

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

Appellate Case No. 2022-000290
Case No. 2020-CP-46-02006

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SEP 28 2022

SC Court of Appeals

Eastwood Construction Partners, LLC and
Eastwood Development Corporation, ... Appellants,

v.

GHD Brooks Creek, a North Carolina Limited Liability Company, and AF-Brooks
Creek, LLC, a North Carolina Limited Liability Company, GHD River Falls, a
North Carolina Limited Liability Company, and AF-River Falls, LLC, a North
Carolina Limited Liability Company, Greenhawk Corporation, Inc. and
TRI Pointe Homes, Inc., ... Respondents.

**RECORD ON APPEAL
VOLUME II**

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all materials proposed to be included by any of the parties and not any other material.

Respectfully submitted,

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STATE OF SOUTH CAROLINA
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Creek, LLC, a North Carolina Limited
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North Carolina Limited Liability Company,
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Limited Liability Company, Greenhawk
Corporation, Inc., and TRI Pointe Homes,
Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

C/A No. 2020-CP-46-02006

**MEMORANDUM IN SUPPORT OF
DEFENDANTS' MOTION FOR
PARTIAL SUMMARY JUDGMENT
AND CANCELLATION OF LIS
PENDENS**

Defendants GHD-Brooks Creek, LLC, AF-Brooks Creek, LLC, GHD-River Falls, LLC, AF-River Falls, LLC, and GreenHawk Corporation, Inc. ("GreenHawk") (collectively, "Defendants"), by and through their undersigned counsel, hereby submit this memorandum in support of their Motion for Partial Summary Judgment and Cancellation of Lis Pendens¹ ("Motion") against Plaintiffs Eastwood Construction Partners, LLC, and Eastwood Development Corporation (collectively, "Eastwood").

INTRODUCTION

This is a dispute arising out of a negotiation to purchase land in York County. The undisputed facts establish that the parties had – at most – an unenforceable agreement to agree at

¹ "Lis Pendens" as used herein is a collective reference to Lis Pendens Nos. 2020-CP-46-00228 and 2020-CP-46-00229.

some point in the future. *See Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 568, 579, 762 S.E.2d 696, 701-02 (2014) (holding that an agreement to execute further agreements is unenforceable when there is no meeting of the minds on material terms). However, that unenforceable agreement to agree was never reduced to writing, and uncontroverted deposition testimony confirmed that there was never a meeting of the minds on any material terms, such as lot price, takedown schedule, and a deposit amount for the land at issue.

Eastwood attempts to circumvent these undisputed facts by alleging, without factual support, a prior course of dealing or partnership between the parties. *See Jackson v. Bermuda Sands, Inc.*, 383 S.C. 11, 17, 677 S.E.2d 612, 616 (Ct. App. 2009) (holding that “mere bald allegations made by the non-moving party” are insufficient to create a genuine issue of material fact). Throughout discovery, such bald allegations were unequivocally refuted by numerous documents, as well as deposition testimony from Eastwood’s own representatives.² Indeed, it is now clear that no enforceable contract, written or otherwise, ever existed between the parties whereby Eastwood would purchase the land at issue from GreenHawk. Accordingly, Defendants’ Motion should be granted, and the Lis Pendens should be cancelled.

FACTUAL BACKGROUND

GreenHawk and Eastwood’s failed negotiation began more than five years ago. Today, improperly tied up in this litigation are two stifled subdivisions at varying stages of development. One such subdivision, Brooks Creek, is a developed townhouse subdivision. Part of Brooks Creek was sold to co-defendant TRI-Pointe Homes, Inc. (“TRI-Pointe”) prior to this litigation, and the

² In August 2020, this Court denied GreenHawk’s Motion to Partially Dismiss the Complaint and Cancel Lis Pendens in large part because no discovery had taken place.

remainder is still under contract for sale to TRI-Pointe.³ The other subdivision, River Falls, is currently under contract for sale to non-party Taylor Morrison Homes, which has plans to develop it.⁴

As a land developer, GreenHawk purchases raw land and contracts for construction of improvements for residential or commercial purposes. In the present instance, Eastwood identified the two separate parcels of land that would ultimately become Brooks Creek⁵ and River Falls. Prior to closing on these assembled parcels, Eastwood assigned the contracts for purchase to GreenHawk, and GreenHawk entities purchased them.⁶ The parties' initial intention was for GreenHawk to develop the land; then, after GreenHawk completed development, the parties would enter into contracts whereby GreenHawk would sell the lots in the River Falls and Brooks Creek subdivisions back to Eastwood. However, despite negotiations that spanned several years, the parties never agreed on any material terms for either subdivision.

The following table⁷ contains undisputed evidence, compiled from written discovery and deposition transcripts, that conclusively shows no enforceable contract, written or otherwise, has

³ This sale cannot move forward as long as the Lis Pendens affecting Brooks Creek remains in effect.

⁴ The River Falls property is still raw land.

⁵ GreenHawk formed two LLC's, AF-Brooks Creek, LLC and GHD-Brooks Creek, LLC, to purchase and to develop the Brooks Creek subdivision. Eastwood sometimes referred to Brooks Creek as "Brooks Springs," and TRI-Pointe later changed the name to Ashburn. However, Brooks Creek, Brooks Springs, and Ashburn all refer to the same property.

⁶ The contracting parties were AF-Brooks Creek, LLC and AF-River Falls, LLC, which were GreenHawk affiliates formed for the specific purpose of purchasing these tracts of land.

⁷ The documents in this table will be submitted to the Court, but not filed on the public index. Out of an abundance of caution, GreenHawk is not filing these documents on the public index because some of them may contain Eastwood's confidential information.

ever existed between the parties whereby Eastwood would purchase River Falls or Brooks Creek from GreenHawk. It also contains deposition testimony from Eastwood's Vice President of Land, Joseph "Joe" Polite, regarding the Lis Pendens that conclusively proves that Eastwood's purpose for filing the Lis Pendens was entirely improper:

DATE/ DEPOSITION	DESCRIPTION/QUOTE	EX./BATES # OR TR. CITE
9/29/2016	Email from Joe Dority to Joe Polite, both Eastwood Vice Presidents of Land, ⁸ RE: "Transition." Attached to the email is a "quick cheat sheet" of each Eastwood deal. Eastwood Development Community Spreadsheet: Under the Charlotte Division notes, beside both Brooks Creek and River Falls, the project status reads: <i>"*Need Contract* Currently Under Development / Need to get this under contract with Greenhawk / They do not want to price lots until all costs are in"</i>	<i>Ex. A</i> Email: ECP_0001150 <i>Ex. B</i> Attachment: ECP_0001152
10/18/2016	Email from Joe Polite to Allen Nason, Eastwood's general counsel, RE: "Greenhawk Development" "Remember just yesterday you were teaching me the importance of having a contract for lots when transferring or assigning property to a developer? <i>It hit me last night VERY hard that that was not done with Greenhawk on 3 properties that I know: River Falls, Brooks Springs, and Kanata.</i> "	<i>Ex. C</i> ECP_0001542
10/26/2016	Email from Joe Polite to Clark Stewart, owner of Eastwood, RE: "follow up items- Charlotte" Polite, writing to Stewart regarding Brooks Springs and River Falls: <i>"Guys, we are exposed on the pricing of these projects since there was never a contract put into place with Greenhawk when we assigned them these properties. . . ."</i>	<i>Ex. D</i> ECP_0008398

⁸ Polite succeeded Dority as Eastwood's Vice President of Land.

	In response, Stewart describes Eastwood's position as, "ridin' dirty," ⁹ which is Stewart's way of admitting that he knows Eastwood is exposed on River Falls and Brooks Creek because no contract was in place.	
12/22/2016	Email from Joe Polite to Jesse Buchanan and Craig Briner, both Greenhawk employees, RE: "Eastwood Greenhawk Contract Format" <i>"Jesse, Have you had a chance to start the contract process for River Falls and Brooks Spring [sic]?"</i>	<i>Ex. E</i> ECP_0008428
3/20/2017	Email from Joe Polite to Craig Briner, copying Eastwood employees Mike Conley and Patrick Quinn, RE: "River Falls Development" <i>"Craig, . . . [A]s soon as we have a lot purchase contract signed with Greenhawk, Pat and I are happy to interface with the town on your behalf."</i>	<i>Ex. F</i> ECP_0008789
9/07/2017	Email from Mike Conley to Eastwood CFO Kevin Hutchins, RE: "September Budget Review" <i>"I would delete brook springs and river falls [from the budget] due to no contract."</i>	<i>Ex. G</i> ECP_0012284
6/4/2018	Email from Joe Polite to Mike Conley and Bryan Degabrielle, copying Kevin Hutchins (all Eastwood employees), RE: "Brooks Springs Update" Polite, describing his conversation with Craig Briner regarding Brooks Springs: <i>"There is no contract."</i>	<i>Ex. H</i> ECP_00008535
8/2/2018	Email from Allen Nason to Katie Sands, copying Joe Polite and Kevin Hutchins, all Eastwood employees, RE: "Tax Bill" <i>"Hmmm. If I recall they [GreenHawk] don't have a contract with us [Eastwood]. Perhaps the best thing to do is consider how we can transfer this property contemporaneous with a contract. . . ."</i>	<i>Ex. I</i> ECP_0013356

⁹ "Ridin' dirty" is a slang phrase that refers to driving with something illegal in the vehicle. See https://en.wikipedia.org/wiki/Riding_dirty (defining "ridin' dirty" as "a phrase that refers to driving with illegal drugs present in the vehicle"); see also <https://www.urbandictionary.com/define.php?term=riding%20dirty> (defining "riding dirty" as "driving a vehicle with any form of illegality").

8/8/2018	Email from Kevin Hutchins to Joe Polite, copying Mike Conley, RE: "Brooks Springs and River Falls!!!" <i>"Well I will say that during 2017 we wrote off approximately \$350k off as deposit write off for both projects so at least our books are clean and anything we get back from those guys will be income."</i>	<i>Ex. J</i> ECP_0013321
3/26/2019	Email from Margaret Puckett to Mike Conley and Joe Polite, copying Brad Dyer and Katie Sands (all Eastwood employees), RE: "Consolidated Notes On Deals/Prospects." An attachment titled "2019-03-26- Charlotte Land Positions" is attached to the email. In the attachment, in the "Lot Delivery Date" column, the following notation appears in the rows associated with "Brooks Springs" (Brooks Creek) and River Falls: "???? No contract"	<i>Ex. K</i> Email: ECP_0001110 <i>Ex. L</i> Spreadsheet: ECP_0001112
6/8/2020	Email from Joe Polite to GreenHawk employee Jeremy Medlin, RE: "Brooks Creek/River Falls" <i>"The amount [pre-development expenses] was intended to be credited towards the final earnest money deposits, however there was never a ratified contract for the repurchase of the lots between the two parties. Attached is our accounting of the funds that Eastwood spent; \$312,296. I realize there is a lot of history on these projects and we can review it but it is our intent to collect this money. If you can make arrangements for payment we can put this behind us."</i> In follow up email correspondence, Medlin repeatedly asks Polite and Allen Nason for evidence of a contract and for Eastwood to make an offer on River Falls.	<i>Ex. M</i> GHD_0010260
5/4/2021 Deposition of Joe Polite	Polite states that Eastwood's standard practice is to have a contract in place for land sale agreements.	<i>Ex. N</i> 88:19-89:2
5/4/2021 Deposition of Joe Polite	Q: "When you joined [Eastwood] and received this transition list from Mr. Dority, it had become your understanding that Eastwood, quote, needed	112:2-8

	a contract, closed quote, on both of these properties?" A: "Yes."	
5/4/2021 Deposition of Joe Polite	Q: "It was true, was it not, that there was never a contract put into place with GreenHawk when Eastwood assigned them these properties; wasn't that true?" A: "That was a true statement."	121:11-15
5/4/2021 Deposition of Joe Polite	Polite confirms that there was a "raw draft" contract with respect to Brooks Creek, but the draft contract was never signed.	130:8-131:7
5/4/2021 Deposition of Joe Polite	While reviewing one of his emails, Polite confirms that the email indicated that he was going to send GreenHawk a "standard draft contract," but that the parties would need to agree on certain "business points," such as deposits, takedown schedule, and lot price.	131:9-134:22
5/4/2021 Deposition of Joe Polite	Polite confirms that the parties would need to agree on lot price and a takedown schedule for Brooks Creek and River Falls.	139:1-25
5/4/2021 Deposition of Joe Polite	Polite agrees that takedown schedule and lot price were going to be two "essential terms of any lot purchase agreement [Eastwood] ever had with Greenhawk over [River Falls and Brooks Creek]." Thereafter, Polite further confirms that Eastwood did not have an agreement with GreenHawk as to a lot purchase contract that would include a takedown schedule and price.	152:8-153:15
5/4/2021 Deposition of Joe Polite	Polite admits that the draft contract Eastwood received from GreenHawk for Brooks Creek was never accepted by Eastwood.	156:18-158:2
5/4/2021 Deposition of Joe Polite	Polite admits that he does not have any record of Eastwood accepting the draft contract for Brooks Creek.	161:18-162:4
5/4/2021 Deposition of Joe Polite	Q: "Is it Eastwood's position that it currently has a contract for the purchase of the Brooks Creek lots?" ... A: " <i>In the definition of that you used for contract, I would say no.</i> "	162:12-17
5/4/2021 Deposition of Joe Polite	Q: "... I'm asking you for what a material term is in a contract that you say Eastwood already has. You say Eastwood already has a contract. And if the court agrees with you, Mr. Polite, what are you	165:16-166:13

	going to tell the court that takedown term is of that contract?" A: <i>"Mr. Cox, I did not say we had a contract."</i> ... Q: "[A]s we sit here right now, has Eastwood and GreenHawk agreed on a takedown schedule with respect to the Brooks Creek property?" A: "Not to my knowledge, no." Q: "... [A]s you said earlier, that's a material term, ... that's an essential term of ... any lot purchase contract for the sale of lots in a development; isn't that right?" A: "That's correct. That would be one of the items, sure."	
5/4/2021 Deposition of Joe Polite	Q: "... What was the purpose in filing that lis pendens?" A: <i>"It would be to, as I said, collect a debt on properties that we expended money towards."</i>	187:7-11
5/20/2021 Deposition of Joe Dority	Dority explains that Eastwood's practice for approving a purchase of property like Brooks Creek or River Falls would involve Eastwood signing a written contract.	<i>Ex. O</i> 30:6-21
5/20/2021 Deposition of Joe Dority	Q: "... Do you recall negotiating any sort of written option or right of first refusal with respect to Brooks Creek?" A: "Not a written, but there was a <i>verbal understanding</i> that's what would happen." ... Q: "Understood. But before y'all could agree on a contract to sell those lots to Eastwood Homes there were certain terms that had to be settled; for example, the price of the lots had to be agreed on, didn't it?" A: <i>"I guess the exact terms would have had to be nailed down, yes, ..."</i>	38:7-39:5

5/20/2021 Deposition of Joe Dority	Dority confirms that before Eastwood could buy property from GreenHawk, the parties would have to agree on lot price, takedown schedule, and any deposit to be paid. Dority further confirms that his expectation was that at some point, Eastwood and GreenHawk would ultimately negotiate a written lot purchase contract and "hammer out the exact details" of those specific terms.	39:14-41:15
5/20/2021 Deposition of Joe Dority	Dority could not recall any further negotiations with GreenHawk with respect to River Falls after April of 2016.	50:2-51:7
5/20/2021 Deposition of Joe Dority	Q: "It appears from this transition summary that you still didn't have a . . . lot purchase contract with GreenHawk at the time you left [Eastwood] in the fall of 2016. Is that accurate?" A: "That's the way it appears with this that whatever we agreed to was not in a contract form that both parties – <i>I mean, it looks like to me there needs to be a written contract inked up. . . .</i> "	58:8-15
5/20/2021 Deposition of Joe Dority	Q: ". . . So my understanding is that you have no recollection as you sit there today of any terms for any purchase of lots in the Brooks Creek, or Brooks Springs as y'all referred to it?" . . . A: " <i>I don't remember any specific terms for Brooks Springs, Brooks Creek, River Falls.</i> " Q: "You've anticipated my question. Because I was going to ask you do you have any recollection of any details of any deal to buy lots in River Falls?" A: " <i>No sir. . . . I don't remember . . . specific terms. I remember I talked to the GreenHawk folks about terms. Okay, we need to get the terms, we need to – whatever it is. And whatever emails are the emails. . . .</i> "	65:11-66:8
10/20/2021 30(b)(6) Deposition of Joe Polite	Q: "So I asked you this question. You see referenced in that email, I think the second one up the chain where you sent it to Mr. Buchanan on December 14th, that you were going to send him a blank Eastwood standard contract as a starting point, correct?"	14:13-15:9

	A: "That's what it reads, yes." Q: "And then it says we will need to apply the agreed upon deal points – right? – deposits, takedown and pricing." A: "As written. Yes." Q: "So just to put this in context, you acknowledge that in a lot purchase agreement like the one contemplated in the River Falls and Brooks Springs deals, the contract would have a combination of sort of standard terms and deal specific terms; isn't that right?" ... A: <i>"There are certain points that need to be agreed upon."</i>	
10/20/2021 30(b)(6) Deposition of Joe Polite	Q: "Okay. So, basically, in December of 2016 you were prepared to supply GreenHawk with a standard Eastwood contract, and you were expecting them to send it back to you with the agreed upon deal points specific to the deal incorporated into those standard terms; is that accurate?" A: "That would be – yeah. That would be the intention."	<i>Ex. P</i> 16:7-14
10/20/2021 30(b)(6) Deposition of Joe Polite	Polite agrees that as of December 14, 2016, there was no agreement between the parties with respect to lot price, takedown schedule, or deposit amount for Brooks Creek.	16:22-18:1
10/20/2021 30(b)(6) Deposition of Joe Polite	Polite confirms that "there was no acceptance or rejection of" the draft contract Eastwood received for Brooks Creek on October 31, 2018. Moreover, Polite noted that there was no need for Eastwood's land acquisition committee to meet about Brooks Creek at that point "[b]ecause <i>there was no agreed upon terms by both the Charlotte division or GreenHawk at the time.</i> "	20:14-21:18
10/20/2021 30(b)(6) Deposition of Joe Polite	Q: "Did anyone from Eastwood, either of the Eastwood entities, ever communicate to GreenHawk or any of the defendants in this case that that contract was accepted by Eastwood?"	22:21-23:6

	A: "No." Q: <i>"Was the contract ever accepted by Eastwood?"</i> A: "No." Q: "So is it fair to say that the contract that was attached to this Exhibit 22 was just sort of set aside and not acted upon by Eastwood?" A: "That is correct."	
10/20/2021 30(b)(6) Deposition of Joe Polite	Polite confirms that as of the date of his deposition, there had been no agreement between Eastwood and GreenHawk with respect to the Brooks Creek lot price, takedown schedule, or deposit amount.	23:14-25:5
10/20/2021 30(b)(6) Deposition of Joe Polite	Q: "All right. So, Eastwood, you understand, is suing for the right to purchase the Brooks Creek development and build houses on it; isn't that right?" A: "Yes." Q: "And, so, if you win, if Eastwood prevails on that argument, a lot price is still going to have to be determined, right, because it hasn't been determined yet?" A: <i>"It would have to be agreed on what the price would be to transfer those lots to us."</i> Q: "So the answer to my question is yes?" A: "Yes. With work. With additional work. It's yes, but with additional work."	38:2-14
10/20/2021 30(b)(6) Deposition of Joe Polite	Polite confirms that Eastwood never responded to GreenHawk's October 31, 2018 offer with respect to Brooks Creek.	53:7-21
10/20/2021 30(b)(6) Deposition of Joe Polite	Polite explains that the parties had an <i>"agreement in principle"</i> with respect to how they would arrive at an agreed-upon lot price.	77:1-14
10/20/2021 30(b)(6) Deposition of Joe Polite	Q: "Okay. And do you know if a draft agreement was ever proposed on the River Falls lots?"	88:16-19

	A: "Not to my knowledge or the company's knowledge have I seen a draft of the River Falls."	
10/20/2021 30(b)(6) Deposition of Joe Polite	Q: "So is it not the contention of Eastwood that that document [attached as Exhibit G to the Complaint] itself was a contract or those terms were accepted; is that correct?" ... A: <i>"I would say it's a general terms that definitely GreenHawk put forward, but there was never an agreement that Eastwood accepted it."</i>	91:5-12
10/20/2021 30(b)(6) Deposition of Joe Polite	Q: "... And is it correct that there is no agreement between Eastwood and the Greenhawk entity for Eastwood to purchase the [River Falls] land in that condition?" A: "Not to my knowledge that there's an agreement for us to purchase the semi-finished raw land – pre-platted land back." Q: "Just for clarity, I'm asking for the company's knowledge. <i>I'm asking if there is a term of any agreement by which the company has the right to buy the River Falls project undeveloped?</i> " A: <i>"Not to my knowledge."</i>	94:7-17
10/20/2021 30(b)(6) Deposition of Joe Polite	Polite confirms that Eastwood has never made an offer for River Falls outside of settlement discussions associated with this litigation.	98:25-99:8
10/20/2021 30(b)(6) Deposition of Joe Polite	Q: "Okay. Are you aware of any ... lot purchase agreement under which Eastwood purchased subdivision lots from a GreenHawk entity without a signed written contract?" ... A: <i>"The closings that we've had on lots with GreenHawk have had contracts. ... No closings without a signed contract to date."</i> Q: "So this instance of Brooks Creek would be the first. You would want the court to make a contract that's not written and not signed and get the court to make GreenHawk sell lots to Eastwood as a first time between the parties; is that correct?"	155:7-156:13

	A: "We would like to have them live up to the agreement that they were going to sell us lots, yes." ... Q: ". . . <i>It would be the first time that . . . Eastwood would buy a lot from a GreenHawk entity without a signed written contract; isn't that correct?</i>" A: "<i>Should the court order it, yes.</i>"	

As these documents and deposition testimony make clear, prior to filing its Complaint in this action, Eastwood *never* contended that it an enforceable contract to purchase lots in River Falls or Brooks Creek. Indeed, various Eastwood representatives have *repeatedly acknowledged* that no contract exists in both documents and testimony associated with this litigation.

LEGAL STANDARD

Summary Judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." SCRCP 56(c). "[O]nce the moving party carries its initial burden, the opposing party must come forward with specific facts that show there is a genuine issue of fact remaining for trial." *Sides v. Greenville Hosp. Sys.*, 362 S.C. 250, 255 (S.C. Ct. App. 2004).

"Where a motion for summary judgment is made and supported by proper affidavits, a plaintiff cannot rest on allegations in his pleadings that are controverted by affidavits and/or depositions submitted by defendants." *Montgomery v. CSX Transp., Inc.*, 362 S.C. 529, 542, 608 S.E.2d 440, 447 (Ct. App. 2004). Furthermore, "[a] party may not create a genuine issue of material fact through speculation or guesswork." *In re Eleanor McCarthy Lenahan Tr. under agreement*

Dated July 12, 2001, 428 S.C. 598, 605, 836 S.E.2d 793, 797 (Ct. App. 2019) (recognizing that one may not create a genuine issue of material fact by speculation or an “inferential leap”). And, “mere bald assertions uncorroborated by any other evidence” are likewise insufficient. *See Noorai v. Sch. Dist. of Pickens Cty.*, No. 2014-001282, 2016 WL 1367066, at *2 (S.C. Ct. App. Apr. 6, 2016); *see also Jackson v. Bermuda Sands, Inc.*, 383 S.C. 11, 17, 677 S.E.2d 612, 616 (Ct. App. 2009) (holding that “assertions as to liability must be more than mere bald allegations made by the non-moving party in order to create a genuine issue of material fact”).

ARGUMENT

A. GreenHawk is Entitled to Summary Judgment on Eastwood’s Specific Performance Claim Because the Undisputed Evidence Establishes That No Valid Agreement, Written or Otherwise, Ever Existed Between the Parties Whereby Eastwood Would Purchase River Falls or Brooks Creek From GreenHawk.

“Specific performance should be granted only if there is no adequate remedy at law and specific enforcement of the contract is equitable between the parties.” *Ingram v. Kasey’s Assocs.*, 340 S.C. 98, 105, 531 S.E.2d 287, 291 (2000) (citations omitted). In order to compel specific performance, a court must find:

(1) *there is clear evidence of a valid agreement*; (2) the agreement had been partly carried into execution on one side with the approbation of the other; and (3) the party who comes to compel performance has performed his or her part, or has been and remains able and willing to perform his or her part of the contract.

Id. at 106, 531 S.E.2d at 291 (emphasis added).

Here, the “clear evidence” conclusively establishes that the parties *never* had a valid agreement for the sale of River Falls or Brooks Creek. It is undisputed that the parties never executed a written contract for either property that would satisfy the statute of frauds. *See Fici v. Koon*, 372 S.C. 341, 346, 642 S.E.2d 602, 604 (2007) (“To satisfy the Statute of Frauds, every essential element of the contract must be expressed in a writing signed by the party to be

compelled.”). At most, the parties had an unenforceable, oral agreement to agree on the material terms of a contract at some undetermined point in the future. *See id.* at 347, 642 S.E.2d at 605 (holding that an agreement to agree is not enforceable under the statute of frauds); *see also Stevens & Wilkinson of S.C., Inc.*, 409 S.C. at 579, 762 S.E.2d at 701-02 (holding that an agreement to execute further agreements is unenforceable when there is no meeting of the minds on material terms).

Indeed, Eastwood’s own executives who were in charge of land acquisition, one of whom was Eastwood’s 30(b)(6) designee, testified to as much and repeatedly confirmed that the parties never agreed to material terms of the contract, such as lot price, takedown schedule, and a deposit amount for River Falls or Brooks Creek. *See, e.g.,* Polite 30(b)(6) Dep. at 77:1-14 (testifying that the parties had an “*agreement in principle*” with respect to how they would arrive at an agreed-upon lot price) (emphasis added); *see also id.* at 23:14-25:5 (confirming that as of October 20, 2021, there was no agreement between Eastwood and GreenHawk with respect to the Brooks Creek lot price, takedown schedule, or deposit amount); *id.* at 20:14-21:18 (confirming that “there was no acceptance or rejection of” the draft contract Eastwood received for Brooks Creek on October 31, 2018, and further noting that there was no need for Eastwood’s land acquisition committee to meet about Brooks Creek at that point “[b]ecause *there was no agreed upon terms by both [Eastwood’s] Charlotte division or GreenHawk at the time*”) (emphasis added); *Id.* at 94:13-17 (Q: “Just for clarity, I’m asking for the company’s knowledge. *I’m asking if there is a term of any agreement by which the company has the right to buy the River Falls project undeveloped?*” A: “*Not to my knowledge.*”) (emphasis added); Dority Dep. at 38:7-39:5 (testifying that the parties had a “*verbal understanding*” and that the “*exact terms [of the contracts] would have had to be nailed down*”) (emphasis added); *Id.* at 65:11-66:18 (“*I don’t remember any*

specific terms for Brooks Springs, Brooks Creek, River Falls. . . . I remember I talked to the GreenHawk folks about terms. Okay, we need to get the terms . . .” (emphasis added). This testimony, as well as various other deposition excerpts and documents detailed in the table above, conclusively establish that there has never been a “valid agreement” between the parties that would support a claim of specific performance.

To the extent Eastwood attempts to sidestep the glaring contractual deficiencies through an alleged course of dealing between the parties, (*see, e.g.*, Third Am. Compl. at ¶¶ 10-11), those baseless allegations fare no better in the face of the unambiguous documents and deposition testimony. When testifying on behalf of Eastwood, Polite confirmed that Eastwood has *never* closed on a property sale with GreenHawk without a signed, written contract, and further confirmed that if this Court were to order specific performance with respect to River Falls or Brooks Creek, that “[i]t would be the first time that . . . Eastwood would buy a lot from a GreenHawk entity without a signed written contract.” Polite 30(b)(6) Dep. at 155:7-156:13 (emphasis added). This testimony and the prior written contracts between the parties run entirely

contrary to the “course of dealing” allegations Eastwood included in its Complaint.¹⁰ Indeed, the disparity between Eastwood’s allegations and the evidence is egregious.¹¹

Based on the foregoing, GreenHawk is entitled to summary judgment on Eastwood’s specific performance claim because there is no genuine issue of material fact regarding the existence of a valid agreement between the parties for the sale of River Falls or Brooks Creek to Eastwood.

B. Eastwood and GreenHawk Were Not Partners or Joint Venturers.

Eastwood also attempts to circumvent glaring contractual deficiencies by baselessly claiming – *for the first time* in its Third Amended Complaint – that the parties were partners or joint venturers in the Brooks Creek and River Falls projects. *See, e.g.*, Third Am. Compl. at ¶¶ 69 (“As joint venturers, Eastwood and Greenhawk had fiduciary duties to one another.”), 74

¹⁰ Attached as *Exhibit Q* are *six* prior written purchase and sale contracts that the parties entered into for subdivisions named Crismark (Union County, NC), Dutchman’s Ridge (Gaston County, NC), Granite Crest (Wake County, NC), Sunnybrook (Wake County, NC), Lindley Park Estates (Guilford County, NC), and Kanata Mills (Wake County, NC). Not only are these contracts all reduced to writing, but they each contain “veto” language, which Eastwood presumably included as an extra layer of protection from apparent authority issues in the event that one of their owners chose not to sign off on a contract. *See, e.g.*, Crismark Lot Purchase Agreement at p. 1 (“From the Effective Date, the Agreement will be in full force and effect for twenty one (21) days, but will automatically terminate if the signature of Joseph K. Stewart or J. Clark Stewart is not affixed within ten one [sic] (10) days of the Effective Date.”) (emphasis in original); *see also* Dutchman’s Ridge Lot Purchase Agreement at p. 1 (“From the Effective Date, the Agreement will be in full force and effect for five (5) days, but will automatically terminate if the signature of Joseph K. Stewart or J. Clark Stewart is not affixed within five (5) days of the Effective Date.”) (emphasis in original).

¹¹ To the extent Eastwood argues that it has enforceable contracts for the purchase of River Falls and Brooks Creek pursuant to the part performance exception to the statute of frauds, that argument fails, among other reasons, because there is no “clear evidence of a valid agreement.” *See Gibson v. Hrysikos*, 293 S.C. 8, 15, 358 S.E.2d 173, 176 (Ct. App. 1987) (“A party seeking to show part performance by possession and improvements must show acts which relate clearly and unequivocally *to the agreement*, exclusive of any other relation between the parties touching *the agreement*.”) (emphasis added).

("Eastwood and Greenhawk were partners carrying on as co-owners of a business for profit."); *see also* *Trexler v. McIntyre*, 216 S.C. 469, 473-474, 58 S.E.2d 887, 889 (1950) ("[T]he true test of a copartnership is that *there must be a communion of profits and losses.*") (emphasis added); *Halbersberg v. Berry*, 302 S.C. 97, 101, 394 S.E.2d 7, 10 (Ct. App. 1990) ("To establish a partnership there must be an association of two or more persons to carry on as co-owners of a business *for profit.*") (emphasis added); *Id.* (recognizing that evidence of sharing in profits and losses and shared work in the venture was sufficient to submit to the jury the question of whether a partnership existed).

But, Eastwood's allegations are again directly contradicted by the testimony of their own representatives. *See, e.g.*, Polite Dep. at 263:5-12 (admitting that there is no joint profit or loss agreement between Eastwood and GreenHawk); *see also* Dority Dep. at 170:11-172:3 (admitting that the parties never "sat down and say, hey, here's the structure, why don't we become JV [joint venture] partners," and explaining that Eastwood viewed any company in its "supply chain" as a "partner"); *Id.* at 171:20 ("Partnership is a strong word."); Polite 30(b)(6) Dep. at 48:3-8 (Q: "Was there an agreement in principle that Eastwood is going to share a profit and loss on both River Falls and Brooks Creek?" A: "*We were not anticipating sharing the profit with GreenHawk.*") (emphasis added); *Id.* at 65:2-7 (Q: "Was there any prior deal, to your knowledge, in which there was an agreement to share the net profit or loss on the project?" A: "Not to my knowledge."). Similar to Eastwood's allegations regarding a prior course of dealing between the parties, its partnership/joint venture allegations are completely contradicted by the evidence.¹²

¹² Even assuming *arguendo* that Eastwood and GreenHawk were partners, which they were not, GreenHawk is unaware of any authority that would support a partnership exception to the statute of frauds under South Carolina law.

C. The Lis Pendens Should Be Cancelled.

Eastwood's specific performance claim is the only cause of action that affects the title to River Falls and Brooks Creek. Because GreenHawk is entitled to summary judgment on that claim, the Lis Pendens should be cancelled since this action no longer affects the title to real property. *See Carolina Park Assocs., LLC v. Marino*, 400 S.C. 1, 9, 732 S.E.2d 876, 880 (2012) (affirming the cancellation of a lis pendens after the plaintiffs no longer had a claim affecting the title to real property because the lis pendens was no longer authorized by S.C. Code Ann. § 15-11-10).

CONCLUSION

Based on the foregoing, Defendants respectfully requests that the Court grant this Motion and cancel the Lis Pendens.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,

NEXSEN PRUET, LLC

s/Andrew A. Mathias

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Attorneys for Defendants

December 7, 2021
Greenville, South Carolina

Exhibit A

From: Joe Stewart [jstewart@eastwoodhomes.com]
Sent: 9/29/2016 1:25:09 PM
To: Mike Conley [mconley@eastwoodhomes.com]; Justin Myers [jmyers@eastwoodhomes.com]; Kevin Hutchins [khutchins@eastwoodhomes.com]
Subject: FW: Transition
Attachments: Transition Cheat Sheet.xlsx

FYI

From: Joe Dority
Sent: Thursday, September 29, 2016 11:41 AM
To: Joe Polite
Subject: RE: Transition

Joe,
I know you have been busy the past few days and catching up has been challenging.
Here is a quick cheat sheet of each deal as I know it within each division.

Please review and let me know if you have any additional questions or if you need anything in particular.

Joe

From: Joe Dority
Sent: Friday, September 23, 2016 9:07 AM
To: Joe Polite
Cc: Joe Stewart (jstewart@eastwoodhomes.com); Clark Stewart (icstewart@eastwoodhomes.com)
Subject: Transition

Joe P.

Over the next few days I will be providing you a list with details about all communities (current and deals in the works) throughout all of the divisions as well as general advice on each market and developers.

We can do this one on one or I can do it and just send it to you, please let me know. I personally feel we need to do this in person but that is your call.

I will get you all the background info that I have. After that point, I do not know what else I can provide. I know that you will need help and will have questions, but that will be on you to reach out and ask for my assistance or guidance.

Best of luck and I hope that you will find this list / time well spent and helpful,

Joe

Joe Dority
Corporate Vice President of Land
Eastwood Homes
2857 Westport Rd.
Charlotte, NC 28208

Exhibit B

Charlotte

	Seller	Contact	Phone Number	Point Person	Status
Autumn Cove	Albert ?	Byron Tuttle	803-517-0618	Mike Conley	Buying Lots
Salmar Place	Eastwood	Eastwood	-	Pat Quinn	Self Developed / developing final phase now - Pat is up to speed
Berwick	Kilar	David Gorceck	919-858-4567	Mike Conley	Buying Lots
Brookdale	?	Frank Ford	?	Marc Balala	Buying Lots
Briargale	Eastwood	Eastwood	-	Pat Quinn	Raw Land
Camington	Eastwood	Eastwood	-	Pat Quinn	Raw Land
Covington	?	David Dupree	?	Mike Conley	Buying Lots
Crosby Woods	?	?	?	Mike Conley	Buying Lots
Dutchmans	-	JV / Tom Pearson	?	Mike Conley	Buying Lots
Glenholough	Kilar	David Gorceck	919-858-6587	Mike Conley	Buying Lots
Glenmore Towne	-	Eastwood	-	Pat Quinn	Buying Lots
KaSwater	Latar	?	?	Mike Conley	Buying Lots
Parkview	Bob Nixon	Bob Nixon	704-701-1071	Mike Conley	Buying Lots
Pine Forest	Mike Johnson	Mike Johnson	?	Mike Conley	Buying Lots
Parkdale	Charles Gray	Charles Gray	704-718-7399	Mike Conley	Buying Lots / Deal is complicated - ask Joe Stewart for help
Prescott Glen	Shawn Cummings	Joe Dority	803-381-5921	Mike Conley	Currently Under Development
Rapids	Shawn Cummings	Joe Dority	803-381-5921	Mike Conley	Buying Lots
Robinson Oaks	David Simonini	David Simonini	704-309-3904	Mike Conley	Buying Lots
Sweetwater	Eastwood	Eastwood	-	Pat Quinn	Self Developed / developing final phase now - Pat is up to speed
Savannah	Eastwood	Eastwood	-	Pat Quinn	Completed / Pat is coordinating dry utilities
Seven Oaks	?	Jenna Callahan	803-517-9767	Mike Conley	Currently Under Development
Steele Creek	Keystone	Earl Dickinson	804-347-3244	Mike Conley	Buying Lots
Shannon Vista	Eastwood	Eastwood	-	Pat Quinn	Self Developed / Turning Over HOA now
Vistas of Wincoff	Eastwood	Eastwood	-	Pat Quinn	Completed / Callahan to refund \$100k for not developing lots due to creek crossing
Whitnut Creek	Latar	?	?	Mike Conley	Buying Lots
Waterford	Eastwood	Eastwood	-	Pat Quinn	Raw Land
Willgrove Pond	Eastwood	Eastwood	-	Pat Quinn	Raw Land
Woodside	Keystone	Earl Dickinson	804-347-3244	Mike Conley	Buying Lots
Wrenn Creek	Shawn Cummings	Joe Dority	803-381-5921	Mike Conley	Currently Under Development
Brooks Springs	Greenhawk	Craig Briner	919-210-1936	Mike Conley	*Need Contract* Currently Under Development / Need to get this under contract with Greenhawk / They do not want to price lots until a
River Falls	Greenhawk	Craig Briner	919-210-1936	Mike Conley	*Need Contract* Currently Under Development / Need to get this under contract with Greenhawk / They do not want to price lots until a
Waldwood	Phil Mayes	Phil Mayes	704-614-9531	Mike Conley	*Need Contract* Option Contract / waiting on comments back from Seller
Davis Lake	Joe Stevens	Joe Stevens	704-822-5722	Pat Quinn	*Need Contract* Raw Land / under development

Triad

	Seller	Contact	Phone Number	Point Person	Status
Angles Glen	Kavan Combs	Kavan Combs	336-626-3279	Jeff Creighton	Buying Lots
Autumn Trace	Ray Lopez	Ray Lopez	?	Jeff Creighton	Buying Lots
Bluestone	Andy Dreyfus	Joe Dority	803-381-5921	Jeff Creighton	Currently Under Development
Chandler Oaks	Andy Dreyfus	Joe Dority	803-381-5921	Jeff Creighton	Buying Lots
Engles Trace	East West Partners	Daniel Jones	434-234-1478	Jeff Creighton	Buying Lots
Glenmore Creek	Eastwood	Eastwood	-	Pat Quinn	Completed
Giffin Knoll	Herb Parks	Herb Parks	336-706-5000	Amanda Leach	Lots Purchase Complete
Giffin Village	Herb Parks	Herb Parks	336-706-5000	Amanda Leach	Lots Purchase Complete
Vanderdon	Trunk Adams	Trunk Adams	336-382-2076	Jeff Creighton	Currently Under Development
Lindley	Greenhawk	Craig Briner	919-210-1936	Jeff Creighton	Buying Lots
Lowery Mill	Eastwood	Eastwood	-	Pat Quinn	Completed
Magnolia Glen	Shawn Cummings	Joe Dority	803-381-5921	Jeff Creighton	Currently Under Development
Vineyards	Eastwood	Eastwood	-	Pat Quinn	Buying Lots
Giffin Knoll - True Lots	True Homes	Jeff Carmichael	919-210-1936	?	*Need Contract* Awaiting on Signed Contract to back from Seller

Raleigh

	Seller	Contact	Phone Number	Point Person	Status
Flowers Plantation	Bock Flowers	Roid Stephenson	919-369-8332	Jim Cox	Lots Purchase Complete
Gonyard Towne	Eastwood	Eastwood	-	Pat Quinn	Need to complete the horizontal work
Hope Valley	Bruce Knott	Bruce Knott	919-201-7306	Todd Alsop	Buying Lots
Honeycutt Landing	Doug Ball	Doug Ball	919-427-2592	Todd Alsop	Buying Lots
Longview	Andy Dreyfus	Joe Dority	803-381-5921	Todd Alsop	Currently Under Development
Rockledge	Bob Stafford	Bob Stafford	919-263-0919	Todd Alsop	Buying Lots / need next phase developed
Waddington Creek	-	Eastwood	-	Mike Kemp	Fully Entitled
Fish Property	-	Eastwood	-	Mike Kemp	Fully Entitled / Doug Ball is going to purchase and develop
Kanata Falls	Greenhawk	Craig Briner	919-210-1936	Todd Alsop	*Need Contract* Awaiting on the Seller to return the Contract

Richmond

	Seller	Contact	Phone Number	Point Person	Status
Castleton	Boyd Development	?	?	Spn Cullis	Buying Lots
Cascade Creek	Boyd Development	?	?	Spn Cullis	Buying Lots
Harpers Mill	Mark Sowers	Mark Sowers	804-794-1142	Spn Cullis	Buying Lots
Patriots Landing	East West Partners	Clam Carliso	?	Justin Myers	Buying Lots
Ramblewood	Boyd Development	?	?	Spn Cullis	Buying Lots
Vietnamite	David Cloak	David Cloak	804-337-7876	Justin Myers	Buying Lots

Greenville

	Seller	Contact	Phone Number	Point Person	Status
Adams Mill	Rodney Gray	Rodney Gray	854-444-7809	Chris Day	Buying Lots
Catadonia	Anthony Anders	Anthony Anders	854-303-7037	Chris Day	Buying Lots
Endeavor @ Usamora	Eastwood	Eastwood	-	Chris Day	Completed
Giffin Park	Charles Gray	Charles Gray	704-718-7399	?	Buying Lots / Deal is complicated - ask Joe Stewart for help
Grayson Park	Rodney Gray	Rodney Gray	854-444-7809	Chris Day	Buying Lots
Morton Grove	Jon Beason	Jon Beason	?	Chris Day	Buying Lots
Windsor Creek	Charles Gray	Charles Gray	704-718-7399	?	Buying Lots
Watermill	Jon Beason	Jon Beason	?	Chris Day	Buying Lots

Charleston

	Seller	Contact	Phone Number	Point Person	Status
Brownwood	Eastwood	Eastwood	-	Jason Esposito	Raw Land
Carnes Crossing	Daniel Island Group	?	?	Jason Esposito	Buying Lots
Colony North	Van Malphrus	Van Malphrus	843-906-4164	Jason Esposito	Buying Lots
Cooper Estates	Van Malphrus	Van Malphrus	843-906-4164	Jason Esposito	Currently Under Development
Cypress Grove	Jason Myers	Jason Myers	?	Jason Esposito	Buying Lots / Deal is complicated - ask Jason for details
Landings @ Montague	Clark Stewart	Clark Stewart	-	Jason Esposito	Buying Lots
Gale Terrace Preserve	City of North Charleston	?	?	Jason Esposito	Buying Lots
Oakley Pointe	-	Eastwood	-	Jason Esposito	Raw Land
Riverland Oaks	Andy Dreyfus	Joe Dority	803-381-5921	Jason Esposito	Currently Under Development
Sophia's Landing	Van Malphrus	Van Malphrus	843-906-4164	Jason Esposito	Buying Lots
Swygerts Landing	Eastwood	Eastwood	-	Jason Esposito	Raw Land
Wynfield	Eastwood	Eastwood	-	Jason Esposito	Currently Under Development

2 costs 0.10 in
2 costs 0.10 in

Exhibit C

From: Allen Nason [anason@eastwoodhomes.com]
Sent: 11/18/2016 11:36:25 AM
To: Joe Polite [jpolite@eastwoodhomes.com]
Subject: RE: Greenhawk Development
Attachments: image001.png

This was a first raw draft and I was told we would do the spec later. This was very early on.

From: Joe Polite
Sent: Friday, November 18, 2016 11:23 AM
To: Allen Nason
Subject: RE: Greenhawk Development

Did this one ever get signed?
I doubt it as the grading spec are for SF lots and the project is now Townhomes.
I am looking for the information of what the Land purchase price was. Katie has nothing either.

Joe F. Polite Jr.
Ofc. Direct 704-401-1048
Cell 704-574-7877

From: Allen Nason
Sent: Friday, November 18, 2016 10:49 AM
To: Joe Polite <jpolite@eastwoodhomes.com>
Subject: FW: Greenhawk Development

From: Allen Nason
Sent: Thursday, October 27, 2016 12:51 PM
To: Joe Polite
Subject: RE: Greenhawk Development

Joe, good afternoon. You have every Camp Kanata contract from me. What you might not have is the attached Brooks Creek contract (Tega Cay, SC) I drafted for Greenhawk in 2013. I don't have anything on River Falls.

Allen

From: Joe Polite
Sent: Tuesday, October 18, 2016 8:11 AM
To: Allen Nason
Subject: Greenhawk Development

Allen,
Remember just yesterday you are teaching me the importance of having a contract for lots when transferring or assigning property to a developer? It hit me last night VERY hard that that was not done with Greenhawk on 3 properties that I know: River Falls, Brooks Springs and Kanata. Greenhawk has gone almost non-existent on us and is moving at glacial speeds on returning calls, or even consider developing these properties. Do you have any record of these transfers and is there any way we can regain control of these properties?
Thanks, Joie

Joe F Polite, Jr.

Corporate VP Land

(O) 704-401-1048 (C) 704-574-7877

(F) 704.394.0748

Charlotte Business Office

2857 Westport Road

Charlotte, North Carolina 28208

www.eastwoodhomes.com



built with care.

Exhibit D

From: Clark Stewart [jcstewart@eastwoodhomes.com]
Sent: 10/26/2016 4:22:14 PM
To: Joe Polite [jpolite@eastwoodhomes.com]
Subject: RE: follow up items - Charlotte

Like, "ridin' dirty". I'm from Gastonia, sorry.

J. Clark Stewart

Eastwood Homes
2857 Westport Road
Charlotte, NC 28208
704-399-4663 x209 (office)
704-400-4195 (cell)
www.eastwoodhomes.com

From: Joe Polite
Sent: Wednesday, October 26, 2016 4:08 PM
To: Clark Stewart
Subject: RE: follow up items - Charlotte

IS "Dirty" a good thing or a bad thing?

Joe F. Polite Jr.
Ofc. Direct 704-401-1048
Cell 704-574-7877

From: Clark Stewart
Sent: Wednesday, October 26, 2016 3:48 PM
To: Joe Polite <jpolite@eastwoodhomes.com>
Subject: Re: follow up items - Charlotte

Dirty...

Clark

Sent from mobile device

On Oct 26, 2016, at 3:28 PM, Joe Polite <jpolite@eastwoodhomes.com> wrote:

Thanks Clark, My updates are below in Red.....

Joe F. Polite Jr.
Ofc. Direct 704-401-1048
Cell 704-574-7877

Just sending you a list of items to follow up on:

Wildwood (Falcon Ridge replacement) - Phil Hayes – 704-614-9531 – he says contract is fine and he expects to sign his part by end of the month / first of Nov. (I would have him send you a copy or I think the one I was working on, I left on my desk) Phil and I have spoken and he was waiting for his final numbers and another report that wasn't going to be completed until November 1. He said, it's ours and we will get back together after the 1st of the month. I have a tickler on my calendar.

Greenhawk – River Falls & Brooks Springs – Craig Briner – 919-210-1996 – he said he was meeting with Polite this week to discuss. Pat Quinn and I met with Craig yesterday at Callahan, his GC on River Falls. Tega Cay has scheduled a Pre-Con meeting for this Thursday morning to get them re-started on the site. Callahan should have final numbers by next Monday and Craig and I will be getting back together to complete the contract. We/he also engaged Callahan to begin the budgets for Brooks Springs and should have pricing late next week. We will then work on the contract for that property as well. Guys, we are exposed on the pricing of these projects since there was never a contract put into place with Greenhawk when we assigned them these properties. Stay tuned, Mike you get the final say so!

Carmel Towns – Steve Bailey – 704-607-5059 – need plans ASAP / this is going to get contentious if plans continue to drag out. Steve and I had lunch last Friday and I gave him our sketch drawings that Jason had gotten back the same morning. Hawthorn appears to be happy again. I am following up with Steve Bailey on Friday Nov. 4th to review Carmel towns and their Lincoln county project we have with them.

As always, let me know if you have any additional questions.

Best, Joe P.

Exhibit E

From: Joe Polite [jpolite@eastwoodhomes.com]
Sent: 12/22/2016 5:42:14 AM
To: Jesse Buchanan [JBuchanan@greenhawkcorp.com]; Craig Briner [cbriner@greenhawkcorp.com]
Subject: Re: Eastwood Greenhawk Contract Format
Attachments: image003.png; image003.png

Jesse,
Have you had a chance to start the contract process for River Falls and Brooks Spring?
Best,
Joe P.

Joe F Polite, Jr.
704-574-7877
Please pardon the brevity and typos.
Sent from my iPhone

On Dec 16, 2016, at 7:59 AM, Joe Polite <jpolite@eastwoodhomes.com> wrote:

Jesse,
I was told by my General Counsel, Allen Nason, that we used the attached format for our contract between Greenhawk Eastwood at Lindley. It appears that all the deal points were worked through on this version so we do not need to recreate the wheel. Let me know your thoughts.
Best, Joe

Joe F Polite, Jr.
Corporate VP Land
(O) 704-401-1048 (C) 704-574-7877
(F) 704.394.0748
Charlotte Business Office
2857 Westport Road
Charlotte, North Carolina 28208
www.eastwoodhomes.com



built with care.

<Lindley Park Estates Greenhawk v2.doc>

From: Joe Polite [jpolite@eastwoodhomes.com]
Sent: 3/20/2017 3:34:44 PM
To: Craig Briner [cbriner@greenhawkcorp.com]
CC: Mike Conley [mconley@eastwoodhomes.com]; Patrick M. Quinn, P.E. [pquinn@eastwoodhomes.com]
Subject: FW: River Falls Development
Attachments: image002.jpg; Eastwood_Homes_Logo_1d434214-0bec-4881-b7fd-221cb22768b5.png; facebook_dee25c8f-3a81-411f-9bcc-022de8dcc960.png; twitter_913fc8a8-6360-43e6-9363-5712b43c0053.png; instagram_a7c3fece-a62f-4b2d-834f-930ee846d42a.png; instagram_ad469724-1d37-4160-b209-24386275c8b5.png; youtube_f55abf73-806b-42fd-be86-c3e2dfb035c2.png; blog_a2b8cc2e-5deb-4ff1-8594-b68dd666be58.png; BWC_55382559-f28f-4f9f-b066-b27461804cca.png

Craig,

Mike Conley received the letter below from the Town of Tega Cay. He was uncertain about how to respond.

As my voicemail indicated last Friday, I am aware of you re-engaging Susan Rosenblatt on this project. Should we include her in these discussions?

Also, as soon as we have a lot purchase contract signed with Greenhawk, Pat and I are happy to interface with the town on your behalf.

Please advise us on how to proceed with Tega Cay.

Best Regards, Joe



Joe Polite

Vice President Land

(O)704-574-7877

Corporate Office

2857 Westport Road, Charlotte, NC 28208

eastwoodhomes.com



built with care.

From: Mike Conley

Sent: Monday, March 20, 2017 2:09 PM

To: Patrick M. Quinn, P.E. <pquinn@eastwoodhomes.com>

Cc: Joe Polite <jpolite@eastwoodhomes.com>

Subject: FW: River Falls Development

Pat,

I'm not sure who is on first on this deal? This is the second time I have received a notice from the City of Tega Cay regarding this site. I don't want them to think I'm ignoring them. Please let me know if I need to respond or who would be the appropriate person to respond. I will be happy to get involved if necessary.

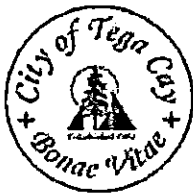
Thanks,

Mike Conley
President
704.361.2375

From: Tom Goebel [<mailto:TGoebel@tegacaysc.gov>]
Sent: Monday, March 20, 2017 10:19 AM
To: Mike Conley
Cc: Susan Britt
Subject: River Falls Development

Mr. Conley,

I hope you are well. I am requesting an update on the status of the River Falls project in Tega Cay. The property has been sitting idle for awhile now, and if work doesn't start back soon, the disturbed areas will have to be stabilized. Thanks in advance for any information you can provide. TG



Tom Goebel | CBO | Development Services Director
7725 Tega Cay Drive, Tega Cay, SC 29708
(o) 803.548.3513 | (f) 803.802.4896
[website](#) | [facebook](#)

Warning: All email correspondence to and from this address may be subject to public disclosure under the South Carolina Freedom of Information Act (FOIA) 2007.

Exhibit G

From: Mike Conley [mconley@eastwoodhomes.com]
Sent: 9/7/2017 11:22:34 AM
To: Kevin Hutchins [khutchins@eastwoodhomes.com]
Subject: RE: September Budget Review

I would add:
Briar gate
Prescott JGlen
Davis Lakes
Heritage

I would delete brook springs and river falls due to no contract

Mike Conley
President
704.361.2375

From: Kevin Hutchins
Sent: Thursday, September 07, 2017 10:57 AM
To: Mike Conley <mconley@eastwoodhomes.com>
Subject: RE: September Budget Review

I'm actually out the 19th – 22nd assuming that Irma does not destroy the place I'm going. I have a conference in FL. I just moved Triad to 9/14/17.

Kevin Hutchins
CFO
704-399-4663 ext. 219

From: Mike Conley
Sent: Thursday, September 07, 2017 10:44 AM
To: Kevin Hutchins <khutchins@eastwoodhomes.com>
Subject: RE: September Budget Review

How about the 19th?

Mike Conley
President
704.361.2375

From: Kevin Hutchins
Sent: Thursday, September 07, 2017 8:25 AM
To: Todd Alsop <talsop@eastwoodhomes.com>; Jason Esposito <jesposito@eastwoodhomes.com>; Mike Conley <mconley@eastwoodhomes.com>
Cc: Spencer Custis <scustis@eastwoodhomes.com>; Justin Myers <jmyers@eastwoodhomes.com>; Chris Day <cday@eastwoodhomes.com>
Subject: RE: September Budget Review

Below are the days that I have scheduled so far.

Columbia 9/6/17
Charleston 9/27/17
Richmond 9/25/17
Raleigh 9/18/17
Greenville 9/13/17
Triad 9/12/17 tentative

Kevin Hutchins
CFO
704-399-4663 ext. 219

From: Todd Alsop
Sent: Thursday, September 07, 2017 8:04 AM
To: Jason Esposito <jesposito@eastwoodhomes.com>; Mike Conley <mconley@eastwoodhomes.com>
Cc: Kevin Hutchins <khutchins@eastwoodhomes.com>; Spencer Custis <scustis@eastwoodhomes.com>; Justin Myers <jmyers@eastwoodhomes.com>; Chris Day <cday@eastwoodhomes.com>
Subject: RE: September Budget Review

Kevin,

Raleigh was planning on Monday the 18th???

Todd Alsop
Division President
704-608-1968

From: Jason Esposito
Sent: Wednesday, September 06, 2017 5:28 PM
To: Mike Conley <mconley@eastwoodhomes.com>
Cc: Kevin Hutchins <khutchins@eastwoodhomes.com>; Todd Alsop <talsop@eastwoodhomes.com>; Spencer Custis <scustis@eastwoodhomes.com>; Justin Myers <jmyers@eastwoodhomes.com>; Chris Day <cday@eastwoodhomes.com>
Subject: Re: September Budget Review

I took the 27th

Sent from my iPhone

Jason Esposito
Division President
843-200-1231

On Sep 6, 2017, at 5:26 PM, Mike Conley <mconley@eastwoodhomes.com> wrote:

I can't find anything on the managers calendar. What dates do you have?

Mike Conley
President
704.361.2375

From: Kevin Hutchins

Sent: Wednesday, September 06, 2017 9:13 AM

To: Todd Alsop <talsop@eastwoodhomes.com>; Spencer Custis <scustis@eastwoodhomes.com>; Jason Esposito <jesposito@eastwoodhomes.com>; Mike Conley <mconley@eastwoodhomes.com>; Justin Myers <jmyers@eastwoodhomes.com>; Chris Day <cday@eastwoodhomes.com>

Subject: September Budget Review

Guys

During the month of September we will be reviewing the 2018 budgets. The managers calendar had/has dates. We can keep these dates if it works in your schedule and you are ready but these dates are really a place holder that we can juggle around depending on when you are ready.

Sorry for any confusion this may have caused in your planning.

Please send me your 2018 stats at the earliest date.

Kevin

Sent from Mail for Windows 10

Kevin Hutchins
CFO
704-399-4663 ext. 219

From: Joe Polite [jpolite@eastwoodhomes.com]
Sent: 6/4/2018 8:55:48 AM
To: Mike Conley [mconley@eastwoodhomes.com]; Bryan Degabriele [bdegabriele@eastwoodhomes.com]
CC: Kevin Hutchins [khutchins@eastwoodhomes.com]
Subject: Brooks Springs Update
Attachments: Brooks Springs Site Plan.pdf

Mike and Bryan,

I finally got Craig Briner, Greenhawk Development, to respond for update on Brook Springs Towns.

His Text said,

"Yes, I'm to get wrapped up with Evolve and our surveyor on Wednesday the 6th.

We Would like you to purchase about half now (as they are completed) and half in December.

Is that what you were thinking too?"

This is the first discussion of any takedown and he did not mention price. I responded with questions on pricing.

There is no contract. We will also need to determine the entry monument and mail kiosks.

The only plan that I have shows 58 units. The plan does not show widths of the units and one of the buildings has 9 units in it.

Any feedback you can provide will help me guide this discussion with Greenhawk.

Thanks in advance, Joe

Joe Polite
Vice President Land
704-574-7877

Exhibit I

From: Joe Polite [jpolite@eastwoodhomes.com]
Sent: 11/19/2018 8:11:57 AM
To: Katie Sands [ksands@eastwoodhomes.com]
Subject: RE: Tax Bill

Well, Craig's response was stuck in my spam filter. I don't have a problem transferring the property to Greenhawk. How do you want to handle it?

Joe Polite
Vice President Land
704-574-7877

From: Katie Sands <ksands@eastwoodhomes.com>
Sent: Monday, November 19, 2018 8:10 AM
To: Joe Polite <jpolite@eastwoodhomes.com>
Subject: FW: Tax Bill

Nope, this is the last email I have so I assume it did not get wrapped up.

Katie Sands
Land Development Coordinator
704-399-4663 ext. 245

From: Allen Nason <anason@eastwoodhomes.com>
Sent: Thursday, August 02, 2018 3:45 PM
To: Katie Sands <ksands@eastwoodhomes.com>
Cc: Joe Polite <jpolite@eastwoodhomes.com>; Kevin Hutchins <khutchins@eastwoodhomes.com>
Subject: Re: Tax Bill

Hmmm. If I recall they don't have a contract with us. Perhaps the best thing to do is consider how we can transfer this property contemporaneous with a contract. Joe P. - your call.

Allen Nason
Sent from my iPhone

Allen Nason

On Aug 2, 2018, at 3:25 PM, Katie Sands <ksands@eastwoodhomes.com> wrote:

This is from back in December. We somehow still own this tiny sliver of land in River Falls, see attached tax bill. We asked Greenhawk to take it. Now they're finally taking it and Costner wants to confirm this is what we want to do.

Please let me know if we've got a green light or not. See GIS of this piece below.

<image010.jpg>

Katie Sands
Land Development Coordinator
704-399-4663 ext. 245

From: Samantha Barnard <samantha.barnard@costnnergroupp.com>
Sent: Thursday, August 02, 2018 3:06 PM
To: Katie Sands <ksands@eastwoodhomes.com>
Subject: RE: Tax Bill

Good Afternoon Katie,

Please see below. Are we conveying the 0.55 acres to GHD-River Falls, LLC? I have drafted the attached non-warranty deed. Let me know if this is not the correct action Eastwood would like to take regarding this.

Thank you,

Samantha Barnard, *Associate Attorney*

<image001.png>

samantha.barnard@costnnergroupp.com
www.costnnerlaw.com • www.arktitlegroup.com

980.219.7637 Main • 980.225.9782 Direct • 866.711.0230 Fax

Costner Law reserves the right to protect the integrity of the closing by employing the following requirements:

Borrower's loan package must be received by our office NO LATER than 2pm the day prior to closings scheduled between the hours of 9am and 12:00 pm.

Borrower's loan package must be received by our office NO LATER than 10:00 am the day of closing for those scheduled between the hours of 1:00pm and 4:00pm.

Failure to adhere to these terms and time frames will ultimately result in the rescheduling of closing.

****It is our strict policy that any funds required over \$1,000 must be in the form of a wire. No certified funds or money orders will be accepted over \$1,000!!! Please note that as a preventative measure to avoid wire fraud, our wire instructions will not change, and we strongly encourage all clients to call to verify our wire instructions prior to sending funds.****

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From: Jesse Buchanan <JBuchanan@greenhawkcorp.com>
Sent: Thursday, August 2, 2018 8:54 AM
To: Jennifer Gosler <jennifer.gosler@costnnergroupp.com>
Cc: Katie Sands <ksands@eastwoodhomes.com>; Woody Jackson <WJackson@greenhawkcorp.com>
Subject: FW: Tax Bill

CAUTION: This email originated from outside of the organization.

I received an out of office reply from Jessica, so I am forwarding our request to you. Is this something you could work on for us?

From: Jesse Buchanan
Sent: Thursday, August 2, 2018 8:50 AM
To: 'jessica.huston@costnergroup.com' <jessica.huston@costnergroup.com>
Cc: 'Katie Sands' <ksands@eastwoodhomes.com>; Woody Jackson (WJackson@GreenHawkCorp.com) <WJackson@GreenHawkCorp.com>
Subject: FW: Tax Bill

Katie Sands reached out to me about moving this parcel to our entity named GHD-River Falls, LLC. Could you assist in preparing a deed to move the parcel for us?

From: Katie Sands <ksands@eastwoodhomes.com>
Sent: Friday, December 22, 2017 10:38 AM
To: Jesse Buchanan <JBuchanan@greenhawkcorp.com>
Cc: Patrick M. Quinn, P.E. <pquinn@eastwoodhomes.com>
Subject: Tax Bill

Hey Jesse, I think this sliver of land of Gold Hill Rd in Tega Cay should belong to you. Can you transfer it to Greenhawk and take care of this tax bill?

Thanks in advance,

<image002.jpg>

Katie Sands

Land Development Coordinator
(O)704-399-4663 ext. 245
Corporate Division
2857 Westport Road, Charlotte, NC 28208
eastwoodhomes.com

<image003.png><image004.png><image005.png><image005.png><image006.png><image007.png>

<image008.png>

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**

<Non-Warranty Deed.pdf>

<Tax Bill.pdf>

Exhibit J

From: Kevin Hutchins [khutchins@eastwoodhomes.com]
Sent: 8/8/2018 12:37:50 PM
To: Joe Polite [jpolite@eastwoodhomes.com]
CC: Mike Conley [mconley@eastwoodhomes.com]
Subject: RE: Brook Springs and River Falls!!!

Well I will say that during 2017 we wrote off approximately \$350k off as deposit write off for both projects so at least our books are clean and anything we get back from those guys will be income.

Kevin Hutchins
CFO
704-399-4663 ext. 219

From: Joe Polite
Sent: Wednesday, August 08, 2018 12:16 PM
To: Katie Sands <ksands@eastwoodhomes.com>; Allen Nason <anason@eastwoodhomes.com>
Cc: Kevin Hutchins <khutchins@eastwoodhomes.com>; Mike Conley <mconley@eastwoodhomes.com>; Bryan Degabrielle <bdegabrielle@eastwoodhomes.com>
Subject: Re: Brook Springs and River Falls!!!

We have confirmation that River Falls will be subject to both fees; Tega Cay and Fort Mill schools.
Brooks Springs will be subject to only the Fort Mill fees.

Joe F Polite, Jr.
704-574-7877
Please pardon the brevity and typos.
Sent from my iPhone

Joe Polite
Vice President Land
704-574-7877

On Aug 8, 2018, at 11:24 AM, Joe Polite <jpolite@eastwoodhomes.com> wrote:

I have been in touch with Grenhawk and said we hope to have something to him Tomorrow.
This morning the entire land department is working on clarifying the Impact Fees imposed by Fort Mill **AND** Tega Cay.
For those new to this information, Tega Cay enacted their own Public Facilities Impact Fee YESTERDAY which is IN ADDITION TO the Fort Mill fees. The Tega Cay Fees are \$6667 per SF House and \$3,800 for apartments.....
We are attempting to determine if River Falls or Brook Springs is in the Tega Cay ETJ and subject to these new fees.....

From: Katie Sands
Sent: Wednesday, August 8, 2018 10:34 AM
To: Allen Nason <anason@eastwoodhomes.com>
Cc: Joe Polite <jpolite@eastwoodhomes.com>; Kevin Hutchins <khutchins@eastwoodhomes.com>
Subject: RE: Tax Bill

Joe, what are your thoughts? Greenhawk is asking for an update.

Katie Sands
Land Development Coordinator
704-399-4663 ext. 245

From: Allen Nason
Sent: Thursday, August 02, 2018 3:45 PM
To: Katie Sands <ksands@eastwoodhomes.com>
Cc: Joe Polite <jpolite@eastwoodhomes.com>; Kevin Hutchins <khutchins@eastwoodhomes.com>
Subject: Re: Tax Bill

Hmmm. If I recall they don't have a contract with us. Perhaps the best thing to do is consider how we can transfer this property contemporaneous with a contract. Joe P. - your call.

Allen Nason
Sent from my iPhone

Allen Nason

On Aug 2, 2018, at 3:25 PM, Katie Sands <ksands@eastwoodhomes.com> wrote:

This is from back in December. We somehow still own this tiny sliver of land in River Falls, see attached tax bill. We asked Greenhawk to take it. Now they're finally taking it and Costner wants to confirm this is what we want to do.

Please let me know if we've got a green light or not. See GIS of this piece below.

<image010.jpg>

Katie Sands
Land Development Coordinator
704-399-4663 ext. 245

From: Samantha Barnard <samantha.barnard@costnergroupp.com>
Sent: Thursday, August 02, 2018 3:06 PM
To: Katie Sands <ksands@eastwoodhomes.com>
Subject: RE: Tax Bill

Good Afternoon Katie,

Please see below. Are we conveying the 0.55 acres to GHD-River Falls, LLC? I have drafted the attached non-warranty deed. Let me know if this is not the correct action Eastwood would like to take regarding this.

Thank you,

Samantha Barnard, *Associate Attorney*

<image001.png>

samantha.barnard@costnergroup.com
www.costnerlaw.com • www.arktitlegroup.com

980.219.7637 Main • 980.225.9782 Direct • 866.711.0230 Fax

Costner Law reserves the right to protect the integrity of the closing by employing the following requirements:

Borrower's loan package must be received by our office NO LATER than 2pm the day prior to closings scheduled between the hours of 9am and 12:00 pm.

Borrower's loan package must be received by our office NO LATER than 10:00 am the day of closing for those scheduled between the hours of 1:00pm and 4:00pm.

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****It is our strict policy that any funds required over \$1,000 must be in the form of a wire. No certified funds or money orders will be accepted over \$1,000!!! Please note that as a preventative measure to avoid wire fraud, our wire instructions will not change, and we strongly encourage all clients to call to verify our wire instructions prior to sending funds.****

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From: Jesse Buchanan <JBuchanan@greenhawkcorp.com>
Sent: Thursday, August 2, 2018 8:54 AM
To: Jennifer Gosler <jennifer.gosler@costnergroup.com>
Cc: Katie Sands <ksands@eastwoodhomes.com>; Woody Jackson <WJackson@greenhawkcorp.com>
Subject: FW: Tax Bill

CAUTION: This email originated from outside of the organization.

I received an out of office reply from Jessica, so I am forwarding our request to you. Is this something you could work on for us?

From: Jesse Buchanan
Sent: Thursday, August 2, 2018 8:50 AM
To: 'Jessica.Huston@costnergroup.com' <jessica.huston@costnergroup.com>
Cc: 'Katie Sands' <ksands@eastwoodhomes.com>; Woody Jackson <WJackson@GreenHawkCorp.com> <WJackson@GreenHawkCorp.com>
Subject: FW: Tax Bill

Katie Sands reached out to me about moving this parcel to our entity named GHD-River Falls, LLC. Could you assist in preparing a deed to move the parcel for us?

From: Katie Sands <ksands@eastwoodhomes.com>
Sent: Friday, December 22, 2017 10:38 AM
To: Jesse Buchanan <JBuchanan@greenhawkcorp.com>
Cc: Patrick M. Quinn, P.E. <pquinn@eastwoodhomes.com>
Subject: Tax Bill

Hey Jesse, I think this sliver of land of Gold Hill Rd in Tega Cay should belong to you. Can you transfer it to Greenhawk and take care of this tax bill?

Thanks in advance,

<image002.jpg>

Katie Sands

Land Development Coordinator

(O)704-399-4663 ext. 245

Corporate Division

2857 Westport Road, Charlotte, NC 28208

eastwoodhomes.com

<image003.png><image004.png><image005.png><image005.png><image006.png><image007.png>

<image008.png>

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<Non-Warranty Deed.pdf>

<Tax Bill.pdf>

Exhibit K

From: Margaret Puckett [mpuckett@eastwoodhomes.com]
Sent: 3/26/2019 10:09:27 AM
To: Mike Conley [mconley@eastwoodhomes.com]; Joe Polite [jpolite@eastwoodhomes.com]
CC: Brad Dyer [bdyer@eastwoodhomes.com]; Katie Sands [ksands@eastwoodhomes.com]
Subject: Consolidated Notes On Deals/Prospects
Attachments: 2019-03-26- Charlotte Land Positions.xlsx; LD 3.25.19 Meeting.xlsx; Margaret Meeting Contacts.xlsx; Puckett- Note Sheet.docx

Hi All,

I have attached my deal notes, and contact list.

I have also updated the Land Development Spreadsheet and the Division Spreadsheet for the Corporate review on the 1st. All attached.

Margaret Puckett
Land Acquisition Manager
704-301-2340

Exhibit L

Acquisitions

3/25/2019

GRADE	Address	Owner	Acres	Units	Type	Other Price	Price Per Acre	Price Per Unit	Price/Acre	Grade	Notes/Action Item	
TH	Matthews 10-000-122.16	Matthews	15.49	73	TH	\$11,500	\$0	0/15/2019	\$10,000	\$0	association. \$10,000 becomes non-refundable at expiration of 120 days. Reasoning Period: 120 days. \$10,000 is released to seller. \$20,000 is held in escrow 180 days. Settlement Period: 120 days. \$40,000 is released to seller. 3/19/2019. Starch going to Union County this week, and pre-submission meeting with Matthews being scheduled for Tuesday 3/26.	
A	Campground-Zeas Road Fort M4 10-000-122.20	Michael O'Shea	19.5	70	TH	\$1,600,000	\$22,857.14	\$42,051	4/23/2019	\$15,000	\$0	There is a possible \$13,000 termination fee on the project if we walk during 60. Decision to terminate the project was made on 3/20. In Mike's court to discuss with Michael O'Shea.
C*	Place Rd East Charlotte 10-000-122.04	Phil Hayes Sellers - Nancy Coe Hall	41.84	80	SF	\$269,000	\$11,500	\$23,836	3/22/2018	\$25,000	\$34,704	30 days before decision.
B*	Billy Harvey Rd. Union County 10-000-122.13	Joe Cameron - Broker Sellers - Leonard Taylor	38.5	33 (by right) 69 (total proposal)	SF	\$1,674,750	\$43,500	\$17,857	0/10/2019	\$20,000	\$4,841	Carino completed 2 plans. We are taking both to Union County to review. Likely going to back with 140 scenarios. Next step is to re-submit rezoning plan. Meeting with Carino has not been set up yet.
A	Vereen Dr. Burlington 15-000-124.08	Ralph Jones	48.5	141	SF	\$1,176,000	\$8,340	\$25,200	5/15/2018	\$20,000	\$162,063	Awaiting EIR approval, wetland and EC permits. Full plans sent to Town. 302 schedule land drive. EIR submitted early pending permit.
B	Forest Oaks Golf Club "Rimelud" Greensboro 15-000-124.07	Larry O'Connell	224	300+	SF - age targeted (Needs rezoning)	\$4,000,000	\$13,333	\$17,857	60 days after EIR Date	\$50,000	\$7,735	City has issues to resolve. Need meeting to get not willing to approve any rezoning. Part 3 is in process and pending to start process without city action. Joe left message with City 3/23. Come to follow up with City week of 3/15.
D	Marion Ave. Elon 15-000-124.10	Ralph Jones	40.1	230	TOD (SF, patio, TH)	\$1,000,000	\$4,348	\$12,484	3/18/2019	\$25,000	\$3,420	Consensus with City board and contract to start land, house agent being offered to present to David last Monday April. Resolving to start in June, maximum hearing and open in July.
	Stanger Road		27.53	99	SF	\$3,000,000	\$31,434.88	March 18th	March 18th	December 15th, 2018	Not done. E. Lenoir.	
	Great Day Pad 15	Rae	40	62	SF						Land Drive March 7th	
	Reserve (3) Liberty Park		129	129	SF						Land Drive March 7th	
	Stara Creek		105	105	SF						Land Drive March 7th	
	Modesty	Charles (V) CARE	475	600+	SF	\$5,250,000					60-day time limit	
	Salmonville Road	Self	100		Town						\$50,000	
	Salmonville Town	Mary Ann	100		Town						\$50,000	
City	Property	Owner	Acres	Units	Type	Other Price	Price Per Acre	Price Per Unit	Price/Acre	Grade	Notes/Action Item	
Charlotte	House Ridge-Mc, Holly 10-000-122.16	Matthews	15.49	73	TH	\$11,500	\$0	0/15/2019	\$10,000	\$0	association. \$10,000 becomes non-refundable at expiration of 120 days. Reasoning Period: 120 days. \$10,000 is released to seller. \$20,000 is held in escrow 180 days. Settlement Period: 120 days. \$40,000 is released to seller. 3/19/2019. Starch going to Union County this week, and pre-submission meeting with Matthews being scheduled for Tuesday 3/26.	
Charlotte	Pine Forest	Michael & Anita Johnson	10.4	70	SF	\$4,500,000	\$50,000	N/A	LOI		Next Steps: Environmental and Soils reports are completed (2018). Ryan Harris has been notified we are holding on moving forward until our contract terms are solidified. Alan is working on contract assignment. Mike spoke with Paul on terms and is moving this one along with Alan.	
Charlotte	Handall	Kobler Land Partners	10.4	129	SF	\$10,707,000	\$63,000	N/A	LOI		Mike to work on introduction to Anita and Mike Johnson to sort out remaining questions regarding CDs and One Delongue.	
Charlotte	Chatham Ridge	Russ Swenell	11.4	129	SF	\$5,600,500	\$44,545	N/A	LOI		No word from Kobler.	
Charlotte	App. Steele Creek Assembly	Multiple	18	120	TH	\$2,424,000	\$20,200	\$127,579	LOI		Russ was \$475 per lot, Brandon Pridemore to the engineer. Lots are 55, 65, and 75. Remaining Engineering Costs: \$110K + \$75K in design. The LD budget provided (in 2018) has \$1.1M in other revenue. Closing 3rd month after CD approval.	
Charlotte	Hammond Dale	Albert	25	25	SF	\$500,000	\$17,857				Counters are coming back from Sellers. Sellers want hard money, and higher purchase price. Provided feedback that we cannot do that.	
Charlotte	Quarling Creek	Frank Howey	55	55	SF/TH		\$10,500				Seller wants to close within 30-60 days - not feasible. McAdams came back with 28 lots - we provided feedback she is too small.	
Charlotte	Carrington Trl	James Family	14	122	TH		\$6,500				Offer is based on a per unit basis. Charlotte Pyle is representing the underlying seller. Frank Howey R2 is out of the deal.	
Charlotte	David's Trl	Alan	127	127	TH	\$2,921,000	\$23,000				LOI sent on Friday 3/23 for \$10K per acre.	
Charlotte	Wilkes Meadows	R2 Development	82	82	TH		\$20,500				Seller for go know our offer was not in his park at \$50K per developed lot. The wanted \$30K for undeveloped lots.	
Charlotte	Very 81 Charlotte County	Dwelling	42.68	730	SF	\$750,000	\$17,500		LOI		Working with Charles on entitlement timing. Alan wants to see a timeline prior to drafting a contract. Contract needs to be in place by 4/5.	
Charlotte	Lugar	Fitch Quarter Tract	730	730	SF						Submitted contract. Received counter offer to decrease.	
Charlotte	Lugar	Fitch Quarter Tract	730	730	SF						Spoke to Brian with DLR for both lots.	
Triad	Lebourne Rd - Greensboro	Wilson Family	44	149	SF	\$1,815,545	\$13,111	\$41,717	LOI		Fully executed LOI 1/8. Contract, etc. allegedly on way.	
Charlotte	Revis - Village II (Durham)	Kobler Land Partners	102	102	TH	\$23,000 per dev lot			LOI		Submitted contract. Received counter offer to decrease.	
Charlotte	Revis - Village I (Durham)	Kobler Land Partners	90	90	SF	\$77,000 per dev lot			LOI		Spoke to Brian with DLR for both lots.	
Charlotte	Lynette Towne (Durham)	James Tucker	17.17	64	TH	\$2,433,000	\$24,000	\$146,842	LOI		LOI sent to seller 3/15. Seller response expected late March. Seller has to go through rezoning.	
Charlotte	Harold Fols Plany (Durham)	Brian Dwyer	40.24	60	SF	\$1,106,000	\$19,333	\$27,236	LOI		Assigned contract. Seller agreed to offer, rezoning & more months from Seller. And the contract & agreement, start CD.	
Charlotte	Anger Ave	David Lazlo	19.941	70	SF	\$1,275,000	\$22,500	\$78,963	LOI		LOI sent to seller 3/15. Seller has to go through rezoning.	
Charlotte	Junction Rd (Durham)	Bruce Kneiz	33.287	90	SF	TBD - dev lots	TBD		LOI		Send LOI week of 3/25, facing competition from pending rezoning and lot split. PG approved 2/13. April Council vote - expect CD approval 1/8 2019.	

Predevelopment

3/25/2019

Division	Project	Description	Developer	Target Date	Engineering Firm	General Contractor	Notes
Charlotte							
	Waterford - SF Rock Hill, SC WF-001-01	165 SF Lots Have had for 10+ years	TBD	May-19	Dewberry - Tim Dorylak Mark Fisher Surveying - Mark Fisher	TBD	Plans sent out on 3/15/19 for bid to Warr, Horsepower, Barton. Preliminary Plat - Approved week of 11/5 Could possibly have full approvals by the end of March at the earliest. Eagle Take permit fee due in Sept 2018, extension of the permit in process (\$35K fee) Waiting for USFWS to determine if fee needs to be paid now 11/18/18- still waiting. USFW was furloughed during shut down. Still waiting for their response.
	Eastwood Owns	Spent to date:					
	Waterford - Towns Rock Hill, SC Eastwood Owns	45 Townhome Lots Have had for 10+ years	TBD	Jun-19	GTSI - Juan Blue Tidemark - Mark Fisher	TBD	Have the final "design" and Juan Blue is beginning CD's. Environmental came back Clean. GTSI to do borings. Awaiting their schedule.
	Carrington CR-000-00	283 single family Ph 1- 49 lots Ph 2- 65 lots Ph 3- 49 lots Ph 4- 61 lots Ph 5- 61 lots	TBD - Spent to date: \$5,545,347.31	Phase 1 permit in hand Phase 2 - in process Phase 3 - Needs to be prepared Phase 4 - Needs to be prepared Phase 5 - Needs to be prepared	Traffic Engineer: Kimley Horn (Amy Massey) Surveyor: Geomatic Concepts Jimmy Faires Cardno Bob Cash/Ashton Walker	Lens of Faith - \$4,353,825 Neil Grading - \$4,359,177.45 CK - \$4,598,857.00 (incl \$185,000 adder) JE Jenkins - \$4,845,646.57 Unassigned	NCDOT has new roundabout exhibit. They wanted a little more detail and Cardno is working with them to answer their questions and get approvals. Phase 2 will not have sewer capacity until July 2018 at the earliest and Dec 2020 at the latest.
	McKee Townhomes Matthews, NC Eastwood owns MK-000-00	18 Townhome Lots	TBD 8.48 Ac	Lat May 2019 approval	American Eng	TBD	Redlines came back for first review. Redlines being addressed for resubmittal. Barry has decreased the slope of the driveways, considerably and now they seem to be in an acceptable range.
	Harrisburg Town Center HT-000-01 "Harrisburg Village" Eastwood Owns	197 Towns 51 SF Lots 248 Total 45' wide sf	TBD Spent to date: \$3,031,939.11	April Grading Permit (Received verbal approval, waiting on official response)	ESP - Dan Brewer (civil) ESP - Matt Levesque (LA) ESP - Bill Finkle (Surveyor)	Unassigned Bryan Pace, Nash, Bar & Clay Inc to nudge CK - \$12,289,510.7 (incl \$1,796,880 Unclassified Adder) Lens of Faith - \$9,038,208.3 (+ \$2,447,073.00 if site cant be lowered 6")	Water and Sewer permit received week of 2.11.19. Phasing has been determined. Need to review landscaping theme (monuments, amenity features) with Matt Levesque (ESP Associates) agreements. ARP Engineering has completed boardwalk design. Updated plans and phasing sent out for bidding to Warr, Donaldson, Barton. Still working with HOA Management Company to acquire the last ROW. They have been a little difficult to contact lately. Will need to write letter to new HOA president. Management company has become non responsive, again. ESP has sent updated plans to NCDOT based on most recent round of comments.
Raleigh							
Charleston							
	Oakley Pointe OP-001-03	Moncks Corner 108 SF - 50' lots			Stanlec (Bryan Kizer and Emily Sotherland)	Sanders Brothers	Discussed the lime stabilization with Sanders last Wed. Will set up a final meeting with Stanlec, Sanders, and a Geo tech (to be determined). Have received Sanders new bid and added it to the budget spreadsheet. 2.22.19. Updated the budget and sent to Dion, Doug Wells.
	Eastwood Owns	Spent to date: \$664,260.07	Doug Wells managing				

ROA 000506

Self Development:

3/25/2019

Division	Project	Description	Target Date	Engineering Firm	Bond Amount	Bond Expiration	Notes
Charlotte							
	Sweetwater Rock HR SC	100% 49 lots		The Rains Group Keith Rains/Mark Fisher			All done on our end. Will begin filling in this pond this week. Had to repair sewer line blockage on 3/15/19.
	SW-001-01	Baron doing work			\$62,991 Subdivision		
	Glenmere Mallard Creek/Dexter	70 lots Domain Ours		McAdams	\$107,000.00 \$10,000.00		Looking for a broker to take remaining excess dirt. New small well alignment is complete. Crews removing all bad dirt currently and prepping road in an effort to get it dried and curb in, asap. Once curb is in Water can begin. Grading is 95% complete.
	11-000-104.21	30 SF	19-Apr	CGL doing the work	\$124,500.00		
	Wigmore Pond		Apr-19	Dowberry			Sewer is 95% complete and storm is at 90%. Conduits starting to go in today. Staking for curb scheduled for this week. Proofroll scheduled for this morning.
	11-000-104.22 Mini Hdr	Crawlspace Lots					
	Savannah Towne Steele Creek	117 towns		Landworks Design Gp Michael Askin			Pond fill has been completed in the area of lots 01-06. Construction on units has begun. Duke to tag route for underground power on 3/21/19. Install will follow shortly after the tagging.
	SN-001-01	74 SF		Cardno			Moss grading, storm and sewer are underway. Phase 1 could be ready for curb this week. Storm and sewer going in in phase 2. Plans to be submitted for phase 1 this week for the first review.
	The Pond at McKee Gls Matthews	Homeowner - contractor 39-42 lots	Late 2019	Ashlan Walker			Have sent City a request to reinspect Phase 1 Map 4. Surveyor located storm structure and it is located in the rear yard of lot 139. Allen is working on.
	11-000-104.23	35-52 lots		Keith Bell - Managing			
	Balmor BP-001-01				\$122,000 subdivision P1 M4 \$40,000 sidewalks P1 M4	10/26/2019 10/26/2019	
	Briargate 11-000-104.20	100 single family Gibraltar GAMCO LLC owns	Ph 2 - Mid 2019	Buestone Mgmt	\$100,000 driveway encroachment		Still need to schedule Darius for some finish up work at the Abando's. Phase 2 work is ongoing. Hunter approx 2 good dry weeks from completion of the phase. Hunter scheduled to begin Timber Road improvements this week. Phase 2 plot is moving along and will be ready to record by the time the 2nd phase work is complete. Have all local approvals. Waiting on State to approve water. S&EC measures are progressing. Sent Shannon Vista HOA the requested letter stating that their water pressure will not be affected by the Whinn Creek waterline late last week. HOA Pres was sending that out to the board and waiting to hear back from them concerning the ROW we need to acquire.
	Whinn Creek 11-000-104.24	Domain Southeast Consultants Keith Bell - Managing	Ph 1 - Late 2019 Ph 2 - Late 2020	Buestone Eagle - Survey McAdams - LA			
Charleston							
	Monarch Plantation	400 apartments					Working with Ashton Woods on revised layout
	Eastwood owns						
	Wynfield	50-lot SF Los		Bucksham	10 bonds		Currently building
	Eastwood owns	Benford		Self Develop	good through 2018		surface course installation by Sundara
	Landings at Montague	234 townhomes	EW				123 towns future phase
	Eastwood owns						Ashton Woods access road in exchange for 200 SF lots - Ashton Woods lending process
	Wyggers	28 estate lots	EW	Thomas & Hudson			Power is wrapping up their install and gas will begin later this month.
	Eastwood owns	355Y-000-09					Asphalt is in progress
	Brownwood	28 lots	EW	Hursey Gay Bell			Curb is at in. Stone is in. Once pump station is complete they will proof roll and pave. Sanitary sewer is being videoed next week. Close to pouring concrete pad for pump station.
	Eastwood owns	160Y-000-01					
Irish							
	Vineyards @ Lexington VT-001-01	44 SF lots 11 towns		Jameson Engineering Dan Pritchett			Trash walk thru has been done and looks as if we will be removing some of the sidewalk. Working to get a photo yard removed from lot 204.
Raleigh							
	Dogwood Pointe (Corkins) - Durham	77 THs Gomer Bruce Knott to manage	Summer 2019	Horvath Eng Davidson Ste Gibrator			Working on rock & utilities, grading, sewer install to start this week. Need to post NC DOT bonds so ROW work can be scheduled.
	DTW-000-08	Eastwood owns					
	Broadwell Trace Powell Only	120 SF Lots	Fall 2019	ESP Wellons c/o Fuller PM Gibrator		TBD	Precon 3/28 Waiting on broader pump proposal from Freese & Nichols Wellons moving along
	Fuquay BT-000-00	Spent to date:					

ROA 000507

37400:0

Project	Address	Developer	Contractor	Type	Description	Unimproved Price	EMV cost	Est. Delivery Date	Notes
Zone 6 Creek	Wichita	Developers LLC	GF	523 lots	\$78,000	\$620,000		TBD	43 day DO after contract execution 30 build-out after 270 days/43 lots after 270 days 2125 sq ft
Broadway	Easton		Build	30 lots		\$150,000			404 Ave. Access meeting City needs to get with City Engineer, need new sign
Brookside Heights	Greenbush	Columbia	Town	58 lots				7/7/17	Pump Station - Published with values (and then changed)
River Falls	Greenbush	Columbia	Town	170 lots				7/7/17	Need contract revised determined
Yorkville, NC	Joe Stevens	Bob Simpson	Town	11 lots	\$2,500	\$300,000		No Contract Oct-18	1st Design/Engineer Katie Young
Rock Creek Park (P)	North Henderson	Columbia	GF	120 lots	\$62,140 \$77,150	\$50,000			Working on final Rock Creek Under Development and Phase 2/3/4
Central Town	North Henderson	Columbia	Town	15 lots	\$111,600	\$75,000		Oct-18	approved, preparing for construction engineering underway - Put to Public bid in 2 days
Frontier Drive	Steen & Andy	Columbia	GF and Town	91,420 (79,420)	\$168,000, \$4,500	\$400,000		7/7/17	Site property and not taking any Jan 1/2019
Rock Hill	Columbia			3 lots	\$20,000				P1 16 lots, P2 24 lots, P3 16 lots, P4 24 lots, P5 24 lots P6 24 lots, P7 24 lots, P8 24 lots, P9 24 lots, P10 24 lots P11 24 lots, P12 24 lots, P13 24 lots, P14 24 lots, P15 24 lots P16 24 lots, P17 24 lots, P18 24 lots, P19 24 lots, P20 24 lots P21 24 lots, P22 24 lots, P23 24 lots, P24 24 lots, P25 24 lots P26 24 lots, P27 24 lots, P28 24 lots, P29 24 lots, P30 24 lots P31 24 lots, P32 24 lots, P33 24 lots, P34 24 lots, P35 24 lots P36 24 lots, P37 24 lots, P38 24 lots, P39 24 lots, P40 24 lots P41 24 lots, P42 24 lots, P43 24 lots, P44 24 lots, P45 24 lots P46 24 lots, P47 24 lots, P48 24 lots, P49 24 lots, P50 24 lots P51 24 lots, P52 24 lots, P53 24 lots, P54 24 lots, P55 24 lots P56 24 lots, P57 24 lots, P58 24 lots, P59 24 lots, P60 24 lots P61 24 lots, P62 24 lots, P63 24 lots, P64 24 lots, P65 24 lots P66 24 lots, P67 24 lots, P68 24 lots, P69 24 lots, P70 24 lots P71 24 lots, P72 24 lots, P73 24 lots, P74 24 lots, P75 24 lots P76 24 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ROA 000508

Exhibit M

Message

From: Allen Nason [anason@eastwoodhomes.com]
Sent: 6/19/2020 4:02:05 PM
To: Jeremy Medlin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a89723fa8d184954884df2ce2cb8c3ac-JMedlin]
CC: Joe Polite [jpolite@eastwoodhomes.com]
Subject: Re: Brooks Creek/River Falls

I am not commenting further. You have refused to do what I suggested, and as a result you have selected the path we are to go down. Your predecessors, as we have previously provided, did not take the tact you are taking.

If you need to communicate further, please do so through your counsel. We will request your counsel voluntarily accept service if process. Also, all emails and communications from Jesse Buchanon and Craig Briner are to be preserved for our future inspection in discovery. Thank you for your anticipated cooperation.

Allen Nason
General Counsel
Sent from my iPhone

On Jun 19, 2020, at 11:46 AM, Jeremy Medlin <JMedlin@greenhawkcorp.com> wrote:

Allen,

I made a simple request and hoped for transparency...

If you have a contract please send it. If you have a wish or desire to purchase River Falls give us an offer.

Why would you seek other avenues.

Thanks,

Jeremy D. Medlin
Executive Vice President of Real Estate
GreenHawk Corporation, Inc.
Phone: (919) 258-2087
Cell: (919) 291-3819
Website: www.greenhawkcorp.com

<image001.jpg>

From: Allen Nason <anason@eastwoodhomes.com>
Sent: Friday, June 19, 2020 11:37 AM
To: Jeremy Medlin <JMedlin@greenhawkcorp.com>
Cc: Joe Polite <jpolite@eastwoodhomes.com>
Subject: Re: Brooks Creek/River Falls

What is truly unfortunate is how Greenhawk doesn't adhere to its arrangements with Eastwood. If you want to resolve this, make a proposal - which proposal shall be treated as a confidential settlement discussion. Otherwise we will just move this forward and let the Courts make the determinations.

Allen Nason
Sent from my iPhone

On Jun 19, 2020, at 11:28 AM, Jeremy Medlin <JMedlin@greenhawkcorp.com> wrote:

Allen,

Your response below is unfortunate.

Thanks,

Jeremy D. Medlin
Executive Vice President of Real Estate
GreenHawk Corporation, Inc.
Phone: (919) 258-2087
Cell: (919) 291-3819
Website: www.greenhawkcorp.com

<image001.jpg>

From: Allen Nason <anason@eastwoodhomes.com>
Sent: Friday, June 19, 2020 10:55 AM
To: Jeremy Medlin <JMedlin@greenhawkcorp.com>
Cc: Joe Polite <jpolite@eastwoodhomes.com>
Subject: Re: Brooks Creek/River Falls

Jeremy, good morning. You did not, apparently, do what I asked in my prior email. You have all the documentation and even have prior emails - and the names of your predecessors which I provided you. I will just move this forward and we can sort everything out over the next year or two.

Allen Nason
Sent from my iPhone

On Jun 19, 2020, at 10:46 AM, Jeremy Medlin <JMedlin@greenhawkcorp.com> wrote:

Allen,

I've asked Joe in several past emails to supply any written documents that suggest we are under contract together. Concerning River Falls I have also requested if your group has an interest to give us a LOI or contract to review. Nothing has been supplied.

Any clarity on why you have chosen lis pendens and the threat of suit would be appreciated. A more simple response would be to:

- 1.) provide the contract that you base this on
- 2.) If your group wants River Falls make us an offer

Thanks,

Jeremy D. Medlin
Executive Vice President of Real Estate
GreenHawk Corporation, Inc.
Phone: (919) 258-2087
Cell: (919) 291-3819

Website: www.greenhawkcorp.com

<image002.jpg>

From: Allen Nason <anason@eastwoodhomes.com>
Sent: Tuesday, June 16, 2020 12:04 PM
To: Jeremy Medlin <JMedlin@greenhawkcorp.com>
Cc: Joe Polite <jpolite@eastwoodhomes.com>
Subject: FW: Brooks Creek/River Falls
Importance: High

Jeremy, good morning. Per the prior emails Craig Briner and yourself have received, Eastwood had to move to protect the over \$300,000 it has in these two projects with Greenhawk. If you are looking to research this I would start by talking with Jesse Buchanon. Also, you can take a look at the original contract assignments where Eastwood agreed to assign these two properties (which it had under contract for Eastwood's benefit) to Greenhawk owned project limited liability companies in contemplation of Greenhawk developing these two projects for Eastwood. Eastwood and Greenhawk worked jointly with the City of Tega Cay and in working to get all land approvals accomplished, and the projects were actually engineered specific to Eastwood's plans. You can also look at the River Falls property deed which was done in 2018 to help get the access issues for that project addressed. There is mounds of information which your predecessors were engaged with for both projects, and it will not be difficult for you to look into these matters.

Anyhow, we understand you may be new to this issue, but for years Eastwood has received communications that all we paid would, at a minimum, be reimbursed. Ewe have provided those communications to Craig and yourself. It was not until recently we learned Greenhawk had contracted with another builder via a former Eastwood employee, and it was therefore my conclusion that we have to get this matter resolved as soon as possible.

The law suit which is required to be filed following the attached lis pendens filings is in process and will be filed in due course, in conformity with South Carolina statute. If there is an interest in avoiding litigation on this it would be acceptable for my client to enter into settlement discussions to get this matter resolved. If that is your preference, please let me know by this Friday. If we do not hear back we will proceed with the understanding that Greenhawk is contesting this matter.

Allen M. Nason, Esq.
General Counsel, Licensed in NC, SC and VA
Eastwood Homes and Fortress Homes, and Affiliates
2857 Westport Road
Charlotte, NC 28208
Phone: (704) 399-4663
Facsimile: (704) 399-1127
www.eastwoodhomes.com

If this email is received in error please delete and notify sender. Thank you.

From: Joe Polite <jpolite@eastwoodhomes.com>
Sent: Friday, June 12, 2020 11:26 AM
To: Jeremy Medlin <JMedlin@greenhawkcorp.com>
Subject: RE: Brooks Creek/River Falls

Jeremy,

Unfortunately I got involved with this project when I arrived here in fall of 2016 and worked with Craig. The discussion prior to that were made by my predecessor and Craig.

We have been requesting this reimbursement from Greenhawk since before my time and were always close but then never paid for whatever reason.

As I mentioned to your initial email, there is a need for greater discovery. Since this is still unresolved, I have turn the matter over to counsel.

I am sure this will uncover the necessary items to support our claim.

Sincerely,

Joe F. Polite, Jr

Joe Polite

704-574-7877

From: Jeremy Medlin <JMedlin@greenhawkcorp.com>

Sent: Friday, June 12, 2020 10:27 AM

To: Joe Polite <jpolite@eastwoodhomes.com>

Subject: RE: Brooks Creek/River Falls

Joe,

This does not look like much of a paper trail to go off of. Looks like you were doing some due diligence on a potential deal – why did you not go to contract? Did you discuss and route contract terms form 2013-2016 – If so can you share that correspondence? Did you have a signed LOI? Anything?

Thanks,

Jeremy D. Medlin

Executive Vice President of Real Estate

GreenHawk Corporation, Inc.

Phone: (919) 258-2087

Cell: (919) 291-3819

Website: www.greenhawkcorp.com

<image002.jpg>

From: Joe Polite <jpolite@eastwoodhomes.com>

Sent: Monday, June 8, 2020 3:05 PM

To: Jeremy Medlin <JMedlin@greenhawkcorp.com>

Subject: FW: Brooks Creek/River Falls

Jeremy,

Below was the response from Jesse Buchanan to our CFO, Kevin Hutchins, acknowledging the money was owed back in 2016.

We can piece all the other emails between all the parties to show that Eastwood paid the due diligence and engineering for both parcels. The amount was intended to be credited towards the final Ernest money deposits, however there was never a ratified contract for the repurchase of the lots between the two parties.

Attached is our accounting of the funds that Eastwood spent; \$312,296.

I realize there is a lot of history on these projects and we can review it but It is our Intent to collect this money. If you can make arrangements for payment we can put this behind us.

Kindest regards,

Joe F. Polite, Jr

<image003.png>

Joe Polite

O 704-574-7877 | jpolite@eastwoodhomes.com

Corporate Office | 2857 Westport Road, Charlotte, NC 28208

EastwoodHomes.com

[Facebook](#) | [Twitter](#) | [Instagram](#) | [YouTube](#)

To unsubscribe from our emails, please reply to this email and type "Unsubscribe."

From: Kevin Hutchins

Sent: Tuesday, February 18, 2020 4:15 PM

To: Joe Polite <jpolite@eastwoodhomes.com>; anason@eastwoodhomes.com

Subject: FW: Brooks Creek/River Falls

Below is the response that I received from Jesse acknowledging that they owe us the money. This was my last correspondence from them.

From: Jesse Buchanan <JBuchanan@greenhawkcorp.com>

Sent: Wednesday, October 12, 2016 8:42 AM

To: Kevin Hutchins <khutchins@eastwoodhomes.com>

Subject: RE: Brooks Creek/River Falls

Thank you for helping me with this. I have been holding the River Falls reimbursement on my desk. Craig has not approved it for me to process. He is out of town right now (a friend's funeral). I think he was hoping to convert this to a deposit, but I will follow up when he returns back to the office next week.

Jesse T. Buchanan

GreenHawk Corporation, Inc.

1330 Sunday Drive, Suite 105

Raleigh, NC 27607

Office: 919-861-2933

Fax: 919-861-2930

From: Kevin Hutchins [<mailto:khutchins@eastwoodhomes.com>]

Sent: Tuesday, October 11, 2016 4:07 PM

To: Jesse Buchanan <JBuchanan@greenhawkcorp.com>

Subject: Brooks Creek/River Falls

Jesse

I hope you are well. Joe Dority reached out and mentioned that you were looking for some detail behind the reimbursed expenses for Brooks Creek. I have attached the detail which has the vendor attached to it. Hopefully that helps.

I also wanted to follow up to see if you had any resolution on the money due back for River Falls. I believe it was north of \$225,000. If you could give me an update I would appreciate it.

Thank you

Kevin Hutchins

Eastwood Homes
Chief Financial Officer
2857 Westport Road
Charlotte, NC 28208
Ph. 704-399-4663
Fax. 704-900-0662

<image004.jpg>

The contents of this email message and any attachments are intended solely for the addressee(s) and may contain confidential and/or privileged information and may be legally protected from disclosure. If you are not the intended recipient of this message or their agent, or if this message has been addressed to you in error, please immediately alert the sender by reply email and then delete this message and any attachments. If you are not the intended recipient, you are hereby notified that any use, dissemination, copying, or storage of this message or its attachments is strictly prohibited.

The contents of this email message and any attachments are intended solely for the addressee(s) and may contain confidential and/or privileged information and may be legally protected from disclosure. If you are not the intended recipient of this message or their agent, or if this message has been addressed to you in error, please immediately alert the sender by reply email and then delete this message and any attachments. If you are not the intended recipient, you are hereby notified that any use, dissemination, copying, or storage of this message or its attachments is strictly prohibited.

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Exhibit N

Eastwood Construction Partners, LLC, et al. vs GHD Brooks Creek, et al.
Joseph Frank Polite, Jr. on 05/04/2021

1 STATE OF SOUTH CAROLINA) IN THE GENERAL COURT OF JUSTICE

2
3 COUNTY OF YORK) SIXTEENTH JUDICIAL CIRCUIT

4
5 Eastwood Construction Partners, LLC and
6 Eastwood Development Corporation,

7 Plaintiffs,

CASE NO:
20-CP-46-02006

8 vs.

9 GHD Brooks Creek, a North Carolina
10 Limited Liability Company, and AF-
11 Brooks Creek, LLC, a North Carolina
12 Limited Liability Company, GHD River
13 Falls, a North Carolina Limited Liability
14 Company, and AF-River Falls, LLC, a
15 North Carolina Limited Liability
16 Company, Greenhawk Corporation, Inc.,
17 and TRI Pointe Homes Holdings, Inc.,

18 Defendants.

19

20

21 DEPOSITION TAKEN VIA VIDEOCONFERENCE OF

22 JOSEPH FRANK POLITE, JR.

23 (Taken by Defendant

24 TRI Pointe Homes Holdings, Inc.)

25 Greensboro, North Carolina

Tuesday, May 4, 2021

10:06 a.m.

23

24

25 Reported stenographically by
V. Dario Stanziola, CCR (GA) (NJ), RPR, CRR

Pages 2..5

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1	APPEARANCES	1	INDEX OF EXAMINATIONS
2	ON BEHALF OF THE PLAINTIFFS:	2	
3	(Appeared Via Videoconference)	3	
4	JAMES C. ADAMS, II, Esquire	4	By Mr. Cox PAGE 11, 324
5	Brooks Pierce McLendon	5	By Mr. Mabe PAGE 238
6	Humphrey & Leonard LLP	6	
7	230 North Elm Street	7	INDEX OF EXHIBITS
8	2000 Renaissance Plaza	8	NUMBER EXHIBIT MARKED
9	Greensboro, North Carolina 27401	9	Exhibit 1: Summons 7
10	336.271.3117	10	Exhibit 1A: Document entitled 7
11	jadams@brookspierce.com	11	qPublic.net York County South 7
12	JAMES EDWARD BRADLEY, Esquire	12	Carolina
13	Moore Taylor Law Firm, P.A.	13	Exhibit 2: Spreadsheet entitled 7
14	1700 Sunset Boulevard	14	Charlotte Division Land Status Report
15	West Columbia, South Carolina 29169	15	Exhibit 3: Spreadsheet entitled 7
16	(803) 796-9160	16	Charlotte Division Land Status Report 7
17	ON BEHALF OF THE DEFENDANT	17	Exhibit 4: Spreadsheet document 7
18	TRI POINTE HOMES HOLDINGS, INC.:	18	Exhibit 5: Spreadsheet document 7
19	(Appeared Via Videoconference)	19	entitled Twelve Month Sales
20	STEPHEN M. COX, Esquire	20	Projections
21	TIMOTHY F. MISNER, Esquire	21	Exhibit 6: E-mail string with the top 7
22	Robinson, Bradshaw & Hinson, P.A.	22	from Mike Conley dated 9/7/17
23	202 East Main Street, Suite 201	23	Exhibit 7: E-mail string with the top 7
24	Rock Hill, South Carolina 29730	24	from Joe Dority dated 5/8/14
25	(803) 325-2900	25	Exhibit 8: E-mail string with the top 10
	scoc@robinsonbradshaw.com		from Jesse Buchanan dated 1/10/17
	tmisner@robinsonbradshaw.com		Exhibit 9: E-mail from Jesse Buchanan 10
			dated 4/27/16
			Exhibit 10: Spreadsheet entitled Joe 10
			D's Transition List
			Exhibit 11: E-mail from Joe Polite 10
			dated 10/10/16
			Exhibit 12: E-mail string with the 10
			top from Clark Stewart dated 10/26/16
			Exhibit 13: E-mail string with the 10
			top from Allen Nason dated 11/18/16
			Exhibit 14: E-mail string with the 10
			top from Joe Polite dated 12/15/16
			Exhibit 15: E-mail string with the 10
			top from Joe Polite dated 12/15/16
			Exhibit 16: E-mail string with the 11
			top from Joe Polite dated 12/22/16
			Exhibit 17: E-mail string with the 11
			top from Jesse Buchanan 3/16/17
			Exhibit 18: E-mail string with the 11
			top from Joe Polite dated 3/20/17
			Exhibit 19: E-mail string with the 11
			top from Patrick M. Quinn, P.E. dated 3/22/17
			Exhibit 20: Spreadsheet entitled 11
			Upcoming Communities and Timelines
			Exhibit 21: E-mail from Joe Polite 11
			dated 6/4/18
			Exhibit 22: E-mail string with the 11
			top from Joe Polite dated 10/31/18
			Exhibit 23: E-mail from Joe Polite 11
			dated 2/6/20
			Exhibit 24: E-mail string with the 12
			top from Joe Polite dated 6/12/20
			Exhibit 25: E-mail string with the 12
			top from Joe Polite dated 7/18/18
			Exhibit 26: E-mail string with the 12
			top from Craig Briner dated 8/9/18
			Exhibit 27: E-mail string with the 12
			top from Joe Polite dated 7/25/18

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Joseph Frank Polite, Jr. on 05/04/2021

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Page 6 1 Exhibit 28: E-mail string with the top from Margaret Puckett dated 11/15/18 12 2 Exhibit 29: Land Designs drawing entitled Brooks Springs 12 3 4 Exhibit 30: E-mail string with the top from Jeff White dated 7/15/20 12 5 Exhibit 31: E-mail string with the top from Joe Stewart dated 9/29/16 247 6 7 Exhibit 32: E-mail from Joshua Peak dated 5/25/17 257 8 Exhibit 33: Spreadsheet entitled Acquisitions 270 9 10 Exhibit 34: Spreadsheet entitled Charlotte Division Strategy Meeting 7/25/18 Charlotte 5 Year Closing Projections 276 11 12 Exhibit 35: Spreadsheet entitled Eastwood Construction Company, Inc. Charlotte Division Absorption Requirement Schedule 285 13 14 Exhibit 36: E-mail string with the top from Todd Alsop dated 12/14/16 293 15 Exhibit 37: E-mail string with the top from Joe Polite dated 12/22/16 302 16 17 Exhibit 38: Contract and Option To Purchase Real Estate 304 18 19 Exhibit 39: Contract and Option To Purchase Real Estate 308 20 21 22 23 24 25	Page 8 1 from Joe Dority dated 5/8/14 premarked for identification, as of this date.) 2 3 (Exhibit 8: E-mail string with the top from Jesse Buchanan dated 1/10/17 premarked for identification, as of this date.) 4 5 (Exhibit 9: E-mail from Jesse Buchanan dated 4/27/16 premarked for identification, as of this date.) 6 7 (Exhibit 10: Spreadsheet entitled Joe D's Transition List premarked for identification, as of this date.) 8 9 (Exhibit 11: E-mail from Joe Polite dated 10/10/16 premarked for identification, as of this date.) 10 11 (Exhibit 12: E-mail string with the top from Clark Stewart dated 10/26/16 premarked for identification, as of this date.) 12 13 (Exhibit 13: E-mail string with the top from Allen Nason dated 11/18/16 premarked for identification, as of this date.) 14 15 (Exhibit 14: E-mail string with the top from Joe Polite dated 12/15/16 premarked for identification, as of this date.) 16 17 (Exhibit 15: E-mail string with the top from Joe Polite dated 12/15/16 premarked
Page 7 1 (Exhibit 1: Summons premarked for identification, as of this date.) 2 3 (Exhibit 1A: Document entitled qPublic.net York County South Carolina premarked for identification, as of this date.) 4 5 (Exhibit 2: Spreadsheet entitled Charlotte Division Land Status Report premarked for identification, as of this date.) 6 7 (Exhibit 3: Spreadsheet entitled Charlotte Division Land Status Report premarked for identification, as of this date.) 8 9 (Exhibit 4: Spreadsheet document premarked for identification, as of this date.) 10 11 (Exhibit 5: Spreadsheet document entitled Twelve Month Sales Projections premarked for identification, as of this date.) 12 13 (Exhibit 6: E-mail string with the top from Mike Conley dated 9/7/17 premarked for identification, as of this date.) 14 15 (Exhibit 7: E-mail string with the top	Page 9 1 for identification, as of this date.) 2 (Exhibit 16: E-mail string with the top from Joe Polite dated 12/22/16 premarked for identification, as of this date.) 3 4 (Exhibit 17: E-mail string with the top from Jesse Buchanan 3/16/17 premarked for identification, as of this date.) 5 6 (Exhibit 18: E-mail string with the top from Joe Polite dated 3/20/17 marked for identification, as of this date.) 7 8 (Exhibit 19: E-mail string with the top from Patrick M. Quinn, P.E. dated 3/22/17 marked for identification, as of this date.) 9 10 (Exhibit 20: Spreadsheet entitled Upcoming Communities and Timelines marked for identification, as of this date.) 11 12 (Exhibit 21: E-mail from Joe Polite dated 6/4/18 marked for identification, as of this date.) 13 14 (Exhibit 22: E-mail string with the top from Joe Polite dated 10/31/18 marked for identification, as of this date.) 15 16 (Exhibit 23: E-mail from Joe Polite dated 2/6/20 marked for identification, as

Page 10 1 of this date.) 2 (Exhibit 24: E-mail string with the top 3 from Joe Polite dated 6/12/20 marked for 4 identification, as of this date.) 5 (Exhibit 25: E-mail string with the top 6 from Joe Polite dated 7/18/18 marked for 7 identification, as of this date.) 8 (Exhibit 26: E-mail string with the top 9 from Craig Briner dated 8/9/18 marked for 10 identification, as of this date.) 11 (Exhibit 27: E-mail string with the top 12 from Joe Polite dated 7/25/18 marked for 13 identification, as of this date.) 14 (Exhibit 28: E-mail string with the top 15 from Margaret Puckett dated 11/15/18 marked 16 for identification, as of this date.) 17 (Exhibit 29: Land Designs drawing 18 entitled Brooks Springs marked for 19 identification, as of this date.) 20 (Exhibit 30: E-mail string with the top 21 from Jeff White dated 7/15/20 marked for 22 identification, as of this date.) 23 24 25	Page 12 1 moment. But you understand this is a just a 2 question-and-answer session. Our court reporter 3 is taking down everything we say. So I say this 4 as much to myself as I say it to you, we have to 5 speak slowly and clearly enough for him to 6 understand what we're saying. We can't nod or 7 shake our heads or do anything nonverbal. And we 8 can't talk over each other, which I do as much as 9 anybody. 10 So you understand that's the basic 11 procedure we're following? 12 A. Understand. 13 Q. Okay. There are a few background 14 questions, foundation questions I'm going to ask 15 you that I ask of every witness. 16 First of all, I understand your name is 17 Joe Polite or you go by Joe. I guess your full 18 name's Joseph? 19 A. Yes. 20 Q. What's your date of birth, sir? 21 A. November 25th, 1967. 22 Q. And your address, your residential 23 address? 24 A. 1537 Ferncliff, F, as in Frank, 25 E-R-N-C-L-I-F-F, Road, Charlotte, North Carolina
Page 11 1 JOSEPH FRANK POLITE, JR., 2 having first been duly sworn, was examined and 3 testified as follows: 4 EXAMINATION 5 BY MR. COX: 6 Q. Mr. Polite, good morning. 7 Can you hear me okay? 8 A. Yes, sir. 9 Q. My name is Stephen Cox. I'm here with 10 my partner Tim Misner, whom you can't see off 11 screen. We're with Robinson Bradshaw & Hinson, 12 which is a law firm in Rock Hill, South Carolina 13 and Charlotte, North Carolina. And we represent 14 TRI Pointe in this lawsuit that's currently 15 pending in York County, South Carolina. 16 You're familiar with that lawsuit; are 17 you not? 18 A. Yes, sir. 19 Q. And you understand you're here today to 20 testify as a witness in that lawsuit? 21 A. Yes, sir. 22 Q. Have you ever given a deposition 23 before, Mr. Polite? 24 A. Yes. 25 Q. Okay. We'll talk about that in a	Page 13 1 28211. 2 Q. Okay. And you understand that you're 3 under oath today and that your testimony is just 4 like testifying at trial? 5 A. Yes. 6 Q. We're -- this is a South Carolina 7 lawsuit that we're involved in, even though you 8 and I are both sitting in North Carolina right 9 now. So the South Carolina rules of procedure 10 apply. And one of those rules is I'm required to 11 ask you at the beginning of this deposition that 12 if any -- if for reason my question doesn't make 13 sense, if I mumble, if my question is in any way 14 unintelligible, please ask me and not your lawyer 15 to repeat the question. 16 Do you understand that? 17 A. Yes. 18 Q. Also, South Carolina has a bit stricter 19 rule than some states. During a break in this 20 deposition, whether you take a restroom break or 21 a lunch break or whatever, you're not permitted 22 to talk to your lawyers about the substance of 23 this case or your testimony. You can talk about 24 the weather, the Hornets. I don't recommend 25 talking about Hornets these days, but whatever

Page 14 1 else you want to talk about, but not the 2 substance of your deposition. 3 Do you understand that? 4 A. Yes. 5 Q. And, again, these are questions I ask 6 of everyone. I'm not picking on you. 7 Are you experiencing any physical or 8 mental condition today that would prevent you 9 from understanding my questions? I understand 10 the irony of that question. 11 A. No. 12 Q. Okay. So if I ask you a question and 13 you answer it, it's fair to assume that you 14 understood it; is that right? 15 A. If I did not ask for you to repeat it. 16 Q. Very well. 17 What did you do today to get ready for 18 your deposition? 19 A. Today I drove to Greensboro and we 20 figured out this interaction or the interaction 21 for today. 22 Q. What did you do on other days to get -- 23 to prepare for your deposition today? 24 A. Reviewed documents as put together by 25 our group here, Jimmy and Ward and Mr. Nason just	Page 16 1 Ferncliff Road address? 2 A. 20 years. 3 Q. Okay. If this case goes to trial in 4 York County, it will pull jurors from York 5 County. So I need to know, do you have any 6 relatives in York County, South Carolina, adult 7 relatives? 8 A. I do not. 9 Q. Okay. And, again, this is a last 10 question I ask of everybody, because in some 11 cases it can go to your -- the credibility of 12 your testimony on the witness stand. 13 Have you ever been convicted of a crime 14 other than a minor traffic violation? 15 A. No. 16 Q. Have you ever been a party to any 17 lawsuit? 18 A. Yes. 19 Q. Can you tell me what those are? 20 A. Corporate law, real estate, 2008, '9 21 here in the downturn. 22 Q. I gotcha. 23 Was it -- were you, yourself, 24 individually a party? 25 A. Individually, yes. As the group
Page 15 1 to remind -- you know, just to kind of get a 2 timeline of events. 3 MR. COX: And Mr. Adams and Mr. 4 Bradley, if these are documents that have 5 already been produced, I think I just need 6 you to tell me that. If there are 7 documents that he reviewed that have not 8 been produced, can you identify what those 9 are or were they all documents that were 10 produced? 11 MR. ADAMS: They were all documents 12 that were produced. 13 MR. COX: Very well. 14 Q. I don't want you to tell me what your 15 lawyers told you, Mr. Polite, because that's 16 privileged. But how many times did you meet with 17 your lawyers before your deposition today? 18 A. Once. 19 Q. And for how long? 20 A. Couple hours. 21 Q. Okay. You say you live in Ferncliff 22 Road in Charlotte. That's over by Southpark; is 23 that right? 24 A. Ish. Yes. 25 Q. How long have you lived at that	Page 17 1 dissolved, yes. 2 Q. Okay. Was that one lawsuit or more 3 than one? 4 A. Just one. 5 Q. And where -- who was the plaintiff in 6 that lawsuit? 7 A. The plaintiff would have been of 8 counsel at Robinson Bradshaw, Bob Lilien. 9 Q. Okay. And that was pending in South 10 Carolina or North Carolina? 11 A. North Carolina. 12 Q. Okay. In Mecklenburg County? 13 A. Yes. 14 Q. Okay. 15 MR. ADAMS: Stephen, I'm not sure -- 16 I'm not sure he understood the question. 17 Q. Was Bob Lilien an actual plaintiff in 18 the case? 19 A. He was -- yes. 20 Q. Okay. He wasn't just a lawyer to a 21 plaintiff, he was the plaintiff himself? 22 A. Correct. 23 MR. ADAMS: Oh, okay. Sorry, I 24 misunderstood. 25 MR. COX: Or you misunderstood the

Page 18 1 answer, one or the other. 2 MR. ADAMS: Yeah. 3 Q. And you were a defendant and a -- and 4 another group of folks who were affiliated with 5 you were other defendants; is that correct? 6 A. Were brought into it, yes. 7 Q. And I think you answered this, and I 8 apologize, I've just forgotten it, that's the 9 case you were deposed in? 10 A. That one, yes. But the others -- there 11 was another that I was deposed in. And I don't 12 recall all the facts on that. 13 Q. Tell me what you do recall about that 14 other case you were deposed in? 15 A. I've been in real estate 25 years. 16 That was another real estate transaction in 17 Mecklenburg County. 18 Q. How many cases -- how many times have 19 you been deposed? 20 A. Two. This will be the third. 21 Q. Okay. What do you recall, if anything, 22 about that second case that you were deposed in? 23 Any of the names of the parties, for 24 example? 25 A. The -- in the chronological order, the	Page 20 1 believe that took us up until about 1993. '94 2 went with Kendall Healthcare approximately until 3 '95. And then went to work for Mulvaney Homes, 4 Mulvaney Builders in Charlotte in '95, '96. 5 Sorry, Stephen, it was in the mix there. And 6 then in -- all the way through 2000 we were 7 Mulvaney Homes. We sold that entity. Then we 8 worked as Mulvaney Properties till 2005. And 9 then went to First Colony Corporation, all in 10 Charlotte, until August of 2007. And then worked 11 for Lincoln Harris for approximately -- about 12 18 months. And then I guess that took me about 13 '09-ish and then -- fall of '09. And then went 14 to work for Agility Recovery for, you know, 15 approximately -- about 5 -- probably 5-and-a-half 16 years. In there I was also consulting, Steve, 17 Mr. Cox. So some of those aren't continuous 18 under The Polite Group. Just doing real estate 19 work. And then went -- then came to work for 20 Eastwood in September 2016. And have been here 21 since current. 22 Q. Thank you. That's a very thorough 23 summary and I appreciate it. 24 Let me go back and sort of get some 25 details from those. When you went to work with
Page 19 1 second one would have been when First Colony 2 Corporation was a developer. I was an employee 3 of them. And then as they filed their 4 bankruptcy, I was not an employee. And then I 5 was brought into that lawsuit as they got 6 dissolved. 7 Q. Okay. Gotcha. 8 Mr. Polite, did you graduate from 9 college? 10 A. Yes, sir. 11 Q. What college did you graduate from? 12 A. Wake Forest University. 13 Q. And what year? 14 A. 1990. 15 Q. Just to make this as streamlined as 16 possible, can you take me through your career 17 history, who you worked for and what your job was 18 from the time you graduated from Wake Forest 19 until today? 20 A. Sure. I'm not going to be able to give 21 you exact dates of hires or leaving. 22 Q. Understood. 23 A. But generally, yes. Finished Wake 24 Forest in May of '90, immediately went to work 25 with SmithKline Beecham Pharmaceuticals. I	Page 21 1 SmithKline, was that in some sort of sales 2 capacity? 3 A. Yes. 4 Q. You weren't doing real estate at 5 SmithKline or Kendall Health, were you? 6 A. No, sir. No, sir. 7 Q. You were -- you were selling 8 pharmaceutical products at those companies? 9 A. Pharmaceutical for SmithKline Beecham, 10 medical equipment for Kendall Healthcare, 11 devices. 12 Q. So you made the shift into real estate 13 when you came to work at Mulvaney Builders? 14 A. Yes. Mulvaney Homes. 15 Q. With the -- go ahead. 16 A. No, no, you're fine. It was -- at some 17 point he was Mulvaney Homes, sometimes he was 18 Mulvaney Builders. So I'm using both inter- -- 19 as the same entity. 20 Q. I know a little bit about that company. 21 At the time you came to work for them, 22 was the Congressman or his father running the 23 company? 24 A. The father always ran the company. 25 Q. Got it.

Page 22 1 And so that's where I want to really 2 start with some detail because that's, I guess, 3 your first real estate job with Mulvaney Builders 4 in '95 or so. 5 What did you do with Mulvaney Builders 6 during your tenure there? I think you said you 7 were there about a decade. 8 A. Yeah, predevelopment and land 9 development. Predevelopment acquisitions and 10 land development. 11 Q. Okay. And I know it varied some, Mr. 12 Polite, but roughly how large was the work force 13 at Mulvaney Builders/Homes during the time you 14 were there? 15 A. I don't want to guess. I don't know 16 the exact head count. We did significant work in 17 Charlotte, building about 700 homes a year -- 18 Q. Okay. 19 A. -- until 2000 when we sold it. I don't 20 know the head count. 21 Q. And then -- that's fine. 22 At First Colony, what did you do for 23 them? 24 A. I was vice president of land 25 development.	Page 24 1 personally with home building operations that he 2 had. 3 Q. And then you went to Agility Recovery 4 in roughly '09 and stayed there for 6 years? 5 A. Yes, sir. 6 Q. And what were you doing with them? 7 A. I was director of the public sector. 8 And that was a disaster recovery company. 9 Q. Okay. Can you hum a few more bars for 10 me on that? What specifically were you doing at 11 Agility Recovery? 12 A. I was in charge of the public sector 13 sales force and introduced Agility Recovery to 14 any government entity that needed disaster 15 recovery coverage. 16 Q. Like a -- like a natural disaster, like 17 a hurricane? 18 A. Could be anything, fire, natural, 19 anything that took them out of their office 20 space. 21 Q. So was this -- I'm sorry, was this 22 company selling insurance coverage? 23 A. No. It was selling physical assets. 24 They're a subscription service. But it was -- if 25 you needed us, if RBH's office in Rock Hill went
Page 23 1 Q. Was that in the Charlotte metropolitan 2 area? 3 A. Yes. And we also had -- we looked at 4 deals in South Carolina and Florida. 5 Q. Why did you leave the Mulvaney entities 6 to come to First Colony? 7 A. It was a better opportunity and more 8 pay. 9 Q. Got it. 10 When you were at Mulvaney -- and by 11 Mulvaney I mean collectively the entities, were 12 there times when you, yourself, invested in a 13 deal that Mulvaney was involved in, some of your 14 own personal assets? 15 A. No, no. 16 Q. Sorry? 17 A. No, sir. 18 Q. Then Lincoln Harris, what did you do 19 with them? 20 A. That we worked on some commercial 21 projects in uptown Charlotte. As you can 22 imagine, it was August of '07, things were 23 eroding quickly. And we never -- worked on 24 predevelopment, but never finished the deals. 25 And then also worked and helped Mr. Harris	Page 25 1 down, and you were a member of Agility, then you 2 would have been stood up within 24 hours with, 3 you know, office space, Internet, et cetera. 4 Q. Gotcha, gotcha. Now I got it. Now I 5 get it. 6 And then you left Agility and went to 7 Eastwood, correct? 8 A. Yes. 9 Q. Why did you leave Agility? 10 A. We -- that company was sold and no 11 longer was going to use a public sector service. 12 Q. Okay. I'm going to try to share this 13 screen now. I think I can do it. Hold on one 14 second. 15 All right. Mr. Polite, this is a 16 Summons and Third Amended Complaint filed by 17 Eastwood Construction Partners, LLC and Eastwood 18 Development Corporation in the York County, South 19 Carolina Court of Common Pleas. We're 20 introducing this as Exhibit 1 in this deposition? 21 MR. COX: And gentlemen, when I 22 introduce exhibits, I tend to just start 23 with number 1 and go all the way through 24 and not worry about the plaintiffs or 25 defendant for deposition purposes. Does

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Page 26 1 that work for you all, Mr. Bradley, Mr. 2 Adams, Mr. Mabe. 3 MR. ADAMS: Yeah. 4 MR. BRADLEY: Yeah. 5 Q. So we're introducing this, Mr. Polite, 6 as Exhibit 1. Let me first ask if you recognize 7 this document? And I'll scroll through it. 8 A. Yes. 9 Q. Have you -- did you read this Third 10 Amended Complaint before it was filed? 11 A. Not prior to filing. 12 Q. Okay. But you've read it since? 13 A. Yes. 14 Q. Okay. There are two plaintiffs in this 15 case, Eastwood Construction Partners, LLC and 16 Eastwood Development Corporation. 17 Do you see that? 18 A. Yes, sir. 19 Q. Are you familiar with both of these 20 entities? 21 A. I'm familiar, yes. 22 Q. Well, let's start, first of all, which 23 one employs you, if either one of them? 24 A. Eastwood Construction Partners. 25 Q. Okay. So let's start with that one.	Page 28 1 A. That was developed or that was 2 incorporated prior to my joining Eastwood Homes 3 and/or Eastwood Construction Partners 4 interchangeably. And it was an entity that 5 worked on development projects. But I am not 6 employed by them. 7 Q. Okay. Do you know if Eastwood 8 Development Corporation continues to be active in 9 business as we sit here now? 10 A. It has limited assets -- 11 Q. Okay. 12 A. -- to my knowledge. 13 Q. Okay. So is that a yes or a no, do you 14 know if it's still in business, if it's doing 15 business? 16 A. It would still be in business as it 17 still holds dwindling assets that were put in 18 that corporation. 19 Q. Okay. Well, then here's what I'm going 20 to do for the course of this deposition to avoid 21 any confusion. I'm not going to just say 22 Eastwood because there are a couple of Eastwood 23 entities here. When I say Eastwood Construction, 24 I mean Eastwood Construction Partners, LLC. 25 Do you understand that?
Page 27 1 What does Eastwood Construction Partners do? 2 A. Eastwood Construction Partners is a for 3 sale home builder as well as at some points we do 4 land development as well. But mainly this is a 5 home building entity. And that's what Eastwood 6 Homes is -- we're known as doing business as 7 would be. 8 Q. Make sure I have that last part right. 9 The technical legal name as you understand it is 10 Eastwood Construction Partners, LLC doing 11 business as Eastwood Homes? 12 A. Yes. The familiar -- the familiarity 13 in the public would be Eastwood Homes, yes. 14 Q. What about the other entity, Eastwood 15 Development Corporation, first of all, let me ask 16 this, you are not employed by that entity, 17 correct? 18 A. No, no. 19 Q. Do you know what -- I'm sorry? 20 A. I -- I didn't say anything. 21 Q. Oh, okay. 22 You're not employed by Eastwood 23 Development Corporation? 24 A. No, sir. 25 Q. Do you know what they do?	Page 29 1 A. Yes, sir. 2 Q. And when I say Eastwood Development, I 3 mean Eastwood Development Corporation. 4 Do you understand that? 5 A. Um-hum. 6 Q. And it sounds like you're in the habit, 7 as completely understandable, of sometimes saying 8 Eastwood Homes. Do I understand when you say 9 Eastwood Homes, Mr. Polite, you mean Eastwood 10 Construction Partners? 11 A. Yes, sir. 12 Q. Okay. So we'll just use those 13 shorthand terms in the course of this deposition. 14 Are you a W2 employee of Eastwood 15 Construction? Do you know what I mean by that? 16 A. Yes, I understand that question. And 17 yes, I am. 18 Q. I didn't really understand it until a 19 number of years ago. So no worries if you 20 didn't. 21 You mentioned earlier you were at one 22 time a consultant; is that right? 23 A. I was at one point. 24 Q. And the name of your consulting company 25 was The Polite Group?

Page 30 1 A. Yes. 2 Q. Is The Polite Group still active? 3 A. No. 4 Q. What did The Polite Group do when it 5 was active? 6 A. When asked about real estate projects, 7 it would give its opinion. 8 Q. Okay. So you basically gave advice in 9 the real estate industry to various folks; is 10 that right? 11 A. Yes. 12 Q. Okay. Other than Eastwood Construction 13 and Eastwood Development, are you familiar with 14 any other what I'll call Eastwood entities that 15 are active right now? 16 A. We have -- we do have multiple LLCs 17 that Eastwood -- it all rolls and owned by 18 Eastwood Construction Partners. 19 Q. I gotcha. 20 But those tend to be LLCs formed with 21 respect to its particular project or tract? 22 A. Could be a tract, but more or less it's 23 a division. We have multiple divisions. 24 Q. Okay. And what are those divisions? 25 A. We have a division in Richmond,	Page 32 1 Eastwood's role in the home construction market? 2 What are the various things it does in 3 the home construction market? 4 A. What do you mean by done? 5 Q. Does it just build houses? Does it 6 develop property? Does it acquire property? 7 What are the various activities it 8 engages in in the residential market in the 9 divisions in which it operates? 10 A. The company has been in existence since 11 1977 and in that time it's done all three, 12 acquisition of land, development of land. But 13 here again, majority of its activities is 14 building homes, for sale homes. 15 Q. Okay. And right as we sit here now, 16 what percentage of Eastwood Construction's work 17 would you say is home construction versus land 18 acquisition or land development? 19 MR. ADAMS: Objection to form. 20 Q. You may answer. From time to time we 21 may have objections from some of the lawyers. 22 You can still answer unless one of the lawyers 23 instructs you not to answer. 24 A. Sure. 25 There's no exact percentage. When I
Page 31 1 Virginia; Raleigh, North Carolina; Greensboro, 2 which we affectionately call the Triad division; 3 we're in Charlotte; we are also in Greenville, 4 South Carolina; we are in Atlanta; we have a 5 division in Columbia; and a division in 6 Charleston. 7 Q. Okay. And each one of those divisions 8 would be a separate LLC that would roll up into 9 Eastwood Construction; is that right? 10 A. Yes, more or less. We have -- we have 11 -- only for special purpose entities if there's 12 maybe some land or some other things. But 13 they're all owned a hundred percent by Eastwood 14 Construction or Eastwood Partners. 15 Q. What is the name of the Charlotte 16 division? 17 A. Charlotte division. 18 Q. It doesn't have a separate LLC? 19 A. No. 20 Q. Okay. So the business that Eastwood 21 Construction does in the Charlotte region, it 22 does under Eastwood Construction Partners; is 23 that correct? 24 A. Yes. 25 Q. Okay. How -- how would you describe	Page 33 1 say majority of it is home building, it is. We 2 do understand that in land acquisitions 3 activities exist every day in the company as we 4 look for more projects to build housing. 5 Q. Okay. Gotcha. 6 And who are the -- who do you consider 7 to be Eastwood Construction's competitors in the 8 Charlotte market? 9 A. It would be any production home builder 10 anywhere from True Homes, David Weekly, D.R. 11 Horton or Lennar, as examples. 12 Q. Okay. Are you familiar with my client, 13 TRI Pointe homes? 14 A. Yes, I'm familiar with them. 15 Q. Do you consider TRI Pointe a competitor 16 of Eastwood Construction? 17 A. Not necessarily, no. 18 Q. Why not? 19 A. Size, scale, startup. 20 Q. Size in which direction, too small? 21 A. Too small. I mean, they're much 22 smaller at this point. 23 Q. Okay. What is your current position 24 with Eastwood Homes -- I said say Eastwood Homes, 25 Eastwood Construction?

Page 34 1 A. Vice president and then land. 2 Q. Vice president, dash, land? 3 A. Of land, yeah. 4 Q. I gotcha. 5 A. Vice presidency, but it's of land. 6 Q. How long have you been in that 7 position? 8 A. Since September 2016. 9 Q. So that's the same position you've held 10 the whole time you've been with the company? 11 A. Yes. 12 Q. And what are your responsibilities in 13 that role? 14 A. I oversee the land acquisitions of all 15 eight divisions, land acquisitions defined as 16 seeking out lot option deals, seeking out raw 17 land to entitle for lot development and then also 18 just purchasing lots from third-party developers 19 and approval of deals by each individual 20 division. Other land deals -- other land deals 21 where, again, there are -- our main objective was 22 to purchase lots through third-party developers. 23 Q. Gotcha. 24 And how many folks do you oversee at 25 Eastwood Construction in your capacity as VP of	Page 36 1 to me, it sounds to me, Mr. Polite, like you were 2 the main person in charge of land acquisition at 3 Eastwood Construction, as the top dog in charge 4 of land acquisition; is that correct? 5 A. I would say I'm a part of it. I'm not 6 the top dog. I still report -- 7 Q. Who is the top dog? 8 A. I still report to owners. 9 Q. I gotcha. 10 Let me ask the question in terms of 11 authority. If you see a particular parcel of 12 land that you want to acquire, let's just put a 13 number on it, 10 acres of land you want to 14 acquire to put homes on, is there some level 15 above which you have to go get authority from the 16 Stewarts to do that? 17 A. No. But I'm not the one identifying 18 the land immediately. That comes through the 19 division's work with their either acquisition 20 manager or the division president's work. 21 Q. Understood. 22 So others bring to you -- others in the 23 company bring to you opportunities. I'm just 24 trying to figure out how much authority do you 25 have to just act on those opportunities and buy
Page 35 1 land? 2 A. My direct reports, the way we've 3 structured it, are the land development managers 4 to a land coordinator would be like direct lines 5 to me. Each division except for two, six of them 6 have their own acquisition managers. I interface 7 with them on a weekly or as needed daily basis. 8 And then the division presidents and I work in 9 tandem to get land approved and purchased. 10 Q. Who is your supervisor at Eastwood 11 Construction? 12 A. I would say Joe Stewart and his son 13 Clark Stewart. 14 Q. And what are their positions? 15 A. Joe's the founder. I don't want to 16 guess at what title they've given him right now. 17 But Clark would be president. 18 Q. Okay. So the division presidents are 19 sort of on the same level as you, they're sort of 20 lateral on the org chart? 21 A. Yes. 22 Q. They don't report to you and you don't 23 report to them, but you work with them? 24 A. Correct. 25 Q. Okay. From what you've just described	Page 37 1 the property versus having to get more authority 2 from the Stewarts? 3 Can you answer that question for me? 4 A. I need more authority. 5 Q. In every case? 6 A. We have it by committee, yes. 7 Q. So if you want to even acquire one lot, 8 you have to go get authority from the committee? 9 A. Yes. We -- we are very transparent. I 10 do not act individually. 11 Q. Gotcha. 12 Is that called a land acquisition 13 committee? What's it called? 14 A. Loosely it's the land committee. 15 Q. And who's on it? 16 A. Joe Stewart and Clark Stewart, myself. 17 Q. And? 18 A. That's the committee. But the division 19 presidents, you know, will play a role. They 20 become a de facto member as they present that 21 project they want to acquire. 22 Q. So if I understand that right, the 23 three of you all are the committee and the 24 division people may appear before the committee 25 from time to time with opportunities they want

Page 38 1 you all to consider; is that right? 2 A. That's correct. 3 Q. Does the committee maintain records of 4 its meetings? 5 A. No. 6 Q. There are no minutes or anything that 7 talks about what you all did and what you all 8 decided? 9 A. No. 10 Q. How do you all remember what you 11 decided? 12 A. It's pretty much done on site while 13 we're actually looking at the project. And if we 14 all agree, then they move -- the division 15 president will move forward with that 16 acquisition. 17 Q. Okay. 18 MR. ADAMS: Stephen, is there any 19 reason we still need the complaint taking 20 up the screen? 21 MR. COX: Oh, I can take it off and put 22 it back. No problem. 23 MR. ADAMS: Thanks. 24 MR. COX: I'm going to ask him some 25 questions about it in a second. But if	Page 40 1 say that Mr. Dority left on bad terms? 2 A. I think they said the transition could 3 have been cleaner. 4 Q. Who said that? 5 A. People within Eastwood. 6 Q. Who? 7 A. Various. Just the notice and then the 8 departure seemed a little -- it was more abrupt 9 than a transition than they would have preferred. 10 Q. No, I understand. But who told you 11 that is what I'm asking? 12 A. I think it was a consensus of the 13 people. 14 Q. But you can't -- 15 A. I mean, it's a consensus of the people 16 that are still there. 17 Q. Let me make it real simple. Can you 18 remember one person who said that to you, their 19 name? 20 A. That the transition was rough? Yes. I 21 would say -- 22 Q. Who? 23 A. Both the Stewards, Mr. Stewart, Clark 24 Stewart and Mr. Conley, Mike Conley, division 25 president of Charlotte.
Page 39 1 this -- 2 MR. ADAMS: Oh, okay. 3 MR. COX: No that's fine. 4 Q. Mr. Polite, I understand that you 5 succeeded a gentleman named Joseph Dority; is 6 that correct? Am I pronouncing his name right? 7 A. Yes. 8 Q. Was he the vice president of land right 9 before you? 10 A. I don't know his title. But he was in 11 a similar role. 12 Q. Do you know why he left? 13 A. You would best be to ask Joe, Mr. 14 Dority. 15 Q. No, I understand that. But I'm asking 16 you, what have you heard at the company about why 17 Mr. Dority left the company? 18 A. For a better opportunity. 19 Q. Okay. Did he leave on good terms, to 20 your knowledge? 21 A. Just my knowledge, I would say we -- we 22 still work with him on ongoing projects. 23 Q. Right. 24 But have you -- have you heard anyone 25 at Eastwood Construction or Eastwood Development	Page 41 1 Q. Okay. All right. And we're going to 2 be talking about some dealings with Green Hawk 3 that took place before you were even with the 4 company. You understand that? Concerning the 5 Brooks Creek and River Falls property. 6 A. Yes, sir. 7 Q. Now, that Mr. Dority is gone, though, 8 to your knowledge, is there anyone at Eastwood 9 Construction who knows more about these two 10 parcels, Brooks Creek and River Falls, than you 11 now that Mr. Dority's gone? 12 A. I would say myself and Mr. Conley. 13 Q. Okay. Mr. Conley is still there, 14 right? 15 A. Yes. 16 Q. And you said he was division president 17 in Charlotte? 18 A. That is his title. 19 Q. Do you know how long he's been division 20 president in Charlotte with Eastwood 21 Construction? 22 A. He has been with Eastwood Homes for 23 over 25 years. 24 Q. Okay. 25 A. And, again, I used homes collectively.

Page 42 1 Q. Right. I understood you to mean 2 Eastwood Homes means Eastwood Construction 3 because that's the home building entity; is that 4 correct? 5 A. That's correct. 6 Q. Now, you're a land guy. Do you have 7 any role in actually putting up houses on these 8 lots once the company has acquired them? 9 A. I do not. 10 Q. Okay. That's a different group? 11 A. Yes, sir. 12 Q. Okay. All right. I'm going to throw 13 up now, because I know Jimmy's waiting for it -- 14 MR. ADAMS: You're going to throw up? 15 MR. COX: No. Well, I'll do that 16 later. I'm going to throw up the Complaint 17 now. 18 Q. You told me you read this complaint 19 that's Exhibit 1, Mr. Polite, after it was filed; 20 isn't that right? 21 A. Yes. 22 Q. Do you agree with all of the 23 allegations made by the Eastwood plaintiffs in 24 this complaint? 25 A. Yes.	Page 44 1 Q. Okay. And these are both in the York 2 County, Tega Cay area? 3 A. Yes, area. 4 Q. Area, correct. Not in the incorporated 5 limits of Tega Cay, but in York County near Tega 6 Cay; is that right? 7 A. That's right. 8 Q. Paragraph 7, you see that on the 9 screen? 10 A. Um-hum. 11 Q. Says that these two portions are 12 adjacent. Is that accurate? 13 A. They're on the same road. They're not 14 contiguous. 15 Q. Right. 16 Well, Columbia and Charlotte are on the 17 same road. I'm asking you whether or not these 18 two parcels are next to each other. They're not, 19 are they? 20 A. They are not. 21 Q. How far down the road are they from 22 each other, roughly? 23 A. A few thousand feet, Steve, my guess. 24 Q. There's some intervening communities 25 between the two parcels; isn't that right?
Page 43 1 Q. Do you know if any one of them is 2 inaccurate? 3 A. Not to my knowledge, no. 4 Q. Okay. You understand the complaint 5 concerns two portions of real estate in York 6 County, South Carolina; you understand that, 7 right? 8 A. Yes. 9 Q. And one is called River Falls; isn't 10 that right? 11 A. Yes. 12 Q. And one is called Brooks Creek; isn't 13 that right? 14 A. And also I would call Brooks Creek 15 Brooks Springs. 16 Q. Right. 17 I've seen references in some of 18 Eastwood's internal documents to Brooks Springs. 19 That's the same thing as Brooks Creek; is that 20 correct? 21 A. That's correct. 22 Q. But when the complaint here refers to 23 Brooks Creek, it's referring to the Brooks 24 Springs property interchangeably; is that right? 25 A. Yes.	Page 45 1 A. Yes, other -- 2 Q. They belong to other -- right. 3 THE STENOGRAPHER: I'm sorry? 4 A. There are parcels between them. 5 Q. Okay. So here's my question: If -- if 6 they are not contiguous and if there are parcels 7 between them, why does paragraph 7 go on to say 8 that they comprise one intended residential 9 community? 10 A. To my knowledge, that's -- they were 11 under contract at the same time to be one 12 community. 13 Q. They were going to be marketed as one 14 community even though they were separate -- they 15 were down the road from each other? 16 A. Similarly, yes. 17 Q. Okay. Now, according to the -- and I'm 18 going to try to move around a bit. 19 According to this complaint, Eastwood 20 Development Corporation initially had a contract 21 to buy the Brooks Creek property from another 22 company called R&H Properties; is that right? 23 A. That predates me to speak, other than 24 reading it here. 25 Q. Understood.

Page 46 1 Let's just to make it clear here, I 2 believe -- do you understand the Brooks Creek 3 property to be about 10.6 acres? 4 A. Yes. 5 Q. So there's a -- here is one of the 6 documents that I believe is Exhibit C to the 7 complaint. Do you see that? That's a real 8 estate contract? 9 A. Yes. 10 Q. And that's the contract between R&H and 11 Eastwood Development. Do you see that? 12 A. Yes. 13 Q. And that's -- it says that it's right 14 there in this check box there, you see it says, 15 approximately 10.64 acres? 16 A. Yes. 17 Q. Is it your understanding that this is 18 the original agreement Eastwood Development had 19 for purchase of Brooks Creek from R&H? 20 A. It appears that way, yes. 21 Q. And then what happened was this 22 agreement to R&H was assigned, and I'm trying to 23 get to that, was assigned over to an entity owned 24 by Green Hawk; is that right? 25 A. If you could show it to me.	Page 48 1 A. Yes. 2 Q. And I understand you weren't there at 3 the time, but is it your understanding that 4 that's, in fact, what happened as Eastwood says 5 in its complaint? 6 A. Yes. 7 Q. Now, to be clear here, Mr. Polite, you 8 told me a moment ago that Eastwood Construction 9 is the entity that you work for, right? 10 A. That's correct. That's my W2. 11 Q. Right. 12 A. That would be where my W2 is, Mr. Cox. 13 Q. I understood. 14 And that's the one that builds the 15 homes; isn't that right? 16 A. That one does build homes, yes. 17 Q. Eastwood Construction, though, did not 18 have the contract with R&H Properties, did it? 19 A. Not -- not here, no, sir. 20 Q. And Eastwood Construction is not the 21 entity that assigned the contract over to the AF 22 Brooks Creek entity, is it? 23 A. Not according to these. 24 Q. Okay. At the -- to your knowledge, at 25 the time Eastwood Development assigned the
Page 47 1 Q. That's it right there. 2 A. If you could show it to me. 3 Q. Right here. 4 A. Yes. 5 Q. You see that? Take your time, look at 6 that real quick. 7 A. What was the entity Green Hawk AF 8 Brooks Creek? 9 Q. Correct. 10 Do you see that? 11 A. Assignee, yes. 12 Q. So you see in the whereas clause of 13 this exhibit, and I believe it's Exhibit D to the 14 Third Amended Complaint that we're looking at 15 now, this refers to a contract that Eastwood 16 Development had with R&H Properties. 17 Do you see that? 18 A. Yes. I nodded. Sorry. 19 Q. For -- for the same 10.64 acres that we 20 talked about a second ago, correct? 21 A. Yes. 22 Q. And Eastwood Development assigned this 23 contract over to this AF Brooks Creek, LLC 24 entity. 25 Do you see that?	Page 49 1 contract over to AF Brooks Creek, had Eastwood 2 Development done anything to improve or invest in 3 that Brooks Creek property? 4 A. I -- that's difficult to say my direct 5 knowledge. 6 Q. Okay. Had they put any money in it? 7 A. Even stated here, they've put a hundred 8 thousand dollars of earnest money. 9 Q. Right. 10 Any other money? 11 A. Again, I couldn't speak to that in 12 2013. 13 Q. Well, the reason I'm going to ask is 14 we're going to look at some e-mails from you to 15 various folks years later that contend that 16 Eastwood had put money in it, I believe. 17 Is that your current understanding? 18 A. That will be fine. 19 Q. Okay. Is that your current 20 understanding, though, that Eastwood had put 21 money -- Eastwood development had put money in 22 this property? 23 A. Absolutely, yes. 24 Q. Okay. To your knowledge, had Eastwood 25 Construction put any money in this property at

Page 50 1 the time the contract was assigned? 2 A. I'm not sure what entity it flowed 3 from. 4 Q. Okay. And as I understand it, the 5 complaint basically alleges that Eastwood 6 Development assigned the property over to AF 7 Brooks so that AF Brooks and Green Hawk could 8 develop the property and then the plan was it 9 would sell finished lots back to Eastwood 10 Construction. That's how I understand your 11 complaint. Is that Eastwood's position? 12 A. That is true, yes. 13 Q. Okay. So the lots were not going to be 14 sold back to Eastwood Development, they were 15 going to be sold back to Eastwood Construction, 16 is that accurate? 17 A. The home builder, yes. 18 Q. Okay. And what was it that AF Brooks 19 Creek was supposed to do with this property 20 before selling lots back to Eastwood 21 Construction? 22 A. They would have done the improvements 23 necessary to record a plat and transfer 24 subdivided lots back to Eastwood Construction. 25 Q. Okay. So, basically, all the	Page 51 1 Construction consider its expertise as really in 2 building houses, not in developing lots for 3 building? 4 MR. ADAMS: Objection to form. 5 Q. You may answer. 6 A. It is where their highest and best use 7 is. And -- 8 Q. Gotcha. 9 A. -- and use the resources. 10 Q. So Eastwood Construction and Eastwood 11 Development would rather put their resources and 12 actually getting opportunities for land and 13 putting houses on them and leave the middle part 14 to somewhere else wherever possible; is that 15 accurate? 16 A. Yes. 17 Q. Okay. And the plaintiff's position in 18 this lawsuit is that AF Brooks Creek and others 19 breached an agreement to sell the finished lots 20 back to Eastwood Construction, correct? 21 A. That has always been my understanding. 22 Q. I say sell them back. That's actually 23 not right because they never had them. That AF 24 Brooks Creek breached an obligation to sell the 25 lots to Eastwood Construction, correct?
Page 51 1 development and entitlement work associated with 2 the property and cutting it up into lots, that's 3 what Eastwood Development expected AF Brooks 4 Creek to do? 5 A. That would be the impression, yes. 6 Q. And then AF Brooks Creek or one of its 7 affiliates would get a subdivision plat recorded 8 with the county and approved; is that right? 9 A. That's right. 10 Q. And then sell that prop- -- sell lots 11 back to Eastwood Construction, that's Eastwood's 12 position, correct? 13 A. Yes. 14 Q. Why couldn't Eastwood Development do 15 that development and entitlement work itself? 16 A. I can't speak to the 2013. But I can 17 say that we utilized third-party development 18 every chance possible. And we enter into 19 agreements and contracts across our divisions 20 where they do -- third-party developers do the 21 improvements and we purchase those finished lots 22 to do vertical construction. 23 Q. Did that have to do with comparative 24 expertise, Mr. Polite? 25 And by that I mean does Eastwood	Page 53 1 A. That's correct. We have not bought any 2 from AF Brooks. 3 Q. So if I understand the plaintiff's 4 position correctly, this was a two-stage 5 transaction, the first stage was Eastwood 6 Development would sign its contract rights over 7 to AF Brooks; is that correct? 8 A. Yes. 9 Q. And that happened, right, as we see 10 here? 11 A. Yes. 12 Q. If it's the second stage that didn't 13 happen, Eastwood Construction maintained AF was 14 then ultimately supposed to sell the lots back to 15 -- to Eastwood Construction, right? 16 A. Yes. 17 Q. Okay. Now, let me go back and ask just 18 a couple of questions about this complaint. I'm 19 trying to drive as quickly as I can back to 20 paragraph 6, which says that Eastwood and Green 21 Hawk have accomplished numerous land acquisition 22 and development projects in the Carolinas for 23 almost a decade. It's taking a long time. Let 24 me see if I can go back to -- oh, I can't do 25 that. Here we go. We're finally there.

Page 54 1 MR. COX: Where is the damn bar, Tim? 2 Try to find a faster way. Yeah, here we 3 go. I think we're getting there. 4 MR. ADAMS: Stephen, don't be cussing 5 at my witness. 6 MR. COX: I'm not. I'm cussing at the 7 screen. I'm cussing at the screen. Here we 8 go. 9 Q. All right. Paragraph 6, it says 10 Eastwood and Green Hawk have jointly accomplished 11 numerous projects over almost I think a decade 12 across North and South Carolina. 13 Do you see that? 14 A. Yes. 15 Q. Do you know whether that's true or not? 16 A. I do. I am aware of North Carolina 17 here in the Greensboro area where we've purchased 18 lots from Green Hawk, a subdivision called 19 Lindley Estates. And South Carolina would have 20 been these two. I'm not familiar with another 21 one in South Carolina. 22 Q. So the Lindley project, and I probably 23 let Mr. Mabe ask most of these questions, I'm 24 just going to ask a couple. Was that a project 25 like this one in which Eastwood -- an Eastwood	Page 56 1 MR. MABE: If it's okay with you guys, 2 I'll stop the video and that might give me 3 more -- that might help some. But I think 4 what I need to do is I'm using a Wi-Fi 5 connection and I probably need to get 6 somebody to get me a cable. That would be 7 where the problem is. 8 MR. COX: Can you hear us? 9 MR. MABE: Yes. 10 MR. COX: All right. We're going to go 11 -- let me just wrap up this area and then 12 we'll take a break and maybe you can get 13 somebody to help you. Does that make 14 sense, John? Will that work? 15 MR. MABE: Can you hear me? 16 MR. COX: Yes. 17 MR. MABE: Okay. I think just keep 18 going. And I think I -- if you don't mind 19 me being on a -- you know, no video so you 20 can't see me grinning and doing a time out 21 sign, then I'll just listen along. 22 MR. COX: Okay. 23 Q. Other than the Lindley project, Mr. 24 Polite, are you familiar with any other projects 25 in which an Eastwood entity has done business
Page 55 1 entity assigned a contract over to a Green Hawk 2 entity, Green Hawk developed it and then sold 3 lots back to an Eastwood entity? 4 A. I don't know the origination of that. 5 I knew -- I was involved when we were purchasing 6 lots from them as they were -- they were 7 developed. 8 Q. Okay. 9 MR. MABE: Guys, let me -- I'm sorry to 10 interrupt. This is Mabe. My Zoom meeting 11 just froze for a minute. And then when it 12 briefly came on, I tried to give a time 13 out. I don't know if anybody saw that. 14 But is there -- in case that -- in case 15 that happens again, I guess what I'll do is 16 send an e-mail to everybody or something. 17 I'm not sure why it froze on me. But... 18 MR. COX: Yeah, you're still frozen, 19 John. I guess it could be in a more 20 embarrassing position, but... 21 MR. MABE: Well, I look pretty good on 22 the screen I'm looking at. How about we do 23 this -- 24 MR. COX: Do you want to try to fix it 25 real quick?	Page 57 1 with a GreenHawk entity? 2 A. The two that we're discussing now. And 3 if there's -- I do not know of another one right 4 off the top of my head. I'd have to be reminded. 5 Q. Okay. In the four years you've been -- 6 A. Oh, I'm sorry, I'm -- hold on, Steve. 7 I'm so sorry. Camp Kanata, Kanata Mills in 8 Raleigh was a GreenHawk project. I'm real sorry 9 about that. 10 Q. No, that's all right. That's why we do 11 this. That's why I ask the same question four or 12 five times because sometimes it spurs your 13 memory. 14 A. I'm the only one working without a pad, 15 so I apologize. 16 Q. So other than Brooks Creek, River Falls 17 Kanata Mills and Lindley, you're not aware of any 18 other project in which a GreenHawk entity has 19 worked with a Eastwood entity; is that correct? 20 A. That's correct. Or where I -- 21 Q. In the four years -- 22 A. -- where I interacted with them. 23 Q. Right. 24 So let me take that question one step 25 further and ask have you heard of other projects

Page 58 1 in which an Eastwood entity worked with a 2 GreenHawk entity in which you were not involved? 3 A. No. Just these two. And if it comes 4 back to me, I'll definitely let you know. But 5 no. 6 Q. On the -- on the Kanata Mills case, how 7 did that work? Did an Eastwood entity assign -- 8 let me finish the question first. We're both 9 doing this, and I apologize. Let's promise to 10 make sure we're sure the other person is finished 11 before we start. We're both doing it. 12 On the -- on the Kanata Mills project, 13 was that a project in which Eastwood just bought 14 lots or did Eastwood assign a contract over to a 15 GreenHawk entity, GreenHawk developed it and then 16 sold lots back? 17 A. Very similar to Lindley. I do not know 18 the origination of it. I just know us buying 19 lots from GreenHawk at Kanata. 20 Q. Gotcha. 21 So on -- on both the Kanata and Lindley 22 projects, all you know about it is that an 23 Eastwood entity bought lots from a GreenHawk 24 entity? 25 A. That's correct.	Page 60 1 Q. Okay. And let me make sure -- let me 2 make sure we're talking about apples and oranges. 3 I want to start with situations in which an 4 Eastwood entity identifies some property, locks 5 it up in a contract and assigns that contract 6 over to a third party, and that third party then 7 develops it and sells lots back to another 8 Eastwood entity. 9 You understand what I'm talking about? 10 A. Yes, I do. 11 Q. Of the situations you've just described 12 to me, which of those involves the two-stage 13 process I just described? 14 A. As I didn't say anything specific, I 15 could say that that's done routinely over all 16 eight divisions are. 17 Q. Well, you say routinely. Just name 18 one. Name a third -- name an entity that you've 19 used to develop one? 20 A. Right. I'm trying to -- I'm trying to 21 think of -- I'm not being evasive. I'm literally 22 trying to think of just one rather than focusing 23 on all of my eight. 24 I can say in Atlanta we had what's now 25 Cambridge, we assigned to Blake Wilder
Page 59 1 Q. Okay. Have -- this two-stage process 2 we talked about earlier that's described in this 3 complaint by which an Eastwood entity sells an 4 opportunity to another entity, that entity 5 develops and sells it back, has an Eastwood 6 entity done that with any other company other 7 than GreenHawk? 8 A. Yes. 9 Q. Who's that? 10 A. Let's see. You know, the -- I'd rather 11 use the developer names. I don't know hundred 12 percent their entity, what they use. We would do 13 that in Raleigh. We would -- with Bruce Knot. 14 We were also -- we sell -- we assign and sell to 15 third parties in what we call land banking 16 transactions to -- you know, where the land is 17 developed and then we -- then Eastwood Homes or 18 Construction would purchase lots from them. We 19 do that routinely. Again, there are -- I'm 20 sitting here thinking of the multiple developers 21 that we utilize. For instance, in Greenville, 22 South Carolina, a hundred percent of our lot 23 development is done by third-party outside 24 developers. The same in Richmond, Virginia. 25 There's a laundry list of people we do this with.	Page 61 1 Associates, Blake Communities in which they took 2 our contract, are developing it now and we're 3 currently in the process of buying back the 4 finished lots. Blake has done that -- 5 Q. Do you know -- 6 A. Go ahead. 7 Q. No, I interrupted you. You go ahead. 8 I'm sorry. 9 A. No, that one Blake has also done for us 10 in Greenville, South Carolina as well. 11 Q. So in those two cases you all 12 identified a contract, assigned it to Blake, 13 Blake did the development and titlement work and 14 then sold lots back to Eastwood Construction? 15 A. Correct. 16 Q. Was there a lot purchase contract 17 between the Blake entity and Eastwood 18 Construction for the second stage of that 19 transaction? 20 A. There are. 21 Q. And are they executed? 22 A. There are -- they are. 23 Q. Were they executed at the time of the 24 first stage, that is when you assigned the 25 opportunity to Blake, or were they executed

Page 62 1 later? 2 MR. ADAMS: Objection to form. 3 Q. You may answer. 4 A. They were done at -- at the same time, 5 the assignment and the contract. 6 Q. Gotcha. 7 That was not done in this lawsuit we're 8 talking about, though, was it? 9 A. At the time of this assignment, there 10 was not a written contract, but there was 11 definitely the agreement that we were getting 12 these lots back developed. 13 Q. Right. 14 But there wasn't a written contract 15 that specified the lot price at which the lots 16 would be sold to Eastwood Construction, right? 17 MR. ADAMS: Objection to form. 18 A. There was not a written contract. 19 Q. Right. 20 And at the time the assignment that was 21 Exhibit B to this complaint was executed, giving 22 the opportunity to Brooks Creek, there was not a 23 written contract specifying a take-down schedule 24 for these lots either, was there? 25 A. There was not on that date.	Page 64 1 two-stage transactions. 2 Do you recall that? 3 A. Yes. 4 Q. And I think you said -- those were the 5 two examples you gave me. I think you said there 6 may be others in which you have been involved in 7 for Eastwood involving a two-stage transaction; 8 is that accurate? 9 A. Yes. 10 Q. In the cases you've been involved in is 11 the assignment of the undeveloped property and 12 the lot purchase contracts for the lots, are 13 those both executed at roughly the same time? 14 A. Yes. Currently, yes. 15 Q. That's your standard practice? 16 A. Mine. 17 Q. All right. Do you know if that was a 18 standard practice of Mr. Dority before you 19 arrived at Eastwood Construction? 20 A. You'd have to ask him. 21 Q. Have you looked in his records? 22 A. Not to that detail for every 23 transaction, no, sir. 24 Q. I want to talk to you now for a bit 25 about the records Eastwood Construction maintains
Page 63 1 Q. In fact, there wasn't even an unwritten 2 agreement at the time of the assignment as to 3 what the specific price would be for the lots, 4 was there? 5 A. I don't know. 6 Q. Okay. You mentioned something called 7 land banking a second ago. Do you remember that? 8 A. Yes, I do. 9 Q. What is land banking? 10 A. Land banking is a mechanism that a 11 third-party finance group takes title of the 12 land, funds the development of the land and then 13 that entity sells lots back to the home building 14 entity or Eastwood Construction. 15 Q. Does the third-party banker develop the 16 property? 17 A. They finance it. And there's -- either 18 we as Eastwood Homes or Eastwood Construction 19 managed the development or we hire third-party 20 outside project managers to manage the 21 development. They finance -- they fund that 22 development. 23 Q. You've told me a second ago about a 24 couple of situations in which Eastwood 25 Construction and Blake Wilder did one of these	Page 65 1 to -- to keep track of its land opportunities. 2 Does Eastwood Construction maintain something 3 called a land status report? 4 A. Each division has their own that 5 they're responsible for. 6 Q. But is that what it's called, a land 7 status report? 8 A. Yes. And it -- they're -- through the 9 years that name or moniker may have changed. But 10 they're all -- they're all tracking what land 11 they have either under the LOI, under interest, 12 what they're pursuing, under contract, et cetera. 13 It's that's the status. 14 Q. I gotcha. 15 I think you've answered my next 16 question, which is what's the purpose of the 17 document. As I understand your answer, the 18 purpose is for each division to be able to track 19 property that it has a target on getting homes 20 built on; is that correct? 21 A. Correct. 22 Q. And it tracks the status of that 23 property whether it's already got it in its own 24 inventory or whether it's negotiating for it or 25 that sort of thing; is that right?

Page 66 1 A. Correct. 2 Q. Let's -- both of these properties we're 3 talking about, Brooks Creek and River Falls, are 4 in the Charlotte division, right? 5 A. Yes. 6 Q. So the questions I'm about to ask I'm 7 going to ask with respect to the Charlotte 8 division. 9 Who's in charge of overseeing the land 10 status report in the Charlotte division? 11 A. Ultimately it would be the division 12 president Mike Conley. And we've had various 13 land acquisition managers that would, you know, 14 update it from time to time. 15 Q. Is -- is there some policy or rule by 16 which -- that talks about how often they're 17 supposed to be updated? 18 A. There's no policy or rule. 19 Q. Do you know how often the Charlotte 20 division updated its land status reports? 21 A. I do not know the exact as needed. 22 Q. Okay. As -- as -- typically are all of 23 the Eastwood Construction projects in a 24 particular division supposed to be reflected in a 25 land status report somewhere?	Page 68 1 Eastwood Construction Partners. It's document 2 number ECP 1165. And the top of it says, 3 Charlotte Division Land Status Report. 4 Do you see that? 5 A. Yes. 6 Q. Is this an example of the kind of land 7 status report the Charlotte division maintains at 8 Eastwood Homes, Eastwood Construction? 9 A. Yes. 10 Q. This is the general format? 11 A. Yes. 12 Q. And it shows here, you know, various 13 categories. I want to go down here and look at 14 Brooks Springs, which is line number 12, I 15 believe. 16 Do you see that? 17 A. Yes. 18 Q. And we agreed earlier, I believe, that 19 Brooks Springs is the same as Brooks Creek? 20 A. Yes, we agree. 21 Q. And it says LOI sent is the heading at 22 the top of those projects. 23 Do you see that? 24 A. Yes. 25 Q. Does this -- and let me show you a few
Page 67 1 A. Yes. 2 Q. Okay. I want to look at -- 3 MR. COX: And Jimmy, to address your 4 question, this is a spreadsheet that I 5 believe is -- let me see -- 6 MS. MISNER: That's Exhibit 2. 7 MR. COX: Right. It's ECP 1165, if I'm 8 not mistaken. Pull up a different document 9 here, if I can get it. 10 MR. ADAMS: And you'll have this on the 11 share site? 12 MR. COX: I'm putting it there right 13 now. I promise. 14 Do you see it now? 15 MR. ADAMS: No. Still see the summons. 16 MR. COX: Oh, gosh. What have I done? 17 Now do you see it? 18 MR. ADAMS: Yeah, I see a portion of 19 it, Steve, yeah. 20 MR. COX: Yeah. I'll try to -- I'll 21 try to get around to it. I've got to move 22 some stuff around. 23 Q. So is this -- I'm moving my gallery. I 24 don't know if you have to move yours. I'm 25 looking at a spreadsheet that was produced by	Page 69 1 other things. And then it says, Status of land 2 recording soon. And it goes on to the end to 3 say, Next steps sign contract and timeline to 4 finish lots Fall 2018. 5 Do you see all those entries? 6 A. I do see them. 7 Q. When this refers to LOI sent with 8 respect to Brooks Springs, do you know what LOI 9 the Charlotte division is talking about? 10 A. LOI means Letter of Intent. And that 11 would be their expectations of the contract. 12 Q. No, right. I get that. 13 Even in Berkeley County, we can 14 translate LOI. But what LOI are we talking 15 about? Was there an LOI that -- and I'll just 16 represent to you the date I have on this document 17 from your own internal data is July 25th, 2018. 18 To your knowledge, was an LOI sent by Eastwood 19 Construction as of that date? 20 MR. ADAMS: Let me first say, Stephen, 21 and if I'm speaking out of turn, but it's 22 not on the document, we -- I think we will 23 disagree about the dates based on my 24 reading -- based on my review. 25 MR. COX: Okay.

Page 70 1 MR. ADAMS: The date is material since 2 it's not on the document. I don't believe 3 the metadata supports what you've said. 4 MR. COX: And it's fine for you to say 5 that because I'm not trying to trick him. 6 All I'm saying is that's my understanding. 7 If he has a different understanding, that's 8 what I really want to hear about. 9 Q. But we have a time frame here that says 10 timeline to finish lots Fall 2018. And I'm just 11 trying to figure out if that's the case, Mr. 12 Polite, do you know what LOI was sent and which 13 one? 14 A. I do not have a physical copy or have 15 seen a physical copy of an actual letter of 16 intent. In this report it -- it doesn't 17 necessarily mean it's a physical letter. 18 Q. Okay. 19 MR. MABE: Can you guys hear me? This 20 is Mabe. 21 MR. COX: Yes, John. 22 MR. MABE: Has this been marked as 23 Exhibit 2? Is that -- 24 MR. COX: Yes, this is Exhibit 2. 25 Thanks for asking. This is what we're	Page 72 1 can't really see it from here, but the file 2 name of this document -- I think this is an 3 abbreviated file name. The file name of 4 the document actually says, Charlotte Land 5 Position 7/25/18. I think you can see that 6 in the metadata, Jimmy. But we can talk 7 about that at a break. 8 MR. ADAMS: Okay. I'll look at that. 9 I was -- 10 MR. MABE: That would create a problem 11 for a lot of these documents because a lot 12 of them have earlier, you know, times when 13 they were created and then have later 14 iterations of the document. 15 Q. But in any event, Mr. Polite, you've 16 answered the question. You don't recall seeing a 17 Letter of Intent for the Brooks Springs property; 18 is that -- do I understand you correctly? 19 A. Correct. 20 Q. When it says letter LOI sent, it 21 doesn't say by whom. Do you know typically in 22 these land status reports did it mean that it was 23 sent by Eastwood Construction or someone else? 24 A. It would have been sent by the 25 division.
Page 71 1 going to be using as Exhibit 2. 2 MR. MABE: And do you mind if I address 3 a question? I'd like to address a question 4 of Jimmy's point. 5 MR. COX: Sure. 6 MR. MABE: I think the metadata on that 7 shows July 25th; is that correct? 8 July 25th of 2018. 9 MR. COX: That's what we have. But 10 Jimmy says he disagrees. 11 MR. ADAMS: Well, what the metadata 12 shows is it was created June of 2016. And 13 the last update was July of 2018. But 14 there's no indication of what was changed. 15 So you can't say from the metadata when 16 anything was put on here or whether -- you 17 know, what the change was or when the 18 change -- all you can see is when the 19 change was made. 20 MR. MABE: Okay. Thank you. Thanks 21 for clarifying that. 22 MR. ADAMS: Last change could have been 23 somebody adding a space. 24 MR. COX: Yeah, I think -- okay. My 25 lawyer has just pointed out to me, you	Page 73 1 Q. Okay. 2 A. And yes. 3 Q. Okay. All right. Then let me look at 4 the next document. I'm going to stop sharing 5 here and go back. 6 This is going to be Exhibit 3. Oh, my 7 goodness. How do I blow that up? What are we 8 looking at? 9 MS. MISNER: The plus or the minus. 10 MR. COX: There it goes. 11 MS. MISNER: There you go. 12 Q. Okay. 13 MR. ADAMS: You can blow up, but don't 14 throw up. 15 MR. COX: I gotcha. I'll try to keep 16 that distinction in mind. 17 Q. This is another document. It's marked 18 as ECP 1111. And what we're looking for here is 19 a negative, Mr. Polite. I'm going to go through 20 this slowly and yell out if you see it. 21 MR. COX: First, let me say one thing, 22 my partner tells me the same thing here, 23 the file name of this one, and Jimmy, you 24 can confirm it, is 2019-3-26 Charlotte Land 25 Positions. I'm not asking Mr. Polite to

Page 74 1 agree to that. I'm just saying that's what 2 our heading says. 3 Q. But Mr. Polite, I don't see Brooks 4 Creek, Brooks Springs or River Falls in here. 5 And I'm going to go through fairly slow. But you 6 tell me if it might be named something else. 7 MR. ADAMS: So Stephen, let me -- let 8 me object first to the document because 9 this is a PDF. And we've produced all PDFs 10 with Bates numbers. This PDF does not have 11 a Bates number. So I can't authenticate 12 the -- the document at all. And I don't 13 have any way to check metadata or file name 14 or anything else. Now, if this is a PDF of 15 an Excel spreadsheet, I don't have that 16 information from you to be able to go and 17 confirm. But with that -- 18 MR. COX: All right. Well, fortunately 19 -- 20 MR. ADAMS: -- with that -- with that 21 objection to the document. 22 MR. COX: Jimmy, I understand. Under 23 our rules, you know, I think that is a 24 speaking objection that would not be 25 permitted. If he doesn't recognize, if he	Page 76 1 MR. COX: 1111, correct. 2 MR. MABE: I don't -- I don't know if 3 this is going to have a Bates number on it, 4 though. 5 MR. COX: It has it at the top. Do you 6 see it at the top with the title? 7 MR. MABE: Oh, yeah, yeah. 8 Q. So that this title, Mr. Polite, says 9 ECP 111 26 March 2019 land position. 10 Do you see that? 11 A. Okay. I don't see the date. Oh, at 12 the top. I see it at the top. I got it, ECP 111 13 26 March 2019. I do see that. 14 MR. COX: And then I'll ask Mr. Mabe to 15 scroll through fairly slowly. 16 Q. But I don't see River Falls, Brooks 17 Creek or Brooks Springs anywhere on this 18 document. And I'd ask you to tell me if it's 19 named something else or if you agree with me? 20 A. Yeah, I don't -- I don't see it on this 21 document. 22 Q. Okay. 23 MR. COX: And we're going to mark 24 that -- since it has all the information 25 that Jimmy requested, we'll mark that as
Page 75 1 can, you're reserving authentication 2 objections until the time of trial. I hear 3 you, but Mr. Polite can just say that he 4 can recognize this document or not. 5 A. Stephen, you're not sharing your 6 screen. I have not seen this document. 7 Q. I apologize. Well, then that sort of 8 makes it all moot. Give me one second. 9 MR. MABE: Stephen I have the Excel 10 spreadsheet off if you want me to share my 11 screen. 12 MR. COX: If you can, that would be 13 great. That way we don't have to worry 14 about it. 15 MR. MABE: Well, let's just see if I 16 can. 17 MR. COX: And I'm going to wrap up this 18 line of questioning and then we'll take a 19 break. I promise. 20 MR. MABE: I'm not -- 21 MR. COX: There you go. 22 A. Okay. Thank you. 23 MR. COX: All right. You see that, 24 Jimmy? That's even better. 25 MR. ADAMS: So ECP 111 -- I mean 1111.	Page 77 1 Exhibit 3. And what I plan to do, guys, is 2 we'll -- once the deposition's over, I'll 3 send a final set of exhibits with exhibit 4 designations to our court reporter and we 5 can all agree that's the set of exhibits 6 that we use. That's what I've been doing 7 and it seems to work okay. 8 Q. Do you -- I'm -- 9 MR. MABE: Are you done with that? 10 MR. COX: Yes, sir, you can stop 11 sharing. 12 Q. Does Eastwood Construction also 13 maintain a document, Mr. Polite, called a lot 14 supply count? 15 A. I call it something different. I call 16 it a lot summary report. 17 Q. Okay. Let me try to share what I've 18 got here. 19 A. That would be great. 20 Q. This is Exhibit 4. Let me get it up 21 here. 22 MR. COX: This was document 1424. 23 A. What's the date on this? 24 Q. January -- I have it as the last 25 version was January 23rd, 2018. And is this the

Page 78 1 general format you would expect to see in a lot 2 supply count document? 3 A. Generally, yes. 4 Q. And what did you call it? I'm sorry? 5 A. Lot summary report. 6 Q. Okay. And if we can go look at the 7 heading, under column D it says, Lot purchased 8 and then lot -- column E, lots remaining. And if 9 I scroll down, Brooks Creek is on line 47. 10 Do you see that? 11 A. Yes, sir. 12 Q. Which shows zero lots purchased, 84 13 remaining; is that right? 14 A. That's what it shows. 15 Q. And then 48 shows River Falls as zero 16 lots remaining, 135 lots purchased? 17 A. Zero lots purchased. 18 Q. I'm sorry, zero lots remaining -- zero 19 lots purchased, 135 remaining, correct? 20 A. Correct. Yes. 21 Q. Do you have any reason to believe that 22 that's inaccurate information as of January 2018? 23 A. That would be accurate that we had not 24 purchased any lots. 25 Q. Okay. And then does Eastwood	Page 80 1 Q. I mean it has -- it has meanings in 2 other contexts too? 3 A. It's a -- for you guys it would be a 4 closing, yes, sir. A lot closing. 5 Q. It would be -- it's a transaction by 6 which Eastwood Construction has actually acquired 7 the lot that it's going to put a house on, 8 correct? 9 A. Yes, sir. 10 Q. And I think if we look at River Falls 11 here, you see that on line 24? It reflects zero 12 lots taken down, 13 Do you see that? 14 A. Yes. 15 Q. All the way across the board, correct? 16 A. This is 2019, yes, that's correct. 17 Q. And the same on this document in line 6 18 it's called Brooks Springs. 19 Do you see that? 20 A. Yes, sir. 21 Q. But we agree that's Brooks Creek? 22 A. Yes. 23 Q. And as of 2019 Brooks Creek had not -- 24 excuse me, Eastwood Construction had not taken 25 down any lots in 2009 with respect to Brooks
Page 79 1 Construction also maintain certain income 2 spreadsheets or income and expense spreadsheets 3 that illustrate financial projections and things 4 of that nature? 5 A. Not financial projections. We do not 6 forecast projections. 7 Q. All right. Well, let me show you what 8 I'm talking about. This was Exhibit 4, by the 9 way, this lot supply count document. And then 10 I'm going to go to -- I'm going to stop sharing 11 here. Go to here. 5. 12 This. You see this document, which 13 we've marked as Exhibit 5? 14 A. Yes. 15 Q. And this is document ECP 1217. What is 16 this -- what do you all call this document, Mr. 17 Polite? 18 A. This would be a lot takedown report. 19 Q. Okay. 20 A. What you expect to take down, the lots 21 to be purchased in these subdivisions by month. 22 It's not a financial projection. 23 Q. And takedown is a special real estate 24 term; is it not? 25 A. Very -- yes, it's very special.	Page 81 1 Springs; is that accurate? 2 A. Correct. 3 MR. ADAMS: 2019, Stephen. You said 9. 4 MR. COX: I meant 19. 5 Q. The document says 2019; does it not? 6 Put another way, really simply, Mr. 7 Polite, this document accurately indicates that 8 in 2019 Eastwood Construction did not take down 9 lots in Brooks Springs or River Falls, did it? 10 A. It -- I can tell you we did not 11 purchase lots in 2019 at either of the 12 properties. 13 Q. Um-hum. 14 A. This is -- I don't know where you -- 15 the source of this. But this is for -- could be 16 projections. This could be looking in the -- 17 here as an overview. I don't know what the -- 18 typically this is just what you expect to 19 purchase. This isn't a reflection of what was 20 purchased. This isn't an actual audit -- this is 21 not an audited financial document of what was 22 purchased each month. 23 Q. I understand. 24 A. Okay. 25 Q. It says at the top -- it says at the

Page 82 1 top projections? 2 A. Correct. 3 Q. And was it the Charlotte division's 4 practice, to your knowledge, to maintain 5 projections of lots it expected to take down? 6 A. Well, understand -- I have to -- I have 7 to point this out. This is sales projections, 8 not lot take down or closing projections is what 9 this particular title is. 10 Q. Okay. What does this mean, start -- 11 let's go through the whole document. The top 12 says Twelve Month Sale Projections, then it says 13 Start Projections, then it says Closing 14 Projections. Can you distinguish between those 15 kind of projections for me? 16 A. Yes, sir. This is 100 percent for the 17 home building operation. I don't know what 18 you're scrolling at now. But of the top three 19 that you were going through, if you want to go 20 back, Stephen. 21 Q. Yep. There. 22 A. Go ahead, start at the top. 23 Q. Okay. 24 A. Everything begins with sales. So this 25 is a -- this is a division document saying we	Page 84 1 Q. Okay. That presumes then the lot has 2 already been taken down by Eastwood Construction, 3 correct? 4 A. Correct. 5 Q. Okay. And then closing projections? 6 A. That is a closing of a house to a 7 third-party homeowner. 8 Q. Okay. Distinguish between closing 9 projections here and sales projections we looked 10 at first. 11 A. It -- sales start the process when the 12 contract for the -- with the homeowner. That's a 13 sale. Then it goes to the field, so to speak. 14 It goes to the field. And that would be a start. 15 And when that house is complete for CO, a 16 Certificate of Occupancy, then it goes through a 17 closing. And that would be the closing 18 projections. 19 Q. So the takedown of a lot by Eastwood 20 Construction from some other source is something 21 prior to what's reflected in a sales projection, 22 prior to its contract with a homeowner to build 23 the house? 24 A. Yes, sir. 25 Q. Is that -- is what I'll call a takedown
Page 83 1 believe we're going to sell one house in Autumn 2 Cove in February. Then what that will translate, 3 if you scroll down to the next section. 4 Q. One second. The sales here is sales to 5 a residential homeowner? 6 A. Yes. 7 Q. Is that correct? 8 A. This is home sales, yes, sir. 9 Q. All right. So this is Eastwood 10 Construction selling a finished house to a 11 homeowner? 12 A. That's correct. Or to -- 13 Q. All right. Then we go -- then we go 14 down to -- 15 THE STENOGRAPHER: I'm sorry, Mr. Cox, 16 but you keep talking when he's talking and 17 the audio only works one at a time. So I 18 didn't get it. 19 Q. Go ahead. 20 The next section, start projections. 21 A. The next section is start projections, 22 this is when the house is physically started in 23 the field on a lot. The permit is done and the 24 slab is created and the sticks and bricks go up. 25 That's a start. That's what this section is.	Page 85 1 projection, is that maintained on an Eastwood 2 internal document of some kind? 3 Is that the lot supply count? 4 A. It -- yes, it could be, yes. 5 Q. All right. We touched a moment ago on 6 Eastwood's recordkeeping and organization. We've 7 now looked at a number of different spreadsheets 8 that reflect Eastwood's recordkeeping. Are those 9 different than from when you arrived? 10 Had they been improved or altered in 11 any way, the format, the method? 12 MR. ADAMS: Objection. Objection to 13 form. 14 A. My opinion is that we've improved 15 reporting. But it has -- 16 Q. In what way? 17 A. -- but it has -- it has changed. Your 18 question was has it changed. Yes. 19 Q. In what way? 20 A. I would say the frequency of the 21 updates and the -- by each division on both land 22 status and lot inventory reports. 23 Q. Okay. Did you institute those 24 improvements yourself? 25 A. There are that I have implemented, yes.

Page 86 1 Q. Okay. Concerning the frequency of 2 reporting, for example? 3 A. Yes. 4 Q. And the detail of reporting? 5 A. Yes. 6 Q. Do you know what Mr. Dority's 7 reputation was within Eastwood Construction for 8 recordkeeping? 9 A. Based on what I got and what I could 10 look back over and, you know, backseat driving, I 11 would say his records were not as detailed. 12 Q. Can you give me some examples of what 13 you mean by as detailed? 14 A. Well, the exhibit you used earlier and 15 just the coloring, what -- we have more backup 16 sheets on those now. And that each division -- 17 the division land status reports and the color 18 coding and such I implemented, it just wasn't 19 handled like that prior to my arrival. 20 Q. Do you recall, Mr. Polite, earlier 21 you'd told me that you believed that when 22 Eastwood Development assigned the contract for 23 the Brooks Creek property over to AF Brooks 24 Creek, the plan of the parties was that AF would 25 ultimately sell those lots back to Eastwood	Page 88 1 Q. Okay. But you've never seen a signed 2 lot purchase contract to that effect, have you? 3 A. Not a signed one. But I've seen a lot 4 purchase contract and requested it. 5 Q. In draft form? 6 A. Correct. 7 Q. Okay. Would you say that Eastwood has 8 switched to more institutional relationships 9 since you were hired? 10 MR. ADAMS: Objection to form. 11 A. As described with land banking, that is 12 a new mode of delivery of lots for Eastwood. 13 Do you want to define that as 14 institutional? That would be fine. 15 Q. Well, it's a term -- go ahead. Go 16 ahead. 17 A. You'd still use individual developers 18 too, as well. 19 Q. Okay. Would you say that Eastwood's 20 land sale agreements are more contract-based than 21 they used to be? 22 MR. ADAMS: Objection, form. 23 A. Since I've been here, we've had -- 24 we've had form contracts. 25 Q. Okay. That's your standard --
Page 87 1 Construction; do you remember that testimony 2 earlier? 3 A. Yes, I do. 4 Q. And you remember you also told me with 5 respect to the Blake Wilder property, the 6 assignment contract and the second stage lot 7 purchase contract were done at the same time; do 8 you remember that? 9 A. Yes. 10 Q. Have you seen other instances at 11 Eastwood Construction while you've been there, 12 similar to the Brooks Creek, in which there was 13 an assignment of property to a third party, but a 14 lot purchase agreement conveying that property 15 back for finished lots was not done? 16 Do you understand my question? 17 A. Yes, I understand the question. 18 Q. Can you answer it, please. 19 A. There were instances early in me 20 arriving that there -- that didn't happen 21 together. And we, over the years, have made 22 moves to make sure that we, quote, unquote, paper 23 it up. But this one I've always understood as 24 the agreement was for us to have the lot sold 25 back to us.	Page 89 1 A. Yes. 2 Q. -- to have a contract in place? 3 I want to look again at -- stop this 4 sharing for one more document. Let's see here. 5 This is Exhibit 6. 6 Can you see it that, Mr. Polite? 7 A. Yes. Yes, I see your screen. Yes, 8 sir. 9 Q. This is an exchange of documents. I'm 10 trying to go to the bottom here. It starts with 11 Kevin Hutchins at the bottom. Is he a CFO with 12 Eastwood Construction? 13 A. He is CFO, yes, sir. 14 Q. Okay. Of Eastwood Construction? 15 A. Yes. 16 Q. And he's copying a bunch folks. Are 17 these all division presidents on this e-mail, 18 Todd Alsop and others? 19 A. Other than -- may I go through this and 20 tell you who is at which division? 21 Q. Sure. 22 A. Todd Alsop was the Raleigh division 23 president at the time. Spencer Custis was the 24 market manager of Richmond. Jason Esposito at 25 this time of this e-mail was the division

Page 90 1 president of Charleston. Mike Conley, division 2 president of Charlotte. Justin Myers is our COO. 3 Dave Myers, Justin Myers is chief operating 4 officer. And then operations officer, and Chris 5 Day is in Greenville, South Carolina. 6 Q. Okay. Got it. 7 And basically, it looks like they're 8 trying to talk about so some logistics here to 9 get some budget meetings scheduled, right? 10 A. It appears so. 11 Q. But then at the top of this e-mail Mr. 12 Conley, he's the Charlotte division president, 13 right? 14 A. Yes, he is. 15 Q. He says to Kevin Hutchins, I would 16 delete Brooks Springs and River Falls due to no 17 contract. 18 Do you see that? 19 A. I do see that. 20 Q. This is September of 2017. So you're 21 at Eastwood Construction by this time, right? 22 A. Yes. 23 Q. Was -- was it your understanding at 24 this time that there was, quote, no contract as 25 Mr. Conley says here?	Page 92 1 A. No. 2 Q. Did Mr. Conley talk to you about the 3 necessity to delete Brooks Springs and River 4 Falls due to no contract around this time period? 5 MR. ADAMS: Objection to form. 6 A. No. 7 Q. You may answer. 8 A. No direct conversation about that. 9 Q. Okay. All right. 10 MR. MABE: Before you move on, I didn't 11 hear you say the number of this document. 12 Is this ECP 12284. 13 MR. COX: This is ECP 12284, correct. 14 It's 6 I think I said. 15 Q. Well, we're so late now for lunch. I'm 16 going to try to get through another section and 17 then break for lunch for about an hour about 18 12:00, 12:15. But Mr. Polite and Mr. Court 19 Reporter, you all are the most important folks. 20 Is that comfortable for you all or you want to 21 take an earlier lunch, what do you want to do? 22 THE STENOGRAPHER: I'm sorry, did you 23 say you wanted to go for one more hour? 24 MR. COX: No, no, no, not one more 25 hour. Take lunch for one hour.
Page 91 1 A. I was still under the impression we 2 were going to be buying back lots and that there 3 was no written contract is what he's referring 4 to. 5 Q. Well, that's not what Mr. Conley says. 6 He doesn't say no written contract, does he? He 7 just says no contract. 8 A. As it's written. 9 Q. Yeah. 10 All right. Do you know why he's saying 11 -- if there was a unwritten contract, as you'd 12 assumed, do you know why he's telling Mr. 13 Hutchins to delete Brooks Springs and River 14 Falls? 15 A. You'd have to ask Mike. 16 Q. Well, let me ask you as vice president 17 of land. If you thought that Eastwood 18 Construction had a contract, written or 19 otherwise, to buy lots in developments, would you 20 delete -- delete those developments from your 21 documents that maintain those projects? 22 A. I would have them on and reflect zeros 23 as far as lot takedowns, starts and closings. 24 Q. And but that's not what he's saying 25 here, is he?	Page 93 1 THE STENOGRAPHER: Oh, I see. I was 2 going to ask for a quick break if we were 3 going to go for another hour. 4 MR. COX: All right. We can either 5 break now for an early lunch or I've got a 6 section I can cover quickly that will wrap 7 up about 12:00, 12:10 or so. But we've 8 been going at this for a while, so let me 9 ask Mr. Polite. 10 A. I'm good if you let me get water. 11 Q. Grab it. Yes, go ahead. 12 All right. You ready? I'm sorry. 13 A. Yes, sir. No, I'm good. Thank you. 14 Q. So I'm looking back at what you've told 15 me. When did you say you started with Eastwood, 16 September of '16? 17 A. Yes, sir. 18 Q. And did you have like a -- was Mr. 19 Dority still there when you started? 20 A. He was, briefly. 21 Q. Did you have a transition meeting or 22 something like that with him where you sat down 23 and went over the various projects that Eastwood 24 Construction had? 25 A. I actually got an Excel list of all of

Page 94 1 the projects. 2 Q. A transition list? 3 A. If you want to call that. It was all 4 the active projects from him. 5 Q. And did you -- did you sit down with 6 Mr. Dority and go over that list? 7 A. I don't recall a formal sit-down with 8 Joe Dority on that list. I really don't. I'm 9 trying to think, but I don't recall it. But I 10 did have the list. 11 Q. He prepared it? 12 A. He prepared it. 13 Q. And e-mailed it to you? 14 A. E-mailed, yes. I -- I was given the 15 list. 16 Q. When was the first time at Eastwood 17 Construction you heard about the Brooks Creek and 18 River Falls properties? 19 A. That fall. I mean, over the time of 20 getting acquainted with all of the ongoing 21 projects. 22 Q. Did Mr. Dority on his way out the door 23 say anything specific to you about those 24 properties? 25 A. Nothing specific even more or less than	Page 96 1 MR. COX: Yeah. If we didn't go back 2 in South Carolina, we'd have nowhere to go. 3 MR. ADAMS: No objection from the North 4 Carolinians. 5 THE DEPONENT: Yeah, no objection. 6 Q. All right. Let me show you this. Here 7 we go. I'm showing you now what is Exhibit P to 8 the Third Amended Complaint. It's an e-mail 9 exchange at the top between Mr. Nason and Mr. 10 Bradley, but it goes on down. Do you recognize 11 this document as an exhibit and Third Amended 12 Complaint? 13 A. As I'm reading it now. 14 Q. Let me start at the top. Mr. Bradley 15 is one of the esteemed outside counsel for 16 Eastwood Construction. He's on this Zoom call, 17 isn't he? 18 A. Yes. 19 MR. ADAMS: Yes. 20 Q. And I believe Mr. Nason is on this call 21 as well. Mr. Nason is in-house general counsel 22 for Eastwood Construction? 23 A. Yes. I don't know if he's on the call, 24 though. I can't tell. 25 Q. I think I saw he was earlier.
Page 95 1 any other project. 2 Q. Did he say anything along the lines of 3 we don't have a contract yet on these properties? 4 A. Not to my recollection. 5 Q. Okay. Do you recall what, if any, 6 development was going on on those properties at 7 the time you got there? 8 A. I don't want to guess, Stephen. But 9 there was clearing going on at River Falls at 10 that time. And we were actually assisting Mr. 11 Briner of GreenHawk in helping with the 12 management of that after Mr. Dority left. I 13 remember visiting the site. 14 Q. Okay. Let me look at another -- I'm 15 going to go back now and go back to the contract. 16 Excuse me, to the complaint. I've got to cancel 17 this first. 18 MR. ADAMS: Stephen, you can't go back. 19 MR. COX: Oh, is that the rule? 20 MR. ADAMS: That's my rule. 21 MR. COX: My questioning. 22 Q. Here we go. At least I'm going faster 23 now. 24 MR. MABE: South Carolina rule, isn't 25 it?	Page 97 1 A. Okay. 2 Q. So and then below that is Mr. -- is an 3 e-mail exchange between Mr. Dority, your 4 predecessor, correct? 5 A. Yes, he is my predecessor. 6 Q. And Craig Briner at GreenHawk Corp. dot 7 com. Do you know who Craig Briner is? 8 A. I do. 9 Q. Who is that? 10 A. He was the point of contact for 11 GreenHawk when I arrived. 12 Q. Okay. So you spoke with Mr. Briner 13 from time to time? 14 A. From time to time. 15 Q. This is an e-mail between Mr. Dority 16 and Briner and the subject is called Sunnybrook. 17 Do you see that? 18 A. Yes. 19 Q. Do you know what Sunnybrook -- I'm 20 aware that this is an e-mail before you got 21 there. But do you know what Sunnybrook is? 22 A. Not at all. 23 Q. Never heard of it? 24 A. No, sir. 25 Q. It says it may make sense for you to

Page 98 1 buy and develop for us in The Triad. 2 That doesn't ring a bell either, I take 3 it? 4 A. I'm going to -- I'm going to probably 5 do what my counsel doesn't want me to do, but if 6 Lindley Estates was something else before it was 7 Lindley, it could be Sunnybrook. But I am not 8 aware of anything named Sunnybrook. 9 Q. Fair. And I'm aware you're just 10 speculating. I'm not holding you to that. 11 A. Okay. 12 Q. But look at -- look at the e-mail 13 between Mr. Nason and Mr. Bradley. Do you see 14 Mr. Nason says to Mr. Bradley, This was the 15 agree- -- arrangement we had with GreenHawk? 16 A. Okay. 17 Q. Do you see that? 18 A. Yes, I do see that. 19 Q. And he says -- and this is dated 20 June 30th of 2020 when he sent that e-mail. 21 Do you see that? 22 A. Um-hum. 23 Q. As the vice president of land for 24 Eastwood Construction in 2020, do you know why 25 Mr. Nason would have been saying that this was	Page 100 1 this is another e-mail that Mr. Nason is passing 2 onto Mr. Bradley. But it's an e-mail from Mr. 3 Buchanan at GreenHawk Corp. to Mr. Dority. 4 Do you see that? 5 A. Yes. 6 Q. Do you know who Mr. Buchanan is? 7 A. I know he works at GreenHawk. 8 Q. Okay. Anything -- do you know anything 9 more than that? 10 A. No. 11 Q. This deals only -- as far as I can 12 tell, it deals with River Falls. 13 Do you see that? 14 A. Yes, I do. 15 Q. I don't see anything here with respect 16 to Brooks Creek, do you? 17 A. Not on this e-mail. 18 Q. And I don't see anything in here by 19 which a GreenHawk entity offers to sell a 20 specific number of lots to Eastwood Construction 21 for a specific price. 22 Do you see that? 23 A. This appears to be all costs. 24 Q. Right. 25 So the answer to my question is there's
Page 99 1 the arrangement you had with GreenHawk? 2 A. I do not other than -- 3 Q. The -- go ahead. Go ahead. Sometimes 4 you pause and I jump in. And I apologize. So go 5 ahead and finish. 6 A. I said I do -- I do not know. I don't 7 have an answer for you on that. 8 Q. The terms that are in Mr. Dority's 9 e-mail to Mr. Briner, do those terms look like 10 terms that you know Eastwood Construction had 11 with GreenHawk? 12 A. Again, just looking at it with my 13 opinion, it seems to say an arrangement that 14 would work for both parties. And he was putting 15 it out there. 16 Q. But to your knowledge, these are not 17 terms that Eastwood Construction ever had with 18 GreenHawk concerning Brook Creek or River Falls; 19 is that correct? 20 A. Not these terms because it's very 21 different dollar amounts. 22 Q. Right. Let's see. 23 Then I'm going to go on to what is 24 Exhibit G to the complaint right here, Exhibit G. 25 And this is an e-mail from Jesse -- excuse me,	Page 101 1 nothing in here by which a GreenHawk entity is 2 offering to sell specific lots to Eastwood 3 Construction for a specific price, is there? 4 A. Not in this e-mail. 5 Q. As you just said, it appears to just be 6 a discussion of potential costs that would affect 7 the project; isn't that right? 8 A. Yes. 9 Q. Let's go to Exhibit H. I'll show you 10 that, Exhibit H. This is another e-mail that Mr. 11 Nathan has forwarded, another e-mail between 12 Jesse Buchanan and Joe Dority. And look -- this 13 is attached to you all's complaint. It's a 14 little bit hard to read. It says it's a pro 15 forma for tomorrow's discussion and then it goes 16 onto include -- this is what was included on the 17 Complaint. 18 Do you recall looking at this as part 19 of an exhibit to your Complaint, Eastwood's 20 Complaint? 21 A. This is an exhibit to this Complaint. 22 Q. And this exhibit looks to me to be, you 23 know, what we would call a pro forma, certain 24 projections of revenue and expenses. 25 Do you see that?

Page 102 1 A. Yes. 2 Q. I did not see anything in this Exhibit 3 H by which a GreenHawk entity was offering to 4 sell a specific number of lots to Eastwood 5 Construction for a specific lot price, did you? 6 A. I did while you were scrolling. 7 Q. Okay. Where is that? 8 A. Who -- can I ask who generated this pro 9 forma? Who -- who was your originator. 10 Q. I don't know. I mean, it -- it's the 11 document your lawyer attached to the Complaint. 12 It's coming from Mr. Buchanan. 13 A. Mr. Buchanan at GreenHawk. And then if 14 you can see right there, you have this being the 15 58 lots that -- excuse me, if you could stop, 16 please. The 50 lots at Brooks Springs with a 17 sale price of \$39,900. 18 Q. Right. 19 I see that that's the revenue that's 20 indicated. I'm asking you did you consider that 21 to be an offer by GreenHawk to sell 58 lots to 22 Eastwood Construction at that price? 23 A. That's what I'm looking at, yes, sir. 24 Q. Did -- did Eastwood Construction ever 25 accept that offer?	Page 104 1 Construction at this price? 2 MR. ADAMS: Objection to form. 3 Q. You may answer. 4 A. It was a discussion. To your point, if 5 it was an actual offer, I would have to say I do 6 not know. 7 Q. And you do not know whether Eastwood 8 Construction ever accepted it even if it were an 9 actual offer; is that correct? 10 A. Correct. At this point, yes. 11 Q. Okay. We'll go on now to Exhibit I. 12 I'm just going through the exhibits in the 13 Complaint real quick to knock them out. 14 This we've already seen. This is 15 Exhibit I. This is another e-mail from Mr. 16 Buchanan to a Stewart Tedford and Joe Dority. Do 17 you know who Stewart Tedford is? 18 A. I do not. 19 Q. And this appears to me -- this was an 20 Exhibit I to you all's Complaint. It appears to 21 me to be just some details for Stewart so that he 22 can appraise the Brooks Creek and River Falls 23 properties. 24 Do you see that? 25 A. The subject line appraisal, I'm looking
Page 103 1 A. I don't know at this time in 2014. I'm 2 sorry, I don't know. 3 Q. Okay. You don't know one way or the 4 other? 5 A. No, I just don't know -- you said they 6 accepted it. The first thing you asked me was 7 there a sale price on here. And there -- there 8 is. And it came from Buchanan, according to this 9 exhibit. So that was what you -- I'm just going 10 by what you asked me, Stephen. That was all. 11 Q. If that's how you understood my 12 question, then I apologize because I didn't ask 13 it right. I wasn't asking whether there was a 14 sales price on here. I was asking whether you 15 saw an offer by GreenHawk to sell particular lots 16 to Eastwood Construction for a particular price. 17 That's my question. Do you regard this pro forma 18 as an offer by GreenHawk to sell lots to Eastwood 19 Construction at a particular price? 20 A. I would say this was definitely based 21 on their expenses and what they were billing to 22 do something at the time. 23 Q. That wasn't my question. 24 My question was do you regard this as 25 an offer by GreenHawk to sell lots to Eastwood	Page 105 1 at Mr. Tedford's e-mail and Comporium -- I don't 2 know them as appraisers. 3 Q. I don't either. But he goes on to say, 4 Stewart, thank you for taking the time to talk to 5 me about appraising our two properties. 6 Do you see that sentence? 7 A. And who sent this? 8 Q. Jesse to Stewart? 9 A. Jesse to Stewart. 10 Okay. Thank you. 11 Q. Do you see anything in this e-mail by 12 which a GreenHawk entity is offering to sell 13 particular lots to Eastwood Construction for a 14 particular price? 15 A. Not on that e-mail. 16 Q. Okay. Same question with respect to 17 Exhibit J. This is a Kirshman Iyer, if I'm 18 pronouncing his name right. I may not be. Do 19 you know who that is? 20 A. I do not. 21 Q. Okay. He says he's a GreenHawk person 22 and he's attaching various plans that talk about 23 the progress of activity on a development 24 project. 25 Do you see that?

Page 108	1 A. Yes, I do. 2 Q. I know you weren't there at the time, 3 but have you since acquired any knowledge of what 4 it means here when it says municipality causing 5 delays? 6 A. That would be a permitting and 7 approvals of the plans. 8 Q. Municipality is a bit of a misnomer, 9 right? Because this isn't within the corporate 10 limits of Rega Cay, is it? 11 A. No, sir, he -- would probably be under 12 the purview of York County. 13 Q. Do you have any knowledge of any delays 14 that the county had in getting things permitted 15 and approved? 16 A. Oh, yeah, yes. 17 Q. So he says, we wanted to give Eastwood 18 the option. He says that later in the e-mail. 19 Do you see that? 20 A. Yes. 21 Q. We do not have an updated cost to 22 develop, but we believe the starting sales price 23 would be in the neighborhood of \$1,000 per lot. 24 Do you see that? 25 A. Yes, sir.
Page 107	1 A. Yeah, I see a schedule. 2 Q. Right. I think that was it. It's just 3 those two pages. It's various schedules. 4 Do you see anything in this document, 5 Exhibit U, by which a Greenhawk entity is 6 offering to sell to Eastwood Construction a 7 particular lot for a particular price? 8 A. No. Not in this e-mail. 9 Q. Okay. And this is Exhibit K. Now, 10 this is an e-mail from Mr. Buchanan to Craig 11 Britner -- excuse me, to Mr. Dorthy copying Craig 12 Britner. Do you see that? 13 A. Yes. 14 Q. It appears to be only River Falls. I 15 don't see anything in here mentioning Brooks 16 Creek, do you? 17 A. I do not see reference to Brooks Creek. 18 Or Springs, yes. 19 Q. Now, this one is dated April 27th, 20 2016. And it does include a proposed takeover 21 schedule and a sales price for lots. 22 Do you see that? 23 A. Yes, sir. 24 Q. To your knowledge, did Eastwood 25 Construction or any Eastwood entity ever agree to
Page 109	1 this proposal? 2 A. I don't know if there was an agreement 3 or an acceptance of this offer. 4 Q. Okay. Do you know anything about what 5 happened in terms of following up to this e-mail 6 by Mr. Buchanan? 7 A. I don't know April 2016 what the 8 follow-up was of this offer. 9 Q. Okay. All right. And then I think 10 I'll finish up with one more. Let me do this 11 real quick. 12 MR. COX: Guys, to maintain the 13 number, we had already, this is going to 14 be Exhibit 9 I'm going to show you now. 15 Q. Okay. Can you see that, Mr. Polite? 16 A. Yes, I do see it. 17 Q. This is another e-mail from Mr. 18 Buchanan to Mr. Dorthy in April of 2016. That's 19 about what, 6 months before you arrived? 20 A. Approximately, yes. Yeah. 21 Q. This is Brooks Creek. He says, since 22 Brooks Creek has dragged on with the municipality 23 causing delays, Greenhawk would entertain a sale 24 \$18,000 per potential pad 58 lots planned. 25 Do you see that?

Page 110 1 Q. And it says, Need contract? 2 A. Um-hum. 3 Q. And then it goes on to say, Currently 4 under development -- oops. Currently under 5 development, need to get this under contract with 6 Greenwood. They do not want to price lots until 7 all costs are in. 8 Do you see that? 9 A. Yes. And GreenHawk, not Greenwood. 10 But yes. 11 Q. GreenHawk. Excuse me, yes. 12 First of all, let me ask you about that 13 last sentence. Is that typical for a developer 14 that a developer can't figure out what the lot 15 sales price is going to be until it has all of 16 its development costs factored in; is that right? 17 MR. ADAMS: Objection, form. 18 Q. You may answer. 19 A. I mean, it does -- it does happen from 20 time to time. And we are aware and compassionate 21 about it. We expect our developers to make a 22 return on their investment. 23 Q. Right. 24 But to answer my question, generally 25 you would expect a developer to want to have a	Page 112 1 Q. Right. 2 That wasn't my question, though. My 3 question was: When you joined the company and 4 received this transition list from Mr. Dority, it 5 had become your understanding that Eastwood, 6 quote, needed a contract, closed quote, on both 7 of these properties? 8 A. Yes. 9 Q. All right. Let me show you a related 10 document. 11 This is number 11. So this is an 12 e-mail, Mr. Polite, from you to Mr. Conley in 13 October of 2016. You would have just been sort 14 of settling in around this time; isn't that 15 right? 16 A. What was the date? Yes. 17 Q. You'd been there about a month? 18 A. Yes. 19 Q. And you say I had a very nice 20 conversation with the rep from Callahan on River 21 Falls this morning. 22 Who was that, by the way? 23 A. Susan. Can't think of her last name 24 right now. It will come back to me. 25 Q. And who was Callahan?
Page 111 1 good sense of what all its costs were on a 2 project before it hit upon a sales price to sell 3 lots back to someone else; isn't that correct? 4 MR. ADAMS: Objection to form. 5 A. It would be in their best interests. 6 Q. Right. 7 That would be reasonable of them to do; 8 you would agree with me? 9 A. It would -- yeah, they should know 10 their costs. 11 Q. Got it. 12 But this is on Mr. Dority's transition 13 list. And I think you told me earlier this was 14 the transition list given to you when you joined 15 the company in fall of '16; is that right? 16 A. That's correct. 17 Q. So when you joined the company and 18 received this transition list, it was your 19 understanding that Eastwood still needed a 20 contract on Brooks Springs and River Falls; isn't 21 that right? 22 MR. ADAMS: Objection to form. 23 A. It was always expressed to me that we 24 were going to be buying lots back from them. And 25 this is the discussion of the written contract.	Page 113 1 A. Callahan is a grading contractor. 2 Q. He's the one that got in a whole mess 3 of trouble in York County over all kind of stuff? 4 A. That's your opinion. 5 Q. He had a lot of lawsuits filed against 6 his company; isn't that correct? 7 A. Yes, sir. 8 Q. Okay. So what was Callahan's 9 involvement with River Falls? 10 A. They were the general contractor. 11 Q. Okay. And was that -- was that true of 12 Brooks Creek as well? 13 A. I don't recall that, Stephen, if they 14 were the developer. 15 Q. All right. 16 A. I don't know if they were the general 17 contractor at Brooks Springs because of the 18 delay. 19 Q. Well, earlier we looked at the 20 transition list just a minute ago, and you go on 21 in that e-mail to say, On the Joe D. transition 22 list it shows that you still need a contract from 23 GreenHawk. Is that still the case? 24 Do you see that? 25 A. I do not see that. But I'm -- I'm

Page 114 1 still looking at this e-mail. 2 Q. It's in here right here. It says right 3 here -- 4 A. Correct. I wrote -- yes, that's what's 5 on this e-mail. 6 Q. I don't think I saw a response from Mr. 7 Conley. But do you recall whether he answered 8 you or not and told you that was still the case? 9 A. He would have said that we do not have 10 a written contract. 11 Q. Okay. Got it. 12 MR. COX: It's 12:05. Can we agree to 13 come back at 1:00, guys? Is that enough. 14 A. What time? 1:05. I'm fine with that. 15 MR. ADAMS: That's okay with me. 16 Stephen, my understanding of Rule 30 17 (j) is that we can discuss documents that 18 we received less than two days before the 19 deposition. 20 MR. COX: No, I don't believe that's 21 correct. Not if they're your own 22 documents. You can look at documents you 23 don't have before. But if they're your own 24 documents, you've had them all along. So I 25 don't believe that's the case.	Page 116 1 If the documents are provided or 2 otherwise identified at least two business 3 days before the deposition, then the 4 witness and the witness' counsel do not 5 have the right to discuss the documents 6 privately before the witness answers 7 questions about them. If the documents 8 have not been so provided or identified, 9 then the counsel and the witness may have a 10 reasonable amount of time to privately 11 discuss the documents before the witness 12 answers questions concerning the document, 13 period. 14 I read that as documents to be shown, 15 irrespective of their source. 16 MR. COX: Jimmy, you can read it 17 however you wish and I respect that. 18 That's certainly your right. But it is the 19 -- Ward may disagree with me but it is my 20 universal understanding and practice in 21 South Carolina, and I have been doing this 22 for a long time, that if I'm just showing 23 the witness documents that are the witness' 24 own document, I'm not providing those to 25 the witness, they're his to begin with.
Page 115 1 MR. ADAMS: That's not the way I read 2 the rule. But I will check with my 3 esteemed counsel, Mr. Bradley. 4 MR. COX: Okay. Well, I don't want to 5 pull punches or be the list bit underhanded 6 here. As you know, the rule allows me to 7 question him about conversations he's had 8 with counsel in violation of the rules. So 9 we may have a good faith dispute of what 10 the rules means. But I do intend to ask 11 him if he's had any conversations with his 12 lawyer about his testimony or the case. 13 MR. BRADLEY: But not about -- I'm 14 sorry, Stephen, but not about the 15 documents. 16 MR. ADAMS: Stephen, the rule says -- 17 let's keep this on the record so we don't 18 have any dispute. Rule 30 (j)(8) says, 19 Deposing counsel shall provide to opposing 20 counsel, so that would be me and ward, a 21 copy of all documents shown to the witness 22 during the deposition, either before the 23 deposition begins or contemporaneously with 24 the showing of each document to the 25 witness.	Page 117 1 You may disagree. I'm telling you I'm 2 going to ask him a question if he's asked 3 -- if he's discussed the document with you 4 or the case or the testimony. And if he 5 maintains privilege on 30 (j), that's 6 certainly your right to so instruct him. 7 But I reserve the right to take whatever 8 action I think is appropriate under the 9 rule. 10 MR. ADAMS: Okay. Well, we have an 11 understanding. We may not have an 12 agreement. 13 MR. COX: We certainly do. Thank you. 14 All right. 1 o'clock. Talk to you all 15 then. 16 THE DEPONENT: 1:05, I think. 17 MR. COX: 1:05 is fine. That's fine. 18 (A LUNCH RECESS WAS TAKEN.) 19 By MR. COX: 20 Q. Okay. We are back on the record and 21 Mr. Polite, just to reorient us, I'm showing you 22 Exhibit 11 again. Let me first ask you quickly, 23 did you have any conversations with your lawyers 24 at lunch about any feature of this case or 25 testimony unrelated to the documents I gave them

Page 118 1 that were going to be used at this deposition? 2 A. No, I did not. 3 Q. Did you have any conversations with 4 them at lunch over the documents I sent that may 5 be used in this deposition? 6 A. No, I did not. 7 Q. Very well. Moving on then. 8 So when we looked at this Exhibit 11, 9 you'll recall your testimony about that that you 10 were asking Mr. Conley about a contract on River 11 Falls? 12 A. Yes, this does state that. 13 Q. Okay. Is it fair to say that around 14 this time, Mr. Polite, you were concerned that 15 you had not been able to sign the contract on 16 River Falls or Brooks Creek? 17 A. I think concerned's a different word. 18 I would say I would bring in my own procedures 19 and would have preferred one written. 20 Q. Because if you said before lunch it is 21 always your practice to try to have a written 22 land purchase -- lot purchase contract for every 23 project, correct? 24 MR. ADAMS: Objection, form. 25 A. As much as I possibly can.	Page 120 1 A. Not a hundred percent sure. Probably 2 me earlier. Like maybe a previous week. But 3 that page is not in here where it originated. 4 Q. Well, probably -- it's probably not you 5 because you refer to -- it refers to Polite, 6 unless you're one of those Trumpian guys that 7 talks about yourself in the third person. 8 MR. BRADLEY: Objection. 9 MR. COX: Sorry. 10 MR. ADAMS: Sustained. 11 Q. So -- but so it looks like the black is 12 somebody else. You can't remember whom? 13 A. Yeah, I don't know. I really don't. I 14 just don't know. I can't -- but I do know my 15 response, as I said above, is my responses are in 16 red to these questions. 17 Q. All right. Look -- you can see the 18 arrow, can't you? 19 A. Yes, I do. 20 Q. Okay. You see here where it starts, 21 you say, Guys, we are exposed on the pricing of 22 these projects since there was a never a contract 23 put into place with GreenHawk when we assigned 24 them the properties. 25 You wrote that, didn't you?
Page 119 1 Q. All right. Well, let me look at 2 another document here. That top part's my 3 favorite. We'll get back to it. 4 So I'm looking now at Exhibit 12, which 5 is document 8398, I believe. Yep, and 8399. 6 It's a 2-page e-mail exchange. And this is an 7 e-mail at the very bottom from you. Somebody's 8 writing on it. It's an exchange between you and 9 Clark Stewart. 10 Do you see that? 11 A. Yes. 12 Q. And did I understand you correctly to 13 say that Clark is the son of Eastwood's founder? 14 A. Yes. 15 Q. And he is the president of the company? 16 A. Yes. 17 Q. Okay. And then if I can get down to 18 here. Let's see. So you see here it says, 19 GreenHawk, River Falls and Brooks Springs? 20 A. Yes. 21 Q. Whose writing is in black and whose 22 writing is in red or are both of them you? 23 A. I know my answers are in red. 24 Q. That's what I'm determining here. 25 Do you know where the black came from?	Page 121 1 A. I did write that. 2 Q. And that was true when you wrote it, 3 wasn't it? 4 A. That we did not have a written 5 contract, correct. 6 Q. No, that's not what you say, Mr. 7 Polite. You say contract. The word written is 8 nowhere in that written. Do you see the written 9 anywhere? 10 A. A contract. 11 Q. Okay. It was true, was it not, that 12 there was never a contract put into place with 13 GreenHawk when Eastwood assigned them these 14 properties; wasn't that true? 15 A. That was a true statement. 16 Q. Right. 17 And that did concern you, didn't it? 18 That's why you wrote it? 19 A. Yes. 20 Q. Because that's not the way you like to 21 do business; isn't that right? 22 A. No. 23 Q. No, that's not the way you like to do 24 business, correct? 25 A. Correct.

Page 122 1 Q. Then Mr. Stewart says, Dirty. And you 2 ask him if that's a good or bad thing. I kind of 3 had the same question. What does he mean by 4 that? 5 A. It -- read the -- if you scroll up. 6 Q. Yep. 7 A. Like riding dirty. I'm from Gastonia. 8 Q. I gotcha. 9 A. There's a rapper rap song about riding 10 dirty. 11 Q. And believe it or not, because I have 12 an 18-year-old son, I know the song. But I'm -- 13 my question to you is it's not immediately 14 apparent to me what the application of the song 15 has to what you're writing about. So do you know 16 what he was talking about there? 17 A. He is literally uses this euphemism 18 more than once about thank you. 19 Q. Oh. Gotcha. 20 So he puts this in e-mails -- other 21 e-mails to you? 22 A. Correct. 23 Q. Okay. Gotcha. 24 All right. Now I want to look at 25 another document. I think I've got it don't.	Page 123 1 Have to switch it back out again, which is 2 awesome. 3 This is Exhibit 13. It's document 4 number 1542. And it's an e-mail chain that 5 begins on page 1543. E-mail from you to Mr. 6 Nason dated October 18th, 2016. 7 Do you see that? 8 A. Yes. 9 Q. Okay. This is right around the same 10 time. The earlier e-mail we looked at with you 11 and Mr. Stewart is October 26th. So this is 12 right around the same time, right? 13 A. Yes. 14 Q. And as we discussed before the break, 15 Mr. Nason is -- he's with in-house counsel? 16 A. Yes. 17 Q. He's a lawyer? 18 A. To the best of my knowledge, he is. 19 Q. Okay. And you say, Allen, remember 20 just yesterday you were teaching me the 21 importance of having a contract for lots when 22 transferring or assigning property to a 23 developer. That's what you wrote, right? 24 A. This is my e-mail, yes. 25 Q. What -- let's talk about that	Page 124 1 conversation first. What was Mr. Nason teaching 2 you about the importance of having contracts for 3 lots? 4 A. Can you be more specific? 5 Q. Well, you wrote it. I mean, you said, 6 Remember just yesterday you were teaching me the 7 importance of having a contract for lots. What 8 was he teaching you? 9 MR. ADAMS: Well, I'm going to object 10 to the extent -- and ask you to withdraw 11 the question, Stephen. That's 12 attorney/client privilege. 13 MR. COX: If so, it's been waived well 14 before this deposition when I asked you all 15 specifically about these e-mails and you 16 told me you meant to produce them. Is it 17 still your position that's attorney/client 18 privilege. 19 MR. ADAMS: There's nothing in the 20 e-mail about the conversation. I don't 21 think there's any waiver of the 22 conversation to the extent it's not 23 reflected in the e-mail. 24 MR. COX: In the e-mail he is talking 25 to Mr. Allen about a conversation the two	Page 125 1 of them had on a specific subject, that is 2 teaching the importance of contracts for 3 lots. 4 MR. ADAMS: Right. But the teaching is 5 privileged. 6 MR. COX: That's your position? 7 MR. ADAMS: Yes, that's my position. 8 MR. COX: Are you instructing your 9 witness not to answer the question? 10 MR. ADAMS: I'm asking you to withdraw 11 the question so we don't have to go there. 12 MR. COX: No, I'm not doing that. I 13 did -- 14 MR. ADAMS: Then I will have to 15 instruct him not to answer the question, 16 that the -- the oral conversation between 17 Mr. Polite -- Mr. Polite and Mr. Nason, 18 general counsel for Eastwood, is 19 privileged. 20 MR. COX: Okay. We don't have to 21 belabor the point. We just have to get it 22 on the record in case one or more of us 23 decide to do something about it. 24 So as I understand your position, and 25 this part of it we discussed before the

Page 126 1 deposition, you all intended to produce 2 this e-mail; isn't that right, Mr. Adams? 3 MR. ADAMS: Well, I'm not -- we've 4 produced the e-mail, Mr. Cox. But as to 5 the content of the conversation that took 6 place that's referenced in the e-mail 7 October 18, 2016, the content of that 8 conversation we are contending is 9 privileged. The fact that it was heard is 10 not. And the reference to it in this 11 e-mail we do not contend that the reference 12 to that conversation is e-mail -- is 13 privileged. 14 MR. COX: All right. Our position, of 15 course, is by producing this e-mail in 16 which he's talking to Mr. Allen about the 17 subject of a conversation, we're allowed to 18 explore that. You've maintained that it's 19 privileged. You've instructed your witness 20 not to answer. We object to that position 21 just so our position is clear. We believe 22 that there is no privilege. Or if there is 23 privilege, it was waived and we can take 24 that up with the court at an appropriate 25 time.	Page 128 1 That's what you were trying to ask him, 2 correct? 3 A. That was -- yes, that's the question. 4 Q. And you go on to say, if there any way 5 we can regain control of these properties. 6 That's what you were asking Mr. Nason, 7 right? 8 A. Yes. 9 Q. Because, as you say in the prior 10 sentence, GreenHawk has gone almost nonexistent 11 on us and is moving on glacial speed on returning 12 calls or even consider developing these 13 properties. 14 Was that accurate? 15 A. Yes, emphatically. 16 Q. Who were -- who were you trying to 17 reach out to at GreenHawk? 18 A. Craig Briner. 19 Q. From the time you had arrived at 20 Eastwood in say September, I think it was, of 21 '16, was that always the sort of contact person 22 you tried to reach at GreenHawk? 23 A. Yes. 24 Q. Anybody other than Mr. Briner? 25 A. No.
Page 127 1 MR. ADAMS: That's fine. 2 MR. COX: That's our position. 3 MR. ADAMS: All right. 4 Q. Well, then let me ask some other 5 questions. Tell me how all this came to light. 6 It says here, Mr. Polite, that the night before 7 you wrote this e-mail it hit you very hard that 8 that was not done with GreenHawk on three 9 properties. What is it that caused you to be hit 10 very hard with this lesson? 11 A. The fact that in the transition notes 12 and in my follow up that there still was no 13 contract for the lots to be repurchased from 14 GreenHawk. 15 Q. So this was just sort of a realization 16 that came to you with the culmination of these 17 earlier investigations; is that accurate? 18 A. Correct. 19 Q. And so what you're doing in this e-mail 20 is you're reaching out to Mr. Nason and you're 21 asking him if he has any record of such a 22 contract, correct? 23 A. I asked that question. 24 Q. Right here in the last sentence, do you 25 have any record of these transfers.	Page 129 1 Q. And at this time it wasn't just River 2 Falls and Brooks Springs, it was also Kanata? 3 A. Yes. 4 Q. None of those these three properties 5 had lot purchase contracts in place, correct? 6 A. At the time we wrote this, yes. 7 Q. And that was in October of 2016, 8 correct? 9 A. That is the date. 10 Q. Was Kanata one of those two-stage 11 transactions we talked about earlier that is a 12 transaction in which Eastwood assigns some 13 property over to another party and that party 14 then assigned back to Eastwood Construction or 15 sold back to Eastwood Construction some finished 16 lots? 17 A. As I've testified earlier, I did not 18 know the origination of that particular deal. 19 Q. Okay. And then Mr. Nason responded to 20 you on October 27th and he says, He might not 21 have the attached Brooks Creek contract drafted 22 for GreenHawk in 2013. 23 Do you see that? 24 A. Yes, I do. 25 MR. COX: And Mr. Adams, it might be

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1 quicker for me to ask you this. This is
2 what I was talking about when I e-mailed
3 you yesterday. I don't think we saw a
4 draft attached to that e-mail. Did we
5 overlook it or do you know?
6 MR. ADAMS: You have everything I have.
7 MR. COX: Very well.
8 Q. I know it's been a while, Mr. Polite,
9 but did you see it -- did Mr. Allen -- did Mr.
10 Allen -- did Mr. Nason actually send you a draft
11 contract with this October 27th e-mail?
12 A. I unfortunately do not recall, Stephen.
13 Q. Okay. But in any event, as we go up
14 here, you say did this one get signed; is that
15 right?
16 A. I don't know which one it's referring
17 to.
18 Q. But that's what you asked him, you said
19 did this one ever get signed.
20 Do you see that?
21 A. I do see that question.
22 Q. And he says, I doubt it. You say, I
23 doubt it, right?
24 A. Correct.
25 Q. You say, I doubt it. And then he says,

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1 This was a first raw draft and I was told we
2 would do the spec later, right?
3 A. That's what it reads, yes, sir.
4 Q. So I read all this to say that that
5 draft contract did not get signed.
6 Was that your understanding?
7 A. That would be my understanding.
8 Q. Okay. Good.
9 All right. And now I'm going to look
10 at Exhibit 14. This is an e-mail. Scroll to the
11 bottom. It's dated ECP 8498 -- not 8498. 8493
12 through -- 8494 through 8495, excuse me.
13 Starting here at the bottom. So this is a couple
14 of months -- or a month or so after that exchange
15 you had with Mr. Nason that we just looked at.
16 And this is an e-mail from you to Craig Briner
17 and Jesse Buchanan; is that right?
18 A. Yes, that's what it says.
19 Q. And it says, I would like to start the
20 process for completing the lot purchase contracts
21 at River Falls and Brooks Springs. I am sure
22 there is some legacy contracts around, but I
23 assume all that has changed.
24 That's what you wrote, right?
25 A. Yes.

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1 Could you do me a favor and move your
2 cursor, please, off the message. Thank you.
3 Q. Do you see that?
4 A. Yes.
5 Q. So is it fair to say, Mr. Polite, that
6 after all of the digging you had done and after
7 the conversation you had with Mr. Nason, you just
8 finally concluded you were going to need to take
9 charge and draft contracts from scratch for these
10 two properties?
11 MR. ADAMS: Objection, form.
12 A. I was following up on the contracts
13 being completed.
14 Q. Well, but you say, I assume all that
15 has changed. What is all that has -- and
16 referring to the legacy contracts. So didn't you
17 assume that the legacy contracts were no good
18 anymore and you all were going to need to start
19 over?
20 MR. ADAMS: Objection, form.
21 A. I just -- we were trying to reach
22 common ground. Or I was trying to.
23 Q. I understand.
24 But that's not my question. My
25 question was: You were referred to some legacy

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1 contracts, but then you say, I assume all that
2 has changed.
3 That's what you said, right?
4 A. That is what the e-mail says, yes, sir.
5 Q. And you didn't attach a draft legacy
6 contract to this e-mail and say let's finish it
7 up, did you?
8 A. No, sir, not on this e-mail. There is
9 not one, an attachment.
10 Q. Instead what you asked Craig and Jesse
11 was to have a conference call to discuss -- to
12 discuss these contracts?
13 A. Yes, that is what is written, yes.
14 Q. You anticipated you would have a
15 conference call with them and then you all would
16 generate another draft, didn't you?
17 A. That would have been my directive, yes.
18 Q. Okay. And then Mr. Buchanan tells you
19 in response, I can take the lead on this. We
20 have not worked on any contracts for those deals.
21 Do you see that?
22 A. Yes, I do see it.
23 Q. Okay. And then you said you would send
24 him a blank Eastwood standing contract as a
25 starting point, right?

Page 134 1 A. That is what's written. 2 Q. But that you would need to apply the 3 agreed upon deal points, right? 4 A. Correct. For example, deposits, 5 takedowns, pricing, et cetera. 6 Q. In other words, the specific business 7 terms for this deal, right? 8 A. That's correct. 9 Q. Eastwood has standard contracts that 10 have what I'll call the boilerplate language for 11 certain provisions, correct? 12 A. That is correct. 13 Q. But every time it uses one of those 14 contracts, it has to put in the deal-specific 15 terms like lot price and take-down schedule and 16 deposits, isn't that right? 17 A. Yes. 18 Q. And what you're saying in this e-mail 19 is here's our standard draft contract, but we're 20 going to need to agree on those business points; 21 isn't that correct? 22 A. That's correct. 23 Q. Then you ask about -- oh, who's Todd 24 Alsop in the next e-mail? 25 A. As described earlier, Todd Alsop was	Page 136 1 So this is you following up again with 2 Jesse and Craig. Who is Katie Sands? 3 Is she on here somewhere? 4 A. Katie Sands is an Eastwood employee. 5 She's the land development coordinator, as 6 described earlier this morning. 7 Q. Okay. What we saw here at the bottom 8 is what we looked at already, right? And then 9 that comes up here. And so this is basically 10 following up the prior e-mail chain we just 11 looked at, correct? 12 A. Yes. 13 Q. And you were attaching an old version 14 from 2013 for Brooks Springs. Do you know if 15 that was the one that was referred to in the 16 earlier e-mail we looked at with Mr. Nason? 17 A. I would have to assume not seeing it, 18 Stephen. But yes, that would be the 2013 19 version. 20 Q. So what's going on here is Mr. Buchanan 21 has offered to take the lead in trying to wrap 22 this up, correct? 23 A. Can you scroll down, please, so I can 24 read his e-mail again to make sure that's what he 25 intended. I can take that on, yes.
Page 135 1 the Raleigh division president at the time for 2 Eastwood Construction for Eastwood Homes. 3 Kanata -- 4 Q. Gotcha. 5 A. -- Kanata is in the Raleigh division. 6 Q. Gotcha. 7 And you're a little bit chagrined 8 because apparently Mr. Alsop has come out from 9 behind the curtain where you'd hidden him on ECC. 10 But that's okay. No problem. Right? That's 11 what's going on there with dude, I blind copied 12 you? 13 A. Yeah, to show him that I was following 14 up with GreenHawk. 15 Q. Got it. 16 So Todd was in charge of the Kanata 17 project, Mike was in charge of the Brooks 18 Springs/Creek, River Falls project? 19 A. That's correct. 20 Q. Okay. All right. Now let's look at -- 21 let's see. One moment have the right one. 22 MR. COX: It's 15, isn't it? 23 Q. All right. Now we're going to look at 24 Exhibit 15. This is a document from GreenHawk. 25 GreenHawk 917, I believe, and 918 at the bottom.	Page 137 1 Q. So you were sending him a -- 2 A. No, no, that's fine. 3 Q. Yeah. 4 The -- I keep doing it and I apologize. 5 I'll try harder. You pause and I think you're 6 done and I jump in. You're done, right? 7 So Jesse is offering to take it on and 8 you're giving him a couple of drafts for him to 9 use as he tries to prepare a contract you all can 10 talk about; is that correct? 11 A. I'm not sure what you mean by a couple 12 of drafts. 13 Q. You gave him a blank -- you gave him a 14 blank version of the Eastwood lot purchase 15 contract, correct? 16 A. Correct. 17 Q. And you gave him an old version you 18 said for Brooks Springs -- 19 A. Correct. 20 Q. -- right? 21 But as we saw -- I'm sorry? 22 A. Yes. 23 Q. But as we saw from the prior e-mail, 24 you all were still going to have to have a 25 conference call and apply the deal points for the

Page 138 1 transaction, correct? 2 A. Yes. 3 Q. Okay. All right. The next one. 4 This is Exhibit 16, document ECP 250 -- 5 oh, no, that's a GreenHawk document 256. It 6 looks like here this is about a week later, Mr. 7 Polite, you're following up with -- with Jesse. 8 Do you see that? 9 A. Yes. 10 Q. First you had sent him an e-mail that 11 said, I was told by my general counsel, Allen 12 Nason, that we used the attached format for our 13 contract between GreenHawk, Eastwood at Lindley. 14 That's the other project we talked 15 about, right? 16 A. Yes, sir. 17 Q. Says, it appears that all the deal 18 points will work through on this version. So we 19 do not need to recreate the wheel. 20 Do you see that? 21 A. Yes. 22 Q. What do you mean by that? 23 Were you all not going to negotiate any 24 deal points at all on Brooks Creek and River 25 Falls?	Page 140 1 Q. And as we said, just so the record's 2 clear, Brook -- whenever we say Brooks Springs, 3 we're also referring to Brooks Creek. 4 A. Agreed. 5 Q. Okay. And basically you're just -- 6 you're just sort of reminding him on 7 December 22nd, have you had a chance to get 8 started? 9 A. Yes. 10 Q. Is that right? 11 A. From the follow up from the 16th, 12 correct. 13 Q. Okay. Then the next document we look 14 at is Exhibit 17. And I'm going to go through 15 this bottom stuff fairly quickly because I think 16 the bottom stuff is with Todd Alsop. That's with 17 Kanata. You remember that? 18 A. Yes, sir. 19 Q. And then we get up to this section 20 here. It's an e-mail from you dated March 16th, 21 2017, right? 22 A. Yes. 23 Q. And you're saying, Craig and Jesse, I'm 24 so glad Kanata has been executed and the map 25 recorded.
Page 139 1 A. That's not what I was referring to. I 2 was referring to all of the points of an accepted 3 contract by Greenwood and Eastwood -- GreenHawk, 4 sorry, and Eastwood. That we were going to use 5 that version at Lindley for the versions going 6 forward at Brooks Springs and River Falls. 7 Q. But you'd still have to come up with a 8 lot price, for example, on Brooks Springs and 9 River Falls, correct? 10 A. Yes. Those would be more deal 11 specific. 12 Q. And you'd to have come up with a 13 takedown schedule on Brooks Springs and River 14 Falls, correct? 15 A. Yes, sir. 16 Q. Okay. Those are always deal specific, 17 are they not? 18 A. That's correct. But as everything else 19 you mentioned is boilerplate once accepted by 20 both parties. 21 Q. So basically you're just trying to say 22 look, to the extent we have negotiations on 23 Lindley that can save us some time on these other 24 two, let's use those, right? 25 A. Correct.	Page 141 1 So Kanata was done at this point, 2 correct? 3 A. Yes. 4 Q. But it looks like River Falls and 5 Brooks Springs, Brooks Creek had not been done 6 yet, had they? 7 A. They had not. 8 Q. And you're asking them what's the time 9 frame because you say, The Charlotte division has 10 been anxiously awaiting the lots, right? 11 A. Exactly -- yes. 12 Q. Now, this is -- this is 3 months since 13 your last e-mail to Jesse. 14 Do you remember that? 15 A. Yes. 16 Q. I'll move up to show his e-mail. 17 Do you know what was taking so long on 18 GreenHawk's part? 19 A. I do not know what their delays were. 20 But this was very common with GreenHawk. 21 Q. It says here that Craig is working with 22 Tega Cay to resolve some issues. We will keep 23 you posted. 24 Do you know what those issues were? 25 A. Not specifically.

Page 142 1 Q. Okay. Going now to 18, which is 2 GreenBawk 1063 and following. If you'd go to the 3 bottom here. 4 All right. Looks like this chain 5 starts with an e-mail request from Tom, I would 6 say Goebel, but he might not go by that name, to 7 Conley that asks for a status report on River 8 Falls and Tega Cay. Then Mike responds to Pat 9 Quinn and copies you. 10 Do you recall getting this e-mail? 11 A. As it's written, I now do. 12 Q. Okay. 13 A. I can't say I did then. But can you 14 please go to the bottom of this one? I'm not 15 sure that I'm starting at the bottom. 16 Okay. Thank you. 17 And I'd go with Tom Goebel. 18 Q. Goebel? 19 A. Yes. No R, Goebel. 20 Q. Okay. All right. So Mr. Goebel says 21 he reaches out to Mike and then Mike reaches out 22 to Pat and you. Pat is an engineer with Eastwood 23 Homes? 24 A. Pat is a former employee of Eastwood 25 Homes and does have his engineering degree.	Page 144 1 Frank Ford, do you know who that is? 2 A. I've met Frank, yes. 3 Q. What is Evolve, the company that he's 4 with? 5 A. Evolve is a apartment developer based 6 here in Greensboro that was doing a project -- I 7 don't know, it's adjacent, contiguous with Brooks 8 Springs in -- in the same area. 9 Q. So he reaches out to Pat Quinn and 10 copies you asking for Pat's help with Craig 11 Briner; is that right? 12 A. That's correct. 13 Q. Do you know -- do you understand -- do 14 you have any idea what kind of help he was 15 looking for? 16 A. The Evolve project shared a sewer lift 17 station with the Brooks Springs project and 18 needed some joint effort between the two parties, 19 Evolve and GreenHawk. 20 Q. Was the Evolve project right next door 21 to Brooks Springs? 22 A. It's adjacent to it. We went through 23 that this morning. It's in that same basin, yes, 24 sir. 25 Q. Yeah, well, if there's one thing I
Page 143 1 Q. At this point in time, Mr. Polite, what 2 was Pat's role? 3 A. Land development manager. 4 Q. Okay. And, basically, Conley's looking 5 for some direction from you and Pat on how to 6 respond to this; isn't that right? 7 A. Yes. 8 Q. Okay. I'm going to keep scrolling up. 9 And so you turn it to Craig, right? 10 A. In this e-mail, yes. 11 Q. And you're basically using this -- 12 among others things, you're using this as an 13 opportunity to sort of gently remind Craig you 14 really would like a lot purchase contract; isn't 15 that right? 16 A. Yes. It's written in this e-mail that 17 way. 18 Q. Do you recall -- you said in this 19 e-mail. Do you recall any other action you took 20 with respect to this inquiry you got from Mike 21 Conley? 22 A. No, nothing specific. 23 Q. Okay. And here's the next one. It's 24 just a couple of days later. This is ECP ending 25 in 8774. This fella at the bottom here named	Page 145 1 learned this morning is that adjacent to you 2 might not mean what it means to me. 3 So is the Evolve project right next 4 door or is it further down the road from the 5 Brooks Springs project? 6 A. I'm going to do this as best I can for 7 you, Stephen. If on the road frontage, they're 8 not adjacent. But they shared a -- I believe, if 9 -- without seeing the tax parcels, they shared a 10 common boundary in the rear of the properties. 11 Q. Got it. Makes sense. 12 A. Okay. 13 Q. And then Pat responds and says, Frank, 14 I got your e-mail, I've e-mailed Craig, the 15 project is still on our radar and we are pushing 16 for a finalized contract. 17 Do you see that? 18 A. I do. 19 Q. The project Pat is talk about is Brooks 20 Springs, correct? 21 A. Yes, that's in the subject line. 22 Q. Okay. Yeah, that's what I thought. 23 MR. COX: Oops. That's the wrong one. 24 Shoot. That's a shameless marketing thing 25 that I did by mistake. I apologize. We're

Page 146 1 going to do this. 2 MR. ADAMS: What did you do? I missed 3 it. I want to see it again. 4 THE DEPONENT: Me too. 5 MR. COX: I called up my firm's website 6 by mistake, which was an accident. 7 Q. All right. Let's see. I think this is 8 a spreadsheet. 9 MR. COX: Isn't that right, Tim? 10 MS. MISNER: Yes, it is. 11 Q. So these are some community review 12 notes. Let me see if I can find the designation 13 here. It's ECF 1709. 14 MR. ADAMS: Stephen, can I ask you to 15 -- some of the top tabs, if you can close 16 the tabs that you've already used. That 17 way the full tab name of the document on 18 the screen will be evident. That way we 19 don't get any confusion about what we're 20 looking at. 21 MR. COX: It's a good suggestion. It 22 presumes execution. So tell me -- tell me 23 what I need to do here. 24 MR. ADAMS: All those little Xs on the 25 documents to the left.	Page 148 1 now. 2 MR. ADAMS: I'm seeing 20. 3 MR. COX: Yeah, you should be seeing 4 20. I hope that's what you're seeing. 5 MR. MABE: Now I am. Thank you. 6 Q. Okay. So who is Joshua Peak, by the 7 way? 8 A. Josh is a Eastwood employee on the 9 construction side of -- the vertical construction 10 side of Eastwood Homes. 11 Q. Let me see if I can do this right. 12 Let's see. 13 So here is the -- you see here on the 14 left-hand side we have River Falls on line 3 and 15 then Brooks Springs on line 6. 16 Do you see that? 17 A. Yes. But not all of line 6, 18 unfortunately. 19 Q. Yeah, I'm going to try to move it and 20 get it up here. Let's see. There we go. You 21 see it now? All of line 3 -- 22 A. Yes. 23 Q. So line 3 was River Falls, line 6 was 24 Brooks Springs. And both of these -- in the 25 first one says this project is stalled out.
Page 147 1 MR. COX: Which I don't think I'm 2 seeing. One second. Let me try to reduce 3 this. There we go. Reduce it again. 4 MS. MISNER: He just wants you to close 5 those. 6 MR. COX: I think I can -- I hope I 7 don't lose anybody when I do this. 8 THE DEPONENT: If I can make a 9 suggestion, I'd start from the left side. 10 MR. COX: Yeah, I didn't even see them. 11 Sorry guys, I just saw them when I did 12 that. So now I see what you're talking 13 about. 14 MR. ADAMS: Yeah, you're doing the 15 wrong ones, Stephen. 16 MR. COX: What do you mean? 17 MR. ADAMS: Well, that will work. You 18 should have -- you could have left the 19 existing documents up and closed the one to 20 the left side. But you can reopen them. 21 MR. COX: Yeah, I'm not driving this 22 very well. But let me see if this works 23 now. Is that better? Now I can -- now I 24 can see the legend. Can you all see it? 25 MR. MABE: Yeah, but we're on Exhibit 9	Page 149 1 Also, we do not have a buy back contract with 2 GreenHawk. 3 Do you see that? 4 A. I do see that. 5 Q. Do you know if Mr. Peak wrote that in 6 red? 7 A. I do not know who wrote that. 8 Q. And then now here in number 6 it says, 9 This was assigned to GreenHawk without a buy back 10 contract. 11 Do you see that too? 12 A. I do see it. 13 Q. I can't get this -- this project part 14 to keep going. But I can't open the box, I don't 15 think. Let me see if I can do this. 16 In any event, we have these dates, the 17 latest date as of September 14th, 2017. I'm not 18 asking you to necessarily agree that that's when 19 these notes were drafted. Here's what I am 20 asking you, Mr. Polite. As of September 14th, 21 2017, were these two statements I read in lines 3 22 and 6 accurate concerning the lack of a buy back 23 contract? 24 A. I believe it to be accurate. 25 Q. Okay. Now I want to go to Exhibit 21.

Page 150 1 This is an e-mail dated June 4th of 2018 from you 2 to Mike Conley and others. 3 Do you see that on the screen? 4 A. I do not. Your screen share is still 5 showing that Excel sheet. 6 MR. COX: Is it, guys? 7 MR. MABE: Yes. 8 MR. ADAMS: Yes. 9 MR. COX: Oh, gosh. Okay. Hold still. 10 Try again. 11 MR. MISNER: You need to stay within 12 all PDFs. You can just -- when you switch 13 it between types of documents you have to 14 -- 15 MR. COX: Oh. My lawyer/IT specialist 16 is telling me if I switch between mediums 17 it screws it up. One second. 18 MR. ADAMS: Yeah, for the next one, 19 Stephen, he can run the documents and save 20 you the trouble. 21 MR. COX: This is a fair point. In 22 fact, it's not going to be the next one, 23 it's going to be right here as soon as I 24 get that up. So why don't you -- I just 25 handed over -- he's driving.	Page 152 1 written? 2 A. It's right here in my e-mail. 3 Q. Okay. 4 A. I wrote the e-mail. I already said I 5 wrote the e-mail. And I'd always referred to as 6 written being based on my e-mail that I wrote. 7 So as written. 8 Q. And as a -- and as we agreed earlier, 9 takedown schedule and lot price were going to be 10 two essential terms of any lot purchase agreement 11 you ever had with GreenHawk over these two 12 properties, correct? 13 A. Yes. 14 Q. And if you say in this e-mail at that 15 point GreenHawk is making a takedown proposal, 16 but there's still not any mention of price, 17 correct? 18 A. That's correct. 19 Q. So as of the date of this e-mail, 20 June 4th, 2018, there was no lot purchase 21 contract with the GreenHawk entity over these 22 properties that would nail down takedown and 23 price, correct? 24 MR. ADAMS: Objection, form. 25 A. I believe he was referring to takedown
Page 151 1 Q. Okay. This is Exhibit 21. It's ECP 2 8535. And it's an e-mail from you to Mike and 3 others. Do you see that? 4 A. Yes. 5 Q. And it says, Mike and -- this is what 6 you wrote. Mike and Brian, I finally got Craig 7 Briner, GreenHawk Development to respond for 8 update on Brooks Springs towns. 9 That's the same as Brooks Creek, right? 10 A. That would be correct. 11 Q. And then you quote his text and you 12 say, This is the first discussion of any 13 takedown, right? 14 A. As written, yes. 15 Q. And that would be discussion -- the 16 discussion you're referring to is what Mr. Briner 17 said in his text about taking half now and half 18 in December, right? 19 A. If that was his quote. 20 Q. That's his takedown proposal, right? 21 A. Yes. 22 Q. And if you say there in the e-mail he 23 did not mention price, correct? 24 A. As written, yes. 25 Q. What do you mean when you say, as	Page 153 1 here, but no price. 2 Q. In other words, that you did not have a 3 -- Eastwood Construction did not have an 4 agreement with the GreenHawk entity as of the 5 date of this e-mail as to a lot purchase contract 6 that would include takedown and price, did it? 7 MR. ADAMS: Objection, form. 8 A. It did not have the contract. 9 Q. Right. 10 And you've gone on to say that, there 11 is no contract, right? 12 A. That's correct. 13 Q. And at the time that was correct; isn't 14 that right? 15 A. Yes, as written. 16 Q. Okay. All right. See, I just reached 17 for it. He's slapping my hand. Let's go to the 18 next exhibit, which is 22. 19 So the e-mail we just looked at was an 20 exchange that you wrote in June of '18. This is 21 an e-mail exchange from October of '18. 22 You see that? 23 A. Yes. 24 Q. Let's go to the bottom first. 25 This is the whole thing, isn't it?

Page 154 1 MR. MISNER: Yes, sir. 2 Q. I'm sorry. This is the whole contract. 3 I'm sorry, let's move back up to the e-mail. 4 So this is an e-mail from Jeff White 5 internally to Craig. 6 Do you see that? 7 A. Yes. 8 Q. Which appears to be a lot purchase 9 agreement, attached is a draft. Let's just look 10 at the first page of that just so we see what it 11 is. 12 Do you see that? 13 And then let's go back up. And then 14 Mr. Briner just forwards that draft to you; is 15 that correct? 16 A. That's what it looks like, yes. 17 Q. And then you flip it to your team, 18 including Mike and Brian and Mr. Nason? 19 A. Yes, the same day. 20 Q. And if you say here, this is -- this 21 October 31st, 2018, that's about two years after 22 you got to Eastwood; isn't that right? 23 A. Yes, sir. 24 Q. This is the first draft you had 25 received from GreenHawk with respect to the	Page 156 1 MR. COX: Well, if you can cut to the 2 chase, that's fine. 3 MR. ADAMS: Eastwood Homes is the 4 former name for Eastwood Construction, 5 which is the former name for Eastwood 6 Construction Partners. And Eastwood Homes, 7 LLC was the successor to Eastwood Homes, 8 Inc. So it's the same company, just 9 changed its names over a period of years as 10 Eastwood's organization changed. 11 MR. COX: I gotcha. So same entity, 12 different name? 13 MR. ADAMS: Correct. 14 So Eastwood Homes, LLC is a predecessor 15 name for Eastwood Construction Partners, 16 LLC. It's the same legal entity. 17 MR. COX: Got it. 18 Q. This draft contract that's attached to 19 Mr. Briner's e-mail to you and that you flipped 20 to your team, did Eastwood Homes or Eastwood 21 Construction Partners, LLC, whatever the entity 22 was at the time, did any Eastwood entity accept 23 this contract as written, Mr. Polite? 24 A. I'm not a hundred percent certain that 25 this version was ever accepted. I don't -- I do
Page 155 1 Brooks Springs property; isn't that right? 2 A. Yes. 3 Q. Let's look at the first page of that 4 contract. Now, this draft agreement is with 5 Eastwood Homes, LLC. 6 Do you see that? 7 A. Yes. 8 Q. In the testimony before lunch you told 9 me that the contract was going to be -- these 10 lots were going to be sold back to Eastwood 11 Constructors -- Construction Partners, LLC. 12 Do you remember that testimony? 13 A. Yes. 14 Q. Why is the name different? It's a 15 different entity entirely. 16 MR. ADAMS: Objection to form. 17 A. All entities are owned -- solely owned 18 by Eastwood Construction Partners. And this is a 19 draft form, not the final form. 20 Q. Does Eastwood Homes, LLC actually 21 exist; do you know? 22 A. In -- I'm not a hundred percent sure on 23 how it would be registered. 24 MR. ADAMS: I can tell you whatever you 25 want to know, Steve.	Page 157 1 not believe so. 2 Q. Okay. What about it in this version -- 3 let's scroll down. Is there any particular part 4 of it that you did not accept? 5 A. It's typically 24 pages. I'm not a 6 hundred percent sure what's all in here. And 7 that's too fast for me to look. 8 MR. COX: Back up, back up, back up. 9 Q. Yeah, there's the purchase price. 10 A. Correct. 11 Q. That -- this contract calls for a base 12 starting lot price of \$76,000. Did Eastwood 13 accept a base starting lot price in Brooks Creek 14 of \$76,000? 15 A. Again, except I'm not a hundred percent 16 sure that this whole -- this whole contract was 17 accepted that way. 18 Q. Understood. 19 I'm not asking about the whole 20 contract. I'm just starting with one discrete 21 term. 22 Did Eastwood Homes or Eastwood 23 Construction Partners, LLC, as the case may be, 24 accept a base starting lot price of \$76,000 for 25 the Brooks Creek property?

Page 158 1 A. To me it would have been reasonable, 2 yes. But I don't recall us accepting it. 3 Q. Well, you're the VP of -- I'm sorry. I 4 interrupted you again. 5 A. Yes, thank you for that -- pointing 6 that out. I am. But if you go down to the 7 signature pages on this contract, I am not the 8 signator. 9 Q. Oh, I understand that. 10 A. Okay. 11 Q. But as the VP of land -- as the VP of 12 land, wouldn't it be your job to know, among 13 other things, what the base lot starting price 14 that Eastwood accepted for Brooks Creek was? 15 A. You asked me was this accepted. And 16 what I said is I think it would be reasonable 17 under my purview. But I'm not a hundred percent 18 certain it was by the people I forwarded it to. 19 Q. And that's what I'm struggling with 20 because let's look back up to the people you 21 forwarded it to. 22 While he's doing that, you testified 23 before lunch that you were part of a three-man 24 land acquisition committee that included you and 25 the father and son Stewart; isn't that right.	Page 160 1 involved in finalizing a contract for something 2 that's been hanging around now for a couple of 3 years. Can you explain that to me? 4 MR. ADAMS: Objection to form. 5 You want him to explain why you don't 6 understand? 7 MR. COX: No. I want him to answer my 8 question. 9 A. Can you repeat the question? 10 Q. How is it that you're not involved in 11 finalizing or knowing the lot sales price for 12 Brooks Creek? 13 MR. ADAMS: Objection to form. 14 THE DEPONENT: Good for me to answer? 15 A. I am involved in the process of 16 finalizing and accepting what the division 17 president's put forward. I am, as testified, a 18 part of that land committee. 19 Q. But you've testified that the land 20 committee did not act with respect to this 21 contract, didn't you? 22 A. Not to my -- to my knowledge, we did 23 not have a meeting of our land committee on this 24 particular contract. 25 Q. And that would have been -- is it
Page 159 1 A. That's correct. 2 Q. And from time to time as division 3 presidents have sales opportunities, they will 4 sort of present those opportunities to the 5 committee, correct? 6 A. That's correct. 7 Q. And Mike Conley would have been the 8 Charlotte division president presenting this 9 particular opportunity to you and the Stewarts? 10 A. That is correct. 11 Q. So I'm asking you, this was sent -- 12 this draft was sent Halloween Day of 2018. Did 13 Mr. Conley come to your land acquisition 14 committee, you and the Stewarts, and propose that 15 you all pay \$75,000 a lot for Brooks Creek? 16 A. There was not a land committee meeting 17 regarding this contract. 18 Q. How was it handled? 19 A. I would have to ask Mike Conley. 20 Q. Were you involved? 21 A. I was involved. But, again, Mike 22 Conley would have taken the lead on it from this 23 point. 24 Q. I'm trying to understand how it is that 25 you're the vice president of land and you're not	Page 161 1 correct that it would have been a requirement for 2 Eastwood to move forward with a purchase of 3 Brooks Springs, the land committee had to approve 4 it; is that right? 5 A. That would be -- that would be the next 6 move or the next step -- 7 Q. When you sent this contract to Mike 8 Conley, did he come back to the land acquisition 9 committee and ask to purchase Brooks Creek? 10 A. As I said before, I do not recall him 11 doing that. 12 Q. Do you recall anything that happened 13 with this contract after you sent to it Mr. 14 Conley? 15 A. There were discussions, but I cannot 16 tell you what the next step was. Because my 17 records don't show it. 18 Q. Okay. Well, then what do your records 19 show is the next step for taking action for 20 Eastwood to buy Brooks Creek? 21 A. It would be to respond to this and have 22 it executed if we would have accepted it. 23 Q. And you don't have any record of 24 accepting it? 25 A. I do not have that.

Page 162 1 Q. To your knowledge, does anyone at 2 Eastwood have any record of accepting this 3 contract? 4 A. To my knowledge, I do not have that. 5 Q. Is it Eastwood's position that it 6 currently has a contract with -- with respect to 7 the purchase of Brooks Springs or Brooks Creek 8 lots? 9 MR. ADAMS: Objection to the form. 10 A. Can you repeat the question? 11 Q. Sure. 12 Is it Eastwood's position that it 13 currently has a contract for the purchase of the 14 Brooks Creek lots? 15 MR. ADAMS: Objection to form. 16 A. In the definition of that you used for 17 contract, I would say no. 18 Q. Well, what definition do you use? 19 A. An agreement since 2013 that we -- they 20 would assign the property and we would fund the 21 predevelopment of that and give it to GreenHawk 22 with the understanding that when at a point in 23 time that they were comfortable with their 24 pricing, they would then offer back the purchase 25 of those lots that were completed to Eastwood	Page 164 1 bought property to somebody or from somebody for 2 something called around this number? 3 A. It's happened before. 4 Q. When you write a check to somebody for 5 land, though, you write them a check for a 6 particular price; do you not? 7 A. That is correct. 8 Q. So I'm asking you a specific question 9 here. If it's your position that Eastwood has a 10 contract with GreenHawk to buy these lots, what's 11 the price? What's the check gonna to say? 12 A. I would be happy if they offered us 13 back at \$76,000 per lot. 14 Q. Right. 15 And where is that number coming from? 16 A. The -- the draft that we just reviewed. 17 Q. Right. 18 That was sent October 31st, 2018, 19 right? 20 A. That is correct. 21 Q. So you would be happy as you sit here 22 today if they offered that price. But as you 23 said earlier, you don't have any record in your 24 files that Eastwood ever accepted that price when 25 it was offered back in October of '18; isn't that
Page 163 1 Homes. 2 Q. Okay. And you've asked the court to do 3 that, you've basically asked the court as part of 4 the relief you've requested in your complaint to 5 force GreenHawk to sell these Brooks Creek lots 6 back to Eastwood; isn't that right? 7 A. Yes. 8 Q. Okay. Let's say the court takes you up 9 on that offer and says, Agreed, Mr. Polite, I'm 10 going to order GreenHawk to sell these lots back 11 to you all. What's the price, Mr. Polite? 12 A. I would go back with, as we always 13 have, once they knew their cost and a reasonable 14 rate of turn for the developer, and what that 15 price would be would be the one that we would 16 agree with. 17 Q. So is it fair to say as we sit here 18 right now, you and GreenHawk have never agreed on 19 a lot purchase price for the lots in the Brooks 20 Creek parcel? 21 MR. ADAMS: Objection, form. 22 A. There was an agreement in principle of 23 around this number. But there were still changes 24 yet to come since this date. 25 Q. Mr. Polite, have you ever sold or	Page 165 1 correct? 2 A. That's correct. 3 Q. What about a takedown schedule, what 4 takedown schedule -- if the court says, okay, 5 Eastwood, we're going to enforce this contract, 6 what's the take down schedule supposed to be? 7 A. I -- I do not know at this point. 8 Q. You don't have one, do you? 9 A. Well, I'm -- you're asking me my 10 opinion on a unilateral side of what the takedown 11 would be. I would -- I would be happy at 8 per 12 quarter. You're asking me fairly what would I 13 prefer. I would prefer a low number per quarter, 14 as any buyer would. 15 Q. Let me be clear. I'm not asking you 16 for your opinion. I'm asking you for what a 17 material term is in a contract that you say 18 Eastwood already has. 19 You say Eastwood already has a 20 contract. And if the court agrees with you, Mr. 21 Polite, what are you going to take tell the court 22 that takedown term is of that contract? 23 A. Mr. Cox, I did not say we had a 24 contract. 25 Q. Your Complaint does?

Page 166 1 MR. ADAMS: Objection to form. 2 Q. As we sit here right now, Mr. Polite, 3 as we sit here right now, has Eastwood and 4 GreenHawk agreed on a takedown schedule with 5 respect to the Brooks Creek property? 6 A. Not to my knowledge, no. 7 Q. And as we -- as you said earlier, 8 that's a material term, that's a lawyer word, 9 that's an essential term of every -- of any lot 10 purchase contract for the sale of lots in a 11 development; isn't that right? 12 A. That's correct. That would be one of 13 the items, sure. 14 Q. Okay. I asked you a lot of questions 15 about Eastwood dealt internally with this draft. 16 Let me ask you about GreenHawk. 17 Did you ever have any communications 18 with Mr. Briner or anyone else at GreenHawk about 19 this draft after it came to you in October of 20 2018? 21 A. I don't recall a specific discussion 22 with him on it. 23 Q. Do you recall the next conversation you 24 had with Mr. Briner at all about Brooks Creek or 25 River Falls after October of '18?	Page 168 1 Springs and River Falls, and the e-mail discusses 2 that. Was that the only purpose of the phone 3 call, those two properties? 4 A. Yes. 5 Q. Do you remember any details about what 6 precipitated the call? 7 A. That there needed to be follow-up on, 8 you know, what the understanding was and the 9 delays and so on and where we were on the 10 project. 11 Q. Okay. Well, we've looked through a lot 12 of -- Mr. Misner's looked through a lot of 13 documents on -- produced by all kinds of parties 14 on these projects, and I think this is the only 15 one of any consequence we see between October of 16 '18 and February of 2020 sort of advancing the 17 ball or discussing Brooks Springs or Brooks 18 Creek. Are you aware of any further activity 19 during that time period on this property? 20 A. Not specific. 21 Q. Okay. You say that, Per our phone call 22 we both agreed that GreenHawk and Eastwood 23 entered into an agreement on both properties. 24 You go on to say, Where Eastwood would pay for 25 predevelopment work. GreenHawk would develop the
Page 167 1 A. I'm not sure the sequence, Mr. Cox. 2 Q. Okay. Let me go to the next document. 3 This is about a year and a half later. It's an 4 e-mail from you to Mr. Briner dated February 6th 5 of 2020. It's Exhibit 23. 6 Do you recognize this e-mail? 7 A. Yes, I do. 8 Q. This is an e-mail you sent to Mr. 9 Briner in February of 2020, right? Just like it 10 says. 11 It refers to a phone call. Was the 12 phone call that day, the day before or what; do 13 you recall? 14 A. It was that day, per my e-mail. 15 Q. Did you call -- oh, I'm sorry, yes, 16 that's exactly what you say. 17 Did you call him or did he call you? 18 A. I don't recall that. I'm -- 19 Q. Okay. 20 A. -- I reached out to Mr. Briner quite a 21 bit only to realize that he was very ill for 22 quite a while. That's why I'm writing in here 23 that I'm glad he's feeling better. I do not 24 recall who called who first that morning. 25 Q. The caption of the e-mail says, Brooks	Page 169 1 property and sell Eastwood lots. 2 That's what you say there, right? 3 A. Yes. 4 Q. Had it -- by the way, did you record 5 this conversation? 6 A. No. 7 Q. Okay. How did that come up? 8 I mean, is that the first thing on the 9 phone call? 10 A. No. First thing was his health and, of 11 course, retirement. 12 Q. And after you got all of the 13 pleasantries over with and got down to business, 14 is this point written here the first business 15 point you all discussed? 16 A. Yes. Just going over the history of 17 this project. 18 Q. So, again, I don't want to put words in 19 your mouth, but I'm trying to move the ball here 20 and just figure out how this went. Did you say, 21 okay, Craig, I just want to you remember, we had 22 an agreement, this is what it was; did it go 23 something like that? 24 A. Pretty much, yes, sir. 25 Q. You were pretty much telling him what

Page 170 1 you thought the agreement was? 2 A. My understanding, yes, sir. 3 Q. And he said, yes, that was our 4 agreement? 5 A. He understood how long it's been and 6 that they were buying the property and that they 7 would sell lots back to us in very general 8 terms -- 9 Q. In that -- 10 A. I'm not finished. Very general terms, 11 yes. 12 Q. You say -- 13 A. That was my recollection. 14 Q. You say general terms. In the course 15 of all of that conversation, did he mention a lot 16 price you all agreed on? 17 A. Not to my knowledge. 18 Q. Did he mention a takedown schedule you 19 all agreed on? 20 A. Not at this time. 21 Q. If he had mentioned either of those 22 things, it's fair you would have written those in 23 the e-mail; isn't that right? 24 A. Yes, sir. 25 Q. Because you were trying to keep a very	Page 172 1 Q. Yes. 2 What were the irregularities with 3 Callahan? 4 A. Their starting and stopping, their 5 inability to complete the project for him. And 6 then also, they did some grading in some areas 7 they weren't supposed to at River Falls and got a 8 notification of infraction. Those type of 9 irregularities, to name a few. 10 Q. Did -- did GreenHawk hire Callahan 11 directly or did it inherit Callahan from 12 Eastwood? 13 MR. ADAMS: Objection to form. 14 A. I don't have direct knowledge. But 15 they were under -- GreenHawk and Callahan had 16 their own contract. 17 Q. Did Eastwood ever have a contract with 18 Callahan with respect to River Falls and Brooks 19 Creek? 20 A. Not to my knowledge. If it did, it 21 predated me, Mr. Cox, and I don't know. 22 Q. What about the Fort Mill impact fees, 23 what was that about? 24 A. The -- the court case that added school 25 impact fees in the Fort Mill school district.
Page 171 1 good record of what Mr. Briner said during that 2 phone call, weren't you? 3 A. Yes. 4 Q. Was this prepared in anticipation that 5 you were going to file a lawsuit? 6 A. Not on my front, no, sir. 7 Q. Okay. This was just something you 8 thought you needed to do to touch base with Mr. 9 Briner? 10 A. It was -- yes. Because of the delays 11 between conversations, yes, sir. 12 Q. Okay. Did anybody direct you to make 13 the call or you took it upon yourself to make the 14 call? 15 A. No, I -- I did it on my own. 16 Q. In the end of that first section you 17 say, Understanding both projects were hit with 18 major delays, irregularities with Callahan and 19 Fort Mill impact fees. 20 Do you see that? 21 A. Yes, I do. 22 Q. Callahan was the grader. You mentioned 23 that earlier, right? 24 A. And you mentioned the number of 25 lawsuits, yes.	Page 173 1 That -- I believe it was mid summer '19, if I'm 2 not mistaken. 3 Q. And that ordinance, that impact fee 4 ordinance was going to effect the Brooks Creek 5 and River Falls properties; isn't that right? 6 A. Yes, it would have -- and then -- but 7 differently between the two. 8 Q. But to the extent impact fees were 9 going to be added to Brooks Creek and River 10 Falls, that would affect the ultimate lot price, 11 development price, all that sort of thing; would 12 it not? 13 A. It would affect the all-in price of the 14 -- of the lot. Meaning after your lot purchase 15 agreement, this impact fee would be added on top 16 of that. 17 Q. Right. 18 So to give an example, if I've got a 19 lot that I'm going to -- that my all-in cost is 20 going to be 50 grand and I'm selling it to a 21 homeowner for 75 grand at \$25,000 profit, if I've 22 got to put a \$15,000 impact fee on top of that, 23 either I've got to pass that onto the homeowner 24 or I've got to cut my profit or some combination 25 of both; isn't that right?

Page 174 1 MR. ADAMS: Objection, form. 2 A. It was -- and I'm not a -- I'd have to 3 look back at the -- what was passed. But I 4 believe it was at the pulling of the permit for 5 the house when you pay the impact fee. But yes, 6 it would be an added cost to the house. And it 7 is -- 8 Q. So you can't just pass -- if you can't 9 just pass that impact fee onto the homeowner, 10 whoever is building the house is going to have to 11 eat some of that, right? 12 MR. ADAMS: Objection to form. 13 A. It would be -- somebody's got to pay 14 that bill. 15 Q. Right. And it affects the ultimate 16 profitability of the lot; does it not? 17 A. It could, yes. But, actually, the lot 18 purchase doesn't impact the profitability to the 19 developer. 20 Q. But it affects what the -- it affects 21 what you can buy the lots for somebody -- wait a 22 minute. Back up. It kicks in at the permit home 23 building stage, correct? 24 A. That's correct. The lot is already 25 purchased at that point.	Page 176 1 we beat this horse enough. 2 Next paragraph. You say, As I 3 mentioned this morning, it came to my attention 4 that GreenHawk has entered into a contract with 5 another builder on the Brooks Springs property. 6 Do you see that sentence? 7 A. I do. Yes, sir. 8 Q. Who was the other builder? 9 A. To my knowledge, at that point, it was 10 TRI Pointe. 11 Q. So you knew in February of 2020 that 12 GreenHawk was planning to sell this to TRI 13 Pointe? 14 A. That's what my belief was, yes. 15 Q. And you go on to say because Eastwood 16 paid for the engineering and construction 17 documents, we need to be paid, correct? 18 A. That's exactly -- yes, sir. 19 Q. And you say your estimate is roughly 20 350,000, but you're going to verify that number 21 with accounting, right? 22 A. Yes, sir. 23 Q. And then you close the paragraph by 24 saying, We agree we don't want to go too far. 25 Can we make sure this is wrapped up in 10 days,
Page 175 1 Q. But it's going to effect how much the 2 home builders can get from the homeowner unless 3 the homebuilder can just pass that cost along to 4 the homeowner? 5 MR. ADAMS: Object to form. 6 A. It is an added cost to the house. 7 Q. That somebody's got to pay, correct? 8 A. The builder pays it first. 9 Q. Right. 10 This doesn't need to be complicated. 11 It's something the homebuilder has to pay to 12 build the house, correct? 13 A. That is correct, yeah. 14 Q. And it's -- and ideally, you find a way 15 to pass that impact fee onto the home buyer. But 16 if you can't, you have to eat either some or all 17 of it as the homebuilder; isn't it that simple? 18 A. Not necessarily that simple. It's now 19 a price of the completed home. So if you're 20 going to make a profit -- if you're going to make 21 a profit margin as you sell it to a third party, 22 do you either send that at -- through at cost or 23 do you mark it up 20 percent as a profit margin? 24 It's a cost to the house, like a 2-by-4. 25 Q. Got it. I've got it. Okay. I think	Page 177 1 right? 2 A. That was my request. 3 Q. And by wrapped up, what do you mean, 4 that GreenHawk was going to go ahead and pay 5 those roughly \$350,000 in costs? 6 A. Either that or how we were going to 7 move forward with this project, what was going to 8 be the ultimate goal. 9 Q. Well, you don't say anything -- you say 10 in this e-mail that you know there's now another 11 buyer on the scene. That's us, correct, TRI 12 Pointe? 13 A. That's -- yes, sir, that's what I did 14 say. 15 Q. You don't say anything in this e-mail 16 about wait a minute, Craig, we have a contract on 17 that property, we want to develop it, you don't 18 say that, do you? 19 A. No, I do not discuss the contract or a 20 contract. 21 Q. In fact, the only -- the thrust of this 22 e-mail is you want Craig to pay you your 23 \$350,000, that's what the e-mail is about, isn't 24 it? 25 A. That would -- yes.

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1 Q. If -- if you had gone to your 2 accounting department that day and confirmed that 3 the number was \$350,000, and GreenHawk had 4 written you a check in that amount, Eastwood a 5 check in that amount, would you have considered 6 it, quote, wrapped up, as you say in this e-mail? 7 MR. ADAMS: Objection, form. 8 A. I would have given it -- yes, I would 9 personally, yes. I was looking for the money we 10 invested in it to get it back. 11 Q. And you say if you couldn't get that 12 money back, you were going to turn the invoices 13 over to your general counsel? 14 A. That's correct. 15 Q. But if he had paid you the money, you 16 would have considered it all wiped clean and 17 done? 18 A. The money -- 19 MR. ADAMS: Objection to form. 20 A. Sorry. 21 Q. If he had paid you the \$350,000 in 22 development costs, you would have considered it 23 all done? 24 A. Yes. 25 Q. All right. Now, but he didn't pay you	1 that's how we have it in our system as GH 2 1565. 3 MR. ADAMS: Okay. 4 MR. MABE: I think it has to do with 5 how you take it off of your -- your 6 platform. Some of them -- sometimes it 7 will take the Bates numbers and sometimes 8 it won't. I can confirm that Bates number 9 if you need me to. 10 MR. ADAMS: I'd like to do that just so 11 the record's clear. 12 MR. MABE: Okay. 13 MR. ADAMS: But -- 14 MR. COX: We'll take a look at that in 15 a moment. 16 Q. Let's scroll to the bottom of this just 17 to get oriented. 18 MR. MISNER: This is the first one. 19 Q. So this is the first e-mail, Mr. 20 Polite. It's from Kevin. You told me he was 21 your CFO, right? 22 A. Yes, sir. 23 Q. It's to Jesse. And said Joe reached 24 out and mentioned that you were looking for some 25 detail behind the reimbursed expenses for Brooks
Page 179	Page 181
1 the money at this time, did he, Mr. Briner? 2 A. No. No, sir. 3 Q. And so we get another e-mail, which is 4 the next one we're going to look at. 5 MR. ADAMS: So Stephen, this is the 6 document I've referred to in a previous 7 e-mail saying that it didn't have a Bates 8 number on it. So I didn't know where it 9 came from. Can you identify where -- 10 MR. COX: Oh, this is -- this is 11 GreenHawk 1565, I believe. That's what I 12 have. I'm asking Tim to confirm it for me. 13 MR. ADAMS: Can you say the numbers 14 again slower? 15 MR. COX: Sure. GreenHawk GH 1565. 16 MR. ADAMS: Okay. I don't know why 17 it's not on -- I don't see the numbers on 18 the document. That's what's confused me. 19 MR. MISNER: There's no Bates on the 20 version produced to us, but it is labeled 21 1565. 22 MR. COX: Tim says there's no Bates 23 number on the version produced to us, but 24 you can see electronically that's the 25 number. I'll defer to John on that. But	1 Creek. And you see, this is back in 2016. Do 2 you see that date? 3 A. Yes, sir. 4 Q. You remember we talked about this early 5 in the deposition. And so now I want to talk 6 about it a little bit more since we're on it. 7 What were these expenses that Kevin is talking 8 about here and that you were talking about to 9 Craig about reimbursing? 10 A. They would be anything to do with the 11 predevelopment prior to permitting that Eastwood 12 spent on the project. I'm not sure, Stephen, if 13 that would be before the assignment or after the 14 assignment. But it would be expenses that 15 Eastwood incurred in -- towards the permitting of 16 the project. 17 Q. Can you give me any kind of idea about 18 what sort of expenses we're talking about? 19 A. Engineering expenses, wetlands 20 delineation, phase 1s. Typical due diligence 21 effort. I wish I had the actual ledger, I could 22 tell you who the vendors were. 23 Q. Was it all cut-of-pocket expenses or 24 was it of some of it internal costs? 25 A. No internal costs were assigned to the

Page 182 1 project. 2 Q. Okay. Let's scroll up. 3 And then Jesse says he's been holding 4 the River Falls reimbursement on his desks. Did 5 you ever -- did Eastwood ever get reimbursement 6 on River Falls? 7 A. No, sir. 8 Q. Okay. Keep going. 9 Then it -- then -- I know this is Mr. 10 Hutchins on this to you. It looks like Mr. 11 Hutchins does this out of his e-mail folder in 12 February 2020 and sent this to you from Jesse; is 13 that right? 14 A. That's correct. 15 Q. And he says, This was my last 16 correspondence from them. 17 A. He said Jesse that acknowledged that 18 they owe us the money and this was the last 19 correspondence. 20 Q. Now, you'll -- I'll just refresh your 21 recollection. A moment ago we looked at the 22 e-mail you sent to Craig Briner. That was dated 23 February 6th, 2020. 24 Do you remember that? 25 A. Yes, sir.	Page 184 1 e-mail. 2 Q. And you recall sending this e-mail to 3 Mr. Medlin? 4 A. I do. 5 Q. And you're saying this amount -- about 6 the third sentence, The amount was intended to be 7 credited toward the final earnest money deposits, 8 but there was never a ratified contract for the 9 repurchase of the lots between the two parties. 10 Do you see that? 11 A. Yes, I do. 12 Q. And that was an accurate statement, 13 correct? 14 A. Yes. 15 Q. Then you say, Attached is our 16 accounting of the funds. And you have it down to 17 the dollar here, right, 312,296? 18 A. That's what Kevin Hutchins, our CFO, 19 put together. 20 Q. But you believe that's the right 21 number, right? 22 A. Yes. 23 Q. For both the River Falls and the Brooks 24 Creek projects? 25 A. That's my understanding, yes.
Page 183 1 Q. This one is dated just a -- well, let's 2 go back to February real quick. 3 A. No, no, February 18th. 4 Q. Yeah. 5 So you went -- about two weeks later 6 you went to Kevin. Were you trying to figure out 7 what the paper trail was on this? 8 A. It was post the 10 days. And I hadn't 9 heard from Mr. Briner. And then I said I'm going 10 to need some help on the backup getting -- as I 11 stated in my February 6th e-mail, that I would 12 get the invoices together because I'd used a 13 round number of 350,000, not the exact number. 14 Q. Got it. Got it. 15 So then the next e-mail I have in the 16 chain is an e-mail that you sent to Mr. Medlin. 17 He's a vice president at GreenHawk, correct? 18 A. I do not know his title. 19 Q. Well, we'll see it in a moment. But 20 anyway, you sent it to Mr. Medlin in June. 21 Basically, you're flipping that response from 22 Jesse to Kevin. What caused you to reach out to 23 Mr. Medlin in June? 24 A. This -- the lack of any response back 25 from GreenHawk to that point from the February	Page 185 1 Q. And as the last sentence indicates, 2 just like you did with Mr. Briner a few months 3 earlier, you were asking Mr. Medlin to get this 4 money paid? 5 A. Yes, sir. 6 Q. And just like we saw with Mr. Briner 7 earlier, if he had paid this money, you would 8 have considered this matter done and resolved; 9 isn't that right? 10 MR. ADAMS: Objection to form. 11 MR. COX: He's looking to you to 12 object, Jimmy. 13 MR. ADAMS: And I did. 14 A. He did. 15 Q. Okay. 16 A. Yes, at this point now we're looking to 17 collect a debt. 18 Q. You don't -- you don't say anything in 19 here about the contract to develop Brooks Creek, 20 right? 21 A. I say that there was never a ratified 22 contract for the repurchase of the lots between 23 us. 24 Q. Fair point. 25 What I mean by that question is you

Page 186 1 don't -- you don't make any demand in here for a 2 contract to develop this to purchase lots in 3 Brooks Creek, do you? 4 A. That is not in this e-mail, you're 5 correct, yes. 6 Q. You don't make any demand in this 7 e-mail for a lot purchase contract on River 8 Falls, do you? 9 A. Not on this contract. Not on this 10 e-mail, no, sir. 11 Q. All you're asking for is the 12 development expenses 312,000 and change, correct? 13 A. That's -- that's what this e-mail 14 states, yes, sir. 15 Q. And if you had gotten that money back 16 in June of 2020, you would have considered this 17 matter put to bed; isn't that correct? 18 MR. ADAMS: Objection to form. 19 A. That was my intention. 20 Q. Yep. 21 And this is just a month before you all 22 filed the lawsuit. Do you remember that? 23 A. We filed after this e-mail was sent. 24 Q. Yeah. 25 A. Because they --	Page 188 1 have to move on it. 2 MR. COX: Okay. No, I'm -- look, I'm 3 not going to belabor it and ask a bunch 4 more questions. But I think the record's 5 clear that all communications between Mr. 6 Nason and Mr. Polite on this subject have 7 been waived, subject matter waiver. So I'm 8 not going to retract the question. And I 9 do think I'm entitled to an answer. But 10 you've instructed him not to answer, that's 11 all that needs to be done to preserve it. 12 MR. ADAMS: You think that all 13 communications between the general counsel 14 and the vice president of land on the issue 15 of Brooks Creek and River Falls have been 16 waived by that one e-mail? 17 MR. COX: Not that one e-mail. Lots of 18 other e-mails. No, excuse me, not -- the 19 one e-mail where he is talking with Mr. 20 Polite about the project and what they had 21 an agreement on, I do think that's subject 22 matter waiver. And that's going to be our 23 position. 24 MR. ADAMS: Okay. I wish you would 25 have given me that heads up. I could have
Page 187 1 Q. And you filed a -- when you filed that 2 lawsuit, you also filled a lis pendens, didn't 3 you? 4 A. Our general counsel did, not me. 5 Q. Well, Eastwood did; did it not? 6 A. Eastwood did. 7 Q. And did you -- what was the purpose in 8 filing that lis pendens? 9 A. It would be to, as I said, collect a 10 debt on properties that we expensed money 11 towards. 12 Q. So is it fair to say you thought filing 13 the lis pendens would give Eastwood some 14 additional leverage to collect that debt? 15 MR. ADAMS: Objection to form. 16 A. Not my purview. 17 Q. I'm just asking you did you ever talk 18 with Mr. Nason about how maybe if you filed the 19 lis pendens, that would give you some leverage to 20 collect the debt? 21 MR. ADAMS: Well, I'm going to instruct 22 Mr. Polite not to answer that question on 23 the grounds that it would invade the 24 attorney/client privilege and ask you to 25 retract the question, Stephen, so I don't	Page 189 1 saved you some trouble. But anyway. 2 Q. Okay. So why is it then -- your 3 lawyer's instructed you not to answer questions 4 with respect to Mr. Nason. And I with respect. 5 I'm asking you from your perspective in the 6 Eastwood -- 7 MR. ADAMS: Stephen, let's be clear. I 8 instructed him not to answer on that 9 question. Because you asked a specific 10 legal question about legal strategy as it 11 related to what ended up potentially being 12 this litigation. There are other questions 13 that you may ask that would not be 14 privileged. And I would not instruct him 15 not to answer. If you want to ask him 16 those questions, we'll see how we go. 17 MR. COX: Fair. No, okay. I 18 understand. I wasn't going to do what you 19 thought I was going to do. But I respect 20 that's your position, Jimmy. 21 Q. Let me ask you this question, did you 22 have a conversation with the Stewarts, Mr. 23 Stewart or his son, about filing a lis pendens on 24 this property to get leverage against GreenHawk? 25 MR. ADAMS: And, Mr. Polite, I instruct

Page 190 1 you not to answer that question if you had 2 such conversation and Mr. Nason was part of 3 it. Otherwise, you can answer the 4 question. 5 A. I did not have a conversation with the 6 Stewarts without Mr. Nason involved if it 7 discussed the lis pendens. 8 Q. Did you have any conversation with 9 anybody at Eastwood without Mr. Nason present in 10 which you discussed ways that you could exercise 11 leverage against GreenHawk to get them to pay 12 these development fees? 13 A. No. 14 Q. As you've testified earlier, you found 15 out about the TRI Pointe contract in February of 16 2020; isn't that right? 17 A. That I found out someone which became 18 TRI Pointe was under contract on the property. 19 Q. Okay. I'm sorry, my question may not 20 have been clear. I thought I asked you back 21 during that e-mail, you recall the 20 -- the 22 February 2020 e-mail where you said we've learned 23 there's a buyer; you remember that, right? 24 A. Oh, yes, I remember. 25 Q. And I asked you who that buyer was and	Page 192 1 property from GreenHawk back in February, why did 2 Eastwood wait until late June or early July, 3 whenever it was, to file the lis pendens on the 4 property? 5 MR. ADAMS: Same instruction. 6 A. Same instruction, I can speak to what I 7 did as the February 6th e-mail discussed trying 8 to recover the money spent on the project as well 9 as the June 8th trying to recover money spent on 10 the project. Both had no impact on the 11 situation. 12 Q. What was your involvement, if any, in 13 preparing and filing the lis pendens on the 14 property? 15 A. None. 16 Q. Did you even know it was filed before 17 it was filed? 18 A. Not prior to. 19 Q. Let me ask you some questions, which I 20 don't believe will call upon you to tell me what 21 Mr. Nason has told you. You said earlier Mr. 22 Nason is the general counsel of the company; is 23 that correct? 24 A. That is correct. 25 MR. ADAMS: Stephen, before you --
Page 191 1 you said TRI Pointe. When did you find out it 2 was TRI Pointe? 3 A. I believe at the time I wrote that 4 e-mail -- 5 Q. In February -- 6 A. -- as I stated. 7 Q. In February of 2020? 8 A. Correct. 9 Q. So if you knew that there was another 10 buyer for the property back in February of 2020, 11 why did Eastwood wait until July to file a lis 12 pendens or June, whenever it was? 13 MR. ADAMS: So, Mr. Polite, again, to 14 the extent that the answer to that question 15 would require you to disclose 16 communications with Mr. Nason, I instruct 17 you not to answer. If you can answer the 18 question without disclosing attorney/client 19 communications, you can answer the 20 question. 21 A. Would you like to repeat the question, 22 Mr. Cox? 23 Q. Yes. Subject to your counsel's 24 instruction, if you found out that TRI Pointe was 25 going to sell this property -- or buy this	Page 193 1 sounds like you're moving somewhere 2 different. Can we take a break? 3 MR. COX: Of course. 4 MR. ADAMS: We've been going an hour 5 and a half. 6 MR. COX: Sure, sure, sure. What do 7 you want 10, 15 minutes? Whatever you 8 want. 9 MR. ADAMS: I mean, 10s more than 10 enough. 11 Q. Mr. Polite, how much you want? Our 12 court reporter, you all are the most important. 13 How much time do you all need? 14 A. Let's -- let's do 10, be back at a 15 quarter of. 16 Q. Sounds good. 17 A. Thank you. 18 (A BRIEF RECESS WAS TAKEN.) 19 MR. COX: So we're back on the record, 20 I think. Court reporter's ready. 21 BY MR. COX: 22 Q. Can you all see the screen here? 23 A. Yes. 24 Q. Okay. Just one last question on the 25 impact fees as an e-mail reflects. This is an

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Page 194 1 e-mail, I'll ask him to show you, from you to 2 Craig Briner, August 8, 2018. 3 Do you see that? 4 A. Yes, sir. 5 Q. And it discusses the impact fees. 6 MR. ADAMS: What number is this, 7 Stephen? 8 MR. COX: Exhibit 26, ECP 10299. 9 10299. We skipped 25. 10 MR. ADAMS: That's fine. I just want 11 to make sure the record's clear what 12 exhibit we're looking at. 13 Q. And this -- this is discussing the 14 impact fees. And near the bottom you say what 15 you told me earlier, Mr. Polite, the fees are 16 triggered by the building permit. You say, I'm 17 still trying to get better feedback from Mike 18 Conley as to what the townhomes could sell for. 19 Is the townhomes the Brooks Springs 20 section? 21 A. Yes. 22 Q. You say the 1,220 additional cost 23 making this deal very tight. 24 First of all, is the 1,220 the impact 25 fee?	Page 195 1 A. Yes. Per townhome or multifamily, that 2 is the number. 3 Q. So when we talk about the cost that it 4 takes to build a townhome, the impact fee is 5 going to put 1,220 into the all-in cost of the 6 townhome, \$12,020? 7 A. Yes. 8 Q. And you're saying that's making the 9 deal very tight, very tight for Eastwood, 10 correct? 11 A. I would be writing from that 12 perspective, yes, sir. 13 Q. And you're -- you're telling Mr. Briner 14 we need all the help we can get, right? 15 A. Yes. 16 Q. Okay. Let's go on. I'm going to skip 17 Exhibit 27 and I'm going shift gears here a 18 second. Did -- did the time when come when you 19 ever attempted to connect GreenHawk with a 20 different buyer for the Brooks Creek property 21 other than Eastwood Construction? 22 A. We've -- there was -- there was 23 discussions with another -- with other builders. 24 And I was actually looking for their input on how 25 they were approaching impact fees. And yes,	Page 196 1 there was some overtures to other builders to say 2 what do you see in this? If you need any 3 information, please, you know, discuss with 4 Craig. 5 Q. Was one of those builders Pulte Homes? 6 A. There was -- yeah, there was a sharing 7 of information with Pulte Homes, yes. 8 Q. Did you have a meeting with a couple of 9 Pulte folks at Amelie's to discuss Brooks Creek 10 project? 11 A. Not -- that was not the reason for the 12 meeting. But we did discuss it. 13 Q. Let's look at an e-mail here, 14 Exhibit 28. Again, we skipped 27. It's document 15 ECP 9076. And it's an e-mail from Margaret 16 Puckett there at the bottom to you, I believe, 17 right? 18 A. Yes. 19 Q. Dated Thursday, November 15th, 2018, 20 right? 21 A. Yes. 22 Q. Now, you remember, Mr. Polite, before 23 the break we looked at what was -- what you 24 called the first draft of the Brooks Creek 25 contract that came from GreenHawk -- from Craig	Page 197 1 Briner to you on October 31st, 2018. 2 You remember that? 3 A. Yes. 4 Q. So this is an e-mail from Margaret just 5 a couple of weeks later; isn't that right? 6 A. The dates are, yes. There was a 7 subsequent meeting, though, that is not in this 8 sequence. 9 Q. Okay. And we'll get to that. 10 But this refers to a breakfast you had 11 had with Margaret. Was it just the two of you or 12 was there another Pulte person there? 13 A. This -- on November 15th it was just 14 Margaret and myself. 15 Q. And what was the purpose of that 16 meeting? 17 A. I actually started the process of 18 enticing her to consider leaving Pulte and coming 19 to Eastwood. 20 Q. And she ultimately did that for a time, 21 right? 22 A. She did. 23 Q. And then she left Eastwood and went to 24 TRI Pointe? 25 A. She did.

Page 198 1 Q. And we'll talk about that in a moment. 2 But -- so do I understand your answer to mean 3 that this breakfast meeting was mainly so you 4 could try to recruit her to Eastwood? 5 A. That's correct. 6 Q. But at the time she's still working for 7 Pulte, right? 8 A. Yes, sir. 9 Q. Okay. Let's look at her signature 10 block. I think she's a land acquisition person 11 at Pulte. Were you recruiting her to come work 12 directly for you? 13 A. She would have worked for the Charlotte 14 division. And I am not the ultimate decision 15 maker for who that person would be for hire. 16 That person would be just hired and final 17 decision by Mike Conley, the division president. 18 Q. Okay. Got it. 19 But you were hoping to spark her 20 interest and then maybe pass her along to Mike 21 Conley to see if he would be willing to hire her; 22 is that accurate? 23 A. Yes. We had an active search for a 24 land acquisition manager during this time frame. 25 Q. She says, I'm glad I got to see you	Page 200 1 that meeting? 2 A. We talked about a lot of different 3 projects and some that were, you know, 4 problematic or, you know, they had a bunch that 5 they looked at, we shared a lot of information 6 from their projects and I shared some information 7 on our projects. 8 Q. Well, in this particular e-mail, which 9 is about a week or so later, I guess, she 10 specifically mentions Brooks Springs, Brooks 11 Creek, doesn't she? 12 A. She does. 13 Q. She says, Can you pass along a site 14 plan? I will dig in and see if I can make it 15 work from a product and pricing standpoint first. 16 Do you see that? 17 A. I do see that, yes. 18 Q. Is that something you all had 19 discussed, whether Pulte could make it work? 20 MR. ADAMS: Objection, form. 21 A. She took it upon herself to see if 22 their numbers worked in that Fort Mill with the 23 impact fees. 24 Q. I mean, Pulte is a homebuilder too, 25 right?
Page 199 1 again. 2 So you all knew each other at the time 3 of this meeting? 4 A. I met her for the first time at the 5 previous meeting with the other Pulte employee. 6 Q. Got it. 7 And what was -- and who was that? 8 A. Fred Matrulli. 9 Q. And was he an executive with Pulte? 10 A. He would have been. Yeah, he would 11 have been like director of their land 12 acquisitions. And even at this time, my 13 understanding is Margaret was a land analyst. 14 Q. And what was the purpose of the meeting 15 that you had previously with Mr. Matrulli and Ms. 16 Puckett? 17 A. Actually, I wanted a meeting with Fred 18 only and he brought Margaret with him, Ms. 19 Puckett with him on -- I forget the date that's 20 on here. I think it was November 8th. And Fred 21 and I were just -- have known each other in the 22 business for quite a long time. And I was just 23 trying to catch up with him. He brought Margaret 24 as well on that first meeting. 25 Q. Did you all talk about Brooks Creek at	Page 201 1 A. Yes. 2 Q. So what she's talking about doing here 3 is doing some analysis to see whether Pulte could 4 acquire these lots and build townhomes on them 5 profitably instead of Eastwood; isn't that right? 6 MR. ADAMS: Objection, form. 7 A. No, I think that's a bit of a stretch. 8 Q. Well, isn't what she's talking about 9 doing, conducting an analysis to see if Pulte, 10 not Eastwood, can build these townhomes? 11 MR. ADAMS: Objection to form. 12 A. She was just going to look into seeing 13 how her economics worked on underwriting the 14 project. 15 Q. Was that something you were encouraging 16 her to do? 17 A. I asked her if she had looked into it. 18 Q. Well, you know, in your lawsuit that 19 Eastwood claims that it had the right to build 20 these townhomes. Why were you talking to Pulte 21 about doing it? 22 MR. ADAMS: Objection to form. 23 A. It wasn't really -- it was not 24 discussing them doing it. It was -- it was 25 really comparing notes on how they looked at a

Page 202 1 project and how we looked at a project. 2 Q. Right. 3 I'm trying to get to the bottom of the 4 same thing, Mr. Polite. If Eastwood thinks that 5 it's going to build these townhomes, that was 6 your position back in October or so of 2018, 7 correct? 8 A. Yes. 9 Q. Then why is it talking to Pulte about 10 whether Pulte can make it work? 11 A. It was my -- it was my curiosity of how 12 they looked at developing and building a project 13 versus how Eastwood looks at building and 14 developing a project. 15 Q. And so what were you ultimately looking 16 for her to do? 17 A. Share information of how -- share 18 information on how their -- what their approach 19 is versus Eastwood's approach. 20 Q. How, for example, they might make it 21 profitable to build the townhomes? 22 A. How might, like you and I discussed, 23 look at the cost of the impact fee and their 24 build costs, trying to learn what it is that they 25 build a unit for versus what we build a unit for.	Page 204 1 A. Yes, sir. 2 Q. And you were hoping that one of your 3 competitors would share its cost information with 4 you? 5 A. Yes, sir. 6 Q. Okay. But you were not going to share 7 your cost information with them; is that what 8 you're telling me? 9 A. That would not be my intent. 10 Q. What possible incentive would Pulte 11 have had in participating in a one-way sharing of 12 cost information with Eastwood? 13 A. I think. 14 MR. ADAMS: Objection to form. 15 A. Would you like to repeat the question, 16 please. 17 Q. What possible incentive could Pulte 18 have had in sharing its cost information with 19 Eastwood when Eastwood was not planning to do the 20 same thing to Pulte? 21 MR. ADAMS: Objection, form. 22 A. It would have been Margaret's decision 23 had -- to share that information, not Pulte as a 24 corporation. 25 Q. Were you asking Margaret to share
Page 203 1 Q. You wanted her to share that with you? 2 A. Of course. 3 Q. So you don't -- you did not consider -- 4 were you going to share Eastwood's cost 5 information to build a unit with Pulte? 6 A. If it came up in discussion, we could 7 compare the two, yes. 8 Q. So you all don't consider that 9 confidential information? 10 A. Not -- we do. Yes. I don't openly 11 share that. That's correct. 12 Q. Well, you just mentioned you would 13 think about sharing it with Pulte? 14 A. No, I would have compared what she was 15 able to put together to what we had. I didn't 16 say I was going to share it with Pulte. 17 Q. I think the record will speak for 18 itself. But I think a moment ago you suggested 19 that Eastwood was prepared to share its cost 20 information with Pulte. Is that not your 21 position? 22 A. That's not my position. 23 Q. Are we talking about a situation -- 24 Pulte is a competitor of Eastwood in the 25 homebuilding business; is it not?	Page 205 1 Pulte's information with you -- 2 A. Yes. 3 Q. -- without necessarily -- without 4 telling Pulte? 5 A. That's -- I was asking for information 6 on how they would build it. And that would have 7 been shared with me, yes. 8 Q. Well, I've heard a couple of different 9 things. You may not have intended to tell me a 10 couple of different things. Were you making this 11 request of Pulte as a company or were you just 12 asking Margaret Puckett to give you information 13 she had from Pulte? Which was it? 14 A. The latter. 15 Q. Okay. Do you know whether at the time 16 Margaret was under any sort of noncompetition 17 agreement or non-confidentiality agreement that 18 prevented her personally from disclosing that 19 information? 20 A. I had no knowledge of that. 21 Q. Did you care? 22 A. Not necessarily. 23 Q. Is this something you've done before, 24 Mr. Polite, ask an employee of a competitor to 25 share cost information of that competitor with

Page 206 1 you? 2 A. I believe I have before, yes. 3 Q. Okay. All right. What if Pulte had 4 looked at it and decided it was interested in 5 building townhomes at Brooks Creek, is that 6 something Eastwood would have pursued or 7 encouraged? 8 A. Not my intent. That's not -- I would 9 not have suggested that. 10 Q. So is this a situation where you're 11 hoping if some other homebuilder builds these 12 townhomes maybe Eastwood can get its costs back 13 from that homebuilder? 14 A. I'm not sure. I'm not sure what you 15 mean by that. What -- the costs that we were 16 requested in 2020? 17 Q. Yeah. 18 I mean, you've testified you all had 19 predevelopment costs of about 312 grand in this 20 -- in these projects, correct? 21 A. Yes, sir. 22 Q. And as we saw from your 2020 e-mails, 23 Eastwood really wanted to get that money back, 24 right? 25 A. In 2020, yes, sir.	Page 208 1 A. I do. If you could go to the title 2 block, please, to the top. Land design Brooks 3 Springs construction documents Eastwood Homes, 4 yes, sir. 5 Q. I'm trying to flip it so you don't have 6 to read upside down. 7 A. That's all right. I was able to. But 8 that was done for Eastwood Homes. And, again, 9 this -- I could probably detail it out that this 10 was one of our paid expenses. 11 Q. So this is a -- this is a Brooks 12 Springs site plan that -- this is a Brooks 13 Springs site plan that Eastwood Homes or Eastwood 14 Construction Partners, whatever the name was at 15 the time, commissioned in some fashion from land 16 design? 17 A. That is my understanding, yes. 18 MR. ADAMS: Stephen, what's the Bates 19 number on this since it doesn't appear on 20 the document? 21 MR. COX: I think it's -- I think it's 22 TRI 1298. 23 MR. BRADLEY: Okay. I'm leaving. I'm 24 leaving, okay? All right. Thanks. 25 MR. ADAMS: Ward, we -- we just heard
Page 207 1 Q. Well, you've always wanted to get it 2 back, haven't you? 3 A. Well, we wanted it applied to our 4 earnest money deposit at the time of contract. 5 That was -- 6 Q. I gotcha. 7 A. -- that would have been the ultimate 8 goal, yes. 9 Q. Was there ever a situation where you 10 were talking to Pulte or another homebuilder 11 hoping that they would pick up the Brooks Creek 12 project and you could somehow get your costs paid 13 back from them? 14 A. No, I was not. 15 Q. Okay. All right. Had -- did you 16 ultimately send Margaret the site plan that she 17 had requested? 18 A. I don't recall if I did or as you can 19 see, Patrick Quinn is on -- is our land 20 development manager, if he had a copy. I'm not 21 sure if she got a copy at all. And if I did, I 22 don't remember it. 23 MR. COX: Let's look at Exhibit 29. 24 Q. This is a land design site plan for 25 Brooks Springs. Do you see that?	Page 209 1 your conversation. 2 MR. COX: Yeah, he's had it. I don't 3 blame him. 4 MR. BRADLEY: I'm sorry. I've just got 5 to go pick up my son. But I'm listening to 6 you. I'm sorry. 7 MR. ADAMS: Stephen, what was the 8 number again, TRI Pointe what? 9 MR. COX: We marked it as a TRI 1298. 10 But this is actually a document we got from 11 Pulte by subpoena. So that was what I was 12 about to tell him, Mr. Polite. This was -- 13 MR. ADAMS: I'm sorry. 14 MR. COX: So we have it -- we -- let me 15 speak real quick. We have this document, 16 we produced it under our Bates number TRI 17 1298. But it's actually a document we got 18 from Pulte. And I think, Jimmy, when we 19 got it, we sent it to you all. 20 MR. ADAMS: Yeah, I'm sure you did. I 21 just -- it didn't have a number on it. So 22 I was just looking for identification of 23 the actual exhibit. 24 MR. COX: Right. 25 Q. So Mr. Polite, the reason I say that is

Page 210 1 we got this from Pulte. We subpoenaed it from 2 them. So they ended up with a copy of the Brooks 3 Springs site plan that Eastwood developed. Or 4 had a land design. 5 A. Yes, sir. 6 Q. So does that refresh your recollection 7 that you did send Pulte a copy of this site plan? 8 A. As I said -- 9 MR. ADAMS: Objection to form. 10 THE DEPONENT: Sorry. 11 A. As I said, I wasn't sure if I sent it. 12 But I also gave Margaret all of the contact 13 information with GreenHawk as well while she was 14 at Pulte. So I'm not sure who -- I'm not sure 15 who sent it to her or to Pulte at that point is 16 my -- was my statement. 17 Q. Right. 18 And, again, why are you -- you told me 19 a little bit earlier about what you were asking 20 Margaret to do. Why did you go so far as to give 21 her Craig Briner's contact information? 22 A. To get the right information to make 23 the analysis. 24 Q. Were you not at all concerned that 25 maybe Pulte would try to cut in and take the deal	Page 212 1 told you they could do it for cheaper, that would 2 tell you maybe Eastwood was doing something 3 wrong? 4 A. Not necessarily wrong. It would just 5 know where I have some pinch points. 6 Q. Okay. Did Margaret or anyone else at 7 Pulte ever get back to you with any information 8 or suggestions? 9 A. Not to my knowledge. 10 Q. If -- and I may have asked a version of 11 this question. If I have, I apologize. If -- if 12 Margaret had come back to you and said, look, we 13 can do this and we'd like to do it. We'll make 14 sure you get paid your \$312,000 in costs back. 15 Would that have been something you would have 16 accepted? 17 MR. ADAMS: Objection to form. 18 A. No. 19 Q. Okay. So this was around the 20 November 18th time frame. When did Margaret 21 actually come to work at Eastwood? 22 A. I have to check my records. It was 23 before Christmas of -- I believe it was '18. 24 Q. And how long was she there? 25 A. I believe she left spring of '19. And
Page 211 1 for itself? 2 A. No, I wasn't. 3 Q. Why not? 4 A. Because we had a firm standing that it 5 was our project. 6 Q. Okay. 7 A. In my opinion. 8 Q. So I know I've asked this -- I've tried 9 to vary the question at least some. And I'm 10 still sort of confused as to why you would want a 11 competitor's employee to help you develop a cost 12 analysis for Eastwood's project? 13 A. For a -- 14 MR. ADAMS: Objection to form. 15 I don't think there's a question. 16 Q. Yeah, well let me -- there's a why in 17 there. So let me put the interrogatory in the 18 front. 19 Why were you asking a competitor's 20 employee to help you develop a costing analysis 21 for an Eastwood project? 22 A. As I mentioned before, I was looking 23 for a comparison between how we approach the deal 24 and how a competitor would approach the deal. 25 Q. Okay. So that if she came back and	Page 213 1 I wish I had those dates in front of me. If you 2 have them, I appreciate you reminding me. 3 Q. And what was her job at Eastwood? 4 Did she work for the Charlotte 5 division? 6 A. Yes, sir, she worked for the Charlotte 7 division as a land acquisition manager. 8 Q. Was she right under Mr. Conley or she 9 had somebody else supervising her? 10 A. She would have been with Mike -- 11 reports directly to Mike Conley. 12 Q. Gotcha. 13 Do you recall what projects she was on? 14 A. She was on a number of projects. 15 Q. Okay. Was she involved at all in the 16 continuing negotiations with Brooks Creek or 17 River Falls? 18 A. I'm not too sure about the extent. But 19 she would have known about these projects. 20 Obviously even prior to leaving Pulte she knew 21 about them. 22 Q. Right. 23 The Brooks Creek property in particular 24 she knew about before leaving Pulte, right? 25 A. Yes, sir.

Page 214 1 Q. Because you had told her about it? 2 A. That's -- that's correct. 3 Q. All right. Did you tell her to keep it 4 a secret? 5 A. No. 6 Q. Okay. Do you know if Ms. Puckett 7 worked with GreenHawk on any projects? 8 A. If she -- 9 Q. While she -- excuse me. Excuse me. 10 While she was -- while she was at Eastwood, do 11 you know if Ms. Puckett worked with GreenHawk or 12 any of its affiliates on any projects? 13 A. The only one it would have been would 14 be Brooks Springs Creek or River Falls would be 15 the only two she would have with GreenHawk. 16 Q. But you don't have any knowledge one 17 way or the other whether she actually worked on 18 those two? 19 A. Yeah, I -- I don't recall any 20 specifics. 21 Q. Physically where are you all? 22 Is your office and Mr. Conley's office 23 and Ms. Puckett's office, were they in the same 24 building at the time? 25 A. Actually not, no. Our -- our structure	Page 216 1 acquisition managers, not the division 2 presidents. 3 Q. Gotcha. 4 Do you know why Ms. Puckett left? 5 A. She did not -- in my understanding, it 6 was not a good fit for her and she had another 7 offer. 8 Q. To your understanding, what made it not 9 a good fit? 10 A. You'd have to ask Margaret more 11 specifically. I did not do any post interviews. 12 Q. Okay. She went to hire at TRI Pointe. 13 It's not unusual, is it, for folks to leave one 14 homebuilding company and go to another, that 15 happens all the time, doesn't it? 16 A. Yes. 17 Q. And you don't contend, do you, that 18 there's anything wrong just by virtue of the fact 19 that Margaret left Eastwood and went to TRI 20 Pointe, that in of itself is nothing wrong with 21 that, correct? 22 A. No. 23 MR. ADAMS: Objection to form. 24 Q. As I understand what Eastwood has put 25 in its complaint, Eastwood's complaint is that it
Page 215 1 is we're not one big happy corporate mass. We 2 have a Charlotte division building where Mike 3 Conley sits, we have the Charlotte -- you know, 4 across the parking lot, the Charlotte corporate 5 division where myself, I sit next to Mr. Stewart, 6 Clark, and then our CFO and COO. And then, 7 actually, our land people and operations, the 8 land development managers, such as Pat Quinn, 9 that we've referred to earlier, and Ms. Puckett's 10 office would be at our design center which is off 11 site on Clanton Road and 77. 12 Q. So you and Ms. Puckett were never in 13 the same physical office working together while 14 she was there? 15 A. Not in the same office, no. Where we 16 would set up our desks, no. 17 Q. Did you have any interactions with her 18 or was she pretty much working for Mr. Conley? 19 A. The way it works, as I've mentioned 20 this morning, they report directly to the 21 division president. And when I say they, I mean 22 acquisition managers within the division. 23 However, we interact on a staff meeting Monday 24 call to go over projects by division to -- and 25 they let me know what they're doing. The	Page 217 1 believes that TRI Pointe, my client, obtained 2 confidential information from Ms. Puckett to 3 compete unfairly with Eastwood; is that 4 Eastwood's position? 5 A. I think she did take knowledge away 6 from the Eastwood company and then brought it 7 with her to TRI Pointe, yes. 8 Q. Okay. What knowledge is that? 9 A. Every deal we were working on in 10 Charlotte. 11 Q. Every deal in your pipeline? 12 A. Yes, sir. 13 Q. All right. Just in the Charlotte 14 division? 15 A. That would be yes. 16 Q. And those are the deals we looked at on 17 one of those -- what we'd call it, land supply? 18 A. Land status, I believe, sheets. 19 Q. Land status report? 20 A. Um-hum. 21 Q. You're alleging she took the 22 information on the land status report and took it 23 over to TRI Pointe? 24 A. I believe she -- 25 MR. ADAMS: Objection to form.

Page 218 1 THE DEPONENT: Thank you. 2 MR. ADAMS: Let's be -- this is Mr. 3 Polite's deposition, not Eastwood's. 4 But... 5 MR. COX: Well, he just alleged it 6 himself. He said he thinks it. I'm not 7 asking what's alleged by Eastwood in the 8 Complaint. I'm asking what Mr. Polite 9 himself is alleging. 10 Q. And Mr. Polite, you just said a moment 11 ago you believe she took information from your 12 deals. Didn't you say that? 13 A. I believe she did. She had knowledge 14 of our deals and they went with her to TRI 15 Pointe. 16 Q. All right. Well, let's break that down 17 for a second. It's one thing to know about them. 18 It's another thing to take them. You would agree 19 with that, correct? 20 A. I'm not sure the difference. 21 Q. It's one thing to know about the deals. 22 It's another thing to divulge those deals to 23 another company. You understand that, don't you? 24 MR. ADAMS: Objection, form. 25 A. I understand how information passes	Page 220 1 was an Eastwood deal. 2 Q. Right. 3 But you've already admitted you told 4 Margaret about this Brooks Creek deal when she 5 was still at Pulte. So it was no secret, right? 6 A. That's correct. 7 Q. Other than this one, is there any other 8 Eastwood deal that you believe Margaret acted on 9 improperly as a TRI Pointe employee? 10 A. Not to my knowledge. 11 Q. So it's only Brooks Creek? 12 A. To my knowledge, correct. 13 Q. Okay. Who else would know at Eastwood 14 whether there were other deals Ms. Puckett acted 15 on inappropriately? 16 A. Mike Conley. 17 Q. Okay. Because he's the Charlotte 18 division president, right? 19 A. That's correct. 20 Q. Has Mike Conley said anything to you 21 about Ms. Puckett acting improperly on these 22 other deals? 23 A. Hold on a second. 24 THE DEPONENT: Are you okay? 25 MR. ADAMS: Stephen, hold on a second.
Page 219 1 through -- through -- from one company to 2 another. 3 Q. What's your basis for believing that 4 she took information -- information concerning 5 your Charlotte deal pipeline to TRI Pointe? 6 A. There were -- well, she definitely had 7 and acted on properties that we had either under 8 control or under consideration. 9 Q. Let me make sure I understand what you 10 said. She -- she acted on them while a TRI 11 Pointe employee or while an Eastwood employee? 12 A. As a TRI Pointe employee after she left 13 Eastwood. 14 Q. So you're saying she -- she had 15 information concerning Eastwood deals and you 16 think she acted on that information while a TRI 17 Pointe employee -- 18 A. Yes. 19 Q. -- correct? 20 A. That is my -- that is my opinion, yes. 21 Q. As we sit here today, has Eastwood lost 22 any of those deals that you contend Margaret 23 acted on as a TRI Pointe employee? 24 A. I believe we're having a dispute right 25 now that TRI Pointe's actively working on that	Page 221 1 THE DEPONENT: Hold on, Stephen, 2 please. 3 MR. COX: Sure. 4 (A DISCUSSION WAS HELD OFF THE RECORD.) 5 MR. ADAMS: I'm sorry, Stephen. I got 6 strangled. Could you repeat the question? 7 BY MR. COX: 8 Q. Okay. Has Mr. Conley said anything to 9 you concerning Ms. Puckett's acting on any of 10 Eastwood's deals after she went to TRI Pointe? 11 A. Yes. 12 Q. Which one? 13 A. Brooks Springs and also Wrenn Creek. 14 Q. What did he say to you about Brooks 15 Springs? 16 A. That's when I found out that TRI Pointe 17 had it under contract in that February 2020 time 18 frame. 19 Q. But what did he say -- what did Mr. 20 Conley say to you that Ms. Puckett had done? 21 A. That he said that TRI Pointe had to put 22 it under contract. 23 Q. Okay. And so you assumed -- I don't 24 want to put words in your mouth, but let me see 25 if this is accurate. You assumed that because

Page 222 1 Ms. Puckett had gone to TRI Pointe, she must have 2 gotten that information -- or TRI Pointe must 3 have gotten the information about Brooks Springs 4 from her? 5 MR. ADAMS: Objection, form. 6 A. I made -- I drew my own conclusions. 7 Q. So that -- so you did assume that; 8 isn't that right? 9 MR. ADAMS: Objection to form. 10 A. Not an assumption. I drew my own 11 conclusions. 12 Q. Well, let me be clear about the 13 terminology. What facts do you have to show that 14 Margaret Puckett divulged the Brooks Creek 15 opportunity to TRI Pointe? 16 MR. ADAMS: Objection to form. 17 MR. COX: What's wrong with the form, 18 Jimmy? 19 I'm sorry, you made an objection as to 20 form. And I'm just asking if it's 21 objection to form, then presumably I can 22 cure the objection. What's wrong with the 23 form that I need to cure it? 24 MR. ADAMS: Stephen, I heard it and 25 objected and I frank -- I don't believe I	Page 224 1 A. Or Craig Briner, who I gave that 2 information to. 3 Q. But you told her about the Brooks Creek 4 opportunity when she still worked at Pulte, 5 didn't you? 6 A. Yes. 7 MR. ADAMS: Objection to form. 8 Q. So, again, you said you drew your 9 conclusions. What conclusions did you draw or 10 what information did you rely on to draw the 11 conclusion that Margaret actually divulged the 12 Brooks Creek opportunity to TRI Pointe? 13 A. My conclusion was the simple fact that 14 they ended up under contract with it, TRI Pointe 15 being they, after her departure -- not soon after 16 her departure with Eastwood. 17 Q. That's it, right? 18 A. That's what I -- yes, sir. 19 Q. Okay. You don't have any information 20 to show that she actually told TRI Pointe here's 21 a Brooks Creek deal you should go after, do you? 22 A. I was not in the room at the time. 23 Q. Okay. These land status reports that 24 we talked about and looked at earlier, does 25 Eastwood consider those to be some sort of trade
Page 223 1 can articulate what the issue. If the 2 court reporter wants -- can read the back 3 the question, I can be precise. 4 Q. My question was what basis do you have 5 for believing that Margaret Puckett disclosed the 6 Brooks Creek opportunity to TRI Pointe? 7 MR. ADAMS: And that's a different 8 question. I don't have an objection to 9 that one. 10 A. And I -- 11 Q. Answer that. Go ahead. 12 A. My answer would be the same, I drew my 13 own conclusion. 14 Q. From what? 15 A. A little bit of the obvious, that she 16 would have known about that deal with us at 17 Eastwood and took it to have TRI Pointe pursue 18 it. 19 Q. Well, she knew about the deal when she 20 was at Pulte because you sent her the plat; isn't 21 that correct? 22 A. I never said I sent her the plat. We 23 did not determine who sent her the plat. 24 Q. Well, someone at Eastwood did, didn't 25 they?	Page 225 1 secret? 2 MR. ADAMS: Objection to form. Again, 3 it calls for a legal conclusion. 4 MR. COX: Again, that's not an 5 objection as to form. But you can make 6 it, I suppose. 7 MR. ADAMS: Well, you're using the word 8 trade secret. So I'm objecting to the use 9 of the term trade secret. That is a form 10 objection. 11 MR. COX: Well, look, I'll say this 12 once, and I'm not going to belabor the 13 point. We're real strict in South Carolina 14 about not making objections that suggest an 15 answer to a witness. And if you're making 16 an objection that the substantive objection 17 like that one is preserved until the time 18 of trial, it's not proper to make it during 19 the deposition. But I'm not going to 20 belabor the point. I'm just going to tell 21 you that's how we do it in South Carolina. 22 MR. ADAMS: Stephen, I believe my -- I 23 made a form objection and you said what's 24 the -- what's the form? I was explaining 25 my objection in response to your question.

Page 226 1 MR. COX: Okay. 2 Q. My question was what's the basis for 3 the objection. But I think we've covered it. 4 MR. ADAMS: Can you take the shared 5 screen down. 6 MR. COX: Oh, sure. 7 Q. Does Eastwood consider these land 8 status records reports to be confidential 9 information or proprietary information? 10 A. Yes, these are internal documents. 11 Q. Do you all print them out and hand them 12 out around the office? 13 A. To Eastwood employees, yes. 14 Q. Do you password protect your computers? 15 A. Yes. 16 Q. Do you have any sort of training 17 manuals or policies that tell employees that 18 these are confidential trade secrets? 19 A. We have a handbook, a policy handbook, 20 yes. 21 Q. Does it talk about confidential 22 information? 23 A. I cannot tell you specifically how 24 that's handled in the -- in the handbook. 25 Q. Other than Margaret Puckett, did you	Page 228 1 Q. Okay. I think that may be just about 2 it. Give me 5 minutes, if you can, and I'll -- 3 let me just make sure of that and then we'll pass 4 it on, if that's okay. 5 A. Whatever you need. 6 MR. ADAMS: We're taking a break. 7 A. Take 5? 8 MR. ADAMS: 3:30? 9 MR. COX: Yeah, yeah, take 5. That 10 will be great. 11 A. Thank you. 12 [A BRIEF RECESS WAS TAKEN.] 13 BY MR. COX: 14 Q. But one last document is GH, it's a 15 GreenHawk document, 1540, and it's Exhibit 30. 16 And I'm going to start down here. It looks like 17 an exchange you're having with Mr. Briner. And 18 you're talking about something else first. Look 19 at this e-mail from him to you dated 20 December 19th, 2018. Actually, go down one more, 21 Tim, so he can -- Joe could see his own e-mail. 22 You say, I'm surprised Terramoor went 23 to D.R. Horton. I just had a new acquisition 24 manager Mount Holly Road property. 25 Does this reorient you, Mr. Polite, to
Page 227 1 share the Brooks Creek deal information 2 concerning the Brooks Creek deal with any other 3 homebuilder employee? 4 MR. ADAMS: Objection, form. 5 A. I don't recall, Stephen. 6 Q. I don't know whether you said this or 7 not. Did you share it with Fred Matrulli. Did 8 you tell Fred about it? 9 A. Oh. With Fred, yeah, at the first 10 breakfast we were discussing Fort Mill and the 11 impact fees, et cetera. And it was brought up, 12 yes, sir. 13 Q. So just to be clear, that first 14 breakfast where Fred and Margaret were both 15 there, you said Eastwood's got this deal to build 16 some townhomes at Brooks Creek and River Falls, 17 something like that? 18 A. As well as other developments. It 19 wasn't the only conversation. 20 Q. But do you recall discussing Brooks 21 Creek or River Falls with any other homebuilder 22 other than the Polite people? 23 A. That is -- my answer to that is I don't 24 recall having any other discussions with other 25 builders.	Page 229 1 this conversation? 2 MR. ADAMS: Hold on, Stephen. Can you 3 go to the bottom bottom? 4 MR. COX: Sure. 5 A. Um-hum. I've just read what he wrote 6 to me first here. I guess that's first. Is that 7 -- are we looking at the -- the initial e-mail, 8 land -- 9 Q. Yeah -- yes, sir, December 18th -- 10 THE STENOGRAPHER: I'm sorry, you 11 interrupted each other again. 12 Q. Yeah, I'm going to talk now, okay? 13 Tuesday, December 18th, 2018 at 8:57 a.m. 14 Do you see that? 15 A. Yes, I do. 16 Q. And just to orient us in time you 17 remember, Halloween, October 31st, 2018 is when 18 GreenHawk sent that first draft Brooks Creek 19 contract that you flipped to Mike. 20 Do you remember that? 21 A. That's correct. Yes. 22 Q. So this is about six weeks or so later. 23 And you all are opening a conversation about 24 Mount Holly Road. 25 Do you see that?

Page 230 1 A. Yes. 2 Q. And then we go up a few e-mails. I 3 want to get to the one I want to talk about, 4 which is -- there you go. 5 MR. ADAMS: Can he look at the whole 6 document? 7 MR. COX: No, because you can't read it 8 if you do that. 9 Scroll down some more. 10 There you go. 11 Q. So then you say, Lots of changes 12 everywhere. You express some surprise. Then 13 keep going up -- keep going up the chain. Greg 14 Briner says, Thanks, Joe. He talks about this 15 Mount Holly Road land. Asked if you have any 16 interest. But here's the part I want to talk 17 about right here. 18 So you respond on December 20th, Joe, 19 and you say, Craig, we are working on this today. 20 I assume that was a Mount Holly property. And 21 then you say, Did you get a new deal cut at 22 Brooks Springs? 23 Do you see that? 24 A. I do see that. 25 Q. Why were you asking him about that?	Page 232 1 purchase contract that GreenHawk had sent to you 2 all? 3 A. That or any other updates on what was 4 going on at Brooks Springs. 5 Q. Okay. But you don't mention anything 6 in this e-mail about where things stand on the 7 lot purchase contract, do you? 8 A. No, I did not. 9 Q. And you remember the last e-mail we 10 looked at from October 31st, '18 showed them 11 sending a draft to you. 12 Do you remember that? 13 A. That's -- yes, sir. 14 Q. And they flipped that to Mike Conley, 15 right? 16 A. And -- 17 Q. You flipped -- 18 A. I'm sorry, I was answering. 19 There was two people on that e-mail. I 20 flipped it or forwarded it to Mike Conley and 21 Bryan DeGabrielle. 22 Q. Got it. 23 And I think you testified that the last 24 you really had any record of it; isn't that 25 correct?
Page 231 1 A. Probably following up on the contract 2 that was sent to us on October 30th. I just 3 hadn't heard anything about it since then. 4 Q. Well, this -- this doesn't talk about 5 the existing contract. I don't see you 6 mentioning that at all. You're asking him if he 7 got a new deal cut. Why did you use those words? 8 A. To leave it open-ended to get Craig to 9 speak. 10 Q. Well, you may remember earlier today, 11 Mr. Polite, we looked at a series of e-mails in 12 which you're constantly asking Jesse and Craig if 13 they have any progress yet on that lot purchase 14 contract. 15 Do you remember that? 16 A. Yes, sir. 17 Q. In this e-mail, though, you don't say 18 about the lot purchase contract, you talk about a 19 new deal. Why are you calling it a new deal? 20 A. I have no reference to it being any 21 different than talking about Brooks Springs. 22 That's -- no other reason. 23 Q. So is it your testimony this afternoon 24 that when you said in this e-mail, Did you get a 25 new deal cut, you're really referring to the lot	Page 233 1 A. Yes, that is correct. 2 Q. And keep going up a little bit. 3 So then Craig forwards this e-mail a 4 couple of years later to Jeff White and he says, 5 Jeff, I forwarded the Brooks Springs lot purchase 6 agreement to Joe Polite on October 31st, 2018. 7 You admit that's correct, right? 8 A. I received his version of that contract 9 October 31st, 2018, yes. 10 Q. They still had expressed interest in 11 the deal at that time. During a follow-up 12 meeting at their offices in Charlotte, Joe 13 indicated that they no longer had any interest 14 given the significant increase in builder-related 15 fees that Fort Mill had recently enacted. 16 Is that true? 17 A. I cannot speak to the truth of that 18 statement. I don't know what date it was or 19 anything when I would have said that to Craig. I 20 have no knowledge of that. 21 Q. I want to make sure I understand 22 exactly what your answer is to this question. 23 Are you saying it's not true or I don't 24 know? Which is it? 25 A. I'm saying it's not true that I

Page 234 1 expressed that to Jeff -- I mean, I'm sorry, to 2 Craig. And I -- I would love to have some 3 follow-up on it if -- if there's a different take 4 on something. 5 Q. I'm still a little confused. 6 Did you ever tell Craig Briner that 7 Eastwood no longer had any interest in the Brooks 8 Creek property? 9 A. No. 10 Q. We've seen from some earlier e-mails 11 you wrote that the impact fees from Fort Mill 12 were, in fact, making the deal very tight. Those 13 were your words. You remember that? 14 A. Yes, sir. 15 Q. So it is true that there was a 16 significant increase in impact fees and that was 17 affecting the property, that part is true, 18 correct? 19 A. That is true. 20 Q. But you're saying it's not correct that 21 you then said to Craig, because of those fees, we 22 no longer have any interest in this property? 23 A. No. 24 Q. You're saying that did not happen? 25 A. That did not happen.	Page 236 1 MR. MABE: 30. 2 MR. ADAMS: 30? So can we -- can we 3 agree just so we -- so there's no confusion 4 that between 1 and 30, anything that was 5 not marked we're just going to show it as 6 intentionally omitted? 7 MR. MABE: Sure. 8 MR. ADAMS: So we don't get any 9 confusion about that. 10 MR. COX: I agree with that. And John, 11 I don't know what you're planning to start 12 with in terms of your own exhibits or how 13 you've numbered them. 14 MR. MABE: Well, unfortunately, I don't 15 have -- I think what I'm -- what I need is 16 Exhibit 25. But I can't -- I don't have it 17 as readily available as you do. 18 MR. COX: We can -- we can do that. We 19 can do that. That's an impact fee article? 20 MR. MABE: That's right. 21 MR. COX: Is this it? Is that it? 22 MR. MABE: Yep, that's it. 23 MR. COX: All right. So this is still 24 our exhibit -- as I said, this is why we do 25 it this way. We're not marking these as a
Page 235 1 MR. COX: Okay. All right. I think 2 that's all I have. I will -- we did not 3 ask -- I've kept you updated along on stuff 4 we didn't ask. Just for the record, we 5 didn't ask about Exhibit 25, we didn't ask 6 about Exhibit 27. Shortly after this 7 e-mail I'll send out another e-mail to 8 everybody and the court reporter making it 9 clear here's what we asked about and here's 10 what we put in the record and here's what 11 we did not ask about but we had it numbered 12 that way anyway. 13 MR. ADAMS: Okay. John, do you have 14 any questions for Mr. Polite? 15 MR. MABE: I do. I've got a -- I've 16 got some -- I've got a document up that I 17 was planning on asking about, but I'm going 18 to have change it. If you'll give me a 19 minute, I've got something else I want to 20 ask him first. 21 MR. ADAMS: Okay. Well, and that's 22 fine. But what I wanted, I wanted to do a 23 little bit of housekeeping. So what's the 24 last exhibit you've marked, Stephen, just 25 so the we're clear?	Page 237 1 party's exhibit. This will just be 2 Exhibit 25. But I agree with Jimmy, if at 3 the end of the day we haven't introduced 4 anything between 1 and 30, those will just 5 be permanently omitted from the record. 6 That's what you're suggesting, Jimmy, 7 right? 8 MR. ADAMS: Correct. Kind of like a 9 form contract where you say intentionally 10 omitted so you don't have to re-number 11 everything. 12 MR. COX: Agreed. 13 Okay. This is 25. Go ahead, John, 14 whenever you're read. 15 MR. MABE: I think the only problem is 16 I don't have the ability quite as easily as 17 you -- well, I don't have any ability to 18 move around on that document, but -- 19 MR. ADAMS: Well, actually, Steve if 20 you will go up under your view options 21 and -- 22 MR. MABE: Well, I'll tell you what, 23 I've got -- I've got -- this may be a 24 different version of the same -- 25 MR. ADAMS: You can request remote

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1 control and -- 2 MR. MABE: No. Let me share my screen. 3 I've got it up on my screen now. 4 MR. COX: Okay. Introduce graduate 5 level Zoom stuff. That's fine. 6 MR. MABE: 7 MR. ADAMS: Hold on. I'm going to turn 8 my camera off and see if maybe it will 9 refocus. 10 MR. MABE: I cannot share the screen as 11 long as you're sharing yours, so... 12 MR. COX: I don't know how to do that. 13 MR. MISNER: We've stopped sharing. 14 MR. COX: We've stopped sharing. We're 15 done. 16 MR. MABE: There you go. 17 EXAMINATION 18 BY MR. MABE: 19 Q. So this -- this is PCP 10299, which I 20 -- I'm not positive that's number 25. But it's 21 -- it's got that same beginning point. And you 22 recall being asked -- let me -- before I jump 23 into asking you questions about this, Mr. Polite. 24 Let me just introduce myself. 25 My name is John Mabe. And I'm sitting	1 MR. MABE: Let me try again. 2 MR. ADAMS: I've got -- on the big 3 computer I've got your -- you frozen. On 4 my computer I've just got a black, blank 5 screen. 6 A. Okay. Now it's coming. 7 Q. Okay. Do you have it now? 8 MR. ADAMS: No, it's saying started 9 sharing. But we haven't actually seen what 10 you're sharing. There we go. 11 MR. MABE: So can you see the e-mail 12 now? 13 MR. ADAMS: Yes. 14 MR. MABE: All right. Good. It's 15 interesting because I've got the e-mail 16 where I can see it, but I -- it's not on 17 the screen where you are. 18 All right. So you recall being asked 19 questions about this -- this e-mail chain, 20 Mr. Polite? 21 A. Yes, sir. 22 Q. And so you went through the -- and then 23 this was -- this was when you were anticipating 24 that Eastwood was going to buy the lots. And I 25 guess in both projects and you were concerned
Page 239	Page 241
1 in Raleigh. And I represent the various 2 defendants other than these -- other than TRI 3 Points. So Brooks Creek, AF Brooks Creek and GHD 4 Brooks Creek and AF River Falls and GHD River 5 Falls and also GreenHawk Development. 6 And so we're -- we're obviously the 7 counterparties to TRI Points on the sale of 8 Brooks Creek. But my client is also affiliated 9 with the River -- River Falls project, which you 10 -- which your client or your company is also 11 trying to prevent them selling to anyone else. 12 So I'm going to have to ask you some 13 questions about River Falls to a little bit 14 greater degree than you were asked about Brooks 15 Creek. 16 So turning to this -- this e-mail 17 chain, which is -- is a -- 18 MR. ADAMS: John, you're frozen. 19 Because we're not seeing anything from you. 20 MR. MABE: Are you hearing me? 21 A. Yes, sir. 22 MR. ADAMS: We hear you fine. But we 23 can't -- 24 A. There's no sharing of your screen. 25 MR. COX: Yep. Correct.	1 about the impact fees and you asked for some -- 2 asked for some help on it. And, you know, you 3 testified about saying that the impact fees were 4 going to make the pricing very tight. I think 5 you've also testified that this, according to 6 your testimony, was what lead you to talk to 7 Margaret Puckett about trying to figure out how 8 Pulte Homes was gonna to contend with these same 9 fees. And it sounds like you were talking to her 10 about whether Pulte Homes would be able to buy 11 lots in these -- at these price points, given the 12 market, and make a profit on those lots when you 13 sold them to your homeowner buyers. So that's 14 what you were sort of feeling her out about; 15 isn't that correct? 16 MR. ADAMS: Objection. 17 MR. COX: Objection to form. 18 Q. You can answer. 19 A. My -- again, as I said, mine was really 20 to look at a comparison of how they were going to 21 approach -- how they would approach these impact 22 fees versus the way we would approach those 23 impact fees and the added cost. 24 Q. Okay. And in a nutshell, though, 25 weren't you trying to figure out whether Pulte

Page 242 1 Homes would be able to buy those and sell them to 2 the market because that would influence your 3 thinking on whether you should be able to buy 4 them and sell them to the market; is that 5 correct? 6 MR. ADAMS: Objection to form. 7 A. Again, I was looking just to compare 8 their approach versus how we approach those added 9 costs. It would not -- 10 Q. Go ahead. 11 A. You asked me if I was saying it what -- 12 if they purchased those lots. That was not 13 really it. That was not my intention. 14 Q. Well, I mean, it obviously involved a 15 hypothetical, whether they would be able to buy 16 those lots and make a profit when they sold them 17 to the market. That's what you were trying to 18 find out, isn't it? 19 A. Stated that way as a hypothetical, yes. 20 Q. And so that's sort of an aside related 21 to this exhibit. But we didn't really talk about 22 the response of -- of Mr. Briner to your request. 23 And he -- he gives you a response and says he 24 could -- he could adjust by \$2,000 on the asking 25 price because they were talking \$78,000 per lot,	Page 244 1 that means? 2 A. Yes, sir. 3 MR. ADAMS: Objection to form. 4 THE DEPONENT: Oh, excuse me. 5 A. Yes, sir. 6 Q. Okay. So then we go up and we've got 7 his response and he says, I have more flexibility 8 on the takedown of those lots than I do on 9 purchase price. Thanks for trying to work 10 through this with us. So you are both interested 11 in being able to get to a place where you're 12 comfortable that -- that Eastwood could buy the 13 lots at a price they could -- where they could 14 make a profit. But they would buy them more 15 rapidly, they'd have a faster takedown. 16 Is that what he's saying here? 17 A. That is what he's saying. 18 Q. And later you got to the point where 19 you had that -- you got to the point where you 20 had that draft contract that came from GreenHawk 21 from -- I think -- did Jesse sent -- Jesse 22 Buchanan sent it or Craig -- Craig sent it. 23 Craig sent it from Jeff to Craig to you. And -- 24 and in that it does have a \$76,0000 starting 25 price; is that correct?
Page 243 1 right? 2 A. That was on that first land status 3 sheet, yes, sir. 4 Q. So he's talking to you about 2000 a 5 lot. And he actually in his e-mail here where he 6 starts off those yahoos at city hall, he says 7 that there's a real relationship between the 8 takedown schedule and the lot prices; is that 9 accurate? 10 A. Yes, there's a relationship in the two. 11 It -- 12 Q. And you -- you -- 13 THE STENOGRAPHER: I'm sorry, I missed 14 the end of his answer. 15 A. I was just reading what he wrote about 16 the -- and it's not up on the screen now. So I 17 can't finish the sentence. 18 Q. All right. Well, let me ask you to 19 back up on that. The bottom line here, right 20 above your signature, you say, We need all the 21 help we can get and might need to buy more 22 upfront to get it as low as possible. And that's 23 a reference to buying more lots on the front end 24 to get more cash into the project, and that might 25 influence the lot price downward; isn't that what	Page 245 1 A. It did. But what I didn't get to see 2 there, John, was the takedown on that last 3 exhibit to remember what it -- if that was 4 modified or not. 5 Q. Okay. So when you say modified, that 6 was the first time you saw a contract, wasn't it? 7 A. Yeah, if it went to the -- this 8 takedown that we were talking about with 9 flexibility. I don't recall what that was. 10 Q. Well, you anticipated my question. 11 Because isn't it -- isn't it the case that 12 October was the first draft -- that you had been 13 talking about trying to come up with a price, but 14 the October draft from Craig Briner was the first 15 takedown schedule for first combination in a -- 16 in a draft contract, right? 17 A. In a draft form, yes, sir. 18 Q. Now, this is going to, unfortunately, 19 go a little bit slowly because I've got these 20 documents loaded onto the platform. And I'm 21 going to have switch around and get them as we go 22 along. I think I want to just go one more place 23 here. The -- your response to -- to Craig is, 24 you know, okay, every little bit helps. That's 25 not an acceptance of any terms on takedown

Page 246 1 schedule, is it? 2 A. I would -- no, sir. 3 Q. That's not an acceptance of \$76,000 a 4 lot because you don't know what the take down 5 schedule would be, correct? 6 A. Correct. 7 Q. And you've already testified that you 8 didn't -- that the committee never got together 9 and you didn't ever accept the draft that was 10 sent over at the end of October, did you? 11 A. Correct. 12 Q. All right. Okay. I want to ask you a 13 little bit about your transition with -- with Joe 14 Dority. 15 Tell me, did you know Joe Dority before 16 you want to work at -- at Eastwood? 17 A. No, sir, I did not. 18 Q. Did you know him by reputation? 19 A. No, sir, I did not. 20 Q. Did you meet with him in person? 21 A. Only after I was hired. 22 Q. Okay. Let me see, I think I may have 23 messed something up trying to fix this. Give me 24 a moment. 25 Did he offer to meet with you?	Page 248 1 (A DISCUSSION WAS HELD OFF THE RECORD.) 2 (Exhibit 31: E-mail string with the top 3 from Joe Stewart dated 9/29/16 marked for 4 identification, as of this date.) 5 BY MR. MABE: 6 Q. Mr. Dority, you see this e-mail 7 September the 23rd from Joe -- 8 MR. ADAMS: John, John, John. 9 Q. I mean, Mr. Polite, Mr. Polite. 10 MR. ADAMS: There you go. 11 Q. All right. So from Joe to Joe, 12 September the 23rd. But at this point it appears 13 that Joe Dority was still corporate VP of land on 14 September 23rd. Were you in a -- both in the 15 same role at that point for some period of time? 16 A. Yes, there was an overlap. And that 17 transition was he was still offering to be with 18 the company and help us through it. And to this 19 date here, September 23rd, I'm not sure the exact 20 date his last day was. But I was there. 21 Q. Okay. So you had been there at that 22 point for at least two weeks and maybe 23 two-and-a-half weeks if you came right after 24 Labor Day. I don't know which -- whether Labor 25 Day was on the 1st or the 7th or somewhere in
Page 247 1 A. After I was hired, yes, we tried to get 2 together a couple of times to go over the 3 transition list. But it was a little more -- 4 there was no real set time that we got together 5 that I remember. 6 Q. When did you start work there? 7 A. It was September 2016. 8 Q. When in September? 9 A. The -- probably the Tuesday after Labor 10 Day. I think -- I think it was the 6th. I'm 11 guessing. I apologize, John. 12 Q. All right. Somehow I've lost 13 everybody's picture except yours and it's just 14 great to have yours, but... 15 A. It's -- thank you. 16 Q. I'm sorry. 17 MR. ADAMS: Objection to the sucking 18 up. 19 Q. Someone somehow I have got to figure 20 out how to get this thing open again, because I 21 -- I can't -- I am unable to share my screen now. 22 THE STENOGRAPHER: This is the court 23 reporter. Can we go off the record? 24 MR. ADAMS: Yes. 25 MR. COX: Yes.	Page 249 1 between. But at that point you would have been 2 working the same role and would have had an 3 opportunity to talk with him about all of the 4 projects, wouldn't you? 5 A. Yes, sir. 6 Q. Okay. And he says, I personally feel 7 we need to do this in person, but that is your 8 call. Help me understand how it is that you 9 might need to meet in person when you were both 10 working in the same role with the same title? 11 Was he not coming into the office? 12 A. He was not -- he was not readily 13 available, John, during this transition. 14 Q. All right. He says here that he felt 15 like you should meet in person. And that was 16 your call. Now, I understood you to testify 17 earlier that you did not meet with them; is that 18 correct? 19 A. I met with him on and off. It didn't 20 take long. But the bulk of the work was handled 21 in the transition list that we discussed earlier 22 today. 23 Q. Right. Exhibit 10? 24 A. Yes, sir. Is that -- if that's the 25 right exhibit number, yes.

Page 250 1 Q. And it was referred to, I think, in 2 some of the e-mails subject line lines as the 3 cheat sheet, is that correct? 4 A. No, sir. I believe it was mentioned as 5 the transition list. 6 Q. Oh, okay. There is a -- a reference 7 here from Joe Stewart to the -- an attachment of 8 the transition sheet -- cheat sheet. 9 A. Oh, there it is. 10 Q. That's -- that's why I was asking that. 11 So you had -- I know that there were a 12 number of communities that you would have to come 13 up to speed on. But the cheat sheet on 14 Exhibit 10 does say that there was no contract on 15 for purchase of lots in Brooks Creek or Brooks 16 Springs nor in River Falls, correct? 17 A. As I recall that sheet, yes, sir. 18 Q. And your testimony earlier was that he 19 didn't tell you that there was no contract, as I 20 understood your testimony. Is -- am I recalling 21 that correctly? 22 A. He might have not have explicitly said, 23 but it was on the list that there was no 24 contract. And it was known that there was not a 25 contract at his time of leaving.	Page 251 1 Q. Okay. Now, well -- okay. I want to 2 talk to you about -- you were asked a couple of 3 questions about the reporting process or how you 4 account for subdivisions where you are at various 5 stages of -- of development. You were asked 6 questions about a -- sort of a spreadsheet with 7 anticipated sales and starts and closings. And 8 you testified that that really was about sales to 9 customers or homeowners and not related to land 10 acquisition and development, right? 11 A. Yes, sir. 12 Q. But there were other reports. Can you 13 tell us what other reports related to things like 14 land acquisition, cash flow or cash needs to pay 15 for lots that you were obliged to take down under 16 various contracts and the status of development 17 of land that you're -- where you have a contract 18 and you're waiting for lots, can you tell us what 19 kind of reports there were when you went to work 20 at Eastwood? 21 A. As I stated earlier, there was really 22 no financial projections done as far as going 23 forward and when lots were to be purchased. We 24 have an outline of, you know, all the standing 25 contracts now of when lots are, you know, on	Page 252 1 their takedown and their schedule. But there are 2 no financial projections dollar-wise that were 3 being produced at the time I arrived. 4 Q. So no looking forward to what cash flow 5 requirements there would be to meet your takedown 6 obligations? 7 A. No, sir, there was not. 8 Q. Is that a function of just how much 9 activity there was or how large the company was? 10 Did you -- did you have to add it 11 because the company grew larger or was that a 12 problem that you wanted to change when you got 13 there? 14 MR. ADAMS: Objection to form. 15 Q. What -- I'll restate the question. 16 Was that a problem that you realized 17 immediately when you started there and that you 18 were wanted to begin doing a financial 19 projections soon after you arrived? 20 A. Again, we still don't project our cash 21 flow on lot closings to this date. We do have a 22 better system that each division can follow their 23 requirements per the contracts that they will 24 have certain number of lots to purchase and every 25 quarter is typically -- the majority of all of	Page 253 1 our contracts are on quarterly take downs. And 2 there is a system for that. 3 Q. You -- you also have a lot price 4 information on how many lots are required to be 5 purchased at what prices, don't you? 6 A. Yes, sir. 7 Q. So in a way, I mean, if you're looking 8 forward to how many lots you were required to 9 take down and at what prices, you do have some 10 financial projections on your obligations, don't 11 you? 12 A. We have -- yes, we have an 13 understanding of what that contract will cost us 14 to purchase those lots. 15 Q. Now, you were asked about a -- I think 16 one of the exhibits, and I'm sorry I don't have 17 the number, but do you know who -- you were asked 18 about Joshua Peak? 19 A. Yes, sir. 20 Q. And did he succeed Marc Battiste in a 21 role at the company? 22 A. They are both construction managers. 23 And I don't know if Josh was in Mark's position. 24 Both are still employees of Eastwood. I don't 25 know how they've been realigned in the Charlotte

Page 254 1 division. But they're both construction 2 managers. 3 Q. Okay. 4 A. Marc Battiste, who we did not mention, 5 and Josh, who we did mention. 6 Q. One of the exhibits that you were asked 7 about, and I didn't -- again, I'm sorry, this is 8 ECP 1201. And I don't have it on my screen, but 9 maybe that Stephen or Tim can tell us which 10 exhibit that is. 11 MR. COX: 1201? 12 MR. MABE: 1201. 13 MR. COX: I don't think so. I don't 14 see it. ECP 1201? 15 MR. MABE: Yes. 16 MR. COX: No, I don't see it on our -- 17 I'm looking at our table, Tim, I don't see 18 it. I don't think we did. 19 MR. MABE: All right. This is the 20 danger part where I try to -- you may have 21 looked at a different version of this. I'm 22 going to ask you soon as I get this thing 23 squared away. 24 Can you all this see this? 25 A. Yes, sir.	Page 255 1 know even know what BP North is. But EDC, is -- 2 is that Eastwood Development Corporation? 3 A. Yes, sir. 4 Q. And Titan. Tell us who Titan is. 5 A. Titan at this time was a general 6 contractor or grading contractor. 7 Q. They're doing the -- so you've got the 8 developer and the grader? 9 A. Yes, sir. 10 Q. Same thing going on BP South. 11 Now, who is Shawn Cummings? 12 A. He was a third-party developer that we 13 utilized in developing lots and buying back those 14 developed lots. 15 Q. You were asked earlier if you could 16 identify anyone who did that. Is -- you didn't 17 identify him. But is he one of the people that 18 you might have recalled and identified as someone 19 that develops land that you all would buy -- 20 A. Yes. 21 THE STENOGRAPHER: I'm sorry, I didn't 22 hear the end of your question because it 23 broke up. 24 THE DEPONENT: Sorry, Dario. 25 Q. Is Shawn -- I'll ask the question
Page 255 1 MR. ADAMS: So is this Exhibit 32, 2 John? 3 MR. MABE: Let's make this Exhibit 32. 4 It may be a repeat of a similar chart. 5 MR. ADAMS: What's the Bates number? 6 MR. MABE: This is ECP 1201. 7 (Exhibit 32: E-mail from Joshua Peak 8 dated 5/25/17 marked for identification, as 9 of this date.) 10 Q. You were asked previously -- I'm going 11 to -- I'm going to drop down to -- well, let me 12 first get you to identify what this document is. 13 The this is some seven months after you were on 14 board, Mr. Polite. 15 A. Yes, sir. 16 Q. Could you explain what these -- the two 17 parts of this document are? There's one titled 18 current timelines, it's for Eastwood Development. 19 And then there's one called future -- let's see, 20 upcoming communities and timelines. 21 A. Yeah, these are meeting notes that land 22 development has with the construction managers to 23 give updates on various projects in the Charlotte 24 division. 25 Q. Okay. Look at this -- this is I don't	Page 257 1 again. 2 Is Shawn Cummings someone that you 3 might have identified earlier today when you were 4 asked who you had entered into contracts with to 5 purchase lots after they developed land that you 6 had an interest in? 7 A. Yes, sir. He would be another example. 8 I used Blake Communities and Shawn Cummings, Vern 9 Rapids is his group. And they do develop lots 10 and sell them back to us. 11 Q. And do you enter into contracts with 12 them to purchase the lots? 13 A. Yes, sir. 14 Q. And you were asked generally about 15 contracting to purchase lots. But you get -- the 16 company gets a contract for the purchase of lots 17 for all of the purchases it makes, doesn't it? 18 A. That is -- 19 MR. ADAMS: Objection to form. 20 THE DEPONENT: Oh, sorry. 21 Q. You can answer if you understand the 22 question. 23 A. The objection to form is there. And 24 then also, yes, it is -- we would -- we get 25 contracts when we transfer the property to the

Page 258 1 third-party developer. 2 Q. You -- you enter into contracts with a 3 third-party developer to sell you lots at certain 4 prices on certain takedown schedules -- 5 A. Yes, sir. 6 Q. -- but before you buy the lots from the 7 developers, right? 8 A. Yes, sir. 9 Q. So on this one, it's EDC and Callahan. 10 EDC indicates, I guess, that it's actually owned 11 by an Eastwood -- Eastwood Development, and it's 12 acting as the developer on these projects, 13 correct? 14 A. Yes, sir. 15 Q. You testified, if I understood you 16 correctly, that after you came on board that you 17 began to try to transition away from that; is 18 that correct? 19 A. The company as a whole, not Joe Polite 20 directive. But the company as a whole, we've 21 moved away from using EDC. 22 Q. And that's because that's not where 23 your strength lies, your strength lies in selling 24 finished product to homeowners and building 25 houses for them, right?	Page 260 1 A. I wasn't there when they first started 2 these, John. So I don't have any details. I 3 know we're buying lots from Coulter currently in 4 a subdivision called Heritage in the Charlotte 5 division. 6 Q. Okay. So down here on upcoming 7 communities, this means, I guess, that they're 8 not communities that are under -- under 9 development or what -- what's the distinction 10 between the timeline part of this current 11 timelines and upcoming communities? 12 A. The recorded map is the trigger for it. 13 The top half that we just went through. And you 14 see just right there, Berewick, EH Coulter 15 recorded. That means a plat has been recorded 16 and lots are subdivided. 17 Q. Okay. So that means you can -- 18 A. Anything -- 19 Q. Sorry. Go ahead. 20 A. Anything below the line does not have a 21 recorded plat. So it's a future or upcoming 22 community. 23 Q. So these above -- above the ones under 24 current timeline, those are projects where you 25 are getting set to start selling lots and
Page 259 1 A. Yes, sir. And the EDC was just holding 2 assets. And once we worked through them, we 3 didn't add anymore to that group. 4 Q. Okay. Did you have right many projects 5 with Callahan? 6 A. We did. 7 Q. Okay. We'll get to that later. 8 Who is Pearson? 9 A. That would be Tom Pearson as a third 10 party. That would be my understanding of that. 11 Q. So a developer? 12 A. Yes, sir. 13 Q. Similarly Matt Gallagher, Nate Bowman, 14 those are -- those are developers? 15 A. Yes, sir. 16 Q. Who is EH? 17 A. Brookdale, that would be -- EH would be 18 Eastwood Homes. 19 Q. Okay. And then Coulter is a -- must be 20 another grader or a site developer? 21 A. They're actually a -- they're actually 22 a developer. They would have been a developer. 23 Q. Okay. So this is -- explain, if you 24 would, the relationship between EH and Coulter on 25 these -- these two subdivisions.	Page 261 1 building houses; is that correct? 2 A. Yes, sir. 3 Q. Once the plat's recorded, you can do 4 that, but you can't before -- 5 A. Correct. 6 Q. -- is that why you have that 7 distinction? 8 A. Yes, sir. 9 Q. Okay. So under upcoming, now you've 10 got EDC/GreenHawk. Now, we all agree, can't we, 11 that GreenHawk isn't the grader on that project? 12 A. We all agree on that. 13 Q. So why is that -- what's -- what's 14 GreenHawk's role in this? 15 A. I didn't put it on here. But I would 16 -- they would be designated as the developer as 17 above Coulter was the developer. 18 Q. Why is EDC listed with GreenHawk as 19 under the developer category? 20 A. It was a -- it was a -- you know, we 21 used EDC and EH above here interchangeably. I 22 can't speak to the specifics on this one, why it 23 was EDC. 24 Q. Why is EDC listed together with 25 GreenHawk as being the developer of the project?

Page 262 1 A. Similar to just above it, Berewick that 2 Eastwood Homes and Coulter are related. Eastwood 3 Homes is not the developer there. And EDC and 4 GreenHawk were working really jointly on getting 5 this one to a permit. It was a -- it was a 6 partnership to get this thing to permit, to 7 grading and plat -- you know, recorded plat. 8 Q. Tell me what you mean when you say 9 partnership? 10 A. Well, I can speak from the time that I 11 arrived, not from 2013 up. But we, as Eastwood 12 Homes, Eastwood Construction Partners, Eastwood 13 Development Corp., all the entities that Jimmy 14 went through earlier, we pretty much managed the 15 predevelopment, paid the bills for the 16 engineering. As you saw, in the land design 17 exhibit that we went through, if you saw 18 Eastwood's name on it, I could probably find the 19 invoice that shows we paid land designs for that 20 work. We also -- because Craig's inability to be 21 on site from Raleigh to Charlotte, interacted 22 with this -- on his behalf with the Town of Tega 23 Cay to get things done. We -- there's a lot of 24 interaction between Pat Quinn and hours that the 25 company Eastwood put into both projects to get Page 263 1 them approved. That is, you know, the 2 understanding and me going forward to the point 3 where we are now that, you know, this was always 4 a GreenHawk and Eastwood deal jointly. 5 Q. You have no written agreement for a 6 joint sharing of profit or loss on this project, 7 do you? 8 MR. ADAMS: Objection to form. 9 A. No, there is no -- there is no joint 10 profit or loss -- 11 Q. All right. 12 A. -- agreement. 13 Q. Right. 14 So what you're really describing, you 15 know, I'm -- this is a question for you. But 16 aren't you really describing a cooperative 17 relationship where -- where Eastwood, knowing 18 that it intended to ultimately buy lots in this 19 subdivision, was involved in the early stages of 20 development of the subdivision, as you mentioned, 21 on predevelopment costs? 22 MR. ADAMS: Objection to the form. 23 A. I would say -- 24 Q. Is it really a cooperative 25 relationship?	Page 264 1 A. Cooperative, partnership. We did -- we 2 managed and we did whatever was helpful for Craig 3 to produce subdivided lots. 4 Q. But is -- it is the -- I think you were 5 asked earlier whether you knew whether Callahan 6 had a contract first with Eastwood. And I 7 believe your -- do you recall that question? 8 A. I recall the question. I couldn't 9 speak to that, as I answered then. 10 Q. Have you ever talked with Joe Dority 11 about the transition of -- of Callahan from 12 Eastwood to GreenHawk? 13 A. As I discussed, I never knew that 14 Eastwood was under contract with Callahan at all. 15 So there wouldn't have been a transition, to my 16 knowledge. 17 Q. I know you -- I want to -- I want get 18 to one other point here. You were earlier asked 19 about the status of Brooks Springs, where it says 20 this was assigned to GreenHawk without a buy back 21 contract. I think it was on a different 22 exhibit. But the language is essentially the 23 same on this exhibit. 24 Do you see that? 25 A. Yes, sir. Page 265 1 Q. And that's with relationship to Brooks 2 Springs. Now, where it says this was assigned to 3 GreenHawk, is that -- are you -- is it correct 4 that you were referring to the assignment of the 5 right to purchase that land? 6 A. That is what this assign would refer 7 to. Again, I didn't type this actual -- 8 Q. I understand. 9 A. -- document. But yes, that does mean 10 the assignment of the contract, which Eastwood 11 had the contract to purchase both properties. 12 And it was assigned those rights to GreenHawk and 13 GreenHawk then closed on the properties. 14 Q. Well, GreenHawk Development established 15 a special purpose entity that closed on it, AP 16 Brooks Creek, right? 17 A. I -- 18 Q. One of the -- 19 A. -- yes. 20 Q. -- one of the defendants in the 21 lawsuit? 22 A. Yes, they did. They're named. 23 Q. All right. So up here, I don't believe 24 you were asked the same question on this, but I 25 want to ask you about River Falls, the -- and we

Page 266 1 could go back and look at it, but I'm not going 2 to take the time to do that. But it was the case 3 when you first came to work there that Callahan 4 was waiting on a sewer approval to install a pump 5 station, isn't that correct? 6 A. Yes, there were -- there were approvals 7 that needed -- some further approvals needed to 8 happen. 9 Q. So the status of that hadn't changed in 10 the eight months that you were there from 11 September to May of -- September of '16 to May of 12 '17, had it? 13 A. Not to my knowledge, no. The sewer 14 approval was not given. 15 Q. Okay. And then you have this project 16 is stalled out. I don't know, again, who wrote 17 this. But these are notes of a meeting that you 18 would have attended, correct? 19 A. Yes, I could have attended this one, 20 sure. I didn't attend all of them. 21 Q. Okay. So it says, This project is 22 stalled out. Also, we did not have a buy back 23 contract with GreenHawk. 24 It doesn't say we don't have a written 25 contract with GreenHawk, does it?	Page 268 1 reviewed earlier, is just the various stages of 2 each project on really the acquisition side from 3 something that's in review to something -- 4 whether it's a raw land piece or possibly a 5 developer selling one of our divisions, finished 6 lots. And it's just the status is is it in 7 review? Meaning we haven't done anything, has 8 there been an LOI sent? Letter of Intent. Is 9 there a contract? And is -- are we fully 10 executed in a contract? So the status is where 11 that project is on that ladder. 12 Q. It will save some time if you will just 13 acknowledge, if you can, that there were a number 14 of land status -- land position status reports or 15 land status reports that say that you need a 16 contract on both the River Falls and the Brooks 17 Creek property or Brooks Springs property? 18 A. Yes, sir. That we were still waiting 19 on a contract, yes, sir. 20 (Exhibit 33: Spreadsheet entitled 21 Acquisitions marked for identification, as 22 of this date.) 23 Q. Give me a second while I try to get 24 another document called up here. 25 I'm going to get faster at this with
Page 267 1 A. It does not say that. 2 Q. And do you know who made the comment or 3 who put this wording together we do not have a 4 buy back contract with GreenHawk? 5 A. Josh seems to be the person that wrote 6 this particular spreadsheet up. 7 Q. Josh who? 8 A. Was it Peak? 9 Q. Josh Peak? 10 A. Yes, sir. 11 Q. Well, there are earlier versions of 12 this that Mr. -- now I've lost my place. That 13 Mr. Battiste was involved in, weren't there? 14 A. Yes. 15 Q. And some of this language would stay 16 from one report to the next, wouldn't it? 17 A. Of course. 18 Q. Now, there were also some reports 19 called land position -- or land status or land 20 position reports. Are those the same things or 21 are they different documents? 22 A. Different documents. 23 Q. Tell us what the land -- land status 24 report is? 25 A. The land status report, as we've	Page 269 1 time, I hope. 2 Can you see the exhibit that I've 3 called up? 4 A. Yes, sir, I see the exhibit. 5 Q. This is ECP 1713. 6 MR. ADAMS: Is this Exhibit 33? 7 MR. MABE: This will be Exhibit 33. 8 MR. ADAMS: Okay. Can we see the date 9 on that, John? Can you scroll over? 10 MR. MABE: Yes. It's in the upper 11 right-hand corner. It's as of 11/13 of 12 2017. 13 MR. ADAMS: All right. Thank you. 14 Q. Just want to ask you a couple of 15 questions about this. You've been around for 16 about a year now. Tell us what this report -- 17 this is a -- this is a land status report, isn't 18 it? Of sorts? 19 A. Of sorts. This is a blend of -- this 20 isn't by division. This has, you know, Charlotte 21 acquisitions, Raleigh acquisitions. And this 22 would be anything that we were considering. 23 Q. The areas of interest. 24 Yeah, I don't -- I don't want to keep 25 you in suspense. The next page has a whole bunch

Page 270 1 of contacts for various leads on land that you 2 might investigate or might want to get into? 3 A. And I can help you that the ones in red 4 were not followed up on. 5 Q. These -- I may be -- 6 A. On the second -- on the second -- 7 Q. On the second page? 8 A. Yes, sir. 9 Q. Okay. So all those are not followed up 10 and the green ones get further reviewed? 11 A. Correct. Yes, sir. 12 Q. All right. So then you have properties 13 that are in various stages. Now, this -- let me 14 see if I can enlarge this. This 15 self-development, what does that mean? 16 A. That means that the division -- 17 Q. Sorry. 18 A. It -- you can -- self-development means 19 the division is responsible for all of the 20 management of the development process. 21 Q. Does that mean -- 22 A. This was not -- this would not have 23 third-party developers on this one. 24 Q. Does this that mean that the division 25 or that either ECP or EH or one of the Eastwood	Page 272 1 A. It could be. I just don't know the 2 closing date, John. 3 Q. Okay. All right. And now, just to 4 make sure that we're on the same page here, you 5 can see the anticipated lot price on these 6 outside developments? 7 A. Yes, sir. 8 Q. And where you've got the lot price, 9 does that mean you had gone to contract? 10 A. Yes, sir. 11 Q. And I don't know at all the status of 12 Brookdale. Had you not gone to contract with 13 that seller? 14 A. At that time, it would be -- it would 15 not have had a -- if it doesn't have a lot price 16 -- anticipated lot price, then we would not have 17 had that contract. 18 Q. And so still -- and no price on River 19 Falls or Brooks Springs. 20 Now, note here under type of housing, 21 both Brooks Springs and River Falls at that point 22 apparently were intended to be townhome 23 developments; is that correct? 24 MR. ADAMS: Objection to the form to 25 the extent the first part of the question
Page 271 1 entities owned the land? 2 A. It could be. Could be the EDC, it 3 could have been the, you know, division or just 4 Eastwood Homes owned it and the completion up to 5 plat was the responsibility of that division. 6 Q. And this is what you were trying to get 7 away from; is this correct? 8 A. We would love to. But we actually are 9 doing more now than we ever have. 10 Q. You also have a category called outside 11 developers. And that's where we see Brooks 12 Springs and River Falls, right? 13 A. With your name, Green- -- or your 14 client's name GreenHawk beside both, yes, sir. 15 Q. Okay. So as of the November 13th of 16 2017, this report indicates that this isn't a EDC 17 project as developer, right? 18 A. That's correct. Because it already -- 19 you -- GreenHawk or its sole purpose entity 20 already owned the property and it was taken off 21 of our balance sheet, so to speak. 22 Q. Well, it may be the case that in 2016 23 in the earlier report that it was already owned 24 by a GreenHawk entity; isn't that correct? 25 MR. ADAMS: Objection to form.	Page 273 1 was a statement. 2 But you can answer. 3 Q. Well, let me ask you in a different 4 way. 5 Mr. Polite, you can see here under the 6 type, is that for type of housing or type of 7 product? 8 A. Yes, that is. And I would say right 9 now that that River Falls is a -- would be a 10 misprint. Should have said single family. 11 Should be SF. 12 Q. Okay. There's a -- there was a 13 reference earlier to periodic meetings of the 14 property -- what is it, the acquisition 15 committee? 16 A. Yes, sir. 17 Q. And is -- and you say -- you've 18 testified that there was no -- there were no 19 notes taken of those meetings. I've got some 20 meetings I want to ask you about that are -- I've 21 got some notes that come from a strategy meeting. 22 Who would have -- who would participate in a 23 strategy meeting? 24 A. Can you be a little more specific? I 25 mean, they're --

Page 274 1 Q. I've got a document. I'll show you it 2 as soon as I can get it up. But here a document 3 called Charlotte Division Strategy Meeting. 4 A. Right. 5 Q. What would strategy meeting notes be 6 about? 7 A. That's an annual meeting that the 8 division comes in and presents to our CFO, to the 9 ownership and land about what they're going to do 10 and then what they foresee happening in their 11 division. Typically for the upcoming year. 12 Q. Now, this particular one says it's for 13 five years. Is that commonplace? 14 A. Yes, sir. 15 Q. Can you see that now? 16 A. Yes, I do see it. 17 (Exhibit 34: Spreadsheet entitled 18 Charlotte Division Strategy Meeting 7/25/18 19 Charlotte 5 Year Closing Projections marked 20 for identification, as of this date.) 21 Q. Okay. So this is BCP 1227. And it 22 will be Exhibit 34. So this is beginning July of 23 2018 and projects 5 years of -- would this be lot 24 takedowns? 25 A. No, sir. This would be house closings	Page 276 1 customize it up to a point. 2 Q. Right. 3 A. And then we build it. We're under 4 contract with the buyer, we build it. And then 5 at the end of the -- our build time and when it's 6 ready for a CO, we would close it to that third 7 party homeowner. 8 Q. And so these -- and so this 5-year 9 closing projections would be completed homes that 10 you'd close and sell to the -- to the homeowner? 11 A. Yes, sir. 12 Q. Okay. And -- 13 A. Projections, yes, sir. 14 Q. Right. 15 Now, this -- there were -- for the 5 16 years from 2018 to 2022 there appear to be no 17 projections in the -- in this top part for either 18 Brooks Creek or River Falls. Now, below you've 19 got what you call other communities and 20 opportunities? 21 A. Yes, sir. 22 Q. What -- can you explain what that 23 category is? 24 A. With the amount of delays and the build 25 time, the division did not feel it -- feel that
Page 275 1 per subdivision per year. 2 Q. So this would -- this would be on the 3 sales side, not on the property acquisition side? 4 A. No, sir. This would be Eastwood Homes 5 closing houses to third-party homeowners. 6 Q. Okay. Would it -- okay. You enter a 7 contract -- let me -- let me make sure I -- I'm 8 assuming here something here. I want to make 9 sure I'm correct. 10 Does Eastwood enter into a contract 11 with a purchaser to build a custom home based on 12 the product that they have available to build 13 from? 14 In other words, they have a collection 15 of designs and they sell a design or do they 16 build spec houses? 17 A. We do a blend of both. Any subdivision 18 would have a model home and two speculative homes 19 built at any given time. All the other ones, we 20 call those pre sales where the buyer chooses from 21 whatever we're offering in that subdivision, a 22 particular house plan. And they can go to our 23 design center, pick out their kitchen and their 24 tile, et cetera. It's -- we are really 25 considered a production builder. But they can	Page 277 1 they had a known quantity of how many closings 2 they could project at Brooks Springs or River 3 Falls or for that matter, Carrington, Prescott 4 Glen, other projects that we own that were in 5 delays. So they wouldn't put them up on their 6 5-year projection. 7 Q. In fact, they don't make any projection 8 at all for River Falls, right? 9 A. On this particular one, they did not. 10 Q. And is it correct, Mr. Polite, that the 11 inclusion of Brooks Springs other -- under the 12 other communities and opportunities category is 13 that you were hopeful of getting a contract to 14 purchase lots from GHD Brooks Springs, but you 15 could then build the townhouses and sell them? 16 MR. ADAMS: Objection to form. 17 Q. Is that why it's listed in other 18 communities or other opportunities? 19 A. Other communities really not knowing 20 when a plat would be produced as well. 21 Q. Now, let me get you to explain. 22 So are you saying that plats were 23 already produced for all of these subdivisions 24 above the line? 25 A. Yes, sir.

Page 278 1 Q. So for all of these plats are -- are 2 recorded and -- and lots are being sold? 3 A. It might be some that had for future 4 phases. But it was already on track to be done. 5 We were -- these are active communities that we 6 know we can pull a building permit in. 7 Q. So Pine Forest, you're not expecting 8 any sales for 2018 or 2019, but you're saying you 9 already have plats recorded, you're just not 10 selling them there? 11 A. These are closings. So the sales 12 proceed closings by -- well, it used to be -- I 13 hate to say it, it used to be about 4 to 5 months 14 and we are -- we have very extend -- at this -- 15 when this was done, build times would have 16 averaged 120 to 180 days. Now that time has been 17 grossly exag- -- extended. 18 Q. Mr. Polite, this -- this strategy 19 meeting document indicates that there are at 20 least, as I count them, three subdivisions where 21 there was -- expected to have no sales for 2 22 years. It can't be the case it's taken you 2 23 years to build houses, could it? 24 A. Closings. It would take us 2 years to 25 get to closings. Let me give you -- let me give	Page 280 1 2019 sales projections. And just confirm for us 2 that this would be a document kept in the 3 ordinary course in the Charlotte division. And 4 it shows for Brooks Springs zero sales for 2019, 5 quarter -- you know, by month by month, quarter 6 by quarter? 7 A. Yes, it does show that. What is the 8 date of these projections? When was this 9 particular work done -- created? 10 Q. I understand the question. I can tell 11 you that my -- my notes show that it was on 11/21 12 of 2018. 13 A. Okay. 14 Q. But it doesn't -- I couldn't get a copy 15 of this that shows the date on it. 16 A. That -- I understand. 17 Q. Okay. And you were asked about this 18 before or a similar document and -- by Mr. Cox. 19 And you made clear that what you were talking 20 about on sales projections here is sales of lots 21 to homeowners -- or -- so, actually -- well, let 22 me ask the question this way, does sales 23 projections really mean contracts to sell 24 property to a home on a lot to a homeowner? 25 A. Yes, that would be sales, yes, sir.
Page 279 1 you an example, John. McKey Towns, which has -- 2 we didn't acquire that probably late in the year 3 2018, and then we've actually sold it to a third 4 party, we developed it all in '19. And actually, 5 got that delayed to this past spring of 2020. 6 And we'll just now start building in there. But, 7 again, these are projections. The reality 8 doesn't even match this one. We will start 9 actually building in that and starts in the field 10 this month. So yeah, this is more of a guide 11 post than it is fact on these ones for the 12 future. 13 MR. MABE: Can you we go off the record 14 for a moment. 15 (A DISCUSSION WAS HELD OFF THE RECORD.) 16 BY MR. MABE: 17 Q. Mr. Polite, I'm showing you a document 18 that's called Eastwood Homes Charlotte income 19 statement for the period ended December 31st, 20 2019. 21 A. Yes, sir. 22 Q. Which would appear to be a 23 quarter-by-quarter projection of sales for that 24 division. And then there's some monthly 25 breakdowns. And I was showing you this page, the	Page 281 1 Q. So sale is a contract to sell and then 2 a start is you begin building that house, and 3 then closing is the projecting that you would 4 close on the sale of the house that you'd built 5 for the homeowner? 6 A. Yes, sir. 7 Q. Okay. So this is more granular, but a 8 similar document to the one we looked at a moment 9 ago that was the strategy meeting. This only 10 covers the one year of 2019; is that correct? 11 A. Yes. Yes, sir. 12 Q. Thank you. 13 We've got one more of these reports 14 that I want to ask you about. And I hate to just 15 temporize while I look for this thing, so -- but 16 that's what I've got to do. Give me a moment. I 17 don't have -- I need a Tim here calling these 18 things up quickly. 19 MR. COX: You need a Tim for more 20 reasons than that, I suspect. But is there 21 -- is there a document that we can -- you 22 had 11/11 I think you were asking about. 23 We've got that one if that's what you're 24 looking for. 25 MR. MABE: I'm actually putting up ECP

Page 282 1 321. I'm not -- that last one I just 2 looked at, we're not going to identify that 3 as a -- as an exhibit. So I think we're -- 4 Mr. Reporter, we're on Exhibit 35; is that 5 correct? 6 THE STENOGRAPHER: Sir, I don't know. 7 I'm not keeping track of them since I am 8 not marking them. 9 MR. COX: Yeah, I think that's a very 10 good point. I think that's a very good 11 point. I don't know that we've been 12 reciting which numbers you're applying to 13 these as we put them up, are we? Or am I 14 missing it? 15 MR. ADAMS: Yeah, I've been keeping 16 track. And I've been reciting them. And 17 John, if you're not marking ECP 1103, then 18 I agree ECP 321 is Exhibit 35. 19 MR. MABE: Thank you. 20 MR. COX: Okay. And John, at the end 21 of the deposition my plan is just to send 22 the court reporter all the ones we've used. 23 Basically the same file I sent you all 24 early today, except I want to take out the 25 ones we didn't use. So you'll just have	Page 284 1 Charlotte division absorption requirements in 2 April 2020 in connection with this lawsuit? 3 I think -- I think that the metadata 4 date on this I believe is April 20th -- I mean, 5 sorry, April 7th, 2020. 6 MR. ADAMS: John, this says 2021. So 7 I'm guessing this is when you -- 8 MR. MABE: No, this is -- no, this 9 right here is my date. That's a date when 10 I picked this up a week or so ago. But 11 I've got an earlier print out of it that 12 has an April 7, 2020 date on it from a PDF. 13 Q. All right. Well, this isn't going to 14 help us very much. We can't get -- get to where 15 we want to be. But let me ask you about what 16 this was kept for Mr. -- 17 MR. ADAMS: What tab -- I'm looking at 18 the original. What tab is that, John? 19 MR. MABE: I believe this is the first 20 page of 8 pages. 21 MR. ADAMS: All right. What was the -- 22 what was the Bates number again? 23 MR. MABE: ECP 321. 24 MR. ADAMS: 321. 25 MR. MABE: Yes. And I can -- I can
Page 283 1 the ones we used. And I assume you can do 2 the same. Does that make sense? With the 3 right numbers on them. 4 MR. MABE: Right. 5 MR. COX: Okay. Good. And we'll send 6 that to the court reporter and then we'll 7 all be on the same page. 8 (Exhibit 35: Spreadsheet entitled 9 Eastwood Construction Company, Inc. 10 Charlotte Division Absorption Requirement 11 Schedule marked for identification, as of 12 this date.) 13 Q. So can you see my screen now? 14 A. Yes. 15 Q. And, unfortunately, I think what 16 happens in a lot of these things, there is a -- 17 there's a cell on these spreadsheets that says, 18 you know, the date is now. So the report date on 19 this when I printed it, I'm just going to tell 20 you, showed April 7, 2020. And I don't know 21 whether that's the current date for this or 22 whether that's a date when somebody looked at it 23 last year. But do you know whether anybody would 24 have had reason to -- in connection with this 25 litigation to be going through the Eastwood	Page 285 1 probably get the -- 2 MR. ADAMS: Oh, okay. Hold on. 3 MR. MABE: I can probably get the -- 4 MR. ADAMS: I got it now. I got it 5 now. I was on the wrong tab. So my native 6 -- my native of this has a last modified 7 date of April 7, 2020. 8 MR. MABE: I'm relieved since that was 9 the date I was giving you. 10 Q. Let me ask you about this, Mr. -- Mr. 11 Polite. So the absorption -- what is the 12 absorption requirement schedule? 13 What does that mean? 14 A. That -- that's going to be what is 15 under contract and what we were required -- 16 minimum number of lots we're required to 17 purchase. Looks like this is for an annual 18 basis. 19 Q. Okay. And it -- if it's dated 20 April 27th -- I'm sorry, April 7th of 2020, it 21 would be pretty current for last year, wouldn't 22 it? 23 A. Yes, sir. 24 Q. And the absorption requirement, if I 25 correctly understand this, means the obligation

Page 286 1 of the Eastwood Construction Partners to purchase 2 lots in these various developments; is that 3 correct? 4 A. Yes, sir. 5 Q. And there are lots that are under 6 contract that are purchased to date and total 7 available for purchase and so on. So you've got 8 a quantity of lots. I think this might be a 9 critical number here, absorption required 10 quarterly; is that right? 11 A. Quarterly. 12 Q. So that's the fifth column from the 13 right side. And I don't have a column identifier 14 on that. But absorption required quarterly and 15 then you've got -- is this -- beside that cash, 16 these are requirements for how much money you're 17 going to need? 18 A. For -- yes, if you're just going to go 19 across, it would be the purchase of, you know, 20 however many lots times their lot price, their 21 acquisition price of those lots would be 661,786. 22 Q. Right. Okay. 23 At least as of April 7th, 2020, there's 24 no anticipation that -- for -- for whatever -- do 25 you know what period this covers?	Page 288 1 A. Yes, sir. 2 Q. Again, no -- no Brooks Springs, 3 correct? 4 A. It is not on this -- this document. 5 Q. I saw a lot of these -- this third 6 page, land goals. That was always kind of 7 unusual. Didn't ever seem like there was a lot 8 of -- a lot of information to be had on those. 9 MR. BRADLEY: You can object now. 10 MR. ADAMS: It's clearly no question. 11 So I'm not even going to have to worry 12 about it. Am waiting for the next 13 question. 14 MR. MABE: All right. 15 Q. I'm just going to scroll through these. 16 But just to confirm that there -- none of these 17 is either River Falls or Brooks Creek, right? 18 This appears to be an earlier one. So that's not 19 going to help us. So -- 20 A. It's on the future if you just scroll 21 past. 22 Q. Yeah, this is -- this page is -- this 23 page goes back to September 2017. 24 Do you see that? 25 A. Yes, sir.
Page 287 1 A. I do not. 2 Q. So there's no anticipation that I can 3 see on this that there would be lots purchased in 4 either River Falls or Brooks Creek or Brooks 5 Springs? 6 A. Not on this document. 7 Q. So would this document support the 8 statement that you were not anticipating any cash 9 outlay for lots in Brooks Springs or Brooks Creek 10 for the period covered by the absorption 11 requirement schedule identified as Exhibit 35? 12 A. According to this document. I am not 13 the author of this document. I am reading it 14 like you are. 15 Q. Do you know who keeps this document? 16 A. This is typically done by our CFO, 17 Kevin Hutchins. 18 Q. Okay. Can you tell us what this -- 19 this -- this schedule seems to be broken down 20 with years? 21 A. These are quarters. 22 Q. Yep. 23 But quarters ending in -- through 24 September of 2020 on this page? This is page 2 25 of the document.	Page 289 1 Q. And in September 2017 Brooks Springs 2 and River Falls are both listed as future 3 developments, right? 4 A. Yes, sir. 5 Q. Meaning -- meaning what, that they're 6 not under contract or they're not -- 7 A. No, sir. That there's no plat. 8 Q. Okay. 9 A. Same for this sheet. 10 Q. No sales, right? 11 A. Yeah, there -- that -- 12 Q. No takedown obligation? 13 A. Correct. 14 Q. And, actually, I think this one -- 15 seems like this one doesn't have a Brooks Creek 16 on it on the last -- on the 8th sheet of this. 17 Sorry. Is this -- is this a -- is this a tool 18 that you use in your work? 19 A. This one -- I do use this one. I don't 20 use the other ones. That's more of the CFO 21 forecasting. 22 Q. So this is -- when you testified 23 earlier that you didn't project your cash flow 24 needs, you were thinking of this form rather than 25 the one that shows the number of lots per quarter

Page 290 1 and the cost? 2 A. Correct. It's -- because I use gross 3 number of lots available for what I produce. 4 Q. Okay. Can you explain why we don't see 5 Brooks Creek on this list of available property 6 in York County? 7 A. I don't -- I don't know why it wouldn't 8 be on there. We would keep -- we would still be 9 tracking it at that date. 10 Q. Okay. I want to ask you some questions 11 on a -- on a different topic, Mr. Polite. There 12 was a -- you were asked several questions about 13 e-mails relating to the contract documents. 14 MR. ADAMS: Thank you. 15 MR. MABE: Yep, you're welcome. I want 16 to see if I can get another document going 17 here. 18 Q. So, Mr. Polite, I'm going to try not to 19 ask questions about all of the same ones you've 20 already looked at. But I do have one or two that 21 I might go back and touch on. Plus I've got some 22 documents that I don't think any of us have 23 looked at today. Waiting for it. 24 Okay. Do you recall -- 25 MR. ADAMS: Let's identify this	Page 292 1 A. Correct. I don't have the details of 2 paragraph 23. 3 Q. Do you recall testifying earlier that 4 there were three deals where there were no 5 contracts, River Falls, Brooks Springs and 6 Kanata, right? You recall -- 7 A. At one point in time there was -- those 8 three were outstanding. 9 Q. Right. 10 And on Kanata, that's -- that's -- 11 that's land that Eastwood was -- did not tie that 12 land up and sell it or assign it to a GreenHawk 13 entity, did it, or do you know? 14 A. That's not what I testified as. I said 15 I did not know the or- -- the origination of that 16 particular deal. 17 Q. Okay. But there -- there had been some 18 sales in Kanata; is that correct? Some lot 19 purchases under -- under a contract for part of 20 those lots; do you know? 21 A. There was a lot contract for phase 1. 22 And I don't recall the exact number. And it was 23 -- we did purchase lots there. 24 Q. So you didn't -- okay. Thank you. 25 To state that a different way, is it
Page 291 1 document for the record. 2 MR. MABE: Yeah, let's do that. 3 Exhibit Number 36 will be ECP page 8500. 4 MR. ADAMS: Okay. 5 (Exhibit 36: E-mail string with the top 6 from Todd Alsop dated 12/14/16 marked for 7 identification, as of this date.) 8 Q. You were asked about Todd Alsop 9 earlier. Do you recall having an e-mail exchange 10 with Mr. Alsop regarding -- is that how you 11 pronounce his name, Alsop? 12 A. Yes, sir. 13 Q. All right. Do you recall having any 14 exchange with him about Jesse Buchanan sending 15 language regarding paragraph 23 on the Kanata 16 contract? 17 A. I -- I do recall this e-mail chain. 18 Q. Do you recall -- 19 A. I don't know the specifics of the -- 20 Q. Okay. But you -- 21 THE STENOGRAPHER: I'm sorry, you're 22 interrupting his response. 23 Q. You recall having an e-mail exchange 24 with Mr. Alsop, you just don't recall the details 25 of it; is that correct?	Page 293 1 correct to say that you did not buy or that 2 Eastwood did not buy lots in Kanata without a 3 purchase and sale contract with the owner of the 4 lots? 5 A. That would be a correct statement. 6 Q. And what you didn't have a contract for 7 was the next phase that you wanted to buy lots in 8 so that you could sell homes on those lots, 9 correct? 10 A. Phase -- I believe it was phase 2. 11 There were future lots that we did not have a 12 contract for that we actually decided not to 13 purchase additional lots at that project. 14 Q. Okay. So there were negotiations on a 15 contract to buy additional lots in Kanata and you 16 ultimately didn't buy additional lots in Kanata 17 after -- after you were there? 18 A. That is correct. 19 Q. Other than the original contract that 20 had -- in the earlier phase? 21 A. We fulfilled the contract that we had 22 between us and whatever entity GreenHawk was 23 using to purchase lots at Kanata. 24 Q. Okay. Now, this paragraph 23 business 25 -- I don't want to ask you about that

Page 294 1 specifically, but Mr. Alsop sent this -- 2 forwarded to you apparently Jesse Buchanan's 3 message about lot -- about paragraph 23. And you 4 -- did he forward it to you or did he copy you 5 with his message when are you hoping to have 23 6 completed? 7 A. That was Todd's e-mail to me. 8 Q. Todd -- Todd sent you either a copy of 9 or a blind copy of this message that he sent to 10 Jesse asking Jesse when are you hoping to have 11 number 23 completed; is that correct? 12 A. I don't -- 13 MR. ADAMS: Objection to form. 14 A. Yeah, I don't -- I don't know what -- 15 whose e-mail this was to or anything. 16 Q. Isn't it correct that Mr. Alsop was not 17 asking you if you were going to have number 23 18 completed? He's not asking you that, is he? 19 A. I don't know. But he's -- he's asking 20 somebody in -- assuming it looks like he's asking 21 Jesse. 22 Q. So you got a copy of this and you said 23 -- you asked Todd -- Todd is Jesse the man for 24 contracts now? 25 Do you recall that?	Page 296 1 which is -- let me see if I can call it up right 2 quick. I don't know how fast I can do this. 3 MR. COX: You're looking for our 4 Exhibit 14, aren't you, that same e-mail 5 date? 6 MR. MABE: Yes, I am. And it's where 7 he sends the message, gentleman, I would 8 like to start the process for completing 9 the lot purchase. 10 MR. COX: Yeah, I think we can -- I 11 think we can get it if you want it. You 12 want it? 13 MR. MABE: Yeah, that would be great. 14 MR. COX: Can we get it? Oh, there we 15 go. I'm sorry, I'm trying to share the 16 screen myself. This one? 17 MR. MISNER: No, you're going to have 18 to open it. 19 MR. ADAMS: 14? 20 MR. COX: Is it 14, Jimmy? I think it 21 is. 22 MR. ADAMS: Well, that's what you said. 23 I'm just repeating what you said. 24 MR. COX: Yeah, yeah, there we go. Can 25 you all see it now?
Page 295 1 A. Yes, I asked that question. 2 Q. And so he says, Not sure. But he was 3 the one who sent it. He's referring to the 4 Kanata contract there, isn't he? 5 A. All of this refers to Kanata, yes, sir. 6 Q. So he had sent you the Kanata -- he had 7 sent Todd the Kanata contract, Todd either 8 forwarded it or copied you on a message to Jesse 9 -- I'm sorry. Yeah, to Jesse. And you asked the 10 question is Jesse the man for contracts now? 11 A. I did, yes. And the reason is is 12 because Craig went silent, our normal contact. 13 Q. Okay. And you were interested in 14 getting up with him because you wanted this -- 15 this -- was this a prompt for you when you saw 16 that Jesse was involved in the contract with 17 Kanata, was that a prompt for you to say, hey, 18 wait, let me go ask Jesse if he will draft -- 19 draft a contract for Brooks Creek or Brooks 20 Springs? 21 A. I -- I don't -- I don't remember 22 exactly if this -- if that was a prompt. It was 23 nice to know that we had something moving at 24 Kanata with Jesse. 25 Q. You were previously shown an exhibit,	Page 297 1 THE DEPONENT: I see the list of all of 2 the exhibits, Steve. 3 MR. COX: Oh, I'm sorry. My apologies. 4 One moment. Let me get back. Sorry, Mr. 5 Polite. One second. 6 Unlike Ted Lasso, I'm not left-handed. 7 I'm going to give this to Tim Misner, see 8 if he can do it. 9 MR. MABE: Oh, I can -- I've got it up 10 now. So I guess I can show it to you. 11 MR. ADAMS: You're not amphibious, 12 Steve? 13 MR. COX: What's that? I'm not 14 amphibious? No, I'm not amphibious either. 15 That's a line for the ages. 16 MR. ADAMS: Yep. 17 MR. COX: You've got it, John? How 18 many lawyers does it take, as they say? 19 MR. MABE: Are you waiting for me now? 20 MR. COX: No, I'm not. I'm sorry, I 21 thought you said you had it. But we can 22 get it. 23 MR. MABE: No, I did. I did. But then 24 when I tried I couldn't because -- all 25 right. So I've got it up here now. So I

Page 298 1 think this may be a slightly different 2 version of it. This is ECP 8498. And I 3 think you -- did you use a GreenHawk 4 version of this e-mail? 5 MR. COX: No, I think we used that one. 6 I think we used the -- we used the same 7 document, same document. 8 MR. MABE: Okay. Good. So this is -- 9 this is you said Exhibit 14? 10 MR. COX: Yes, sir. 11 MR. ADAMS: Yes, sir, that's correct. 12 Q. So -- 13 A. John, may I ask what was the date -- I 14 know how you're trying to relate these two -- 15 Q. Yeah, the other one is December 14th at 16 1 o'clock in the afternoon. And this is 17 December 14th at 5:00 in the afternoon. And 18 that's -- 19 A. Okay. 20 Q. -- exactly what I was going to ask you 21 to note. So it appeared to me, at least, that 22 that message from Todd Alsop prompted you to send 23 this to both Greg and Jesse and to ask them to 24 start the process? 25 A. I think that's fair enough given these	Page 300 1 finish this line and let's take a break and 2 let me see where we are. 3 MR. MABE: I don't know why this isn't 4 showing up full screen. 5 (Exhibit 37: E-mail string with the top 6 from Joe Polite dated 12/22/16 marked for 7 identification, as of this date.) 8 Q. All right. Here's a -- here's a 9 Exhibit 37. And this is ECP 8430. And in this 10 there's some little time later, couple days later 11 he sends Exhibit -- excuse me, paragraph 23. 12 Do you see that, Mr. -- Mr. Polite? 13 A. Yes, sir. 14 Q. And then Alsop really took offense on 15 that because the price jumped to 130,000 when you 16 all were expecting 115,000, right? 17 A. That's for phase 2. 18 Q. Okay. So didn't -- the negotiation 19 wasn't going very well on dealing with phase 2 20 pricing, correct? 21 MR. ADAMS: Objection, form. 22 A. As I mentioned earlier, we decided not 23 to do phase 2. 24 Q. Okay. And so your response to that is 25 it's not even odd, it's criminal. I guess you're
Page 299 1 -- this other exhibit, yes. 2 Q. Okay. Let's see. I've got -- 3 MR. MABE: I think there's a faster way 4 to do this, guys. And I'm sorry that I 5 don't know what it is. 6 MR. ADAMS: The faster way to do it is 7 have them already printed to PDF and on 8 your computer as PDFs. 9 MR. MABE: I do. 10 MR. ADAMS: I thought you were having 11 to pull them off of Relativity or 12 something? 13 MR. MABE: No, I'm not. I'm getting 14 them off my -- I've got them all in a 15 folder. But in any event. 16 MR. ADAMS: Let me ask you, John, how 17 much longer do you think you're going? 18 MR. MABE: Just -- not a lot. Well, 19 probably an hour. 20 MR. ADAMS: I mean, it's quarter after 21 5:00. Joe has to drive home. 22 MR. MABE: I've got one more question 23 on this front and then I'm going to go to a 24 different place. 25 MR. ADAMS: All right. Well, let's	Page 301 1 kind of being sarcastic or joking here with him 2 that that's just a ridiculous amount of money to 3 be asked to pay for those lots. Is that your 4 intent when you said that? 5 A. I believe that's a correct 6 characterization. 7 Q. But then you also point out that you 8 haven't even got a contract for your two 9 developments -- for your two in Tega Cay. Do you 10 see -- now, are you referring to the two 11 developments River Falls and Brooks Springs in 12 Tega Cay? 13 A. Yes, sir. 14 Q. Okay. I'm going to stop at that point. 15 Take a break. I'll get the other -- I'll try to 16 get the other documents lined up. I've got them 17 lined up. The problem is getting them up on the 18 screen. I'm finding it as quickly -- I can get 19 them as quickly out of the -- out of the folder 20 that we uploaded to the platform as I can taking 21 them off the platform. 22 MR. ADAMS: Okay. 23 MR. MABE: I want to ask you some 24 questions about some of these contract 25 documents.

Page 302 1 MR. ADAMS: Okay. John, let's take a 2 quick break and let me talk to Joe about 3 his schedule and about whether we can go 4 keep going or not. 5 MR. MABE: Okay. 6 MR. ADAMS: Let's just take 5 minutes. 7 We'll be back at 5:25. 8 MR. MABE: Okay. 9 MR. COX: Sounds good. Thank you. 10 (A BRIEF RECESS WAS TAKEN.) 11 MR. ADAMS: All right. John, we're 12 willing to keep going, but I'm really 13 asking whether we can try to wrap -- you 14 think we can wrap it up by 6:00. 15 MR. MABE: I think -- I think we can 16 finish in 30 minutes. 17 MR. ADAMS: Okay. Let's aim for that. 18 Thank you. 19 MR. MABE: All right. 20 (Exhibit 38: Contract and Option To 21 Purchase Real Estate marked for 22 identification, as of this date.) 23 BY MR. MABE: 24 Q. Mr. Polite, I've got a -- on the screen 25 here a document that I'm going to identify as	Page 304 1 that e-mail, I believe. But irrespective of 2 that, I just want to ask you a couple of 3 questions about this. 4 A. Okay. 5 Q. You see this second paragraph, if you 6 read that into the record, please. 7 A. The effective date means the latest 8 date of the execution by the seller and any buyer 9 officer other than Joe -- Joseph K. Stewart or J. 10 Clark Stewart, as indicated on the signature 11 page. From the effective date the agreement will 12 be in full force and effect of 30 days, but will 13 automatically terminate if the signature of 14 Joseph K. Stewart or J. Clark Stewart is not 15 affixed within 30 days of the effective date. 16 Q. Can you tell us why that paragraph is 17 likely to be on this document? 18 MR. ADAMS: Objection, form. 19 Q. Do you know why this paragraph is 20 included on the document? 21 A. This is a guard against a rogue 22 employee in getting the company into contracts to 23 purchase without the knowledge of the ownership. 24 Q. Okay. In essence, they have a veto on 25 any contract. And no contract is good for more
Page 303 1 Exhibit 38. And it's ECP 2691. 2 MR. ADAMS: 2691? 3 MR. MABE: 2691. 4 Q. And I'll ask you, Mr. Polite, do you 5 recognize this? 6 A. I'm reading it now and it looks like 7 our standard, as we said earlier, boilerplate 8 contract option for lot purchases. 9 Q. Actually, if you'll look more closely, 10 you'll see that it's dated September 2013 between 11 the GreenHawk entity and Eastwood Construction 12 and it involves Lindley Park in Guilford County. 13 Do you see that? 14 A. Yes, sir. Yes, sir, I see all that. 15 Yes, sir. 16 Q. It says Lindley Woods, LLC as the 17 seller and it involved Lindley Park Estates. 18 Do you see that? 19 A. Yes, sir. 20 Q. Do you recall testifying earlier that 21 one of the documents that was sent -- that you 22 sent to Craig and Jesse at GreenHawk was the 23 Lindley Estates contract? 24 A. Yes, sir. 25 Q. And this you would find affiliated with	Page 305 1 than 30 days unless they sign off on it; is that 2 a fair paraphrase of that paragraph? 3 MR. ADAMS: Objection, form. 4 A. Fair, yes. 5 Q. And that has to do with what you 6 testified about earlier, the three of you getting 7 together and discussing every deal as to whether 8 you're going to buy land, right? 9 A. The three of us along with the division 10 president, yes. 11 Q. And so that happens before they will 12 sign off on a deal as a safety mechanism to make 13 -- well, I'm going to beat a dead horse. 14 Now, I want -- I want to ask you a 15 question about the exhibit -- let's see what -- 16 this may not -- this may not be your full 17 contract. I'm not sure. But I want to show you 18 Exhibit B. Can you tell us what Exhibit B is? 19 A. Exhibit B is the purchase price and 20 absorption schedule. 21 Q. Okay. And just take note, if you 22 would, that there are 14 take downs on this. 23 A. Yes, sir. 24 Q. Beginning at 26 and escalating to 25 39,000 per lot, correct?

Page 306 1 A. Yes, sir. 2 Q. Why is it that there's an escalation in 3 the lot price over time? 4 A. It's been fairly standard in contracts. 5 I believe we've discussed a 1-and-a-half percent 6 quarterly escalator with GreenHawk before. It's 7 just kind of knowing that subdivisions tend to 8 have a starting and at a lower price and as you 9 move through it it does adjust for either 10 inflation or price increases. 11 Q. Okay. I'm going to -- let me see. I 12 don't know if I can do this or not. Now switch 13 to ECP -- document number ECP 1669. See, I 14 learned to do something while we were on break. 15 MR. ADAMS: We're not on, Jim. 16 MR. MABE: Thank you. You're welcome, 17 Jim. 18 MR. ADAMS: We're not getting it, John. 19 A. We're still on Exhibit B, John. 20 MR. MABE: Oh, goodness. I didn't 21 learn to do something. Dagummit. Give me 22 a second. Let me see if I can. 23 How about now? 24 A. We have a new exhibit. 25 Q. Okay.	Page 308 1 talked about before? 2 A. Yes. 3 MR. ADAMS: Objection to form. 4 A. Yes, that's the same language I read 5 into the record. 6 Q. All right. Would this appear to you to 7 be a draft on your form, not on GreenHawk's form, 8 of a prospective Brooks Creek contract? 9 A. This would be putting in the details of 10 the York County one on our form by Eastwood's 11 form contract. 12 Q. Do you know who prepared this? 13 A. I do not know. Is there a date of when 14 this was done? 15 Q. There -- there is a -- there is a date 16 up on the metadata for this document, which is 17 December the 15th, 2016. But it doesn't show on 18 the document. 19 MR. MABE: And, Jimmy, you might -- if 20 you could confirm that December 16, 2016. 21 MR. ADAMS: Well it's attached to an 22 e-mail dated January 16, 2017. 23 MR. MABE: That's from Katie Sands, 24 right? 25 MR. ADAMS: Yep.
Page 307 1 A. I don't know. 2 (Exhibit 39: Contract and Option To 3 Purchase Real Estate marked for 4 identification, as of this date.) 5 Q. This is document -- I'm going to -- 6 we're going to identify this as Exhibit 39. And 7 this is your production page number ECP 1669. 8 And I'm going to zoom in on this a 9 little bit so you can read it better. Can you 10 see all of that? 11 A. Yes, sir. 12 Q. And it still says December 2013. But 13 now it's referring to property in York County. 14 Do you see that? And it refers to a purchase of 15 lots in Brooks Creek. 16 Do you see that? 17 A. Yes, sir, I do see it. 18 Q. And this still has that safety valve 19 language in it, doesn't it? The effective date, 20 et cetera, in the document would automatically 21 terminate unless signed by one of the Stewarts 22 within 30 days after the effective date. 23 MR. ADAMS: Objection to form. 24 Q. You can just answer yes or no. It 25 still has the safety valve language that we	Page 309 1 Q. And Mr. Polite, I didn't show you this, 2 but you sent Katie Sands a copy of the e-mail 3 that you sent to Mr. Briner and Mr. Buchanan and 4 you told him that you were looking for a contract 5 draft from -- from before. And I can -- I was 6 trying to save some time by not showing you that 7 e-mail. But let's -- let's go on. I want to ask 8 you a couple of questions about this document 9 before we go to that. 10 MR. ADAMS: So John, what I have is 11 that it was created -- well, it's -- 12 MR. MABE: Hard to go by the creation 13 date. 14 MR. ADAMS: Yeah, because it looks like 15 it was probably from December of '13. 16 MR. MABE: Now, that -- that had to do 17 with Lindley. 18 MR. ADAMS: Well, all I tell you is -- 19 MR. COX: No, there was -- 20 MR. ADAMS: The last modified -- the 21 last modified date it says 12 of '16, but 22 it says it was modified by Joe. So... 23 THE DEPONENT: Joe who? 24 MR. ADAMS: Joe you. 25 MR. COX: You'll recall, Jimmy, I think

Page 310 1 there was also a reference from -- in an 2 e-mail exchange with Mr. Nason that said he 3 did a first raw draft. And remember, we 4 weren't able to find the draft. Does that 5 metadata indicate any work by Mr. Nason in 6 2013? 7 MR. ADAMS: It does not. 8 MR. MABE: I could not find any. 9 MR. COX: Okay. Thank you. 10 Q. So, Mr. Polite, do you recall working 11 on a draft of a Brooks Springs contract? 12 A. Not at all. 13 Q. Who is Joe Far- -- there's a guy named 14 Farley, isn't there? 15 A. I don't -- I'm not familiar with that 16 name. 17 Q. Okay. Let me -- let's see. If we can 18 get down to page 12 of this. We'll have Exhibit 19 B. Remember we were looking a moment ago at the 20 absorption schedule for the Lindley? 21 A. Yes, sir. 22 Q. All right. So this looks a lot like 23 the -- and so I can't get both of these on the 24 screen at the same time. But this is very 25 similar to the absorption screen schedule for	Page 312 1 be the first change to this document, does it, 2 from Lindley? 3 A. I'm -- I'm not sure of your point. Is 4 there -- is there a question? Because I don't 5 know -- 6 Q. I just asked you if it appeared that 7 the -- the deletion of this takedown schedule 8 doesn't appear to be the first change made since 9 the Lindley contract takedown schedule that you 10 looked at earlier? 11 MR. ADAMS: Objection, form. 12 A. It is not the same takedown schedule -- 13 Q. Okay. 14 A. -- that we've just looked at. 15 Q. Then it was deleted, and as you've 16 pointed out, some -- some different language was 17 added. 18 Do you know who added this language? 19 A. I do not, guys. I am not the author of 20 this. 21 Q. Okay. And there's a fairly long 22 example of how to set the takedown price. And 23 we're not going to go through that. But it -- is 24 it -- would it be your testimony, Mr. -- Mr. 25 Polite, that this document was never finalized as
Page 311 1 Lindley. But you'll see instead of starting at 2 \$26,000 it starts at 26,250 before that was 3 struck out. 4 A. Okay. 5 Q. And we talked about how it went up to 6 39,000. And this actually goes to 39,750. It 7 appears that someone changed the Lindley schedule 8 of takedown prices and added some additional 9 takedowns. But they were using the same format. 10 Does it appear that way to you? 11 MR. ADAMS: Objection to form. 12 Q. Mr. Dority, does it appear to you that 13 someone modified the Lindley takedown schedule by 14 adding additional takedowns and increasing the 15 lot prices? 16 A. It appears to me -- 17 MR. ADAMS: Objection to form. 18 A. Oh, sorry. 19 It appears to me someone deleted a 20 takedown schedule and added other language. 21 Q. Yes, I understand that. That's my next 22 question. But before that, it appears that these 23 numbers were changed and additional takedowns 24 were added. So this doesn't appear to be the 25 first -- the striking of this doesn't appear to	Page 313 1 a contract of signed -- signed and approved by 2 the Stewarts? 3 A. That would be -- yes. 4 Q. Okay. You spoke earlier about -- let 5 me see. You spoke earlier about the boilerplate 6 not changing very much, but that the changes were 7 usually in price and the -- and the takedown 8 schedule; is that correct? 9 Was that your testimony? 10 A. Yes, I would add deposit, takedown 11 schedule and price, yes, sir. 12 Q. Okay. There are -- I'm going to refer 13 you to page 2 of this document. And you'll see 14 that there are miscellaneous other changes in the 15 boilerplate such as lot size, pad size and there 16 are even things that are deleted from the 17 boilerplate. So note that paragraph 13 on the 18 second page of this document has been deleted. 19 Do you see that? 20 A. Yes, sir. 21 Q. And let's look at page 7 of the -- of 22 this document. And on this page you'll note 23 further changes to the maintenance paragraph, 24 which is, I think, for all intents and purposes, 25 we could call that a change to some of the

Page 314 1 boilerplate language, couldn't we? 2 A. Yes, sir. 3 Q. And, likewise, in the corporate res- -- 4 well, that's just a clarification, I think, in 5 the corporate resolution part. Let me ask you 6 about page 7 -- let me see. On -- on this page 1 7 of the paragraphs is that the document may not be 8 altered or modified except in a written 9 agreement. 10 Do you see that? 11 A. I'm reading that, yes, sir. 12 Q. Paragraph 16. 13 And on the next page, come on, there's 14 some language regarding permits. And you see 15 under that paragraph 24 B regarding model home 16 site? Seller shall prepare a minimum of one lot 17 ASAP in order for purchaser to jump start the 18 community with our model home. 19 Do you see that? 20 A. I do see it, yes, sir. 21 Q. Does that suggest to you that the 22 person who drafted this is someone at Eastwood? 23 A. I -- yes, our model would be an 24 Eastwood model home. 25 Q. And then I want to ask you about other	Page 316 1 that you are trying to have exclusive -- the 2 exclusive right to purchase in the subdivision, 3 correct? 4 MR. ADAMS: Objection, form. 5 A. Without written permission by 6 purchaser. So there is a way to have this all 7 taken care of. 8 Q. So which -- between the various 9 contracts that we -- graphs that we've looked at, 10 you couldn't say which of these terms applies to 11 the deal that you believe you have with GHD 12 Brooks Creek to buy the lots in the Brooks Creek 13 subdivision, could you? 14 MR. ADAMS: Objection, form. 15 A. Can you restate that, please, Mr. Mabe. 16 Q. I said among these various drafts, this 17 one and the lot purchase agreement that you 18 looked at earlier today that Mr. Cox showed you, 19 you can't say which so-called boilerplate terms 20 apply to the agreement that you claim you had to 21 buy lots in Brooks Creek, can you? 22 A. This -- this shows that there are 23 changes to the boilerplate. 24 Q. No, but the two drafts are quite 25 different too, aren't they?
Page 315 1 lot purchasers' language. Are you familiar with 2 negotiating to restrict subdivision purchasers to 3 just Eastwood or maybe just Eastwood plus one 4 other developer? 5 A. We do ask for language to -- to know 6 who our other -- if there are two buyers or two 7 builders, who the other one would be, and that we 8 -- our lot prices wouldn't be higher than the 9 others for the lot -- 10 Q. So this -- this -- 11 THE STENOGRAPHER: Excuse me, you 12 interrupted the witness's answer and I 13 didn't get the rest of his answer. 14 A. The lot -- lower than the lot price 15 that we utilize. 16 Q. It's a -- isn't it, sir, most favored 17 nation language -- either exclusivity or most 18 favored nation clause? 19 Have you -- 20 A. Not my -- 21 Q. -- heard of that phrase? 22 A. I'm familiar with it, but I'm not 23 making a determination. 24 Q. Okay. Well, but, again, this isn't 25 boilerplate, is it? This is a negotiated term	Page 317 1 MR. ADAMS: Objection, form. 2 A. I'm trying to decide which one I'm 3 comparing it to. 4 Q. Steve, what exhibit number is that lot 5 purchase agreement? 6 MR. COX: I think it's 20, isn't it, 7 Tim? 22. 22. 8 MR. MABE: Mr. Reporter, were you able 9 to -- 10 THE STENOGRAPHER: You broke up and I 11 didn't understand. I'm sorry. 12 MR. MABE: You -- 13 MR. COX: If you stop -- 14 MR. MABE: I'll stop sharing. I'll 15 stop sharing. 16 MR. COX: We're trying to do it here, 17 guys. 18 Tim's going to have to drive. Just 19 tell us what you want, John. This is 20 Exhibit 22. 21 MR. MABE: Yes. 22 Q. So my question, Mr. Polite, is as 23 between Exhibit 22 and the draft that we just 24 looked at, you can't tell us which terms apply to 25 the alleged agreement you have to buy the Brooks

Page 318 1 Creek lots from GHD Brooks Creek, can you? 2 MR. ADAMS: Objection to form. 3 A. Could I ask for some clarifications 4 here? Because this is a different contract than 5 the Lindley Estates contract you showed me. And 6 this one is a clean version of the Brooks Creek 7 draft. If you could go down to, I don't know, 8 paragraph 30 where we just were to see what 9 changes were actually put in this document. 10 Thank you for whoever is driving this. 11 MR. COX: That's Tim. It would be all 12 over the place if it were me. 13 THE DEPONENT: Thank you, Tim. 14 MR. COX: I'm not sure the numbers are 15 going to correspond to subject matter, but 16 we'll go to 30 if that makes sense. 17 THE DEPONENT: That was the last 18 paragraph we were on, Stephen. I was just 19 trying to -- 20 MR. COX: No, sure, I get it. I get 21 it. What you're asking for is you want to 22 compare an apple to an apple or an apple to 23 an orange. That's as far as it goes. It 24 goes to paragraph 21 in this one. 25 A. Yeah, this isn't the same document that	Page 320 1 Q. Okay. Well, they're different 2 contracts. And neither one of them was signed. 3 And neither one of them applies to the purchase 4 of lots in Brooks Springs, do they? 5 A. Which one? This one? 6 Q. Neither of them applies -- 7 A. -- that or the Lindley Estates revised 8 contract? 9 Q. I think -- I don't know if I'm asking 10 you a really bad question or if you're not 11 listening to the question. But neither of these 12 documents applies to the purchase that you allege 13 you have a right to -- sorry. Neither -- take 14 another run at this. 15 You cannot tell us what terms in either 16 of these documents apply to your alleged contract 17 to buy lots in Brooks Springs, can you? 18 MR. ADAMS: Objection, form. 19 A. They're two different documents. 20 Q. Okay. I think that will suffice. 21 A. Yes, sir. 22 Q. Now, give me a moment. I may be 23 completed here. 24 I want to ask you a couple of follow-up 25 questions about something you were briefly asked
Page 319 1 we were looking at at Lindley Estates. We -- I 2 think -- I just want to make sure I'm clear, Mr. 3 Mabe. You asked me about the Lindley Estates 4 being changed and formatted to try to match 5 something at Brooks Springs. And this particular 6 contract is not that finished product. 7 Q. Well, that's clear, I think, to all of 8 us. But what I -- I want to clarify that 9 Exhibit 39, which is the document you were 10 looking at a moment ago with draft in the blue 11 language, is a draft Brooks Springs or Brooks 12 Creek purchased contract for the purchase of lots 13 by Eastwood from GHD Brooks Creek of lots in that 14 Brooks Springs subdivision. And my question to 15 you was as between that draft and the draft that 16 is now on the screen, Exhibit 22, is it? 17 A. Yes, sir. 18 MR. COX: Yes, sir. Yes, sir. 19 Q. You -- you, Mr. Polite, can't tell us 20 which of these applies to the purchase of lots in 21 Brooks Springs, can you? 22 MR. ADAMS: Objection to the form. 23 A. I believe you said that we all knew 24 that is what you just told me, that we knew that 25 they were different contracts.	Page 321 1 about. I'm going to -- I've already stopped 2 sharing my screen. If you want to stop sharing, 3 you can or not. 4 MR. COX: Wait. I hate to do this, 5 John, but I think that point you were on is 6 very important. And I want to -- I wanted 7 somebody to ask at least one or two 8 questions about it before we lose this, 9 really quickly. 10 MR. MABE: Leave that document -- leave 11 that document up. I'm going to ask one 12 other question before I stop. 13 Q. Mr. -- Mr. Polite, what can you tell us 14 about the relationship between Eastwood and 15 Callahan, specifically Jared Callahan and any of 16 his LLCs? 17 A. There's no relationship. They're two 18 completely different entities. We have no cross 19 anything with Jarrett Callahan Grading. 20 Q. You have no cross ownership with them? 21 A. Absolutely not. No, sir. It was 22 always -- they were always a subcontractor of -- 23 employed by Eastwood at some points and also 24 GreenHawk in these points. 25 Q. I think you'll find that there's some

Page 322 1 documents where they're listed as the developer 2 of projects. Are you familiar -- are you 3 familiar with the Sweetwater project? 4 A. Sweetwater? Yes, sir. They were our 5 grading contractor on that. 6 Q. They -- they were not the developer of 7 it? 8 A. No, sir. 9 Q. All right. 10 A. EDC -- EDC and Eastwood Development 11 Corp. owned the second phase of Sweetwater. And 12 Callahan Grading was the general contractor on 13 that. 14 Q. When Callahan started filing 15 bankruptcies, and I think at least two of the 16 companies were bankrupt, including Callahan 17 Grading, did you undertake to try to determine 18 how much exposure you had for lots that were 19 being completed by Callahan? 20 MR. ADAMS: Objection to form. 21 A. When we got notice of the bankruptcy, 22 we looked at anything or any project that that 23 Callahan Grading was a part of. 24 Q. Did Eastwood file a claim in the 25 Callahan bankruptcy, to your knowledge?	Page 324 1 Q. Okay. Thank you. That's all. 2 MR. COX: Two quick questions, Jimmy, I 3 promise. If I could -- just to follow up 4 that last thing real quick, if I may. 5 EXAMINATION 6 BY MR. COX: 7 Q. Mr. Polite, you recall we talked 8 earlier in the -- if you're going to do a lot 9 purchase contract, you're going to have certain 10 general terms in that contract which lawyers 11 sometimes call boilerplate, correct? 12 MR. ADAMS: Objection to what lawyers 13 sometimes call things. 14 Q. You're going to have certain general 15 terms in a lot purchase contract that are not 16 deal specific, right? 17 A. That can be -- yes, that would be 18 germane to a lot development project, yes. 19 Q. And then you're going to have certain 20 deal specific terms such as price and takedown 21 schedule, correct? 22 A. And deposit. Everyone forgets 23 deposits. Earnest money, deposits, price and 24 takedown and lot spec as single-family lot specs 25 differ from townhome lot specs, specifications.
Page 323 1 A. Did we file a claim? Not to my 2 knowledge. We had claims. I'm not sure if they 3 were perfected, Mr. Mabe. I'm sorry, I don't 4 know the exact if it was filed. 5 Q. Okay. 6 A. I can't remember. 7 Q. Who -- who in the organization at 8 Eastwood has the most familiarity with the 9 contractual relationship with Callahan? 10 A. I inherited them. I don't -- I never 11 initiated a contract with them. So I'm not the 12 best. I'm trying to think who. My 13 predecessor -- 14 Q. Would Conley -- would Mike -- 15 A. Mike Conley -- 16 THE STENOGRAPHER: I'm sorry, if you 17 can go one at a time, please. 18 Q. Would it be Michael Conley? 19 A. As far as best, I don't think he's the 20 best. I still think my predecessor had the 21 relationship with Callahan Grading. 22 Q. So -- so Joe Dority would be probably 23 the person with the most -- most knowledge of the 24 relationship? 25 A. That was my predecessor, yes, sir.	Page 325 1 Q. Right. I'm not trying to be exhaust- 2 -- I'm not trying to be exhaustive. I'm just 3 trying to say you're going to have certain deal 4 specific terms such as price and takedown 5 schedule and you're going to have certain general 6 terms. And together, all of those terms combine 7 the whole contract, correct? 8 A. Yes, sir. 9 Q. And I think, as Mr. Mabe was saying a 10 moment ago, you looked at a lot purchase contract 11 -- 12 MR. ADAMS: Steve, Steve. 13 MR. COX: Yes. 14 MR. ADAMS: Steve, can you turn your 15 camera on? 16 MR. COX: Oh, I'm sorry. I thought it 17 was on. I apologize. 18 Q. And a moment ago Mr. Mabe showed you a 19 Brooks Creek contract that had been revised off 20 of a Lindley form. Do you recall that? I think 21 it was Exhibit 39. 22 A. Yes, sir. 23 Q. And that form originated within 24 Eastwood, correct? It was an Eastwood template, 25 correct?

Page 326 1 A. Yes, sir. 2 Q. This Exhibit 22 that's on the screen 3 now, this -- we looked at this earlier. This is 4 the October 31st, 2018 proposed contract that 5 came from GreenHawk. 6 Do you remember that? 7 A. I do remember that. 8 Q. And that had its origination in some 9 sort of GreenHawk form. 10 Do you agree with that? 11 A. I do -- I believe GreenHawk initiated 12 that version, yes. 13 Q. So not surprisingly, because you have a 14 GreenHawk form on the one hand in Exhibit 22, and 15 an Eastwood contract on the other hand in 16 Exhibit 39. The numbers don't match up and the 17 paragraphs don't match up, right? 18 MR. ADAMS: Objection to form. 19 A. Two different -- two different contract 20 structures. 21 Could you please go to the top of this 22 one so I could see page one? 23 Q. Sure. 24 A. Thank you. 25 Q. While he's getting there, two different	Page 328 1 it believes it has a lot purchase contract with 2 Brooks Creek, correct? 3 A. Can you repeat that question, please. 4 Q. Eastwood's position in this lawsuit is 5 that it believes it has a lot purchase contract 6 with a GreenHawk entity, correct? 7 A. Yes. 8 Q. And so as we just said, you've got some 9 general terms in contract form 21 -- 22 here on 10 the screen and you've got some general terms in 11 Exhibit 39, which you looked at earlier. Which 12 of those sets of general terms go into the 13 contract that Eastwood now says it has in its 14 Complaint? 15 MR. ADAMS: Objection to form. 16 Q. You can answer. 17 MR. ADAMS: You can answer, if you can, 18 Mr. Polite. 19 A. I think it's too scattered. I didn't 20 -- I didn't get your -- he was making a point. I 21 didn't hear the question. 22 Q. Okay. Here's the question again. 23 We've got one set of general terms in this 24 Exhibit 22 on screen now. You'll agree with 25 that?
Page 327 1 contract structures with general terms that may 2 or may not match up in all cases, correct? 3 A. Well -- 4 MR. ADAMS: Stephen, he has to look at 5 the first page. So I'm not -- I think it's 6 not fair to ask him a question while your 7 man is trying to get to the top of the 8 agreement so that my man -- 9 MR. COX: Well, I didn't think that 10 question depended on the page, Jimmy. And 11 I'm trying to save time. But I'm happy to 12 wait to get there. 13 Q. Mr. Polite, do you see it now? 14 A. I do see it, yes, sir. 15 Q. These are two different contract 16 structures, Exhibit 22 and 39, correct, that you 17 just said? 18 A. Yes. 19 Q. And two different sets of general 20 terms, some of which may match, some of which may 21 not, correct? 22 A. I'd have to review it page by page, but 23 I would agree with that general statement. 24 Q. Okay, okay. And so here is the 25 question, your -- Eastwood's allegation is that	Page 329 1 A. As I said, I have to look page by page 2 to see if they're similar or -- or different. I 3 could tell you the format's different. 4 Q. Well, I'm not asking whether they're 5 similar or different. I'm asking whether there 6 are general terms in this document. And I'm 7 happy to go through it if you'd like? 8 MR. ADAMS: Well, I think you are -- 9 well, anyway, I can't say what I want to 10 say. 11 Q. There are general terms in this 12 document. For example -- 13 A. You just passed over the price. 14 Q. There's the price. That's a deal 15 specific term, right, the price? 16 A. Okay. 17 Q. And then you have title and survey, 18 that's a -- you generally see a title and survey 19 provision in any lot purchase contract; would you 20 not? 21 A. Yes. 22 Q. You'd see a conditions to closing 23 provision as a general in any lot purchase 24 contract; would you not? 25 A. Yes.

Page 330 1 Q. Closing and possession. Right now 2 we're looking at a variety of general terms? 3 A. Yes. 4 Q. Closing costs and prorations, right? 5 A. Yes. 6 Q. And you may recall, we went through 7 this whole document earlier and we ended up with 8 21 total terms. 9 Do you remember that? 10 A. I don't recall 21 total terms. But... 11 Q. 21 total paragraphs, I think. 12 A. Oh, paragraphs. Okay. I think the 13 last page -- you're saying the last page had 14 paragraph number 21, it didn't go further. 15 Q. Correct. That's exactly what I'm 16 saying. 17 A. Yes, sir. 18 Q. I made a mistake, guys. I tried to do 19 it myself. That's what happens. 20 So this is Exhibit 22 where we see 21 21 paragraphs with a number of general terms and 22 some deal specific terms, correct, Mr. Polite? 23 A. Yes. 24 Q. And I'm happy to ask Mr. Mabe to throw 25 up Exhibit 39 right now, which was the Lindley	Page 332 1 to the point of selecting -- of selecting general 2 terms to go into it because it was never adopted? 3 A. The general and the specific terms were 4 never finalized. 5 Q. Got it. That's all I need. 6 One last -- two last questions. Did 7 Mike Conley have the authority all by him himself 8 to approve the lot purchase agreement for Brooks 9 Creek that GreenHawk sent to you on Halloween 10 2018? 11 A. It would have gone through the same 12 process, Mr. Cox, that it would have to be signed 13 with Conley's signature to start the effective 14 date and then within 30 days one of the Stewarts 15 would have had to sign that. 16 Q. Okay. So the answer is he did not all 17 by himself have the authority to approve that, he 18 had to have a signature from a Stewart? 19 A. That is correct. The way -- in our 20 format of -- of our terms. 21 Q. Did the land acquisition committee also 22 have to meet with you on it to approve the deal 23 as well? 24 A. If we got to a final contract, Mike 25 Conley would have brought it to us so that we
Page 331 1 revised contract. But I think you'll remember 2 when he was going through that with you that also 3 had some general and deal specific terms in it. 4 Do you remember that? 5 A. Yes. 6 Q. But there were -- you know, in that 7 case there were more paragraphs than in this one. 8 Do you remember that's why we noticed they didn't 9 match up when we did that analysis? 10 A. We did discover that, yes, we did. 11 Q. And so we have one set of terms in this 12 paragraph -- excuse me, in this Exhibit 22, and 13 we have another set of terms in Exhibit 39. And 14 Mr. Mabe I both are trying to figure out of those 15 two sets of terms in these two different 16 exhibits, which ones do you think go into the 17 contract that Eastwood says it now has with a 18 GreenHawk entity to buy Brooks Creek? 19 MR. ADAMS: Objection to the form of 20 the question. 21 A. As -- as stated before, we know that 22 there was never a contract adopted of one form or 23 the other. 24 Q. Okay. So is the answer that because 25 there was no contract adopted, you all never got	Page 333 1 would have presented it within -- typically that 2 happens within that 30-day window. 3 Q. And as you testified earlier, that did 4 not happen? 5 A. That's correct. 6 Q. All right. That is really all I have. 7 Thank you very much, Mr. Polite, for your time 8 and patience. We appreciate it. 9 A. All right. Thank you, Mr. Cox. 10 THE DEPONENT: Mr. Mabe, thank you. 11 MR. MABE: Thank you, Mr. Polite. 12 THE DEPONENT: And Mr. Court Reporter, 13 thank you. 14 MR. COX: Especially. He's going to 15 drink like a bottle of Scotch tonight if 16 he's anything like me. Dario, we'll send 17 it to you. Thank you very much. 18 THE STENOGRAPHER: Will the witness be 19 reserving or waiving signature? 20 MR. ADAMS: We're going to read and 21 sign. 22 THE STENOGRAPHER: And if you all would 23 please place your orders on the record, 24 starting with Mr. Cox. 25 MR. COX: Yeah, I think we have a

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1 standing electronic order, electronic only.	1 WITNESS' CERTIFICATE
2 THE STENOGRAPHER: Mr. Mabe?	2
3 MR. MABE: I want an electronic copy.	3 I, Joseph Frank Polite, Jr., do hereby
4 And that's all. I don't need a printout.	4 certify that I have read and understand the
5 THE STENOGRAPHER: And Mr. Adams?	5 foregoing transcript and believe it to be true,
6 MR. ADAMS: Electronic as well,	6 accurate, and complete transcript of my
7 although you -- plus whatever you send to	7 testimony, subject to the attached list of
8 the witness. I don't know if that's	8 changes, if any.
9 electronic or not. If it's electronic for	9
10 the witness, that's fine as well.	10
11 (TIME NOTED: 6:07 p.m.)	11
12 (SIGNATURE RESERVED.)	12 JOSEPH FRANK POLITE, JR.
13	13
14	14
15	15 This deposition was signed in my presence by
16	16 _____, on the _____ day of
17	17 _____, 2021.
18	18
19	19
20	20 NOTARY PUBLIC
21	21 My commission expires:
22	22
23	23
24	24
25	25

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1 STATE OF NORTH CAROLINA	1 Huseby Global Litigation (Page 1 of 2)
2 COUNTY OF MECKLENBURG	2 1230 West Morehead Street, Suite 408
3 CERTIFICATE	2 Charlotte, North Carolina 28208
4 I, V. Dario Stanziola, a Notary Public	3 (800) 333-2082
5 in and for the State of North Carolina duly	3 www.huseby.com
6 commissioned and authorized to administer oaths	4 E R R A T A S H E E T
7 and to take and certify depositions, do hereby	5
8 certify that on Tuesday, May 4, 2021, Joseph	6 RE: Eastwood Construction Partners, LLC
9 Frank Polite, Jr., being by me personally duly	6 and Eastwood Development Corporation
10 sworn to tell the truth, thereupon testified as	7 vs. GHD Brooks Creek, a North Carolina
11 above set forth as found in the preceding pages,	7 Limited Liability Company, and AP-Brooks
12 this examination being reported by me verbatim	8 Creek, LLC, a North Carolina Limited
13 and then reduced to typewritten form by me, that	8 Liability Company, GHD River Falls, a
14 the foregoing is a true and correct transcript of	9 North Carolina Limited Liability Company,
15 said proceedings to the best of my ability and	9 and AP-River Falls, LLC, a North Carolina
16 understanding; that I am not related to any of	10 Limited Liability Company, Greenhawk
17 the parties to this action; that I am not	10 Corporation, Inc., and TRI Pointe
18 interested in the outcome of this case; that I am	11 Homes Holdings, Inc.
19 not of counsel nor in the employ of any of the	12 DEPOSITION OF: Joseph Frank Polite, Jr.
20 parties to this action.	13 Please read this transcript with care,
21 IN WITNESS WHEREOF, I have hereto set	13 and if you find any corrections or changes you
22 my hand, this the 17th day of May 2021.	14 wish made, list them by page and line number
23	14 below. DO NOT WRITE IN THE TRANSCRIPT ITSELF.
24	15 Return the Certificate and Errata Sheet to this
25	16 office after it is signed. We would appreciate
	16 your prompt attention to this matter
	17 To assist you in making such
	17 corrections, please use the form below. If
	18 supplemental or additional pages are necessary,
	18 please furnish same and attach them to this
	19 errata sheet.
	19 Page Line Should read Reason
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Exhibit O

EASTWOOD CONSTRUCTION PARTNERS, LLC, ET AL. vs GHD BROOKS CREEK, ET AL.
Joe R. Dority on 05/20/2021

1 IN THE COURT OF COMMON PLEAS
2 SIXTEENTH JUDICIAL CIRCUIT
3 STATE OF SOUTH CAROLINA
4 COUNTY OF YORK
5
6 EASTWOOD CONSTRUCTION)
7 PARTNERS, LLC, and)
8 EASTWOOD DEVELOPMENT)
9 CORPORATION,)
10 Plaintiffs,)
11 vs.)
12) Case No.
13) 20-CP-46-02006
14 GHD BROOKS CREEK, a)
15 North Carolina Limited)
16 Liability Company, and)
17 AF-BROOKS CREEK, LLC, a)
18 North Carolina Limited)
19 Liability Company, GHD)
20 RIVER FALLS, a North)
21 Carolina Limited)
22 Liability Company, and)
23 AF-RIVER FALLS, LLC, a)
24 North Carolina Limited)
25 Liability Company,)
 GREENHAWK CORPORATION,)
 INC., and TRI POINTE)
 HOMES HOLDINGS, INC.,)
 Defendants.)

26 DEPOSITION OF JOE R. DORITY, produced, sworn
27 and examined on the 20th day of May, 2021, between the
28 hours of 10:06 a.m. and 3:30 p.m., at 11220 Elm Lane,
29 Charlotte, North Carolina, 28277, before Mindy Vislay,
30 a Notary Public within and for the State of North
31 Carolina, in a certain cause now pending in the Court
32 of Common Pleas, Sixteenth Judicial Circuit, in the
33 County of York, State of South Carolina, wherein

EASTWOOD CONSTRUCTION PARTNERS, LLC, ET AL. vs GHD BROOKS CREEK, ET AL.
Joe R. Dority on 05/20/2021 **Pages 2..5**

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1	EASTWOOD CONSTRUCTION PARTNERS, LLC, and EASTWOOD	1	For the Defendants (attending by VTC):
2	DEVELOPMENT CORPORATION are Plaintiffs and GHD BROOKS	2	ROBINSON, BRADSHAW & HINSON, P.A.
3	CREEK, a North Carolina Limited Liability Company, and		By: TIMOTHY P. MISNER
4	AP-BROOKS CREEK, LLC, a North Carolina Limited	3	202 East Main Street
5	Liability Company, GHD RIVER FALLS, a North Carolina		Suite 201
6	Limited Liability Company, and AP-RIVER FALLS, LLC, a	4	Rock Hill, South Carolina 29730
7	North Carolina Limited Liability Company, GREENHAWK		803-325-2900
8	CORPORATION, INC., and TRI POINTE HOMES HOLDINGS,	5	tmisner@robinsonbradshaw.com
9	INC., are Defendants.	6	
10			For the Defendants (attending by VTC):
11		7	
12			NEXSEN PRUET LAW FIRM
13		8	By: JOHN I. MABE
14			4141 Parklake Avenue
15		9	Suite 200
16			Raleigh, North Carolina 27612
17		10	919-653-7819
18			jmabe@nexsenpruet.com
19		11	
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2		2	QUESTIONS BY:
3	For the Plaintiffs (attending by VTC):	3	MR. COX
4	BROOKS PIERCE	4	MR. MABE
5	By: JAMES C. ADAMS	5	
6	230 North Elm Street	6	EXHIBITS
7	Greensboro, North Carolina 27401	7	PLAINTIFF'S
8	336-373-8850	8	EXHIBIT 40 ECP 0001797
9	jadams@brookspierce.com	9	EXHIBIT 41 ECP 508 Excel spreadsheet
10		10	EXHIBIT 42 GHD 0000047
11		11	EXHIBIT 43 Joe D's transition list
12		12	DEFENDANT'S
13	For the Plaintiffs (attending by VTC):	13	EXHIBIT 44 ECP 0001010
14	BROOKS PIERCE	14	EXHIBIT 45 ECP 0002246
15	By: WILLIAM OTIS WALKER, IV	15	EXHIBIT 56 ECP 0003688
16	150 Fayetteville Street	16	EXHIBIT 57 Agreement for purchase dated
17	Raleigh, North Carolina 27601	17	05/2012
18	919-839-0300	18	EXHIBIT 58 ECP 0008175
19	wwalker@brookspierce.com	19	EXHIBIT 59 ECP 0008596
20		20	EXHIBIT 60 ECP 0008618
21	For the Plaintiffs (attending by VTC):	21	EXHIBIT 61 ECP 0008621
22	MOORE TAYLOR LAW FIRM, P.A.	22	EXHIBIT 63 ECP 0000001
23	By: JAMES EDWARD BRADLEY	23	EXHIBIT 64 ECP 0002941
24	1700 Sunset Boulevard	24	EXHIBIT 65 ECP 0002867
25	West Columbia, South Carolina 29171	25	EXHIBIT 66 ECP 0002604
	803-796-9160		EXHIBIT 67 ECP 0001843
	ward@mttlaw.com		EXHIBIT 68 ECP 0001844
			EXHIBIT 69 ECP 0007813
	For the Defendants (attending by VTC):		EXHIBIT 70 ECP 0001747
	ROBINSON BRADSHAW & HINSON, P.A.		EXHIBIT 71 ECP 0001558
	By: STEPHEN M. COX		EXHIBIT 72 GHD 0000614
	202 East Main Street		EXHIBIT 73 ECP 0010823
	Suite 201		EXHIBIT 74 ECP 0002809
	Rock Hill, South Carolina 29730		EXHIBIT 75 ECP 0010595
	803-325-2900		EXHIBIT 76 ECP 0008627
	scox@robinsonbradshaw.com		EXHIBIT 77 ECP 0002722
			EXHIBIT 78 ECP 0011269
			EXHIBIT 79 ECP 0008349
			EXHIBIT 80 ECP 0010966
			EXHIBIT 81 ECP 0010017
			EXHIBIT 82 ECP 0011277

1 EXHIBIT 83 ECP 0010078 EXHIBIT 84 ECP 0011448 2 EXHIBIT 85 ECP 0009578 EXHIBIT 87 ECP 0011775 3 EXHIBIT 88 ECP 0011776 4 5 6 (Original exhibits were retained by the court reporter and will be copied and attached to copies of 7 the transcript.) 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	Page 6 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322 323 324 325 326 327 328 329 330 331 332 333 334 335 336 337 338 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2271 2272 2273 2274 2275 2276 2277 2278 2279 2280 2281 2282 2283 2284 2285 2286 2287 2288 2289 2290 2291 2292 2293 2294 2295 2296 2297 2298 2299 2300 2301 2302 2303 2304 2305

Page 10 1 A. Reviewed some documents with my attorneys. 2 That's about it. 3 Q. And by your attorneys you mean Mr. Adams 4 and Mr. Bradley or other lawyers? 5 A. Mr. Adams and Mr. Bradley. 6 Q. Okay. 7 MR. COX: Jimmy, can I just go ahead and 8 confirm were those documents that have been produced 9 in the case? 10 MR. ADAMS: Yes. Either by you or by me or 11 by John. 12 MR. COX: All right. Good deal. 13 BY MR. COX: 14 Q. Mr. Dority, you say your lawyers. Are you 15 personally represented by Mr. Adams? 16 A. Yes, sir. That's my understanding. 17 Q. Okay. When did you become -- when did Mr. 18 Adams become your lawyer? 19 A. I don't remember the exact date. I guess 20 at some point whenever I got a notice that you guys 21 wanted to talk. 22 Q. All right. 23 MR. COX: And, Jimmy, I can keep asking him 24 these questions. It may be more efficient for you to 25 tell me. Is it y'all's position there's an	Page 12 1 jurors may be related to any witness in the case, so 2 this is why I'm going to ask you this next question. 3 Do you have any family members -- adult family members 4 who live in York County? 5 A. Yes, sir. 6 Q. And can you tell me who they are? 7 A. My wife Faith and my son Dylan. 8 Q. Faith Dority, I take it? 9 A. Yes. 10 Q. And is Dylan with a D-Y-L or D-I-L-L-O-N? 11 A. D-Y. 12 Q. How old is Dylan? 13 A. Eighteen. 14 Q. Does he live in Fort Mill? 15 A. He does. 16 Q. He lives in the same household with you and 17 your wife? 18 A. He does. 19 Q. Any other adult relatives in York County 20 other than your wife and son? 21 A. No, sir. 22 Q. Is Faith from York County? Does she have 23 adult relatives in York County? 24 A. She's not from York County, and she does 25 not.
Page 11 1 attorney/client relationship between Mr. Dority and 2 Brooks Pierce? 3 MR. ADAMS: Yes. And with Mr. Dority and 4 Ward Bradley's firm Moore Taylor. 5 MR. COX: And, again, anyone who wants to 6 answer it. I just need to get the information. When 7 did that relationship begin? 8 MR. ADAMS: Well, it began probably in 2008 9 originally. 10 BY MR. COX: 11 Q. Okay. Is that your understanding, 12 Mr. Dority, that you've been working with these two 13 lawyers since you left Eastwood's employment? 14 A. I worked with Mr. Adams in I guess 2008 or 15 something like that. 16 Q. Okay. We'll get into that. I think you 17 answered my basic question, and I'll get some of these 18 dates confirmed. 19 How long have you lived in Fort Mill, Mr. Dority? 20 A. I don't know. Thirteen, 14 years. 21 Something like that. 22 Q. So this case has been filed in York County, 23 and if it goes to a trial it will go to trial before a 24 jury in York County, so any time that happens we have 25 to make sure that we know if any of the potential	Page 13 1 Q. Okay. Got it. And I ask this question of 2 everybody else. It's nothing personal, but it affects 3 sometimes the rules that govern how you're allowed to 4 testify in court. Have you ever been convicted of a 5 crime other than a minor traffic violation? 6 A. No, sir. 7 Q. Okay. You mentioned you had testified 8 before. Have you ever been a party to a lawsuit; that 9 is, you were the plaintiff in the case or a defendant 10 in the case? 11 A. I don't -- I don't think so, but if I had 12 it was probably something to do with a traffic 13 accident or something. 14 Q. I gotcha. Okay. You mentioned you had 15 testified before. Was that in court or just in a 16 private deposition like what we're doing right here? 17 A. Both. 18 Q. Okay. Tell me about that. How many times 19 have you testified in court? 20 A. I don't have any -- I don't know. 21 Q. More than once? 22 A. I would believe so. It was probably more 23 for the company Eastwood Homes. 24 Q. I gotcha. And do you recall -- so is it 25 fair to say every time you testified in court before

Page 14 1 you've testified on behalf of Eastwood Homes? 2 A. On behalf of the company. Yes. 3 Q. And were those cases pending in North 4 Carolina? South Carolina? Where were they pending? 5 A. I don't remember. I'd have to -- Jimmy may 6 be able to give the information on that. I don't 7 remember. 8 Q. Okay. Very well. And you mentioned you'd 9 been deposed as well. Were you also deposed in those 10 cases? 11 A. Again, I don't remember. I would imagine. 12 Q. Okay. Let me ask the question this way. 13 Do you recall ever testifying in court or being 14 deposed in any case other than for Eastwood Homes? 15 A. Again, if I was, it was just for a traffic 16 accident or something like that. 17 Q. Were you in a traffic accident at one time 18 that resulted in a lawsuit? 19 A. I was when I was younger. 20 Q. Okay. How old were you? 21 A. Eighteen, 19. Something like that. 22 Q. Okay. Gotcha. Where did you graduate from 23 high school, Mr. Dority? 24 A. Hanahan High School. 25 Q. Oh. Berkeley County?	Page 15 1 A. Yes, sir. 2 Q. I'm from Moncks Corner. And where did you 3 go -- did you go to college after high school? 4 DEFENSE ATTORNEY: I didn't know that, 5 Stephen. 6 MR. COX: Indeed. 7 THE WITNESS: Trident Tech. 8 BY MR. COX: 9 Q. Okay. And from the time you left Trident 10 Tech just give me a quick summary. I'm probably not 11 going to go into all this, but I've found this is the 12 most efficient way to do it. Can you just give me a 13 summary of your full-time employment history starting 14 with, you know, whenever you left Trident Tech to the 15 present. 16 A. I worked for an engineering surveying firm 17 in Charleston. I think Trico or whatever. They may 18 have been bought and sold several times, but 19 essentially Trico Engineering. Then I went to work 20 for Beazer Homes. I worked for Beazer Homes for -- I 21 don't know how many years. I worked in Charleston and 22 Columbia. Then I left Beazer Homes and went to work 23 for Eastwood. I think Eastwood Homes. Then I went to 24 Myrtle Beach. I left Myrtle Beach and went to 25 Charlotte and worked for one of the entities Eastwood	Page 16 1 has and then stayed at Eastwood Homes for a while, and 2 then I left Eastwood Homes and started something out 3 on my own, and now I work at Concept Homes Group right 4 now. 5 Q. Okay. How long have you been at Concept 6 Homes? 7 A. Concept Homes Group. Let me see -- I don't 8 know. Three, four years. 9 Q. Okay. Now, I'm going to ask my partner Mr. 10 Misner to pull up what we marked as Exhibit 1 in a 11 prior deposition. This is the complaint that's been 12 filed in this case. 13 MR. COX: Tim, can you go ahead and pull 14 that up, please, sir. 15 MR. MISNER: Yep. I'm working on it. 16 BY MR. COX: 17 Q. While he's doing that, Mr. Dority, have you 18 reviewed the complaint in this case? 19 A. I have not. 20 Q. Okay. Do you understand that -- you see 21 that there in front of you? Can you see that okay? 22 A. I can. 23 Q. So this is the complaint that's been filed 24 by the two Eastwood entities in York County, and you 25 see there there are two of them as I said. One is	Page 17 1 called Eastwood Construction Partners, and one is 2 called Eastwood Development Corporation. Do you see 3 that? 4 A. I see that. 5 Q. Are you familiar with both of those 6 Eastwood entities? 7 A. I'm familiar with Eastwood Development 8 Corporation. 9 Q. Okay. Which Eastwood entity -- you said 10 you came to work for Eastwood. When did you start at 11 Eastwood? Do you recall what year? 12 A. I do not. 13 Q. Can you give me a rough idea, 2005, 2010, 14 just between two or three years when it would have 15 been? 16 Let me try to get it at this way, then. Do you 17 recall that you left the company in the fall of 2016, 18 around September of 2016? Does that ring a bell? 19 A. That sounds right. 20 Q. And when you left had you been at the 21 company for ten years? Five years? Do you recall a 22 rough amount of time you'd been there? 23 A. Ten, 12 years. Something like that. 24 Q. So I'm going to say roughly 2004/2006 time 25 frame is when you started. Does that sound about

Page 18 1 right? 2 A. That sounds about right. 3 Q. Okay. And which Eastwood entity actually 4 employed you? 5 A. Eastwood Construction. I don't know what 6 Eastwood -- Eastwood Construction Partners, that's not 7 an entity I'm familiar with. 8 Q. Okay. 9 MR. COX: Jimmy, I think we established -- 10 just to get it clear on the record, I think we 11 established in a prior deposition that Eastwood Homes 12 is what used to be -- excuse me -- Eastwood 13 Construction Partners is what used to be Eastwood 14 Homes. Is that accurate? 15 MR. ADAMS: Well, Eastwood Homes has always 16 been a d/b/a. So it was originally Eastwood 17 Construction, Inc., and then became Eastwood 18 Construction LLC, and now it's Eastwood Construction 19 Partners LLC, but it's the same basic entity -- well, 20 it's the same entity, name change, always d/b/a 21 Eastwood Homes. 22 MR. COX: Gotcha. 23 BY MR. COX: 24 Q. So, as I understand it, Mr. Dority, you 25 believe you worked for Eastwood Construction, whatever	Page 20 1 A. Or whatever entity that was. 2 Q. I gotcha. This lawsuit that's up on the 3 screen right now -- I believe you told me a moment ago 4 you had not read this complaint; is that right? 5 A. I have not. 6 Q. When did you first become aware that 7 Eastwood had filed this lawsuit? 8 A. I don't -- I don't know. I'm not sure. 9 Recently -- 10 Q. Do you -- I'm sorry? 11 A. Recently -- 12 Q. Okay. Gotcha. You said you came -- I 13 think we established you came to Eastwood around the 14 2004/2006 time frame. What brought you to Eastwood 15 from I think you said Beazer Homes? 16 A. I don't -- I guess -- I don't know how 17 to -- I just changed jobs. I don't know. 18 Q. I gotcha. I didn't know if somebody 19 recruited you in particular or if you had heard about 20 an opportunity. Do you recall any specific person 21 that caused you to come work for Eastwood? 22 A. I don't remember how I got the job or -- I 23 interviewed and I was hired. I don't know the 24 specifics. 25 Q. When you first came on board at Eastwood
Page 19 1 the name of the entity was at that time; is that 2 accurate? 3 A. Yeah. That's correct. 4 Q. What is your understanding of what Eastwood 5 Development Corporation was? 6 A. That was their development arm, the company 7 that developed property, developed land. 8 Q. Got it. So there was one Eastwood arm, 9 Eastwood Development, that developed land, and then 10 Eastwood Construction was the one that actually built 11 the homes; is that accurate? 12 A. That's accurate. 13 Q. So you did not work for the development 14 arm? 15 A. I did work for the development arm. 16 Q. Oh. You did? Your W-2 that you got every 17 year, was that from the development arm or was that 18 from the construction arm? 19 A. It depends on which year. At some point -- 20 I went to work for the Eastwood Homes, whatever that 21 entity was, then when I moved to Charlotte I worked 22 for Eastwood Development, and then at some point I 23 flipped from Eastwood Development back to Eastwood 24 Homes. 25 Q. Gotcha.	Page 21 1 what was your job? What was your position? 2 A. Let me see. That was in Myrtle Beach. I 3 was in acquisitions. 4 Q. Land acquisitions? 5 A. Land acquisitions. 6 Q. So your job was to acquire property that 7 Eastwood could then build houses on; is that true? 8 A. That is correct. 9 Q. And I think you said you left Myrtle Beach 10 and then came to Charlotte. Still working for 11 Eastwood? 12 A. Eastwood Development. Yes. 13 Q. Okay. And when you came to Charlotte did 14 you have the same land acquisition job? 15 A. When I came to Charlotte I was over -- my 16 understanding -- acquisitions but also development. 17 So Eastwood Development focused on finding raw dirt, 18 entitling it, developing it and then selling it back 19 to builders. 20 Q. I gotcha. And, so, you were doing 21 development work when you first came to Charlotte? 22 A. Yes. 23 Q. And how long did -- do you recall roughly 24 how many years you were in Myrtle Beach before you 25 came to Charlotte?

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Page 22 1 A. A year, year-and-a-half. Something like 2 that. 3 Q. Did you have the same job with Eastwood the 4 whole time you were in Charlotte or did the job 5 change? 6 A. I guess -- I mean, it changed. I mean, I 7 don't -- it evolved, I guess. I don't know if the job 8 title actually changed or anything, but the 9 responsibility kind of evolved more depending on the 10 environment we were in, I guess. 11 Q. I want to make sure I understand what you 12 told me. So while you were in Charlotte part of your 13 job still involved land acquisition; is that accurate? 14 A. Correct. 15 Q. And part of it also involved land 16 development? 17 A. Correct. 18 Q. Who did you report to during that time? 19 A. Joe Stewart, I guess. 20 Q. Is he the founder or the founder's son? I 21 can't remember. 22 A. He's the owner. The founder, I guess. 23 Q. Okay. And I understand from a prior 24 deposition we did that Eastwood is organized in 25 divisions; is that correct?	Page 24 1 Q. Did you form a company for that purpose? 2 A. I did. 3 Q. What was the name of the company? 4 A. Brooks Capital. 5 Q. Brooks Capital? 6 A. Yes. 7 Q. How long did that company last? 8 A. I don't know. Not long. 9 Q. Okay. Because I think you said and then 10 you left that on your own to go to Concept Homes? 11 A. Yes. 12 Q. Do you own any part of Concept Homes, or 13 you're just an employee for them? 14 A. I own Concept Homes Group. 15 Q. You own it? 16 A. Concept Homes Group. 17 Q. Okay. And is that a home builder or a 18 developer or both? 19 A. Concept Homes Group is more of a management 20 company. 21 Q. For apartment buildings or what? 22 A. No. I manage different things. So it 23 manages a home building company. It manages -- let me 24 see. There's a car wash. It manages property -- 25 office property. It manages commercial property.
Page 23 1 A. Yeah. I guess. 2 Q. And I think the Charlotte division at one 3 time was headed by a man -- is headed by a man named 4 Mike Conley. Do you know Mike? 5 A. I do know Mike. 6 Q. But you did not report to the division 7 president; is that right? You were outside of that 8 structure? 9 A. Correct. 10 Q. Okay. You left in the fall of 2015 I think 11 we've established. Why did you leave? 12 A. I'm not entirely sure, I guess. Burnout. 13 Wanted something different, another opportunity. I 14 don't know. 15 Q. Was it your choice to leave or were you 16 asked to leave? 17 A. My choice. 18 Q. And I think you told me you left to do 19 something on your own; is that right? 20 A. Correct. 21 Q. What did you leave to do? 22 A. I went to go -- let me see -- to 23 development property. Buy and develop property. 24 Q. On your own? 25 A. Yeah. With other partners.	Page 25 1 Just different things. 2 Q. Okay. I gotcha. All right. Let me go 3 back to this lawsuit, then. Do you understand that 4 this lawsuit involves a dispute over two parcels of 5 land in Tega Cay -- York County, not within the 6 incorporated limits of Tega Cay but in York County 7 near Tega Cay? Do you understand that? 8 A. I do. 9 Q. And one of those parcels is called Brooks 10 Creek. I think at one time it was also referred to as 11 Brooks Springs. Do you understand that? 12 A. I do. 13 Q. And the other one is called River Falls. 14 Do you understand that? 15 A. I do. 16 Q. I wanted to talk to you about these parcels 17 and sort of how -- the kind of involvement you may 18 have had with them. Let me start with Brooks Creek. 19 When did you learn of the Brooks Creek property and 20 the potential for development of that property? 21 A. I don't remember. 22 MR. COX: Can we call up Exhibit 40. We're 23 starting with Exhibit 40 in this deposition. I think 24 that's the first new exhibit in this deposition. 25 MR. ADAMS: Stephen, I sent the exhibits

Page 26 1 that I got from Tim to Joe. So Joe may have them that 2 he can pull up on a separate monitor -- I don't 3 know -- to avoid the screen share, but that's up to 4 you and him. 5 MR. COX: Okay. Joe, I don't know if you 6 have them available or not. At least this way 7 everybody can see it. 8 This is Exhibit 40, and, Mindy, we'll send these 9 to you to make sure you have these as well at the end 10 of the deposition. 11 (PLF, EXHIBIT 40, ECP 0001797, was marked 12 for identification.) 13 BY MR. COX: 14 Q. This is an email that was sent to you, 15 Mr. Dority, by Dean Kilbourne at Titan Land Group. Do 16 you know Dean? 17 A. I do. 18 Q. And it was sent January of 2013, and if we 19 scroll down in this email it refers to a couple of 20 opportunities. 21 MR. ADAMS: Stephen, can you identify the 22 Bates number for the record? I'm trying to -- 23 MR. COX: Sure. It's a document that the 24 Bates number starts ECP 1797. This is a document 25 produced by Eastwood.	Page 28 1 A. I see that. 2 Q. And we established in an earlier deposition 3 this was the contract that covered Brooks Creek that 4 was ten acres or so. Is that your recollection? 5 A. Okay. 6 Q. Is that your -- do you recall that? 7 A. I don't. I mean, I can read where it says 8 ten acres, and if you tell me that this was the 9 contract to buy it, okay. 10 Q. Well, let me ask you this: Do you know who 11 R&H Properties was? 12 A. I do not. 13 Q. Did you have any recollection of dealing 14 with R&H Properties? 15 A. I don't know who R&H is. 16 Q. All right. Let's see if we can go to the 17 bottom of the signature page. I think that will give 18 us a name. I'm trying to read that. It says Robert 19 Runde? 20 A. Oh. Okay. 21 Q. Who was Robert Runde? Does that ring a 22 bell? 23 A. I guess he was the seller of the property. 24 Q. Right. But do you have a recollection of 25 dealing with him?
Page 27 1 MR. ADAMS: Right. Thank you. 2 BY MR. COX: 3 Q. And Mr. Kilbourne is sending along an email 4 that he got or that he had access to from a guy named 5 William Simerville at Cassidy Turley. Do you know 6 Mr. Simerville? 7 A. Not that I know of. 8 Q. And this refers to a couple of 9 opportunities, one called Stockbridge. Was the 10 Stockbridge property part of what Brooks Creek was 11 part of? 12 A. I have no idea. 13 Q. Do you have any recollection as to whether 14 or not you heard about Brooks Creek from the Titan 15 folks? 16 A. Not that I remember. No. 17 Q. Okay. 18 MR. COX: Let me -- let's try it this way. 19 If we can go back to the complaint, Tim, and go to 20 Exhibit C I believe it is. 21 BY MR. COX: 22 Q. What I'm going to show you now is Exhibit C 23 to the complaint filed by Eastwood. This is a 24 contract between Eastwood and R&H Properties. Do you 25 see that?	Page 29 1 A. I mean, I don't have a recollection, no, 2 but -- 3 Q. Okay. And then you signed it. Is that 4 your signature on behalf of Eastwood Development 5 Corporation? 6 A. Looks like it is. 7 Q. But, just to be clear, you don't have any 8 recollection of negotiating or dealing with Mr. Runde 9 concerning the purchase of this property? 10 A. No, sir. 11 Q. At our last deposition we deposed 12 Mr. Polite, and he described something. I believe he 13 called it a land acquisition committee at Eastwood 14 composed of Mr. Stewart and his son and the land 15 acquisition manager at the time Mr. Polite. Was that 16 kind of committee in existence when you were there? 17 A. I don't know if we ever formalized the 18 committee, I mean, when I was there. We may have, but 19 I don't -- 20 Q. Okay. Let me ask the question this way, 21 Mr. Dority. You signed this contract on behalf of 22 Eastwood. We've seen that. Right? 23 A. Yes, sir. 24 Q. And I take it that you had to get approval 25 before signing a contract like this to acquire

Page 30 1 property. You couldn't just do it all by yourself. 2 Is that accurate? 3 A. I don't know if I could or couldn't. I 4 would have spoken to somebody about it. 5 Q. Well, that's what I'm trying to get at. 6 What was the procedure when you were there at Eastwood 7 for approving a purchase of property like this that 8 we're looking at in Exhibit C? What would be your 9 practice? 10 A. From what I can remember, we would -- I 11 would find the property however I found it, do some 12 preliminary just homework on it to see if it made 13 sense, have a dialogue with whatever division would 14 want it, meaning if it was in Raleigh or the Triad or 15 Charleston or -- it didn't matter, whoever the end 16 user would be which is typically the division 17 president. They'd say yes it makes sense. Then I 18 would try to obtain -- you know, get the property 19 under contract, and if I'm successful, then I'd talk 20 to either Mr. Stewart or Clark, and then we'd say yeah 21 it makes sense, and then we'd sign the contract. 22 Q. Mr. Stewart -- Joe Stewart -- is the 23 founder, and Clark is his son? 24 A. Yes. 25 Q. So let me make sure I understand this	Page 32 1 somebody else and they buy and develop it and sell the 2 lots back to Eastwood or Eastwood buys it. I mean, 3 this particular contract is in Eastwood Development 4 Corporation's name. That being the development arm, 5 they would -- I mean, there may be a potential that 6 they developed it, but I don't know what I was -- what 7 my intent or thinking was on April 19th, 2013. 8 Q. Okay. Do you recall at some point did 9 GreenHawk become involved in the Brooks Creek 10 property? 11 A. Yes. 12 Q. I'm going to show you Exhibit F. If you 13 can scroll down, Tim. And this is Exhibit F to the 14 complaint. 15 I'm just trying to figure out here was this email 16 from you to Craig Briner regarding Sunnybrook -- what 17 was Sunnybrook? 18 A. My understanding, that's the deal up in 19 Raleigh. 20 Q. Okay. So that had nothing to do with this 21 particular case, with the Brooks Creek case? 22 A. Sunnybrook? No. 23 Q. Okay. Gotcha. Just wanted to make sure of 24 that. Let's back up one more to the assignment which 25 is Exhibit D.
Page 31 1 right. Would you try to get their approval before you 2 signed an agreement to purchase like this one or 3 after? 4 A. It's really depending on the deal. I 5 don't -- I don't know. It could go either way. I 6 don't know the -- I don't remember this deal 7 specifically, and generally speaking it was just more 8 of a -- I mean, sometimes it was before, sometimes it 9 was after, sometimes it was at the same time. I don't 10 know. 11 Q. Do you recall anything about what caused 12 you to want to buy Brooks Creek? 13 A. Nothing specific, no. 14 Q. Okay. Do you recall at the time this was 15 signed in April of 2013 was Eastwood developing other 16 property in the area? 17 A. I don't remember. 18 Q. Okay. What was your intention -- what did 19 you plan for Eastwood to do with the property when you 20 signed this contract in April 2013, develop it 21 yourself? Have someone else develop it? What were 22 you going to do with it? 23 A. I don't remember what my intention was. I 24 mean, I can tell you -- I mean, the goal would have 25 been to acquire property and either (A) assign it to	Page 33 1 So earlier we saw that Eastwood Development 2 Corporation signed a contract to buy this property on 3 April of 2013. Do you remember that? 4 A. I remember the exhibit, yes. 5 Q. And this was an assignment -- you see here 6 it's an assignment by which Eastwood Development has 7 assigned that contract it had with R&H Properties over 8 to a company called AF Brooks Creek LLC. Do you see 9 that? 10 A. I see that. 11 Q. And do you understand that AF Brooks Creek 12 was an entity affiliated with GreenHawk? 13 A. I understand. 14 Q. And that gentleman's name there who signed 15 on behalf of AF Brooks Creek was Craig Briner. Did 16 you know Mr. Briner? 17 A. I did. 18 Q. And you knew him because of his work with 19 GreenHawk? 20 A. Yes. I think that's how I knew him. 21 Q. All right. I'm going to let Mr. Mabe get 22 into all the details of that GreenHawk relationship 23 and how you dealt with them. I'm really interested 24 only in this Brooks Creek portion. 25 So we see that Eastwood signed the contracts to

Page 34 1 buy this property in April. This assignment is dated 2 in December of 2013. Do you see that date there? 3 A. I do. 4 Q. So during that eight month period between 5 the time Eastwood signed the contract in April and the 6 time you assigned that contract over to the GreenHawk 7 entity in December, what negotiations were going on 8 between you and GreenHawk about this property? 9 A. I don't remember specifics. 10 Q. Do you remember anything at all about any 11 negotiations you had with GreenHawk about the Brooks 12 Creek property? 13 A. Not specifically, no. I mean, I can look 14 at the documents that you provided and make some 15 logical conclusions, but, no, I don't remember 16 specific details. 17 Q. Okay. Do you understand that Eastwood, the 18 plaintiffs in this case, have alleged that when this 19 property was assigned over to the GreenHawk entity 20 there was an understanding that GreenHawk would 21 develop it and then sell it back to Eastwood? Do you 22 understand that's the allegation in the complaint? 23 A. Yes, sir. 24 Q. Do you recall if that was your 25 understanding at the time you signed this assignment	Page 35 1 on behalf of Eastwood? 2 A. Again, I don't know if it was specifically 3 at this time of the assignment. I do know that I 4 would have purchased -- you know, I would have entered 5 into the contract to buy the property and found the 6 buyer -- in this case AF Brooks Creek -- to buy it, 7 and they would sell lots back to Eastwood. I wouldn't 8 have done it just because I'm a nice guy. So there 9 would be some type of understanding. And, you know, 10 that's my understanding that was the intent. I would 11 have done all that and said, hey, Craig, you need to 12 buy this, develop it and turn around and sell it back 13 to Eastwood. Yep, sounds great. Work out the 14 details. Yep, yep. And that would be it. 15 Q. Okay. I gotcha. Is that something you 16 would have done with Mr. Briner before? 17 A. Maybe. I don't remember. 18 Q. Okay. When you say sell it back to 19 Eastwood, let's be clear about this. There's two 20 Eastwood entities we've talked about, right, the 21 development corporation and the construction 22 corporation? 23 A. Correct. Eastwood Homes. 24 Q. And the development corporation is the 25 corporation that originally signed the contract to buy	Page 36 1 Brooks Creek in the first place, right? 2 A. Correct. 3 Q. When you say sell it back to Eastwood, 4 though, as I've understood it your expectation was 5 that GreenHawk would develop it and then sell it back 6 to the Eastwood Construction Corporation for that 7 company to build homes; isn't that right? 8 A. Correct. The home building company. 9 Q. They would not develop the property and 10 then sell it back to the development corporation, 11 would they? 12 A. No, sir. 13 Q. Okay. Now, there's nothing -- you take as 14 much time as you need to read it, but I don't see 15 anything in this Exhibit D, this assignment, by which 16 the AF Brooks Creek entity promises to sell lots back 17 at particular prices or at all. Do you see anything 18 like that in there? 19 MR. ADAMS: Objection to form. 20 BY MR. COX: 21 Q. From time to time Mr. Adams may object, 22 Mr. Dority, and unless he instructs you not to answer 23 you can go ahead and answer the question. So let me 24 ask this again noting Mr. Adams has objected. 25 Do you see anything in this contract by which AF	Page 37 1 Brooks Creek is promising to sell lots back to 2 Eastwood Construction? 3 A. I don't see anything in that particular 4 exhibit outside of -- you know, again, the intent 5 between me and both parties was that, you know, they 6 were going to sell it back to Eastwood. 7 Q. Got it. Well, actually, not sell it back 8 to Eastwood, because Eastwood Construction had never 9 owned it. They were going to sell it to Eastwood 10 Construction. Isn't that right? 11 A. Yeah. Eastwood Homes. Yes. 12 Q. Okay. But you mentioned a moment ago the 13 details would have had to be worked out. So, before 14 that property was sold to Eastwood Homes slash 15 Eastwood Construction, you and Mr. Briner would have 16 had to work out certain details about that sale; isn't 17 that correct? 18 A. Myself, or in this case Mike Conley, or 19 someone, a group -- yes, details would have had to 20 have been worked out, but it would have been Eastwood 21 Homes's I guess option or first right of refusal, or 22 they would have, you know -- Mr. Briner and his entity 23 would come up and say, hey, you know, this is what 24 we've worked out, do you want it? Yes this makes 25 sense we do, or no it doesn't, and that would be the

Page 38 1 end of it. 2 Q. Right. Well, you mentioned an option or 3 right of refusal. I don't see any of those two things 4 mentioned in this assignment either, do you? 5 A. Again, I don't remember it. Do you want me 6 to read it? 7 Q. Well, I mean, it speaks for itself. Do you 8 recall negotiating any sort of written option or right 9 of first refusal with respect to Brooks Creek? 10 A. Not a written, but there was a verbal 11 understanding that's what would happen. 12 Q. Right. But, again, before any of that 13 actually happened, before any lots got sold back 14 GreenHawk and Eastwood would have to agree on the 15 terms of that sale, correct? 16 MR. ADAMS: Objection to form. 17 THE WITNESS: I mean, Mr. Cox, I don't -- 18 the intent was that I would have found the property 19 and assigned the contract with the intent that they 20 would sell the lots back to Eastwood Homes. 21 BY MR. COX: 22 Q. Understood. But before y'all could agree 23 on a contract to sell those lots to Eastwood Homes 24 there were certain terms that had to be settled; for 25 example, the price of the lots had to be agreed on,	Page 40 1 A. Yes. 2 Q. And at the time this assignment, which is 3 Exhibit D, was signed by you, those particular terms, 4 price, takedown schedule and deposit, had not yet been 5 decided between Eastwood Homes and GreenHawk; isn't 6 that correct? 7 MR. ADAMS: Objection to form. 8 THE WITNESS: Mr. Cox, I don't remember if 9 it was or wasn't. 10 BY MR. COX: 11 Q. Okay. But you talk about what the general 12 intent was. It was your expectation that at some 13 point Eastwood Homes and GreenHawk entity would 14 negotiate a written lot purchase contract with those 15 specific terms I've been talking about; isn't that 16 true? 17 A. Yeah, at some point in time. If it already 18 happened -- I mean, I would imagine the intent would 19 have happened before we got to this point, but I don't 20 remember what happened. 21 Q. I don't think you answered my question. 22 You say the general intent at the time you executed 23 this assignment was that GreenHawk would sell lots 24 back to Eastwood Homes, but it was also your intent 25 and expectation that there would be a written lot
Page 39 1 didn't it? 2 A. I guess the exact terms would have had to 3 be nailed down, yes, but the overall intent was that 4 they would sell the property developed back to 5 Eastwood Homes. 6 Q. Well, Mr. Dority, there's no mystery here. 7 How is Eastwood Homes supposed to buy the property 8 back from GreenHawk when it doesn't even know what the 9 lot price is? 10 MR. ADAMS: Objection to form. 11 THE WITNESS: Can you rephrase the 12 question, sir? 13 BY MR. COX: 14 Q. Yeah. I think it's a real simple question. 15 Before Eastwood Homes could buy the property from 16 GreenHawk, if that was the intent, as you said, 17 Eastwood Homes and GreenHawk would have to agree on a 18 price to be paid for those lots; isn't that correct? 19 A. Yes, the terms -- yes. 20 Q. And they would have to agree on a takedown 21 schedule for those lots; isn't that correct? 22 A. Yeah. Whether that was just one time or 23 over a period of time, yes. 24 Q. And they would have to agree on any deposit 25 to be paid; isn't that correct?	Page 41 1 purchase contract setting forth those terms at some 2 point; isn't that right? 3 A. Yes. And I believe I answered it was the 4 intent and understanding well before the assignment 5 that that's what was going to happen, and both sides 6 worked to try to get to those numbers and all the 7 details, the minutiae, before we got to the 8 assignment, and then, if not, shortly thereafter. 9 That was the intent. I don't know the specifics and, 10 you know, all the facts of what happened afterwards, 11 but that was the general intent. 12 Q. Okay. But the general intent was to 13 ultimately negotiate a written lot purchase contract, 14 correct? 15 A. Correct. To hammer out the exact details. 16 Q. Okay. And in terms of figuring out what 17 Eastwood would be willing to pay, obviously Eastwood 18 expected that if it bought these lots from GreenHawk 19 it was going to make a profit on the ultimate sale, 20 correct? 21 A. I'm sorry. Can you ask that one more time? 22 Q. Yeah. Sure. In terms of coming up with 23 the price that both sides could live with, Eastwood 24 expected that if it bought these lots back from 25 GreenHawk it was ultimately going to make a profit on

Page 42 1 the sale of the lots and the homes, right? 2 A. Who was going to make the profit is my 3 question. 4 Q. Eastwood. I mean, you're not going to buy 5 land back from GreenHawk if you don't think you can 6 make money on it, are you? 7 A. Eastwood Homes? 8 Q. Correct. 9 A. I was thinking about Eastwood Homes. 10 Correct. 11 Q. So in order to come up with an appropriate 12 price, Eastwood Homes is gonna run some pro formas and 13 make sure it can make money on the deal. Isn't that 14 how y'all did business? 15 A. I don't know if we ran pro formas on it and 16 detailed it out that granular. I mean, I think we -- 17 again, I don't remember the exact details of this 18 deal, but, I mean, we would not necessarily run pro 19 formas on deals. We would be, you know, do you think 20 you can sell a house and make money at this 21 location -- you know, at this location at, you know, 22 these terms? Yeah, I think we can. So we did the 23 deal. 24 Q. Right. You're not going to do a deal 25 unless you think you can sell homes and make money on	Page 44 1 MR. COX: Oh. Okay. I gotcha. 2 MR. ADAMS: That's why I wanted to know 3 what the Bates number was, and we produced it as an -- 4 it's an attachment to an email that originated with 5 GreenHawk. 6 MR. COX: Okay. Well, that may answer the 7 question. 8 BY MR. COX: 9 Q. And maybe you've answered this earlier, 10 Mr. Dority. Do you recall while at Eastwood preparing 11 any sort of pro forma or analysis to determine the 12 profitability of a Brooks Creek deal? 13 A. I don't remember. 14 Q. Okay. We saw a moment ago the contract was 15 assigned over to a GreenHawk entity in December 2013. 16 Do you remember that? 17 A. I remember the exhibit. Yes, sir. 18 Q. What do you recall about continuing 19 negotiations with GreenHawk to try to negotiate a lot 20 purchase contract between GreenHawk and Eastwood 21 Homes? 22 A. Not a whole lot. 23 Q. Do you remember anything? 24 A. Not specifically. 25 Q. All right. You don't remember any
Page 43 1 the property you buy? 2 A. Correct. 3 Q. Okay. 4 MR. COX: Tim, I think you can take that 5 particular screen share down. 6 Let me look here one second. Tim, is Exhibit 41 7 ECP 508? 8 MR. MISNER: That is correct. 9 MR. COX: Let's call that up. 10 (PLF. EXHIBIT 41, Excel Spreadsheet ECP 11 508, was marked for identification.) 12 BY MR. COX: 13 Q. And you see this, Mr. Dority? This is a 14 document that was produced by Eastwood Construction. 15 It doesn't have the -- I think it has a number on it. 16 Oh, yeah, it does. ECP 508. And it's a financial 17 analysis of Brooks Creek. Do you recall being 18 involved in something like this? 19 A. I don't remember, no. 20 Q. If someone -- who at Eastwood would have 21 been preparing financial analyses like this to look at 22 potential income and profits from a deal? 23 MR. ADAMS: Stephen, is it appropriate for 24 me to say something about this? We produced this, but 25 this is a document we got from GreenHawk.	Page 45 1 conversation with Mr. Briner about needing to get a 2 contract negotiated on for the Brooks Creek property? 3 A. Mr. Cox, not specifically, no, sir. Again, 4 I can -- I mean, I would have imagined I would have 5 said, hey, we need to get these terms hashed out, but 6 I don't specifically remember the conversations, no. 7 Q. Who at Eastwood would have been in charge 8 of negotiating that lot purchase contract with 9 GreenHawk? 10 A. That would have been me or Mike Conley 11 or -- more than likely me. 12 Q. Okay. Did you have anybody working under 13 you like a deputy or a lieutenant that could negotiate 14 these contracts on Eastwood's behalf, or was it pretty 15 much just you? 16 A. Best I remember, me. 17 Q. And in the meantime did GreenHawk start 18 taking steps to develop the property and title the 19 property? 20 A. I don't remember the exact specifics. I 21 mean, I think we -- the property was under contract. 22 I think we took steps shortly after we put the 23 property under contract to get it entitled. I don't 24 know when GreenHawk entered the picture or when they 25 didn't. So -- does that answer the question?

Page 46 1 Q. Well, let me ask the question this way. 2 Eastwood has alleged in this lawsuit that it is 3 entitled to certain development expenses that it 4 incurred in connection with the Brooks Creek and River 5 Falls properties. Are you aware of that? 6 A. I didn't know they were -- that was alleged 7 in the complaint, no. 8 Q. And one of the allegations -- well, not 9 necessarily in the complaint, but in the course of the 10 lawsuit they've made allegations to that effect, and 11 they're seeking in the neighborhood of \$315,000 in 12 development expenses allegedly incurred in connection 13 with the property, and so my question to you is do you 14 recall Eastwood Development or Eastwood Construction 15 incurring any development expenses with respect to 16 Brooks Creek or River Falls? 17 A. I remember specifically -- again, I don't 18 remember the exact details of what development 19 expenses or what entitlement expenses, but on any 20 project you would have due diligence expenses, 21 investigation, planning expenses, rezoning expenses, 22 and if you buy the property you typically, you know -- 23 so the underlying or the over -- the kind of I guess 24 verbal agreement was they would -- Eastwood would 25 spend a hundred dollars on rezoning and GreenHawk	Page 48 1 Q. You're asking him in this email if he could 2 get an invoice paid for Brooks Creeks. It looks like 3 it's an invoice from some sort of Wetlands and 4 Environmental Planning Group. Do you see that? 5 A. I do. 6 Q. And it's dated May of 2014. Do you see 7 that, your email? 8 A. I see that. 9 Q. Which is about, what, five months after 10 GreenHawk had bought the property from R&H -- excuse 11 me -- five months after the assignment had been made 12 from Eastwood to R&H. Do you remember that? 13 A. Okay. 14 Q. Eastwood to AF Brooks Creek. I guess I'm 15 showing you this to ask this question: Within a few 16 months after the property had Eastwood started sort of 17 sending to GreenHawk any invoices associated with 18 Brooks Creek? 19 A. Well, the -- again -- and I don't mean 20 to -- my question I'm gonna ask -- when was the 21 property closed? -- and I can answer this question 22 once I know that. 23 Q. I could find that date during a break. I 24 can't remember off-hand. But tell me why that date 25 matters to you.
Page 47 1 would reimburse Eastwood the hundred dollars if they 2 closed the property, or something like that. 3 Q. Right. But do you recall any specific 4 expenses or development work that Eastwood did on the 5 property and paid for itself? 6 A. Specifically, like, I don't know if they 7 spent engineering fees and things like that, but no is 8 the answer. I don't remember specific details, no. 9 MR. COX: All right. Let's call up 10 Exhibit 42, Tim, and this is -- I think we have a 11 Bates stamp at the bottom of this. 12 (PLF. EXHIBIT 42, GHD 0000047, was marked 13 for identification.) 14 BY MR. COX: 15 Q. This is an email, Mr. Dority. It's ECP -- 16 it's a GreenHawk document, document 47, and this is an 17 email from you to Jessie Buchanan. Do you see that? 18 A. I do. 19 Q. Do you know who Jesse Buchanan was? 20 A. He worked at GreenHawk. Yes. 21 Q. Do you recall having negotiations with him 22 over Brooks Creek from time to time? 23 A. I remember he and I talked about it. I 24 don't remember if they were negotiations or not, but 25 yes.	Page 49 1 A. Again, if Eastwood -- again, depending on 2 when the property closed, again, if it closed 3 January 1, 2014, anything before that Eastwood would 4 have paid. Anything after the closing Eastwood 5 wouldn't have paid on behalf of AF whoever or 6 GreenHawk. So I don't know when this guy did the 7 work, and I don't know the invoice. 8 So, preclosing, preassignment, you would assume 9 that Eastwood would have paid it because we were 10 trying to get it entitled, rezoned, whatever, and 11 those expenses would be reimbursed. After closing all 12 the expenses go to whoever owns the property. 13 Q. Okay. You had two different dates in 14 there. You said preassignment and you said 15 preclosing. Which was it? And what was the trigger 16 point at which Eastwood would have expected GreenHawk 17 to start picking up development expenses, after the 18 assignment or after the closing? 19 A. That's why I asked when the closing was. 20 Again, I don't know the exact date. I don't know any 21 date when they closed. 22 Q. Okay. All right. Let's go back to the 23 complaint real quick, Exhibit K, and this is an email 24 from Jesse Buchanan to you. It's dated April 27 of 25 2016. Do you see that?

Page 50

1 A. I see that.

2 Q. And we haven't really talked about River

3 Falls, but is it your understanding that the River

4 Falls contract was assigned around the same time, the

5 2013/2014 time frame, to a GreenHawk entity and that

6 GreenHawk ultimately bought that property?

7 A. I don't know when it was assigned, but it's

8 my understanding GreenHawk closed on it, yes.

9 Q. Okay. And this is an email by which

10 Mr. Buchanan is talking to you about a potential deal

11 on River Falls, correct?

12 A. That's the way it appears, yes.

13 Q. So you remember we talked earlier, and you

14 said at the time of these assignments it was your

15 intention that Eastwood and GreenHawk would ultimately

16 negotiate a lot purchase contract with specific terms.

17 You recall your testimony on that subject?

18 A. I do.

19 Q. And it looks like Mr. Buchanan is saying

20 now we need to actually write that contract for the

21 River Falls property. Do you agree?

22 A. I agree that's what it says, yes.

23 Q. And here are some of the specific terms

24 that had to be worked out such as deposit, takedown

25 schedule and lot price, correct?

Page 51

1 A. Correct.

2 Q. Do you recall this email or these

3 discussions in April of 2016?

4 A. I do not recall them, no.

5 Q. Okay. Do you recall any further

6 negotiations with Mr. Buchanan about this subject?

7 A. I do not.

8 Q. Now, that is Exhibit 9 -- excuse me.

9 That's Exhibit K on the contract. It has to do with

10 the River Falls property, and it's dated April 27,

11 2016. Keep that date in mind. And I want to now look

12 at an exhibit we already admitted in a prior

13 deposition, and that's Exhibit 9.

14 MR. COX: Tim, would you call that up,

15 please.

16 BY MR. COX:

17 Q. This is an email from Mr. Buchanan to you

18 dated the same date. Do you see that?

19 A. I see that.

20 Q. But this one has to do with Brooks Creek,

21 doesn't it?

22 A. Yes, sir.

23 Q. And he's proposing a sale of the property

24 to Eastwood, presumably, for \$18,000 per potential

25 pad. Do you see that?

Page 52

1 A. I see that.

2 Q. What does potential pad mean?

3 A. Potential undeveloped lot.

4 Q. Okay. And he's basically given Eastwood

5 the option to buy the property at that price, isn't

6 that correct?

7 MR. ADAMS: Objection to form.

8 BY MR. COX:

9 Q. You see where he says we wanted to give

10 Eastwood the option?

11 A. I see that.

12 Q. So he's basically giving Eastwood the

13 option to buy the property at this price, isn't that

14 correct?

15 MR. ADAMS: Objection to form.

16 THE WITNESS: I mean, the way I read this

17 email is that they would entertain selling the

18 property in its current state at \$18,000 a blank or

19 \$51,000 a lot is the way I read this one.

20 BY MR. COX:

21 Q. Okay. I thought the starting sales price

22 of 51,000 a lot refers to the price to the ultimate

23 homeowner whereas 18,000 would be the price to

24 Eastwood to buy it back. Is that not correct?

25 A. No. The way I read this is it's \$18,000

Page 53

1 per undeveloped lot, and then 51,000 per developed

2 lot.

3 Q. Well, who's paying what is my question.

4 A. Well, Eastwood.

5 Q. Eastwood's paying the \$18,000 per lot to

6 Greenwood, correct, per undeveloped lot to

7 Greenwood -- to GreenHawk? Excuse me.

8 A. Or the 51,000. Yeah. Either/or.

9 Q. The either/or is what's throwing me. Why

10 would you give somebody a chance to buy a lot at

11 either 18,000 or 51,000? That seems like a pretty

12 easy choice.

13 A. Well, it's 18,000, but then you had to put

14 in -- I'm gonna make up a number -- \$30,000 in costs

15 to get it equivalent to the 51,000 number. Because

16 right there you have ones at 18, which is unfinished,

17 51 appears to be -- I read this as being finished.

18 Q. Who's going to finish it?

19 A. The way I read this email, if Eastwood

20 raises a hand on 18 they would finish it. If they

21 raise their hand on 51 GreenHawk would finish it.

22 Q. Okay. I gotcha. So it's a two-pronged

23 offer is how you read this email?

24 MR. ADAMS: Object to form.

25 THE WITNESS: That's how I read it, yes.

Page 54 1 BY MR. COX: 2 Q. Okay. This is dated April 27, 2016, 3 correct? 4 A. Yes, sir. 5 Q. That's two-and-a-half years after Eastwood 6 Development had assigned the Brooks Creek contract 7 over to a GreenHawk entity; isn't that right? 8 A. If that's what the assignment date is, yes. 9 I don't -- 10 Q. This had taken quite a while? 11 A. Okay. 12 Q. Right? And by this April 2016 date 13 Eastwood Homes and GreenHawk still didn't have a lot 14 purchase contract worked out; isn't that true? 15 MR. ADAMS: Objection to form. 16 THE WITNESS: I don't remember if they did 17 or didn't. 18 BY MR. COX: 19 Q. Well, this email certainly suggested they 20 didn't, doesn't it? 21 A. I could read -- I mean, I don't remember is 22 my answer, but, I mean, I see that in the email. I 23 mean, if you had terms, I don't know why you'd come 24 back with a price. 25 Q. Right. Where it says dragged on with the	Page 56 1 Q. Do you recall preparing sort of a 2 transition summary for Mr. Polite listing all the 3 projects you were handling and the status of those 4 projects? 5 A. After I saw the exhibit, yes. 6 Q. And let's look at that exhibit. It's 7 Exhibit 43, I believe. 8 (PLF. EXHIBIT 43, Joe D's transaction list, 9 was marked for identification.) 10 BY MR. COX: 11 Q. You just mentioned after you saw that 12 exhibit. Is this the exhibit you're talking about? 13 A. Yeah. 14 MR. ADAMS: Didn't you mark this with Joe 15 Polite already? 16 MR. COX: I thought we had, and then I 17 realized I think what happened is I had marked it but 18 we ended up not using it, and John may have, so just 19 to avoid any confusion I marked it again, but it 20 doesn't really matter if you've got two numbers for 21 the same thing. 22 BY MR. COX: 23 Q. So, do you recall this? Is Joe D you? 24 A. Yes, sir. 25 Q. Did you create this yourself?
Page 55 1 municipality causing delays, do you have any idea what 2 that means? 3 A. I would imagine -- no, I don't know the 4 details, the specifics. I mean, it's the 5 business we're -- I mean, when you rezone property or 6 you try to get permitted or titled it's not a quick 7 process. 8 Q. Do you have any recollection of any delays 9 that had been caused by any municipality or government 10 authority with respect to the Brooks Creek project? 11 A. Not that I remember, no. 12 Q. Okay. Do you recall what your response was 13 to this email? 14 A. I do not. 15 Q. Do you recall having any negotiations with 16 Mr. Buchanan or Mr. Briner or anyone at GreenHawk 17 about the Brooks Creek property in the spring of 2016 18 or following? 19 A. I don't recall any specifics, no. 20 Q. Okay. You testified earlier that you left 21 Eastwood in the fall of 2016. Do you recall that? 22 A. I recall that being said. Yes. 23 Q. And at the time when you left your 24 successor was Joe Polite; isn't that right? 25 A. Correct.	Page 57 1 A. I don't remember if I did or not. 2 Q. Okay. And then look down at the bottom of 3 the first page in the Charlotte projects. You see 4 where it says Brooks Springs? 5 A. All right. 6 Q. You see that? 7 A. I see that. 8 Q. And I think we've agreed that Brook Springs 9 and Brooks Creek is the same thing; isn't that right? 10 A. I would make that assumption. Yes, sir. 11 Q. I mean, we've seen various emails from 12 Buchanan and others referring to Brooks Creek. Y'all 13 referred to Brooks Creek and Brooks Springs 14 interchangeably; isn't that correct? 15 A. I don't remember if we did or didn't. 16 Q. But Brooks Springs is the Brooks Creek 17 property, isn't it? 18 A. I would assume, but -- yeah. I'm on board 19 with it. 20 Q. And then it says -- under the status it 21 says need contract. Currently under development. 22 Need to get this under contract with GreenHawk. They 23 do not price lots until all costs are in. Do you see 24 that? 25 A. I see that.

Page 58 1 Q. Was that an accurate statement by you at 2 the time you left Eastwood in the fall of 2016? 3 A. I don't remember -- I don't remember. 4 Q. Well, is there any reason you would not 5 have put an accurate statement in your summary you 6 prepared here for Mr. Polite? 7 A. Not that I can think of, no. 8 Q. It appears from this transition summary 9 that you still didn't have a contract with -- a lot 10 purchase contract with GreenHawk at the time you left 11 in the fall of 2016. Is that accurate? 12 A. That's the way it appears with this that 13 whatever we agreed to was not in a contract form that 14 both parties -- I mean, it looks like to me there 15 needs to be a written contract inked up. That's the 16 way I read that. 17 Q. Right. And this also says you didn't even 18 have a lot price yet, did you, because they wanted to 19 wait until all prices were in before pricing the lots? 20 A. Again, I don't remember if we did or 21 didn't. I can read that's what the -- that they don't 22 want to price the lots until all costs are in. 23 Q. Let me ask the question this way: As of 24 the time you left Eastwood, Mr. Dority, do you have 25 any memory that any specific lot price had been agreed	Page 60 1 BY MR. MABE: 2 Q. I'm John Mabe. I'm in Raleigh. Where are 3 you again? 4 A. Charlotte. 5 Q. Okay. Are you at home, or I guess you're 6 at your office? 7 A. At my office. Yes, sir. 8 Q. I represent what I refer to as the 9 GreenHawk defendants. It's AF Brooks Creek is an LLC, 10 and GHD Brooks Creek which is an LLC, and AF River 11 Falls an LLC, and GHD River Falls is an LLC, and also 12 GreenHawk Corporation which provides services to those 13 LLCs. 14 I understood you to say you were familiar with 15 them generally, and I know you said you were familiar 16 with Craig Briner. We'll get into it further, but do 17 you know some other people? I think you mentioned you 18 had talked with Jesse Buchanan. Who else do you know 19 at GreenHawk? 20 A. That would -- you named them. I don't 21 know -- 22 Q. Okay. All right. We'll go more into depth 23 a little bit more later. My understanding is that the 24 company Eastwood -- now, I understand that there are 25 predecessors to Eastwood Construction Partners, and
Page 59 1 to between GreenHawk and Eastwood Homes for the Brooks 2 Creek property? 3 A. I do not have any memory. 4 Q. You can't say one way or the other, can 5 you? 6 A. Correct. 7 Q. Do you have any specific memory one way or 8 the other as to whether a takedown schedule had been 9 agreed for the Brooks Creek property between Eastwood 10 Homes and GreenHawk as of the time you left Eastwood? 11 A. I cannot speak to that, no. 12 Q. Do you have any specific memory as to 13 whether any lot purchase contract terms had been 14 agreed to between Eastwood Homes and GreenHawk as of 15 the time you left the company Eastwood? 16 A. No, sir. 17 Q. Let's take a break. I'm about wrapped up, 18 I think. So, if we can, it's 11:10. Why don't we say 19 11:20. Does that work for everybody? 20 (A short recess was taken.) 21 MR. COX: Mr. Dority, I may have some 22 followup up on whatever he asks you, but I'm done for 23 now. Thank you very much. 24 THE WITNESS: Thank you. 25 DIRECT EXAMINATION	Page 61 1 there was some sort of a reorganization, so to speak. 2 One of the questions I have is whether you had any 3 involvement in the reorganization of the company? 4 A. No, sir. 5 Q. The administrative structure of it, you 6 didn't have anything to do with that? 7 A. No, sir. 8 Q. Who were your direct reports when you were 9 the land acquisition manager -- or you were VP for 10 land, right? 11 A. Yes, sir. 12 Q. Who were your direct reports? 13 A. Michael Kemp. I think Pat Quinn. Katie 14 Sands. 15 Q. Were they in Charlotte? 16 A. They were. 17 Q. Did they have authority to enter into a 18 land lot purchase agreement without your approval or 19 without approval -- excuse me -- without someone's 20 approval? 21 MR. ADAMS: Objection to form. I think 22 those are two different things, John. There's land 23 agreements and there's lot agreements. 24 MR. MABE: Okay. Well, let me -- 25 BY MR. MABE:

Page 62 1 Q. What I specifically meant to ask was did 2 they have authority to enter into agreements to buy 3 lots without someone's approval? 4 A. No. 5 Q. Did the division presidents have authority 6 to enter into lot purchase agreements, bulk lots, 7 without someone's approval? 8 A. No, sir. 9 Q. Would you be the person who would 10 ultimately have to be familiar with the terms of a 11 lot -- a bulk lot purchase agreement before it would 12 be approved? 13 A. I didn't necessarily have the -- I didn't 14 have the authority to approve any land purchase or lot 15 purchase. Ultimately everything came to Joe Stewart. 16 Q. Okay. All right. But it would go through 17 you presumably? You would learn of any of your 18 division presidents' desires to buy lots in bulk, 19 wouldn't you? 20 A. Correct. 21 Q. Okay. And y'all kept up with that sort of 22 stuff, right? You kept reports and records on what 23 lots were in the pipeline? 24 A. I would imagine. Yes, sir. 25 Q. You imagine? You went to meetings where	Page 64 1 I don't -- 2 Q. All right. I want to -- did you finish 3 your answer? 4 A. Yes, sir. 5 Q. Okay. I want to follow up on something 6 your attorney Mr. Adams said about, you know, the 7 difference between buying raw land and buying lots, 8 and, please, if I ask you a question that it's 9 confusing or unclear which I'm referring to, tell me 10 and let's make sure we get it straight. 11 My understanding is that you had -- in your role 12 as VP for land you would have been in charge of the 13 company's efforts to locate and acquire raw land; is 14 that correct? 15 A. I don't -- that was one of the things I was 16 charged with. 17 Q. I didn't mean that was all. 18 A. Okay. Yeah. But I guess what I want to 19 clarify is like a Mike Conley, any division president 20 or any other employee, if they found land, and they -- 21 I mean, it was a combined effort. 22 Q. Okay. But you would be involved in it, 23 though, right? 24 A. Yes, sir. 25 Q. Okay. And were you also similarly involved
Page 63 1 you talked about it, didn't you? 2 A. Yes, sir. But I don't remember the reports 3 or -- 4 Q. I'm not asking you to recall. I'll show 5 you some stuff, but I just wanted to get the lay of 6 the land. 7 A. Okay. 8 Q. You had bimonthly or at least monthly 9 meetings where you discussed what subdivisions were 10 becoming available, what subdivisions were being 11 developed, that sort of thing, so that you would have 12 an idea of what the pipeline was for lots that could 13 be sold and built upon; is that correct? 14 A. We had meetings. I don't remember the 15 frequency of them. 16 Q. Okay. But meetings for those purposes? 17 A. Yes, sir. We would discuss that. 18 Q. Did you run those meetings? 19 A. No, sir. Not necessarily. 20 Q. Sometimes you would run them or sometimes 21 you never or -- sorry. Did you run them some of the 22 time? 23 A. I don't know if any one individual ran 24 meetings. We would just have a meeting, and, you 25 know, we discussed whatever we needed to discuss, but	Page 65 1 in any deal to buy bulk purchases of multiple lots? 2 A. I would be involved in it, yes, sir. I 3 would know information on it. 4 Q. Right. And my understanding from your 5 testimony is that you have no specific recollection of 6 any details that were discussed regarding the purchase 7 of lots in Brooks Creek or -- to clarify, when I say 8 lots, I mean building pads. Because I think that was 9 a townhome development, right? 10 A. Right. Finished lots. Yes, sir. 11 Q. All right. So my understanding is that you 12 have no recollection as you sit there today of any 13 terms for any purchase of lots in Brooks Creek, or 14 Brooks Springs as y'all referred to it? 15 A. I don't remember. 16 Q. Is that correct? 17 A. I don't remember any specific terms for 18 Brooks Springs, Brooks Creek, River Falls. 19 Q. You've anticipated my question. Because I 20 was going to ask you do you have any recollection of 21 any details of any deal to buy lots in River Falls? 22 A. No, sir. 23 Q. Now, you've been particular about saying 24 that you have no specific recollection. Describe to 25 us what you mean when you say specific recollection.

Page 66 1 A. I don't remember -- like I don't have 2 memories of like we were gonna sell this lot in Brooks 3 Springs for \$10,000 or \$74,000. I have no idea what 4 it was. I don't remember terms of -- specific terms. 5 I mean, I don't remember specific conversations. I 6 remember I talked to the GreenHawk folks about terms. 7 Okay, we need to get the terms, we need to -- whatever 8 it is. And whatever emails are the emails. But I 9 don't remember specifically oh yes -- I don't remember 10 specific conversations, specific dialogues, specific 11 meetings. 12 Q. What would it take for you to be able to 13 remember specific terms of a contract to purchase lots 14 in either Brooks Creek or River Falls? 15 A. I don't have -- I don't know the answer. 16 Q. You'd have to look at a written contract 17 that was signed by the parties, wouldn't you? 18 MR. ADAMS: Objection to form. 19 THE WITNESS: I don't know if I'd -- I'd 20 have to look at something in writing, yes. 21 BY MR. MABE: 22 Q. Okay. When you said look at something in 23 writing, what do you think is sufficient for your -- 24 withdraw that. 25 Let me ask you a little bit more about your	Page 68 1 don't know if that's an accurate statement. It was 2 more of a -- I guess the company was in the middle of 3 a transition from Joe Stewart the founder to Clark 4 Stewart the son, and Clark had a different I guess 5 feeling about developing than Mr. Stewart. So, 6 sometimes we developed. Sometimes we didn't. It just 7 depended on the deal, the terms of it. 8 Q. So I know, can you tell me when that 9 transition from Joe Stewart to Clark was happening? 10 A. There's not like a date. I mean, again, 11 the way I remember it and kind of would characterize 12 it would be Joe was in the process of training his son 13 to take over the company. It's not just a one day 14 deal. It was a four year, ten year process of getting 15 him to where Joe felt comfortable the company was in 16 good hands, you know. 17 Q. Had that happened before you left at the 18 end of 2016? 19 A. No, I mean, Joe was still pretty much 20 involved. So that was in the process. I don't know 21 if it's -- like it may be done now. I have no idea. 22 Q. Okay. I wanted to go over something you 23 said about when you left in the fall of '16 you 24 started Brooks Capital to develop property, and you 25 said you did that with partners. Can you name some of
Page 67 1 development side of the company. If I understood your 2 testimony, you said that Eastwood Development who had 3 acquired the Brooks Creek property was the development 4 arm. Is that what you referred to it as? 5 A. Eastwood Development Corporation. They 6 would buy and develop lots and sell to builders. 7 Correct. 8 Q. Right. And did they sell them to builders 9 other than Eastwood Homes? 10 A. They did. 11 Q. So they sold them to competitors of 12 Eastwood Homes? 13 A. They did. 14 Q. Who are some of the competitors of Eastwood 15 Homes that they sold lots to? I mean, generally, if 16 you can recall some names. 17 A. I don't remember names. I know there were 18 other builders. 19 Q. Did they sell them to Pulte Homes? 20 A. I don't think so, but I don't remember. 21 They may have. I don't remember, though. 22 Q. All right. Was there an effort to get out 23 of developing raw land into buildable lots during your 24 time at Eastwood? 25 A. I don't want to say there was an effort. I	Page 69 1 the partners you worked with at Brooks Capital? 2 A. Shawn Cummings. Andy Dreyfus. 3 Q. Where is Shawn Cummings? Is he in 4 Charlotte? 5 A. No, sir. I think he lives up in Greensboro 6 area. 7 Q. Was he someone who you knew from your work 8 at Eastwood? 9 A. Yes, sir. 10 Q. Did you know him before you went to work at 11 Eastwood? 12 A. No, sir. 13 Q. And he is an individual who -- was he a 14 partner of Brooks Capital or did Brooks Capital team 15 up with other entities that Mr. Cummings was involved 16 in to develop property? 17 A. The latter. 18 Q. You mentioned Andy -- what's the last name? 19 A. Dreyfus. 20 Q. Where is he? 21 A. Somewhere up in the Triad. 22 Q. Any others? Can you recall any others? 23 A. No, sir. 24 Q. Are you the sole owner of Concept Homes 25 Group?

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Page 70 1 A. Yes, sir. 2 Q. Does Concept Homes Group have management 3 agreements with real estate developers -- any real 4 estate developer? 5 A. No, sir. 6 Q. You said you manage commercial property. 7 You're talking about nonresidential office and 8 institutional-type buildings; is that correct? 9 A. Yes. Correct. 10 Q. How about apartment buildings? 11 A. No, sir. 12 Q. So, no residential management? 13 A. I don't know what you mean by that. 14 Q. Is it the case that Concept Homes Group 15 does not manage any residential properties? 16 A. Not that -- not specifically. No, sir. 17 No, I don't think so. 18 Q. I'll ask you some of the same type of 19 questions that you had -- I'm going to show you a 20 document. I think this might -- 21 MR. MABE: I think -- if you have any 22 objection to it, Counsel, let me know, but this is 23 going to be a document that you guys have seen one 24 like it or you've seen this one. Is it showing? 25 MR. ADAMS: Yes.	Page 72 1 of it? 2 MR. MABE: Yes. This is ECP 2246. 3 MR. ADAMS: And you're marking that as 4 Exhibit 45? 5 MR. MABE: Exhibit 45. It's labeled as 6 Exhibit 45. 7 BY MR. MABE: 8 Q. Mr. Dority, I want to ask some questions 9 about the form of this. There's a number of 10 subdivisions that are referred to by initials over 11 here. It says community BP North and BP South. Do 12 you recall what subdivisions those were or what 13 developments those were? 14 A. A few of them. Yes, sir. 15 Q. Do you know what VI is for? 16 A. No idea. 17 Q. Does that mean villas? 18 A. I don't know. 19 Q. Okay. And you see Shawn Cummings was 20 involved. How about Callahan? Do you recall doing 21 transactions with Callahan at Eastwood? 22 A. What type -- I mean, he did work for 23 Eastwood, yes, sir. 24 Q. Okay. Did he do work with your company 25 after you left Eastwood?
Page 71 1 (DFT. EXHIBIT 45, ECP 0002246, was marked 2 for identification.) 3 BY MR. MABE: 4 Q. Okay. So, Mr. Dority, do you see this 5 document on the screen dated September 1st of 2016 6 from Mark Battiste? 7 A. I do. 8 Q. All right. And you were a recipient of 9 that, right? Do you see that? 10 A. I see that. Yes, sir. 11 Q. You typically got these, right? 12 A. I don't remember if I did or didn't. 13 Q. Okay. You wouldn't have any recollection 14 of any of the details on this independent of the 15 document itself, would you? 16 A. Correct. 17 Q. It's my understanding from earlier 18 testimony, Mr. Dority, that these are notes about 19 projects in which Eastwood Homes is interested in 20 keeping up with the time at which they may be able to 21 begin selling lots and building homes; is that 22 correct? 23 A. Buying lots. Yes, sir. 24 MR. ADAMS: John, can you put on the record 25 what the Bates is for that since I don't have a copy	Page 73 1 A. I think he did one project. Yes, sir. 2 Q. When you say he, you're referring to 3 Jarrett Callahan? 4 A. The company is what I'm referring to. 5 Q. Okay. So Brooks Capital did at least one 6 deal with some Callahan entity? 7 A. Well, I don't know about Brooks Capital, 8 but whatever entity was formed, yes, sir. 9 Q. Okay. How about Coulter? Who is Coulter? 10 A. They're a developer. 11 Q. Okay. How about Bowman? Who is Bowman? 12 A. I don't know. 13 Q. You didn't mention Dave Lyle. Do you know 14 who Dave Lyle is? 15 A. I do not. 16 Q. Do you know who Keith Hawthorne is? 17 A. I do. 18 Q. Tell us who -- who is Keith Hawthorne? 19 A. He was a developer. 20 Q. Did Keith Hawthorne -- I think his name is 21 found in several places in the documents of Eastwood. 22 Did he or some entity in which he was involved do 23 deals with you after you left Eastwood? 24 A. I don't know -- what do you mean? 25 Q. Well, my understanding is that Brooks

Page 74 1 Capital undertook to do some real estate deals, and 2 I'm asking you if any of those were with Hawthorne or 3 his interests? 4 A. No, sir. 5 Q. Did you ever work for any company owned by 6 Keith Hawthorne? 7 A. I guess -- I mean, Keith Hawthorne and I 8 are currently business partners in a few things, but I 9 don't know if I ever -- I mean, "worked for him" I 10 don't know is the right answer. 11 Q. Okay. Worked with him. Did you work with 12 Keith Hawthorne on projects in which you were both 13 personally involved? 14 A. I work with Keith. I mean, he's one of 15 my -- yeah, I mean, I work with Keith. I don't know 16 if I'm personally involved, but, yes, right now 17 today -- 18 Q. Right now today what? 19 A. Keith and I work together. 20 Q. Okay. What are you working on with 21 Hawthorne today? 22 A. He -- let me see. He developed those two 23 properties up there right now. So, Rock Creek I am 24 working on with him to assist him in getting the 25 balance of that project completed.	Page 76 1 Q. Okay. Is there any other one? 2 A. There's a Rufus Road. Wildbrook. 3 Q. Can you describe for us generally what your 4 consulting services include, what scope of services? 5 A. I guess the short answer would be project 6 management. 7 Q. And a slightly longer answer, can you 8 describe what you mean when you say project 9 management? 10 A. I get the project -- again, we'll take Rock 11 Creek specifically. He entered into a contract with 12 Eastwood Homes to develop -- let me see, based on this 13 spreadsheet here 130 lots. It's split into two 14 phases. So I'll see to it that it gets -- again, I 15 didn't have a whole lot to do with phase one, but 16 phase two, Mr. Hawthorne is getting out of the 17 development business, and I'm just assisting him in 18 finishing out his obligations and being done. So I'll 19 make sure the roads get -- roads and utilities get 20 installed and the plat gets recorded and it gets sold 21 in this case to Eastwood Homes. 22 Q. Does Eastwood Homes have a contract to 23 purchase lots in Rock Creek? 24 A. Yes, sir. 25 Q. And that has all the typical details of a
Page 75 1 Q. Is that -- what kind of development is 2 that? 3 A. Residential development. 4 Q. I got the impression that the company you 5 were presently with wasn't involved in residential 6 development. 7 A. The company I am -- 8 Q. Did I understand your testimony? 9 A. Well, the company I am with isn't involved 10 in it. I'm helping Keith -- that's independent of my 11 company. 12 Q. Okay. Are you doing that in your personal 13 capacity or through some business entity? 14 A. Through my personal capacity. 15 Q. Are you doing that as a consultant or as an 16 investor? 17 A. Consultant. 18 Q. And that's Rock Creek? 19 A. Correct. 20 Q. Are you advising on other developments? 21 A. I advised on Carmel Road, and I think 22 that's -- he has another property that I advised on. 23 Q. Carmel Road? 24 A. Carmel Road. Yes. That project is 25 complete.	Page 77 1 bulk lot purchase contract covering lot prices and 2 takedown schedule and escalation, terms for completion 3 of the subdivision improvements or those sorts of 4 things that are in that agreement? 5 MR. ADAMS: Objection to form. 6 BY MR. MABE: 7 Q. You can answer it if you know. 8 A. It's Eastwood's typical contract. I 9 don't -- 10 Q. There's a number of developments listed as 11 being EDC developments. Those are, as I understand 12 it, Eastwood Development Corporation projects? 13 A. Yes, sir. 14 Q. Okay. And, so, as of September of 2016, 15 Eastwood Development Corporation was involved -- or 16 Company was involved in a number of subdivisions that 17 it was self-developing; is that correct? 18 A. Yes, sir. That's the way I read it. 19 Q. And I'm just curious about this, 20 Mr. Dority. Earlier testimony has been to the effect 21 that the company was sort of getting out of being a 22 developer and being more as a builder, and I'm 23 wondering if that transition is related to your 24 departure from the company. Do you know? 25 MR. ADAMS: Objection to form.

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Page 78 1 THE WITNESS: I don't know is the answer, 2 but I don't know if I -- it's like I said before, I 3 think Joe Stewart didn't necessarily have a problem 4 owning land, where Clark Stewart wanted to put those 5 resources towards something else. 6 BY MR. MABE: 7 Q. Okay. So did that have something to do 8 with the burnout? 9 A. I don't understand the question. 10 Q. All right. I'll withdraw that. 11 MR. MABE: Let me make a clarification 12 about the identification of this exhibit. This is 13 marked 45. I was wrong when I said this would be No. 14 44. 15 BY MR. MABE: 16 Q. I'm going to -- if I can figure out how to 17 get there, I'm going to start sharing the screen. 18 All right. How did you get to know -- sorry. Did 19 you personally know Jarrett Callahan? 20 A. I mean, professionally. I don't know about 21 personally, no. 22 Q. Okay. Well, professionally you met with 23 Callahan regarding developments that Eastwood might 24 undertake? 25 A. Yes, sir.	Page 80 1 A. I can't -- I don't remember that, but I 2 think I saw something in my preparation that they 3 were. 4 Q. Okay. All right. Well, who runs Titan? 5 A. I believe it was Dean Kilbourne or Dean 6 Kilgore or something like that. 7 Q. Okay. And, again, you've got Callahan on 8 here, and you've got a number of things that you guys 9 were doing. I guess this is -- let me ask you about 10 Brookdale. So this says that it's coming online in 11 June of 2016. Is that right? It says recorded -- 12 what does recorded map mean to you? 13 MR. ADAMS: John, Brookdale is off my 14 screen. 15 MR. MABE: Okay. Well, I'm just going up 16 to the top of that column. 17 BY MR. MABE: 18 Q. Mr. Dority, do you see where it says 19 recorded map? 20 A. Yes, sir. 21 Q. What's the significance of the recordation 22 of the map? 23 A. That's when you can transfer lots. 24 Q. All right. So that's sort of -- that's 25 when the flag comes down and you can take off and
Page 79 1 Q. Well, how did you come to meet him, through 2 work? 3 A. Yes, sir. Through work. I don't know how, 4 but yes, sir. 5 Q. I'm going to see if I can share another 6 exhibit here. This should be Exhibit No. 44. This is 7 a similar -- it looks similar to the one you just 8 testified about. This one is dated June of 2016. 9 MR. ADAMS: What's the Bates number, John? 10 MR. MABE: ECP 1010. 1010. 11 MR. ADAMS: Thank you. 12 (DFT. EXHIBIT 44, ECP 0001010, was marked 13 for identification.) 14 BY MR. MABE: 15 Q. Let me ask a couple more questions about 16 these developers or graders. Is Titan a grading 17 company? 18 A. Yes, sir. I believe so. 19 Q. Did you work with them on a pretty frequent 20 basis? 21 A. I don't know about -- I guess I don't know 22 what you consider frequent. 23 Q. Well, the reason I'm wondering about Titan 24 is they were initially involved with Brooks Creek, 25 weren't they?	Page 81 1 start selling and building on those lots, right? 2 A. Yeah. That's when you can transfer and 3 pull a building permit. Yes, sir. 4 Q. Yeah. What you would be doing -- what 5 Eastwood would be doing is buying lots that you were 6 committed to purchase from the developers, right? 7 A. Correct. 8 Q. So I was asking you about -- there it is -- 9 Brookdale. So Brookdale is a subdivision that you 10 were under contract to buy lots in that subdivision; 11 is that right? 12 A. I don't remember, but, I mean, that's what 13 I would assume based on this document. 14 Q. Okay. And the anticipation was they were 15 going to come online in June of '19, right? 16 A. June of '16? 17 Q. I'm sorry. June of '16. Thank you. 18 A. Again, I didn't create this document. 19 Yeah, that's the way I read that, yes, sir. 20 Q. All right. Are you aware of troubles if 21 any that Callahan was having developing or delivering 22 buildable lots in the 2016 time frame? 23 A. Not that I remember, no, sir. 24 Q. Okay. How did you get to know Craig 25 Briner?

Page 82 1 A. I don't remember how I got to know him. 2 Q. Did you know him before you met him -- 3 before you worked with him at GreenHawk? 4 A. I don't believe so, no. 5 Q. Do you recall -- I think you already were 6 asked several times when you first began, and we sort 7 of got it to somewhere between 2006 and 2008 at 8 Eastwood. Do you recall when was the first time you 9 had any dealings with anyone at GreenHawk while you 10 were at Eastwood? 11 A. I don't. I do not. 12 Q. Do you have any recollection of any 13 subdivisions where you were involved in the 14 acquisition of lots for Eastwood Homes? 15 I'm sorry. Let me rephrase that. 16 Do you recall any subdivisions where Eastwood 17 Homes purchased lots from a GreenHawk entity? 18 A. Yeah, I mean, I think they bought lots from 19 them. And, like I said, I think there was something 20 earlier about Sunnybrook. I think they bought lots 21 from them. And there's a community up in the Triad 22 Greensboro area. I think there was another one in up 23 in Raleigh. 24 Q. Okay. Do you recall the name of the one in 25 the Triad?	Page 84 1 language in the bottom of this opening paragraph where 2 it's got -- this is underlined. It looks like it may 3 be in addition to the contract. The effective date 4 means the latest date of execution by the seller and 5 any buyer other than the Stewarts, and then there's a 6 statement that says from the effective date the 7 agreement will be in full force and effect for 21 days 8 but will automatically terminate if the signature of 9 Joseph K. Stewart or J. Clark Stewart is not affixed 10 within 21 days of the effective date. 11 Is that language familiar to you? 12 A. Yes, sir. 13 Q. And did that mean -- my terms. Layman's 14 terms. Did that mean that they had a veto power over 15 any lot purchase agreement that was entered into -- 16 A. Correct. 17 Q. -- that had this language? 18 A. Correct. 19 Q. And did they require that any of the 20 agreements that you were involved in have this 21 language in it? 22 A. I don't know if they required it. It was 23 just in the -- in that document. 24 Q. Do you recall a contract for the purchase 25 of finished lots in Hunters Point from Live Oak Homes?
Page 83 1 A. I think it's Lindley Park, but I didn't 2 recall that before I started -- 3 Q. Before your prep? 4 A. Right. 5 Q. How about the one in the Raleigh area? 6 A. Camp Kanata. 7 Q. Do you remember any others? 8 A. No, sir. 9 Q. My assistant still hasn't arrived, so I'm 10 may get to where I'm fast at this before the end of 11 the deposition, but I don't think I am going to, so 12 bear with me. 13 Okay. I'm sharing -- oh, golly. I'm sorry. I'm 14 still getting the -- are you seeing the same document 15 you were before or do you have new one? 16 A. There's a new one that I see. 17 (DFT. EXHIBIT 56, ECP 0003688, was marked 18 for identification.) 19 BY MR. MABE: 20 Q. All right. Lot purchase agreement. This 21 is Exhibit No. 56, and it's Bates No. ECP 3688. This 22 is a markup. This isn't the actual document. Do you 23 know whose handwriting this is? 24 A. I do not. 25 Q. Do you recall -- let me refer you to the	Page 85 1 A. I do not. 2 Q. Do you recall Live Oak Homes? 3 A. I think that's GreenHawk's building entity, 4 but I don't -- 5 Q. I mean, I think the record will show that 6 that's correct, but do you recall buying finished lots 7 from Live Oaks Homes in more than one development? 8 A. I do not remember that, no. 9 Q. Let me ask you just a real general 10 question. Do you recall ever buying any lots without 11 a written contract? 12 A. I don't remember -- 13 MR. ADAMS: Objection to form. 14 THE WITNESS: I don't remember if we did or 15 didn't. I mean, we may have bought one or two. It 16 depends on the lots, but I don't remember if we did or 17 didn't is the answer. 18 BY MR. MABE: 19 Q. All right. If I can paraphrase that, is it 20 correct that you could not swear and testify that 21 Eastwood ever bought a finished subdivision lot 22 without a written contract -- 23 MR. ADAMS: Objection to form. 24 BY MR. MABE: 25 Q. -- for purchase of the lot?

Page 86 1 MR. ADAMS: Objection to form. 2 BY MR. MABE: 3 Q. Is that correct? 4 A. Rephrase that one more time for me. 5 Q. Is it correct that you cannot swear that 6 Eastwood ever bought a finished subdivision lot 7 without a written contract for the terms of the 8 purchase and sale? 9 A. I can't say that they did, and I can't say 10 that they didn't. 11 Q. I'm not sure that answered the question. 12 You can't swear that they did; is that correct? 13 A. I can't swear that they did or I can't 14 swear that they didn't. 15 Q. All right. Let me try this share screen 16 thing again. I'm trying to share an agreement for the 17 purchase and sale for finished lots in Granite Crest. 18 Can you see that? 19 A. I can. 20 MR. MABE: All right. This is marked 21 Exhibit 57, and it starts on page -- that's not a 22 felicitous situation. It doesn't have a number on it. 23 I'll have to get you a number on this one, Jimmy. I 24 thought all of them now had footers on them. 25 (DFT. EXHIBIT 57, Agreement for Purchase	Page 88 1 you recall Granite Crest? 2 A. It's a community up in Raleigh, but I think 3 it's more -- you counted nine, ten, eleven. So a 4 couple handfuls of lots. 5 Q. Right. And this is the purchase of 6 finished lots, right? 7 A. That's the way I read it, but I don't 8 remember the deal. 9 Q. Okay. Well, we're not going to take the 10 time to read the whole thing, but it says right at the 11 top it's for finished lots in Granite Crest? 12 A. That's what it says. Yes, sir. 13 Q. It would appear that this is not a 14 situation where Eastwood had any kind of arrangement 15 with GreenHawk to develop lots for Eastwood. The lots 16 are finished, and they're just being sold to Eastwood, 17 correct? 18 A. Live Oaks Homes. Yes, sir. 19 Q. So what I'm driving at, and I want you to 20 understand where I'm going on this is I want you to 21 tell me what you can recall about any deal where 22 Eastwood bought or tied up the land and then got a 23 GreenHawk entity to develop it and then bought back 24 lots. Can you recall any instance where that 25 happened?
Page 87 1 and sale of finished lots at Granite Crest dated 2 05/2012, was marked for identification.) 3 BY MR. MABE: 4 Q. So this contract is dated May of 2012. You 5 were there then, right? 6 A. Yes, sir. I was there in 2012, I think. 7 Q. I'm going to drop down to the signature. 8 Do you know whose signature that is? 9 A. It appears to be Brian Johnson's. 10 Q. Was he a division vice president? 11 A. I believe he was the division president of 12 Raleigh, yes. 13 Q. Okay. Were you involved in this purchase? 14 A. I mean, meaning was -- did I put the deal 15 together? 16 Q. Well, were you involved in the approval of 17 the deal? 18 A. I would imagine, but I don't remember it. 19 Q. You don't have any recollection other than 20 what you would see on this document? 21 A. Correct. 22 Q. All right. This appears to be a sale 23 for -- an agreement for the purchase of nine lots, if 24 I count them correctly -- one, two, three, four, five, 25 six, seven, eight -- nine lots in Granite Crest. Do	Page 89 1 MR. ADAMS: Objection to form. 2 THE WITNESS: Mr. Mabe, if there was a list 3 of all the subdivisions that Eastwood had, I might be 4 able to jog my memory, but -- 5 BY MR. MABE: 6 Q. I'm not sure that that's possible, but I'm 7 going to show you another contract. This is -- can 8 you see this is an agreement for purchase and sale 9 between Live Oaks Homes and Eastwood of Raleigh 10 relating to Sunnybrook? 11 A. Yes, sir. 12 Q. Do you have any recollection whatsoever as 13 to whether Eastwood had tied up this property prior to 14 Live Oaks Homes having these lots for sale? 15 MR. ADAMS: Objection to form. 16 THE WITNESS: Your question is? 17 BY MR. MABE: 18 Q. Did Eastwood tie up the land and then get a 19 GreenHawk entity to develop it? That's the question. 20 MR. ADAMS: Objection to form. 21 THE WITNESS: No, sir, because they're 22 finished lots that Live Oaks Homes didn't want, they 23 were getting rid of. 24 Q. Right. Okay. 25 MR. MABE: So this is ECP 8175. It will be

Page 90 1 Exhibit 58. 2 (DFT. EXHIBIT 58, ECP 0008175, was marked 3 for identification.) 4 BY MR. MABE: 5 Q. Now I'm going to drop down to page 8188, 6 and I'm going to ask you a question about this page. 7 Okay? And I'm taking it that that must be your 8 initials JRD there, right? 9 A. Yes, sir. That's my initials. 10 Q. All right. Do you see this language -- 11 this bold paragraph beginning buyer acknowledges that 12 buyer has entered into this agreement, etc. -- 13 A. I see that. 14 Q. -- do you see that? So this would be 15 consistent with your understanding that this is a 16 purchase of finished lots as they stand -- you know, 17 as they lie as is, right? 18 A. I'm not understanding the question. 19 Q. It's a purchase of lots as is. There's 20 no -- the seller isn't making any representation about 21 these lots, isn't that correct? 22 MR. ADAMS: Objection to form. 23 THE WITNESS: Without reading the contract, 24 I don't know what the seller is committing to. I 25 don't know.	Page 92 1 Q. Joe, let me know if I'm scrolling through 2 this too fast or too slow. 3 A. All right. You're good. 4 Q. You don't have to read it into the record. 5 Let me give you an opportunity to just read 23.12 in 6 full. Let us know when you're done. 7 A. Okay. 8 Q. So you're not binding anybody to your 9 interpretation of this, but you signed this, can you 10 tell me what that means to you? 11 A. The way I read it is it's not a -- let me 12 see here. This agreement isn't an agreement until the 13 seller signs it. That's my take on it. 14 Q. And that's typical for a real estate 15 transaction, isn't it, that it's not a deal until it's 16 a signed deal? Isn't that correct? 17 MR. ADAMS: Objection to form. 18 BY MR. MABE: 19 Q. You can answer. 20 A. I don't know if it's typical or atypical. 21 Q. I'm going to refer you to page 8194. 22 That's your signature, isn't it? 23 A. Yes, sir. 24 Q. All right. And you recognize Craig 25 Briner's signature for Live Oaks Homes?
Page 91 1 BY MR. MABE: 2 Q. All right. Well, let's move on. I'm going 3 to refer you to the bottom of -- to page 8192, and I 4 want to ask you about this paragraph No. 23.12, not an 5 offer; last date for submission. 6 Do you know -- let me get you to read the first 7 full sentence of that, please, into the record. 8 MR. ADAMS: John, let me ask that you allow 9 Mr. Dority to read any part of paragraph 23 that he 10 chooses to. This is some part of 12 -- 11 MR. MABE: Sure. 12 MR. ADAMS: -- and there is absolutely zero 13 context for this. I mean, under the rules I think 14 technically we'd be allowed to take a break so Joe 15 could review the whole thing, but -- 16 MR. MABE: All right. This is a paragraph 17 titled miscellaneous. It has to do with signing it in 18 counterparts, having more than one document bearing 19 the signatures, what happens with partial invalidity 20 when you get -- when possession is delivered. 21 MR. ADAMS: That's fine. I just want -- I 22 mean, if Joe wants to look at it, I just want to give 23 him a chance to look at all the subparts if he needs 24 to. He may not need to. 25 BY MR. MABE:	Page 93 1 A. I can read it's Craig's. Yes, sir. 2 Q. Yeah. And that was an Eastwood entity, 3 right? 4 A. Eastwood Homes of Raleigh? 5 Q. Live Oaks Homes, Inc. 6 A. That's a GreenHawk entity, I believe. 7 Q. I'm sorry. I said Eastwood. I beg your 8 pardon. That's a GreenHawk entity. Right. Thank 9 you. 10 MR. MABE: I've got a couple more. I'll 11 try to -- I'm moving as briskly as I can. I'm still 12 waiting for my assist to get here. This is going to 13 be Exhibit No. 59. 14 MR. ADAMS: Did you intentionally skip from 15 45 to 56? 16 MR. MABE: Yes. I'm going to go back and 17 cover some ground later. I think it will be -- 18 MR. ADAMS: That's fine. I just wanted to 19 make sure. 20 (DFT. EXHIBIT 59, ECP 0008596, was marked 21 for identification.) 22 BY MR. MABE: 23 Q. I'm showing you a document that's labeled 24 Exhibit 59, and it starts on page ECP 8596, and this 25 looks like the other one that it has initials CAB and

Page 94 1 JRD on it. Do you see that, Mr. Dority? 2 A. I see that. 3 Q. All right. So this is an offer for the 4 purchase and sale of real estate in Guilford County, 5 North Carolina. Do you recognize the Lindley Falls 6 name or Lindley Estates? 7 A. Yes, sir. 8 Q. This has that same effective date language 9 we looked at earlier. Do you see that in the second 10 paragraph -- 11 A. Yes, sir. 12 Q. -- referring to the Stewarts? Now I'm 13 going to drop down to page 8604. That's your 14 signature, isn't it? 15 A. Yes, sir. 16 Q. And Stewart has signed it, right? 17 A. Yes, sir. 18 Q. Can you tell us anything from your 19 recollection about Lindley Estates? 20 A. Other than it's in the Triad, that's about 21 it, sir. 22 Q. I'm not certain of this, but it sounds like 23 you would -- would you testify that you have no 24 recollection independent of what you would read in 25 this document about the deal?	Page 96 1 record that you don't really remember anything about 2 it other than what the documents show. Is that 3 correct? 4 A. I can -- right now that's all I remember, 5 yes, sir. 6 Q. Well, you wouldn't anticipate getting a 7 better memory of it between now and trial, would you? 8 MR. ADAMS: Objection to form. 9 BY MR. MABE: 10 Q. Without reference to the documents. Is 11 that correct? 12 A. I don't remember a whole lot, no, sir. 13 Q. What do you recall about the circumstances 14 in which Ryan Homes was involved in Lindley Park 15 Estates, if anything? 16 A. I didn't remember Ryan Homes was involved. 17 Q. Any Ryan entity? I know there's more than 18 one. 19 A. I didn't remember -- none. Zero. 20 Q. Okay. All right. Thank you. 21 Let's see how soon I can get my next exhibit 22 showing here. 23 (DFT. EXHIBIT 60, ECP 0008618, was marked 24 for identification.) 25 BY MR. MABE:
Page 95 1 A. That's a fair statement. 2 Q. So it is for Lindley Park Estates, and it 3 is for the purchase of 22 as is lots, at least in 4 part, but that's part of what this is about, right? 5 A. The way I read that it's for 80 to be 6 developed lots -- 7 Q. Right. 8 A. -- and 22 finished lots. 9 Q. Okay. Thank you. Do you have any idea 10 what involvement Eastwood had in the acquisition of 11 the lot of the property before GreenHawk was involved 12 with it? 13 A. I don't remember. No, sir. 14 Q. Is it correct that you would not be able to 15 testify that there was any handshake deal -- I'll 16 withdraw that. 17 Is it correct that you could not testify regarding 18 the terms under which a GreenHawk entity became the 19 owner of the Lindley Estates -- Lindley Park Estates? 20 MR. ADAMS: Objection to form. 21 THE WITNESS: Mr. Mabe, I don't remember a 22 whole lot about the Lindley Park Estates deal, so I 23 don't remember is the answer. 24 BY MR. MABE: 25 Q. Okay. I just want to establish for the	Page 97 1 Q. I'm going to show you Exhibit 60. All 2 right. We're looking at a document identified as 3 Exhibit 60, and it starts on page ECP 8618. 4 Do you recall any effort by the parties to amend 5 the schedule for takedown of lots and lot prices on 6 Lindley Woods or Lindley Park? 7 A. I don't recall, no, sir. 8 Q. Do you see the paragraph 2 there refers to 9 purchase price and absorption schedule. Can you tell 10 us the significance of the absorption schedule and 11 purchase price information? 12 MR. ADAMS: Objection to form. 13 THE WITNESS: What do you mean by 14 significance? 15 BY MR. MABE: 16 Q. Well -- okay. Why is this term in this 17 amendment? 18 A. I don't -- other than what it says, it's 19 been revised, that I guess whatever it was has been 20 changed to this -- 21 Q. Okay. 22 A. -- but I don't -- 23 Q. All right. I'm going to show you the 24 signature. Does this document bear your signature? 25 A. It does.

Page 98 1 Q. All right. And can you recall that there 2 was an amendment of the takedown arrangement and the 3 lot price on the Lindley Estates other than by looking 4 at this document? 5 A. Outside of seeing this document I don't 6 recall it, no. 7 Q. Okay. Thank you. 8 MR. MABE: I'm going to -- I've got one 9 more of the same, unfortunately. You guys acknowledge 10 that I am getting a little bit faster getting these 11 things out here. 12 (DFT. EXHIBIT 61, ECP 0008621, was marked 13 for identification.) 14 BY MR. MABE: 15 Q. Do you see this document titled second 16 amendment to the contract and option to purchase real 17 estate in Lindley Park Estates? 18 A. Yes, sir. 19 Q. And this one is marked Exhibit 61, and it 20 begins on page 8621. 21 So it appears, does it not, Mr. Dority, that there 22 was a further amendment to the takedown schedule and 23 lot prices? Is that correct? 24 A. If that's what it shows, yes, sir. I don't 25 remember, but, I mean, based on those documents you	Page 100 1 two of us, and somehow I found out GreenHawk was the 2 other buyer, and once I realized that I backed out 3 because whoever I was -- assuming Eastwood would have 4 bought it, I would have taken it to GreenHawk to 5 develop. So that's what I remember about Camp Kanata. 6 Q. So Eastwood never tied up that property, 7 did it? Eastwood -- 8 MR. ADAMS: Objection to form. 9 BY MR. MABE: 10 Q. Eastwood never tied up the raw land? 11 A. Right. Once I realized GreenHawk was the 12 other entity trying to purchase it, I pulled our 13 offer. In essence, I would have been bidding against 14 ourselves. 15 Q. How do you mean bidding against yourselves? 16 A. Because I would have taken the opportunity 17 to GreenHawk to develop and sell back to Eastwood 18 Homes. 19 Q. So you felt like if Eastwood paid more than 20 GreenHawk for the raw land that you would still have 21 sold it to GreenHawk to develop and it would result in 22 higher prices when you bought the lots coming back to 23 you if you bought lots? 24 A. I guess. I just felt that GreenHawk was 25 going to be on the -- Eastwood and GreenHawk would
Page 99 1 just showed, that's the way I see it. 2 Q. Okay. Do you recall any of the 3 circumstances surrounding the amendment to the Lindley 4 Park takedown schedule or lot purchase agreement? 5 A. No, sir. 6 Q. Let me rephrase that. Do you recall -- 7 independent of the documents, do you have any 8 recollection of any of the circumstances of the 9 amendment of the Lindley Park Estates purchase and 10 sale agreement? 11 A. No, sir. 12 Q. Thank you. Were there other deals where -- 13 or other circumstances where perhaps Eastwood and 14 GreenHawk talked about entering into a contract to 15 develop land or to purchase land but didn't do it, you 16 know, the discussion or idea came to nothing? 17 A. I don't remember if there was or wasn't. 18 Q. Okay. Do you recall anything about Camp 19 Kanata? 20 A. I remember Camp Kanata I -- I say I. 21 Eastwood was trying to purchase the raw land, and I 22 don't remember who the seller was, but I remember 23 Eastwood -- I -- was chasing the opportunity, and I 24 don't know how I found out, but there was another 25 entity, another person trying to -- it came down to	Page 101 1 have been in it together, and if they were already 2 running lead on it I stepped back. 3 Q. It wasn't automatic that you were going to 4 get GreenHawk to develop it, though, was it? You 5 could have gotten someone else to develop it, couldn't 6 you? 7 MR. ADAMS: Objection to form. 8 THE WITNESS: I guess. If Eastwood 9 obtained the contractual rights, I guess they could 10 have. Yes, sir. 11 BY MR. MABE: 12 Q. I mean, we looked at two -- how do you 13 refer to them -- current timelines for Eastwood 14 Development, documents 44 and 45, that showed a number 15 of other developers with which Eastwood worked, right? 16 A. Yes, sir. 17 Q. And do you recall that the GreenHawk 18 developers of that property didn't enter into a 19 contract to sell all the lots to Eastwood? Do you 20 recall that? 21 A. I don't remember all the specifics, but I 22 do think there were multiple builders in there. 23 Q. Okay. So it wasn't -- even if GreenHawk 24 acquired it, they didn't have to sell it to Eastwood, 25 did they? And your testimony would be that there were

Page 102 1 more than -- they didn't only sell lots to Eastwood, 2 did they? 3 MR. ADAMS: Objection to form. 4 THE WITNESS: If you could ask the question 5 one more time. 6 BY MR. MABE: 7 Q. My understanding of what you just told me 8 was that there were multiple builders in there, and I 9 think by that you meant that Eastwood wasn't able to 10 buy all of the lots in Camp Kanata; is that correct? 11 MR. ADAMS: Objection to form. 12 THE WITNESS: I think -- again, I don't 13 remember the exact details, but I think there was 14 another builder that bought lots and Eastwood bought 15 lots. There were two different sections. Again, I 16 don't know why or how it happened, but that's what I 17 remember. 18 (DFT. EXHIBIT 65, ECP 0002867, was marked 19 for identification.) 20 BY MR. MABE: 21 Q. Okay. Did Eastwood enter into a lot 22 purchase contract with a GreenHawk entity for lots in 23 Camp Kanata? And I'm showing you -- 24 A. That's what it appears. Yes, sir. 25 Q. Here. Let me show you. This is Exhibit	Page 104 1 such as this? 2 A. I mean, I don't know -- I mean -- I can 3 take some guesses, but I guess when I was at Eastwood 4 they did the contract -- they sent deposits out, and 5 sometimes they secured the deposit with a deed of 6 trust, sometimes they didn't. So I don't know why 7 it's here. I don't know what the whole -- I don't 8 know how to answer your question, I guess. 9 Q. Okay. Well, is it the case that frequently 10 Eastwood would make a significant deposit of money to 11 secure its obligation to purchase lots in a 12 subdivision? 13 MR. ADAMS: Objection to form. 14 THE WITNESS: Mr. Mabe, sometimes they did, 15 sometimes they didn't. I don't know the -- I don't 16 know if they did here or not. I don't remember. 17 BY MR. MABE: 18 Q. Okay. You said sometimes they did, and is 19 it correct that Eastwood would sometimes make a 20 deposit to secure the obligation to buy lots in a 21 subdivision? 22 A. Yes, sir. 23 MR. ADAMS: Objection to form. 24 BY MR. MABE: 25 Q. And then is it correct that sometimes when
Page 103 1 No. 65. This is an attachment to Exhibit 65. It's 2 not a signed agreement, but I wanted you to see the 3 source of this. Here's a message from Allen Nason -- 4 he's counsel for Eastwood; is that correct? 5 A. Yes, sir. 6 Q. -- to you, and he's attached a draft 7 contract using Lindley as a go by, I guess, and 8 there's a standard deed of trust used to secure 9 deposits. So he's drafted up a contract, and then it 10 looks like you forwarded that on to Craig Briner at 11 GreenHawk to review that, correct? 12 A. Yes, sir. That's the way I read it. 13 Q. And this has the same language about -- the 14 veto language that we looked at before giving Joe 15 Stewart or Clark Stewart the power to not sign the 16 agreement so if they don't approve of it this would 17 die in 30 days if this is the executed agreement; is 18 that correct? 19 A. That's correct. 20 Q. All right. I'm going to refer you down to 21 page 2890. I just want to ask you a couple questions 22 about this. Page 2890 is the beginning of an 23 attachment called a deed of trust for Camp Kanata 24 subdivision. Can you explain what the purpose of the 25 deed of trust is in a lot purchase and sale agreement	Page 105 1 they did that they would be secured by a deed of trust 2 on the property? 3 MR. ADAMS: Objection to form. 4 THE WITNESS: Sometimes they secured that 5 with a deed of trust, sometimes they didn't. 6 BY MR. MABE: 7 Q. And then isn't it correct that the typical 8 pattern would be that the deposit would be released on 9 the last lots purchased? 10 MR. ADAMS: Objection to form. 11 THE WITNESS: Not necessarily, no. 12 BY MR. MABE: 13 Q. They'd be taken into account during the 14 takedown process? In other words, the deposit wasn't 15 left -- was ultimately going to be credited to the 16 purchase price -- 17 A. Correct. 18 Q. -- of the lots; isn't that correct? 19 A. That's correct. 20 Q. Okay. And would you say that that was a 21 fairly typical arrangement, that there would be a 22 deposit to secure the obligation to purchase bulk 23 finished lots? 24 MR. ADAMS: Objection to form. 25 BY MR. MABE:

Page 106 1 Q. Would you say that was pretty typical for 2 Eastwood? 3 MR. ADAMS: Objection to form. 4 THE WITNESS: It really depends on the 5 time. Sometimes -- again, I'm not trying to be coy. 6 Some developers a deposit was important to them. Some 7 developers it wasn't. Some developers didn't want a 8 deposit because they didn't want -- again, certain 9 times they did and certain times they didn't. When 10 they did, they would get it back either pro rata over 11 the course of when they purchased lots or the back end 12 or whatever was negotiated. 13 MR. MABE: Okay. I'm going to -- it's 14 after 12. It's 12:40. I'm going to suggest -- I'm 15 going to suggest that we break for 30 minutes. 16 Mr. Dority, I understand you've got a hard stop at 17 four o'clock, and I don't want to ask everybody to 18 continue through the deposition without stopping at 19 all for lunch. I think it's a good idea to take a 20 little bit of time, and I know Madam Court Reporter 21 would appreciate that, but I hope y'all can deal with 22 less than an hour. What's your preference on that? 23 (An off-the-record discussion was held.) 24 MR. MABE: Why don't we reconvene at 1:15. 25 (A short recess was taken.)	Page 108 1 know, sometimes certain deals fit better with certain 2 developers, certain locations, certain whatever. 3 Certain times developers didn't have -- they really 4 weren't buying at that time. So there isn't a one 5 size fits all answer, I guess. 6 Q. Okay. And the deals are different because 7 of the circumstances because of, if I understand what 8 you're saying, these are big and complicated deals 9 involving a lot of money, and a lot of time -- 10 A. Right. 11 Q. -- and a lot of time to finish a 12 development, right? 13 MR. ADAMS: Objection to form. 14 THE WITNESS: Right. They're complex, I 15 guess. And, again, it's just the nature of what it 16 is, and sometimes it requires -- I guess a lot of 17 money is subjective, but, you know, sometimes it 18 requires more money than others, sometimes it requires 19 more time than others, sometimes it requires -- you 20 know, some developers don't want any part of a 21 townhome development. Some developers don't want -- 22 it just depends on the niche and -- you know. 23 BY MR. MABE: 24 Q. I want to touch briefly on something we 25 haven't talked about and that is the time it takes to
Page 107 1 BY MR. MABE: 2 Q. When we stopped we were talking about 3 Kanata Mills, and I want to move on to some other 4 maybe deals that didn't happen. My goal, Mr. Dority, 5 is to try to spur your recollection of anything that 6 constituted some kind of an agreement that any deals 7 that came up that you were going to get them to 8 GreenHawk if they wanted them or GreenHawk was going 9 to take them if you wanted them to, and if GreenHawk 10 had lots they wanted to sell that y'all would buy 11 them, that sort of thing. Is it fair to say that 12 throughout your dealings with GreenHawk it was like 13 your dealings with other developers, you entered into 14 deals on an arm's length basis? 15 MR. ADAMS: Objection to form. 16 BY MR. MABE: 17 Q. Is that a fair summary? 18 A. Other deals were -- again, I don't know how 19 to -- every deal kind of stood on its own. We didn't 20 really -- I mean, we had -- again, for lack of a 21 better phrase, Eastwood had a stable, you know, a 22 group of preferred developers, whoever we would do 23 business with. Some deals were structured some ways. 24 Some deals were structured different ways. There 25 wasn't a one size fit all type of a deal, but, you	Page 109 1 develop a subdivision affects the return on it because 2 of the time value of money. Isn't that true? 3 A. That would be a component of the IRR. Yes, 4 sir. 5 Q. And wasn't it pretty typical if you had a 6 multi-year takedown schedule that there would be 7 escalation in the price of property -- the price of 8 lots over the period of the takedown schedule? 9 A. I guess. I mean, that would -- I think 10 I've seen more deals structured that way than not that 11 way. 12 Q. Okay. And sometimes -- if I understand you 13 correctly, sometimes the developer might have an 14 opportunity and decide not to take it, to take a pass 15 on a project because it wasn't in their niche or their 16 expertise or their financial capability, for any 17 number of reasons they might take a pass on an 18 opportunity; isn't that correct? 19 A. Yeah -- 20 MR. ADAMS: Objection to form. 21 (Court Reporter addresses simultaneous 22 speaking and requests clarification of witness's 23 testimony.) 24 THE WITNESS: Mr. Mabe, can you ask one 25 more time?

Page 110 1 BY MR. MABE: 2 Q. Isn't it correct that sometimes developers 3 take a pass on a project for any number of reasons, it 4 might not be financially attractive, it might not be 5 within their niche of capabilities, it might be too 6 big for them, or they might not, as you said, like to 7 do townhomes. It could be any number of reasons, and 8 developers would discuss the deal and ultimately not 9 make a deal on a development. Isn't that correct? 10 MR. ADAMS: Objection to form. 11 THE WITNESS: There's a -- yeah, I guess 12 the answer is -- the short answer is yes, the 13 developers can pass for any number of reasons. They 14 didn't always do the deals you took to them. 15 Conversely, I mean, when developers would bring the 16 builders deals, sometimes the builder said yeah it 17 sounds great and sometimes they would say no. 18 BY MR. MABE: 19 Q. Did you finish your answer? 20 A. Yes, sir. 21 Q. What are some circumstances in which the 22 flip side of that would happen where a builder would 23 take a pass on buying lots in a subdivision? 24 A. If a subdivision was in a location the 25 builder didn't want. The lots were, you know, priced	Page 112 1 Q. Mr. Dority, during your lunch break did you 2 have an opportunity at all to look over any of the 3 exhibits that we have sent? 4 A. Not to review them. I was able to -- Jimmy 5 forwarded them to me. I opened them up, and they're 6 on a separate screen, but I haven't gone through them 7 or perused them yet. 8 Q. No, no. Of course. I understand that. 9 I'm showing you what's marked Exhibit 63, and I'm 10 going the go up to the top of this and point out that 11 this is an email with a subject line indicating 12 approximately 92 acres White Oak Garner, and you are 13 shown earlier in the trail of this as receiving a 14 copy, or later in the chain you get a copy -- there 15 you go. Do you recall a review of an opportunity in 16 White Oak, Garner, North Carolina? 17 A. No, sir. 18 Q. Okay. Have you got any recollection of 19 this whatsoever? 20 A. No, sir. 21 Q. So I'm pointing you to an email on page 2 22 from Craig Briner to Jim Bost and Rich Barta in which 23 Mr. Briner says that, quote, we are terminating the 24 contract that we have with you for the White Oak 25 Garner property, close quote, and then later in that
Page 111 1 more than they thought they could pay for them. If 2 the absorption -- any number of things. Maybe they 3 were in a bad school district. Maybe they weren't the 4 right lot size. Something like that. 5 Q. When you say absorption, what does that 6 mean? 7 A. The velocity. Maybe the developer wanted 8 it, you know -- I think you used the phrase -- what 9 was the -- 10 Q. Time value of money? 11 A. Time value of money. Maybe they had to 12 have the time value of money. Some developers care 13 about that and some developers don't. It just 14 depends. 15 (DFT. EXHIBIT 63, ECP 000001, was marked 16 for identification.) 17 BY MR. MABE: 18 Q. I'm going to show you a document that's 19 going to be Exhibit 63. This document begins on page 20 ECP No. 1. Let me give you a chance to look through 21 this for a second. 22 MR. MABE: Off the record a moment, Madam 23 Court Reporter. 24 (An off-the-record discussion was held.) 25 BY MR. MABE:	Page 113 1 it says, quote, please return the 50k to Eastwood and 2 we'll clean up our obligation with them as well, close 3 quote. 4 Does that cause you any recollection of GreenHawk 5 terminating a contract involving real estate in 6 Garner, North Carolina? 7 A. No, sir. I don't remember anything about 8 it. 9 Q. Okay. You're not going to know anything 10 about the acknowledgement and the allocation of the 11 \$50,000 deposit either, I guess, is that correct? 12 A. No, sir, I don't remember anything about 13 it. 14 Q. I don't know if I can do this except by 15 stopping and starting, and I apologize for that, but I 16 hope I can get the next one more quickly. 17 (DFT. EXHIBIT 64, ECP 0002941, was marked 18 for identification.) 19 BY MR. MABE: 20 Q. I'm showing you what's marked as 21 Exhibit 64, and this is an email from Jim McKinney to 22 you -- well, to Craig Briner with a copy to you. Can 23 you tell us who Jim McKinney is? 24 A. He was a division president for Eastwood in 25 Raleigh.

Page 114 1 Q. All right. Now, he refers to a meeting 2 with Rusty Ange to look at Hidden Lake opportunity. 3 Do you recall anything about Rusty Ange or Hidden 4 Lake? 5 A. Other than I think it was an opportunity up 6 in Raleigh, it doesn't -- I vaguely remember something 7 about it, but I couldn't tell you any exact details. 8 Q. Does the name Cedar Crossing strike a cord? 9 A. No, sir. 10 Q. Are you aware of whether or not GreenHawk 11 acquired property -- undeveloped property from Rusty 12 Ange to develop? 13 A. I don't remember if they did or didn't. 14 Q. So you wouldn't be able to testify 15 regarding any agreement between Eastwood and GreenHawk 16 regarding the property that Mr. Ange had available at 17 Hidden Lake; is that correct? 18 A. I don't remember anything -- 19 MR. ADAMS: Objection to form. 20 THE WITNESS: I don't remember anything 21 about Hidden Lake. I'm sorry. 22 MR. MABE: For the record, this is Bates 23 ECP 2941. Let me see what happens here if I do 24 that -- you wouldn't know I practiced at lunchtime. 25 (DFT. EXHIBIT 66, ECP 0002604, was marked	Page 116 1 for identification.) 2 BY MR. MABE: 3 Q. I'm going to show you now an email from 4 Bob -- do you know how to pronounce his name? Is it 5 Mainones? 6 A. That sounds about right. Mainones or -- 7 you had it closer, I think. 8 Q. I tend to want to say his name is "main 9 ones," but I imagine he doesn't pronounce it that way. 10 So this starts with an email from you to -- excuse 11 me. This is Exhibit No. 67, and it starts on page ECP 12 1843. So this starts with an email from you to Mr. 13 Mainones asking for an update on Brooks Creek and 14 River Falls, right? 15 A. Yes, sir. That's the way I read it. 16 Q. Let me give you a chance to review that. 17 Let us know when you're ready. 18 A. All right. 19 Q. Okay. So this is July 15, 2014. Do you 20 know whether GreenHawk through AF River Falls had 21 acquired title to the River Falls property by that 22 time? 23 A. I have no idea. 24 Q. Okay. I will tell you that they had, but 25 let me just ask you some questions about this. Do you
Page 115 1 for identification.) 2 BY MR. MABE: 3 Q. I'm showing you now what we've marked as 4 Exhibit 66. It starts on page ECP 2604, and take an 5 opportunity to read this, Mr. Dority. It appears to 6 start here with an email from you to Craig Briner and 7 Jesse Buchanan who were at GreenHawk. Do you see 8 that? 9 A. Yes, sir, I see that. 10 Q. Do you recall anything about Weddington 11 Creek? 12 A. No, sir. 13 Q. You outlined some potential deal points 14 with various lot sizes and various pricing, various 15 revenue, and I think there's even mention of a 16 deposit -- yeah, a deposit of \$1.5 million cash to be 17 used in the deal and to be returned over the final 146 18 lots. 19 Does any of that cause you to recall whether 20 GreenHawk and Eastwood did anything together on the 21 Weddington deal? 22 A. I don't remember anything about the 23 Weddington Creek deal. 24 Q. All right. 25 (DFT. EXHIBIT 67, ECP 0001843, was marked	Page 117 1 know how many lots you folks were looking at building 2 in River Falls? 3 A. The exact number, no, sir, other than 4 seeing that here it says 142. 5 Q. Right. It would be variable depending on 6 the width of the lots, wouldn't it? 7 A. Yes, sir. 8 Q. It would be variable according to other 9 factors like how the roads were put in, where the 10 creek crossings were. Any number of factors could 11 lead to a different number of lots in there, couldn't 12 it? 13 A. Yes, sir. 14 Q. I can show you -- let me see if I can show 15 you the attachment. 16 (DFT. EXHIBIT 68, ECP 0001844, was marked 17 for identification.) 18 BY MR. MABE: 19 Q. So I'm showing you what we've marked for 20 the deposition as Exhibit 68, and it's on page ECP 21 1844, the next number after Exhibit 67. I'm going to 22 zoom in on this so you can see some of the detail. 23 All roads have 50-foot frontage -- do you recall what 24 the plan was as to what lot width you ended up with on 25 the approved plat?

Page 118 1 A. I have no idea. 2 Q. Okay. Do you recognize this as the River 3 Falls property? 4 A. From seeing the title block, yeah. 5 Q. Yeah, but, I mean, if you saw this shape 6 would you be able to recognize the shape of this land 7 as the River Falls property? 8 A. I don't know. I mean, I know it is now. 9 Before, if I just saw that without anything else 10 around it, I don't think so, but I don't know. 11 Q. All right. So tell me about your relation 12 with Land Design. Did they do multiple subdivision 13 layout designs for you? 14 A. They did more than one, I guess. They're 15 just an engineer here in Charlotte. They have 16 multiple offices. They're a pretty large firm. 17 They're good on certain things. 18 Q. And did you act on behalf of the land owner 19 in dealing with them? 20 A. I don't -- I don't -- I guess I acted on 21 behalf of Eastwood, I guess. 22 Q. Okay. And what was Eastwood's interest in 23 the layout of the subdivision? 24 A. Well, Eastwood would have wanted the 25 subdivision -- I mean -- I mean, Eastwood -- the	Page 120 1 to them. How it happened I don't know. I don't 2 remember. 3 Q. Okay. You don't recall any discussions 4 with -- would it have been with Craig Briner that you 5 would have discussed the assignment? 6 A. Yeah, I mean, that stuff would have been 7 discussed with Craig. 8 Q. Do you recall any arrangement of any kind 9 as to how long you would be involved in the 10 predevelopment phases? 11 A. I don't -- I don't recall at all. 12 Q. Do you recall at all what the cost to 13 develop the subdivision into buildable lots would be? 14 A. No idea. 15 Q. Do you have any idea who you got -- or who 16 got the pricing for subdivision development? 17 A. Who obtained the -- I mean, I would have -- 18 I mean, I think I would have been the one to go get 19 the pricing, but I don't remember the who and the how 20 and the whats. I mean, I know that -- I think 21 Callahan was the one -- Callahan Grading was the one 22 that did the work on it, I think. GreenHawk was the 23 one that obviously Eastwood had assigned the contract 24 to buy the property. 25 Q. Other than that do you have any
Page 119 1 layout itself Eastwood probably could have cared less 2 about. The number of lots and things like that and 3 the lot dimensions and the grading specs, that's what 4 Eastwood would have cared about. 5 Q. Okay. Do you recall how you came to tie up 6 the River Falls property? And when I say tie up, I 7 mean get it under contract or under auction, however 8 you acquired it. 9 A. I don't know how I came about it. I think 10 a real estate agent brought it to me. I don't exactly 11 remember the details around it. 12 Q. Do you remember Debbie Weatherby? 13 A. Yeah. She was the real estate agent on it, 14 but I don't remember how we connected or got involved 15 here. 16 Q. Okay. Do you recall whether when you 17 started you intended to self-develop through 18 Eastwood Development? 19 A. I don't remember if we did or didn't. 20 Q. Do you recall anything about how you came 21 to assign -- or how Eastwood came -- excuse me. Do 22 you recall anything about how Eastwood Development 23 came to assign the contract for purchase of the land 24 to a GreenHawk entity? 25 A. Well, only -- I mean, I know we assigned it	Page 121 1 recollection of any of the details? 2 A. I remember it being a very difficult 3 project to get entitled, and there were issues with 4 the county or the town or the City of Tega Cay, 5 whatever they are. 6 Q. Right. 7 A. And then I remember there was issues with 8 DOT getting the road aligned where it needed to be or 9 something, but that's about it. 10 Q. Okay. Do you remember issues with the 11 United States Army Corps of Engineers? 12 A. I'm sorry. Yeah. I think once they 13 started work out there they cleared into some wetlands 14 or wetland buffer or creek buffer or something and 15 there was some remediation that had to be done. 16 Something like that. 17 Q. Do you recall that that created a lot of 18 uncertainty about what the ultimate cost of the 19 subdivision development would be? 20 A. I don't recall that, no. 21 Q. Do you recall the note in the Joe D's 22 transition sheet that you looked at this morning -- I 23 think it was marked as Exhibit 40. Do you recall 24 reading the phrase that GreenHawk didn't want to price 25 the lots until they knew all of their development

Page 122 1 expenses? 2 A. I remember that from this morning's 3 exhibit, yes, sir. 4 Q. Does that relate directly to the problems 5 that that subdivision underwent with the U.S. Army 6 Corps of Engineers and the town and DOT and the creek 7 crossings and so forth? 8 MR. ADAMS: Objection to form. 9 THE WITNESS: I don't know if it was 10 specific to what you -- I would imagine it's a 11 collective of all the development costs, whatever 12 those happen to be. 13 BY MR. MABE: 14 Q. Did you have any agreement that whatever 15 the cost was that Eastwood was going to pay whatever 16 it took to cover all the expenses of the subdivision 17 development? 18 MR. ADAMS: Objection to form. 19 THE WITNESS: Not -- not -- 20 BY MR. MABE: 21 Q. Did you have such an agreement? 22 A. No, sir, not that I remember. 23 Q. Okay. All right. Did you have an 24 agreement that even if Eastwood lost money on the 25 project that y'all would make them whole? Did you	Page 124 1 have remembered it before the prep here. 2 Q. Right. Right. And you don't know if that 3 continued to be the lot size through to the approval 4 of the preliminary plat, do you? 5 A. I couldn't -- I could not testify to that, 6 to use your phrase. 7 Q. You mentioned that you thought Callahan 8 Grading -- or I think you said Callahan, but you're 9 referring to Callahan Grading, aren't you? 10 A. Yes, sir. That's correct. 11 Q. And do you recall -- I think from your 12 earlier testimony we would expect there to have been 13 other contracts with Callahan before River Falls, 14 wouldn't there? 15 MR. ADAMS: Objection to form. 16 THE WITNESS: What do you mean by other 17 contracts? 18 BY MR. MABE: 19 Q. Yeah, I need to rephrase that. Before 20 River Falls you were familiar with Callahan Grading 21 because they had worked on other projects in which 22 Eastwood had an interest; isn't that correct? 23 A. That's a fair statement. 24 Q. Do you recall any of the other subdivisions 25 where Callahan was involved and Eastwood had an
Page 123 1 have such an agreement as that? 2 A. Mr. Mabe, not that I -- I don't remember 3 such agreement. 4 Q. Do you have any recollection of any 5 partnership arrangement whereby you would agree to 6 develop the property and share the profit or loss on 7 it? Do you recall any such thing as that? 8 MR. ADAMS: Objection to form. 9 THE WITNESS: Mr. Mabe, I don't recall -- 10 again, this River Falls would be very similar to 11 Brooks Springs, as far as I recall, putting the 12 property under contract, getting it entitled, getting 13 it planned or permitted, however -- you know, get it 14 to where you could start development, and then 15 Eastwood would have the opportunity to buy lots back 16 from GreenHawk or the entity they designate. 17 BY MR. MABE: 18 Q. How would they have the opportunity to buy 19 back lots? What was that arrangement? 20 A. I don't remember the specifics. 21 Q. Do you remember any price -- any lot price? 22 A. No, sir. 23 Q. Do you remember any lot size? 24 A. Well, I mean, going through the -- I've 25 seen something that said a 50-foot lot, but I wouldn't	Page 125 1 interest either as developer or as a purchaser of 2 finished lots? 3 A. I mean, not off the top of my head, but if 4 there was a list I might be able to point them out. 5 Q. I can give you some names. I can show you 6 a list, but in the interest of time let me ask you do 7 you recall Seven Oaks? 8 A. No, sir, I don't recall that. 9 Q. Do you recall anything about Sweetwater? 10 A. Yes, sir. That's a development down in 11 Rock Hill. 12 Q. Who was the developer of Sweetwater? 13 A. I believe that was EDC. 14 Q. And was -- 15 A. Eastwood Development. 16 Q. Right. And was Callahan the grader? 17 A. I can't -- I think Callahan did some work 18 out there. There were multiple grading companies out 19 there. 20 Q. I asked you earlier today whether VI meant 21 villas. Do you recall The Villas? 22 A. I don't recall The Villas. 23 Q. Do you remember a project called Savannah? 24 A. Yes, sir. I think it's a townhome project. 25 Yes, sir.

Page 126 1 Q. Where is that? 2 A. Somewhere in Charlotte off -- Steele Creek 3 area, I think. 4 Q. Do you recall a project called Rock Creek? 5 A. I do. 6 Q. Was that a project on which Callahan was 7 the grading contractor? 8 A. I think he started out there, yes. 9 Q. That implies that he must not have finished 10 out there. Do you recall having trouble on the Rock 11 Creek project with getting the work done? 12 MR. ADAMS: Objection to form. 13 THE WITNESS: That wasn't a project I -- 14 once I signed the lot purchase contract it wasn't my 15 deal. 16 BY MR. MABE: 17 Q. Okay. 18 A. It was somebody else's problem to manage. 19 Q. Just to tap the nail on this, The Villas, I 20 asked you if you remembered. You didn't remember 21 anything about that one. I think you said Savannah 22 you remembered was a townhome project somewhere in 23 Charlotte. Was Callahan involved on the Savannah 24 townhomes project? 25 A. I believe they graded that one. Yes, sir.	Page 128 1 Does that mean a phase that has 50-foot-wide lots? 2 A. I would assume, but I don't know. 3 Q. Then there's another one called Prescott 4 Glen 60s? 5 A. I would make the same assumption. 6 Q. A 60-foot-wide lot? Okay. Do you know 7 whether Callahan was involved as the grading company 8 on the Prescott Glen project? 9 A. He was. 10 Q. Do you recall when that was ongoing? 11 A. I do not. 12 Q. Are you aware that Callahan ultimately 13 filed for bankruptcy? 14 A. I am familiar with that, yes. Or I'm 15 aware, I guess. 16 Q. Did you have an interest either as an 17 employee or as a part owner or owner of a company that 18 filed a proof of claim in the bankruptcy of Callahan? 19 A. I don't think so. 20 Q. Okay. Can you tell me anything about how 21 Callahan came to be the grading contractor on River 22 Falls? 23 A. No idea how they wound up getting the -- I 24 don't remember. 25 Q. Okay. Do you have any recollection of
Page 127 1 Q. How about Carmel Townes? I think you 2 referred earlier to that being a Keith Hawthorne 3 project? 4 A. Correct. 5 Q. And Callahan was the grading contractor on 6 that, wasn't he? 7 A. There were several grading contractors, but 8 yeah. 9 Q. Callahan was one of them? 10 A. Yeah. Callahan -- yes. 11 Q. Do you remember Robinson Oaks? 12 A. Yeah, I think that's -- the answer is yes. 13 I think that's a deal out in Gastonia. 14 Q. Was Callahan involved on that? 15 A. I'm not sure. 16 Q. How about Prescott? P-R-E-S-C-O-T-T. 17 A. Yes. 18 Q. There are actually three Prescotts. 19 There's Prescott Glen Townes, which I think must mean 20 townhomes; is that correct? 21 A. I would assume. Yes, sir. 22 Q. Was Callahan involved on that one? 23 A. Yes, sir. I think Prescott is one giant 24 community, but -- 25 Q. Okay. And then there's Prescott Glen 50s.	Page 129 1 whether they entered into a contract with Eastwood? 2 A. I don't remember. I don't know. 3 Q. Did you arrange for any meeting between 4 Callahan Grading and GreenHawk? 5 MR. ADAMS: Objection to form. 6 THE WITNESS: I know that Callahan and 7 GreenHawk met. I don't remember arranging it, but I 8 know they met. 9 BY MR. MABE: 10 Q. Did you facilitate a contract between 11 GreenHawk and Callahan Grading? 12 MR. ADAMS: Objection to form. 13 THE WITNESS: I put those two together, 14 Callahan and GreenHawk. I don't remember if I 15 facilitated, but -- 16 MR. MABE: Okay. I think I've been sharing 17 that screen long enough. Sorry. I sort of forgot 18 myself there. Give me a moment. I've got another one 19 I want to show you if I can. It's not letting me 20 open -- okay. 21 (DFT. EXHIBIT 69, ECP 0007813, was marked 22 for identification.) 23 BY MR. MABE: 24 Q. I'm showing you what's being identified as 25 Exhibit No. 69, and this begins on page 7813. This is

Page 130 1 an email chain in which a man named Kent Parris has 2 written to Debbie Weatherby regarding a timber 3 appraisal. Debbie, as I understand it, was the 4 realtor for the project? 5 A. Yes, sir. 6 Q. For the River Falls and Brooks Creek 7 property, or was it just for the River Falls? Let me 8 ask you a question. Was Debbie Weatherby the realtor 9 for the River Falls project -- or excuse me -- 10 property? 11 A. Yes, sir. 12 Q. All right. And she copied you with a reply 13 in January of 2014 to set up a cruise for timber. Do 14 you see that? 15 A. Yes, sir. 16 Q. And it appears from this that you folks 17 arranged to meet out there, and this refers to 18 Eastwood Mosier 53.88 acres. That would be the River 19 Falls property, wouldn't it? 20 A. I guess. I don't know. I would assume. 21 Q. It says AF Brooks site. That would be the 22 Brooks Creek or Brooks Springs property, wouldn't it? 23 A. I would assume. Yes, sir. 24 Q. Do you have any recollection of when or 25 whether the property was cruised for timber before	Page 132 1 responsible, and then under No. 5 it shows your name 2 and your address. That Westport Road address is 3 Eastwood in Charlotte, isn't it? 4 A. Correct. 5 Q. And Land Design is listed as the 6 engineering firm. Is it typical for the engineering 7 firm to prepare these documents and set them up with 8 the regulatory agency that's involved, in this case 9 York County -- or sorry -- City of Tega Cay? Is it 10 typical for the engineering firm to set these up? 11 A. The engineer or the owner. Yeah. 12 Q. So when it designates you as being the 13 agent or day-to-day contact, what does that mean to 14 you? 15 A. That I would be the agent or the day-to-day 16 contact. 17 Q. But with what responsibilities, Mr. Dority? 18 A. I would assume if anything went wrong I 19 would be the one they called. 20 Q. Not for financial responsibility but just 21 you're the contact person? 22 A. Well, in the context of this document 23 that's the way I read it because above that it says 24 the financially responsible. So, yes. 25 Q. So your company, as you read this, wasn't
Page 131 1 Callahan came and started development? 2 A. I have no idea. 3 Q. Okay. 4 (DFT. EXHIBIT 70, ECP 0001747, was marked 5 for identification.) 6 BY MR. MABE: 7 Q. I'm showing you a document that we've 8 marked Exhibit 70, and this begins on page ECP 1747. 9 Do you know what this is? 10 A. No. I mean, I'd have to look at it. 11 Q. Let me give you a chance to look at the 12 front of this document, and let me know when you're 13 ready. 14 A. It looks like a land survey permit 15 application. 16 Q. That's right, and it's for property that is 17 on -- it's owned by AF River Falls according to the 18 application here. Do you recall whether you made an 19 application or prepared an application for a land 20 disturbance permit for the River Falls property? 21 A. I don't remember doing it, no. 22 Q. Okay. You see in No. 3 it's listed as 23 being owned by AF River Falls LLC? Do you see that? 24 A. Correct. 25 Q. Do you see that they would be financially	Page 133 1 putting itself out there as being financially 2 responsible for River Falls storm water management and 3 sediment control plan and the land disturbance permit, 4 was it? 5 A. I mean, I didn't fill this out, so I don't 6 know. I don't remember filling it out if I did. 7 Q. Do you remember a guy named Theron Pickens? 8 A. I believe he was an engineer, yes. 9 Q. Do you recall him being at -- working at 10 Land Design? 11 A. Yes, sir. 12 (DFT. EXHIBIT 71, ECP 0001558, was marked 13 for identification.) 14 BY MR. MABE: 15 Q. All right. Now I'm referring you to a 16 pretty short message here. This is from Craig Briner 17 to you on January 21st, 2016, which consists only of a 18 subject line reading rough schedule of cash flow slash 19 construction at Brooks Creek and River Falls question 20 mark. 21 Do you recall getting an email such as this from 22 time to time from Craig Briner? 23 A. I don't recall, no, sir. 24 Q. Can you tell me what you think Craig 25 Briner -- what his question was?

Page 134 1 A. I couldn't begin to try to guess that, sir. 2 Q. You have no recollection, I take it, of 3 having any discussion with Craig Briner related to the 4 cash flow and construction at Brooks Creek and -- 5 sorry -- the schedule for cash flow and construction 6 at Brooks Creek and River Falls in January 2016? 7 A. I'm sure I've had conversations with him, 8 but I couldn't tell you anything -- 9 Q. And that's not my question. My purpose -- 10 I'm sorry. I'm talking over you. Are you finished? 11 A. Yeah. I don't have any memory of it. I'm 12 sorry. 13 Q. My purpose is to determine whether you 14 have -- you know, such a thing as this would spur any 15 recollection. So, if it does, you need to tell us, 16 and I understand if it doesn't. 17 A. Gotcha. 18 Q. Do you -- I know the answer to the 19 question, but let me ask it anyway. Do you have any 20 recollection of when the River Falls plat was 21 approved? 22 A. No, sir. I don't know when it was 23 approved. 24 Q. Well, for some reason it is not -- I'm 25 sorry. Let me -- I'm trying to get this exhibit	Page 136 1 A. She was the planning and development 2 manager for the City of Tega Cay. 3 Q. Do you recall her? 4 A. I recall her, but not in any capacity, not 5 really. 6 Q. Okay. So what is the -- let me give you a 7 chance to read that, and tell me what's the 8 significance of the approval of the preliminary plat? 9 A. The way I read whatever is in the email it 10 says everything is good to go, you just have to 11 contact this Tom Goebel person to set up the pre-con 12 and permits will be issued. 13 Q. What work could be done before the 14 preliminary plat approval? 15 A. I don't know. Every municipality is 16 different. I don't know. 17 Q. Okay. You testified this morning that you 18 had done a fair amount of work as a project manager 19 for -- I think you were talking about for Keith 20 Hawthorne and maybe for some others. In your role as 21 a project manager for real estate development does 22 that involve interacting with the planning department 23 for the people who issue the permits entitling you to 24 develop the land? 25 A. Mr. Mabe, I may have misspoke earlier.
Page 135 1 called up for you. 2 (DFT. EXHIBIT 72, GHD 0000614, was marked 3 for identification.) 4 BY MR. MABE: 5 Q. Okay. What's on the screen now is 6 Exhibit 72, and it starts on page ECP -- GHD. That's 7 a GreenHawk development document 614, and it appears 8 to be a message from you, Mr. Dority, in October of 9 2016, to Craig Briner regarding preliminary plat 10 approval for River Falls. Do you see that? 11 A. Yes, sir. 12 Q. Below that is a message to Brooks Capital 13 at Outlook.com. Is that your company? 14 A. That's an email for that company. Yes, 15 sir. 16 Q. So this October 7, 2016, would have been 17 very shortly after you left Eastwood, wouldn't it? 18 A. Yes, sir. 19 Q. Okay. And then below that, I guess maybe a 20 day earlier, there's a message from Susan Britt to a 21 number of people, including folks at Land Design and 22 at Eastwood, one of whom is your old address at 23 Eastwood Homes, right? 24 A. I see that. Yes, sir. 25 Q. Okay. So do you know who Susan Britt is?	Page 137 1 Again, while I may do project management, I don't want 2 to -- again, a project manager is somebody who 3 anticipates, gets out in front of potential problems. 4 Again, it's more than just putting out fires. So when 5 I say I'm -- what I'm currently doing for 6 Mr. Hawthorne would be -- and I'm paraphrasing. It's 7 slightly better than this. I'm bumbling my way 8 through to get this problem off his plate and 9 fulfilling an obligation. 10 So, I mean, yes -- again, in this regard I think I 11 know where you're going. I would have gotten this 12 information and forwarded it on to -- I guess I did 13 forward it on to Craig and -- yeah, I mean, I would 14 have facilitated in putting the people in place 15 facilitating the meeting. Does that help? 16 Q. Facilitated the meeting. What meeting do 17 you refer to? 18 A. I would have gotten people -- the people 19 that needed to be there to get this information to go 20 to the next step. I would have done that. 21 Q. Were you acting as the project manager for 22 the development of River Falls up to the time when you 23 left Eastwood? 24 A. I don't -- again, I don't know if I was 25 acting as a project manager as more as I was acting

Page 138 1 as -- you know, I lived down here. They lived up in 2 Raleigh or wherever they lived. I'd go by and -- you 3 know. I'll be their -- you know, I'll look at the 4 site, I'll do this -- you know. But, I don't know, 5 probably project management is too detailed and too 6 specific. I wasn't doing that much work. I had a lot 7 of other things going on that required my time. Does 8 that make sense? 9 Q. Well, it sounds like you are telling us 10 that you were doing some things that were project 11 management but that somehow it was a more limited role 12 than being a full on project manager. That's how I 13 interpret what you're saying. Is that correct? 14 A. That's a fair way to put it. 15 Q. And to the extent that you were providing 16 project management services even on a limited basis, 17 you were doing that as well as you could, weren't you? 18 A. I mean, as much as the time allowed for me 19 to do what I needed to do as far as -- and handle 20 everything else. I mean, I guess. 21 Q. Can you recall now what you did in your 22 role as a semi-project management on the River Falls 23 project? 24 A. Outside of -- not specifically, no. I 25 remember -- I remember whenever -- going through and	Page 140 1 A. That's in Rock Hill. 2 Q. How about -- do you recall anything now 3 about Seven Oaks? 4 A. No, I don't. 5 Q. All right. There are at least a couple of 6 other projects in the neighborhood in which you folks 7 were interested that were going on at this time. I 8 was just wondering how much you got to the Tega Cay 9 sites for River Falls and Brooks Springs or Brooks 10 Creek? 11 A. I don't remember. 12 Q. Okay. I'm going to try to open more than 13 one here at a time. I had several open, but it was as 14 many as my computer could hold. 15 All right. Let me see if that will go any faster. 16 (DFT. EXHIBIT 73, ECP 0010823, was marked 17 for identification.) 18 BY MR. MABE: 19 Q. I'm trying to show you what's -- that's not 20 the one. Well, maybe this is. I think this is 21 identified as Exhibit 73, and it starts on page ECP 22 10823, and behind it, which is an attachment, is 23 10824. We're going to treat that all as one Exhibit, 24 Exhibit 73. 25 MR. ADAMS: What was the number again? It
Page 139 1 getting it entitled. I remember the clearing 2 contractor clearing in the wetlands. I remember 3 dealing with the -- I don't know if it was the Army 4 Corp -- a wetlands consultant to solve that problem. 5 I remember having dialogues with Craig about that. I 6 remember -- let me see. I remember our discussions 7 about a light, that there had to be a signal out there 8 with the DOT roads. So I remember snippets but not 9 like day-to-day activities, if that makes sense. 10 Q. Did you -- how often did you go to the 11 project site? 12 A. I don't know. I don't remember. 13 Q. You had other projects. You had a project 14 going on in Fort Mill, didn't you? 15 A. I don't -- I don't know. I don't remember. 16 Q. And I think you told us that Sweetwater was 17 in Rock Hill? 18 A. Oh, Yes, sir. 19 Q. Did you do any monitoring of the progress 20 of that work? 21 A. I may have, but I may have also given it to 22 one of the people that work for me. I don't remember 23 who did what. 24 Q. And can you remind me where you said 25 Prescott Glen was?	Page 141 1 left the screen. 2 MR. MABE: Page No. 10823. 3 MR. ADAMS: And it's how many pages? Six 4 pages total? 5 MR. MABE: It is six pages, but the sixth 6 page on these is blank. I think that's because of the 7 logo or something, so sometimes it might show up as a 8 five-page exhibit -- or document. 9 MR. ADAMS: Okay. Thank you. 10 BY MR. MABE: 11 Q. So I've got on the cover of this exhibit, 12 Mr. Dority, a message from Steve Scism to Jarrett 13 Callahan and then from Jarrett Callahan to you on 14 January 29th, 2016. Do you see that? 15 A. I see that. 16 Q. References to River Falls contract. And, 17 so, do you recall a little while ago I showed you an 18 email from Craig Briner from the end of January 2016 19 asking a question in the subject line where he said 20 rough schedule of cash flow slash construction for 21 Brooks Creek at River Falls? Do you remember that 22 email? 23 A. I remember you saying something, yes, sir. 24 Q. Well, I showed it to you and asked you 25 about it, and you couldn't recall anything about it,

Page 142 1 but my assumption from looking at the timing on this 2 is that somebody has gotten a contract from Callahan 3 Grading whether it was you or not. Do you recall 4 whether it was you or not? 5 A. I don't recall, but, I mean, based on the 6 exhibit, it was emailed to me and I forwarded it to 7 Craig or whoever. 8 Q. Right. 9 A. GreenHawk. Yeah. 10 Q. So you were sort of at least acting as an 11 intermediary in arranging this contract between 12 Callahan Grading and River Falls' owner GreenHawk; is 13 that correct? 14 MR. ADAMS: Objection to form. 15 THE WITNESS: I mean, I don't -- I don't 16 know how to -- I don't know the definition of 17 intermediary. I was the one that -- 18 BY MR. MABE: 19 Q. Well, it was sent to you by the contractor, 20 and you sent it on to the owner, right? 21 A. Correct. That's correct. 22 Q. And if I'm understanding your testimony 23 correctly, you can't remember anything else about it; 24 is that correct? 25 MR. ADAMS: Objection to form.	Page 144 1 River Falls schedule to start is immediately? 2 A. No, sir, not that I recall. 3 Q. All right. 4 (DFT. EXHIBIT 74, ECP 0002809, was marked 5 for identification.) 6 BY MR. MABE: 7 Q. Now I'm trying to share a screen that shows 8 a document identified as Exhibit 74, and it starts on 9 page 2809, and behind it is page 2810, and that also 10 is a six-page exhibit. 11 So I think this starts with the same email from 12 Steve Scimm. Do you know Steve Scimm by the way? 13 A. I know he worked for Callahan Grading. 14 Q. At this time, you had forwarded this on 15 February the 1st to Jesse Buchanan and Craig Briner 16 with no message except Eastwood River Falls contractor 17 Callahan. Do you see that? 18 A. I see that. 19 Q. All right. Now, I bet you've looked at 20 this some time since you left Eastwood. Have you 21 looked at this recently? 22 A. No, sir. 23 Q. You haven't seen this recently? 24 A. No, sir. 25 Q. Have you seen it since you left Eastwood?
Page 143 1 THE WITNESS: I don't remember negotiating 2 the contract. I don't remember the details of the 3 contract. So -- 4 BY MR. MABE: 5 Q. Okay. So I'm going to ask you about this 6 figure here \$5,975,000. Does that strike a cord? 7 Does that spur any recollection about this contract? 8 A. No, sir. 9 Q. All right. It refers to performing work 10 per a civil engineering plan dated 7/20 of 2014. Does 11 that strike a cord at all? This would be the work for 12 the grading for River Falls, wouldn't it? 13 A. That's the way I read it, yes, sir. 14 Q. Okay. And you didn't have any 15 communications that you can recall with Callahan 16 Grading about this? 17 A. Not that I remember. I mean, I'm sure I 18 did, but I don't remember them. 19 Q. Okay. All right. All right. Thank you. 20 There are three additional terms down here at the end 21 of the contract. We'll come back and visit that 22 later, but I wanted to point those out to you. 23 Do you have any recollection whatsoever about the 24 response you got from Jesse Buchanan regarding your 25 message that says this is the development contract for	Page 145 1 A. Not that I remember. No, sir. 2 Q. Okay. So this appears to be, if not the 3 same, very close to the same. It's got a \$5,975,000 4 price tag on it, and it's got three items at the end. 5 Can you recall anything at all about the contract now? 6 A. No, sir. 7 Q. All right. 8 (DFT. EXHIBIT 75, ECP 0010595, was marked 9 for identification.) 10 BY MR. MABE: 11 Q. I'm going to show you a document now we've 12 identified as Exhibit 75. Can you tell me about the 13 attachment line here -- let's finish identifying this. 14 This is Exhibit 75, and it starts on page 10595. This 15 is a five-page document, and the last page is the 16 exhibit sheet, and there's not a blank sheet at the 17 end of it. 18 Tell me about this attachment line that says 19 support at Eastwood Homes. Is that your fax machine? 20 A. I would imagine. I don't know. 21 Q. Okay. All right. So this is an email that 22 you sent to Jesse Buchanan on February 4th. Do you 23 recall the earlier was February the 1st? Do you 24 remember that? 25 A. Yes, sir.

Page 146 1 MR. ADAMS: John, from my experience with 2 Eastwood, I think that is a scan. It's like you've 3 scanned something in and had it sent to a computer. 4 MR. MABE: Okay. Thanks. Right. I said 5 fax, didn't I? 6 MR. ADAMS: You did. 7 MR. MABE: Yeah. It would be a scan. 8 Thank you. 9 BY MR. MABE: 10 Q. So, attached to this is something that 11 looks very similar to the document we saw attached to 12 those earlier emails. The price tag has gone up to 13 \$6 million. Do you recall anything at all about why 14 the cost of the project would have gone up by \$25,000 15 to six million? 16 A. No, sir. 17 Q. At this point this appears to have been 18 signed by somebody on behalf of Callahan Grading. Do 19 you see that? 20 A. Yes, sir, I see that. 21 Q. Do you happen to recognize the signature of 22 Jarrett Callahan? 23 A. I don't recognize it, no, sir. 24 Q. How about this signature? Do you recognize 25 that signature?	Page 148 1 MR. ADAMS: Objection to form. 2 THE WITNESS: Mr. Mabe, I don't remember 3 the negotiations of this contract. I don't -- 4 that's -- I would say I'm -- that's new news to me 5 based on that section down there. 6 BY MR. MABE: 7 Q. New news to you. In other words, you're 8 saying you didn't ever know that they asked for a 9 million dollars on the downstroke? 10 A. I'm saying I didn't remember. I don't 11 remember. I don't recall. If you showed that to me 12 today, which you just have, based on the other two you 13 showed to me, if we were placing bets, I would have 14 lost that that would have showed up in the -- I didn't 15 remember. I don't recall. 16 Q. Okay. All right. 17 MR. MABE: I'll get the next one ready as 18 quickly as I can, guys. 19 (DFT. EXHIBIT 76, ECP 0008627, was marked 20 for identification.) 21 BY MR. MABE: 22 Q. Okay. Do you see on your screen an email 23 from Jesse Buchanan to you beginning on page ECP 8627? 24 A. Yes, sir. 25 Q. This is what we're marking as Exhibit 76.
Page 147 1 A. I have no idea. No, sir. 2 Q. Okay. I do, but we won't talk about that. 3 And attached to that are now five conditions, or 4 five terms -- I'm sorry -- six. I don't count very 5 well. Six. The fourth term, the first additional 6 term says \$1 million to be paid to Callahan Grading 7 LLC upon signing off contract. 8 Now, that certainly couldn't be the reason for 9 raising the price by \$25,000. Do you have any idea 10 what that increase of a million dollars is about? 11 MR. ADAMS: Objection to form. 12 THE WITNESS: I don't know if it's an 13 increase in a million dollars. I don't know why it's 14 there is the answer. 15 BY MR. MABE: 16 Q. Okay. Well, there's an increase of 17 \$25,000, but there's what looks like a down payment of 18 a million dollars, isn't there? 19 A. I mean -- I don't know is the answer. 20 Q. I tell you, this is so extraordinary I 21 would think that it might be something you would 22 recall. Are you sure you have no recollection of 23 Callahan Grading saying that they had to have a 24 million dollars on the downstroke to undertake to do 25 the grading on River Falls?	Page 149 1 This first email would appear to be another iteration 2 of the one we just looked at from you to Jesse, 3 although it doesn't mention the attachment on it, but 4 then coming back to you it does have attachment, and 5 that does appear to be a scan, and it says can I call 6 you tomorrow around ten o'clock. Do you recall what 7 Jesse Buchanan's role was in connection with this 8 Callahan contract? And I'll show you that it's 9 attached. 10 A. I don't know what his role was within the 11 contract. I know he worked with Craig. I don't know 12 the -- I would imagine -- I think it was something to 13 do on the accounting side, but that's it. 14 Q. Okay. And, so, it's been countersigned by 15 Craig Briner on behalf of the owner, and it's got 16 those six additional terms, including that million 17 dollar term, and does this help you recall anything at 18 all about arranging, or if you did arrange -- sorry. 19 I'm going to start over again. Do you recall having 20 any role in arranging a contract between Callahan 21 Grading and GreenHawk? 22 MR. ADAMS: Objection to form. 23 THE WITNESS: No, sir. 24 BY MR. MABE: 25 Q. Do you have any recollection whatsoever

Page 150 1 about arranging a contract between Callahan Grading 2 and GHB River Falls? 3 A. No, sir, I don't remember. 4 Q. All right. 5 MR. ADAMS: John, are you going to tell us 6 who that other signature is or are you going to just 7 keep us guessing? 8 MR. MABE: I think I'll keep you guessing. 9 I'm not sure who it is, but I think it's an attorney. 10 BY MR. MABE: 11 Q. So, if you don't recall this email, I guess 12 you don't recall what you would have talked to Jesse 13 Buchanan about the next morning; is that correct? 14 A. I don't recall what I would have spoken 15 about, no, sir. 16 Q. Right. Did you have any role in 17 negotiating any part of this contract that you can 18 remember? I think you've already told me the answer, 19 that you don't. 20 A. I don't remember. 21 Q. All right. Sorry. I'm going to try to get 22 you another thing to look at here as quick as I can. 23 I'll take things out of order here. 24 (DFT. EXHIBIT 87, ECP 0011775, was marked 25 for identification.)	Page 152 1 second. 2 (DFT. EXHIBIT 88, ECP 0011776, was marked 3 for identification.) 4 BY MR. MABE: 5 Q. I'm showing you what I've marked as 6 Exhibit 88, and this begins on page 11776. You can 7 recall the other one was 11775, and this is the 8 attachment to that email. It's dated earlier. It's 9 dated July 2014. 10 I imagine even though you have a limited role in 11 construction management you're familiar with a takeoff 12 sheet like this, aren't you? 13 A. Yes, sir. 14 Q. All right. I want to ask you to take 15 particular note of the erosion control figure here. 16 See that \$475,850? And I also want to get you to take 17 note of the bottom line grand total \$4,598,827.74. 18 Now, were you asking Callahan Grading to give you 19 a price to perform the grading work on the River Falls 20 project? 21 A. I would imagine I asked them to bid it, 22 but -- 23 Q. You see here it refers to the job as The 24 Falls. So would you have gotten more than one bid? 25 A. I would -- I don't remember, but I would
Page 151 1 BY MR. MABE: 2 Q. So I'm trying to show you a document that 3 came to you from Keith Rains in November 2014. Are 4 you seeing that? 5 A. I see it. 6 Q. All right. I've got that marked as 7 Exhibit 87, and that's page ECP 11775. He's 8 forwarding you a message from, gosh, Steve Sciam to 9 Keith Rains, subject River Falls, and it has an 10 attachment Callahan River Falls takeoff sheet. What 11 is a takeoff sheet, please, sir? 12 A. I would imagine their bid sheet. 13 Q. So would that be the way of establishing a 14 price for a contract? 15 A. Yes, sir. 16 Q. So a bid sheet would be -- it typically 17 would be -- that would become the basis for a 18 contract. The bid would be the price at which 19 somebody was willing to do a scope of work in a 20 contract; is that correct? 21 MR. ADAMS: Objection to form. 22 THE WITNESS: I mean, it could be. I don't 23 know. Is there an attachment? 24 BY MR. MABE: 25 Q. Yeah, I think I can find it. Give me a	Page 153 1 imagine, yeah. 2 Q. Okay. And another part of your limited 3 role as a construction manager on this project was 4 just in getting somebody lined up to do the grading 5 work for the subdivision; is that correct? 6 MR. ADAMS: Objection to form. 7 THE WITNESS: I mean, I don't -- I was -- 8 again, I don't know the purpose of why I would have 9 done this. I mean, obviously to get numbers to try 10 to -- I guess to work on obtaining costs for the 11 project -- obtaining a budget. I don't know any 12 other -- I don't know why -- I mean, I asked them to 13 do the project, I guess. 14 BY MR. MABE: 15 Q. Yeah. Okay. And there are other records 16 we could go through that shows that Keith Rains got 17 the plans from Land Design and that stuff, but I just 18 wanted to see if you could recall any of that. 19 I'm going to ask you to look at an Exhibit No. 77. 20 (DFT. EXHIBIT 77, ECP 0002722, was marked 21 for identification.) 22 BY MR. MABE: 23 Q. I've marked this Exhibit 77. It's three 24 pages that begin on page 2722. ECP's production. 25 See the attachment references to River Falls

Page 154 1 application 1 PDF? 2 MR. ADAMS: We can't see anything, John. 3 MR. MABE: Well, let me get you where you 4 can. Thanks. 5 BY MR. MABE: 6 Q. Okay. We're looking at a three-page 7 exhibit. I've marked it as 77, and it starts on page 8 2722 of ECP's production. 9 So the message from Steve Scimm on February 11th 10 of '16, which is pretty -- you know, one week after 11 that February 4th contract that we looked at a moment 12 ago, right? I mean -- sorry. The February 4th email 13 from Jesse Buchanan sending the contract was one week 14 before this, right? 15 A. Right. 16 Q. It says this is an invoice for River Falls 17 that will be complete with 90 percent of it by Sunday. 18 I will take you a -- I guess that means picture -- and 19 send it this afternoon. They still want the \$1 20 million check next week. This contractor is bonded if 21 that makes you feel better. 22 Does that help you recall the \$1 million down 23 payment for Callahan to do the work? 24 A. No, sir. 25 Q. Okay. Is it true that you recommended to	Page 156 1 A. I don't know where he worked at the time, 2 but, yeah, I know he did some work for Callahan, yes. 3 Q. You knew he worked in Callahan's office, 4 didn't you? 5 A. I don't -- I don't know what -- I don't 6 know -- I don't remember where he worked at the time. 7 I mean, I don't know. 8 Q. All right. I'm going to draw your 9 attention to the figure for erosion control 10 \$1,497,856. Your email to them said that they should 11 pay this -- all right. I guess in fairness it doesn't 12 actually say that they should pay it. Did you expect 13 them to pay it when you sent this to them? 14 MR. ADAMS: Objection to form. 15 THE WITNESS: I don't remember what I 16 expected. 17 BY MR. MABE: 18 Q. All right. And they're showing an amount 19 completed one week after they started that's greater 20 than the roughly \$475,000 figure that they showed as 21 the cost of erosion control. Did that raise any 22 question in your mind about the propriety of this pay 23 application? 24 MR. ADAMS: Objection to form. 25 THE WITNESS: Mr. Mabe, I don't -- (A) I
Page 155 1 my client that they engage Callahan Grading to perform 2 the grading on this project? 3 A. I don't know if I did or didn't. 4 Q. Is it a fair inference, do you think, for 5 me to draw from your email sending him -- sending 6 Buchanan a contract attached to an email saying this 7 is the contract for River Falls, is it a fair 8 inference from that that you were recommending that 9 they sign the contract with Callahan Grading? 10 MR. ADAMS: Objection to form. 11 THE WITNESS: I don't -- I can't -- I can't 12 testify or -- I don't know if there was a phone call. 13 There were a lot of other -- I don't remember it. So 14 I don't -- I'm sure there was conversations. Beyond 15 what we have, I don't remember. 16 BY MR. MABE: 17 Q. And you see here it says application No. 2. 18 You're familiar with a form of an application for 19 payment, right? 20 A. Yes, sir. 21 Q. And this has, interestingly, a certificate 22 here, and the certificate shows the name of Keith 23 Rains. Do you know who Keith Rains is? 24 A. He was an engineer. Yes, sir. 25 Q. Yeah. He worked for Callahan, didn't he?	Page 157 1 don't remember it, and if I did, I don't know if I 2 would have looked and crosschecked the documents 3 you've shown me. I don't remember a whole lot about 4 it. 5 BY MR. MABE: 6 Q. You wouldn't have gone back and looked to 7 see what the bid was when you sent a contract to the 8 owner for them to sign -- 9 MR. ADAMS: Objection to form. 10 BY MR. MABE: 11 Q. -- in your sometimes role as project 12 manager? I mean -- 13 MR. ADAMS: Objection to form. 14 BY MR. MABE: 15 Q. -- you've got to agree with me, haven't 16 you, that you were assisting them in setting this 17 contract up, weren't you? 18 MR. ADAMS: Objection to form. 19 THE WITNESS: Mr. Mabe, I don't remember a 20 whole lot about the ins and cuts and the details. I 21 don't remember if I negotiated the contract. I don't 22 remember if I set up the contract, to use your phrase. 23 I don't remember a whole lot about it, so I don't -- 24 I'm sorry. 25 MR. MABE: Let me get a few more exhibits

Page 158 1 ready here. 2 THE WITNESS: I need to use the restroom. 3 MR. MABE: Sure. 4 (A short recess was taken.) 5 (DFT. EXHIBIT 78, ECP 0011269, was marked 6 for identification.) 7 BY MR. MABE: 8 Q. Mr. Dority, did you visit the site -- 9 MR. ADAMS: John, are you going to go ahead 10 and ask questions before Stephen gets back? 11 MR. MABE: Yeah, we'll wait up. 12 MR. ADAMS: I mean, I don't care. 13 MR. MABE: It's up to Tim. 14 MR. MISNER: He said he wanted to take the 15 lead and make sure he's listening in on everything. 16 So if we can give another minute or two, and if he's 17 not back by then you can go ahead and get started. 18 MR. MABE: No problem. 19 (A short recess was then taken.) 20 BY MR. MABE: 21 Q. Mr. Dority, I'm showing you what we've 22 marked as Exhibit No. 78. As I said, it begins on 23 page ECP 11269. Do you recognize this as an email 24 from you to Jesse Buchanan and Craig Briner? 25 A. Yes, sir.	Page 160 1 A. That's the way I read it, yes, sir. 2 Q. And the certificate itself indicates a 3 payment of \$293,067 should be made; is that correct? 4 MR. ADAMS: Objection to form. 5 BY MR. MABE: 6 Q. Is that what the form indicates? 7 A. That's the way I read it. 8 Q. And looking at the schedule of values it 9 shows that erosion control is now 89 percent complete, 10 storm drainage and erosion control and earth work 11 started. So, earth work. I guess that means exactly 12 what it says, doesn't it, clearing and grubbing? So 13 you would have been out there and you would have seen 14 that somewhere in the neighborhood of 20 percent of 15 that work was in place or had been performed -- or I'm 16 sorry. Forty-two percent of it. Forty-two percent of 17 the earth work had been done? Is that how that reads? 18 Can you see it okay? 19 A. Yeah. I just don't know -- I'm assuming 20 that this -- yeah, I read what you're saying, yes. 21 Q. All right. Let's move on. 22 (DFT. EXHIBIT 79, ECP 0008349, was marked 23 for identification.) 24 BY MR. MABE: 25 Q. All right. Now I'm trying to show you what
Page 159 1 Q. And what do you mean by the phrase this one 2 is good to go as well? 3 A. I don't know what I meant. I mean, I can 4 guess, but I don't remember what I meant. 5 Q. It's your words, isn't it? So I think it's 6 fair for you to guess what you meant when you said 7 that. 8 MR. ADAMS: Well, objection. 9 BY MR. MABE: 10 Q. Well, I'd like to have what you think it 11 means. 12 A. Again, I don't know what it meant back in 13 2016 when I said it, but I read it as today saying, 14 hey, this one's good, pay it. That's what I read, but 15 I don't know. 16 Q. This one's good to pay? 17 A. Well, see, I don't know. I mean, if I 18 would have said this was good to pay, I probably would 19 have said, you know, this one's good to pay as well, 20 but I don't know. 21 Q. The next sentence says I will send videos 22 of the site I took yesterday as soon as I can figure 23 out how to send them efficiently. 24 So you had been out to the site on March 22nd -- 25 it would appear -- 2016. Is that a fair reading?	Page 161 1 I've marked for identification as Exhibit 79 which 2 starts on page ECP 8349. I think you've already 3 identified this previously, haven't you, the email 4 from Mr. Buchanan on April 27, 2016? Remember that? 5 A. Yes, sir. 6 Q. I'm going to show you the upper part of 7 this. It would appear to be a message from you to 8 Allen Nason replying to a message from Allen Nason to 9 you. So as I look at this chain of emails it appears 10 that you forwarded to Mr. Nason the Jesse Buchanan 11 message about starting a contract. Is that what it 12 looks like to you? 13 A. Yes, sir. That's what I see. 14 Q. And then he came back and asked the 15 question, "Any amenities, budget? Monumentation 16 budget? Size lots? I assume the as-developed 17 contract?" 18 So, in essence, what is he asking you about, 19 Mr. Dority? 20 A. It sounds like he's wanting to get the 21 terms of the contract so he could prepare the contract 22 asking what the -- I mean, based on the email it looks 23 like what's the amenity budget, what's the monument 24 budget, what's the size of the lots. 25 Q. Right. Okay. So all that is -- I mean, I

Page 162 1 think it's pretty well-established there's not a 2 written agreement yet, but tell me, do you know 3 whether this is a note from you to him or from 4 Mr. Nason to you, this language under the deposit 5 language where it says space this out one hundred 6 thousand at contract, one hundred thousand 45 days 7 later and three hundred thousand 60 days after the 8 contract? 9 A. I have no idea. 10 Q. Okay. It would be either you or Mr. Nason 11 talking about splitting up the \$600,000 deposit -- or 12 the five hundred additional for the deposit? 13 A. I don't know where it came from. 14 Q. Okay. 15 (DFT. EXHIBIT 80, ECP 0010966, was marked 16 for identification.) 17 BY MR. MABE: 18 Q. Now I'm going to ask you about this No. 80, 19 and this is kind of more of the same on those pay 20 applications. This we've marked as Exhibit 80, and it 21 starts on page 10966 of the ECP production. 22 This one is unambiguous, isn't it, Mr. Dority? 23 You sent it to Jesse and Craig, and you say good to 24 pay. 25 MR. ADAMS: Objection to form.	Page 164 1 A. I don't -- I agree that's what they're 2 charging -- that's what they're saying, they did the 3 work, yes. 4 Q. Yeah. Okay. So the next one's going to be 5 No. 81. 6 (DFT. EXHIBIT 81, ECP 0010017, was marked 7 for identification.) 8 BY MR. MABE: 9 Q. This is Exhibit 81 beginning on page ECP 10 10017, and on this one I didn't detect any message at 11 all from you to them, you just sent them the pay 12 application. Do you remember anything whatsoever 13 about this pay application? 14 A. No, sir. 15 Q. I'm going to show it to you anyway. 16 They're applying for another payment of \$311,038, pay 17 application No. 7 in June of 2016. Do you recall when 18 it was that the preliminary plat was approved? 19 A. I don't recall. No, sir. Do you know? 20 Q. Well, we looked at it, didn't we? It's 21 July, I think. No. It's not. It's October 2016. 22 All right. Let me see if I can -- 23 (DFT. EXHIBIT 82, ECP 0011277, was marked 24 for identification.) 25 BY MR. MABE:
Page 163 1 BY MR. MABE: 2 Q. Pay application 6. Do you see that? 3 A. Yes, sir, I see that. 4 Q. That's not open to any other 5 interpretation, is it? 6 MR. ADAMS: Objection to form. 7 THE WITNESS: Not that I see. 8 BY MR. MABE: 9 Q. All right. So am I right in figuring that 10 you'd been out to the site to see if there's more work 11 than there was the last time you were there? 12 A. I would assume. 13 Q. Okay. 14 A. But I don't remember going to the site, I 15 mean, to verify this payout. 16 Q. All right. So now they're showing 17 98 percent of the erosion control and 86 percent of 18 the earth work clearing and grubbing and 77 percent of 19 the storm drainage. So it would certainly appear what 20 they're saying that they're making progress on the 21 work, doesn't it? 22 MR. ADAMS: Objection to form. 23 BY MR. MABE: 24 Q. Do you agree that it appears from this that 25 they say they are making progress on the work?	Page 165 1 Q. I'm showing you -- or trying to -- what 2 I've marked as Exhibit 82 which begins on page ECP 3 11277, and your message to Jesse Buchanan is this is 4 for River Falls, the entire pay app is for materials 5 purchased for the project. 6 Do you want to -- I'm going to make you look at it 7 anyway. Do you recall anything whatsoever about the 8 pump station and the delivery -- the claim that they 9 were holding \$85,978 worth of pump station materials? 10 A. No, sir. 11 Q. Do you recall there being an issue about 12 getting clearance to install the pump station? 13 A. No, sir. 14 Q. Okay. 15 (DFT. EXHIBIT 83, ECP 0010078, was marked 16 for identification.) 17 BY MR. MABE: 18 Q. Now I'm focusing on application No. 9, and, 19 again, it appears that you forwarded this with no 20 message, forwarded it to Jesse Buchanan, and on this 21 application it appears that they're saying that 22 they've got now \$200,000 worth of the pump station 23 stored or completed as of August 2016. Do you agree 24 with that? Do you agree that's what it says? 25 A. Yes, sir. I see what that says.

Page 166 1 MR. MABE: That was 83. 10078. This now 2 on the screen is Exhibit 84 beginning on page 11448. 3 (DFT. EXHIBIT 84, ECP 0011448, was marked 4 for identification.) 5 BY MR. MABE: 6 Q. So the message to Jesse Buchanan on this 7 one, Mr. Dority, in September 2016 is, "Here is the 8 pay app for River Falls. Please process and sit tight 9 on the check. I haven't made it out to confirm yet." 10 Tell me what you mean by saying that to Mr. Buchanan. 11 A. I don't remember, but I guess the way I 12 read it is process the check and don't send it. 13 Q. Right. What about the next phrase? 14 A. I haven't made it out. I haven't confirmed 15 whether whatever he said he did he did. I don't know. 16 Q. Right. 17 A. That's the way I read it. 18 Q. Right. I understand. And, so, one might 19 read that as saying that you were going to go out 20 there to confirm that the work they were billing for 21 was largely in place. Wouldn't that be a fair reading 22 of that sentence? 23 A. That's the way I read it, yes, sir. 24 Q. Okay. So the pump station, a \$285,000 item 25 is now shown as 74 percent complete, \$210,674. Isn't	Page 168 1 Q. Now, this is a chain with a different 2 beginning. Do you remember Mr. Cox showed you an 3 invoice from Leonard Rindner's company -- well, maybe 4 it wasn't. That was from Wetlands Remediation or 5 something. This is from Environmental Planning 6 Consultant. Let me see if this is -- yeah. 7 So there's an invoice that you -- that Mr. Rindner 8 has sent you for River Falls involving remediation 9 efforts, and then there's a follow-up on it in 10 February of 2016, and then there's a follow-up on that 11 in June 2016, and you have sent that to Jesse Buchanan 12 at the end of June 2016 saying, "This one as well. We 13 will deduct a total of \$9,865 from his next check to 14 cover these invoices." 15 I can show you another one where you had sent an 16 invoice to Mr. Buchanan and asked him to -- or told 17 him that if he paid the invoice for the wetlands 18 remediation consultant they could deduct that from 19 Callahan's next payment. 20 Do you recall that at all? Do you recall having 21 advised Jesse Buchanan to withhold payment from 22 Callahan for these wetlands remediation invoices? 23 MR. ADAMS: Objection to form. 24 THE WITNESS: I don't recall whether I did 25 or didn't, no, sir.
Page 167 1 that what that line reads? 2 A. That's the way I see it for certain. 3 Q. Okay. Do you have any idea what the 4 clubhouse is? They're saying that they've completed 5 \$118,000 on the clubhouse. 6 A. I don't know why they're saying that, no, 7 sir. 8 Q. Do you know if there was a clubhouse out 9 there? 10 A. I don't -- I don't remember. I don't know. 11 Q. Uh-huh. You don't remember going out and 12 finding that there wasn't any clubhouse when you went 13 out to look at it? 14 A. I don't remember the -- no, sir. 15 Q. How about the monument? Do you know if a 16 monument is out there even today? 17 A. I don't know if there's a monument out 18 there today. I haven't been by the site in quite some 19 time. 20 Q. Okay. I keep doing this wrong, but I don't 21 know if it takes any more time. I'm pulling up 22 Exhibit 85. 23 (DFT. EXHIBIT 85, ECP 0009578, was marked 24 for identification.) 25 BY MR. MABE:	Page 169 1 MR. MABE: Okay. I'll tell you what, I'm 2 going to take just a couple minutes to see if I need 3 to shift gears or just -- I may be real close to the 4 end. Give me a couple minutes to go off line here. 5 (A short recess was taken.) 6 BY MR. MABE: 7 Q. So, Mr. Dority, I want to ask you about a 8 couple of people. I asked you earlier when you had 9 met Craig Briner, and I think you said y'all weren't 10 friends but you had met him through your work, and am 11 I correct in recalling that you didn't meet him before 12 you worked with him at GreenHawk? 13 A. I don't think so. I don't remember. 14 Q. Have you worked with him since? 15 A. I don't think so, no. 16 Q. Have you worked with him since you left 17 Eastwood? 18 A. No, sir. 19 Q. Okay. Did you ever go to the GreenHawk 20 offices to meet with Mr. Briner? 21 A. Yes, sir. 22 Q. Can you tell us about that, please. 23 A. I went to GreenHawk's office and I met with 24 him. That's it. I'm sorry. 25 Q. Do you recall anything that you discussed?

Page 170 1 A. No, sir. Not in detail. 2 Q. I'm going to give you a pass and tell you 3 you don't have to tell me in great detail, but just 4 tell me what you talked about. 5 A. When? 6 Q. When you went to their offices at 7 GreenHawk. 8 A. I couldn't tell you what we talked about. 9 I would imagine opportunities, land deals, the 10 business. I couldn't tell you. 11 Q. Okay. Is it correct to say that you have 12 no present recollection of discussing with them 13 forming a partnership or a joint venture to develop 14 property together? 15 MR. ADAMS: Objection to form. 16 THE WITNESS: I remember -- again, I 17 don't -- again, when you pose the question -- we never 18 sat down and said, hey, here's the structure, why 19 don't we become JV partners. No. We never said that. 20 That was never part of the dialogue. We said, hey, we 21 need to be partners and work together and this and 22 that, but I don't remember the specifics of it. 23 BY MR. MABE: 24 Q. All right. When you say partners, you mean 25 partners the way my insurance company is partner with	Page 172 1 you buy lots from them; is that what you're saying? 2 MR. ADAMS: Objection to form. 3 THE WITNESS: Correct. 4 BY MR. MABE: 5 Q. Just like other companies are preferred -- 6 who are some of the other preferred developers that 7 you worked with? 8 MR. ADAMS: Objection to form. 9 THE WITNESS: I don't know. 10 BY MR. MABE: 11 Q. Let me rephrase the question. Who were 12 some other developers that were considered to be 13 preferred developers at Eastwood? 14 A. Again, if you show me a list I could 15 probably tell you. I don't know the -- let me see. 16 On the list you just said Coulter. They would have 17 been a preferred developer. 18 Q. How about your client Hawthorne? 19 A. Yeah, I guess he would have been considered 20 a preferred developer, yes. 21 Q. How about Cummings? 22 A. Yeah, I guess he was a preferred developer. 23 Q. Who is Shawn? There's someone listed as 24 Shawn on a lot of your lists of developers. 25 A. That would have been Shawn Cummings.
Page 171 1 me when I pay my premiums or do you mean partners the 2 way a partner might be when they agree to share losses 3 and profits on a mutual business? 4 MR. ADAMS: Objection to form. 5 BY MR. MABE: 6 Q. What do you mean by partners? 7 MR. ADAMS: Objection to form. 8 THE WITNESS: More than you and your 9 insurance company and less of what you just said. 10 BY MR. MABE: 11 Q. Okay. Did you have similar conversations 12 with other developers that you wanted to do business 13 with? 14 A. I don't remember specifically, but I'm sure 15 we did. Again, Eastwood viewed -- again, whether you 16 were the -- if you were part of the, again, supply 17 chain, for lack of a better word, you were viewed as a 18 partner. I mean, not that you would share, you 19 know -- again, we viewed -- again, I don't -- I don't 20 know. Partnership is a strong word. You know, we 21 would bring them deals, and they would sell them back 22 to us. That was kind of the way they were viewed. I 23 don't know any other way to say it. 24 Q. Okay. But they're a preferred partner in 25 development projects where they develop land and then	Page 173 1 Q. Okay. Thanks. How about Tom Pearson? 2 Would Tom Pearson have been a preferred developer? 3 A. He would have been, yes. 4 Q. How do you know Tom Pearson? 5 A. Through the business, I guess. 6 Q. Okay. Are you familiar with JP Development 7 Group? 8 A. Not off the top of my head, no, sir. 9 Q. Do you currently work with Mr. Pearson on 10 any projects? 11 A. No, sir. 12 Q. Is there anyone in Mr. Pearson's 13 organization that you know and work with other than 14 Tom Pearson? 15 A. No, sir. 16 Q. How about in Keith Hawthorne's empire or 17 operation, do you know other people who work for Keith 18 Hawthorne who are involved in the development 19 business? 20 MR. ADAMS: Objection to form. 21 THE WITNESS: There really isn't any other 22 people. 23 BY MR. MABE: 24 Q. Okay. He's got an awful lot of LLCs under 25 his umbrella. Do you know people who -- you say you

Page 174 1 don't know anyone else but Mr. Hawthorne? 2 A. Well, he has other employees. I mean, I 3 know them, but they're not -- there's a lot of stuff 4 that Mr. Hawthorne's involved with. 5 Q. That's what I gather. How about a 6 Mr. Howey? 7 A. I know Mr. Howey. 8 Q. Tell me who Mr. Howey is. 9 A. He's a -- I guess he's a developer or was a 10 developer, yeah. He was partners with Mr. Hawthorne 11 on some of these deals. 12 Q. Okay. And was he a partner of Eastwood in 13 the sense that you use it? 14 A. I don't know if he was or wasn't. Not 15 really. I mean, I knew his name. 16 Q. I mean, I picked his name up on -- I'm 17 sorry. Go ahead. 18 A. I don't think he was viewed as a partner, 19 no. 20 Q. So he wouldn't be a preferred developer? 21 A. Yeah, no, I think we're going a little bit 22 extreme on the preferred developer moniker, I guess, 23 but -- 24 Q. Mr. Howey is listed as a developer on some 25 of the charts that have been shared with us, and	Page 176 1 Q. Okay. I appreciate it. Thank you. That's 2 all the questions I've got this afternoon. I really 3 appreciate you taking the time to talk with us this 4 afternoon, and we'll see where we go next. 5 MR. COX: I don't have anything further. 6 Thank you, Mr. Dority. Appreciate it. 7 MR. ADAMS: I don't have any. We're going 8 to read and sign, Mindy. 9 COURT REPORTER: And will you be ordering a 10 copy of the transcript, Mr. Adams? 11 MR. ADAMS: Yes, ma'am. Electronic is 12 sufficient. Thank you. 13 COURT REPORTER: Mr. Mabe, will you be 14 ordering a copy of the transcript, sir? 15 MR. MABE: Yes. We'd like an electronic 16 copy only. We don't need the exhibits. 17 (Deposition was concluded at 3:30 p.m.) 18 19 20 21 22 23 24 25
Page 175 1 that's the reason I'm asking. I haven't -- I haven't 2 talked to Mr. Howey. I'm just asking you if you can 3 tell me something about his relationship with 4 Eastwood. 5 So, other than that he was a developer, can you 6 tell me anything about the relationship between 7 Mr. Howey and Eastwood? For example, what's the name 8 of the company that Mr. Howey operated in? 9 A. I don't know. 10 Q. I want to ask you about your own expertise. 11 Do you hold any licenses other than a driving license? 12 Do you have a professional license in any type of 13 business? 14 A. No, sir. 15 Q. No real estate license? 16 A. No, sir. I don't think I still have my 17 license. No, sir. 18 Q. Did you use to have a broker's license? 19 A. I did, but I think it lapsed. 20 Q. Have you held any other professional 21 licenses in the past? 22 A. No, sir. 23 Q. And I've got to ask this as well. Were you 24 ever disciplined by the Real Estate Commission? 25 A. No, sir.	Page 177 1 STATE OF NORTH CAROLINA) 2 COUNTY OF HECKLENBURG) 3 4 I, JOE R. DORITY, do hereby certify: 5 That I have read the foregoing deposition; 6 That I have made such changes in form and/or 7 substance to the within deposition as might be 8 necessary to render the same true and correct; 9 That having made such changes thereon, I hereby 10 subscribe my name to the deposition. 11 I declare under penalty of perjury that the 12 foregoing is true and correct. 13 14 15 JOE R. DORITY 16 Executed this day of 17 2021, at 18 19 20 Notary Public: 21 My Commission Expires: 22 23 Signature page to: JAMES C. ADAMS 24 25 MV/JOE R. DORITY, 05/20/2021 26 EASTWOOD CONSTRUCTION PARTNERS, LLC, and EASTWOOD 27 DEVELOPMENT CORPORATION vs. GHD BROOKS CREEK, a North 28 Carolina Limited Liability Company, and AF-BROOKS 29 CREEK, LLC, a North Carolina Limited Liability 30 Company, GHD RIVER FALLS, a North Carolina Limited 31 Liability Company, and AF-RIVER FALLS, LLC, a North 32 Carolina Limited Liability Company, GREENHAWK 33 CORPORATION, INC., and TRI POINTE HOMES HOLDINGS, INC. 34 35

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Index: witness's..zoom

ROA 000797

Exhibit P

EASTWOOD CONSTRUCTION PARTNERS, LLC, ET AL. vs GHD BROOKS CREEK, ET AL.
30(b)(6) Joseph F. Polite, Jr. on 10/20/2021

1 IN THE COURT OF COMMON PLEAS
2 SIXTEENTH JUDICIAL CIRCUIT
3 STATE OF SOUTH CAROLINA
4 COUNTY OF YORK
5
6 EASTWOOD CONSTRUCTION)
7 PARTNERS, LLC and)
8 EASTWOOD DEVELOPMENT)
9 CORPORATION,)
10 Plaintiffs,)
11)
12 vs.) Case No.
13) 20-CP-46-02006
14)
15 GHD BROOKS CREEK, a)
16 North Carolina Limited)
17 Liability Company, and)
18 AF-BROOKS CREEK, LLC, a)
19 North Carolina Limited)
20 Liability Company, GHD)
21 RIVER FALLS, a North)
22 Carolina Limited)
23 Liability Company, and)
24 AF-RIVER FALLS, LLC, a)
25 North Carolina Limited)
26 Liability Company,)
27 GREENHAWK CORPORATION,)
28 INC., and TRI POINTE)
29 HOMES HOLDINGS, INC.,)
30 Defendants.)
31
32 30(B)(6) DEPOSITION OF JOSEPH F. POLITE,
33 JR., produced, sworn and examined on the 20th day of
34 October, 2021, between the hours of 10:11 a.m. and
35 2:55 p.m., by Zoom, at the offices of Brooks Pierce,
36 230 North Elm Street, Greensboro, North Carolina,
37 27401, before Mindy Vislay, a Notary Public within and
38 for the State of North Carolina, in a certain cause
39 now pending in the Court of Common Pleas, Sixteenth

Page 2 1 Judicial Circuit, in the County of York, State of 2 South Carolina, wherein EASTWOOD CONSTRUCTION 3 PARTNERS, LLC and EASTWOOD DEVELOPMENT CORPORATION are 4 Plaintiffs and GHD BROOKS CREEK, a North Carolina 5 Limited Liability Company, and AF-BROOKS CREEK, LLC, a 6 North Carolina Limited Liability Company, GHD RIVER 7 FALLS, a North Carolina Limited Liability Company, and 8 AF-RIVER FALLS, LLC, a North Carolina Limited 9 Liability Company, GREENHAWK CORPORATION, INC., and 10 TRI POINTE HOMES HOLDINGS, INC., are Defendants. 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	Page 4 1 For the Defendants (via Zoom): 2 NEXSEN PRUET LAW FIRM 3 By: JOHN I. MABE 4 6141 Parklake Avenue 5 Suite 200 6 Raleigh, North Carolina 27612 7 919-653-7819 8 jmabe@nexsenpruet.com 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25
Page 3 1 A P P E A R A N C E S 2 3 For the Plaintiffs (via Zoom): 4 BROOKS PIERCE 5 By: JAMES C. ADAMS 6 230 North Elm Street 7 Greensboro, North Carolina 27401 8 336-373-8850 9 jadams@brookspierce.com 10 11 For the Plaintiffs (via Zoom): 12 BROOKS PIERCE 13 By: WILLIAM OTIS WALKER, IV 14 150 Fayetteville Street 15 Raleigh, North Carolina 27601 16 919-839-0300 17 wwalker@brookspierce.com 18 19 For the Plaintiffs (via Zoom): 20 MOORE TAYLOR LAW FIRM, P.A. 21 By: JAMES EDWARD BRADLEY 22 1700 Sunset Boulevard 23 West Columbia, South Carolina 29171 24 803-796-9160 25 ward@mttlaw.com 18 For the Defendants (via Zoom): 19 ROBINSON BRADSHAW & HINSON, P.A. 20 By: STEPHEN M. COX 21 202 East Main Street 22 Suite 201 23 Rock Hill, South Carolina 29730 24 803-325-2900 25 scox@robinsonbradshaw.com	Page 5 1 INDEX 2 3 QUESTIONS BY: PAGE NO. 4 MR. COX 6 5 MR. MABE 43 6 MR. COX 125 7 MR. ADAMS 139 8 MR. MABE 149 9 CERTIFICATE OF REPORTER 157 10 11 EXHIBITS 12 13 DEFENDANT'S DESCRIPTION PAGE MKD. 14 15 EXHIBIT 106 Defendant's amended notice of 8 30(B)(6) deposition of Eastwood Construction Partners, LLC 16 EXHIBIT 107 Defendant's amended notice of 9 30(B)(6) deposition of Eastwood Development Corporation 17 EXHIBIT 108 ECP 0001186 75 18 EXHIBIT 109 ECP 0001201 78 EXHIBIT 110 ECP 0008361 82 19 EXHIBIT 111 GHD 0001563 95 EXHIBIT 112 GHD 0013443 103 20 EXHIBIT 113 ECP 0013321 108 EXHIBIT 114 ECP 0006647 115 21 EXHIBIT 115 ECP 0013356 118 EXHIBIT 116 ECP 0005863 124 22 23 24 (Exhibits 106 - 116 attached to transcript.) 25

Page 6 1 IT IS HEREBY STIPULATED AND AGREED, by and 2 between counsel for the Plaintiffs and counsel for the 3 Defendants that this deposition may be taken in 4 shorthand by Mindy Vislay, a Notary Public, and 5 afterwards transcribed into typewriting; and the 6 signature of the witness is expressly reserved. 7 * * * * * 8 JOSEPH F. POLITE, JR., 9 of lawful age, produced, sworn and examined on behalf 10 of the Defendants, deposes and says: 11 DIRECT EXAMINATION 12 BY MR. COX: 13 Q. Mr. Polite, good morning. 14 A. Good morning. 15 Q. I think, even though you just did it a 16 second ago in a deposition that you were testifying in 17 to your personal capacity, I think I still have to go 18 through at least this much preliminary stuff. 19 You understand you're being called upon to testify 20 as a corporate representative today in the case of 21 Eastwood Construction Partners and others versus GHD 22 Brooks Creek and others? 23 A. I do. 24 Q. And I think you understand you're 25 testifying in a corporate capacity under a rule we	Page 8 1 (EXHIBIT 106, Defendant's amended notice of 2 Rule 30(B) (6) deposition of Eastwood Construction 3 Partners, LLC, was marked for identification.) 4 BY MR. COX: 5 Q. Okay. So this will be Exhibit 106. It's 6 the amended notice of rule 30(b)(6) deposition of 7 Eastwood Construction Partners. Do you see that, Mr. 8 Polite? 9 A. Yes, sir. Polite. 10 Q. Polite. Yes. As I understand it from a 11 prior deposition, and you can confirm this, or anyone, 12 Eastwood Construction Partners LLC was formerly known 13 as Eastwood Homes LLC; isn't that right? 14 A. Yes. 15 Q. It's the same entity? 16 A. Yes. 17 Q. Okay. And then on the next page of this 18 Exhibit 106 -- or actually page -- the section after 19 page 3. It's the fourth page. That's a list of 20 topics. Do you see those? 21 A. Yes. 22 Q. Are you prepared -- are you going to be the 23 corporate representative on behalf of Eastwood 24 Construction Partners LLC this morning who is prepared 25 to testify to all nine of these topics?
Page 7 1 have in our Rules of Civil Procedure called 30(B) (6); 2 is that right? 3 A. I do. 4 Q. Because you've given depositions before, I 5 won't go through my usual spiel about what we do here 6 and what the ground rules are except to say that if 7 you have any questions about my question, if my 8 question doesn't make sense or it needs to be 9 clarified, please ask me and not your own counsel. 10 Okay? 11 A. You got it. 12 Q. And please do not discuss the deposition of 13 this case during breaks until the deposition is 14 completed. Do you understand that? 15 A. Yes, sir. 16 Q. All right. 17 MR. COX: So I'm going to go ahead and call 18 up a couple of deposition notices, if everyone can see 19 that. Gentlemen, I went back, and I think we stopped 20 at Craig Briner's deposition with Exhibit 105, so I 21 believe this is supposed to be Exhibit 106, and I'll 22 put a sticker on that and send it to Mindy. Does 23 anybody disagree with my numbering? 24 MR. ADAMS: Otis is shaking his head yes, 25 so that means we agree.	Page 9 1 A. Yes. 2 Q. And the other one -- I'm going to go ahead 3 and call up another one real quick. 4 MR. ADAMS: Stephen, we have these printed 5 out, too, if you don't want to share. 6 MR. COX: Okay. Well, just so we have it 7 on the -- let me see. I think I can do this here real 8 quick. 9 (EXHIBIT 107, Defendant's amended notice of 10 Rule 30(B) (6) deposition of Eastwood Development 11 Corporation, was marked for identification.) 12 BY MR. COX: 13 Q. All right. Now I'm showing you what we'll 14 mark and I'll put a sticker on it and send to Mindy at 15 a break as Exhibit 107 which is defendant's amended 16 notice of 30(b)(6) deposition of Eastwood Development 17 Corporation. Do you see that? 18 A. Yes. 19 Q. And that's also got nine topics -- I 20 believe they're the same topics -- on pages 4 and 5. 21 Do you see those topics? 22 A. Yes. 23 Q. And are you the corporate representative 24 today of Eastwood Development Corporation who's 25 prepared to testify as to all nine of these topics?

Page 10 1 A. Yes. 2 Q. I just want to clarify a couple of issues 3 on the status of -- (audio distortion) -- designation 4 No. 2. I want to make sure I understand the 5 capacities here. You are an actual employee, what we 6 call a W-2 employee of Eastwood Construction Partners 7 LLC; isn't that right? 8 A. That's correct. 9 Q. What about Eastwood Development 10 Corporation? Are you an employee of Eastwood 11 Development Corporation? 12 A. No, sir. 13 Q. Do you hold any sort of officer position or 14 position with Eastwood Development Corporation? 15 A. Not to my knowledge. 16 Q. Got it. You've just been the person 17 designated on behalf of that corporation to testify; 18 is that accurate? 19 A. Correct. 20 Q. Okay. What did you do to today to prepare 21 for these depositions in your capacity as a Rule 22 30(b)(6) corporate designee? 23 A. I reviewed the amended deposition, the 24 exhibits you just went over as well as the prior 25 deposition that I gave as well as Mr. Briner and as	Page 12 1 Q. Isn't it John, the other Stewart? 2 MR. ADAMS: Joe. 3 MR. MASE: Joe. 4 BY MR. COX: 5 Q. Joe. Excuse me. My apologies. I should 6 know this. It's one of those things I learn and then 7 I forget for some reason. That's a father and son 8 duo, is it not? 9 A. That's correct. 10 Q. Who is the father and who's the son again? 11 A. Joe Stewart is the father. Clark Stewart 12 is the son. 13 Q. And Joe owns Eastwood Construction 14 Partners? 15 A. Joe does not own Eastwood Construction 16 Partners. Clark Stewart and a trust own Eastwood 17 Construction Partners. 18 Q. Got it. Is Joe the founder of the company? 19 A. Joe Stewart is the founder of Eastwood 20 Homes, yes. 21 Q. Which ultimately became Eastwood 22 Construction Partners LLC; is that -- 23 A. Yes, sir. 24 Q. Okay. You said Mike Conley is the 25 Charlotte division president. As you know, this
Page 11 1 well as Mr. Dority plus the various exhibits 2 associated with both of those depositions as well as 3 mine. 4 Q. I gotcha. And your prior deposition, 5 you're talking about the deposition you gave in your 6 personal capacity on May 4th of 2021; is that right? 7 A. Correct. 8 Q. Other than your lawyers, and I don't want 9 to know what you said or talked about with your 10 lawyers. Other than your lawyers did you talk with 11 anyone at Eastwood -- at either of the Eastwood 12 entities in preparation for your deposition today? 13 A. Yes. 14 Q. Who did you talk to? 15 A. I spoke with Mike Conley. He's the 16 division president for the Charlotte division of 17 Eastwood Construction Partners, as well as our CFO 18 Kevin Hutchins. 19 Q. What about Clark Stewart, did you talk to 20 him in preparation for today? 21 A. Yes. But not on topic. 22 Q. What about John Stewart, did you talk to 23 him in preparation for the deposition today? 24 A. I'm sorry. Can you repeat that name, 25 please?	Page 13 1 lawsuit we're involved in concerns two pieces of 2 property -- two tracts of property in York County, 3 South Carolina, which we have referred to throughout 4 this litigation as the River Falls property and the 5 Brooks Creek property. You're aware of that, aren't 6 you? 7 A. Yes. 8 Q. And I think in some internal communications 9 among the parties from time to time the Brooks Creek 10 property is referred to as Brooks Springs; is that 11 right? 12 A. Yes. 13 Q. But they're the same property, are they 14 not, Brooks Creek and Brooks Springs? 15 A. Yes. My -- yes. 16 Q. Okay. So now I'd like to go to Exhibit 14 17 from your prior deposition in your personal capacity. 18 I've called it up on the screen. Do you have that 19 there? 20 A. It is printed. Yes. 21 MR. ADAMS: Stephen, the one on the screen 22 is the amended notice for Eastwood Development. 23 MR. COX: Oh. I'm not sharing -- the one 24 on the screen is what? You're not seeing the email on 25 the screen?

Page 14 1 MR. ADAMS: No. 2 THE WITNESS: No. 3 MR. COX: All right. Let me figure out how 4 to do this real quick. Hold one second. Now do you 5 see it? Now do you see it? 6 MR. ADAMS: Exhibit 14? Yes. 7 BY MR. COX: 8 Q. All right. So, Mr. Polite, you may recall 9 from your deposition in your personal capacity this is 10 an email exchange that you had in December of 2016 11 with Jesse Buchanan of GreenHawk. Do you recall that? 12 A. I do. 13 Q. So I asked you this question. You see 14 referenced in that email, I think the second one up 15 the chain where you sent it to Mr. Buchanan on 16 December 14th, that you were going to send him a blank 17 Eastwood standard contract as a starting point, 18 correct? 19 A. That's what it reads, yes. 20 Q. And then it says we will need to apply the 21 agreed upon deal points -- right? -- deposits, 22 takedown and pricing. 23 A. As written. Yes. 24 Q. So just to put this in context, you 25 acknowledge that in a lot purchase agreement like the	Page 16 1 Q. It would include a takedown schedule 2 specific to that deal, correct? 3 A. Yes. 4 Q. And it would include a deposit specific to 5 that deal, correct? 6 A. As written. Yes. 7 Q. Okay. So, basically, in December of 2016 8 you were prepared to supply GreenHawk with a standard 9 Eastwood contract, and you were expecting them to send 10 it back to you with the agreed upon deal points 11 specific to the deal incorporated into those standard 12 terms; is that accurate? 13 A. That would be -- yeah. That would be the 14 intention. 15 Q. Okay. As of the day that you sent this 16 email on December 14, 2016, with respect to the Brooks 17 Creek deal, had Eastwood and GreenHawk agreed on a lot 18 price for those lots? 19 A. It was always understood it was going to be 20 a cost-plus scenario, that once they had their cost 21 the plus of their profit would be a lot price. 22 Q. Okay. Again, I appreciate that, but that's 23 not my question. At the time you sent this email on 24 December 14, 2016, had Eastwood and GreenHawk agreed 25 to a specific lot price for the lots to be sold in the
Page 15 1 one contemplated in the River Falls and Brook Springs 2 deals, the contract would have a combination of sort 3 of standard terms and deal specific terms; isn't that 4 right? 5 MR. ADAMS: Objection to form. 6 BY MR. COX: 7 Q. You may answer. 8 A. There are certain points that need to be 9 agreed upon. 10 Q. Right. That's not my question, though. My 11 question was in a contract like this from River Falls 12 and Brooks Springs, the contract would have certain 13 standard terms that Eastwood uses in many different 14 contracts but also have deal specific terms; isn't 15 that right? 16 A. Yes. 17 Q. Okay. The deal specific terms would 18 include, for example, as you put in this email, the 19 lot price, correct? 20 A. I said pricing. Yes. 21 Q. And that's the price for the lots that 22 Eastwood was going to pay, correct? 23 MR. ADAMS: Objection to form. 24 THE WITNESS: Correct. 25 BY MR. COX:	Page 17 1 Brooks Creek development? 2 MR. ADAMS: Objection to form. 3 THE WITNESS: We agreed on the structure, 4 but at this time there was no set lot price 5 determined. 6 BY MR. COX: 7 Q. Got it. Now let's talk about the takedown 8 schedule. At the time you sent this email on 9 December 14, 2016, had Eastwood and GreenHawk agreed 10 on a takedown schedule for the lots in the Brooks 11 Creek development? 12 A. Not specifically, but -- 13 Q. But what? 14 A. No. But it would have been on a 15 quarterly-type takedown. 16 Q. Right. But there was no specific takedown 17 schedule agreed to at the time you sent this email in 18 December, correct? 19 A. Yes. I agree with that. 20 Q. At the time you sent this email in December 21 of 2016 had Eastwood and GreenHawk agreed on a 22 deposit -- the amount of a deposit that Eastwood was 23 going to pay as part of a contract for the Brooks 24 Creek development? 25 A. There was not a specific deposit

Page 18
1 determined.
2 Q. All right. So the next document I'd like
3 to go to is -- okay. I think everybody should be able
4 to see this. I'm now looking at Exhibit 22. Do you
5 see that or have it in front of you, Mr. Polite?
6 A. Yes. I have it printed if you see me
7 looking down.
8 Q. No, no. That's fine. So we just looked at
9 a December 2016 email exchange between you and
10 Mr. Buchanan in which y'all agreed that GreenHawk
11 would take the lead in drafting the lot purchase
12 agreements for Brooks Creek and River Falls; is that
13 right?
14 A. Sorry. Were you referencing the 2016
15 exhibit just now?
16 Q. Yes.
17 A. And that Jesse said he could do it -- yes.
18 Q. And it's fair to say it took him a while;
19 isn't that right?
20 A. I believe we're now two years from that
21 date approximately. Yes.
22 Q. Right. So it took -- I think you testified
23 in your prior deposition in your personal capacity
24 that the draft contract that you attached to this
25 email is the first draft contract you got from

Page 19
1 GreenHawk from Brooks Springs; isn't that correct?
2 A. That is correct.
3 Q. Okay. So now -- you'll recall that I asked
4 you a number of questions in your prior deposition
5 about what happened internally with respect to this
6 contract, and you testified that you gave it to --
7 sent it to Mike Conley, the Charlotte division
8 president who is shown on this email; isn't that
9 right?
10 A. As well as shown on this email Brian
11 DeGabrielle who is the vice president of sales for
12 Charlotte.
13 Q. Right. But I'm going to want to ask you
14 what happened there after that, and you didn't have
15 personal knowledge at that point when we talked in May
16 about what happened. Do you remember that testimony?
17 A. Yes.
18 Q. So now I'm asking you in your corporate
19 capacity. You said that you had talked to Mike
20 Conley. What did Mike do with this draft contract
21 from GreenHawk when you sent it to him?
22 A. I don't specifically speak for Mike. He
23 said that he remembers getting it and that at the time
24 there were still unknown costs associated with the
25 construction of townhomes at Brooks Springs.

Page 20
1 Q. Okay. Did Mike -- do you remember last
2 time you testified that there was a land acquisition
3 committee that had to approve the purchase of lots for
4 Eastwood? Do you remember testifying to that?
5 A. That's a general procedure we use. Yes.
6 Q. And I think you're on that committee along
7 with Clark and Joe Stewart; isn't that right?
8 A. Yes.
9 Q. Was that the composition of the committee
10 back in October of 2018?
11 A. Yes. I mean, from a deal to deal basis
12 across all of our divisions that would be a group,
13 yes.
14 Q. So I'm asking you now as a corporate
15 representative of Eastwood the general practice when
16 Eastwood -- and by Eastwood I mean Eastwood
17 Construction Partners or Eastwood Development
18 Corporation. The general practice when Eastwood is to
19 acquire lots like the ones in River Falls and Brooks
20 Creek would be for the land acquisition committee you
21 just named, the two Stewarts and you, to consider a
22 specific proposal and to approve or deny it. That's
23 the general procedure; isn't that right?
24 A. General procedure. Yes.
25 Q. And that committee -- that land acquisition

Page 21
1 committee did not approve or deny the contract that
2 was attached to this email we're looking at now,
3 Exhibit 22, did it?
4 A. There was no acceptance or rejection of
5 that contract.
6 Q. And that's because the committee did not
7 really meet to consider this draft contract; isn't
8 that correct?
9 MR. ADAMS: Objection to form.
10 MR. COX: I'm sorry?
11 MR. ADAMS: I objected to form, Stephen.
12 MR. COX: Yeah, that's noted.
13 THE WITNESS: There was no need for us to
14 meet for this particular draft.
15 BY MR. COX:
16 Q. And why was that?
17 A. Because there was no agreed upon terms by
18 both the Charlotte division or GreenHawk at the time.
19 Q. I think you've also said the general
20 procedure was the contract or the proposal would be
21 presented to the committee by the respective division
22 president; isn't that right?
23 A. That's correct.
24 Q. So it would have been Mike's
25 responsibility, if he thought the time was right, to

Page 22 1 present this draft contract to the land acquisition 2 committee, correct? 3 A. Yes. 4 Q. And he did not do that. Right? 5 A. That's right. 6 Q. Because, as you just testified, there were 7 certain undetermined costs that made it impossible to 8 determine what the final terms should be. Is that 9 accurate? 10 A. Correct. 11 Q. So, what happened? Did Mike ever present 12 this draft contract to the land acquisition committee 13 for development -- for -- 14 A. No. No. 15 Q. I think I choked or mumbled on that last 16 word, so let me ask it again. That's my fault. 17 Did Mike ever present the draft contract attached 18 to this email that is Exhibit 22 to the land 19 acquisition committee for approval? 20 A. No. 21 Q. Did anyone from Eastwood, either of the 22 Eastwood entities, ever communicate to GreenHawk or 23 any of the defendants in this case that that contract 24 was accepted by Eastwood? 25 A. No.	Page 24 1 on an amount; is that correct? 2 MR. ADAMS: Objection to form. 3 THE WITNESS: Yes. 4 BY MR. COX: 5 Q. So as we sit here today neither of the 6 plaintiffs or any of the defendants in this case have 7 agreed to a specific lot price that is going to be 8 paid by Eastwood to a GreenHawk entity for the Brooks 9 Creek lots; is that right? 10 MR. ADAMS: Objection to form. 11 MR. COX: You may answer. 12 THE WITNESS: Correct, to my knowledge, 13 yes. 14 BY MR. COX: 15 Q. As we sit here today has either Eastwood 16 entity agreed with any of the defendants or a 17 GreenHawk entity as to a specific takedown schedule 18 that will be adopted with respect to the Brooks Creek 19 development? 20 A. There has not been an agreement. 21 Q. As we sit here today has either of the 22 Eastwood entities and any of the defendants in this 23 case agreed to a deposit that Eastwood is going to pay 24 for the Brooks Creek development? 25 A. Not agreed upon.
Page 23 1 Q. Was the contract ever accepted by Eastwood? 2 A. No. 3 Q. So is it fair to say the contract that was 4 attached to this Exhibit 22 was just sort of set aside 5 and not acted upon by Eastwood? 6 A. That is correct. 7 Q. With respect to the Brooks Creek 8 development, Eastwood I believe has taken the position 9 in its complaint that it has a right to purchase the 10 lots in the Brooks Creek development. That is the 11 company's position, is it not? 12 A. Yes, it is. 13 Q. What's the lot price that is agreed upon -- 14 let me ask the question again. In Eastwood's view, 15 what is the lot price that the parties have agreed to 16 for the purchase of the lots in the Brooks Creek 17 development? 18 A. Again, this goes back to the original 19 agreement with them that we were going to do a 20 cost-plus purchase price, and I would say that there's 21 been no agreement set by both parties. 22 Q. Okay. So, again, I think it was your 23 testimony earlier that you thought y'all had a general 24 understanding as to the method you would follow when 25 calculating the price, but you had not actually agreed	Page 25 1 Q. Have any terms of any specific lot purchase 2 agreement with respect to the Brooks Creek development 3 been agreed to between any Eastwood entity and any 4 GreenHawk entity? 5 A. Not specifically. 6 Q. Okay. 7 MR. COX: I'm pretty close to finished on 8 my end, but I want to take a brief break, Jimmy, if 9 you don't mind, and take a look at a couple things and 10 get back on. Can we take about a ten minute break? 11 MR. ADAMS: Sure. 12 (A short recess was taken.) 13 BY MR. COX: 14 Q. Mr. Polite, we were on a break briefly. Do 15 you have anything you want to change or clarify about 16 your prior testimony as a result of being on break? 17 A. No. 18 Q. Okay. So -- I'm sorry. Did I interrupt 19 you? 20 A. No. No. 21 Q. So you testified earlier that you flipped 22 this contract -- this draft contract from GreenHawk to 23 Mr. Conley and others, and that's the contract that 24 was attached to Exhibit 22. Do you recall that 25 testimony?

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1 A. Yes.
2 Q. And I don't have the contract right in
3 front of me, but I believe the lot price in that
4 contract that was proposed was \$76,000 per lot; is
5 that right?
6 A. Proposed. Yes.
7 Q. And I think you told me that Mike did not
8 act on that contract because there were certain
9 undetermined costs. Did I write that down correctly?
10 A. That's true.
11 Q. And you also said that Eastwood's position
12 was that the specific lot price was going to be
13 determined as a function of the total development
14 costs in the project; is that correct?
15 A. The total cost of -- yes. Plus a profit
16 for GreenHawk.
17 Q. Right. So let's first get that concept
18 locked down. So I want to back up a little bit for
19 this. You recall that it was originally Eastwood
20 Development Corporation that had the right to purchase
21 this Brooks Creek property from a third-party. Do you
22 remember that?
23 A. That goes back to, yes, all the way to the
24 beginning.
25 Q. Right. And Eastwood Development

Page 27
1 Corporation assigned its real estate contract for
2 Brooks Creek to a company called AF Brooks Creek LLC,
3 a GreenHawk entity. Isn't that right?
4 A. That's true.
5 Q. And I believe you testified here today that
6 it was Eastwood's general understanding -- when
7 Eastwood Development Corporation assigned its right to
8 AF Brooks Creek to buy the Brooks Creek tract it was
9 Eastwood's general understanding that AF Brooks Creek
10 or a GreenHawk entity would prepare that property for
11 development and get all the necessary zoning and
12 planning approvals and plats for development, correct?
13 A. That is the understanding, yes.
14 Q. And then once that was done it was
15 Eastwood's general understanding that AF Brooks Creek
16 or a GreenHawk entity would then convey the property
17 back through a lot purchase agreement to Eastwood
18 Construction Partners, correct?
19 A. To Eastwood -- at that time it was Eastwood
20 Homes, now Eastwood Construction Partners.
21 Q. But, again, the general understanding was
22 ultimately the property would be conveyed back to
23 Eastwood Homes, now Eastwood Construction Partners,
24 pursuant to a specific lot purchase agreement,
25 correct?

Page 28
1 A. With a lot of underlying assumptions being
2 made about the costs, the profit through GreenHawk and
3 also the money that Eastwood had already spent on the
4 project. There were more considerations.
5 Q. I understand that, but my basic point is
6 this: At the time Eastwood Development Corporation
7 assigned its right to buy the property to a GreenHawk
8 entity it was Eastwood's general understanding that
9 that property would ultimately be conveyed back to
10 Eastwood Construction Partners under the terms of a
11 specific lot purchase agreement, correct?
12 MR. ADAMS: Objection to form.
13 THE WITNESS: As a subdivided lot for
14 Eastwood Construction or Eastwood Homes to build
15 houses. That was the general understanding.
16 BY MR. COX:
17 Q. So the answer to my question is yes?
18 A. Yes.
19 Q. And among those terms that would have to be
20 decided at that time when the property was actually
21 going to be conveyed to Eastwood Construction
22 Partners, among the specific terms that the parties
23 are going to have to agree to are lot price, takedown
24 schedule and deposit just to name three, correct?
25 MR. ADAMS: Objection to form.

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1 THE WITNESS: Again, there still needed to
2 be all of the formulas to go into all of those being
3 specifically set.
4 BY MR. COX:
5 Q. Correct. My question is just this, Mr.
6 Polite: Before that property could then actually be
7 conveyed back to Eastwood Development Corporation,
8 Eastwood and GreenHawk were going to have to agree on
9 some specific terms including lot price, deposit and
10 takedown schedule, correct?
11 A. That incorporated all the work done prior
12 to that agreement, yes.
13 Q. So the answer to my question is yes?
14 MR. ADAMS: Objection to form.
15 THE WITNESS: That would be to memorialize
16 what was already done years ago with this partnership
17 that we formed with them.
18 BY MR. COX:
19 Q. Well -- but it couldn't memorialize a lot
20 price that hadn't been decided on yet. At the time
21 Eastwood Development assigned its right to a GreenHawk
22 entity the lot price that Eastwood Construction was
23 going to pay to buy the property back had not yet been
24 determined, right?
25 A. Just the formula about how to determine it

Page 30 1 was done. 2 Q. Okay. But the price itself had not been 3 determined, correct? 4 A. Not specifically determined, but based on 5 what they had at that time they had a general 6 understanding of what it would be. 7 Q. But they were going to have to be -- I'm 8 sorry. I interrupted you. Go ahead. 9 A. No. That's it. You're fine. 10 Q. But there were going to have to be further 11 negotiations and discussions to come up with an 12 agreement on a specific lot price, correct? 13 MR. ADAMS: Objection to form. 14 THE WITNESS: There would be -- yes. 15 Between both parties. 16 BY MR. COX: 17 Q. And there were going to have to be further 18 negotiations and discussions to come up with a 19 specific agreement on a takedown schedule for Brooks 20 Creek, correct? 21 MR. ADAMS: Objection to form. 22 THE WITNESS: That would have been, you 23 know, on a quarterly basis of how many lots would be 24 taken on a quarterly takedown. Yes. 25 BY MR. COX:	Page 32 1 parties, right? A specific amount? 2 MR. ADAMS: Objection to form. 3 THE WITNESS: The actual number was not 4 agreed upon, but how to come to that number was agreed 5 upon early on. 6 BY MR. COX: 7 Q. And, so -- that's what I want to get into 8 now. So how to come to that number was you believe 9 Eastwood and GreenHawk were going to calculate the 10 total development costs in the project; is that right? 11 A. Yes. 12 Q. The total development costs incurred by 13 GreenHawk? 14 A. That's my understanding, yes. GreenHawk. 15 Q. And then once GreenHawk's total development 16 costs had been calculated they were going to have to 17 receive a lot price from Eastwood that would 18 compensate them for their total costs incurred and 19 give them some profit, correct? 20 A. The groups would both have to agree to that 21 number -- 22 Q. Right. 23 A. -- and early on there were pro formas done 24 that way. There was not one in 2018 -- to my 25 knowledge in 2018 there was no specific costs shown to
Page 31 1 Q. And there would have to be a specific 2 agreement as to a deposit to be paid by Eastwood, 3 correct? 4 MR. ADAMS: Objection to form. 5 THE WITNESS: The deposit is a term in a 6 contract, but Eastwood had already invested a lot of 7 money in it so that would have had to have been taken 8 into account as well. 9 BY MR. COX: 10 Q. But no specific deposit had been agreed to 11 between the parties, correct, at the time Eastwood 12 Development assigned its right to a GreenHawk entity? 13 Isn't that right? 14 A. At the time the assignment happened there 15 was no exact number of what the deposit would be. 16 Q. Right. As we sit here today I think you 17 testified earlier Eastwood and GreenHawk had never 18 agreed on a specific deposit amount for Brooks Creek. 19 As we sit here today isn't that right? 20 A. The specific amount, no, but we do know how 21 much Eastwood invested in the project. 22 Q. Well, let me ask you this. So the reason I 23 asked that is -- let me ask you this question about 24 cost. So you've testified that a specific lot 25 purchase price has never been agreed to between the	Page 33 1 Eastwood. 2 Q. You said pro formas. Those are just 3 projections and estimates, correct? 4 A. They were projections and estimates. 5 Q. But what you're telling me, if I'm 6 understanding your testimony correctly, at the time 7 Eastwood Development assigned its right to buy this 8 Brooks Creek property to a GreenHawk entity it was 9 Eastwood's general understanding that Eastwood 10 Construction Partners would ultimately pay a lot price 11 to get the property back that would compensate 12 GreenHawk for all its development costs and get 13 GreenHawk some profit. Isn't that right? 14 A. That was the general understanding, yes. 15 Q. But that specific number could not be 16 agreed to until all the costs had been determined; is 17 that right? 18 A. That's correct. 19 Q. And is that how this links into what you 20 told me about Mr. Conley, that he could not present 21 the contract to the land committee for approval 22 because all the costs had not yet been determined? 23 A. That's correct. 24 Q. So, as you said a moment ago, GreenHawk was 25 proposing a lot price of \$76,000 per lot in this draft

Page 34 1 contract attached to Exhibit 22? 2 A. That was proposed. 3 Q. And as you just said moment ago as well, 4 there were additional costs, though, that were going 5 to have to be determined, right? 6 A. Yes. 7 Q. So that means that the price per lot was 8 going to go up, doesn't it? 9 A. It could go either way. 10 Q. Well, if there are additional costs that 11 haven't been determined, Mr. Polite, how's it going to 12 go down? 13 A. Well, we weren't provided the actual costs 14 of development at the time, and then in the summer 15 prior to this submittal there was the implication or 16 the -- I don't know -- the adoption of impact fees in 17 the Fort Mill school districts that that was 18 definitely additional costs that was at the time we 19 got this still unknown of how much it was going to 20 impact this project. 21 Q. Okay. So because there were additional 22 development costs out there and impact fees out 23 there -- by the way, who pays the impact fee? Would 24 Eastwood have paid it once they got the property back 25 or would GreenHawk pay it?	Page 35 1 A. To rerun the actual numbers of development 2 and to show what their projected profit was going to 3 be as we did in the original partnership when this was 4 first contemplated. 5 Q. Do you mean that you would have expected 6 with respect to this lot price that was being 7 proposed, this \$76,000, you would have wanted to 8 see -- and by you I mean the company, Eastwood would 9 have wanted to see GreenHawk's total development costs 10 to determine whether 76,000 was a fair price based on 11 those costs? 12 A. Yes. 13 MR. ADAMS: Objection to form. 14 THE WITNESS: Yes. 15 BY MR. COX: 16 Q. Did Eastwood ever ask GreenHawk for its 17 total development costs in response to this draft that 18 was proposed in October of 2018? 19 A. Not to my knowledge. 20 Q. Why not? 21 A. I can't answer that. I don't know. 22 Q. Well, we saw from your prior deposition 23 that Eastwood was pretty anxious to get a lot purchase 24 contract negotiated, right? It was pushing pretty 25 hard for that?
Page 36 1 MR. ADAMS: Objection to form. 2 THE WITNESS: You know, Stephen, I wasn't a 3 hundred percent sure of the timing of that impact fee. 4 BY MR. COX: 5 Q. Okay. But what you're saying is there were 6 additional costs that were still to be determined, the 7 impact of the impact fee was a big deal, and, so, 8 Eastwood was not prepared to settle on a specific lot 9 price when it got this draft contract in October of 10 '18; is that correct? 11 A. That's correct. 12 Q. Okay. So, what happened then -- I mean, at 13 some point it became obvious what the amount of the 14 impact fee was going to be, didn't it? 15 A. I believe that was settled in March of this 16 year. 17 Q. Okay. And what about these other 18 development costs, at some point did that get settled? 19 A. I never saw anything from GreenHawk on 20 their development costs. 21 Q. Well, what would you have needed to get 22 from GreenHawk -- or what would you or the company 23 have needed to get from GreenHawk in order to evaluate 24 this lot price to determine whether it accurately 25 reflected costs?	Page 37 1 MR. ADAMS: Objection to form. 2 THE WITNESS: We requested the contract to 3 be done, yes. 4 BY MR. COX: 5 Q. And as we saw earlier, GreenHawk was 6 supposed to be taking the lead in I think 2016 to 7 actually draft a contract, correct? 8 A. Yes. 9 Q. And you finally got a draft in 2018 two 10 years later, right? 11 A. Yes. 12 Q. So if there was more information you 13 needed -- if there was more information Eastwood 14 needed to lock down a specific lot purchase price, why 15 wasn't Eastwood asking for that information? 16 MR. ADAMS: Objection to form. 17 THE WITNESS: It was just the body of work 18 that was needed to -- the partnership, or how much we 19 invested and how much they put in was never put 20 together on a sheet. So I don't know why it wasn't 21 requested. It was just never done. 22 BY MR. COX: 23 Q. Okay. And Eastwood never asked for such 24 additional cost information prior to filing this 25 lawsuit, isn't that right?

Page 38 1 A. Not to my knowledge. 2 Q. All right. So, Eastwood, you understand, 3 is suing for the right to purchase the Brooks Creek 4 development and build houses on it; isn't that right? 5 A. Yes. 6 Q. And, so, if you win, if Eastwood prevails 7 on that argument, a lot price is still going to have 8 to be determined, right, because it hasn't been 9 determined yet? 10 A. It would have to be agreed on what the 11 price would be to transfer those lots to us. 12 Q. So the answer to my question is yes? 13 A. Yes. With work. With additional work. 14 It's yes, but with additional work. 15 Q. By additional work what do you mean? 16 A. Remember that this was a venture between 17 us. We had money spent already, Eastwood, we, the 18 company, and then GreenHawk has money spent, and we 19 would have to look at it, like you suggested, all the 20 costs be accounted for and then come up with that 21 agreed upon lot price. 22 Q. Right. So, not only would you have to look 23 at all the costs, the costs that y'all have and the 24 costs that GreenHawk has, you'd have to figure out an 25 appropriate amount of profit that the parties could	Page 40 1 that actually says that, that formula and the IRR has 2 been agreed to by the parties, is there? 3 A. You're talking about a lot purchase 4 contract that we have not both signed, but there were 5 definitely discussions about how this all was going to 6 work. 7 Q. Right. But, again, to come up with a 8 specific price, all that work would have to be done, 9 all those costs would have to be analyzed, and only 10 then would the parties be able to negotiate and settle 11 on a final price; isn't that correct? 12 MR. ADAMS: Objection to form. 13 THE WITNESS: That would be the process, 14 yes. 15 BY MR. COX: 16 Q. Okay. As it stands today, based on the 17 impact fees is it still even financially viable for 18 Eastwood to pursue this project? 19 A. Yes. 20 Q. Okay. How do you know that? 21 A. Just based on current market conditions. 22 Q. Have you done the analysis to determine 23 what Eastwood would be prepared to pay given the 24 impact fees? 25 A. No. Not a specific price.
Page 39 1 agree to as well, right? 2 MR. ADAMS: Objection to form. 3 THE WITNESS: That was part of the original 4 agreement, yes. 5 BY MR. COX: 6 Q. Okay. How much profit are you going to 7 give them? 8 A. The target always discussed was a 9 20 percent IRR return on their money. 10 Q. Okay. So is it your testimony that the 11 company -- Eastwood is prepared to pay all of the 12 costs associated with the GreenHawk development plus 13 20 percent -- with the Brooks Creek development plus 14 20 percent to GreenHawk for these lot prices? Is that 15 your testimony? 16 A. And less money that we've already spent on 17 it. We would have to determine that as well. But 18 yes. 19 Q. And that's your understanding of the 20 formula that would determine the lot price? 21 A. Yes. 22 Q. Okay. Is that written down anywhere? 23 A. I've seen it in testimonies and the 24 discussions prior to my employment at Eastwood. 25 Q. I mean, there's no lot purchase agreement	Page 41 1 Q. Okay. So is it your position -- Eastwood 2 has its own costs in the deal, some costs which I 3 believe Eastwood said it incurred with Brooks Creek 4 prior to the transfer; is that right? 5 A. Prior to and while GreenHawk owned the 6 property, yes. 7 Q. What costs were y'all incurring while 8 GreenHawk owned the property with respect to Brooks 9 Creek? 10 A. Brooks Creek, there were earnest money 11 deposits made on their behalf that Eastwood the 12 company has not been reimbursed for to date. There's 13 also all the engineering work that was performed by 14 Land Design up to a certain point. I don't know 15 exactly when GreenHawk took over those bills, but our 16 accounting is approximately \$359,000 invested in this 17 project that has not been reimbursed or accounted for. 18 Q. Right. And you may recall in your prior 19 deposition on May 4th we looked at some documents, 20 some email exchange between you and I think it was 21 Craig Briner over that amount when you were trying to 22 get that back. Do you remember that? 23 A. Yes, sir. 24 Q. So that's Eastwood's total amount in the 25 deal, and so it's your testimony that Eastwood would

Page 42 1 be prepared to pay whatever GreenHawk's costs were, 2 whatever the impact fees are minus the 359 that 3 Eastwood's already got in it plus some profit for 4 GreenHawk. Is that your testimony? 5 MR. ADAMS: Objection to form. 6 THE WITNESS: Yeah. That's the general 7 framework, yes. 8 BY MR. COX: 9 Q. But there would have to be analysis done to 10 determine all of those components, and only then would 11 y'all be able to negotiate and settle on a final 12 price, correct? 13 MR. ADAMS: Objection to form. 14 THE WITNESS: I don't think that's 15 insurmountable. 16 BY MR. COX: 17 Q. But the answer to my question is yes, 18 correct? 19 MR. ADAMS: Objection to form. 20 THE WITNESS: That all that would need to 21 be done and we could come up to an agreed upon price, 22 yes. 23 BY MR. COX: 24 Q. But as we sit here today you still haven't 25 done that work and have an agreed upon price?	Page 44 1 deposition exhibits, so we had the benefit of those. 2 Under the Rule 30, with respect to most of the 3 exhibits that you sent us we've never seen before, and 4 so we're reserving our right if you want to ask him 5 about any of those non-previously designated exhibits 6 to take a break so we can go off the record and 7 discuss those exhibits as the rule allows. I'm not 8 saying we will, but -- 9 MR. MABE: You know they did come from your 10 production except for ones that I'm going to show Mr. 11 Polite presently, but we can deal with that. 12 MR. ADAMS: John, just so we're clear, you 13 understand the rule says unless you give me your 14 exhibits two days in advance I have the right to 15 suspend the deposition to talk to the witness. 16 MR. MABE: Yeah, I understand that. So do 17 you want to talk to him now about the exhibits that I 18 sent you and then we'll reconvene in a few minutes? 19 MR. ADAMS: No. I think we're -- 20 MR. MABE: Why don't we do that. Rather 21 than me asking a question and you taking a break to 22 talk to him, why don't you go ahead and talk to him 23 now about those exhibits that I've sent you. 24 MR. COX: Wait a minute now. I don't think 25 anybody has ever interpreted that rule in South
Page 43 1 A. I haven't been afforded the luxury of doing 2 that work. I don't know their costs. 3 Q. And to your knowledge Eastwood's never 4 asked for it? 5 A. That's correct. And it wasn't also given 6 to us either. 7 Q. Okay. I got it. 8 MR. COX: Okay. I think that's all I have. 9 Mr. Mabe? 10 THE WITNESS: Thank you, Mr. Cox. 11 DIRECT EXAMINATION 12 BY MR. MABE: 13 Q. Good morning, Mr. Polite. 14 A. Hey. Good morning, Mr. Mabe. 15 Are there any exhibits printed for this? 16 Q. And there might be a couple others based on 17 what you've testified to, but you've got some there 18 that I want to ask you about. 19 MR. COX: And I'm sorry, Mr. Polite. You 20 were more courteous than I was. Thank you. Thank you 21 for your time this morning. 22 THE WITNESS: Okay. Thank you. I am 23 polite, too, Stephen. 24 MR. ADAMS: John, before you get started, 25 all the exhibits that Stephen was using were prior	Page 45 1 Carolina to mean you get a chance to talk to your own 2 witness about your own documents. 3 MR. ADAMS: Sure. I mean, that's the way I 4 understand it -- well, I'll let Ward weigh in on this, 5 but I understand the way the rule reads is -- it 6 doesn't refer to the source it just says exhibits. 7 MR. COX: Well, you and I may have 8 different views on that. I've had this fight at a 9 number of depositions where I said, look, you don't 10 get time to talk about your own documents with your 11 witness. Now, maybe it's all a moot point because I 12 don't have any documents to talk about, and it sounds 13 like, Jimmy, you may not need the time, but I do want 14 to make it clear for the record that I don't believe 15 the rule affords you the chance to talk to your 16 witness about your own documents. You presume to know 17 what your own documents say. Just putting that on the 18 record, but, go ahead, John, this is now your 19 deposition, so you handle it as you want. 20 MR. ADAMS: Well, Rule 30(J)(8) says 21 deposing counsel shall provide to opposing counsel a 22 copy of all documents shown to the witness during the 23 deposition either before the deposition begins or 24 contemporaneously with the showing of each document to 25 the witness. If the documents are provided or

Page 46 1 otherwise identified at least two business days before 2 the deposition, then the witness and the witness's 3 counsel do not have the right to discuss the documents 4 privately before the witness answers questions about 5 them. If the documents have not been so provided or 6 identified, then counsel and the witness may have a 7 reasonable amount of time to privately discuss the 8 documents before the witness answers questions 9 concerning the documents. 10 I mean, I read that to be documents. It doesn't 11 say whose documents. It just says documents. 12 MR. COX: The key word is provided. If you 13 have the documents and they have been provided to you 14 they're your documents. But we don't need to have a 15 law school debate about this. It may not even be a 16 big point. 17 MR. ADAMS: Okay. But, Stephen, I want to 18 understand the rule. Because wouldn't that mean then 19 that as long as a document has been produced in 20 discovery by either side this rule -- you don't get 21 that opportunity, but doesn't that basically mean -- 22 MR. COX: Correct. That's exactly right. 23 The whole purpose of the rule was to prevent an 24 ambush, to prevent an ambush of documents you've never 25 seen before and don't know anything about. It's not	Page 48 1 throughout all the discussions that I did on my own, 2 you know, reading and discovery, yes. 3 Q. Was there an agreement in principle that 4 Eastwood is going to share a profit and loss on both 5 River Falls and Brooks Creek? 6 MR. ADAMS: Objection to form. 7 THE WITNESS: We were not anticipating 8 sharing the profit with GreenHawk. We were going to 9 make sure they made a profit on their investment. 10 BY MR. MABE: 11 Q. If you assure that GreenHawk makes a profit 12 on River Falls, are you prepared -- is Eastwood 13 prepared to put money into the transaction so that GHD 14 River Falls will make a profit? 15 MR. ADAMS: Well, objection to form. I 16 think that's outside of the scope of the notice. 17 BY MR. MABE: 18 Q. I've asked about partnership, it's one of 19 the notices, and he's testified that there's a 20 partnership, and my question is, does the partnership 21 require Eastwood to reimburse GreenHawk -- GHD River 22 Falls -- to assure that they don't lose money on River 23 Falls? 24 A. There was no guarantee that we would have 25 to add more money to it. It was just based on the lot
Page 47 1 meant to say you get an extra chance to talk to your 2 witness about their own documents. But we don't need 3 to have an extended discussion about it if John is not 4 talking about a lot of documents. I just want to make 5 my position clear on the record. I've had this debate 6 many times. 7 MR. ADAMS: Okay. 8 BY MR. MABE: 9 Q. Mr. Polite, I'd like to ask you some 10 questions about a couple things that you said on your 11 examination by Mr. Cox. Before the break we didn't 12 hear the word partnership. We heard that after the 13 break. That's my recollection. I'd like for you to 14 tell me what partnership you were referring to. 15 A. The partnership between GreenHawk and 16 Eastwood which kind of started in 2013 when the 17 assignment was done originally and how both parties 18 worked together in getting the property prepared for, 19 you know, individual lots. 20 Q. There was no formal document that sets 21 forth any terms of a partnership, was there? 22 A. That's correct. There's no specific -- 23 Q. Was there an agreement to share a profit 24 and loss on this? 25 A. There was an agreement in principle	Page 49 1 price agreed upon. 2 Q. So you would pay enough money to get the 3 land back in order for GreenHawk to have no loss on 4 that River Falls project; is that your testimony? 5 MR. ADAMS: Objection to form. 6 BY MR. MABE: 7 Q. Is that Eastwood's position? 8 A. Eastwood's position from the beginning was 9 that when they showed us their cost and their pro 10 forma that we would target -- or that they would 11 target their 20 percent IRR and that subsequently the 12 lot price would fall in line with that. 13 Q. Okay. So, on River Falls -- let me back up 14 a little bit on this. You've read the third amended 15 complaint, right? 16 A. I have. 17 Q. You were asked in your first deposition 18 about the third amended complaint and had you seen it 19 before it was filed, and I think your testimony was no 20 you hadn't but you had reviewed it after it was filed. 21 Right? 22 A. Correct. 23 Q. Now, did you look at the original complaint 24 before it was filed? 25 A. Not -- no.

Page 50 1 Q. So did you look at the first amended 2 complaint before it was filed? 3 A. I can't recall. 4 Q. Do you recall if you looked at the second 5 amended complaint before it was filed? 6 A. Not specifically, John. I apologize. 7 Q. You don't have to apologize to me. I think 8 it's clear that your testimony is that you didn't look 9 at these pleadings before they were filed. So be it. 10 MR. ADAMS: John, I just want to make sure. 11 Are you asking him in his individual capacity or his 12 corporate capacity? 13 MR. MABE: I'm asking -- well, that's a 14 good question. He was asked in his individual 15 capacity. I don't think -- I don't think that he 16 would -- well, let me ask -- let me clarify that 17 question. 18 BY MR. MABE: 19 Q. Did you review the third amended complaint 20 in preparation for this deposition on behalf of the 21 company? 22 A. Yes. The third amended complaint we did 23 review. Yes. Yes, sir. 24 Q. And you're aware that in the third amended 25 complaint there's an allegation that River Falls and	Page 51 1 Brooks Creek is all one development as far as Eastwood 2 is concerned; is that correct? 3 A. They were both done together originally, 4 yes. 5 Q. And, so, if there was a partnership, as you 6 have averred in your deposition, then the partnership 7 would incorporate the profits and losses on both 8 Brooks Creek and River Falls; is that correct? 9 A. That's correct. 10 Q. So, Eastwood -- it's your understanding 11 that Eastwood's position in this litigation is that 12 it's entitled to purchase lots in Brooks Creek at a 13 price at which the GreenHawk entity, GHD Brooks Creek, 14 will receive all of its costs plus something like a 15 20 percent return? 16 MR. ADAMS: Objection to form. 17 BY MR. MABE: 18 Q. That's your testimony? 19 A. Yes, sir. That was the formula. 20 Q. And is it your testimony that Eastwood is 21 entitled to purchase the River Falls property at all 22 of GHD River Falls' costs plus a reasonable rate of 23 return such as 20 percent? 24 A. That has been my understanding, yes. 25 Q. Now, how did you get that understanding?	Page 52 1 A. By reviewing the documents prior to my 2 employment of Eastwood because this goes back so far, 3 the 2013. 4 Q. Did you review those documents before your 5 testimony as an individual? 6 MR. ADAMS: I'm going to object, Mr. Mabe. 7 That's outside of the scope of this notice. He's here 8 to testify as the corporate representative. This is 9 not an opportunity to go back and redo the prior 10 personal deposition. 11 THE WITNESS: I reviewed those documents 12 prior to this deposition because they were made 13 available to me. 14 BY MR. MABE: 15 Q. Now, those documents that you're referring 16 to, what can you recall specifically that says that 17 Eastwood is going to buy back these properties, either 18 Brooks Creek or River Falls -- let me rephrase that. 19 What document did you look at that says that 20 Eastwood would purchase lots in Brooks Creek at the 21 cost incurred by GHD Brooks Creek plus a profit of 22 approximately 20 percent? 23 A. I apologize and won't be specific about 24 Mr. Briner's testimony, but in his testimony -- I 25 don't know what page is why I'm not being specific --	Page 53 1 it definitely states that was the arrangement, and 2 also Mr. Dority's interpretation of it as well. 3 Q. It was the intention of GHD Brooks Creek to 4 sell the lots for a 20 percent return? 5 A. That was what I understood from those 6 depositions. 7 Q. Now, you were asked a moment ago about an 8 exhibit to the -- I think it was Exhibit No. 107 [sic] 9 which is the draft agreement, which has been referred 10 to as the Halloween draft, but the contract that was 11 sent on October 31st, 2018. Do you recall that? 12 A. I do. Yes. 13 Q. And that proposes a firm price of \$76,000 14 per lot for Brooks Creek? 15 A. That's in that exhibit. 16 MR. ADAMS: Objection to form. 17 THE WITNESS: That was in that exhibit. 18 BY MR. MABE: 19 Q. And you've testified that there was just no 20 response to that? 21 A. No response from Eastwood. Correct. 22 Q. No requests for any backup documents, no 23 request for any costs information associated with that 24 price? 25 A. That was my testimony, yes.

Page 54 1 Q. Now, do you recall whether Eastwood 2 requested that the asking price of \$78,000 per lot be 3 reduced to \$76,000? 4 A. There was a request for a reduction but not 5 to a specific number. 6 Q. And your request for a reduction was 7 because of impact fees; is that right? 8 A. That's correct. 9 Q. Now, you testified a moment ago about the 10 impact fees. Those are on top of the lot cost; isn't 11 that correct? 12 MR. ADAMS: Objection to form. 13 THE WITNESS: It's a part of the costs, 14 yes, of building. 15 BY MR. MABE: 16 Q. When you say it's a part of the cost, are 17 you saying that -- well, what do you mean when you say 18 it's a part of the cost? 19 A. It becomes a part of the cost of the 20 overall package from the lot to the house to the sale 21 price. It is a cost of that. 22 Q. Is it a cost to be shared under your 23 understanding of the pricing arrangement between the 24 parties? 25 MR. ADAMS: Objection to form.	Page 56 1 Q. And he testified earlier today that there 2 was nothing in his previous deposition that he wanted 3 to change. Is that correct? 4 A. That's correct. 5 MR. ADAMS: That was actually -- no. I 6 object. That was part of the continuation of his 7 personal deposition. That question was not asked and 8 not appropriate to ask in the 30(b)(6). 9 BY MR. MABE: 10 Q. In the preparation for this deposition, Mr. 11 Polite, you reviewed your testimony from your prior 12 personal deposition, didn't you? 13 A. I did. 14 Q. And in reviewing that did you read that the 15 impact fees that were being charged on the Brooks 16 Creek lots would be in excess of or in addition to the 17 lot price? 18 A. That is a -- yes. It's an additional cost. 19 Q. So is it correct that Eastwood would pay 20 the lot cost -- pay the cost of the lot, and then, as 21 it built, at some point in the process of building a 22 house and selling it to a homeowner Eastwood would 23 incur a fee for the schools impact; is that correct? 24 MR. ADAMS: Objection to form. 25 THE WITNESS: There is an additional cost
Page 55 1 THE WITNESS: I still don't know who would 2 be paying that and the timing of it. 3 BY MR. MABE: 4 Q. Are you changing your previous testimony in 5 which you stated that the cost of the impact fees 6 would be incurred at the building permit stage? 7 A. No. I think, if I recall my testimony, was 8 I did not know the timing of when those were due. 9 Q. But that was in excess -- didn't you 10 testify that that was in excess of the lot price 11 itself? 12 MR. ADAMS: I'm going to object again, Mr. 13 Mabe. I don't believe it's appropriate to use a 14 deposition of him in his individual capacity to try to 15 impeach him, and he's here to testify on behalf of the 16 company. If you want to ask him questions about the 17 company's position, I think that's fine, but we're not 18 here for you to ask him questions about something he 19 testified to a couple months ago as an individual. I 20 believe that's not proper, and I object. 21 MR. MABE: Well, he's the vice president 22 for land for the company. 23 BY MR. MABE: 24 Q. Right, Mr. Polite? 25 A. That's my title. Yes, sir.	Page 57 1 that needs to be paid to the school districts based on 2 the impact fees. 3 BY MR. MABE: 4 Q. I'm going to see if I can -- I'm going to 5 see if I can share my screen here. Okay. Are you 6 seeing the deposition page 175 on the screen? 7 A. It's very small. 8 Q. I'll zoom in. I just want to make sure you 9 can see it, and I want to show you that this is the 10 deposition of you, Mr. Joseph Polite, on May the 4th, 11 2021, and I'm going to refer you to page 175, and I'm 12 going to ask you to look at lines 10 through 24. You 13 testified that the builder pays -- the builder pays 14 the impact fee, right? 15 MR. ADAMS: And, again, I object. 16 BY MR. MABE: 17 Q. Let us show you where we're talking about 18 here. 19 MR. ADAMS: I object to this line of 20 questioning on the grounds that it's outside of the 21 scope of the 30(b)(6). You're trying to impeach -- in 22 a 30(b)(6) you're trying to use the deposition. 23 MR. MABE: I'm trying to clarify what his 24 testimony is on behalf of the company. 25 MR. ADAMS: Well, then, ask him a question.

Page 58 1 I don't believe it's appropriate in a 30(b)(6) to use 2 a prior individual deposition. 3 BY MR. MABE: 4 Q. So, Mr. Polite, is it correct that Eastwood 5 would incur the impact fee, and, as asked in this 6 question on line 14, do you find a way to pass that 7 impact fee on to the home buyer? 8 MR. ADAMS: Objection to form. 9 BY MR. MABE: 10 Q. Is that what Eastwood's understanding of 11 the impact fee was? 12 MR. ADAMS: Objection to form. That's 13 outside of the scope of the notice. There's no 14 reference to the impact fees in the notice. 15 MR. MABE: I understand that, but there are 16 references to the allegation that there's a 17 partnership, and that's what we're talking about. I'm 18 asking -- 19 BY MR. MABE: 20 Q. Mr. Polite, do you contend now that the 21 impact fee was something that the developer GHD Brooks 22 Creek was supposed to share in paying? 23 MR. ADAMS: Objection to the form. 24 THE WITNESS: If I read -- I'm just going 25 to go by what I'm reading, and you're asking a	Page 60 1 I'm asking you did you review the allegation that 2 Eastwood makes that they have a history of dealing 3 with GreenHawk entities on a number of successful 4 projects? 5 A. Yes. 6 Q. Were any of those partnerships? 7 MR. ADAMS: John, can you tell me what 8 notice number this question goes to? 9 MR. MABE: The allegation that there is -- 10 excuse me. The topic of the allegation that there's a 11 partnership. 12 MR. ADAMS: Which one is that? 13 MR. MABE: Number 6. 14 MR. ADAMS: That refers specifically to 15 Brooks Creek or River Falls. 16 MR. MABE: It refers to both. 17 MR. ADAMS: Right. That's what I'm saying. 18 One or the other. It doesn't refer to any other 19 potential project. So if you want to ask him about 20 the joint venture as it related to Brooks Creek or 21 River Falls, he's prepared to do that. He was not 22 asked to prepare with respect to any other specific 23 project. 24 BY MR. MABE: 25 Q. The allegation that there was a continuing
Page 59 1 question if it was the home builder, and I think the 2 ultimate is always that the impact fee is included in 3 the price of the house, and that was my testimony, and 4 that's how it's absorbed. I don't think I was ever 5 stating it was anyone's real expense, the home 6 builder, because we weren't sure of the timing of when 7 that was going to be paid or whose expense it would 8 be. 9 BY MR. MABE: 10 Q. I want to ask you some more about this 11 partnership allegation, Mr. Polite. Did you review 12 paragraph 6 and 7 of the third amended complaint? I 13 can show those to you, but the allegations that 14 Eastwood entities and GreenHawk entities had worked in 15 cooperation on other subdivisions or other 16 developments. Did you review that? 17 A. May I take a look at that -- 18 Q. Sure. 19 A. -- to be specific on a certain paragraph? 20 I don't have that at my fingertips. 21 Q. It's Exhibit 1 to the -- 22 A. Otis is helping me out. Hang on, please. 23 Paragraph 9 or -- I'm sorry. I have it in front of 24 me, John. Thank you. 25 Q. Okay. I don't have it on the screen, but	Page 61 1 arrangement between the parties is a part of your 2 allegation, as I understand it, that there was a 3 partnership in this instance. Now, are you not 4 taking -- is Eastwood not contending that the 5 partnership arose out of a course of dealing? Because 6 that's what the allegation is. 7 MR. ADAMS: Objection to the form. 8 MR. MABE: No. I'm -- okay. 9 BY MR. MABE: 10 Q. Mr. Polite, the allegation is that there 11 was a course of dealing which created a partnership or 12 a joint venture -- it's unclear which -- between the 13 parties, and my question to you is in which of the 14 prior developments they worked on was there a 15 partnership or a joint venture? 16 MR. ADAMS: Objection to the form. Outside 17 of the scope. 18 THE WITNESS: Yeah, I'm going to speak just 19 to the Brooks Creek/River Falls, that it was all -- 20 BY MR. MABE: 21 Q. I'm asking specifically about -- 22 MR. ADAMS: John, let him answer. You can 23 follow up, but he's entitled -- you stopped. You 24 asked a question. He's entitled to answer the 25 question. You can follow up after he answers the

Page 62 1 question. 2 THE WITNESS: And the reason I'm gonna 3 answer it, because I'm very familiar with how the 4 Brooks Creek and River Falls structure was about this, 5 how the money was spent early, how assigning the 6 contract at cost and also the man hours that Eastwood 7 put into the Brooks Creek and River Falls because I 8 have firsthand knowledge of that. The company did a 9 lot on behalf of GreenHawk to make that an ongoing 10 interest. 11 To your question, I don't have that knowledge on 12 these past deals and did not look into that. 13 BY MR. MABE: 14 Q. So you're not prepared to testify regarding 15 any previous agreements between the parties -- between 16 an Eastwood entity and a GreenHawk entity; is that 17 you're what saying? 18 A. Correct. I have not done any prep on past 19 dealings outside of these two. 20 Q. So is it your testimony that the position 21 of Eastwood is that any prior course of dealing or 22 previous business arrangements between Eastwood and 23 GreenHawk has no bearing on the existence of a 24 partnership or a joint venture or some cost sharing 25 arrangement in River Falls or in Brooks Creek?	Page 64 1 legal conclusion and it's outside the scope. 2 BY MR. MABE: 3 Q. You can answer the question. 4 A. I'm going to go back to my original answer 5 that there was a history of successful dealings with 6 the two companies. 7 Q. And is that part of the basis for the claim 8 that there's a partnership or a joint venture in 9 Brooks Creek? 10 MR. ADAMS: Objection again. Outside the 11 scope. 12 THE WITNESS: I would say that it made it 13 easier to enter into that partnership based on the 14 history that Brooks Creek and River Falls would be a 15 successful partnership as well. 16 BY MR. MABE: 17 Q. Okay. Now I'm going to ask the same 18 question with respect to River Falls. Did the prior 19 dealings between the GreenHawk entity and the Eastwood 20 entity result in or contribute to the creation of a 21 partnership or joint venture on River Falls? 22 MR. ADAMS: Same objection. 23 THE WITNESS: Again, based on what I saw at 24 River Falls and Brooks Creek that this was structured 25 similar to those prior deals.
Page 63 1 MR. ADAMS: Objection to the form of the 2 question. 3 THE WITNESS: I'm gonna -- 4 MR. ADAMS: Outside the scope. 5 THE WITNESS: Outside the scope. I'm going 6 to qualify it one more time that I know more about the 7 Brooks Springs arrangements that I can testify to, 8 John, and I don't have all of those other ones that 9 were done prior to it so I can't testify to that. 10 BY MR. MABE: 11 Q. I understand, I think, what you're saying, 12 but my question is this: Does Eastwood Construction 13 Partners contend that a prior course of dealing made 14 the Brooks Creek or the River Falls into a 15 partnership? 16 A. I would say -- 17 MR. ADAMS: Same objection. 18 THE WITNESS: Same objection, but I would 19 say that there was definitely a history between the 20 two companies of having successful deals together. 21 BY MR. MABE: 22 Q. Well, successful deals together is 23 different from a partnership. You can have successful 24 deals without having a partnership, can't you? 25 MR. ADAMS: Objection. That calls for a	Page 65 1 BY MR. MABE: 2 Q. Was there any prior deal, to your 3 knowledge, in which there was an agreement to share 4 the net profit or loss on the project? 5 MR. ADAMS: Objection to form. Outside the 6 scope. 7 THE WITNESS: Not to my knowledge. 8 MR. COX: One second, guys. John, you 9 mentioned No. 6. There's also topic No. 7 which says 10 all terms of any partnership or land banking 11 arrangement alleged by the plaintiff in their ninth 12 cause of action. 13 MR. MABE: I pointed that out. I mentioned 14 No. 7 as well. 15 MR. COX: And the ninth cause of action 16 incorporates all of the allegations of the complaint 17 that talk about a history of carrying on business, so 18 he should be prepared to testify today under this 19 notice topic No. 7 as to the entire history and course 20 of dealing that Eastwood contends support the idea 21 that there's a partnership. I disagree with the idea 22 that it's limited to River Falls and Brooks Creek. It 23 incorporates the whole complaint. If I have any 24 redirect I'm going to be proceeding on that 25 understanding.

Page 66 1 MR. ADAMS: Well, Stephen, when you get 2 another chance, if you get another chance, we'll 3 address your questions when you ask them. That's not 4 the way we read item No. 7. 5 BY MR. MABE: 6 Q. So, Mr. Polite, is it your understanding 7 that the alleged partnership which has -- excuse me. 8 Is it your understanding that the alleged partnership 9 between the Eastwood entity and the GreenHawk entity 10 was easier to arrange because of successful prior 11 dealings between these parties? 12 MR. ADAMS: Objection to form. 13 THE WITNESS: There was a -- yes. Because 14 of a history. Yes. 15 BY MR. MABE: 16 Q. And was there ever a prior history in which 17 there was a partnership between a GreenHawk entity and 18 an Eastwood entity on a prior development? 19 MR. ADAMS: Objection to form. 20 MR. BRADLEY: Same objection. 21 THE WITNESS: Again, if the structure was 22 the same as Brooks Springs and River Falls, then, yes, 23 there was a partnership of those parties, if it was. 24 BY MR. MABE: 25 Q. If it was structured the same. You mean --	Page 68 1 one. You mentioned those as previous instances, but I 2 think you testified then that you weren't aware of the 3 background history of how those developments got 4 started. 5 A. The same is true today. Yes. 6 Q. Is that the same testimony today? 7 A. Yes, sir. 8 Q. Though the company has not prepared you as 9 a witness to testify regarding the allegations of a 10 course of dealing or partnership as alleged in 11 whatever that paragraph is, paragraph 9? 12 MR. ADAMS: Objection to form. 13 BY MR. MABE: 14 Q. Is that correct? 15 A. Whether it was the company that didn't 16 prepare me or anyone, I worked and focused on the 17 Brooks Springs/River Falls projects. I did not look 18 into the history since my personal testimony May 4th 19 on Kanata Mills and Lindley Estates. 20 Q. All right. So, to be clear, the company is 21 not prepared to testify regarding any previous course 22 of dealing which it contends created a partnership or 23 a joint venture between the parties; is that correct? 24 MR. ADAMS: John, I mean, I'm going to be 25 clear because I'm responsible for designating the
Page 67 1 what do you mean when you say if the structure was the 2 same? 3 A. Because I don't have all of the background 4 on those historic communities. 5 Q. Which community, if any, can you identify 6 in which the Eastwood entity tied up land, got a 7 contract on land, and then prepared all the 8 development that they wanted, prepared the 9 entitlements and got a design for a plat and then 10 flipped it to a GreenHawk entity to purchase the land 11 and build the development? 12 MR. ADAMS: Same objection. 13 BY MR. MABE: 14 Q. Do you know of any previous instance where 15 that happened? 16 A. Again, specifically I do not know. I just 17 know the projects by name, John. I don't know how 18 they were -- how they came about. How they manifest. 19 Q. And that's consistent with your testimony 20 that you gave as an individual, isn't it? You were 21 asked -- 22 A. It would be. Yes. 23 Q. You were asked about -- you mentioned a 24 couple of subdivisions. Kanata being one in Wake 25 County and Lindley in Guilford County being another	Page 69 1 witness as counsel to the companies, and Mr. Polite is 2 prepared to testify to everything on the list there. 3 We understood that No. 7 relates to the term land 4 banking arrangement in the ninth cause of action. 5 There's no reference to partnership or any other prior 6 conduct on that ninth cause of action, as I understand 7 it. And, so, you know, we did this with the 8 understanding that the issues in this case are Brooks 9 Creek and River Falls. If you want us to get a new 10 witness, or you want Mr. Polite to go get educated on 11 something other than what we understood was in No. 7, 12 we're happy to do that, but I don't think it's useful 13 for anybody's time to ask this witness a bunch of 14 things that he already told you he's not prepared to 15 talk to you about because he didn't understand he had 16 to be prepared on. 17 MR. MABE: Okay. I'm prepared to move on 18 if he's not prepared to talk about any previous deal, 19 but, you know, the reason -- the thing I want to get 20 clear on the record is that the company has designated 21 someone who is not prepared to talk about any of the 22 allegations of land banking or partnership on any 23 prior deals. Can we just have that understanding that 24 that's the case? 25 MR. ADAMS: Everything in the ninth cause

Page 70 1 of action relates to River Falls and Brooks Creek, and 2 so that's the way we read No. 7. If you want to send 3 another notice that's broader than that we'll provide 4 a witness to testify about something different 5 assuming we don't otherwise have any objections to 6 doing so, which we probably won't, but I think it's -- 7 the ninth cause of action relates specifically to 8 these two subdivisions, John. I'm not trying to be 9 difficult, but I don't want there to be some 10 suggestion that we didn't do our job. We did our job, 11 and we got Mr. Polite prepared, and he got himself 12 prepared to testify about what was in the notice as we 13 understood what was in the notice. If we have a 14 disagreement about the notice, that's a disagreement 15 about counsel. That's not a failure to prepare. 16 MR. COX: Well, I would just reiterate the 17 ninth cause of action incorporates all prior 18 allegations of the complaint, but I think you're 19 right, Jimmy, we do have a disagreement about the 20 scope of the notice, and it doesn't make sense to sort 21 of make Mr. Polite a party to that. 22 MR. MABE: I just want to get clear that I 23 don't need to ask him any questions about any previous 24 deals because he hasn't prepared to talk about them 25 and he doesn't know more than he did when he testified Page 71 1 as an individual. 2 MR. ADAMS: Yeah, I thought I made that 3 clear about 30 minutes ago. 4 MR. MABE: Okay. I think it was a lot less 5 than that, and I think it was a lot less clear, but 6 let's move on. 7 BY MR. MABE: 8 Q. Mr. Polite, on the River Falls deal, what 9 was the arrangement between the GreenHawk entity and 10 Eastwood at the outset of the River Falls assignment 11 of the right to purchase that land? 12 A. The structure, as I reviewed it, since it 13 was done, you know, prior to my employment, but what 14 the company was looking to do was exactly the same 15 where we would have GreenHawk purchase the property, 16 and then in the course of working together on 17 entitlements and permitting, and also a little bit of 18 the overseeing of the development based on our 19 proximity to the project being in Charlotte and 20 GreenHawk being in Raleigh, to oversee that, and then 21 in return Eastwood would buy lots back from that 22 entity when they were ready for platting and 23 permitting homes. 24 Q. After the plat was recorded; is that what 25 you meant?	Page 72 1 A. That's when we would -- that's when we 2 purchase the lots. Yes, sir. 3 Q. Right. And what was the agreement on the 4 front end regarding pricing for the lots? 5 A. Again, that was similar to Brooks Springs 6 where it would be a cost plus a target of 20 percent 7 IRR to set the lot price. 8 Q. Did Eastwood obtain entitlements on the 9 project on River Falls? 10 MR. ADAMS: Objection to form. 11 THE WITNESS: It would have been GreenHawk 12 actually getting those permits since they were the 13 owner of the land. 14 BY MR. MABE: 15 Q. And are you familiar with Mr. Joe -- well, 16 you know who Joe Dority is, right? And you mentioned 17 a moment ago there might be some overseeing of 18 development by Eastwood because of proximity to the 19 project? 20 A. That's correct. And I do know Joe Dority. 21 Q. And did Eastwood undertake to review the 22 progress on the work by the construction contractor 23 who was building the subdivision improvements? 24 MR. ADAMS: Objection to form. 25 THE WITNESS: Yeah, there was never Page 73 1 anything in writing, but that's what he did at that 2 time. 3 BY MR. MABE: 4 Q. So Eastwood undertook to review the work 5 done by the general contractor for the subdivision 6 improvements; is that correct? 7 MR. ADAMS: Objection to form. 8 BY MR. MABE: 9 Q. On River Falls. 10 A. When they were in the grading operation it 11 was understood that Mr. Dority was going by there time 12 to time. 13 Q. Was Mr. Dority forwarding pay applications 14 to GreenHawk for payment? 15 MR. ADAMS: Objection to form. 16 THE WITNESS: Yeah, I don't know that 17 specifically, John. 18 BY MR. MABE: 19 Q. Did you read his deposition? 20 A. I read over it. Yes, sir. 21 Q. You referred to having read Mr. Dority's 22 deposition. That's why I asked that question. Do you 23 know anything otherwise, then, that Mr. Dority 24 forwarded pay applications from the general contractor 25 to GHD River Falls?

Page 74 1 A. Just based on what I read that there were a 2 couple that he did, yes. 3 Q. A couple? 4 A. I mean, maybe there were pay apps. I'm 5 not, you know -- again, I don't remember verbatim 6 which pay app numbers. I believe there were a series 7 of numbers. I'm not sure -- 8 Q. Right. I'm not asking you -- I understand 9 that. I'm not asking you to tell me verbatim what was 10 said or when. I'm just asking you is it Eastwood's 11 understanding or position that they were cooperating 12 in getting the construction done? 13 A. Yes. 14 Q. And is it Eastwood's position that as part 15 of that Mr. Dority went out and looked at the project 16 to check on its progress because of his proximity to 17 the site? 18 MR. ADAMS: Objection to form. 19 THE WITNESS: Based on his testimony, yes. 20 BY MR. MABE: 21 Q. And as part of that reviewing the site he 22 also sent pay applications from the general contractor 23 to GHD River Falls for payment, didn't he? 24 A. Again, not specific -- I don't know which 25 ones, and then also I'm not sure that they weren't	Page 76 1 printed ones? 2 Q. It's one of those printed ones. I've got 3 too many of them open apparently. 4 A. That's fine. I just don't have numbers on 5 mine. I just have the printed ones. So if you could 6 be specific of what the header is. 7 Q. This is ECP 1186 Charlotte development 8 [sic] land positions. Do you see -- 9 A. Yeah. I have it in black and white. Yes. 10 Q. All right. So, Charlotte division land 11 positions -- and I think this may have been identified 12 in a previous deposition, but the thing I want to ask 13 you about in looking at -- well, can you tell us what 14 the Charlotte division land position status report is 15 and what it -- excuse me -- what it is used for by the 16 company? 17 A. It is used as pretty much the definition. 18 It's just where each project lies in its development 19 or purchasing of lots or building of homes and what 20 the status of those outstanding projects are. 21 Q. Okay. Now, I think we may have asked 22 previously about the last column on the right where it 23 says you need a contract on River Falls and Brooks 24 Springs. Do you see that? 25 A. Yes. They both say need contracts.
Page 75 1 being copied directly as well. I couldn't tell if 2 GreenHawk was being copied at the same time. There 3 was no discussion about that. 4 Q. Okay. Mr. Dority was aware of the state of 5 the construction on the project because he had been 6 going out there looking at it, correct? 7 MR. ADAMS: Objection to form. What 8 Mr. Dority was aware of is clearly outside the scope 9 of this notice. 10 BY MR. MABE: 11 Q. Eastwood was aware of the state of the 12 construction on the River Falls project because 13 Mr. Dority was going out on its behalf and checking on 14 the progress of construction, isn't that correct? 15 MR. ADAMS: Objection to form. 16 THE WITNESS: As the company, I would -- 17 yes, Eastwood would have been informed of what was 18 going on or knowledgeable to Mr. Dority, but at that 19 point he was the company. 20 (EXHIBIT 108, ECP 0001186, was marked for 21 identification.) 22 BY MR. MABE: 23 Q. Okay. I want to share with you a document 24 that I'm going to identify as No. 108. 25 A. Which one is it? Is it one of these	Page 77 1 Q. It's my understanding that you contend that 2 you had a contract under which you were going to buy 3 these on a cost-plus basis. Why did the report say 4 that you need a contract? 5 MR. ADAMS: Objection to form. 6 THE WITNESS: Yeah, I'd say we had an 7 agreement of the form of how we were going to arrive 8 to the lot price. 9 BY MR. MABE: 10 Q. Sort of an agreement in principle of what 11 you might -- of how you were going to calculate a 12 contract price? 13 A. I've said that before. Agreement in 14 principle. Yes, sir. 15 Q. Okay. Now, this status report says that 16 lots should be available, timeline to finish lots. Do 17 you see that column? 18 A. I do. Yes, sir. 19 Q. So the spring of 2017 you were expecting to 20 have finished lots, correct? 21 A. That was the expectation when this was 22 written. 23 Q. And are you aware that Mr. Dority was going 24 to the site and looking at the progress of 25 construction during 2016? Is the company aware of

Page 78 1 that? 2 A. Again, I don't have specific knowledge of 3 any of his visits. It was understood he was. 4 MR. ADAMS: Again, objection. This is I 5 believe outside the scope. 6 MR. MABE: I'm asking you about this 7 alleged partnership arrangement between the parties on 8 River Falls. So how is that -- Jimmy, how is that not 9 part of the scope? 10 MR. ADAMS: I'm just telling you it's my 11 view based on the question that the questions you're 12 asking are outside of the scope of the notice. I'm 13 just preserving my objection so I don't have to -- 14 MR. MABE: Okay. 15 THE WITNESS: Yeah, again, based on 16 testimony, he was visiting the site. 17 MR. ADAMS: Joe, there's no question 18 pending right now. 19 THE WITNESS: Okay. Sorry. 20 (EXHIBIT 109, ECP 0001201, was marked for 21 identification.) 22 BY MR. MABE: 23 Q. Mr. Polite, I'm going to try to share 24 another screen if I can. If you'll give me a moment. 25 I have a lot of these open. I'll close a few of them.	Page 80 1 the first item River Falls. 2 A. Yes, sir. 3 Q. It says rough grading to start after 4 easement for forced main is granted. The project is 5 stalled out. Also, we do not have a buy back contract 6 with GreenHawk. Do you see that? 7 A. I do. 8 Q. So is it the testimony of the company that 9 the status in May 2017 was that this project was 10 stalled out? 11 A. Yes. 12 Q. And it would appear from this that the 13 grading hadn't started yet; is that correct? 14 MR. ADAMS: Objection to form. 15 BY MR. MABE: 16 Q. See where it says grading specs submitted 17 to Joe Polite, rough grading to start after easement 18 for forced main? 19 A. Yes. I see that. 20 Q. So does the company have any other way of 21 determining whether the project was partially 22 constructed at that point? 23 A. I don't recall exactly May '17, John, of 24 what the state of the project was. I do know that it 25 had to stop.
Page 79 1 That might make it work better. 2 I'm trying to share as Exhibit 109 a document that 3 is an email from Joshua Peak dated May 25, 2017. Do 4 you see that? 5 A. Yes, sir. 6 Q. You've been asked previously -- this is an 7 earlier exhibit. 8 MR. ADAMS: John, can you give me the Bates 9 number? I've got these pulled up. So I can -- 10 MR. MABE: Yeah. It's ECP 1201. 11 MR. ADAMS: Got it. Thank you. 12 BY MR. MABE: 13 Q. So, ECP 1201. Can you tell us what this 14 document is, please? 15 A. This looks to be the current timelines for 16 Eastwood Development. Just a status report on various 17 communities under development. 18 Q. So do you recall just a moment ago I was 19 asking you about when lots were supposed to be 20 finished and available for purchase by -- 21 A. Yes, sir. 22 Q. -- Eastwood in the spring of 2017, right? 23 A. That's correct. 24 Q. I'm going to ask you now to look at the 25 upcoming communities and timelines, specifically at	Page 81 1 Q. So it would appear that GreenHawk was not 2 building any subdivision lots for Eastwood at least as 3 of May 2017 at River Falls, correct? It was stalled? 4 A. It was stalled. 5 Q. When you say stalled -- 6 A. I mean, that means they couldn't finish 7 what they started, and they -- you know, to get us 8 those lots. 9 Q. So your agreement with Eastwood was -- 10 excuse me. Your agreement with the GreenHawk entity 11 was that you were going to be able to start getting 12 lots in the spring of 2017, wasn't it? 13 MR. ADAMS: Objection to form. 14 THE WITNESS: That was just the original 15 timeline. 16 BY MR. MABE: 17 Q. Well, was that an agreement, that they 18 would build it and start selling you lots in 2017? 19 A. That was anticipated that that was going to 20 be the time that we could start buying lots, but it 21 didn't work out that way. 22 Q. I want to ask you about another document 23 here. Give me a moment. Okay. I think I can share 24 this now. Thank you for your patience. 25 All right. I'm showing you a document -- that's

Page 82 1 not the one I want. I'm going to switch it. This is 2 a different one. 3 A. Are we finished with this one? 4 MR. ADAMS: We don't know yet. 5 MR. MABE: No. We're going to get back to 6 it. 7 (EXHIBIT 110, ECP 0008361, was marked for 8 identification.) 9 BY MR. MABE: 10 Q. I'm showing you what is a clean copy of 11 Exhibit K to the third amended complaint. 12 MR. ADAMS: John, again, what's the Bates 13 number? 14 MR. MABE: I'm getting there. ECP 8361. 15 MR. ADAMS: Thank you. 16 BY MR. MABE: 17 Q. Okay. Mr. Polite, you were asked about 18 the -- you were asked about Exhibit K to the 19 complaint, I think, on your individual testimony, but 20 I want to ask you as the representative of the company 21 to tell me what this email from Mr. Buchanan was 22 about. 23 A. I would say that this outlines the parts of 24 the agreement that they had come to on repurchasing 25 the lots from GreenHawk at River Falls.	Page 84 1 A. The plat. The recording of the plat. 2 Q. So that's when you can actually start to 3 sell lots in there, correct? 4 A. Purchase lots. 5 Q. You can purchase lots, but you can then 6 market them to your customers, right? 7 A. Correct. 8 Q. Okay. Now, there's a takedown schedule? 9 A. Yes. 10 Q. Can you explain how that takedown schedule 11 fits with your testimony about there being a 12 partnership on pricing? 13 A. This particular one, there would need to be 14 the backup of, you know, the cost plus the target 15 profit margin, and then this goes through the purchase 16 every quarter on a quarterly lot takedown until the 17 last one is purchased with quarterly escalation. 18 Q. So there's no reference at all to the cost 19 of the construction, is there? 20 A. Not in this email. No, sir. 21 Q. And at that point in April of 2016 the 22 rough grading hadn't even started, had it? 23 A. I'm not sure on the actual date that they 24 started rough grading and clearing. 25 Q. Okay.
Page 83 1 Q. So there's a call for a deposit of 2 \$500,000. Was there ever any deposit made on River 3 Falls to your knowledge? 4 A. The deposit that's in parenthesis, the 5 \$100,000 from the land purchased, was our earnest 6 money that was applied to the purchase price of the 7 underlying dirt. 8 Q. Okay. So an additional \$400,000 would be 9 needed? 10 A. I would say that's what this is saying. 11 Yes, sir. 12 Q. Was that ever paid to your knowledge? 13 A. Not to my knowledge. 14 Q. Was it ever paid to the company's 15 knowledge? 16 A. To the company's knowledge, no. 17 Q. So that was never paid. What about the 18 reimbursement, the \$150,000 estimate in the second 19 line? 20 A. We have not been reimbursed any expenses on 21 this project. 22 Q. Okay. And you were asked -- well, I'll 23 skip that. So then the next line is first lot 24 purchase would be 30 days post recordation. What's 25 that referring to?	Page 85 1 A. I don't know the exact date. 2 Q. It appeared from the previous exhibit that 3 as of May of 2017 that the specs for the grading had 4 been sent to you to review but that the rough grading 5 hadn't started yet. Is that not correct? 6 A. The grading specs are for the actual lots 7 themselves and not rough grading. And, again, this 8 says rough grading to start after easement from forced 9 main is granted. I mean, from my standpoint and the 10 company's standpoint they had started this project but 11 had to stop it based on other issues that arose. 12 Again, the specific dates of when it was cleared, 13 which is different than the grading, I don't have 14 exactly when they started it. 15 Q. Okay. Well, we got onto this tangent 16 because I was asking you whether there were costs 17 known on the development side in order to feed into 18 this takedown schedule and these lot prices, and, so, 19 my question is did Eastwood make any attempt to dig 20 into the basis for these lot sales prices? 21 A. Again, I'd have to go back and look 22 specifically, but there were bids given to GreenHawk 23 on the cost of the development, and they would have 24 been -- and these lot sales prices would have been 25 interpreted from that.

Page 86 1 Q. And -- 2 A. Bids from the sense of a general contractor 3 doing the work. 4 (Court Reporter request for clarification.) 5 THE WITNESS: From the bids from a general 6 contractor to perform the rough grading and 7 subdivision work. 8 BY MR. MABE: 9 Q. So how does that affect the \$75,000 lot 10 price as the starting figure? How does that bid fit 11 into that? 12 A. That they had some known costs or estimated 13 costs, and they would have backed into this number at 14 that point. 15 Q. Okay. If you entered into a contract with 16 them to sell them -- excuse me -- to purchase lots at 17 \$75,000 for the first 20 lots, is it your testimony 18 that if the price -- if the cost of developing the 19 lots went so high that they couldn't make money at 20 \$75,000 or that they couldn't make -- well, let me 21 just leave it at that. Is it your testimony that if 22 the contract were entered into with a first purchase 23 of 20 lots at \$75,000 per lot that then if the cost 24 exceeded \$75,000 per lot that that price wouldn't be 25 binding?	Page 88 1 MR. ADAMS: Objection to form. 2 THE WITNESS: That's done on a case by case 3 basis, and we would have to look at the invoices to 4 see what was there and what warranted the request for 5 additional sales price. 6 BY MR. MABE: 7 Q. So this last line here, "please let me know 8 if you have any further questions," am I correct in 9 interpreting that as contact me if you want further 10 information? 11 MR. ADAMS: Objection to form. 12 BY MR. MABE: 13 Q. Do you know what if any follow up there was 14 to this? 15 A. I don't know specifically. No, sir. 16 Q. Okay. And do you know if a draft agreement 17 was ever proposed on the River Falls lots? 18 A. Not to my knowledge or the company's 19 knowledge have I seen a draft of the River Falls. 20 Q. And there was never a draft agreement that 21 proposed all of the terms of a purchase and sale 22 contract for Eastwood Homes to buy -- or Eastwood 23 Construction Partners to buy lots from GHD River 24 Falls; isn't that correct? 25 A. There wasn't a draft of that lot purchase
Page 87 1 MR. ADAMS: Objection to form. 2 BY MR. MABE: 3 Q. Is that your testimony? 4 A. No, that is not. The price was based on 5 the bids, and there was no true-up as I think you're 6 speaking to if the cost overran that. 7 Q. So if you had entered into a written 8 agreement to buy lots at a starting price of \$75,000 9 for the purchase of 20 lots, an initial purchase of 20 10 lots, would that \$75,000 have been increased as 11 necessary to cover whatever costs they incurred? 12 MR. ADAMS: Objection to form. 13 THE WITNESS: Prior to that agreement done 14 we would have had to go back and look at those prices, 15 but at this juncture it was based on what their 16 knowledge was of the estimated cost plus a profit that 17 they derived this number. 18 BY MR. MABE: 19 Q. But I don't think that answers the 20 question. The question is if you entered into the 21 contract, a written agreement that Eastwood is going 22 to take down 20 lots 30 days after the recordation of 23 the plat for \$75,000 per lot, would you then adjust 24 that price up if the cost on the project exceeded 25 \$75,000 per lot for the developer?	Page 89 1 agreement. 2 Q. Right. Okay. I tell you what, I'm not 3 going to be able to finish before lunchtime. I'm 4 going to suggest this is a good point for a break for 5 about 30 or 45 minutes. 6 MR. ADAMS: Okay. 7 (A recess was taken for lunch.) 8 BY MR. MABE: 9 Q. Mr. Polite, I hope you had a nice lunch 10 break. 11 A. Yes. Thank you. 12 Q. Did you have an opportunity to talk about 13 the deposition while you were out? 14 A. Not the deposition as much as just the 15 exhibits you sent. 16 Q. Okay. Did you have occasion to discuss 17 your testimony given previously? 18 A. No. 19 Q. Do you want to change any of your testimony 20 regarding the prior dealings between Eastwood and 21 GreenHawk? 22 A. No, sir. 23 Q. All right. Was there -- I think we ended 24 basically on the understanding that there wasn't ever 25 a written draft of a contract for purchase and sale on

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1 River Falls lots, right? Isn't that a correct
2 statement that there was never a draft?
3 A. A draft of the River Falls --
4 Q. Purchase and sale.
5 A. There was one way back, like our template
6 in 2013 for a River Falls contract, but it was
7 never -- but that one was never executed, but there is
8 a draft.
9 Q. So that predates anything to do with the
10 email that Mr. Buchanan sent in 2016, though. I was
11 referring to your testimony regarding the email in
12 2016.
13 A. Okay. Correct. There was not a template
14 sent in 2016.
15 Q. Now, tell us, Mr. Polite, was the
16 proposal -- the proposed terms stated in that email
17 from Buchanan, Exhibit No. 110, was that ever accepted
18 by Eastwood?
19 MR. ADAMS: Objection to form.
20 THE WITNESS: Not to -- no, not to my
21 knowledge.
22 BY MR. MABE:
23 Q. Why did the company attach that to the
24 complaint as evidence of its contract to purchase the
25 Brooks Creek property?

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1 A. Well, I think we're talking about two
2 different things. This was just the general terms of
3 the discussion points of how the deposit and return of
4 our existing money and the takedown would take place.
5 Q. So it is not the contention of Eastwood
6 that that document itself was a contract or those
7 terms were accepted; is that correct?
8 A. I'd say --
9 MR. ADAMS: Objection to form.
10 THE WITNESS: I would say it's a general
11 terms that definitely GreenHawk put forward, but there
12 was never an agreement that Eastwood accepted it.
13 BY MR. MABE:
14 Q. Okay. Now, as we all know, I think, the
15 River Falls subdivision was not actually built by
16 GreenHawk/GHD River Falls, correct?
17 MR. ADAMS: Objection to form.
18 THE WITNESS: May I ask who built it then,
19 John, if you know the answer?
20 BY MR. MABE:
21 Q. Do you know what's been built out there?
22 A. Nothing's been built. It was cleared and
23 then stopped.
24 Q. So the infrastructure, roadways, the
25 improvements required to record a plat for lots in

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1 River Falls were not built by GreenHawk, were they?
2 A. They were not completed.
3 Q. And is it correct that -- well, let me ask
4 it this way. Does Eastwood contend that it has a
5 contract to buy the undeveloped River Falls land?
6 A. Yes. I would say we have, as I've
7 mentioned, an agreement in principle that there was a
8 way for us to purchase those lots back, yes.
9 Q. Well, yeah, to buy the lots back, but what
10 about to buy the land without the lots having been
11 created?
12 MR. ADAMS: Objection to form.
13 BY MR. MABE:
14 Q. That's my question.
15 A. That wasn't the agreement. We were to
16 purchase lots back finished.
17 Q. Okay. Right. There was an agreement -- in
18 your world there was an agreement that GreenHawk would
19 develop the River Falls subdivision into buildable
20 single family lots and then enter into a contract with
21 Eastwood to sell the lots to Eastwood; is that
22 correct?
23 A. Once they were platted. Yes, sir.
24 Q. Okay.
25 A. You've got to get it to plat before we

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1 could purchase the lots.
2 Q. And we've seen a number of references to
3 needing a contract on River Falls?
4 A. Yes.
5 Q. You saw a number of references to needing a
6 contract on River Falls when you reviewed the
7 documents, didn't you?
8 A. I did.
9 Q. Tell me, is there any understanding between
10 Eastwood and the GreenHawk entity regarding what to do
11 with River Falls if GreenHawk doesn't build out the
12 subdivision improvements?
13 A. There's been -- no, there's not a --
14 there's no agreement there if they didn't perform.
15 Q. Okay. So there's no agreement that
16 Eastwood gets to buy the raw land back. I realize --
17 excuse me. The land isn't purely raw, is it?
18 A. Not purely. It's cleared land.
19 Q. It's been stripped. Right?
20 A. Yes, sir.
21 Q. There's been some rough grading done; is
22 that correct?
23 A. Yes, sir.
24 Q. Some roadway grading has been done?
25 A. I wouldn't go that far.

Page 94 1 Q. Okay. Okay. Very little -- is it correct 2 that very little of the subdivision improvements have 3 been put in place? 4 A. I hate to say it, very little versus more 5 than enough or -- I don't know, but not a lot of work 6 has been done there. 7 Q. Right. And is it correct that there is no 8 agreement between Eastwood and the GreenHawk entity 9 for Eastwood to purchase the land in that condition? 10 A. Not to my knowledge that there's an 11 agreement for us to purchase the semi-finished raw 12 land -- pre-platted land back. 13 Q. Just for clarity, I'm asking for the 14 company's knowledge. I'm asking if there is a term of 15 any agreement by which the company has the right to 16 buy the River Falls project undeveloped? 17 A. Not to my knowledge. 18 Q. Okay. Were you aware that GHD River Falls 19 was attempting to market the River Falls project 20 unbuilt? 21 A. No. I was not made aware of that. Is that 22 a recent occurrence? 23 Q. Okay. Well, I'm aware that you were 24 invited to make a proposal to purchase the River Falls 25 property. Do you recall that?	Page 96 1 we're in a big room. 2 MR. MABE: That's document GHD 1563, and 3 I'm going to designate that Exhibit 111. 4 MR. ADAMS: That's not one of the ones you 5 sent me this morning or this afternoon, right? 6 MR. MABE: This is correct. This is 7 something I didn't intend to use, but since Mr. Polite 8 doesn't recall being asked for a bid I thought I'd 9 show it to him. 10 MR. ADAMS: Give us a second to -- 11 MR. MABE: Jimmy, do you want me to start 12 at the bottom or -- 13 MR. ADAMS: The way we did this before, Joe 14 had his computer so he could look at the documents. 15 He doesn't have that. So I'll print it and we'll go 16 get it. What's the number again? 17 MR. MABE: GHD 1563. I think this may be 18 kind of short and simple if you'll let me ask him a 19 question and then you decide whether you want to go 20 print it. 21 MR. ADAMS: Sure. 22 BY MR. MABE: 23 Q. So, Mr. Polite, do you recall having an 24 email exchange with Jeremy Medlin when you attempted 25 to get GHD River Falls or any GreenHawk entity to pay
Page 95 1 A. Not to enough detail, John. Not to enough 2 detail that I remember that we were -- I can't 3 remember an email or anything direct that said make me 4 an offer. I just don't have that recollection. 5 Q. Okay. That's fair enough. 6 MR. ADAMS: John, just so I'm clear, are 7 you talking about something related to the mediation 8 that occurred early in the case before I was involved? 9 If so, I don't think -- that's not an appropriate 10 deposition question. 11 MR. MABE: Strictly speaking, I am not. 12 (EXHIBIT 111, GHD 0001563, was marked for 13 identification.) 14 BY MR. MABE: 15 Q. I'm going to share my screen, and I'm 16 hopeful -- this is actually an exhibit that -- well, 17 let me see if I can -- 18 This is one of our documents, GHD 1563, and y'all 19 will probably get it called up before I can. 20 Okay. I'm trying to show you a document which is 21 an email from Jeremy Medlin dated June 5th, 2020, to 22 you, Joe Polite. Do see that on the screen? 23 A. I see it. 24 Q. That's probably -- 25 MR. ADAMS: It's a long way to see because	Page 97 1 back the predevelopment expenses Eastwood incurred? 2 A. Yes. 3 Q. Okay. And, so, there was some discussion 4 in June last year, and there's this email from Mr. 5 Medlin to you on June 5th. He's basically telling you 6 he's trying to catch up with what happened on these 7 projects, and he says, "Are you interested in River 8 Falls? If so, I suggest you provide an offer." Do 9 you see that? 10 A. Correct. I do see that now. I'm reading 11 it. Okay. 12 Q. Does that sharpen the recollection of the 13 company regarding an invitation from GreenHawk to make 14 a proposal for purchasing the River Falls property? 15 MR. ADAMS: Objection to form. 16 THE WITNESS: Evidently, Mr. Medlin had no 17 knowledge of any history of any funds or involvement 18 by Eastwood. So I'm not real sure what he's talking 19 about when he says we should make him an offer. 20 Looking at all of this I remember this distinctly, and 21 we've all established how much money we've spent and 22 GreenHawk knew about, but Mr. Medlin decided he didn't 23 know about it, so I kind of found this as not a real 24 valid email. 25 BY MR. MABE:

Page 98 1 Q. Did you see this email in your review of 2 documents in preparation for the deposition? 3 A. I don't specifically remember looking at 4 this one, but I'm looking at it now. 5 Q. Okay. What do you not understand about the 6 second paragraph of that email? 7 A. I'm more focused on the first. 8 Q. I want you to focus on the second, and I 9 want to specifically ask you if you understand what 10 the second paragraph means. 11 MR. ADAMS: Objection to the instruction. 12 He's entitled to look at the entire exhibit and answer 13 the questions as it relates to the entire exhibit. 14 MR. MABE: Oh, yeah. I understand that. 15 MR. ADAMS: So, asked and answered. 16 THE WITNESS: Yeah, I would have to assume 17 Mr. Medlin spoke to zero people at his new employment 18 to understand our involvement and interest in River 19 Falls. So I think this is moot, to be honest, is my 20 interpretation of it, John. 21 BY MR. MABE: 22 Q. Did you respond in any way to this? 23 A. I don't recall, and there's no record of 24 it. 25 Q. Okay. Did Eastwood ever make any proposal	Page 100 1 A. Our intention would be to buy platted lots 2 subdivided for home building purposes. 3 Q. And we've established for the record that 4 there are no platted lots suitable for single family 5 or any other kind of residential purposes, right, on 6 River Falls? 7 A. At this time. 8 Q. Okay. So my question is if Eastwood 9 prevails in this litigation does it expect that it's 10 going to get an order telling GHD River Falls to build 11 the River Falls subdivision? 12 A. That would be one solution, yes. 13 Q. And then it would purchase the lots at a 14 price yet to be determined? 15 MR. ADAMS: Objection to form. 16 BY MR. MABE: 17 Q. Is that correct? 18 A. Based on the criteria that we've had since 19 2013 we could come to that agreement. 20 Q. Those criteria with respect to River Falls 21 being what? 22 A. As the other ones and we've discussed, the 23 cost plus some target profit for GreenHawk. 24 Q. Okay. So you would be content -- you 25 Eastwood would be content with a court order directing
Page 99 1 to purchase the River Falls project in its present 2 condition? 3 MR. ADAMS: Outside of any settlement 4 discussions? 5 BY MR. MABE: 6 Q. Outside of any settlement discussions. 7 A. Not to my knowledge outside of the 8 settlement discussion. 9 Q. If Eastwood made a proposal to purchase 10 River Falls in its present condition, is there any 11 way -- any reason you would not be aware of that? 12 A. No. I would be aware of it if we made that 13 offer. 14 Q. Okay. Is it Eastwood's contention that the 15 court should order GHD River Falls to build the River 16 Falls subdivision and then sell lots to Eastwood at a 17 price to be determined? 18 MR. ADAMS: Objection to form. 19 THE WITNESS: I'd like for you to clarify 20 that. Are you asking me to make a statement on what 21 the court should order? I'm just -- 22 BY MR. MABE: 23 Q. No. I'm asking you to tell us what 24 Eastwood is trying to get with a claim on the River 25 Falls project.	Page 101 1 GHD River Falls to build the subdivision and then 2 Eastwood would pay all of the costs that it's incurred 3 plus some reasonable profit of 20 percent or so? 4 MR. ADAMS: Objection to form. 5 BY MR. MABE: 6 Q. Is that correct? 7 A. I think you left out the money we've 8 already spent on the project. 9 Q. Granted. Granted. 10 A. Well, it's not granted. You didn't 11 specifically say it, so I'm going to say it. Sorry. 12 Q. No. Right. I'll change my question. So 13 you would be -- Eastwood would be content with an 14 order from the court saying that GHD River Falls must 15 build the River Falls subdivision, and then all of the 16 expenses incurred by River Falls and all of the 17 expenses incurred by Eastwood would be figured into 18 the lot price so there would be a netting out of 19 Eastwood's expenses? 20 MR. ADAMS: Objection to form. 21 BY MR. MABE: 22 Q. Is that your contention? 23 MR. ADAMS: Objection to form. 24 THE WITNESS: It would be based on a review 25 of actual costs that have been done on the project and

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1 what would be the cost to complete and then coming up
2 with a number for that lot, but there would have to be
3 verification of costs to the project prior to agreeing
4 on that lot price.
5 BY MR. MABE:
6 Q. Okay. I think I understand where you're
7 coming from on that. So it is the same -- you have
8 the same approach to that as for Brooks Creek; is that
9 correct?
10 A. Yes, sir.
11 Q. Except in the case of River Falls there's
12 no subdivision yet, right?
13 A. There's no subdivision. Correct.
14 Q. So you have to add the step of trying to
15 get the subdivision built and then figure out what it
16 costs and then get a lot price?
17 MR. ADAMS: Objection to form.
18 THE WITNESS: We would need what's called a
19 cost to complete number before we could agree.
20 BY MR. MABE:
21 Q. A cost of completion?
22 A. Yes.
23 Q. Okay.
24 MR. ADAMS: John, just so you're aware, my
25 computer crashed, but I'm back, if you'd noticed.

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1 MR. MABE: I see you. Do you need to
2 regroup anything?
3 MR. ADAMS: No. I'm fine. When I handed
4 Joe my computer so he could look at that exhibit,
5 somehow or another it crashed everything, but I was
6 still able to hear and see on the screen so we were
7 fine.
8 MR. MABE: All right.
9 (EXHIBIT 112, GHD 0013443, was marked for
10 identification.)
11 BY MR. MABE:
12 Q. I want to share another document. I think
13 this is the correct one. Now, this is a document I
14 sent you right before lunch, and this is going to be
15 Exhibit No. 112. It's GHD -- our production number
16 GHD 13443.
17 Mr. Polite, in your review did you see an
18 agreement that had been sent in December 2013 from
19 GreenHawk Development -- or excuse me -- from Eastwood
20 Construction to GreenHawk Development pertaining to
21 Brooks Creek in York County?
22 A. Yeah. After you sent it before lunch we
23 started looking at it. Yes, sir.
24 Q. Did you look at it in your review of
25 preparation for the deposition?

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1 A. Not in prep for the deposition, not each
2 item, no, sir.
3 Q. All right. Would you agree that this is
4 pertinent to your contentions or is this not pertinent
5 to your contentions regarding the right to purchase
6 Brooks Creek?
7 MR. ADAMS: Objection to form.
8 THE WITNESS: Yeah, it's my opinion this
9 would have been from the company as our template for
10 how we would proceed to purchase them, and, you know,
11 it was a draft to that extent.
12 BY MR. MABE:
13 Q. Right. Now, I want to just point out for
14 the record here something you and I have talked about
15 in a previous deposition. This second paragraph has
16 some emphatic language saying that if this agreement,
17 even if it were signed by somebody for Eastwood, it
18 would automatically terminate if it wasn't signed by
19 either Joe or Clark Stewart within 30 days. Do you
20 see that language?
21 A. Yes, sir.
22 Q. That was a standard operating procedure
23 inhouse at Eastwood, wasn't it?
24 A. Yes, sir.
25 Q. And that's the company's policy still,

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1 isn't it?
2 A. Oh, yes. Yes, sir.
3 Q. All right. Now, let me refer you down to
4 the price provision -- actually, I think we need to do
5 this up in the body of the agreement. You see on page
6 4 of 23 the purchase price and absorption schedule of
7 the lots shall be as described in Exhibit B?
8 A. Yes, sir.
9 Q. I'll ask you to look for a moment and see
10 if you see anything in that paragraph regarding a
11 profit to the developer?
12 A. Not in 2B. No, sir. Not in paragraph 2.
13 It does not discuss it in detail.
14 Q. Okay. Does it discuss it in Exhibit B?
15 A. It discussed a lot of stuff in Exhibit B
16 and how the total project cost calculation is
17 determined by lot price, and it goes on to calculating
18 the total and how the parties agree to the total
19 project and the hard costs required to take the raw
20 property and convert it to billable lots. It goes on,
21 you know, to talk about how this would be calculated.
22 Q. Right. Let me ask my question again.
23 Looking at 2B, purchase price provision, do you see
24 anything in there about a profit to the developer?
25 A. In paragraph 2, no. You're talking about

Page 106 1 Exhibit B? 2 Q. Exhibit B. 3 A. I do not. 4 Q. Do you see that -- do you see the exclusion 5 of items from the total project cost here in the 6 middle of this first paragraph beginning total project 7 cost does not include, and it refers to a number of 8 items including construction loan interest, financing 9 fees? 10 A. Yes. I see that. 11 Q. Okay. So would you describe those things 12 as being in the nature of overhead? 13 A. Yes, sir. 14 Q. So what this proposal -- or this draft 15 proposed was that the developer would build the Brooks 16 Creek subdivision and sell the lots back to Eastwood 17 at its hard costs; is that correct? 18 MR. ADAMS: Objection to form. 19 THE WITNESS: The total project cost. 20 BY MR. MABE: 21 Q. And the total project cost is hard costs 22 not profit and overhead; is that correct? 23 MR. ADAMS: Objection to form. 24 THE WITNESS: That's my understanding. 25 Yes, sir.	Page 108 1 A. I have it printed in front of me, John. 2 Q. Okay. Well, does everybody have access to 3 ECP 13321? Otherwise we can just go ahead. We're not 4 relying on the video. 5 MR. ADAMS: Yes. This is one of the ones 6 you sent us at 12:30. 7 MR. MABE: That's correct. 8 MR. ADAMS: Yeah. We've got them. 9 (EXHIBIT 113, ECP 0013321, was marked for 10 identification.) 11 BY MR. MABE: 12 Q. I'm going to ask you about the top of this. 13 I'm going to identify this as Exhibit No. 113. Do you 14 recall the circumstances in which you received this 15 email from Kevin Hutchins, Mr. Polite? 16 A. Yes. 17 Q. Okay. 18 A. Kevin Hutchins is our CFO. 19 Q. Thank you. You anticipated my question. 20 Why was he tuning in -- or why was he piping in on 21 this discussion? 22 A. He would have been asked how much money we 23 have invested in the project, and he would have given 24 us that accounting. 25 Q. Would that be -- which project?
Page 107 1 BY MR. MABE: 2 Q. So is it correct, Mr. Polite, that this 3 isn't a statement of the agreement that you contend 4 you had with GreenHawk? This is not -- excuse me. 5 I'm going to restate that. 6 Is it correct that Exhibit No. 112 is not a 7 statement of the agreement you contend Eastwood had 8 with GreenHawk? 9 MR. ADAMS: Objection to form. 10 THE WITNESS: Again, as a draft I think 11 this does a very good job of discussing what the total 12 project costs are, and it was probably not accepted by 13 GreenHawk because it didn't discuss profit. That's my 14 assumption. 15 BY MR. MABE: 16 Q. And just to tap the nail again, it is your 17 understanding for the corporation or the company that 18 this agreement was not accepted by GreenHawk -- 19 MR. ADAMS: Objection. 20 BY MR. MABE: 21 Q. -- correct? 22 A. Correct. 23 Q. I'm going to ask you about a document. I 24 think this is one that I -- this is ECP 13321, and I'm 25 having a difficult time calling it up. I'm sorry.	Page 109 1 A. River Falls. 2 Q. Do you see the subject line being Brooks 3 Springs and River Falls? 4 A. Yes. On the top page of this printout it 5 does. 6 Q. Okay. Do you see the email message that 7 you sent immediately prior to Mr. Hutchins' email on 8 Wednesday, August 8th at 12:16 p.m.? 9 A. Yes, sir. The one that says we have 10 confirmation? 11 Q. Yes. 12 A. Yes, sir. I have it. 13 Q. What's the significance of that? 14 A. This is a discussion of the impact fees 15 that Fort Mill and Tega Cay had imposed on the area. 16 Q. What was the concern about the impact fees 17 that led to this email? 18 A. The additional cost that was not 19 anticipated when we started all of this. 20 Q. And we talked about that earlier in your 21 deposition today, didn't we? 22 A. Yes, sir. 23 Q. So Mr. Hutchins says that during 2017 we 24 wrote off approximately \$350,000 as deposit write-off 25 for both projects. Were you involved in the decision

Page 110 1 to write those expenses off? 2 A. I knew about it, yes, sir, but he goes on 3 to say that when we come back to it and we get that 4 money back that we'll have to write it up as income is 5 the complete -- 6 Q. Was there a discussion at that time of 7 seeking to get back your predevelopment expenses 8 because the impact fees would make the projects 9 unattractive to Eastwood? 10 A. Can you ask that in a different way? I'm 11 not a hundred percent I followed you. I might have 12 been reading. 13 MR. ADAMS: You're gonna need to ask him 14 the same way. He was reading. 15 BY MR. MABE: 16 Q. Okay. Was there discussion at that time 17 that Eastwood would want to get its expenses back 18 because the impact fees had made these projects 19 unattractive? 20 A. It was always -- 21 MR. ADAMS: Objection to form. 22 THE WITNESS: It was always our intention 23 to receive that predevelopment money back via deposit 24 or cash. This just made us kind of make sure to know 25 exactly what we had in these projects based on this	Page 112 1 MR. ADAMS: Objection to form. 2 BY MR. MABE: 3 Q. Is that correct? 4 MR. ADAMS: John, again, I'm not sure -- 5 can you tell me which topic this is on? 6 MR. MABE: This is on the terms of the 7 agreement. 8 MR. ADAMS: Okay. Well, he's testified 9 that the terms of the agreement they would buy the 10 property. You're now saying that they're -- 11 MR. MABE: I'm asking if the company isn't 12 considering what their options are to avoid 13 followthrough on buying the lots. 14 MR. ADAMS: Okay. Well, why don't you ask 15 that question? 16 MR. MABE: Well, I just did. I just asked 17 it in a different way. 18 MR. ADAMS: I still think it's outside the 19 scope. You're asking about something other than the 20 contract. You're asking about business strategy, you 21 know, extraneous to the contract. 22 MR. MABE: Well, I've got to disagree with 23 you because if they say they have a contract that says 24 they're going to buy the lots in Brooks Creek no 25 matter what they cost, and then they're talking about
Page 111 1 new information. 2 BY MR. MABE: 3 Q. Right. And you were wondering what you had 4 in them because you were looking at cutting bait on 5 these projects because of the impact fees, weren't 6 you? 7 MR. ADAMS: Objection to form. 8 THE WITNESS: No, sir. I just like to know 9 where we stand on projects. 10 BY MR. MABE: 11 Q. I'm asking you, and you're under oath, to 12 tell us if Eastwood was discussing forgoing 13 development of -- excuse me -- forgoing the purchase 14 of lots in Brooks Creek and River Falls because the 15 impact fees that were imposed made them unattractive. 16 A. I will disagree with your being 17 unattractive. It would have been a statement to 18 determine what is our exposure to this project if it 19 didn't go forward. 20 Q. Okay. And when he says at least our -- and 21 he Mr. Hutchins in this email says, "At least our 22 books are clean and anything we get back from those 23 guys will be income," he's talking about getting back 24 your predevelopment expenses if you walk away from the 25 lot purchases.	Page 113 1 getting their money back, their predevelopment 2 expenses, they're talking about walking away from the 3 agreement they say they have to buy the lots, and 4 that's within the scope of the topics. 5 MR. ADAMS: Well, I object. 6 BY MR. MABE: 7 Q. So, Mr. Polite, I'll ask you again. Was 8 there a discussion about how much money you wanted to 9 get back from the GreenHawk entities if you walked 10 away from the project? 11 MR. ADAMS: So let me object to the 12 statement of your understanding. Let me object to the 13 question, and let me object to the question is outside 14 the scope. 15 MR. MABE: Are you instructing the witness 16 not to answer? 17 MR. ADAMS: Of course not. 18 MR. MABE: Okay. 19 THE WITNESS: Do you want to repeat your 20 question so we know where we are? 21 BY MR. MABE: 22 Q. Was there a discussion at Eastwood about 23 what amount of money you had invested in these 24 projects that you would want to get back from 25 GreenHawk if you walked away from the agreement you

Page 114 1 say you had to buy these lots? 2 MR. ADAMS: Objection to form. Objection 3 that it exceeds the scope of the notice. 4 THE WITNESS: I would agree for the first 5 half of your question that we would always want to 6 know how much money we have invested in a project. It 7 is not necessarily true that it was if we walked away. 8 It was if GreenHawk, at this point being, you know, 9 four years in, if they didn't perform at all, you 10 know, how much does this company have? That would be 11 what my responsibility is to the company. If 12 GreenHawk doesn't perform, which they still haven't, 13 what do we have invested in this project? That was my 14 request of our CFO. 15 BY MR. MABE: 16 Q. I want to change topics and ask you about 17 some property that was acquired by Eastwood from Helms 18 as part of the assemblage for River Falls. 19 A. Yes, sir. 20 Q. Are you generally familiar with that? 21 A. Generally. Yes, sir. 22 Q. And do you know why the Helms property was 23 part of the assemblage? 24 A. I'm not a hundred percent sure prior to me 25 how it came about that the Helms property was	Page 116 1 on Gold Hill Road in Tega Cay should belong to you. 2 Can you transfer it to GreenHawk and take care of the 3 tax bill?" 4 Is this the tax bill you were referring to a 5 moment ago in your answer? 6 A. Yes, sir. 7 Q. And there's a series of emails. So that 8 was in December of 2017, and I think that there was a 9 little back and forth, but it's August of 2018 when it 10 comes up again. So can you tell us generally what 11 transpired with respect to that property? 12 A. I just want to make sure I get these dates 13 correct. Katie sends to Jesse on December 22nd of 14 '17, and he responds on August 2nd, 2018? Is that the 15 way -- 16 Q. I don't think that's the first response. 17 A. Has this been edited somehow? That's a 18 long time between emails. 19 Q. I can show you and you've already seen some 20 other documents that have some of the intervening 21 information. Let's just focus on a couple things 22 right quick. 23 A. Okay. 24 Q. At the bottom of page 6647 Mr. Buchanan 25 requests a deed be prepared to transfer a piece of
Page 115 1 purchased by us or given to us. I was made aware of 2 it in August when we kept getting the tax bill for it, 3 John, and it's a .55 acres that had the frontage on 4 River Falls that was not transferred to GreenHawk at 5 your client's closing. 6 (EXHIBIT 114, ECP 0006647, was marked for 7 identification.) 8 BY MR. MABE: 9 Q. I'm going to try and call up for you to 10 look at Exhibit 114 which is ECP 6647. 11 A. Okay. 12 Q. I guess you've got that in front of you, 13 but let me see if I can -- 14 MR. MABE: Do I need to share the screen, 15 Stephen? 16 THE WITNESS: I have a copy of it. 17 MR. COX: Yeah, that's fine, John. Go 18 ahead. 19 BY MR. MABE: 20 Q. So, looking at Exhibit 114 which is ECP 21 6647, let me refer you to the second page of that in 22 an email from Katie Sands to Mr. Buchanan with a copy 23 to Mr. Quinn from December of 2017. 24 A. Uh-huh. 25 Q. And she says, "I think this sliver of land	Page 117 1 property from Eastwood to the GreenHawk entity, 2 correct? Do you see that? 3 A. Yes, sir. I do see that. 4 Q. And that's by an email to a woman at the 5 Costner Group. Now, the next email up is another one 6 from Jesse Buchanan to the folks at the Costner Group 7 with a copy to Katie Sands basically following up 8 about that six days later. Do you see that? 9 A. Yes, sir. 10 Q. And then it goes all the way to October, 11 and there's a message from Craig Briner that 12 Proofpoint Essentials re-sent to you, and I think this 13 is explained by your message at the top. So is the 14 Proofpoint forwarding to you, is that familiar to you 15 what that comes from? 16 A. I'm not familiar with that. I'm sorry, 17 John. 18 Q. Is that your spam filter, Mr. Polite? 19 A. It very well could be. 20 Q. Okay. So your message to Katie Sands -- 21 and remind us again who Katie Sands is? 22 A. Katie Sands is the land development 23 coordinator for Eastwood Homes. 24 Q. Your message to Katie Sands says, "This was 25 stuck in my junk mail." And then you say, "I assume

Page 118 1 that it has been taken care of. Correct?" 2 A. Yes. That's how it reads. 3 Q. So what were you assuming had been taken 4 care of? 5 A. That the deed of the extra property was 6 done and transferred to GreenHawk. 7 (EXHIBIT 115, ECP 0013356, was marked for 8 identification.) 9 BY MR. MABE: 10 Q. Okay. So, with that, let's go to the 11 document identified as ECP 13356, and this will be 12 Exhibit No. 115. 13 A. I have it. 14 Q. Turn to the third page of this. Do you see 15 the beginning message from Katie Sands to Jesse 16 Buchanan, hey Jesse, I think this sliver of land, 17 etc., can you transfer it to GreenHawk? 18 A. Which is the same email we started with -- 19 Q. Right. 20 A. -- on the other exhibit. 21 Q. Right. But it's sort of -- it sort of goes 22 in a little bit different direction. Mr. Buchanan 23 resends it August 2nd, and then there's a message 24 from -- at the top of page 13357 a message from 25 Samantha Barnard to Katie Sands. Do you see that?	Page 120 1 A. I do see that response from Allen. What I 2 don't see is that Katie -- who Katie sent her email to 3 on August 2nd, but -- 4 Q. I understand, and I don't think that it's 5 indicated who it went to, but since there's a reply 6 from Allen Nason will you agree with me that it seems 7 logical that that message went to Mr. Nason and that 8 she was asking for a green light to convey that land? 9 A. I'm trying -- 10 MR. ADAMS: Objection to form. 11 THE WITNESS: Allen responded -- to that 12 header on that she wrote it to Allen, myself and Kevin 13 Hutchins, and Allen responded to everyone. 14 BY MR. MABE: 15 Q. So it would appear that he's responding to 16 the message immediately below that he had received, 17 correct? 18 A. Based on this exhibit, yes. 19 Q. Okay. And he says they don't have a 20 contract with us. What do you understand that to 21 mean? 22 MR. ADAMS: Objection to form. 23 THE WITNESS: I don't know what he's 24 getting at there other than not something that has all 25 of our, you know, verbal agreements from the very
Page 119 1 A. Yes, I do. 2 Q. So she's asking if indeed Eastwood wants 3 her to prepare a deed, right? 4 A. She actually -- what I'm reading is she 5 actually says she drafted it. "I have drafted the 6 attached non-warranty deed." That's not asking if she 7 should. She did it. 8 Q. Okay. Fair enough. Now go to the next 9 page, and at the bottom of that page you can see Katie 10 Sands had written that this was from back in December, 11 somehow we still own this tiny sliver of land. Here's 12 the tax bill. We asked GreenHawk to take it. Costner 13 wants to confirm. And she says, please let me know if 14 we've got a green light or not. 15 This is apparently a message to Allen Nason 16 because the response comes from Mr. Nason on 17 August 2nd at 3:45 p.m. Do you see that in the middle 18 of the page? 19 MR. ADAMS: Objection to form. John, I 20 think there's about three questions in there. The 21 only question pending is do you see that in the middle 22 of the page. So can you re-ask your question? 23 BY MR. MABE: 24 Q. Do you see the reply from Mr. Nason on 25 August 2nd at 3:45 p.m?	Page 121 1 beginning. 2 BY MR. MABE: 3 Q. He says, "Perhaps the best thing to do is 4 consider how we can transfer this property 5 contemporaneous with a contract." Do you understand 6 what that means? 7 A. I do. 8 Q. What does that mean to you? 9 MR. ADAMS: Objection to form. 10 THE WITNESS: That from, you know, Allen's 11 standpoint that this could be a point of moving it 12 forward to get a contract to memorialize what we've 13 always been talking about into a contract form and 14 doing it when we transferred the property to them, but 15 it goes on to say Joe P. -- to me -- it's my decision. 16 BY MR. MABE: 17 Q. So, Joe P., your call. That means it's 18 your decision whether to transfer the sliver of land? 19 A. That's correct. 20 Q. And just to link this together, going back 21 to Exhibit No. 114 at the top of the page you said, "I 22 assume that it has been taken care of. Correct?" And 23 that's a question you asked to Katie Sands on 24 November 19th three months later? 25 A. Yeah, that is, because it was my decision

Page 122 1 that there was absolutely no reason not to transfer 2 that to GreenHawk because of all of our prior 3 agreements. We were going to act in good faith and at 4 no cost transfer that property to GreenHawk. 5 Q. And, so, at the top of page -- well, excuse 6 me. Immediately above Mr. Nason's message on 7 Exhibit 115 Katie Sands says, "Nope. This is the last 8 email I have." So is that -- Mr. Polite, is that a 9 response to your question about this having been taken 10 care of on the previous exhibit? 11 A. I hate to have to do this. I'm going to 12 the timestamps, John. 13 Q. Yeah, it's sad, isn't it? 14 A. I know. I'm on Exhibit 14. I wrote that 15 at 6:22 a.m. It sounds like a great morning. And 16 then she responded to me at 8:10 on that date. The 17 order of this, I don't -- she's not responding to 18 Allen, so I'm not a hundred percent sure she's 19 replying to me either. 20 Q. Well, the message only goes from her to 21 you. 22 A. Yeah, sorry for the confusion. But then 23 she didn't have anymore emails, and the last one that 24 I got, like you pointed out, was stuck in my Proof 25 Essentials. This is --	Page 124 1 A. I have that. 2 (EXHIBIT 116, ECP 0005863, was marked for 3 identification.) 4 BY MR. MABE: 5 Q. And there's a message from the associate 6 attorney at the Costner Law Firm saying recorded deed 7 is attached? 8 A. Yes. 9 Q. I didn't prepare the deed itself for you to 10 look at. 11 MR. ADAMS: John, I'm sorry. I'm not sure 12 I've got that. 13 THE WITNESS: This one? 14 MR. ADAMS: Was that in the zip file this 15 morning? 16 MR. MABE: Yes. I believe it was. 17 MR. ADAMS: What's the Bates stamp on that? 18 I'm sorry. 19 MR. MABE: ECP 5863. 20 MR. ADAMS: I have 5870. 21 THE WITNESS: Otis printed it for me. 22 MR. ADAMS: The file says 5870. It's 5863. 23 Sorry. 24 MR. MABE: Okay. Good. I think the deed 25 is probably 5870, but I don't know for sure.
Page 123 1 Q. Let me ask the question again. And if 2 you've got both Exhibit 114 and 115 in front of you? 3 A. Yes, sir, I do. 4 Q. Okay. And, so, on Exhibit 114 you say, "I 5 assume that it has been taken care of. Correct?" 6 A. I did say that. 7 Q. On Exhibit 115 an hour and 50 minutes 8 later, approximately, she says, "Nope. This is the 9 last email I have so I assume it did not get wrapped 10 up." 11 A. Got it. Yes, sir. And then my response 12 says, "I don't have a problem transferring the 13 property to GreenHawk. How do you want to handle it?" 14 Q. Right. Okay. So, as of November 19, 2018, 15 the company decided we're not going to try to hold 16 that sliver of land against getting a written 17 agreement for purchase of lots in whatever subdivision 18 whether Brooks Creek or River Falls? 19 A. Correct. 20 Q. Okay. Are you aware that the deed was 21 recorded soon thereafter? 22 A. I haven't seen that stamp date, but I 23 assume it was taken care of. 24 Q. Yeah. I sent you an exhibit -- we'll go 25 ahead and identify this as 116. ECP 5863.	Page 125 1 MR. ADAMS: I've got it. Thank you. I'm 2 sorry. 3 MR. MABE: No worries. Give me a moment 4 and let me see if I have anything else I need to do 5 here. 6 That's all I have. 7 MR. ADAMS: Can we -- let me take a break 8 and see if I've got any redirect for Mr. Polite. 9 MR. COX: I'm going to have a couple 10 additional questions. Really just two. So it's up to 11 you, Jimmy. You might want to wait until I ask my 12 couple of questions and then hit it all at one time. 13 It's entirely up to you. 14 MR. ADAMS: Okay. I kind of assumed since 15 we said he wasn't prepared -- how long do you have, 16 Stephen? 17 MR. COX: Like five minutes. 18 MR. ADAMS: You okay? Do you want to take 19 a break, Joe? 20 THE WITNESS: I've got to go to the 21 restroom. 22 MR. COX: Let's come back at 2:10. 23 (A short recess was taken.) 24 FURTHER DIRECT EXAMINATION 25 BY MR. COX:

Page 126 1 Q. So, Mr. Polite, I just have a couple of 2 questions. One is -- 3 MR. ADAMS: You can ask as many questions 4 as you want to in five minutes. 5 MR. COX: I gotcha. 6 BY MR. COX: 7 Q. You testified today, Mr. Polite, that 8 although the Eastwood and GreenHawk parties never had 9 an agreement as to a specific lot purchase price they 10 did have an agreement as to a formula that would be 11 used to calculate that price; isn't that correct? 12 A. That's correct. 13 Q. And as I understand your testimony, that 14 formula was you would take the total costs of 15 development incurred by GreenHawk, y'all Eastwood 16 would get a credit for your -- I think it was \$359,000 17 in your costs, and then on top of that cost figure you 18 would give GreenHawk a 20 percent return, profit. Is 19 that correct? 20 A. That was the structure. 21 Q. Let me ask you this question. So that's a 22 formula that then spits out a price, a specific price 23 once you know all the costs that go into it, right? 24 A. Yes. 25 Q. And how long -- the company's position is	Page 127 1 that it has had this agreement as to this pricing 2 formula for how long? 3 A. I would say since they started discussing 4 it prior to me in 2013 when they made the assignment. 5 Q. Okay. Gotcha. So is Eastwood's 6 understanding that it is obligated to pay whatever 7 price that formula spits out or is Eastwood going to 8 get a chance to look at that price and decide whether 9 or not to accept it? Do you understand that question? 10 A. That's right. In the spirit of the 11 partnership it would be that we get to confirm that 12 pricing or cost, so to speak, before agreeing to the 13 price. 14 Q. Right. That's not my question. Let me ask 15 the question more clearly. Let's say the costs are 16 confirmed, you know what the costs are, everything's 17 been vetted. Those are the actual costs. But the 18 costs are really high, and so it spits out a lot price 19 that's high. Is Eastwood compelled to accept that 20 price regardless or does Eastwood get a chance once it 21 sees the final price to say, you know, we just don't 22 think we can do that and reject it? 23 A. No. I think -- the only thing I'm going to 24 clarify, Stephen, in your question is we would have to 25 confirm those higher prices as well. You said	Page 128 1 everything is confirmed. So what I'm saying is we, 2 between GreenHawk and Eastwood, confirm those prices, 3 and then there's a profit margin, and then we would 4 agree to that price and then takedown less our moneys 5 spent which would be considered, you know, credit 6 towards a deposit, or that would be the deposit. 7 Q. Again, I'm not being clear, and I 8 apologize. I'm saying assume through whatever process 9 y'all have agreed to or have yet to agree to that the 10 costs are confirmed, that Eastwood has satisfied 11 itself that the costs are accurate and those costs are 12 now in the formula, the 20 percent return that you say 13 y'all have agreed to is in the formula and the price 14 is spit out. Do you follow me so far? 15 A. Yes, sir. 16 Q. If that price is really high because the 17 confirmed costs are really high is Eastwood compelled 18 under your understanding of the parties' agreement to 19 accept and pay that price regardless or does Eastwood 20 get a chance to say, wow, that's a high price, we 21 don't think we want to do this deal? 22 A. I think at that point it does become a 23 judgment call, but I would say that we would -- 24 because of the agreement that we had in the beginning, 25 that we -- I don't like the word compelled, but we	Page 129 1 would probably accept it. 2 Q. Well, be very clear. Eastwood is going to 3 court, and it's representing to the court that this is 4 the pricing formula the parties have agreed to. So if 5 the court agrees that such a contract exists -- that's 6 my question -- does your agreement say that this is 7 the pricing formula and we will pay it? 8 A. Yes. 9 Q. Because that's what the court is going to 10 order regardless -- 11 A. Okay. 12 Q. So Eastwood's position right now at this 13 deposition is it will pay whatever the confirmed net 14 costs are that is GreenHawk's costs minus Eastwood's 15 costs and will guarantee a 20 percent rate of return 16 to GreenHawk on that number and it's compelled to 17 accept that price and cannot back out. Is that 18 Eastwood's testimony? 19 A. I would say yes. 20 Q. Okay. All right. 21 A. If -- 22 Q. If what? 23 A. No, if we all confirm the pricing and the 24 costs, both parties together, we, being GreenHawk, if 25 we confirm those prices, yes, we would be willing to

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1 purchase based on those costs.
2 Q. You said pricing and costs. You said
3 pricing and costs. As I understand your testimony the
4 costs determine the price, correct?
5 A. Plus profit less our investment.
6 Q. Correct. So let's just pick round numbers.
7 Let's say GreenHawk's costs were a million dollars.
8 You've got 359, I think. Right?
9 A. We do.
10 Q. So it's a million minus 359 plus 20 percent
11 divided by the number of the lots. That's the lot
12 price. You're saying that's the formula the parties
13 agreed to?
14 A. That's correct.
15 Q. And even if GreenHawk's confirmed costs are
16 larger than anticipated, Eastwood is still bound to
17 accept that lot price generated by the formula?
18 A. And that has happened. Yes, sir.
19 Q. What do you mean that has happened?
20 A. Prices go up.
21 Q. Right. So even if those costs are higher
22 than expected, y'all are gonna pay it?
23 A. That's right.
24 Q. Now, what about the impact fees? Because,
25 as I understand it, and I think there was some

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1 testimony here today or some questions here today, as
2 I understand Fort Mill's school district system, the
3 impact fee is to be paid at the time the building
4 permit is pulled. Is that your understanding as the
5 company?
6 A. I'm still not a hundred percent clear on
7 that. I would like to confirm that, Stephen, about
8 the timing of that impact fee.
9 Q. This is something I didn't really
10 understand even the question with respect to Mr.
11 Mabe's earlier question. I think he was asking you
12 whether Eastwood's commitment to this contract had
13 been affected at all by the new impact fee
14 development. Do you recall that line of questioning?
15 A. Yes.
16 Q. And I wasn't really clear on the answer, so
17 let me ask that question. How if at all did the
18 impact fee system established by Fort Mill's school
19 district affect Eastwood's commitment to buy the
20 Brooks Creek property?
21 A. We viewed the impact fee as an additional
22 cost to the house -- the final price of the house,
23 which needed to be understood of when it was paid, who
24 was paying it and what the impact was on the final
25 sale price of the house.

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1 Q. Right. So how does this feed into the
2 formula I just -- the formula I just gave you, we
3 spent maybe five minutes going over it -- I may be in
4 the red zone -- didn't include impact fees. So how
5 does that play into the whole thing?
6 A. Your definition did not, but it's still a
7 cost that we would have to incur that was unknown at
8 the time.
9 Q. Right. So if the formula that we talked
10 about yielded a lot price of say \$80,000 a lot, you're
11 then going to have an impact fee on top of that,
12 right, that you're going to have to absorb before you
13 can sell to the homeowner?
14 A. We would have that on top, correct. We
15 would, the builder.
16 Q. Right. So my question was how did that
17 additional layer of costs affect Eastwood's commitment
18 to do this deal to buy the Brooks Creek property?
19 A. Understand we were never offered the exact
20 cost of these lots at the time we were presented the
21 agreement. So we never had that chance to say this is
22 the right price. Coupled with the fact of the
23 additional cost of the impact fees it made us pause.
24 Q. Okay. So, made you pause in what sense, to
25 not do the deal, or what?

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1 A. Well, as you recall, we didn't respond to
2 their contract.
3 Q. Correct.
4 A. And then that's where the pause was.
5 Q. So am I to understand then that y'all had
6 decided not to proceed with the deal because --
7 A. That's not -- no. You're mistaken.
8 Q. I'm trying to ask you a question. I'm not
9 stating anything, Mr. Polite. So let me finish.
10 My question was had y'all decided not to do the
11 deal, is that why y'all did not respond to the
12 October 2018 contract?
13 A. That is not -- you're putting words in my
14 mouth. That is not --
15 Q. I'm asking a question, sir. Is it or is it
16 not --
17 A. The answer is no, we did not make that
18 decision.
19 Q. Okay. Then why did you not even reach back
20 out to GreenHawk and say what are your costs?
21 A. I can't respond to that. I have no answer.
22 Q. You have no answer or you have no
23 explanation?
24 A. Both.
25 Q. Was this Exhibit 24 one of the documents

Page 134 1 that was looked at earlier? 2 MR. ADAMS: Exhibit what, Stephen? 3 MR. COX: The Exhibit 24, the exchange with 4 Mr. Medlin. Do you remember that? 5 THE WITNESS: I think John had a different 6 number for it. 7 MR. MABE: Yeah, I did. I numbered it No. 8 111. 9 MR. COX: And I'm not sure this is right. 10 This might not be something -- I was having trouble 11 trying to find it at the break. This was an exhibit 12 from his earlier deposition. 13 MR. ADAMS: You're way into the red zone, 14 Stephen, but I'm okay. 15 MR. COX: I understand. I wouldn't be if 16 we started at 9:30. That was a joke. 17 MR. ADAMS: No. The red zone was the 18 five minutes you said. 19 MR. COX: I understand. I'm borrowing my 20 30 minutes from 9:30. I'm not even close to -- 21 MR. ADAMS: There was no question the 22 30(b)(6) started at ten. So you're maybe -- 23 MR. COX: All right. Fair point. This 24 really is the last line. 25 BY MR. COX:	Page 136 1 Q. Which, as you said, y'all never responded 2 to, right? 3 A. Uh-huh. 4 Q. And never asked -- to your knowledge as the 5 corporate representative never asked for any 6 explanation of GreenHawk's costs between October of 7 2018 and June 8th of 2020, right? 8 A. That's right. 9 Q. So at this point in June of 2020 was it 10 still Eastwood's intention to proceed with the deal 11 once it got the costs from GreenHawk? 12 A. Yes. 13 Q. Why don't you say that in this email? 14 A. Well, I said it through that that money 15 would be applied to deposits, and that was my 16 intention that it would either be used through 17 deposits or we would need to collect the money. 18 Q. But what you say here is there was never a 19 ratified contract for the repurchase of the lots 20 between the two parties, and my question is why didn't 21 you go on in the very next sentence to say we would 22 like to see your costs so we can figure out what the 23 contract price is going to be? Why didn't you say 24 that? 25 A. That may have been a better response. I
Page 135 1 Q. Do you remember the conversation you had 2 with Mr. Medlin trying to get the fees paid -- the 3 reimbursed expenses paid back in June of 2020 we 4 discussed at your last deposition? 5 A. I would love to see that. I don't have 6 that. 7 Q. I've got it on the -- I thought I did. 8 A. Yeah, but it's across the room, Stephen. 9 I'm sorry. I just want to make sure. 10 Q. Here's the sentence I'm going to ask you 11 about. You're writing to Mr. Medlin. I think Mr. 12 Hutchins had reached out to you asking about the 13 status of this. You reached out to Mr. Medlin, and 14 you said in part this amount -- and at the time you 15 had it at \$312,000. I think you've since revised it. 16 But you said, "This amount was intended to be credited 17 toward the final earnest money deposits. However, 18 there was never a ratified contract for the repurchase 19 of the lots between the two parties." Do you see 20 that? 21 A. Yes, sir. 22 Q. Now, this is about close to two years -- 20 23 months or so after y'all had received the draft 24 contract from GreenHawk in October of 2018, right? 25 A. That draft, yes. 2018.	Page 137 1 did not say that. 2 Q. But your testimony sitting here today as 3 the corporate rep is that as of the day you sent this 4 email on June 8, 2020, it was Eastwood's intention to 5 proceed with the contract once it got those costs? 6 A. Yes. 7 Q. Even though y'all had never asked for them? 8 A. That's correct. 9 Q. Okay. Why were you asking so much -- in 10 2016 you were asking for a lot purchase contract, and 11 you were asking for GreenHawk to take the lead in 12 drafting it, right? 13 A. That was a request. 14 Q. If you already had an agreement as to 15 pricing and how are things going to be priced, which 16 Eastwood says in this lawsuit is an enforceable 17 agreement, why did you even need a lot purchase 18 contract? 19 A. I think it would have put this type of 20 incident behind us if we had the agreement. 21 Q. Okay. And if you couldn't figure out what 22 the lot price was going to be until you knew all the 23 costs, then why were you trying to get a contract when 24 you couldn't even determine the price yet in 2016? 25 A. Had we had the costs we would have been

Page 138 1 able to determine that. 2 Q. But you didn't. You didn't even have them 3 two years later, right? 4 A. Still don't have them. 5 Q. Right. So why were you proceeding with the 6 contract if you didn't have the costs yet to determine 7 the price? 8 A. To avoid this. A conflict. This being a 9 conflict. 10 Q. Okay. You were trying to draft a contract 11 so you would not have a dispute over whether there was 12 a contract; is that accurate? 13 A. To avoid a conflict between the two 14 parties. It would have been -- 15 Q. Over whether -- excuse me. Over whether a 16 contract existed or not? 17 A. It would have memorialized all of those 18 agreements made since 2013 was my opinion. 19 Q. And now we don't have that, right? 20 A. That's correct. That one. That specific 21 one. 22 Q. Thank you. 23 MR. COX: Jimmy, I know I'm in the red 24 zone, and I appreciate it. I'm done. 25 THE WITNESS: Thank you, Stephen.	Page 140 1 Q. Right. Let me ask this way: As of 2 June 8th was Eastwood aware of the fact that TRI 3 Points had already started building townhomes at 4 Brooks Creek? 5 A. I don't know the exact date, but it 6 happened that summer when it came to our attention. 7 Q. And how did it come to your attention that 8 TRI Points had started building on property that 9 Eastwood thought was going to be its property at 10 Brooks Creek? 11 A. Both myself and Clark Stewart, the owner of 12 Eastwood, drove by the site and discovered the 13 vertical construction. 14 Q. And what was the reaction of Eastwood when 15 it discovered vertical construction? 16 A. Shock. 17 Q. And why were you shocked? 18 A. Because those were our lots. 19 Q. So as of the date of this email exchange 20 with Mr. Medlin did you understand that GreenHawk had 21 at least in some respect sold lots to TRI Points? 22 A. Again, date specific I'm not a hundred 23 percent, I can't speak to June 8th, but it was around 24 that time it came to our attention. 25 Q. Okay.
Page 139 1 MR. COX: Thank you, too. I appreciate it. 2 MR. ADAMS: I've got a couple of 3 follow-ups. Can y'all hear me okay? 4 MR. COX: Yes, sir. 5 MR. ADAMS: Just for Stephen and John, what 6 is the deposition exhibit for the exhibit on the 7 screen right now? 8 MR. COX: Exhibit 24 in May. 9 MR. ADAMS: Also Exhibit 111? 10 MR. COX: I don't know about that. 11 COURT REPORTER: Mr. Mabe, I can't hear 12 you. 13 MR. MABE: That's because I was muted. I 14 can share my screen and show you 111, but it's 15 four days earlier on June 4th. 16 MR. ADAMS: Okay. 17 THE WITNESS: And it's a different one. 18 MR. ADAMS: Okay. We can start with this 19 one. 20 CROSS-EXAMINATION 21 BY MR. ADAMS: 22 Q. Mr. Polite, as of June 8, 2020, do you know 23 that the status of GreenHawk's relationship with TRI 24 Points was as it related to Brooks Creek? 25 A. Do I know it now or did I know it then?	Page 141 1 MR. ADAMS: And, Stephen, you can take that 2 down. 3 MR. COX: Okay. Sure. 4 MR. ADAMS: I've got to get the right 5 documents here. John, can you put up -- 6 MR. MABE: Gladly. I've got it ready. 7 111? 8 MR. ADAMS: No. I want to put up 113. 9 MR. MABE: It will take me a little longer 10 to do that, but I think I can. 11 MR. ADAMS: That's just for everybody 12 else's benefit. 13 MR. MABE: Okay. 14 MR. ADAMS: I'm going to request remote 15 control, John, if you'll let me have it, and then I 16 can navigate. There we go. Perfect. 17 BY MR. ADAMS: 18 Q. So, Mr. Polite, looking at Exhibit 113 as 19 it relates to this .55 acres -- 20 A. Yes, sir. 21 Q. -- why did Eastwood deed the .55 acres to 22 GreenHawk -- well, strike that. Did GreenHawk pay 23 Eastwood for the .55 acres? 24 A. No. No money. 25 Q. Why did Eastwood transfer that property to

Page 142 1 GreenHawk without being paid for it? 2 A. As I said earlier, it was my decision that 3 it was the right thing to do for the betterment of 4 River Falls and that it was the right thing to do for 5 the agreements we've had in place. 6 Q. And do you see there on the screen there's 7 a reference there on the email in red from August 8th 8 by you regarding the impact fees? 9 A. Yes. 10 Q. As of the summer of 2018 what was the 11 status of the impact fee? 12 A. That it had just been passed and that we 13 were uncertain on this particular email of which of 14 the two properties fell under both jurisdictions, Fort 15 Mill alone or Fort Mill and Tega Cay. 16 Q. And was there litigation that you're aware 17 of involving the impact fees? 18 A. Yes. There was class action from builders 19 and property owners against them. 20 Q. And was Eastwood one of those plaintiffs in 21 any of those cases? 22 A. No. We didn't have standing since we 23 weren't a property owner at that time. 24 Q. Did Eastwood ask GreenHawk to be a 25 plaintiff in that litigation?	Page 144 1 Q. And why as far as Eastwood understood was 2 there a lack of communication on both sides with 3 respect to Brooks Creek? 4 A. Ask that again. 5 Q. Why is it that Eastwood didn't talk to 6 GreenHawk about Brooks Creek and GreenHawk didn't talk 7 to Eastwood about Brooks Creek? 8 A. It was the unknown on this whole impact 9 thing. We talk about the Halloween contract. 10 Q. Right. 11 A. We still had a huge uncertainty of the Fort 12 Mill massacre which was the title of the impact fees. 13 That was just unresolved at that time. 14 Q. And did anyone from GreenHawk ever say to 15 Eastwood we are terminating our relationship with you 16 and we are now going to sell this property -- the 17 Brooks Creek property to another home builder? 18 A. No. 19 Q. Did they ever tell you that they had 20 entered into discussions with another home builder? 21 A. No. Not about selling them. 22 Q. Right. About selling lots. Was Eastwood 23 ever put on notice by GreenHawk that they were not 24 going to honor the agreement to sell the lots back to 25 Eastwood at cost-plus based on the terms that had been
Page 143 1 A. Yes. 2 Q. And what was GreenHawk's response? 3 A. To my knowledge, it was they did not want 4 to join that lawsuit. 5 Q. And what impact did the litigation about 6 the impact fees have on the discussions between 7 GreenHawk and Eastwood as it related to the Brooks 8 Creek component of the Gold Hill Road property? 9 A. Well, from the time that that litigation 10 was filed until March 2021 it was really undetermined 11 if there was going to be the additional cost or not, 12 and there was really a lot of uncertainty of what that 13 number could be or would be during that litigation. 14 Q. Now, you were asked by I know Mr. Cox and 15 maybe Mr. Mabe too whether Eastwood provided any 16 follow-up after the receipt of the October 2018 draft 17 contract. Do you remember that? 18 A. That's correct. 19 Q. And your answer was Eastwood did not 20 respond about it, correct? 21 A. That's right. 22 Q. Did GreenHawk ever follow up to say, you 23 know, what's the answer, what are we doing on the 24 contract? 25 A. No.	Page 145 1 negotiated and discussed over the five years of 2 development? 3 A. No. 4 Q. And, so, when was the first time Eastwood 5 had any notice that GreenHawk was not complying with 6 the agreements that the parties had been operating 7 under since 2013? 8 A. Firsthand knowledge, driving by the 9 property and seeing the vertical construction and 10 signage for TRI Pointe Homes. 11 Q. And there had been -- to your knowledge had 12 Eastwood received any written communication from 13 GreenHawk saying that they were not going forward with 14 the agreement as it related to River Falls? 15 A. No. Still nothing. 16 Q. Did -- hold on a minute. I didn't freeze. 17 I just got real still. 18 MR. MABE: You froze, but the computer 19 screen did not. 20 MR. ADAMS: Correct. 21 THE WITNESS: I agree. 22 BY MR. ADAMS: 23 Q. Mr. Polite, with respect to Brooks Creek, 24 was Eastwood ever told by GreenHawk that the Brooks 25 Creek lots had been platted and that a plat was on

Page 146 1 record? 2 A. I don't recall. 3 Q. Have you seen any documents to suggest that 4 Eastwood knew that there was a plat prior to 5 discovering that the vertical had been constructed by 6 TRI Pointe? 7 A. I don't recall anything specific about that 8 plat. 9 Q. Was there ever a point in time that 10 GreenHawk tendered back the \$360,000 of Eastwood's 11 money that it had the benefit of since 2013? 12 A. We have not gotten any money. 13 Q. Has it been tendered? Has it even been 14 offered? 15 A. No. 16 Q. And has Eastwood over the years had a 17 practice of having what I'll call handshake deals, 18 partnership-type development agreements with other 19 builders in addition to GreenHawk that then would be 20 confirmed in final contracts prior to the 21 development -- prior to the delivery of actual lots? 22 MR. MABE: Objection, leading. 23 THE WITNESS: I still answer? 24 BY MR. ADAMS: 25 Q. It's on cross. Yes. You can still answer.	Page 148 1 think I've read in some places and that that is not 2 normal for other developers that we've dealt with. 3 Q. Did Eastwood place trust in GreenHawk that 4 it would honor the agreement and develop the property 5 as agreed? 6 A. Yes. 7 MR. MABE: Objection, leading. You're on 8 direct, by the way. He's your witness. 9 BY MR. ADAMS: 10 Q. Was there ever a point in time when 11 Eastwood determined that it could not trust GreenHawk? 12 A. I would say when Mr. Medlin got involved 13 that we had a problem when he said there was 14 absolutely no record of this in the GreenHawk 15 knowledge base. 16 Q. Was that in 2020? 17 A. If that's the dates on the emails that we 18 used, yes. Yes. 19 Q. Based on your investigation was there ever 20 a point in time when Eastwood was dealing with 21 Mr. Briner at GreenHawk that it questioned whether 22 GreenHawk was committed to the partnership agreement 23 and the contract that the parties had? 24 A. I'd say no, not necessarily. 25 MR. MABE: Objection, leading.
Page 147 1 A. Okay. Yes. There are groups that we dealt 2 with that we would do a handshake agreement. We have 3 since more formalized that having those agreements 4 done prior to assigning the property to them at this 5 point. 6 Q. And based on the investigation you did in 7 order to testify today what was Joe Dority's practice 8 as it related to reaching agreements with land 9 developers? 10 A. Handshakes. Assignment prior to 11 formalizing. Having the agreement and then -- not 12 having the contract done but having the agreement 13 worked out. 14 Q. Is there anything about the relationship 15 with GreenHawk other than the fact that we're now in 16 litigation that differentiates it from the manner in 17 which you understand Mr. Dority handled other 18 relationships with other builders in general? 19 MR. MABE: Objection to form. 20 BY MR. ADAMS: 21 Q. I'm sorry. Other developers. 22 A. Yeah, I'll give the Joe Polite version of 23 that. There was a lot of loosey goosey. The 24 GreenHawk crowd, as discovered in the length of time 25 between messages and correspondences, was glacial I	Page 149 1 THE WITNESS: No, not necessarily. 2 MR. ADAMS: I believe that's all I have. 3 MR. MABE: I've got some more questions. 4 REDIRECT EXAMINATION 5 BY MR. MABE: 6 Q. Mr. Polite, you were asked about handshake 7 deals. I want to ask you about the Kanata contract. 8 A. Okay. 9 Q. Tell me what about the Kanata deal was a 10 handshake? Was there any aspect of that that was a 11 handshake deal? 12 A. I don't remember the origins of that one. 13 I apologize. 14 Q. You don't know anything about it? 15 A. When I was here we were purchasing lots at 16 that point. 17 Q. Right. And you found out that Mr. Dority 18 had signed an option agreement that you would only 19 have an option on the second phase. Do you recall 20 that? 21 A. I do. Yes, sir. 22 Q. Do you recall taking a pass on buying up 23 lots in the second phase? 24 A. Yes, I do. 25 Q. Okay. So there's no handshake about that.

Page 150 1 You signed the contract that optioned the lots and 2 then you the company took a pass on it and didn't buy 3 the lots. Correct? 4 A. That is correct. 5 Q. It was not done on a handshake, it was done 6 with written signed contracts, right? 7 A. That -- 8 MR. ADAMS: Objection to form. 9 THE WITNESS: That particular one did have 10 an option agreement on phase two, yes. 11 BY MR. MABE: 12 Q. On Lindley -- I know you told me you 13 haven't looked at these things, but you're familiar 14 with the development in Gibsonville called Lindley 15 Estates, right, or Lindley Farms? 16 A. Yes, sir. 17 Q. And Eastwood did not develop that property 18 but another home builder developed that project, 19 correct? 20 A. There was another home builder that started 21 that project. 22 Q. And they got a preliminary plat approved to 23 their liking; isn't that correct? 24 A. I don't know specifically if they liked it 25 or not.	Page 152 1 BY MR. MABE: 2 Q. Isn't it true that the Lindley deal between 3 Eastwood and the original tract builder or home 4 builder was a written contract? 5 MR. ADAMS: John, are you retracting the 6 question I objected to? 7 MR. MABE: I'm going to get back to it. 8 I'm setting some background for it. 9 THE WITNESS: Can you repeat that? Because 10 what you just said, that we had a contract with the 11 tract builder, I mean -- 12 BY MR. MABE: 13 Q. I'm asking you. The Eastwood company made 14 an agreement with the original developer of that, 15 which was a tract builder, to buy the subdivision and 16 complete it. Isn't that what happened? 17 A. Again, I don't recall that specific 18 agreement and who we -- 19 Q. Okay. 20 A. -- purchased it from. 21 Q. Do you know whether it was a handshake deal 22 with your competitor that you were just going to go in 23 and buy the rest of that subdivision and finish it? 24 A. I don't have knowledge of how that 25 originated.
Page 151 1 Q. Okay. I beg your pardon. Eastwood did not 2 participate in the entitlement to build subdivision 3 lots at Lindley, did it? 4 A. Yeah, not to my knowledge we did not. 5 Q. Not to anybody's knowledge because it was 6 another home builder that got the entitlements; isn't 7 that correct? 8 A. Another home builder started that project. 9 Yes, sir. 10 Q. Right. And Eastwood did not amend the 11 preliminary plat, did they? 12 A. I was not -- no, we did not. 13 Q. Okay. And Eastwood got GreenHawk to buy 14 the undeveloped project and develop it. Isn't that 15 correct? 16 A. Yes, sir. 17 Q. And to sell developed lots in the first 18 phase and to sell lots in the next phase that 19 GreenHawk developed; isn't that correct? 20 A. That's correct. 21 Q. So there was no handshake deal on that, was 22 there? 23 A. No, but -- 24 MR. ADAMS: Objection to form. 25 THE WITNESS: No, but there --	Page 153 1 Q. Well, do you have knowledge of the 2 assignment agreement that's signed in writing between 3 Eastwood and GreenHawk for GreenHawk to buy that 4 project from the original developer? 5 A. I don't have knowledge of the assignment 6 agreement, but I do have knowledge that there was a 7 contract between GreenHawk and Eastwood and then that 8 had to be modified based on additional costs that were 9 incurred by GreenHawk and we made revisions to those 10 original lot prices at Lindley. 11 Q. You changed the takedown schedule, didn't 12 you? 13 A. We changed the takedown -- to my knowledge, 14 as I remember it, we changed the takedown schedule, 15 made it specific to each lot as the price, and there 16 was a price increase because he ran into overages on 17 his budget. 18 Q. And that was done in writing, wasn't it? 19 A. We discussed it and then we put it in 20 writing, yes. 21 Q. And you signed it, didn't you? 22 A. It was -- 23 Q. It was a signed agreement? 24 MR. ADAMS: John, let him answer the 25 question. You're talking over him.

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 1 MR. MABE: I beg your pardon. I thought he
 2 had answered.
 3 MR. ADAMS: Well, if you'll watch his mouth
 4 moving, and when it stops you can ask the next
 5 question.
 6 MR. MABE: Actually, I'm still sharing my
 7 screen and his picture is pretty small. Let me change
 8 that. You're done with this, right? I'm not going to
 9 ask anything about it, I don't believe so. There you
 10 go.
 11 BY MR. MABE:
 12 Q. So, finish your answer, please.
 13 A. Ask the question again, please.
 14 Q. That it was a signed agreement to amend the
 15 lot purchase and sale agreement between the GreenHawk
 16 entity and Eastwood on Lindley?
 17 A. There was a signed amendment after there
 18 was additional costs. Yes, sir.
 19 Q. And there was a signed second amendment,
 20 wasn't there?
 21 A. That's the amendment I was discussing, yes.
 22 Q. Okay. So do you know how many times that
 23 contract was amended in writing with a signature from
 24 the parties?
 25 A. I do not.

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 1 Q. Are you aware of any change in the
 2 agreement that y'all had for the purchase of lots in
 3 Lindley that was done just on a handshake?
 4 A. What I did, there was not -- there was
 5 discussion, and then we wrote it down and signed the
 6 amendment.
 7 Q. Okay. Are you aware of any -- any -- lot
 8 purchase agreement under which Eastwood purchased
 9 subdivision lots from a GreenHawk entity without a
 10 signed written contract?
 11 MR. ADAMS: Objection to form.
 12 THE WITNESS: The closings that we've had
 13 on lots with GreenHawk have had contracts.
 14 BY MR. MABE:
 15 Q. That doesn't answer my question. Are you
 16 aware of any closing on a lot purchase by Eastwood
 17 from a GreenHawk entity without a signed written
 18 purchase and sale contract?
 19 A. No closings without a signed contract to
 20 date.
 21 Q. So this instance of Brooks Creek would be
 22 the first. You would want the court to make a
 23 contract that's not written and not signed and get the
 24 court to make GreenHawk sell lots to Eastwood as a
 25 first time between the parties; is that correct?

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 1 A. We would like to have them live up to the
 2 agreement that they were going to sell us lots, yes.
 3 Q. This would be the first time -- if the
 4 court ordered GHD Brooks Creek to sell lots in Brooks
 5 Creek to Eastwood it would be the first time that it
 6 was done with no written signed contract?
 7 A. It would be the first time that I would be
 8 aware of us purchasing lots under a court order.
 9 Q. Well, please answer my question. It would
 10 be the first time that you would -- that Eastwood
 11 would buy a lot from a GreenHawk entity without a
 12 signed written contract; isn't that correct?
 13 A. Should the court order it, yes.
 14 Q. Okay. Are you -- I'm going to leave that
 15 one alone. I'm done.
 16 MR. COX: That's it for me. Thank you, Mr.
 17 Polite. I appreciate your time.
 18 MR. ADAMS: Thank you, Stephen.
 19 COURT REPORTER: Mr. Adams, will you be
 20 ordering a copy of this transcript, sir?
 21 MR. ADAMS: Yes, ma'am, please.
 22 COURT REPORTER: And how about for Mr.
 23 Mabe?
 24 MR. MABE: Yes, ma'am.
 25 (Deposition was concluded at 2:55 p.m.)

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 1 STATE OF NORTH CAROLINA
 2 COUNTY OF HECKLENBURG
 3
 4 CERTIFICATE OF VERBATIM TRANSCRIPT
 5
 6 I, Mindy Vislay, Court Reporter and Notary
 7 Public for the State of North Carolina at Large, do
 8 hereby certify that the foregoing transcript of JOSEPH
 9 F. POLITE, JR., was taken by me and transcribed by me
 10 and is a true, accurate, and complete record.
 11 I further certify that I am neither related
 12 to nor counsel for any party to the cause pending or
 13 interested in the events thereof.
 14 In witness whereof, I have hereunto set my
 15 hand this 22nd day of October, 2021 at Charlotte,
 16 North Carolina.
 17
 18
 19 
 20 Mindy Lynn Vislay
 21 #200926400076
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1 STATE OF NORTH CAROLINA) 2 COUNTY OF MECKLENBURG) 3 4 I, JOSEPH F. POLITE, JR., do hereby certify: 5 That I have read the foregoing deposition; 6 That I have made such changes in form and/or 7 substance to the within deposition as might be 8 necessary to render the same true and correct; 9 That having made such changes thereon, I hereby 10 subscribe my name to the deposition. 11 I declare under penalty of perjury that the 12 foregoing is true and correct. 13 14 15 JOSEPH F. POLITE, JR. 16 17 Executed this day of 18 2021, at 19 20 Notary Public: 21 My Commission Expires: 22 23 Signature page to: JAMES C. ADAMS 24 25 MV/JOSEPH F. POLITE, JR., 10/20/2021 26 EASTWOOD CONSTRUCTION PARTNERS, LLC and EASTWOOD 27 DEVELOPMENT CORPORATION vs. GHD BROOKS CREEK, a North 28 Carolina Limited Liability Company, and AF-BROOKS 29 CREEK, LLC, a North Carolina Limited Liability 30 Company, GHD RIVER FALLS, a North Carolina Limited 31 Liability Company, and AF-RIVER FALLS, LLC, a North 32 Carolina Limited Liability Company, GREENHAWK 33 CORPORATION, INC., and TRI POINTE HOMES HOLDINGS, INC.	Page 158
1 WITNESS ERRATA SHEET 2 Witness Name: JOSEPH F. POLITE, JR. 3 Case Name: EASTWOOD CONSTRUCTION PARTNERS, LLC and 4 EASTWOOD DEVELOPMENT CORPORATION vs. GHD BROOKS CREEK, 5 a North Carolina Limited Liability Company, and 6 AF-BROOKS CREEK, LLC, a North Carolina Limited 7 Liability Company, GHD RIVER FALLS, a North Carolina 8 Limited Liability Company, and AF-RIVER FALLS, LLC, a 9 North Carolina Limited Liability Company, GREENHAWK 10 CORPORATION, INC., and TRI POINTE HOMES HOLDINGS, INC. 11 12 Date Taken: October 20, 2021 13 14 Page # _____ Line # _____ 15 Should Read: _____ 16 Reason for Change: _____ 17 18 Page # _____ Line # _____ 19 Should Read: _____ 20 Reason for Change: _____ 21 22 Page # _____ Line # _____ 23 Should Read: _____ 24 Reason for Change: _____ 25 26 Page # _____ Line # _____ 27 Should Read: _____ 28 Reason for Change: _____ 29 30 Page # _____ Line # _____ 31 Should Read: _____ 32 Reason for Change: _____ 33 34 Page # _____ Line # _____ 35 Should Read: _____ 36 Reason for Change: _____ 37 38 Page # _____ Line # _____ 39 Should Read: _____ 40 Reason for Change: _____ 41 42 Page # 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STATE OF SOUTH CAROLINA
COUNTY OF YORK

Eastwood Construction Partners, LLC, and
Eastwood Development Corporation,

Plaintiffs,

v.

GHD Brooks Creek, a North Carolina
Limited Liability Company, and AF-Brooks
Creek, LLC, a North Carolina Limited
Liability Company, GHD River Falls, a
North Carolina Limited Liability Company,
and AF-River Falls, LLC, a North Carolina
Limited Liability Company, GreenHawk
Corporation, Inc., and TRI Pointe Homes,
Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

C/A No. 2020-CP-46-02006

**GREENHAWK DEFENDANTS'
MOTION FOR PARTIAL SUMMARY
JUDGMENT AND CANCELLATION
OF LIS PENDENS**

Defendants GHD-Brooks Creek, LLC, AF-Brooks Creek, LLC, GHD-River Falls, LLC, AF-River Falls, LLC, and GreenHawk Corporation, Inc. (collectively, "GreenHawk Defendants"), by and through their undersigned counsel and pursuant to Rule 56 of the South Carolina Rules of Civil Procedure and S.C. Code Ann. § 15-11-10 *et seq.*, hereby move this Court for an order granting their motion for partial summary judgment ("Motion") against Plaintiffs Eastwood Construction Partners, LLC and Eastwood Development Corporation (collectively, "Plaintiffs"). In conjunction with partial summary judgment, this Motion also seeks an order cancelling Lis Pendens Nos. 2020-CP-46-00228 and 2020-CP-46-00229.

This Motion is made on the grounds that there is no genuine issue as to any material fact, and the GreenHawk Defendants are entitled to judgment as a matter of law on Plaintiffs' Second Cause of Action for Specific Performance and on any other cause of action or claim for relief by

Plaintiffs that would affect title to the “Brooks Creek” property or the “River Falls” property (as described in the Third Amended Complaint) or that would require the GreenHawk Defendants to convey all or any portion of such properties to Plaintiffs. Specifically, the GreenHawk Defendants will show that there does not exist, nor has there ever existed, any legally enforceable agreement between any of the Plaintiffs and any of the GreenHawk Defendants for the conveyance of the Brooks Creek property or the River Falls property to Plaintiffs. In particular, but without limitation, the agreement alleged by Plaintiffs in their Third Amended Complaint is barred by the Statute of Frauds and is unenforceable because there was no meeting of the minds as to all necessary and material terms. Furthermore, without any cause of action or claim for relief affecting title to such properties, Lis Pendens Nos. 2020-CP-46-00228 and 2020-CP-46-00229 are no longer authorized by S.C. Code Ann. § 15-11-10 *et seq.*¹

This Motion is supported by the applicable law, the papers and pleadings of record in this action, the deposition transcripts in this action, and such other and further grounds as may appear in a Memorandum in support of this Motion, which the GreenHawk Defendants reserve the right to file in advance of a hearing on this Motion.

[SIGNATURE PAGE FOLLOWS]

¹ See *Carolina Park Assocs., LLC v. Marino*, 400 S.C. 1, 9, 732 S.E.2d 876, 880 (2012).

Respectfully submitted,

NEXSEN PRUET, LLC

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November 24, 2021
Greenville, South Carolina

**STATE OF SOUTH CAROLINA
COUNTY OF YORK**

**IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT**

**Eastwood Construction Partners, LLC and
Eastwood Development Corporation,**

Plaintiffs,

v.

**GHD Brooks Creek, a North Carolina
Limited Liability Company, and AF-
Brooks Creek, LLC, a North Carolina
Limited Liability Company, GHD River
Falls, a North Carolina Limited Liability
Company, and AF-River Falls, LLC, a
North Carolina Limited Liability
Company, Greenhawk Corporation, Inc.,
and TRI Pointe Homes Holdings, Inc.,**

Defendants.

CASE NO: 20-CP-46-02006

**MOTION FOR PARTIAL
SUMMARY JUDGMENT**

Defendant TRI Pointe Homes Holdings, Inc. ("TRI Pointe"), by and through its undersigned counsel and pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, hereby moves that this Court issue its Order entering summary judgment in favor of TRI Pointe on Plaintiffs' Second Cause of Action for Specific Performance and on any other cause of action or claim for relief by Plaintiffs that affect TRI Pointe's title to the "Brooks Creek Property" (as described in the Third Amended Complaint) or that would require TRI Pointe to convey all or any portion of the Brooks Creek Property to Plaintiffs.

TRI Pointe further moves that this Court cancel the *lis pendens* filed by the Plaintiffs with respect to the Brooks Creek Property.

As grounds for its motion, TRI Pointe will show that there does not exist, nor has there ever existed, any legally enforceable agreement between any of the Plaintiffs and any of the Defendants for the conveyance of the Brooks Creek Property to Plaintiffs. In particular, but without limitation, the agreement alleged by Plaintiffs in their Third Amended Complaint is barred by the Statute of Frauds and is unenforceable because it lacks all necessary and material terms. Accordingly, there exists no genuine issue of material fact with respect to Plaintiffs' claims for specific performance or that affect title to the Brooks Creek Property, and TRI Pointe is entitled to summary judgment on such claims as a matter of law.

In support of its motion, TRI Pointe will rely on the papers and pleadings of record in this action, the transcripts from the depositions of Joseph Polite, Joseph Dougherty and the corporate designees of Plaintiffs, and on such other and further grounds as may appear in a Memorandum to be filed by TRI Pointe at or before the hearing on this motion. TRI Pointe is not filing the aforementioned deposition transcripts because such transcripts are in the possession of Plaintiffs and because the transcripts include exhibits that have been designated as confidential by the parties.

This 12th day of November, 2021.

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STATE OF SOUTH CAROLINA
COUNTY OF YORK

Eastwood Construction Partners, LLC, and
Eastwood Development Corporation,

Plaintiffs,

v.

GHD Brooks Creek, a North Carolina
Limited Liability Company, and AF-Brooks
Creek, LLC, a North Carolina Limited
Liability Company, GHD River Falls, a
North Carolina Limited Liability Company,
and AF-River Falls, LLC, a North Carolina
Limited Liability Company, and Greenhawk
Corporation, Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

C/A No. 2020-CP-46-02006

**MEMORANDUM IN SUPPORT OF
DEFENDANTS' RULE 12(b)(6)
MOTION TO PARTIALLY DISMISS
THE COMPLAINT AND
CANCEL LIS PENDENS**

Defendants GHD Brooks Creek, a North Carolina Limited Liability Company, AF-Brooks Creek, LLC, a North Carolina Limited Liability Company (collectively, "Brooks Creek"), GHD River Falls, a North Carolina Limited Liability Company, and AF-River Falls, LLC, a North Carolina Limited Liability Company (collectively, "River Falls")¹ hereby file this memorandum in support of their Motion to Partially Dismiss the Complaint and Cancel Lis Pendens ("Motion").

INTRODUCTION

Defendants are owners of the properties affected by Lis Pendens Nos. 2020-CP-46-00228 and 2020-CP-46-00229 (collectively, "the Lis Pendens"). First, this Court should dismiss Plaintiff's specific performance claim because such claim fails to state facts sufficient to

¹ Brooks Creek and River Falls are also collectively referred to as "Defendants."

constitute a cause of action against Defendants. Then, in conjunction with dismissing the specific performance claim, this Court should cancel the Lis Pendens, because without the specific performance claim, the Lis Pendens are no longer authorized by statute. *See* S.C. Code Ann. § 15-11-10 *et seq.*; *see also* *Carolina Park Assocs., LLC v. Marino*, 400 S.C. 1, 9, 732 S.E.2d 876, 880 (2012). Lastly, Defendants respectfully request that this Court award them the reasonable attorney's fees and costs associated with this Motion.

FACTUAL AND PROCEDURAL HISTORY²

This dispute concerns two properties, one owned by Brooks Creek and the other by River Falls. (Compl. at ¶ 6; *see also* Affidavit of Jeffrey M. White, attached as *Exhibit A*, at ¶¶ 4-5). As the Complaint makes clear, there is no written contract between Plaintiffs and Brooks Creek or River Falls with respect to the properties at issue. (Compl. at ¶¶ 8-12; *see also* White Aff. at ¶¶ 10, 12 (confirming that there is no evidence of any written contract between Plaintiffs and Defendants for the purchase of either of the properties at issue). Indeed, there is no contract at all, written or otherwise.

On June 11, 2020, Plaintiffs filed the Lis Pendens. Thereafter, Defendants specifically demanded that Plaintiffs provide them with evidence of a written contract that would support the filing of the Lis Pendens. (*See* June 25, 2020 Letter from James I. Warren, III to James Edward Bradley, attached as *Exhibit B* ("June 25 Letter"), at p. 1 ("This is to demand that the putative Plaintiff, Eastwood Construction Partners, LLC, immediately provide such written evidence of contract which you believe will satisfy the South Carolina Statute of Frauds. Your client's failure to produce a written contract will be taken as indicating their bad faith in filing the . . . Lis Pendens.")). Plaintiffs have produced nothing. Indeed, instead of responding to the June 25

² Defendants only set forth the factual background relevant to Plaintiffs' specific performance claim and the Lis Pendens.

Letter or providing evidence of a written contract, Plaintiffs filed this action on July 1, 2020 and asserted a claim for specific performance of a contract that does not exist.

LEGAL STANDARD

A. SCRPC 12(b)(6)

Under Rule 12(b)(6), a defendant may move to dismiss a complaint when it fails to state facts sufficient to constitute a cause of action. SCRPC 12(b)(6); *see also Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). “In considering such a motion, the trial court must base its ruling solely on allegations set forth in the complaint.” *Id.* If the facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, fail to entitle the plaintiff to relief on any theory, then the court should grant a motion to dismiss for failure to state a claim. *Id.*

In addition, a trial court may treat a Rule 12(b)(6) motion as a motion for summary judgment and consider matters presented outside of the pleadings if the parties are afforded a reasonable opportunity to respond to such matters in accordance with Rule 56(c) and (e), SCRPC. *Baird v. Charleston Cty.*, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999).

B. Lis Pendens

The filing of a lis pendens must strictly comply with the statutory provisions of S.C. Code Ann. § 15–11–10. *Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 17, 567 S.E.2d 881, 889 (Ct. App. 2002). Section 15-11-10 provides that a lis pendens may be filed “[i]n an action *affecting the title to real property* . . . not more than twenty days before filing the complaint or at any time afterwards . . . with the clerk of each county in which the property is situated” (emphasis added). If a court finds that a lis pendens does not affect the title to real property, then

the lis pendens is not authorized by the statute, and the statute does not limit the court's power to cancel it. *Marino*, 400 S.C. at 9, 732 S.E.2d at 880.

ARGUMENT

A. Plaintiff's Specific Performance Claim Should be Dismissed.

"Specific performance should be granted only if there is no adequate remedy at law and specific enforcement of the contract is equitable between the parties." *Ingram v. Kasey's Assocs.*, 340 S.C. 98, 105, 531 S.E.2d 287, 291 (2000) (citations omitted). In order to compel specific performance, a court must find:

(1) *there is clear evidence of a valid agreement*; (2) the agreement had been partly carried into execution on one side with the approbation of the other; and (3) the party who comes to compel performance has performed his or her part, or has been and remains able and willing to perform his or her part of the contract.

Id. at 106, 531 S.E.2d at 291 (emphasis added). Furthermore, the Statute of Frauds provides, in pertinent part:

Agreements required to be in writing and signed.

No action shall be brought whereby:

...

(4) To charge any person upon any contract or sale of lands, tenements or hereditaments or any interest in or concerning them;

...

Unless the agreement upon which such action shall be brought or some memorandum or note thereof shall be in writing and signed by the party to be charged therewith or some person thereunto by him lawfully authorized.

Fici v. Koon, 372 S.C. 341, 346, 642 S.E.2d 602, 604 (2007) (quoting S.C. Code Ann. § 32-3-10) (emphasis in original). "To satisfy the Statute of Frauds, every essential element of the contract must be expressed in a writing signed by the party to be compelled." *Id.* (citations omitted). "The burden of proof is on the party seeking to enforce the contract." *Id.*

“In the context of a land sale, a description of the property must be in a signed writing; parol evidence cannot supply this essential element.” *Id.* Indeed, “the signed writings must contain a sufficient description of the land to show with reasonable certainty what is to be conveyed.” *Id.* “A description that does not include the location of the land or its boundaries is inadequate.” *Id.* at 346-47, 642 S.E.2d at 604-05. In addition, “an agreement to agree . . . is unenforceable under the Statute of Frauds.” *Id.* at 347, 642 S.E.2d at 605.

Here, there is no written agreement satisfying the Statute of Frauds. Defendants have specifically demanded that Plaintiffs provide them with evidence of a written agreement for the sale of the properties at issue, and Plaintiffs have ignored these requests. Therefore, this Court should dismiss the specific performance claim, as there can be no “valid agreement” for the purposes of that claim without a written contract.

B. The Lis Pendens Should be Cancelled Because Without the Specific Performance Claim, This Action Does Not Affect the Title to Real Property.

“Generally, the filing of a lis pendens places a cloud on title which prevents the owner from freely disposing of the property before the litigation is resolved.” *Poole*, 351 S.C. at 17, 567 S.E.2d at 889 (citations omitted). Because “the filing of a lis pendens is an extraordinary privilege granted by statute,” strict compliance with the provisions of Section 15-11-10 is required. *Id.* “The lis pendens mechanism is not designed to aid either side in a dispute between private parties.” *Id.* “Rather, lis pendens is designed primarily to protect unidentified third parties by alerting prospective purchasers of property as to what is already on public record, *i.e.*, the fact of a suit *involving property*.” *Id.* (emphasis added). “Thus, it notifies potential purchasers that there is pending litigation that may affect their title to real property and that the purchaser will take subject to the judgment, without any substantive rights.” *Id.* Stated differently, the sole purpose of Section 15-11-10 is to put third parties on notice that title to a piece of property is the

subject of litigation. As such, “an action ‘affecting the title to real property’ clearly allows the filing of a lis pendens by an *interested party* in order to *protect their ownership interest* in the property subject to the litigation.” *Id.* (emphasis added).

First, Plaintiffs do not have an ownership interest in either of the properties subject to the Lis Pendens. *See id.* at 16, 567 S.E.2d at 889 (finding that every party listed in the caption had some ownership interest in the subdivision at issue). Moreover, the most important requirement of Section 15-11-10 is that an action “affect the title to real property.” In *Poole*, the Court of Appeals listed several examples of actions “affecting the title to real property.” Such examples included: (1) actions attempting to set aside a fraudulent conveyance of real property; (2) actions to establish a constructive trust over real estate; (3) actions to quiet title; (4) actions to establish the existence of an easement; (5) actions to reform deeds to resolve a boundary dispute; (6) actions for specific performance; and (7) actions for mortgage foreclosures. *Id.* at 17-18, 567 S.E.2d at 889-90.

The only claim in this action that affects the title to real property is that of specific performance. However, because there is no written contract, Plaintiffs’ specific performance claim should be dismissed, and without the specific performance claim, this action no longer affects the title to real property. *See Marino*, 400 S.C. at 9, 732 S.E.2d at 880 (affirming the cancellation of a lis pendens because plaintiffs had failed to state a claim for constructive trust, and therefore they no longer had a claim affecting the title to real property and the lis pendens at issue was no longer authorized by statute). Accordingly, the Lis Pendens should be cancelled.

C. Defendants Have Suffered and Will Continue to Suffer Tremendous Prejudice if the Lis Pendens are Not Cancelled.

The impact of these improper Lis Pendens cannot be underestimated. Defendants are in the business of developing, buying, and selling real estate in the subdivisions owned by River

Falls and Brooks Creek. With the Lis Pendens in place, Defendants cannot convey clean title to a buyer for either of the properties at issue. In fact, Brooks Creek may lose several potential sales if the Lis Pendens are not cancelled. Tri-Pointe Homes ("Tri-Point"), which had already purchased 13 lots in the subdivision owned by Brooks Creek prior to the Lis Pendens, is willing and able to purchase the remaining 45 lots in that subdivision. However, Tri-Point will not purchase those remaining lots as long as they are subject to the Lis Pendens.

Moreover, although River Falls has not yet located a potential buyer for the lots in its subdivision, the Lis Pendens has rendered those lots virtually unmarketable, and Plaintiffs have shown absolutely no interest in purchasing those lots. Indeed, Plaintiffs' filing of the Lis Pendens, particularly with respect to the property owned by River Falls, amounts to nothing short of judicial blackmail to gain an advantage in this action. (*See* email correspondence attached as *Exhibit C* and *Exhibit D*³ (showing that despite numerous requests for an offer, Plaintiffs have demonstrated no interest in purchasing the property owned by River Falls; and also showing that despite numerous requests for the aforementioned contractual documentation, Plaintiffs have not provided any contract between Plaintiffs and River Falls or Brooks Creek)). Defendants are clearly suffering tremendous prejudice as a result of these improper Lis Pendens.

D. Defendants are Entitled to the Reasonable Attorney's Fees and Costs Associated With This Motion Because Plaintiff Has Slandered the Title to the Properties at Issue.

South Carolina law is clear that a proper lis pendens filed pursuant to the strict requirements of Section 15-11-10 cannot form the basis for an action for slander of title. *See Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 29-31, 567 S.E.2d 881, 896-97 (Ct. App. 2002);

³ *See also Ex. D* at p. 3 ("I will just move this forward and we can sort everything out over the next year or two."); *id.* at p. 2 ("[W]e will just move this forward and let the Courts make the determinations.").

see also Sapphire Dev., LLC v. Span USA Inc., 120 F. App'x 466, 474 (4th Cir. 2005). However, South Carolina's appellate courts have not yet addressed the issue of whether an *improperly-filed* lis pendens enjoys the same absolute immunity.⁴ *See D.R. Horton, Inc. v. Wescott Land Co., LLC*, 410 S.C. 319, 320, 764 S.E.2d 701 (2014) (holding that it was not necessary for the Court of Appeals to reach the *novel issue* of whether a lis pendens that is filed but does not comply with certain requirements of Section 15-11-10 is entitled to absolute privilege when faced with a slander of title claim).

In contrast, the District of South Carolina has addressed this issue, holding that an improperly-filed lis pendens is subject to a slander of title claim. *See BidZirk, LLC v. Smith*, No. CIV.A. 6:06-109-HMH, 2007 WL 3119445, at *8 (D.S.C. Oct. 22, 2007). In *Smith*, The Honorable Henry M. Herlong, Jr. ("Judge Herlong") held, "[o]ne who places a lis pendens notice on property without a colorable claim of right to or interest in the property subjects themselves to a claim for slander of title." *Id.* (internal citations and quotations omitted). Moreover, Judge Herlong found that the improper use of a lis pendens to gain an advantage in a civil action – as Plaintiff has done here – warranted the issuance of sanctions. *Id.* at *9. In support of his sanction determination, Judge Herlong reasoned that the attorney was "a competent attorney who knew or should have known *with the most basic research* that his actions [in filing the lis pendens] were improper." *Id.* at *8 (emphasis added).

Without a written contract, clearly "the most basic research" would have revealed that Plaintiff's Lis Pendens were filed in clear contravention of the statutory requirements of Section 15-11-10. Moreover, Plaintiff's counsel did not even have to conduct this "most basic research,"

⁴ Defendants have not waived and hereby expressly reserve the right to file a counterclaim for slander of title at the appropriate time.

as undersigned counsel provided it to him last Friday as a courtesy. *See* July 24, 2020 Letter from Andrew Mathias to James Edward Bradley, attached as *Exhibit E* ("July 24 Letter"). Having received no response to the July 24 Letter, Defendants were left with no other choice than to file this memorandum. For these reasons, Defendants respectfully request that this Court award them the reasonable attorney's fees and costs associated with this Motion.

CONCLUSION

Based on the foregoing, Defendants respectfully request that the Court grant their Motion, dismiss the specific performance claim with prejudice, cancel the Lis Pendens, and award them the reasonable attorney's fees and costs associated with this Motion.

Respectfully submitted,

NEXSEN PRUET, LLC

s/Andrew A. Mathias

Andrew A. Mathias (S.C. Bar No. 76220)
Konstantine P. Diamaduros (S.C. Bar No. 102231)
55 E. Camperdown Way, Suite 400 (29601)
Post Office Box 10648
Greenville, South Carolina 29603-0648
Telephone: 864.370.2211
Facsimile: 864.282.1177
AMathias@nexsenpruet.com
KDiamaduros@nexsenpruet.com

Attorneys for Defendants

July 30, 2020
Greenville, South Carolina

EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
	)	C/A No. 2020-CP-46-02006
Eastwood Construction Partners, LLC,	)	
and Eastwood Development Corporation,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
GHD Brooks Creek, a North Carolina	)	
Limited Liability Company, and AF-Brooks	)	
Creek, LLC, a North Carolina Limited	)	
Liability Company, GHD River Falls, a	)	
North Carolina Limited Liability	)	
Company, and AF-River Falls, LLC, a	)	
North Carolina Limited Liability	)	
Company, and Greenhawk Corporation,	)	
Inc.,	)	
	)	
Defendants.	)	

AFFIDAVIT OF JEFFREY M. WHITE

JEFFREY M. WHITE, being first duly sworn, avers as follows:

1. I am employed by Greenhawk Corporation, Inc., a defendant herein, as Chief Operating Officer. I make the following statement from my own personal knowledge.
2. I have been employed by Greenhawk Corporation since 2016. GreenHawk Corporation is a privately-held company that, among other activities, provides executive services to GHD-Brooks Creek, LLC and to GHD-River Falls, LLC. The three companies share the same physical address in Raleigh, North Carolina.
3. I have been actively involved with oversight of the development of the River Falls subdivision in Tega Cay, South Carolina and the Brooks Springs subdivision in York County, South Carolina, since the summer of 2018.

4. River Falls Subdivision is in the jurisdiction of Tega Cay, South Carolina. Brooks Springs Subdivision is in the jurisdiction of York County, South Carolina. I worked with both jurisdictions in correcting various land entitlement issues pertaining to each of the subdivisions. Each application and approval was developed and approved separately. The subdivisions have no shared development entitlements, such as density transfers.

5. Brooks Springs and River Falls subdivisions are also separated geographically, by about three quarters of a mile distance. They do not share any utilities. They obviously do not share any interconnecting roads. A competent real estate attorney or paralegal would readily discover from the public records of York County that these properties are separate and distinct subdivision developments. Attached as Exhibit "A" is a map taken from the York County tax office website, depicting the River Falls subdivision at a scale of 1:6000. Attached as Exhibit "B" is a map taken from the York County tax office website, depicting the Brooks Springs (now referred to as Ashburn) subdivision at a scale of 1:6000.

6. When I became involved in the projects in the summer of 2018, Brooks Springs was significantly further along in the development process than River Falls. River Falls had been cleared and some roadwork had been graded, but there were no physical improvements added to the site, aside from some gravel to stabilize the road.

7. Beginning in or about the spring of 2019, GHD-Brooks Creek, LLC, which owned the Brooks Springs subdivision, began seeking interest from residential builders who might want to purchase lots in the Brooks Springs subdivision, because we expected that residential lots would soon be available for purchase after completion of the subdivision improvements and recordation of the final plat.

8. I was not personally in contact with representatives of the Eastwood interests, but an effort was made to interest Eastwood in buying lots in Brooks Creek. They declined the invitation, according to information in the GHD-Brooks Creek, LLC office. The files of GHD-Brooks Creek, LLC do not reflect any interest in purchasing lots in the development by the Plaintiffs in this action.

9. The home developer Tri-Pointe Homes expressed interest in acquiring lots in the Brooks Springs Subdivision. Ultimately, Tri-Pointe Homes entered into a contract with GHD-Brooks Creek, LLC in the summer of 2019, pursuant to which Tri-Pointe Homes agreed to purchase lots in Brooks Springs subdivision on an agreed schedule. Also pursuant to that agreement, the subdivision was renamed Ashburn subdivision. Tri-Pointe Homes has bought several lots in Brooks Springs (now Ashburn) subdivision, and currently markets townhomes in Ashburn subdivision.

10. GHD-Brooks Creek, LLC has no record of any written contract to sell lots in the Brooks Springs Subdivision to the Plaintiff. Neither Eastwood Construction Partners, LLC nor Eastwood Development Corporation has produced a written contract for purchase of any lots in the River Falls subdivision.

11. GHD-River Falls, LLC has recently made the residential construction community aware that the property will soon be available for purchase. Because of the passage of time since permits were originally obtained, some of the development entitlements are no longer current, so the land will be sold in bulk, not in individual lots. Development entitlements that remain current will be conveyed with the property. GHD-River Falls, LLC specifically invited Eastwood Construction Partners, LLC to propose terms upon which they would purchase the River Falls property, but Eastwood has expressed no

-4-

interest in purchasing this project, other than by filing a lis pendens and the present litigation.

12. GHD-River Falls, LLC has no record of any written contract to sell to the Plaintiffs lots in the River Falls Subdivision, or any part of the River Falls land. Neither Eastwood Construction Partners, LLC nor Eastwood Development Corporation has produced a written contract for purchase of any part of the River Falls subdivision.

Further sayeth affiant not.

This the ____ day of July, 2020.


Jeffrey M. White

Sworn to and subscribed before me,

this the 15 day of July, 2020.

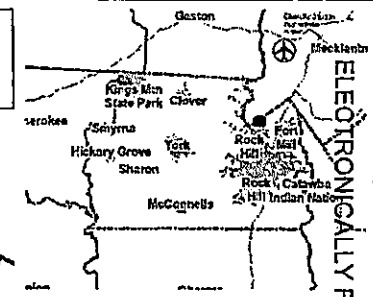

Notary Public

Carrie E. McReynolds
Printed Name

My Commission Expires: 2/19/2025



River Falls Subdivision



Legend

- Address
- ▲ Occupied
 - ▲ Meter
 - ▲ Vacant

1:6,000

Notes

Exhibit A

ROA-000909

ELECTRONICALLY FILED - 2020 JUN 30 2:35 PM - YORK - COMMON PLEAS - CASE#2020CP4602006

0.2 0 0.09 0.2 Miles

NAD_1983_StatePlane_South_Carolina_FIPS_3900_Feet_Intl
GIS@YorkCountyGov.com

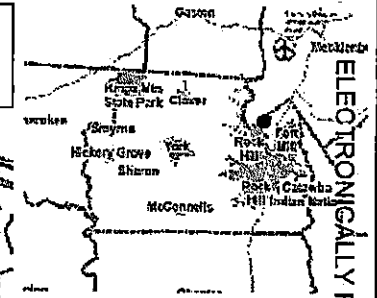
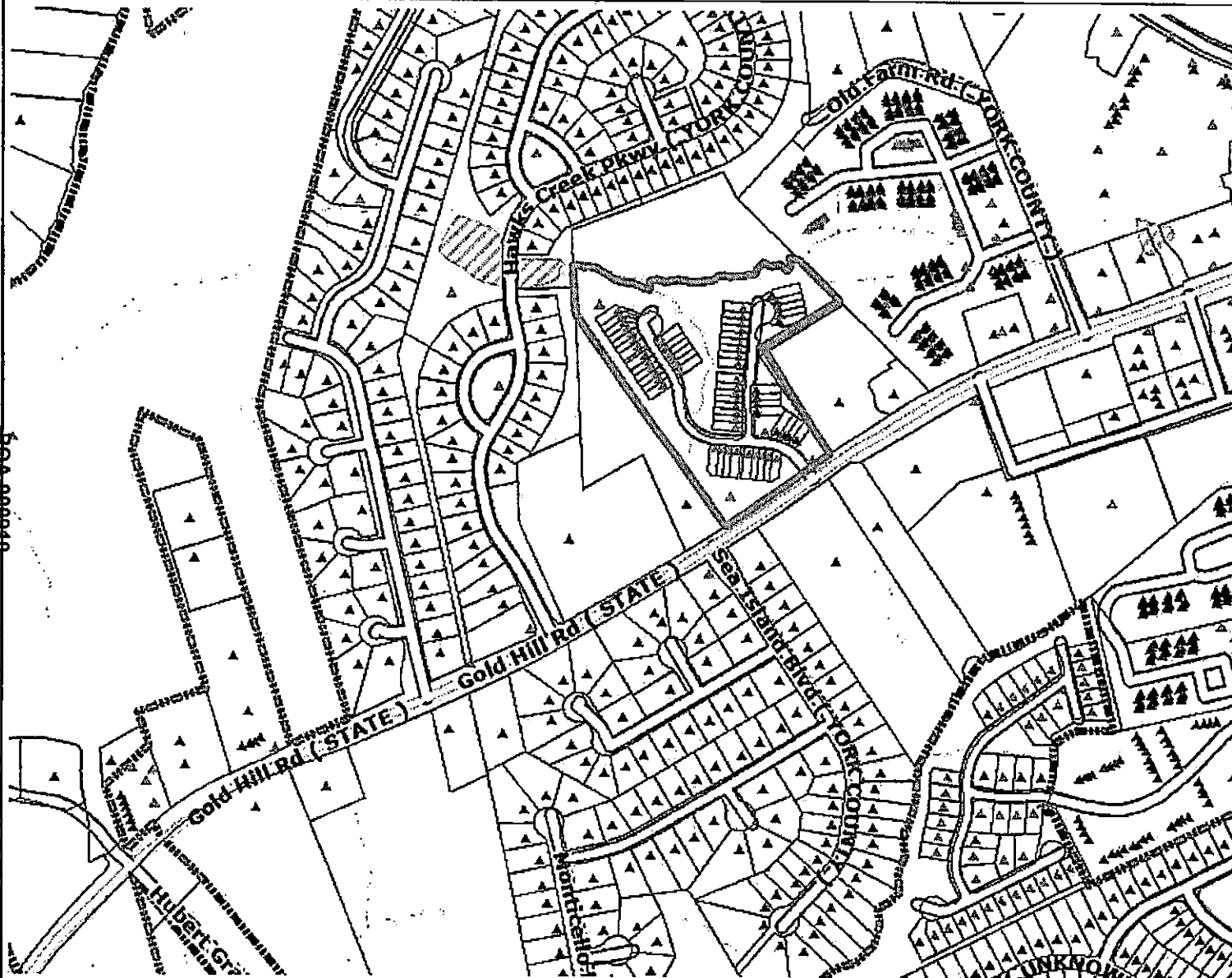
Printed: 7/14/2020

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

THIS MAP IS NOT TO BE USED FOR NAVIGATION



Brooks Springs (now Ashburn) Subdivision



Legend

Address

- ▲ Occupied
- ▲ Meter
- ▲ Vacant

1:6,000

Notes

Enter Map Description

Exhibit B

0.2 0 0.09 0.2 Miles

NAD_1983_StatePlane_South_Carolina_FIPS_3900_Feet_Intl
GIS@YorkCountyGov.com

Printed: 7/14/2020

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

THIS MAP IS NOT TO BE USED FOR NAVIGATION

EXHIBIT B

James I. Warren III
Member

June 25, 2020

James Edward Bradley, Esq.
Moore Taylor Law Firm, PA
1700 Sunset Boulevard
PO Box 5709
West Columbia, SC 29171

Re: River Falls and Brooks Creek Subdivisions, Tega Cay, SC

Dear Mr. Bradley:

We represent GHD-River Falls, LLC and GHD-Brooks Creek, LLC, owners of two subdivisions in Tega Cay, South Carolina, with which you are familiar. On or about June 10, 2020, you filed Notice of Lis Pendens against each of the subdivision properties owned by our clients, on behalf of Eastwood Construction Partners, LLC. In each of the Notices of Lis Pendens you stated that Eastwood Construction Partners, LLC, has a contract for sale which entitles it to give notice of an intention to file an enforcement action, presumably to seek specific performance of a contract for sale of each of these subdivisions.

Please be advised that we are not aware of any written contract for sale of either of these subdivisions to your client, Eastwood Construction Partners, LLC. Our client has made repeated requests for a copy of any written agreement conforming to the South Carolina Statute of Frauds, relating to either of the subdivisions. Your client has failed to produce any written contract. This is to demand that the putative Plaintiff, Eastwood Construction Partners, LLC, immediately provide such written evidence of contract which you believe will satisfy the South Carolina Statute of Frauds. Your client's failure to produce a written contract will be taken as indicating their bad faith in filing the Notices of Lis Pendens. As you know, a Lis Pendens in derogation of the clear title of a property owner can impact the property owner's ability to market the property. Should it ultimately be established that the sole purpose of the lis pendens filing was to impede our clients' ability to market their property, we will seek treble damages under the South Carolina Unfair Trade Practices Act, and we also will pursue an action for abuse of process or malicious prosecution.

Charleston
Charlotte
Columbia
Greensboro
Greenville
Hilton Head
Myrtle Beach
Raleigh

55 East Camperdown Way
Suite 400 (29801)
PO BOX 10848
Greenville, SC 29603-0648
www.nexsenpruet.com

T 864.282.1191
F 864.477.2891
E JWarren@nexsenpruet.com
Nexsen Pruet, LLC
Attorneys and Counselors at Law

NPRAL1:1566428.1

ROA 000912

ELECTRONICALLY FILED - 2020 Jul 30 2:35 PM - YORK - COMMON PLEAS - CASE#2020CP4602006

James Edward Bradley, Esq.
June 25, 2020
Page 2

Separately, your client purports to have a claim for reimbursement of certain development expenses that it incurred in the initial phases of the development of Brooks Creek and River Falls subdivisions. We do not contest your client's right to assert that it has a contract claim against these property owners, although our client vehemently contests the truthfulness of that claim and the enforceability of such a claim. We believe that your client, through Mr. Joe Polite, has contrived to create evidence of an agreement for the property owners to reimburse your client for unspecified development expenses. With respect to these claims, you should be aware and your client should respond to the fact that your client's former representative, Mr. Joe Dority, created claims in favor of River Falls against Eastwood. This bears further explanation.

When Eastwood assigned to GHD-River Falls, LLC, its option to purchase the River Falls property, Mr. Dority represented that there was in place at least \$1,000,000.00 worth of subdivision site improvements. This was false. Furthermore, Mr. Dority later represented that 90% of the subdivision improvements were in place and that the site improvements contractor should be paid on its pay application number 6. This was patently false, as later became clear. Therefore, our client has a claim against Eastwood in excess of \$1,000,000.00 for negligent misrepresentation, misrepresentation, or possibly for outright fraud, in connection with the assignment of the purchase option.

It is true that your client and ours discussed with one another the possibility of entering into a purchase and sale agreement by which your client would purchase developed subdivision lots from River Falls. Had that been done, the purchase price would have taken into account both the \$1,000,000.00 down-stroke paid by GHD-River Falls, LLC, for the (non-existent) site improvements, and also your client's presale site development expenses. However, no contract was ever made by which such totting of expenses occurred. We can discuss the details of the situation further, once the Lis Pendens notices have been cancelled.

Again, your client's failure to cancel its Notice of Lis Pendens will be taken as an act of bad faith and our client reserves all rights and remedies with respect to the same.

Should your client desire to seek an amicable resolution, that would be indicated by cancellation of the Notices of Lis Pendens.

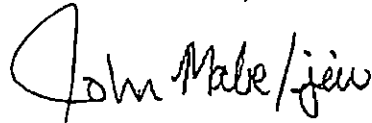
James Edward Bradley, Esq.
June 25, 2020
Page 3

With best regards, we are

NEXSEN PRUET, PLLC

A handwritten signature in cursive script that reads "Jim Warren".

James I. Warren, III

A handwritten signature in cursive script that reads "John Mabe/Jew".

John I. Mabe, Jr.

JW/JIM:kmt

ELECTRONICALLY FILED - 2020 Jul 30 2:35 PM - YORK - COMMON PLEAS - CASE#2020CP4602006

NPRAL1:1566428.1

ROA 000914

EXHIBIT C



From: Jeremy Medlin
Sent: Friday, June 5, 2020 12:09 PM
To: Joe Polite <jpolite@eastwoodhomes.com>
Subject: RE: Brooks Springs and River Falls

Joe,

I have a general knowledge of both properties but I am unaware of any funds or involvement by Eastwood. If you have any written documentation that suggest something other than that please share it.

Are you interested in River Falls? If so I suggest you provide an offer.

Thanks,

Jeremy D. Medlin
Executive Vice President of Real Estate
GreenHawk Corporation, Inc.
Phone: (919) 258-2087
Cell: (919) 291-3819

Website: www.greenhawkcorp.com



From: Joe Polite <jpolite@eastwoodhomes.com>
Sent: Thursday, June 4, 2020 6:15 PM
To: Jeremy Medlin <JMedlin@greenhawkcorp.com>
Subject: Re: Brooks Springs and River Falls

Jeremy,
Thank you for your email.
Because this is the first time you and I have been in contact and based on your response am I to assume you have no information on these projections and their origins?
I just need to know how much discovery you actually need.
Thanks again for your response.

Joe F Polite, Jr.
704-574-7877
Please pardon the brevity and typos.
Sent from my iPhone



built with care.

Joe Polite
O 704-574-7877 | jpolite@eastwoodhomes.com
Corporate Office | 2857 Westport Road, Charlotte, NC 28208

EastwoodHomes.com
[Facebook](#) | [Twitter](#) | [Instagram](#) | [YouTube](#)

To unsubscribe from our emails, please reply to this email and type "Unsubscribe."

On Jun 4, 2020, at 5:31 PM, Jeremy Medlin <JMedlin@greenhawkcorp.com> wrote:

Joe,

As I understand you have concerns about both properties. Please send me any written

documentation you have that establishes a claim on the property. Future correspondence should be directed to me. If you wish to purchase River Falls please feel free to provide a written offer and it will be considered.

I look forward to hearing from you.

Thanks,

Jeremy D. Medlin
Executive Vice President of Real Estate
GreenHawk Corporation, Inc.
Phone: (919) 258-2087
Cell: (919) 291-3819
Website: www.greenhawkcorp.com

<image001.jpg>

The contents of this email message and any attachments are intended solely for the addressee(s) and may contain confidential and/or privileged information and may be legally protected from disclosure. If you are not the intended recipient of this message or their agent, or if this message has been addressed to you in error, please immediately alert the sender by reply email and then delete this message and any attachments. If you are not the intended recipient, you are hereby notified that any use, dissemination, copying, or storage of this message or its attachments is strictly prohibited.

The contents of this email message and any attachments are intended solely for the addressee(s) and may contain confidential and/or privileged information and may be legally protected from disclosure. If you are not the intended recipient of this message or their agent, or if this message has been addressed to you in error, please immediately alert the sender by reply email and then delete this message and any attachments. If you are not the intended recipient, you are hereby notified that any use, dissemination, copying, or storage of this message or its attachments is strictly prohibited.

EXHIBIT D



From: Jeremy Medlin
Sent: Friday, June 19, 2020 11:46 AM
To: Allen Nason <anason@eastwoodhomes.com>
Cc: Joe Polite <jpolite@eastwoodhomes.com>
Subject: RE: Brooks Creek/River Falls

Allen,

I made a simple request and hoped for transparency...

If you have a contract please send it. If you have a wish or desire to purchase River Falls give us an offer.

Why would you seek other avenues.

Thanks,

Jeremy D. Medlin
Executive Vice President of Real Estate
GreenHawk Corporation, Inc.
Phone: (919) 258-2087

Cell: (919) 291-3819
Website: www.greenhawkcorp.com



From: Allen Nason <anason@eastwoodhomes.com>
Sent: Friday, June 19, 2020 11:37 AM
To: Jeremy Medlin <JMedlin@greenhawkcorp.com>
Cc: Joe Polite <jpolite@eastwoodhomes.com>
Subject: Re: Brooks Creek/River Falls

What is truly unfortunate is how Greenhawk doesn't adhere to its arrangements with Eastwood. If you want to resolve this, make a proposal - which proposal shall be treated as a confidential settlement discussion. Otherwise we will just move this forward and let the Courts make the determinations.

Allen Nason
Sent from my iPhone

On Jun 19, 2020, at 11:28 AM, Jeremy Medlin <JMedlin@greenhawkcorp.com> wrote:

Allen,

Your response below is unfortunate.

Thanks,

Jeremy D. Medlin
Executive Vice President of Real Estate
GreenHawk Corporation, Inc.
Phone: (919) 258-2087
Cell: (919) 291-3819
Website: www.greenhawkcorp.com

<image001.jpg>

From: Allen Nason <anason@eastwoodhomes.com>
Sent: Friday, June 19, 2020 10:55 AM
To: Jeremy Medlin <JMedlin@greenhawkcorp.com>
Cc: Joe Polite <jpolite@eastwoodhomes.com>
Subject: Re: Brooks Creek/River Falls

Jeremy, good morning. You did not, apparently, do what I asked in my prior email. You have all the documentation and even have prior emails - and the names of your

predecessors which I provided you. I will just move this forward and we can sort everything out over the next year or two.

Allen Nason
Sent from my iPhone

On Jun 19, 2020, at 10:46 AM, Jeremy Medlin <JMedlin@greenhawkcorp.com> wrote:

Allen,

I've asked Joe in several past emails to supply any written documents that suggest we are under contract together. Concerning River Falls I have also requested if your group has an interest to give us a LOI or contract to review. Nothing has been supplied.

Any clarity on why you have chosen *lis pendens* and the threat of suit would be appreciated. A more simple response would be to:

1. provide the contract that you base this on
2. If your group wants River Falls make us an offer

Thanks,

Jeremy D. Medlin
Executive Vice President of Real Estate
GreenHawk Corporation, Inc.
Phone: (919) 258-2087
Cell: (919) 291-3819
Website: www.greenhawkcorp.com

<image002.jpg>

From: Allen Nason <anason@eastwoodhomes.com>
Sent: Tuesday, June 16, 2020 12:04 PM
To: Jeremy Medlin <JMedlin@greenhawkcorp.com>
Cc: Joe Polite <jpolite@eastwoodhomes.com>
Subject: FW: Brooks Creek/River Falls
Importance: High

Jeremy, good morning. Per the prior emails Craig Briner and yourself have received, Eastwood had to move to protect the over \$300,000 it has in these two projects with Greenhawk. If you are looking to research this I would start by talking with Jesse Buchanon. Also, you can take a look at the original contract assignments where Eastwood agreed to assign these

two properties (which it had under contract for Eastwood's benefit) to Greenhawk owned project limited liability companies in contemplation of Greenhawk developing these two projects for Eastwood. Eastwood and Greenhawk worked jointly with the City of Tega Cay and in working to get all land approvals accomplished, and the projects were actually engineered specific to Eastwood's plans. You can also look at the River Falls property deed which was done in 2018 to help get the access issues for that project addressed. There is mounds of information which your predecessors were engaged with for both projects, and it will not be difficult for you to look into these matters.

Anyhow, we understand you may be new to this issue, but for years Eastwood has received communications that all we paid would, at a minimum, be reimbursed. Ewe have provided those communications to Craig and yourself. It was not until recently we learned Greenhawk had contracted with another builder via a former Eastwood employee, and it was therefore my conclusion that we have to get this matter resolved as soon as possible.

The law suit which is required to be filed following the attached lis pendens filings is in process and will be filed in due course, in conformity with South Carolina statute. If there is an interest in avoiding litigation on this it would be acceptable for my client to enter into settlement discussions to get this matter resolved. If that is your preference, please let me know by this Friday. If we do not hear back we will proceed with the understanding that Greenhawk is contesting this matter.

Allen M. Nason, Esq.
General Counsel, Licensed in NC, SC and VA
Eastwood Homes and Fortress Homes, and Affiliates
2857 Westport Road
Charlotte, NC 28208
Phone: (704) 399-4663
Facsimile: (704) 399-1127
www.eastwoodhomes.com

If this email is received in error please delete and notify sender. Thank you.

From: Joe Polite <jpolite@eastwoodhomes.com>
Sent: Friday, June 12, 2020 11:26 AM
To: Jeremy Medlin <JMedlin@greenhawkcorp.com>

Subject: RE: Brooks Creek/River Falls

Jeremy,

Unfortunately I got involved with this project when I arrived here in fall of 2016 and worked with Craig. The discussion prior to that were made by my predecessor and Craig.

We have been requesting this reimbursement from Greenhawk since before my time and were always close but then never paid for whatever reason.

As I mentioned to your initial email, there is a need for greater discovery.

Since this is still unresolved, I have turn the matter over to counsel.

I am sure this will uncover the necessary items to support our claim.

Sincerely,

Joe F. Polite, Jr

Joe Polite
704-574-7877

From: Jeremy Medlin <JMedlin@greenhawkcorp.com>

Sent: Friday, June 12, 2020 10:27 AM

To: Joe Polite <jpolite@eastwoodhomes.com>

Subject: RE: Brooks Creek/River Falls

Joe,

This does not look like much of a paper trail to go off of. Looks like you were doing some due diligence on a potential deal – why did you not go to contract? Did you discuss and route contract terms form 2013-2016 – if so can you share that correspondence? Did you have a signed LOI? Anything?

Thanks,

Jeremy D. Medlin
Executive Vice President of Real Estate
GreenHawk Corporation, Inc.
Phone: (919) 258-2087
Cell: (919) 291-3819
Website: www.greenhawkcorp.com

<image002.jpg>

From: Joe Polite <jpolite@eastwoodhomes.com>

Sent: Monday, June 8, 2020 3:05 PM

To: Jeremy Medlin <JMedlin@greenhawkcorp.com>
Subject: FW: Brooks Creek/River Falls

Jeremy,

Below was the response from Jesse Buchanan to our CFO, Kevin Hutchins, acknowledging the money was owed back in 2016.

We can piece all the other emails between all the parties to show that Eastwood paid the due diligence and engineering for both parcels. The amount was intended to be credited towards the final Ernest money deposits, however there was never a ratified contract for the repurchase of the lots between the two parties.

Attached is our accounting of the funds that Eastwood spent; \$312,296. I realize there is a lot of history on these projects and we can review it but it is our intent to collect this money. If you can make arrangements for payment we can put this behind us.

Kindest regards,
Joe F. Polite, Jr

<image003.png>

Joe Polite

O 704-574-7877 | ipolite@eastwoodhomes.com
Corporate Office | 2857 Westport Road, Charlotte, NC 28208

EastwoodHomes.com
[Facebook](#) | [Twitter](#) | [Instagram](#) | [YouTube](#)

To unsubscribe from our emails, please reply to this email and type "Unsubscribe."

From: Kevin Hutchins

Sent: Tuesday, February 18, 2020 4:15 PM

To: Joe Polite <jpolite@eastwoodhomes.com>;
anason@eastwoodhomes.com

Subject: FW: Brooks Creek/River Falls

Below is the response that I received from Jesse acknowledging that they owe us the money. This was my last correspondence from them.

From: Jesse Buchanan <JBuchanan@greenhawkcorp.com>

Sent: Wednesday, October 12, 2016 8:42 AM

To: Kevin Hutchins <khutchins@eastwoodhomes.com>

Subject: RE: Brooks Creek/River Falls

Thank you for helping me with this. I have been holding the River Falls reimbursement on my desk. Craig has not approved it for me to process. He is out of town right now (a friend's funeral). I think he was hoping to convert this to a deposit, but I will follow up when he returns back to the office next week.

Jesse T. Buchanan
GreenHawk Corporation, Inc.
1330 Sunday Drive, Suite 105
Raleigh, NC 27607
Office: 919-861-2933
Fax: 919-861-2930

From: Kevin Hutchins [<mailto:khutchins@eastwoodhomes.com>]
Sent: Tuesday, October 11, 2016 4:07 PM
To: Jesse Buchanan <JBuchanan@greenhawkcorp.com>
Subject: Brooks Creek/River Falls

Jesse

I hope you are well. Joe Dority reached out and mentioned that you were looking for some detail behind the reimbursed expenses for Brooks Creek. I have attached the detail which has the vendor attached to it. Hopefully that helps.

I also wanted to follow up to see if you had any resolution on the money due back for River Falls. I believe it was north of \$225,000. If you could give me an update I would appreciate it.

Thank you

Kevin Hutchins

Eastwood Homes
Chief Financial Officer
2857 Westport Road
Charlotte, NC 28208
Ph. 704-399-4663
Fax. 704-900-0662

<image004.jpg>

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EXHIBIT E

July 24, 2020

VIA EMAIL

James Edward Bradley
Moore Taylor Law Firm, PA
1700 Sunset Boulevard
PO Box 5709
West Columbia, SC 29171

Re: *Eastwood Construction Partners, LLC et al. v. GHD Brooks Creek et al.*,
C/A No. 2020-CP-46-02006 – Cancellation of Lis Pendens

Dear Ward:

Charleston
Charlotte
Columbia
Greensboro
Greenville
Hilton Head
Myrtle Beach
Raleigh

As I am sure you are aware, the filing of a lis pendens is an extraordinary privilege granted by S.C. Code Ann. § 15-11-10. Thus, strict compliance with the statute is required. In short, Section 15-11-10 requires that an action be one that *affects the title* to real property, and its sole purpose is to put third parties on notice that a piece of property is subject to litigation. Aside from a specific performance claim, the action you filed on behalf of Eastwood Construction Partners, LLC and Eastwood Development Corporation (collectively, “Plaintiffs”) does not affect the title to the properties encumbered by lis pendens Nos. 2020-CP-46-00228 and 2020-CP-46-00229 (collectively, “the Lis Pendens”). As evidenced by our pending motion to partially dismiss the Complaint and cancel the Lis Pendens (“Motion”),¹ we are confident that Plaintiffs’ specific performance claim is entirely baseless. Plaintiffs have no ownership interest in the properties at issue, nor have they ever been able to produce a written contract for sale. See June 25, 2020 Letter from Jim Warren, attached as *Exhibit A* (“June 25 Letter”) (specifically demanding that Plaintiffs “immediately provide” a copy of any written agreement conforming to the South Carolina Statute of Frauds with respect to the properties at issue).

¹ As you know, the Motion was filed on behalf of Defendants GHD Brooks Creek, AF-Brooks Creek, GHD River Falls, and AF-River Falls. However, “Defendants” as used herein is a collective reference to all Defendants in this action, including Greenhawk Corporation, Inc.

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Greenville, SC 29603-0848
www.nexsenpruet.com

T 864.282.1196
F 864.477.2697
E AMathias@nexsenpruet.com
Nexsen Pruet, LLC
Attorneys and Counselors at Law

James Edward Bradley
 July 24, 2020
 Page 2

Please be advised that we consider Plaintiffs' failure to immediately provide a written contract in response to the June 25 Letter as an indication of bad faith in filing the Lis Pendens. Indeed, it is abundantly clear that without a written contract, Plaintiffs had no basis on which to file the Lis Pendens or assert a claim of specific performance. Accordingly, if Plaintiffs will not agree to cancel the Lis Pendens and voluntarily dismiss the specific performance claim – *with prejudice* – under SCRCP 41(a)(1)(B), then we will have no other choice than to ask the Court for all attorney's fees and costs associated with obtaining an Order cancelling the Lis Pendens. Furthermore, if Plaintiffs will not agree to the aforementioned terms, then we will include a counterclaim for slander of title when Defendants respond to the Complaint. Our basis for taking these positions is detailed below.

The impact of an improper lis pendens cannot be underestimated. Our Supreme Court has held that "the filing of a lis pendens places a cloud on title which prevents the owner from freely disposing of the property before the litigation is resolved." *Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 17, 567 S.E.2d 881, 889 (Ct. App. 2002). That is exactly what has occurred here, as Defendants' ability to sell the properties at issue is now hamstrung due to the filing of these improper Lis Pendens. To be clear, the sole goal of Section 15-11-10 is to provide a temporary measure to protect third parties' interests during the pendency of litigation, "*not to aid either side in a dispute between private parties.*" See *id.* (emphasis added). In *Poole*, the Court emphasized that a proper lis pendens requires that an action *affect the title* to real property. *Id.* After listing seven different examples of actions "affecting the title to real property" – six of which (excluding specific performance) bear no resemblance to the instant action – the Court held that the filing of a lis pendens was entirely improper where no real property was implicated. *Id.* at 17-18, 567 S.E.2d at 889-90. These Lis Pendens, which are based on a meritless specific performance claim, are likewise entirely improper.

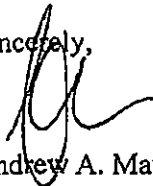
The law in South Carolina is clear that a proper lis pendens filed pursuant to the strict requirements of Section 15-11-10 cannot form the basis for an action for slander of title. However, South Carolina courts have not addressed whether an improperly-filed lis pendens enjoys the same absolute immunity. See *D.R. Horton, Inc. v. Wescott Land Co., LLC*, 410 S.C. 319, 320, 764 S.E.2d 701 (2014) (holding that it was not necessary for the Court of Appeals to reach the *novel issue* of whether a lis pendens that is filed but does not comply with certain requirements of Section 15-11-10 is entitled to absolute privilege when faced with a slander of title claim). Additionally, in analyzing Judge Herlong's opinion in *BidZirk, LLC v. Smith*, it is highly unlikely that South Carolina state courts – if given the opportunity to decide this novel issue – would afford an improperly-filed lis pendens absolute immunity from a slander of title claim. See *BidZirk, LLC v. Smith*, 2007 WL 3119445 (D.S.C. Oct. 22, 2007) (finding that the improper use of a lis pendens to gain an advantage in a civil action warranted the issuance of sanctions for such misconduct).

James Edward Bradley
July 24, 2020
Page 3

In *Bidzirk*, Judge Herlong held, “[o]ne who places a lis pendens notice on property without a colorable claim of right to or interest in the property subjects themselves to a claim for slander of title.” *BidZirk, LLC v. Smith*, No. CIV.A. 6:06-109-HMH, 2007 WL 3119445, at *8 (D.S.C. Oct. 22, 2007) (internal citations and quotations omitted). After finding that the matter did not affect real property, Judge Herlong sanctioned the attorney \$1,000.00, which was payable immediately to the defendant, *Id.* at *9. In support of this sanction, Judge Herlong reasoned that the attorney was “a competent attorney who knew or should have known with the most basic research that his actions [in filing the lis pendens] were improper.” *Id.* at *8.

Without a written contract, there can be no doubt that the instant Lis Pendens and specific performance claim are improper (and possibly sanctionable). However, we believe it is in the best interest of everyone involved to resolve this issue amicably at the outset of this litigation. As such, I write this letter as a courtesy in hopes that you will agree to cancel the Lis Pendens and voluntarily dismiss the specific performance claim with prejudice. If the Parties can reach such an agreement, then we will withdraw our Motion and will not include a counterclaim for slander of title when Defendants respond to the Complaint. Please contact me no later than close of business Monday, July 27, 2020 to inform me of Plaintiffs’ intentions. If they refuse to cancel these improper Lis Pendens and dismiss the specific performance claim, then we will have no other choice than to proceed as outlined above. I look forward to hearing from you.

Sincerely,



Andrew A. Mathias

cc: Jeremy Medlin
John Mabe
Konstantine Diamaduros

EXHIBIT A

James I. Warren III
Member

June 25, 2020

James Edward Bradley, Esq.
Moore Taylor Law Firm, PA
1700 Sunset Boulevard
PO Box 5709
West Columbia, SC 29171

Re: River Falls and Brooks Creek Subdivisions, Tega Cay, SC

Dear Mr. Bradley:

We represent GHD-River Falls, LLC and GHD-Brooks Creek, LLC, owners of two subdivisions in Tega Cay, South Carolina, with which you are familiar. On or about June 10, 2020, you filed Notice of Lis Pendens against each of the subdivision properties owned by our clients, on behalf of Eastwood Construction Partners, LLC. In each of the Notices of Lis Pendens you stated that Eastwood Construction Partners, LLC, has a contract for sale which entitles it to give notice of an intention to file an enforcement action, presumably to seek specific performance of a contract for sale of each of these subdivisions.

Please be advised that we are not aware of any written contract for sale of either of these subdivisions to your client, Eastwood Construction Partners, LLC. Our client has made repeated requests for a copy of any written agreement conforming to the South Carolina Statute of Frauds, relating to either of the subdivisions. Your client has failed to produce any written contract. This is to demand that the putative Plaintiff, Eastwood Construction Partners, LLC, immediately provide such written evidence of contract which you believe will satisfy the South Carolina Statute of Frauds. Your client's failure to produce a written contract will be taken as indicating their bad faith in filing the Notices of Lis Pendens. As you know, a Lis Pendens in derogation of the clear title of a property owner can impact the property owner's ability to market the property. Should it ultimately be established that the sole purpose of the lis pendens filing was to impede our clients' ability to market their property, we will seek treble damages under the South Carolina Unfair Trade Practices Act, and we also will pursue an action for abuse of process or malicious prosecution.

Charleston
Charlotte
Columbia
Greensboro
Greenville
Hilton Head
Myrtle Beach
Raleigh

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F 864.477.2891
E JWarren@nexsenpruet.com
Nexsen Pruet, LLC
Attorneys and Counselors at Law

NPRALI:1566428.1

ROA 000933

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James Edward Bradley, Esq.
June 25, 2020
Page 2

Separately, your client purports to have a claim for reimbursement of certain development expenses that it incurred in the initial phases of the development of Brooks Creek and River Falls subdivisions. We do not contest your client's right to assert that it has a contract claim against these property owners, although our client vehemently contests the truthfulness of that claim and the enforceability of such a claim. We believe that your client, through Mr. Joe Polite, has contrived to create evidence of an agreement for the property owners to reimburse your client for unspecified development expenses. With respect to these claims, you should be aware and your client should respond to the fact that your client's former representative, Mr. Joe Dority, created claims in favor of River Falls against Eastwood. This bears further explanation.

When Eastwood assigned to GHD-River Falls, LLC, its option to purchase the River Falls property, Mr. Dority represented that there was in place at least \$1,000,000.00 worth of subdivision site improvements. This was false. Furthermore, Mr. Dority later represented that 90% of the subdivision improvements were in place and that the site improvements contractor should be paid on its pay application number 6. This was patently false, as later became clear. Therefore, our client has a claim against Eastwood in excess of \$1,000,000.00 for negligent misrepresentation, misrepresentation, or possibly for outright fraud, in connection with the assignment of the purchase option.

It is true that your client and ours discussed with one another the possibility of entering into a purchase and sale agreement by which your client would purchase developed subdivision lots from River Falls. Had that been done, the purchase price would have taken into account both the \$1,000,000.00 down-stroke paid by GHD-River Falls, LLC, for the (non-existent) site improvements, and also your client's presale site development expenses. However, no contract was ever made by which such totting of expenses occurred. We can discuss the details of the situation further, once the Lis Pendens notices have been cancelled.

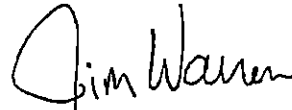
Again, your client's failure to cancel its Notice of Lis Pendens will be taken as an act of bad faith and our client reserves all rights and remedies with respect to the same.

Should your client desire to seek an amicable resolution, that would be indicated by cancellation of the Notices of Lis Pendens.

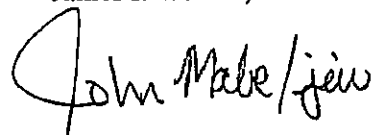
James Edward Bradley, Esq.
June 25, 2020
Page 3

With best regards, we are

NEXSEN PRUET, PLLC

A handwritten signature in black ink that reads "Jim Warren". The signature is written in a cursive style with a large initial "J".

James I. Warren, III

A handwritten signature in black ink that reads "John Mabe/jew". The signature is written in a cursive style with a large initial "J".

John I. Mabe, Jr.

JW/JIM:kmt

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NPRAL1:1566428.1

ROA 000935

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Eastwood Construction Partners, LLC, and
Eastwood Development Corporation,

Plaintiffs,

v.

GHD Brooks Creek, a North Carolina
Limited Liability Company, and AF-Brooks
Creek, LLC, a North Carolina Limited
Liability Company, GHD River Falls, a
North Carolina Limited Liability Company,
and AF-River Falls, LLC, a North Carolina
Limited Liability Company, and Greenhawk
Corporation, Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

C/A No. 2020-CP-46-02006

**DEFENDANTS' RULE 12(b)(6)
MOTION TO PARTIALLY DISMISS
THE COMPLAINT AND
CANCEL LIS PENDENS**

COME NOW the Defendants GHD Brooks Creek, a North Carolina Limited Liability Company, AF-Brooks Creek, LLC, a North Carolina Limited Liability Company, GHD River Falls, a North Carolina Limited Liability Company, and AF-River Falls, LLC, a North Carolina Limited Liability Company (collectively, "Defendants"), by and through undersigned counsel and pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure and S.C. Code Ann. § 15-11-10 *et seq.*, and hereby move this Court for an order granting their motion to dismiss the Second Claim of the Complaint of Plaintiffs Eastwood Construction Partners, LLC and Eastwood Development Corporation (collectively, "Plaintiffs"), that claim being for the remedy of Specific Performance. In conjunction with partial dismissal, this Motion also seeks an order cancelling Lis Pendens Nos. 2020-CP-46-00228 and 2020-CP-46-00229. This Motion is made on the grounds that Plaintiffs' specific performance claim fails to state facts sufficient to

constitute a cause of action against these Defendants, owners of the property affected by the notices of Lis Pendens. Without their specific performance claim, Lis Pendens Nos. 2020-CP-46-00228 and 2020-CP-46-00229 are no longer authorized by S.C. Code Ann. § 15-11-10 *et seq.* See *Carolina Park Assocs., LLC v. Marino*, 400 S.C. 1, 9, 732 S.E.2d 876, 880 (2012).

This Motion is supported by the applicable law, the pleadings in this action, and an accompanying memorandum, including supporting exhibits and documents, which Defendants hereby give notice and reserve the right to file in support of the subject Motion and rely on it and all applicable law during a hearing on this matter.

Respectfully submitted,

NEXSEN PRUET, LLC

s/Andrew A. Mathias

Andrew A. Mathias (S.C. Bar No. 76220)
Konstantine P. Diamaduros (S.C. Bar No. 102231)
55 E. Camperdown Way, Suite 400 (29601)
Post Office Box 10648
Greenville, South Carolina 29603-0648
Telephone: 864.370.2211
Facsimile: 864.282.1177
AMathias@nexsenpruet.com
KDiamaduros@nexsenpruet.com

Attorneys for Defendants

July 16, 2020
Greenville, South Carolina