

IN THE SUPREME COURT
OF THE STATE OF SOUTH DAKOTA

Appeal No. 30480

DUANE REMINGTON AND MELODY REMINGTON

Plaintiffs/Appellants

vs.

**WILD BILL'S CAMPGROUND AND RESORT, LLC.; KEITH GRIMM, AND
BRYAN IVERSON**

Defendants/Appellees.

APPEAL FROM THE CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT
PENNINGTON COUNTY, SOUTH DAKOTA

THE HONORABLE JEFFREY CONNOLLY
Circuit Court Judge

APPELLANTS' BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	3
PRELIMINARY STATEMENT.....	5
JURISDICTIONAL STATEMENT	5
STATEMENT OF THE LEGAL ISSUES	5
I. Did the Circuit Court err in granting Defendant Bryan Iverson’s Motion for Summary Judgment finding no disputed material fact exists concerning Defendant Iverson’s knowledge of material defects with the property prior to the sale.	
II. Did the Circuit Court err in granting Defendant Bryan Iverson’s Motion for Summary Judgment finding that a property disclosure statement was not required for the sale of the property, which included residential living quarters?	
a. Did the Circuit Court err in finding that Defendant Iverson was not required to inform his clients that a property disclosure statement was required.	
STATEMENT OF THE CASE.....	6
STATEMENT OF THE FACTS.....	7
ARGUMENT AND AUTHORITY	22
I. The circuit court erred in granting Iverson’s motion for summary judgment finding that no material fact existed concerning knowledge of material defect.	22
II. The Circuit Court erred in granting Defendant Bryan Iverson’s Motion for Summary Judgment finding that a property disclosure statement was not required for the sale of the property, which included residential living quarters.....	27
CONCLUSION.....	32
CERTIFICATE OF COMPLIANCE.....	34
CERTIFICATE OF SERVICE	35
APPENDIX INDEX	36

TABLE OF AUTHORITIES

CASES

<i>American Tel. & Tel. Co. v. Delta Commc'n Corp.</i> , 590 F.2d 100 (5th Cir. 1979)	20
<i>Casillas v. Schubauer</i> , 2006 S.D. 42 714 N.W.2d 84.....	19
<i>Center of Life Church v. Nelson</i> , 2018 S.D. 42 913 N.W.2d 105.....	27
<i>Cox v. Kentucky Dept. Of Transp.</i> , 53 F.3d 146 (6th Cir. 1995)	19
<i>Engelhart v. Kramer</i> , 1997 S.D. 124 570 N.W.2d 550	5, 26
<i>Fuller v. Croston</i> , 2006 S.D. 110 725 N.W.2d 600	26, 27
<i>Gades v. Meyer Modernizing Co.</i> , 2015 S.D. 42 865 N.W.2d 155	19
<i>Garrido v. Team Auto Sales, Inc.</i> , 2018 S.D. 41 913 N.W.2d 95	20, 21
<i>Hurney v. Locke</i> , 308 N.W.2d 764 (SD 1981).....	23
<i>Jacquot v. Rozum</i> , 2010 SD 84 790 N.W.2d 498	6, 23
<i>LPN Trust v. Farrar Outdoor Advertising, Inc.</i> , 996 SD 97 552 N.W.2d 796.....	19
<i>Lucero v. Van Wie</i> , 2006 S.D. 1999 SD 109, N.W. 2d 893.....	32
<i>Magner v Brinkman</i> , 2016 S.D. 50 883 N.W.2d 74	19
<i>McKie Ford Lincoln, Inc., v. Hanna</i> , 2018 S.D. 14 907 N.W.2d 795	20
<i>Miller v. Harrington</i> , 618 N.W.2d 460 (Neb. 2000)	6, 28, 29
<i>Norwest Bank of SD N.A. v. Venners</i> , 440 N.W.2d, 774 (SD 1989).....	31
<i>Oxton v. Rudland</i> , 2017 SD 35, 897 N.W. 2d 356.....	31
<i>Peters v. Great W. Bank, Inc.</i> , 2015 S.D. 859 N.W.2d 618.....	19
<i>Saiz v. Horn</i> , 2003 SD 94, 668 N.W.2d 332.....	6, 23, 24
<i>Scatterlee v. Johnson</i> , 526 N.W.2d 256 (S.D. 1995).....	19
<i>St. Onge Livestock Co., Ltd. v. Curtis</i> , 2002 S.D. 102, 650 N.W.2d 537.....	20
<i>Suvada v. Muller</i> , 2022 S.D. 75 983 N.W.2d 548	19
<i>Tibke v. McDougall</i> , 479 N.W.2d 898 (S.D. 1992).....	20

STATUTES

Neb.Rev.Stat. § 76-2,120	29
SDCL § 43-4-38	6, 26, 27, 29, 31
SDCL 15-26A-3	5
SDCL 43-4-37	27, 28, 29
SDCL 43-4-42	27

OTHER AUTHORITIES

10A Charles Alan Wright et al. <i>Federal Practice & Procedure</i> Civil § 2727.2	19
Daniel P. Collins, <i>Summary Judgment and Circumstantial</i> <i>Evidence</i> , 40 Stan. L. Rev. 491, 494 (1988).....	21

PRELIMINARY STATEMENT

Plaintiffs/Appellants Duane Remington and Melody Remington will be collectively referred to as “Remingtons” or their individual first names of “Duane”, or “Melody.” Defendants/Appellees Wild Bill’s Campground and Resort, LLC, will be referred to as the “Wild Bills,” Defendant/Appellee Keith A. Grimm will be referred to as “Grimm” and Defendant/Appellee Bryan Iverson will be referred to as “Iverson.” References to the record as reflected by the clerk’s index are referenced by “R” following by the page number. Documents in the Appendix are referenced by “APP” followed by the number designation. Citations to the jury transcript are referenced by “T” followed by the page number and line.

JURISDICTIONAL STATEMENT

Duane Remington and Melody Remington appeal from the Order Granting Bryan Iverson’s Motion for Summary Judgment. (R: 300.) Remington’s filed a Notice of Appeal on October 2, 2023. (R: 815.) The clerk submitted the certificate on October 16, 2023. Jurisdiction in this Court is proper pursuant to SDCL 15-26A-3.

STATEMENT OF THE LEGAL ISSUES

ISSUE I: Did the Circuit Court err in granting Defendant Bryan Iverson’s Motion for Summary Judgment finding no disputed material fact concerning Defendant Iverson’s knowledge of material defects with the property prior to the sale.

Legal Authority

Jacquot v. Rozum, 2010 SD 84, ¶ 22, 790 N.W.2d 498, 506

Saiz v. Horn, 2003 SD 94, 668 N.W.2d 332

ISSUE II: Did the Circuit Court err in granting Defendant Bryan Iverson's Motion for Summary Judgment finding that a property disclosure statement was not required for the sale of the property, which included residential living quarters?

- a. Did the Circuit Court err in finding that Defendant Iverson was not required to inform his clients that a property disclosure statement was required.

Legal Authority

Engelhart v. Kramer, 1997 S.D. 124, ¶ 20, 570 N.W.2d 550, 554

Miller v. Harrington, 618 N.W.2d 460, 472

STATEMENT OF THE CASE

This lawsuit is the result of the sale of Wild Bill's Campground and Resort, ("Wild Bill's") near Deadwood, South Dakota. During the spring of 2017, Appellants, Duane and Melody Remington, were looking to purchase a campground in the Black Hills as a retirement project. The Remingtons came across an online listing for Wild Bill's. Keith Grimm was the seller, and Bryan Iverson was the realtor who listed the property for sale.

After the purchase, numerous defects with the property were discovered by the Remingtons. The defects were never disclosed to the Remingtons because Iverson, the realtor, failed to advise his client, Keith Grimm that a written property disclosure statement was required. A written property disclosure statement was required because the property included a residence. Evidence presented to the circuit court demonstrated that Grimm and Iverson were both aware of material defects with the property. Evidence is also undisputed that these known material defects were never disclosed to the Remingtons.

The circuit court erred in granting Iverson's motion for summary judgment finding that no disputed material fact exists concerning Defendant Iverson's knowledge of material defects with the property prior to the sale. The circuit court further erred in granting Iverson's motion for summary judgment and holding that a property disclosure statement was not required pursuant to SDCL § 43-4-38. Appellants request this Court reverse the circuit court's decisions.

STATEMENT OF THE FACTS

During the spring of 2017, Plaintiffs Duane and Melody Remington were looking to purchase a campground in the Black Hills as a retirement project. Plaintiffs came across an online listing for Wild Bill's Campground located near Galena, South Dakota. Kieth Grimm was the seller, and Bryan Iverson was the realtor who listed the property for sale. Iverson acted as the dual agent for Grimm, the seller and purchaser, the Remingtons.

Shortly after viewing the property, the Remingtons approached Iverson on April 27, 2017. On the same day, the parties executed a Buyers Agency Agreement, (APP.002), and Agency Agreement Addendum, (APP.005). These two documents set forth the duties and obligations a realtor owes his clients when representing both the seller and buyer. On April 27, 2017, a purchase agreement was executed between Remingtons and Grimm. (APP.006.) The property was purchased through a contract for deed, which was executed on May 12, 2017. (APP.010.) The purchase price was \$899,000, with a deposit paid in the amount of \$17,000, and a down payment in the amount of \$190,000. (*Id.*) The remaining \$682,000 was amortized over a period of twenty years with 5.5% interest. (*Id.*)

After Plaintiffs purchased the campground, the following defects with the property were discovered:

- (1) Yearly flooding in the basement created a hazardous mold problem;
- (2) A portion of the main office building and parking lot was in the right- of- way in violation of federal regulations;
- (3) Numerous fire pit rings were not compliant with code;
- (4) A bridge on the property was defective; and
- (5) The financial condition of the property was misrepresented.

A. Keith Grimm and Wild Bill's Campground and Resort

Keith Grimm purchased Wild Bill's Campground and created Wild Bill's Campground and Resort LLC, in 2005. (APP.021.) He purchased it for \$575,000 from Bonnie and Chuck King. (APP.021.) He first listed the property for sale in 2008 with Bryan Iverson acting as the listing agent. (APP.022.) During this ten-year period between the first listing and the eventual sale to the Remingtons, the property was placed on the real estate market each year during the offseason. (APP.023.) Over this ten-year period, the asking price of the campground never changed. (APP.023.) Over the decade the property was for sale, there were multiple interested buyers who viewed the property. (APP.024)

Also, Grimm made additions to the original property over this period. He added cabins, brought in power, upgraded the water, electric, and sewer. (APP.022.) He made improvements to the buildings and built a deck around the main building. (APP.023) Grimm understood that it was his duty to inform Iverson of any changes to the property so Iverson would be able to correctly change the listing. (APP.023)

B. The Listing

The listing was created by Iverson and included a detailed description of the property with numerous photographs. (APP.054.) Grimm failed to ever review the listing to make sure everything was correct. (APP.027.) Page two of the listing includes a written description of the property, which specifically includes living quarters:

Description of Property

- 12.74 Acres
- Well with new filtration system
- 98+ Total sites
- 9 - 50 amp full hook-ups
- 16 - 30 amp full hook-ups
- 5 - 30 amp electric & water sites
- 14 - 30 electrical sites
- 11 pop-up/tent sites
- Numerous Tent Sites
- Duplex cabin each side has 2 beds, bath-room, kitchen, & fireplace
- 7 Sleeping cabins with 2 beds, table & refrigerator
- Updated Shower/laundry house
- Play area
- Saloon & Grill
- Store
- Living quarters
- 3 Walking bridges & 2 driving bridges
- Wi-Fi in certain areas of campground
- Malt liquor license
- Bear Butte & Strawberry creeks meet on the property
- Snowmobile Trail on property
- 5 miles from Deadwood

(APP.092). The living quarters is also described on the last page of the listing with the following information:

The Living Quarters main level: kitchen (pictured above), living room (pictured above, used as storage area and laundry), and bedroom with full bath (bedroom currently used as office and storage). Basement has 3 bedrooms, 1/2 bath and workshop area. Living Quarters is the back portion of the main level shared with the Bar, Grill and Store area and a full basement.

(APP.098.) The description included pictures as well:



Kitchen in Living Quarters



Storage & Laundry Room in Living Qtrs.



Office/Bedroom and Full Bath

In addition to the living quarters, the listing also advertised a new drive bridge:



New Drive Bridge

(APP.098.)

C. Material Defects with the Property.

a. Yearly flooding and mold in the basement.

Upon taking possession of the property, the Remingtons learned that the basement in the living quarters would flood every year. Mr. Remington then started to investigate the issue and discovered that mold was concealed on the walls. He discovered that

someone had replaced the 2 x 4s and sheet rock about one foot up from the floor.

(APP.113.) As a result of the mold, Plaintiffs were forced to shut down the restaurant and bar. (APP.113.) Grimm knew of the presence of mold prior to the sale of the property.

Q: So you removed the bottom four feet of the walls and replace it with what?

A: With- I believe we put plywood. We put on new- new nailers, put plywood on, and then put paneling on.

Q: Wood paneling?

A: Yes.

Q: When you did- did you personally do this work?

A: Me and my father.

Q: When you completed this work, did you notice mold on the sheetrock?

A: Yes.

(APP.031.)

Even though Grimm noticed the presence of mold on the sheetrock he willfully withheld that information from the Remingtons. (APP.031-032.) Iverson admitted that the concealment of mold would affect a buyer's use and enjoyment of the property:

Q: Do you want to change your testimony with regard to whether mold would affect the use and enjoyment of property?

A: Yes.

Q: Yes, you do?

A: (Nodded.)

Q: And your testimony is that it would?

A: Yes.

(APP.051).

b. Structures in the Right-of-Way.

On November 9, 2016, Grimm received notice from the Department of Transportation that a portion of the restaurant deck was in the Right-of-Way. (APP.115) This letter informed Grimm that pursuant to Federal Regulations, the portion of deck in the right of way needed to be removed by October 1, 2017. (APP.026) Notice of this Right-of-Way violation was provided to Grimm, the Seller, six months prior to the sale. (APP.028) It is undisputed that this material fact was never disclosed to Plaintiffs and nothing was ever done to remedy the violation.

Q: You never notified my clients of this DOT letter, did you?

A: No.

Q: You never notified my clients that part of the deck was located within the right-of-way? No?

A: No.

(APP.28) Iverson agreed that having a structure in the right-of-way would affect the use and enjoyment of the property:

Q: Similarly, would you like to change your testimony in regards to whether having a structure in the right-of-way would affect the use and enjoyment of the property?

A: Yes.

Q: And what's your testimony to that?

A: It would.

(APP.051.)

c. Fire Pit Code Violations

In addition to the Department of Transportation violations, the fire pits were not compliant with county regulations and had to be rebuilt by the Remingtons. After possession, the Remingtons began getting letters from the fire marshal indicating that there was not enough gravel around the fire pits and if it was not fixed, they would be shut down. (APP.103.) As a result, the Remingtons incurred substantial expense of hauling gravel and rebuilding the fire pits. Not surprisingly, this material defect was never disclosed to Plaintiffs prior to the purchase because Iverson failed to inform Grimm that a property disclosure statement was required.

d. Defective Bridges

As previously mentioned, the listing indicated that the bridges on the property had been rebuilt prior to the sale. (APP.096; APP.060.) However, during the short time the Remingtons were in possession of the property, two motorhomes fell through the bridges. (APP.109.) The evidence demonstrates that Grimm and Iverson had knowingly misrepresented that the bridges were new, when in fact they were re-built seven and nine years before the selling of the property:

Q: And the listing that we talked about also indicated that you had bridges that were rebuilt?

A: Yes.

Q: Is it two bridges?

A: Two drive bridges and three walk bridges

Q: When were they rebuilt?

A: I would say the one was seven, eight years. The other one was before that, so maybe nine, ten years possibly.

Q: So they were rebuilt seven and nine years before the sale?

A: One was new re—wasn't an existing bridge. The old existing bridge is still there. It's just a...

Q: Okay. Let me try to understand this. So one drive bridge was rebuilt seven years prior to the sale; correct?

A: Yes.

Q: And then the other drive bridge-

A: Was built brand new. I mean, it wasn't an existing one where its at.

Q: That was built nine years prior to the sale?

A: Yes, approximately around there.

(APP.032.)

Given Iverson's extensive knowledge of the property for ten years, a jury could find that Iverson had knowledge that the bridges were not rebuilt as advertised. Iverson did concede that it would be improper for Grimm to maintain that the bridge was rebuilt and widened, when in fact, it was not. (APP.060.)

e. Financial Misrepresentations

Over the years, Iverson obtained financial documents on the property and business to include with the listing information. Included with the profit and loss statements was a property improvement list. Testimony in this case reveals that the profit and loss statements were artificially inflated for the purpose of inducing the Remingtons to purchase the property. Further, the values on the property improvement list were

improperly inflated. For example, Grimm listed John Deere mower for \$8,500, when the purchase order reveals the mower was purchased for \$6,700. (APP.117; APP.119.)

Grimm acknowledged that the mower was overly inflated and misrepresented as new at the time of sale.

Q: Okay. You've got a John Deere commercial lawn mower listed here. What year was that?

A: When did I buy it?

Q: Yeah.

A: I don't know, probably five years ago.

(APP.035.)

Grimm further acknowledged that he inflated and misrepresented the value of the mower.

Q: If the purchase order indicates that mower was only purchased for \$6,700, this claim on this listing would be incorrect?

A: I would have to go back and figure out if- I don't remember if I financed it and that's what it came out to be, or why that would be different, but.

(Deposition Exhibit 20 was marked for identification)

Q: (By MR. Beardsley:) I'm going to show you Exhibit 20, a customer purchase order form RDO Equipment in Rapid City for a John Deere Z520. And at the top corner it says, Cash Sale. Do you see that? Right under the date of order.

A: It's X'd cash sale, yes.

Q: The total price on this piece of equipment is \$6,700, and with sales tax came out to \$6,968: correct?

A: That's what it says, yes.

Q: So the claim that this mower was \$8,500 would be misleading, wouldn't it?

A: Appears that way.

(APP.035.) Iverson acknowledged that overinflating the value of improvements, in an effort to deceive a potential buyer would not be appropriate. (APP.060; APP.061.)

Prior to purchasing the property, the Remingtons inquired as to the profitability of the property. Iverson indicated to Mr. Remington that the property made \$240,000 to \$245,000 per year:

Q: All right. Did you have any questions of Mr. Iverson prior to May 12th, 2017?

A: Yeah. I asked him at one point in time if this place was worth it. He said, yes. That's when we sat down, and I know Bryan don't remember, apparently, because we set down and did a cap -- no, we did a cap rate later on, when we did the cap rate. But the only thing I remember asking Bryan is if the place was worth it, and he said he made 240, \$245,000 a year, Keith did, and we would be fine.

So as somebody who's representing me, or supposedly representing me, I take that word as gospel.

(APP.106.)

The Remingtons worked the property from 7:00 am to midnight, seven days a week, and could not come close to the numbers claimed by Grimm and Iverson.

(APP.107.) The Remingtons were fraudulently induced to purchase the property by inaccurate financial information. The extent of Iverson's knowledge of financial misrepresentations is a question of fact for the jury.

f. The commercial property listing included living quarters.

The property was deliberately "titled" as a commercial property by Iverson to avoid the statutorily required disclosure statement. There is no question that Iverson was aware of the existence of living quarters on the property. His own listing, which included over 10 years of knowledge, specifically advertised the property with a description and

photographs of the living quarters. Grimm also knew that the prior owners used the property as a residence; Grimm and his family personally used the living quarters; and two others lived in the living quarters:

Q: Okay. I'm sorry. Anyone else besides Anthony Smith, Brandon Pressley that had lived in the living quarters during that time period from when you purchased it to when you sold it?

A: My family, my daughter.

Q: Before you purchased it, was there always a living quarters?

A: The previous owners lived there. I mean, they lived there.

(APP.027.) These facts were also abundantly clear to the listing agent, Iverson, who in turn had a duty to inform his client of the necessity of a written disclosure statement.

To state that this was only a commercial transaction is not representative of Grimm and the prior owner's intent while using the property. Grimm knew of the property being used as a permanent residence by the previous owners. (APP.038.)

During Grimm's ownership, he even lived on the property:

Q: And prior to the sale, there had been times that someone, in fact, did live there: correct?

A: Yeah. I did.

(APP.027.)

D. Iverson's History with Wild Bills

Iverson first listed Wild Bills in 2007 and continued to act as the only realtor for the property until its sale in 2017. (APP.046.) During this ten-year period, the property was placed on the real estate market each year during the "camping" offseason.

(APP.047.) Over the decade the property was for sale, there were numerous interested buyers who viewed the property with Iverson. (APP.046.) Additionally, other realtors

were involved with showing the property. (APP.046.) Iverson was physically on the property for every showing. (APP.046.)

Over the ten years Iverson worked to sell the property, he obviously became familiar with the property. In order to create and modify the listing for the property, he had to be familiar with the details, modifications, and of course, the problems. In fact, Iverson testified that he personally showed the property 30 times prior to the sale in 2017:

Q: Prior to the sale of the property in May of '17, given the fact that it was listed by you for the prior 10 years, how many times would you say you've walked through the property?

A: I do not know.

Q: 50?

A: I don't know.

Q: Well, I mean, you show the property five times for 10 years, and it's on and off the market each year. Is 50 a fair estimate of how many times you've walked that property?

A: I just couldn't tell you.

Q: More than 30?

A: I'll go with 30.

(APP.048.) Lastly, Iverson and Grimm have been friends for the past thirty years.

(APP.045-APP.046.)

Iverson should have required Grimm, the seller to complete a written property disclosure statement due to the presence of living quarters on the property. Iverson should have also personally disclosed any material defects with the property. Questions of fact prevent summary judgment in this case, and the circuit court's order dismissing Iverson from the lawsuit was error.

STANDARD OF REVIEW

“The grant or denial of a motion for judgment as a matter of law is a question of law reviewed de novo.” *Suvada v. Muller*, 2022 S.D. 75, ¶ 27, 983 N.W.2d 548, 557 (citing *Magner v Brinkman*, 2016 S.D. 50, ¶ 13, 883 N.W.2d 74, 81). The issue on appeal also raises a question of statutory interpretation. The construction and application of statutes are reviewed de novo, with no deference to the trial court. *LPN Trust v. Farrar Outdoor Advertising, Inc.*, 1996 SD 97, ¶ 8, 552 N.W.2d 796, 798.

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.” SDCL 15–6–56(c). Courts must view the evidence “most favorably to the nonmoving party and resolve reasonable doubts against the moving party. If there exists any basis which supports the ruling of the [circuit] court, affirmance of a summary judgment is proper.” *Gades v. Meyer Modernizing Co.*, 2015 S.D. 42, ¶ 7, 865 N.W.2d 155, 158 (quoting *Peters v. Great W. Bank, Inc.*, 2015 S.D. 4, ¶ 5, 859 N.W.2d 618, 621). (citation omitted) “It is only when the evidence is such that reasonable persons can draw but one conclusion from the facts and inferences that they become a matter of law and this occurs rarely.” *Casillas v. Schubauer*, 2006 S.D. 42, ¶ 13, 714 N.W.2d 84, 88 (quoting *Scatterlee v. Johnson*, 526 N.W.2d 256, 258 (S.D. 1995)); see *Cox v. Kentucky Dept. Of Transp.*, 53 F.3d 146, 150 (6th Cir. 1995) (stating that a court must proceed cautiously in considering subjective issues on motions for summary judgment); see also 10A Charles Alan Wright et al. *Federal Practice & Procedure Civil* § 2727.2, Westlaw (database updated September 2018) (stating evidence

that “raises subjective questions such as motive, intent, or conscience, there may have to be a trial . . . testing the credibility of this kind of evidence”).

It is important to note that “[s]ummary judgment is not a substitute for trial; a belief that the non-moving party will not prevail at trial is not an appropriate basis for granting the motion on issues not shown to be a sham, frivolous or unsubstantiated; summary judgment is an extreme remedy and should be awarded only when the truth is clear.” *St. Onge Livestock Co., Ltd. v. Curtis*, 2002 S.D. 102, ¶ 25, 650 N.W.2d 537, 544 (quoting *Tibke v. McDougall*, 479 N.W.2d 898, 904 (S.D. 1992)). As such, this Court should “make all *reasonable inferences* drawn from the facts in the light most favorable to the non-moving party.” *Garrido v. Team Auto Sales, Inc.*, 2018 S.D. 41, ¶ 15, 913 N.W.2d 95, 100 (emphasis added) (quoting *McKie Ford Lincoln, Inc., v. Hanna*, 2018 S.D. 14, ¶ 8, 907 N.W.2d 795, 798).

The non-moving party is not required to produce evidence of personal knowledge regarding the alleged tortious actions. Because a court needs to draw all reasonable inferences from the facts presented by the non-moving party, circumstantial evidence may be used to establish such reasonable inference. Once a court makes the determination of reasonableness, it may not choose among competing inferences, regardless of whether one is more plausible than the others. *See American Tel. & Tel. Co. v. Delta Comme'sn Corp.*, 590 F.2d 100, 102 (5th Cir. 1979); *see also* Daniel P. Collins, *Summary Judgment and Circumstantial Evidence*, 40 Stan. L. Rev. 491, 494 (1988). In this regard, the South Dakota Supreme Court has allowed circumstantial evidence presented by the non-moving party to defeat a motion for summary judgment. *See Garrido*, 2018 S.D. 41, 913 N.W.2d 95.

In *Garrido*, the plaintiffs purchased a car from Team Auto Sales, Inc., for \$1,500. *Id.* at ¶¶ 3-4. Plaintiffs noticed the car smelled like gasoline when running and had to be jump started before the test drive; however, they purchased the vehicle “as is.” *Id.* After purchasing the car and after an incident that caused plaintiffs to be admitted to the hospital as a result of carbon monoxide poisoning, plaintiffs filed a complaint against Team Auto Sales, Inc. seeking damages as a result of the poisoning from the muffler on the car. *Id.* at ¶¶ 7-10. Team Auto Sales moved for summary judgement because the evidence could not establish causation, and the circuit court granted their motion. *Id.* at ¶¶ 10, 14. On appeal, the South Dakota Supreme Court reasoned:

[A]n exact measure of the carbon monoxide levels in the vehicle at the time of the exposure are not essential to create a jury question. The medical evidence that Appellants were suffering from carbon monoxide exposure, the condition of the vehicle exhaust system, and the timing and circumstances of Appellants’ reporting to the hospital with these injuries allow a fact finder to conclude that the defective exhaust system was probably the instrument that caused the exposure. In a context such as this, TAS has not presented any case suggesting that causation can only be established by presenting expert testimony that the levels of carbon monoxide in the passenger compartment were toxic while Appellants were sitting in the vehicle.

Id. at ¶ 24. Thus, the Court reversed the grant of summary judgment based on circumstantial evidence showing causation. *See Id.* at ¶ 27.

Therefore, it is not required that Plaintiffs have personal knowledge that Iverson was aware of material defects. There is no “smoking gun” evidentiary requirement to defeat a motion for summary judgment. Plaintiffs have demonstrated sufficient evidence that could lead a jury to find that Iverson had knowledge of material facts and failed to disclose them to Plaintiffs in violation of South Dakota law.

ARGUMENT AND AUTHORITIES

- I. **The circuit court erred in granting Iverson's motion for summary judgment finding that no material fact existed concerning knowledge of material defect.**

- a. **Iverson's Duties and Obligations to Plaintiffs**

As previously stated, Iverson was acting as an agent for the seller and purchaser.

The Buyers Agreement Addendum (APP.005), which was executed by Plaintiffs and Iverson, constitutes a legally binding contract. The Agency Agreement Addendum to the Buyers Agreement Addendum was also executed by Plaintiffs and Iverson. The Agency Agreement Addendum sets forth the following obligations:

- A. The broker may not knowingly say anything or do anything which might place one party at a disadvantage, disclose personal confidences of one party or the other party, or any other information a party specifically instructs the broker in writing not to disclose, unless disclosure is required by law.
- B. The broker may not, without the prior express written consent of the owner, disclose to the buyer/tenant that the owner might accept a price less than the listing price, nor shall the broker, without the prior express written consent of the buyer/tenant, disclose to the owner that the buyer/tenant may be willing to pay a higher price, or accept terms less favorable to the buyer/tenant than those indicated in the buyer's/tenant's previous offer.
- C. The broker may not represent the interests of either the owner or buyer/tenant to the detriment of the other party. The broker is obligated to inform each party of all facts the broker knows which would affect the party's decision to permit the broker to represent both the owner and the buyer/tenant.

....

AGENT OBLIGATIONS: Regardless of representation, the broker shall: Disclose all known material facts about the property which could affect the buyer's/tenant's use or enjoyment of the property, disclose information which could have a material impact on either party's ability to fulfill their obligations under the purchase/lease agreement, respond honestly and accurately to questions concerning the property, and deal honestly and fairly with all parties. The duties of the broker in a real estate transaction do not relieve an owner or buyer/tenant from the responsibility to protect their own interests. You should carefully read all documents to assure that they adequately express your understanding of the transaction. If you have questions regarding the duties and responsibilities of the broker, you should resolve those questions before proceeding further.

(APP.005)

In addition to the duties and obligations as outlined in the Agency Agreement, a real estate agent also owes the client a fiduciary duty, which has been defined by this Court in the following manner:

In some circumstances, because of a relationship between two parties, one party owes the other a duty to act for the other party's benefit. Such a relationship is called a fiduciary relationship. When a fiduciary relationship exists, the party who owes this legal duty is called a fiduciary, and the legal duty the fiduciary owes is called a fiduciary duty.

Real estate agents owe their principals a fiduciary duty to use reasonable efforts to fully, fairly, and timely disclose information to their principals within their knowledge, which is or may be material to the subject matter of their agency. Whether information is material depends on the facts and circumstances of each case. Real estate agents are bound to exercise reasonable care, skill, and diligence in performing the transactions entrusted to them and are responsible for loss legally resulting from their failure to do so. Any acts or omissions by agents in violation of the duties imposed upon them by their agency contract render them responsible to their principals for loss or damages.

Jacquot v. Rozum, 2010 S.D. 84, ¶ 22, 790 N.W.2d 498, 506 (citing *Salz v. Horn*, 2003 SD 94, 668 N.W.2d 332; *Hurney v. Locke*, 308 N.W.2d 764 (SD 1981)). Whether information is material is for the trier of fact to determine.

In *Salz*, the issue was whether a real estate agent is required to inform a buyer of a seller's requirement to provide a disclosure statement. 2003 SD 94, 668 N.W.2d 332 at ¶ 11. The court held that a real estate agent owes a fiduciary duty to their clients, which obligate them to advise their clients of the rules and procedures involved in a real estate transaction. The court stated:

Not unlike the requirement of other professionals to inform their clients, real estate agents are expected to advise their principals on the rules and procedures involved in a real estate transaction. Why have realty agents for buyers, if agents, supposedly knowledgeable in real estate transactions, have no obligation to tell clients that sellers are required by law to give a disclosure statement? Such disclosure is legally mandated for the protection of buyers. It can reveal matters that may materially influence a decision whether to purchase a home.

Id. at ¶12.

Further, real estate agents “owe their principals ... a duty to use reasonable efforts to fully, fairly and timely disclose information to their principals within their knowledge, which is or may be material to the subject matter of their agency. Material information depends on the facts and circumstances of each case.” *Id.* at ¶13.

Iverson seems to believe that the contractual obligations, pursuant to the Agency Agreement Addendum (APP.005.) and his duties as a fiduciary pursuant to well established South Dakota law, simply don't apply to him. When Iverson was questioned regarding his duties, the following responses were given:

Q: (By Mr. Beardsley:) I'd like you to take a look at Section 3 on Exhibit 2, and I want you to read the second sentence of Subsection C into the record, please.

A: The broker is obligated to inform each party of all facts the broker knows which would affect the party's decision to permit the broker to represent both the owner and the buyer.

Q: So you would agree with me that as the real estate agent for the Remingtons you have an obligation to disclose all known material facts about the property which could affect the buyer's use or enjoyment of the property?

A: No.

(APP.049.)

Iverson seems to think that his only obligation is to do what his clients ask him to do and not provide professional advice as required by the *Saiz* case, or disclose material facts:

- Q: I want you to go down to Agent Obligations on that Exhibit 2 and please read the first sentence.
- A: Regardless of representation, the broker shall disclose all known material facts about the property which could affect the buyer's/tenant's use or enjoyment of the property, disclose information which could have material impact on either party's ability to fulfill their obligations under the purchase/lease agreement, respond honestly and accurately to questions concerning the property and to deal honestly and fairly with all parties.
- Q: And you were the agent on this document, correct?
- A: Yes.
- Q: And it says, Agent Obligations; that's what you just read from?
- A: Yes.
- Q: Are you testifying here today that those are not your obligations?
- A: I did what the Remingtons asked me to do.
- Q: So just so I'm clear, it's your testimony here today that your obligations were only to do what the Remingtons asked you to and have nothing to do with what's stated in this document?
- MR. ERLANDSON: Objection, form.
- A: This is what they asked me to do. I did as they requested.
- Q: (By Mr. Beardsley:) And, Bryan, you understand that by signing this you agreed to follow the terms of Exhibit 2; correct?
- MR. ERLANDSON: Objection, form; asked and answered.
- A: I did what they asked me to do.
- Q: (By Mr. Beardsley:) So you're testifying here today that you did not agree to follow the duties set forth on Exhibit 2, correct?

A: I did what they asked me to do.

Q: And, Bryan, if you did not disclose all known material facts to your clients, that would be a breach of your obligation as a real estate agent; correct?

MR. ERLANDSON: Objection, form.

A: I did what the Remingtons asked me to do.

Q: (By Mr. Beardsley:) I know you've said that about four times. I'm asking you if you don't disclose known material facts to your clients, that is a breach of your professional obligations, "yes" or "no"?

A: No.

Q: No?

A: No.

(APP.049-APP.050)

Iverson clearly believes that he is not obligated to disclose material facts to his clients. However, Iverson does not get to make the rules, but he is required by law to follow them. The most important rule that Iverson chose to ignore was the requirement of a property disclosure statement.

II. The Circuit Court erred in granting Defendant Bryan Iverson's Motion for Summary Judgment finding that a property disclosure statement was not required for the sale of the property, which included residential living quarters

a. Property Disclosure Statement

The doctrine of caveat emptor has been abandoned in South Dakota with the adoption of the detailed disclosure statutes relating to residential property. *Engelhart v. Kramer*, 1997 S.D. 124, ¶ 20, 570 N.W.2d 550, 554. "A seller of residential property is required to complete a copy of the statutory disclosure statement." *Fuller v. Croston*, 2006 S.D. 110, ¶ 18, 725 N.W.2d 600, 606. Pursuant to SDCL § 43-4-38, "[t]he seller of

residential real property shall furnish to a buyer a completed copy of the disclosure statement before the buyer makes a written offer . . . [, and if] the seller becomes aware of any change of material fact which would affect the disclosure statement, the seller shall furnish a written amendment disclosing the change of material fact.” SDCL § 43-4-38 states:

The seller of residential real property shall furnish to a buyer a completed copy of the disclosure statement before buyer makes a written offer. If after delivering the disclosure statement to the buyer or the buyer’s agent and prior to the date of closing for the property or the date of possession of the property, whichever comes first, the seller becomes aware of any change of material fact which would affect the disclosure statement, the seller shall furnish a written amendment disclosing the change of material fact.

Accordingly, a residential property is defined as “all residential real property consisting of not more than four family dwelling units, all of which are contained in one structure[.]” SDCL 43-4-37. The disclosure statute requires “a complete and truthful disclosure made in good faith, not a disclosure simply sufficient to put the buyer on notice of the defects.” *Center of Life Church v. Nelson*, 2018 S.D. 42, ¶ 19, 913 N.W.2d 105, 111. “[A] seller’s ‘good faith’ is determined under a reasonable person standard.” *Fuller*, 2006 S.D. 110, ¶ 18, 725 N.W.2d at 607. The South Dakota Supreme Court has also noted that the “terms ‘truthful’ and ‘complete’ do not operate independently to the exclusion of the other.” *Id.* ¶ 22. A person who intentionally or negligently violates the disclosure requirement “is liable to the buyer for the amount of the actual damages and repairs suffered by the buyer as a result of the violation or failure.” SDCL 43-4-42.

SDCL 43-4-42 states:

A transfer that is subject to §§ 43-4-37 to 43-4-44, inclusive, is not invalidated solely because a person fails to comply with §§ 43-4-37 to 43-4-44 inclusive. However, a person who intentionally or who negligently

violates §§ 43-4-37 to 43-4-44, inclusive, is liable to the buyer for the amount of the actual damages and repairs suffered by the buyer as a result of the violation or failure. In any court action pursuant to this section, the court may award costs and attorney fees to the prevailing party. Nothing in this section precludes or restricts any other rights or remedies of the buyer or seller.

b. Defendant's Failed to Provide a Property Disclosure Statement

It is undisputed that a property disclosure statement was not provided in this case.

It is also undisputed that Iverson failed to inform anyone that one was required.

(APP.057.)

As demonstrated by the listing, the property included living quarters. In fact, just prior to the sale, Iverson was aware that someone was actually living in the living quarters:

Q: Do you know who lived there?

A: I believe the gentleman who was leasing the restaurant was staying there.

Q: Okay. And I think that was Brandon Presley, wasn't it?

A: I believe so.

Q: And didn't Keith have a handyman that also lived in the building?

A: I don't know.

Q: But you're aware that prior to sale, at least one person did live there?

A: Yes.

(APP.054.)

While this transaction was labeled as a commercial property sale, due to the presence of living quarters on the property, a disclosure statement was required. In *Miller v. Harrington*, Plaintiffs purchased a tavern business and building. 618 N.W.2d 460, 472 (Neb. 2000). The building was located in a business district and zoned primarily for

commercial use. *Id.* The building also had an apartment on the second floor. *Id.* The purchasers discovered defects with the building and brought suit against the seller and real estate agent alleging, in part, that the defendants failed to provide a disclosure statement.

The statute requiring disclosure statements in Nebraska is nearly identical to SDCL 43-4-38. Neb.Rev.Stat. § 76-2,120(2) provides “that each seller of residential real property located in Nebraska shall provide the purchaser with a written disclosure statement of the real property’s condition.” SDCL § 43-4-38 states “[t]he seller of residential real property shall furnish to a buyer a completed copy of the disclosure statement before the buyer makes a written offer.” Further, Nebraska defines residential property as “real property on which no fewer than one or more than four dwelling units are located,” Neb.Rev.Stat. § 76-2,120(1)(c). South Dakota defines residential property as “all residential real property consisting of not more than four family dwelling units, all of which are contained in one structure[.]” SDCL 43-4-37.

In *Miller*, Defendants argued that the primary purpose of the purchase was commercial, and therefore a disclosure statement was not required. The court disregarded that argument and held:

In this case, § 76-2,120 contains no ambiguity in its terms. Under its plain language, the sale of any property consisting of at least one dwelling unit, but not more than four units, will trigger the disclosure requirements. The statute makes no mention of the buyer’s primary purpose for the purchase. The Millers contracted to purchase property with both commercial and residential components. The first floor was a tavern known as C.J.’s Saloon and constituted the Millers’ primary purpose for purchasing the property. The Harringtons, however, also informed the Millers at the time of the inspection that the second floor was occupied by a tenant who paid rent. The tenant continued to live there and pay rent to the Millers for 4 to 5 months after closing. Because the property contained at least one dwelling unit, a disclosure statement was required under § 76-2,120(2).

Id. at 475.

In the case at bar, the property was advertised to have living quarters.

There is no dispute that the main building included living quarters:

Q: And, Bryan, this looks like a description of the living quarters; correct?

A: Yes.

Q: And there's a kitchen?

A: Yes.

Q: And the picture indicates there's a dishwasher, a kitchen sink, a refrigerator, and a stove in this particular photo; is that accurate?

A: That's a refrigerator there. This is a different room. (Indicating.)

Q: Oh, I -- yeah, I'm talking about the photo above the title "kitchen in living quarters". Do you see that photo?

A: Yep.

Q: And that includes a stove, freezer/refrigerator, dishwasher, and a kitchen sink and cabinets --

A: Yes.

Q: -- in that photo?

A: Yes.

Q: And that's located in the main building on the property?

A: Yes.

(APP.054-APP.055.) Further, it was known by all parties involved that the living quarters had been occupied prior to the sale. (APP.054; APP.109.) Additionally, Plaintiff's primary purpose of the purchase is irrelevant.

The rationale behind the disclosure requirement is to put the buyer on notice of a material fact or defect that may influence a decision to go forward with the purchase.

This requirement is not optional, as Iverson seems to believe. There are real estate transactions every day that could have a commercial component. However, that does not render SDCL 43-4-38 meaningless. For example, many homes in the Black Hills area are also short-term rentals through Airbnb or VRBO, which are clearly commercial in nature. It would be preposterous for a real estate agent to advise the seller and buyer that a disclosure form is not necessary due to the presence of the business within the home. Similarly, a property may also include a commercial furniture shop in addition to the residence. There is no dispute that the sale in the case at bar contained at least one dwelling unit. As such, this Court should hold that a disclosure statement was required. Given the similarities in the law, Appellants urge that this court follow the same rational and adopt a similar holding to the Supreme Court of Nebraska in interpreting South Dakota's disclosure statute.

c. The property disclosure requirement was not waived by the parties.

It is anticipated that Appellee will argue that if this Court finds that a disclosure statement was required, the "as is" language of the contract for deed constitutes waiver of the disclosure requirements under SDCL 43-4-38 as a matter of law. This argument was refuted by this Court's holding in *Oxton v. Rudland*, 2017 S.D. 35, 897 N.W.2d 356.

The issue in *Oxton* was whether an "as is" clause in a contract for deed waived the property disclosure statement. This Court relied on long standing precedent and held "[b]ecause no clear, unequivocal, or decisive act or acts exist on this record, we reverse the circuit court's summary disposition of the Oxton's claim that the Rudlands violated SDCL 43-4-38." *Id.* at ¶ 22 citing *Norwest Bank South Dakota, N.A. v. Venners*, 440 N.W.2d 774, 775 (SD 1989) (to support the defense of waiver, there must be a showing of

a clear, unequivocal and decisive act or acts showing an intention to relinquish the existing right.)). This Court clarified that *Lucero v. Van Wie*, 1999 SD 109, N.W. 2d 893, does not hold that the use of “as is” language or general disclaimers against warranties or representations constitute waiver of the disclosure requirements under SDCL 43-4-38 as a matter of law, but must be determined by the facts of each case. *Id.* at ¶ 21.

The facts of the case at bar do not include a clear, unequivocal and decisive act or acts showing an intention to waive the disclosure requirements. The facts of the case at bar demonstrate dual representation by a real estate agent who misinformed both parties regarding the requirements of a disclosure statement. The facts also demonstrate fraudulent misrepresentations that induced the Remingtons into purchasing the property. “A provision in a contract that the buyer takes the property “as is” does not confer upon the seller a general a general immunity from liability for fraud.” *Id.* at ¶ 18 (citations omitted). This principal applies to fraudulent actions by the seller’s agent as well. More importantly, “reliance in a fraudulent inducement case is a question of fact,” which precludes summary judgment. *Id.*

CONCLUSION

The Circuit Court’s ruling fosters and encourages fraud contrary to the public policy of this statute. Based on the foregoing, Duane and Melody Remington respectfully asks that the Court reverse the trial court for the reasons aforementioned.

Respectfully submitted this 2nd day of January, 2024,

BEARDSLEY, JENSEN & LEE,
PROF. L.L.C.

By: /s/ Michael S. Beardsley
Michael S. Beardsley

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Rapid City, SD 57709
Tel: (605) 721-2800
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Attorneys for Defendants/Appellants

ORAL ARGUMENT IS RESPECTFULLY REQUESTED

CERTIFICATE OF COMPLIANCE

Pursuant to S.D.C.L. §15-26A-66(b)(4), I certify that Appellant's Brief complies with the type volume limitation provided for in the South Dakota Codified Laws. This Brief contains 7917 words and 39,883 characters. I have relied on the word and character count of our processing system used to prepare this Brief. The original Appellant's brief and all copies are in compliance with this rule.

Dated this 2nd day of January, 2024.

BEARDSLEY, JENSEN & LEE,
PROF. L.L.C.

By: /s/ Michael S. Beardsley

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Fax: (605) 721-2801
E-mail: mbeardsley@blackhillslaw.com
Attorney for Defendants/Appellants

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of January, 2024, I electronically filed the foregoing Appellants' Brief and sent one copy of it by U.S. Mail, first-class postage prepaid to:

John Nooney
Robert Galbraith
Nooney and Solay
632 Main Street
Rapid City, SD 57709

Gregory J. Erlandson
Bangs, McCullen, Butler, Foye & Simmons
PO Box 2670
Rapid City, SD 57709

I further certify that on 2nd day of January, 2024, I electronically filed the foregoing Appellants' Brief and sent the original and one copy of it by U.S. Mail, first-class postage prepaid to:

Shirley A. Jameson-Fergel, Clerk
South Dakota Supreme Court
500 East Capitol Avenue
Pierre, SD 57501-5070

BEARDSLEY, JENSEN & LEE,
PROF. L.L.C.

By: /s/ Michael S. Beardsley
Michael S. Beardsley

APPENDIX INDEX

	Page(s)
1. Order Granting Bryan Iverson's Motion for Summary Judgment -----	APP.001
2. Buyers Agency Agreement -----	APP.002
3. Agency Agreement Addendum -----	APP.005
4. Purchase Agreement -----	APP.006
5. Contract for Deed -----	APP.010
6. Deposition of Keith Grimm-----	APP.019
7. Deposition of Bryan Iverson-----	APP.041
8. ReMax Listing Brochure -----	APP.092
9. Deposition of Duane Remington-----	APP.099
10. DOT Letter to Grimm -----	APP.115
11. Campground Improvements List-----	APP.117
12. John Deere Purchase Order -----	APP.118

STATE OF SOUTH DAKOTA

COUNTY OF PENNINGTON

DUANE REMINGTON and
MELODY REMINGTON,

Plaintiffs,

vs.

WILD BILL'S CAMPGROUND AND
RESORT, LLC, KEITH GRIMM,
and BRYAN IVERSON

Defendants.

IN CIRCUIT COURT

SEVENTH JUDICIAL CIRCUIT

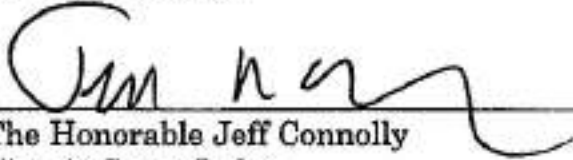
51CIV18-000118

**ORDER GRANTING BRYAN
IVERSON'S MOTION FOR
SUMMARY JUDGMENT**


Hearings were held on defendant Bryan Iverson's Motion for Summary Judgment on October 5, 2018 and February 22, 2019. Bryan Iverson appeared personally and through counsel, Gregory James Erlandson. Plaintiffs appeared through counsel Michael Beardsley. Wild Bill's Campground and Resort, LLC, and Keith Grimm was present through their attorney Robert Galbraith.

Based upon the pleadings on file and the arguments of counsel, the Court grants defendant Bryan Iverson's Motion for Summary Judgment thereby dismissing all of Plaintiffs' claims against him.

BY THE COURT:


The Honorable Jeff Connolly
Circuit Court Judge

ATTEST:



RANAE TRUMAN,
Clerk of Courts




Deputy

Pennington County, SD
FILED
IN CIRCUIT COURT

FEB 27 2019

Ranae Truman, Clerk of Courts
By  Deputy

51CIV18-000118

Order Granting Motion for Summary Judgment

Page 1 of 1

APP.001



REALTOR®

BUYERS AGENCY AGREEMENT

(EXCLUSIVE AGREEMENT TO REPRESENT BUYERS)

(This is a legally binding contract. If you do not understand it, seek legal advice.)



Broker will assist Buyer as Buyer's exclusive agent under the terms specified herein. Buyer represents to Broker that Buyer has not employed, retained, contracted with nor in any other manner engaged another broker to assist in acquiring an interest in the property that is within the scope of this Agency Agreement. Buyer agrees to protect, defend, indemnify, and hold Broker harmless from any claims, demands, suits, actions by or on behalf of another Broker and all expenses related thereto, including reasonable attorney's fees, arising from any breach of this representation by Buyer. The Broker and Buyer, as parties to this agreement, agree that a party in breach of any of the covenants, promises or obligations arising under this contract shall be liable and responsible for attorney's fees and costs that may result from enforcement thereof as against the party in breach.

- Buyer gives Broker the exclusive right to locate and/or assist in negotiations for the purchase, exchange, or option to purchase property (purchase) at a price and with terms acceptable to Buyer.
- Buyer agrees to compensate Buyer's Broker. **THE AMOUNT OF COMPENSATION SHALL BE** _____ percent of the selling price OR \$ _____, whichever is greater, plus appropriate sales/service tax, which may be satisfied in whole or in part by payments from a cooperating Broker or Seller. On properties not listed by a cooperating Broker, Buyer agrees to pay Broker _____ of purchase price, but said amount will be reduced by any amount paid by Seller.
- Buyer acknowledges that they have received a copy of an Agency Relationship Disclosure and agree in writing to the applicable Agency Relationships as shown in the herein attached Agency Addendum.
- Buyer acknowledges and consents that Broker may represent other buyers who may have an interest in presenting purchase agreements on any given property for sale by a Seller.
- BUYER'S OBLIGATION: Buyer will:**
 - Work exclusively with Broker for the purchase of property.
 - Provide Broker with accurate and relevant personal financial information to determine Buyer's ability to purchase property.
 - Compensate Broker as outlined in paragraph two (2) if Buyer purchases property or defaults on an Agreement to purchase during the period of this contract.
 - Compensate Broker as outlined in paragraph two (2) if Buyer purchases a property within 60 days after the end of this Agreement which Broker has shown to Buyer during the term of this Agreement. If Buyer enters into an Exclusive Agreement with another broker after expiration of this agreement, this agreement shall be null and void in its entirety.
- Description of property desired:**
 - Type of property: Wild Bill's Campground Bar & Grill
 - General location: Northern Black Hills
 - Price range: _____
- Other Provisions:** Only for this transaction
- This agreement shall begin April 27, 2017 at _____ ☐ a.m./ ☐ p.m., and shall continue until the earlier of May 31, 2017 at 5:00 ☐ a.m./ ☒ p.m., or completion of the acquisition of the property.

However, if a purchase agreement is entered into by Buyers during the term of this agreement, the termination thereof shall extend to and include the date of closing under said purchase agreement as to the purchase property only.

Receipt of a copy of this contract by the buyer has been acknowledged.

Duane Remington

Buyer's Name - Typed or Printed

Buyer's Signature

Date

Melody Remington

Buyer's Signature

Date

Buyer's Name - Typed or Printed

6835 Arcadia St., Sunnyside, SD 57718

Address

Email

Broker:

by Agent:

Date:

THIS AGREEMENT IS EXTENDED TO:

Receipt of a copy of this contract by the buyer has been acknowledged.

Buyer:

Date:

Buyer:

Date:

Broker:

by Agent:

Date:

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This form is authorized for the use of the members of the Black Hills Association of REALTORS® only. (revised) BHAR 10/14

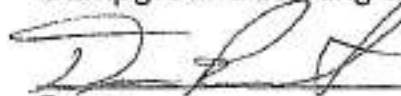
Revised: 02/24/2014 149-338012

Prepared by: Bryan Hanson | REALTOR® | bryan@bhsd.com


for APP.002 ty

Addenda #1: Other Provisions:

1. Seller and Buyer agree that Wild Bill's Campground is being sold as-is with no warranty.
2. All Licenses and Certificates associated with the campground to be current prior to closing. After closing Buyer is responsible to transfer all License and Certificates.
3. All Rights to Wild Bill's Campground Saloon and Grill – Name, Logos, Website, Domain Name, Business Phone Number and/or any other use of the name to go to the Buyers.
4. The cost of all existing inventory and supplies to be reimbursed to the Seller at the time that the Buyer assumes the business .
5. Seller to provide training at the start of the season at the start and the close of the season. Also will be available during the season.
6. Seller to provide list of all Suppliers and Vendors associated with the campground.
7. Seller to provide a Disclosure to Hold Harmless the Buyers for any legal action or litigation that may have happened before the transfer of ownership to the Buyers.
8. Contract for Deed – \$200,000 down at closing with the remainder to be amortized over 20 years at 5.5%. Equal monthly payments to be made by the 5th of each month over the next 240 months. Buyers reserve the right to payoff the loan early without penalty.
9. Payments to be setup with Old West Escrow Company (Fee to be split 50% Seller and 50% Buyer).
10. Buyers will be responsible for Real Estate Taxes and Insurance for the Campground starting the day of closing.

 4-27-17
Buyer Date

 4/27/17
Seller Date

 4-27-17
Buyer Date

Seller Date

APP.004



AGENCY AGREEMENT ADDENDUM



This addendum is attached to and made a part of the ☐ Exclusive Listing Agreement ☒ Buyer Agency Agreement dated 4/27/17, between Re/Max Results (Brokerage Firm) and Duane & Melody Remington (Client).

I. IF THE BROKER REPRESENTS THE ☐ SELLER/LANDLORD or ☒ BUYER/TENANT: If a broker enters into an agreement to represent an seller/landlord or buyer/tenant as a client, the broker and all licensees associated with that broker represent the client. An agent/subagent owes the client the duties of loyalty, obedience, disclosure, confidentiality, reasonable care and diligence, and full accounting.

II. IF THE BROKER APPOINTS AN ASSOCIATE LICENSEE TO REPRESENT THE ☐ SELLER/LANDLORD or ☐ BUYER/TENANT: If a broker enters into an agreement to represent a seller/landlord or buyer/tenant as a client, the broker appoints _____ as the client's appointed agent. For the purposes of this addendum, the client shall have an agency relationship with ONLY the appointed agent, the responsible broker _____ and, if applicable, responsible broker's designated broker _____.

The responsible broker may appoint other affiliated licensees during the term of the brokerage agreement should the appointed agent not be able to fulfill the terms of the brokerage agreement or as by agreement between the responsible broker and the client. An appointment of another affiliated licensee or an additional affiliated licensee does not relieve the first appointed agent of any duties owed to the client. In an appointed agency relationship, the responsible broker and, if applicable, the responsible broker's designated broker will act in a limited agency capacity.

III. IF A BUYER/TENANT REPRESENTED BY A BROKER WANTS TO SEE A PROPERTY OF A SELLER/LANDLORD BEING REPRESENTED BY THE SAME BROKER: A real estate broker acting directly or through an associate licensee or appointed agent can legally be the agent of both the seller/landlord and the buyer/tenant in a transaction, but only with the knowledge and written consent of both parties. Upon such consent the broker, associate licensee or appointed agent represents both the seller/landlord and the buyer/tenant and the following provisions will govern the actions of the broker:

- The broker may not knowingly say anything or do anything which might place one party at a disadvantage, disclose personal confidences of one party or the other party, or any other information a party specifically instructs the broker in writing not to disclose, unless disclosure is required by law.
- The broker may not, without the prior express written consent of the owner, disclose to the buyer/tenant that the owner might accept a price less than the listing price, nor shall the broker, without the prior express written consent of the buyer/tenant, disclose to the owner that the buyer/tenant may be willing to pay a higher price, or accept terms less favorable to the buyer/tenant than those indicated in the buyer's/tenant's previous offer.
- The broker may not represent the interests of either the owner or buyer/tenant to the detriment of the other party. The broker is obligated to inform each party of all facts the broker knows which would affect the party's decision to permit the broker to represent both the owner and the buyer/tenant.

CONSENT AGREEMENT: If the seller/landlord elects to negotiate with a buyer/tenant that is a client of the broker, or a buyer/tenant elects to negotiate with a seller/landlord that is a client of the broker, it is understood that both parties will be required to confirm, in writing, their election to have the broker act as a consensual limited agent.

AGENT OBLIGATIONS: Regardless of representation, the broker shall: Disclose all known material facts about the property which could affect the buyer's/tenant's use or enjoyment of the property, disclose information which could have a material impact on either party's ability to fulfill their obligations under the purchase/lease agreement, respond honestly and accurately to questions concerning the property, and deal honestly and fairly with all parties. The duties of the broker in a real estate transaction do not relieve an owner or buyer/tenant from the responsibility to protect their own interests. You should carefully read all documents to assure that they adequately express your understanding of the transaction. If you have questions regarding the duties and responsibilities of the broker, you should resolve those questions before proceeding further.

Having read and understood this information about agency, I instruct Broker as initialed below:

I agree to an appointed agency relationship as described in section II above. Yes 1 No 1 N/A MR

I agree to a potential limited agency representation as described in section III above. Yes MR No 1 N/A 1

4-27-17 10:00 AM Duane & Melody Remington 4-27-17 10:00
☒ Buyer/Tenant ☐ Seller/Landlord (date/time) ☒ Buyer/Tenant ☐ Seller/Landlord (date/time)

4/27/17 10:00 AM
☒ Broker (date/time) by MR ☒ Agent (date/time)

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Serial#: 622608-100149-0160034

Prepared by: Dyan Iverson | RE/MAX Results | byron4922@gmail.com |

for APP 005

**REAL ESTATE PURCHASE AGREEMENT
COMMERCIAL/AGRICULTURAL**

(This is a legally binding contract. If you do not understand it, seek legal advice)

1. EARNEST MONEY DEPOSIT - PARTIES TO CONTRACT - PROPERTY.

Purchasers: Diane & Melody Remington Real Estate Advisors

Broker hereby acknowledges receipt of Earnest Money in the amount of (\$ 10,000.00)

Ten Thousand and 00/100 DOLLARS

Cash ☐ Check ☒ to be deposited the next legal banking day after acceptance of this offer on the property legally described as:

Wild Bill's Campground Bar & Grill

Lot B ex H1 (.04 ac) & H2 (.06 ac) & Lot B-2 of HRS 137 Acres; 11.21 Sec. 18 Township 4 North, Range 4 East Tracts 0091-A & 0091-B Acres: 1.53 Sec. 17 Township 4 North, Range 4 East

also known as: 21372 US Hwy 385, Deadwood, SD 57732

Sellers: Wild Bill's Campground & Resort, LLC

Purchaser and Seller acknowledge that Broker is the limited agent of both parties to this transaction as outlined in Section III of the Agency Agreement Addendum and authorized by Purchaser and Seller.

Yes ☒ No ☐ (Initials) Purchaser DR, MR Seller KG, J N/A

2. PURCHASE PRICE. The total price is to be (\$899,000.00) Eight Hundred, Ninety-Nine Thousand and 00/100 DOLLARS

After earnest money herein is credited, an additional down payment of \$ 0 is to be paid by Purchaser on or before _____.

After earnest money and down payment are herein credited, the remaining balance is to be paid by Purchaser at closing.

3. FINANCING. If this offer is contingent upon Purchaser obtaining a new loan, Purchaser agrees to immediately make application for and diligently endeavor to procure such loan without delay, and to sign the note and mortgage within five (5) days after they are ready. (Buyer is going with a Contract for Deed with the Seller - See Addenda #1)

4. TITLE. Merchantable title shall be conveyed by Warranty Deed, subject to conditions, zoning, restrictions, and easements of record, if any, which do not interfere with or restrict the existing use of the property. An Abstract of Title shall be continued to date and furnished promptly to buyer for examination. In lieu of an Abstract of Title, an owner's policy of Title Insurance in the amount of purchase price may be substituted with cost to be distributed as follows: Seller: 50% Purchaser: 50%.

5. INSPECTIONS. This offer is contingent upon the following inspections: 1) Septic Tanks to be pumped, inspected or provide information from last time completed - Seller Expense. 2) Well Test with the SD DENR are up to date and acceptable - Seller Expense. 3) Buyer to inspect the property and the Equipment that stays with the property. 4) Buyer may conduct any other inspection deemed appropriate at Buyer's Expense.

Inspections shall be completed within 30 days of acceptance of this offer.

Should the results of any inspections not be satisfactory to Purchaser, then, within this same period, Purchaser shall notify Seller or Listing Broker in writing of the specific dissatisfaction and at which time parties may renegotiate or terminate this contract. If Purchaser fails to specifically approve or disapprove any inspections within the time specified, then Purchaser shall be deemed to have approved and accepted the property in its present condition and any real estate licensee having anything to do with this transaction does not have any further obligation to Purchaser as to such inspections or agreement.

INITIALS: PURCHASER DR, MR SELLER KG, J

6. PRORATIONS. Taxes are to be paid as follows: The 2016 real estate taxes paid in 2017 shall be paid 100% by Seller and 0% by Purchaser. Real estate taxes assessed this year and payable next year will be ☒ prorated to the date of closing.

Other prorations: 1) All deposits and prepaids for 2017 reservations will be used as initial down payment on the Contract for Deed as of 4/27/17 the balance is \$17,000. Any additional deposits from 4/27/17 until closing will be paid to the Buyer.

7. SURVEY: Current County GIS Boundary Survey to be acceptable with the Buyers.
8. OTHER PROVISIONS: See Addenda #1
9. CLOSING/POSSESSION. Possession and closing shall be given to Purchaser on or before (date) 05/15/17, provided, however, delivery of possession is conditioned upon closing.
10. EARNEST MONEY/DEPOSITS. Listing office shall deposit and hold all earnest money and other deposits until sale is closed. If this offer is not accepted by Seller, or if Purchaser is unable to secure financing, if so contingent, or if no agreement is reached regarding conditions found on inspection report(s), this agreement is void and Purchaser's money shall be returned in full, less any expenses incurred on Purchaser's behalf, including any inspection ordered by Purchaser.
11. ADDENDA TO THIS AGREEMENT. The following documents are addenda to this contract and are attached and become part of this contract by reference. If none, so state. 1) Addenda #1

12. TIME IS OF THE ESSENCE OF THIS CONTRACT.

Dated this 27th day of April, 2017 at 10:00 a.m.

This agreement is void if not accepted by Seller by the 27th day of April, 2017 by 5:00 p.m.

[Signature] Purchaser [Signature] Purchaser

On this 27th day of April, 2017, the foregoing offer is:
(month) (year)

(Initial) ACCEPTED KGI; NOT ACCEPTED /; COUNTERED /

[Signature] President 4/27/17
Seller Seller

THE FOLLOWING IS FOR INFORMATION PURPOSES ONLY:

Re/Max of Rapid City
Selling Company

Bryan Iverson
Selling Licensee

Re/Max of Rapid City
Listing Company

Bryan Iverson
Listing Licensee

Addenda #1: Other Provisions:

1. Seller and Buyer agree that Wild Bill's Campground is being sold as-is with no warranty.
2. All Licenses and Certificates associated with the campground to be current prior to closing. After closing Buyer is responsible to transfer all License and Certificates.
3. All Rights to Wild Bill's Campground Saloon and Grill – Name, Logos, Website, Domain Name, Business Phone Number and/or any other use of the name to go to the Buyers.
4. The cost of all existing inventory and supplies to be reimbursed to the Seller at the time that the Buyer assumes the business.
5. Seller to provide training at the start of the season at the start and the close of the season. Also will be available during the season.
6. Seller to provide list of all Suppliers and Vendors associated with the campground.
7. Seller to provide a Disclosure to Hold Harmless the Buyers for any legal action or litigation that may have happened before the transfer of ownership to the Buyers.
8. Contract for Deed – \$200,000 down at closing with the remainder to be amortized over 20 years at 5.5%. Equal monthly payments to be made by the 5th of each month over the next 240 months. Buyers reserve the right to payoff the loan early without penalty.
9. Payments to be setup with Old West Escrow Company (Fee to be split 50% Seller and 50% Buyer).
10. Buyers will be responsible for Real Estate Taxes and Insurance for the Campground starting the day of closing.

Buyer

Date

Seller

Date

Buyer

Date

Seller

Date

DUANE OR MELODY REMINGTON 10704 LAMENE RD BLACK HAWK SD 57622		5657 7674000014
4-27-17		Date
Pay to the Order of	<i>Anthony B. Berto</i>	\$ 10,000 ⁰⁰ / ₁₀₀
<i>Ant. Berto</i>		Dollar
MICROMARK 10704 LAMENE RD BLACK HAWK SD 57622		
<i>M. Remington</i>	<i>M. Remington</i>	
⑆ 9000 9665 1000 21 2 2000 201 ⑈ 5657		

CONTRACT FOR DEED

THIS AGREEMENT is made and entered into this 12 day of May, 2017, between Wild Bill's Campground and Resort, LLC, of 851 Ennen Drive, Rapid City, South Dakota 57703, (hereafter Seller) and Duane and Melody Remington, of 6835 Arcadia Street, Summerset, South Dakota 57718, (hereafter Buyers).

1.

REAL PROPERTY. That if Buyers shall first make the payments and perform the covenants hereinafter set out on Buyers' part to be made and performed, the Seller hereby covenants and agrees to convey and assure good and merchantable title to the Buyers, in fee simple, free and clear of all encumbrances and liens except for easements, special assessments, reservations, restrictions, and rights-of-way of record, by good and sufficient Warranty Deed (same to be deposited in escrow at time of closing), to the following real property, to-wit: Wild Bill's Campground Bar & Grill, 21372 US Hwy 385, Deadwood, Lawrence County, South Dakota, legally described as:

LOT E AND LOT E-2 OF H.E.S. 137 LOCATED IN SECTION 17 AND SECTION 18 TOWNSHIP 4 NORTH, RANGE 4 EAST, B.H.M., LAWRENCE COUNTY, SOUTH DAKOTA, ACCORDING TO PLAT BOOK 4 PAGE 126 AND PLAT BOOK 6 PAGE 214 EXCEPT LOT E-1 AND E-3 OF THE SUBDIVISION OF LOT E AND EXCEPT LOTS H1 AND H2 IN LOT E ACCORDING TO PLAT DOC #2001-4464.

TRACT NO. 0091-A LOCATED IN SECTION 18, TOWNSHIP 4 NORTH, RANGE 4 EAST, ACCORDING TO PLAT DOCUMENT NO. 89-1596 AND TRACT NO. 0091-B LOCATED IN SECTION 17, TOWNSHIP 4 NORTH, RANGE 4 EAST, LAWRENCE COUNTY, SOUTH DAKOTA, ACCORDING TO PLAT DOCUMENT NO. 89-1597.

2.

PERSONAL PROPERTY AND CHATTELS. The personal property/chattels to be purchased in accordance with the terms and conditions of this Contract, include the following:

- A. The trade name, "Wild Bill's Campground Saloon and Grill," and all trademarks and logos, signage, website(s) and other marketing titles, slogans or techniques, and the current business phone number.
- B. All equipment, furniture, furnishings, trade fixtures, supplies and miscellaneous personal property of the business known as "Wild Bill's Campground Saloon and Grill" and located on the business premises in Deadwood, South Dakota. (Reference list of chattels attached hereto as Exhibit "A" and incorporated herein by this reference)

Signature
KG



Signature
DR

- C. The cost of all existing inventory and supplies to be reimbursed to the Sellers as of date of closing.
- D. The Good Will of the business known as "Wild Bill's Campground Saloon and Grill" as operated and conducted in Deadwood, South Dakota.
- E. Seller to provide a list of all suppliers and vendors associated with the Campground.
- F. All applicable licenses and certificates associated with the campground the parties agree will be current and in good standing as of date of closing. After closing, Buyers agree to transfer all such licenses and certificates.

The above referenced personal property and chattels shall be conveyed by good and merchantable Bill of Sale, which shall be held in escrow until all sums due and owing hereunder have been paid in full. Further in this regard, the Purchase Agreement dated April 27, 2017 executed by the parties hereto and all addendums thereto, shall be incorporated herein by this reference and unless modified by this Contract, shall be binding upon the parties.

3.

PURCHASE PRICE AND METHOD OF PAYMENTS: As purchase price for the above-described property, Buyers shall pay the sum of Eight Hundred Ninety-Nine Thousand Dollars and No Cents (\$899,000.00) in the following manner:

A. **Earnest Money.** Both parties acknowledge Buyers' earnest money deposit in the amount of Ten Thousand Dollars and No Cents (\$10,000.00), the receipt of which is hereby acknowledged by Seller.

B. **Deposits.** Both parties acknowledge that all deposits and prepaids for 2017 reservations in the amount of Seventeen Thousand Dollars and No Cents (\$17,000.00) will be used as the initial down payment by Buyers.

C. **Down Payment:** The sum of One Hundred Ninety Thousand Dollars and No Cents (\$190,000.00) down payment will be paid by Buyers to Seller on date of closing.

D. **Balance:** The balance of Six Hundred Eighty-Two Thousand Dollars and No Cents (\$682,000.00) shall be amortized over a period of twenty (20) years with monthly payments commencing June 5, 2017, to be paid to Seller's escrow account to be established at Old West Escrow, 2800 Jackson Blvd, #406, Rapid City, South Dakota 57702, along with instructions to release the Warranty Deed to Buyers upon completion of all payments provided in this Contract. The monthly payment shall be Four Thousand Six Hundred Ninety-One Dollars and Thirty-Nine Cents (\$4,691.39) with interest commencing as of date of closing, at the rate of Five and One-Half Percent (5.5%) annually.

RECEIVED
K.G.

RECEIVED
J.K.
P.M.

The Amortization Schedule is attached hereto as Exhibit "B." The first payment shall be due and payable June 5, 2017, and due each consecutive month thereafter on the 5th of the month.

The parties acknowledge that Seller currently owes on a Note in the approximate amount of \$350,000.00, secured by a Mortgage against the subject property. The Escrow Company shall first pay Seller's Note at Security First Bank from the Buyers monthly payments, and then forward any remaining payment to the Seller. One Hundred Thousand Dollars of the down payment remitted in accordance with this Contract to Seller by Buyers shall be applied to the balance of said Note at time of closing.

4.

POSSESSION: The parties agree that Buyers may assume possession of the real property described herein on date of closing, which is currently scheduled for May 12, 2017 at Pennington Title Company in Rapid City, South Dakota.

5.

RIGHT TO INSPECT: During the life and term of this Contract, Buyers will keep and maintain the subject premises, and all structures and improvements thereon, in a good state of condition and repair, at least equal to their present condition, reasonable wear and tear by the elements and normal depreciation alone expected. Buyer shall permit no waste on said premises. Seller or its agent, shall have the right to inspect the subject premises from time to time upon reasonable notice and at reasonable times for the purpose of enforcing this paragraph. Buyers acknowledge that they have examined the real property and any equipment or fixtures and furniture (collectively "property") related to the operation of same and acknowledge that the property is acceptable.

6.

TAXES AND SPECIAL ASSESSMENTS: Taxes shall be prorated to date of closing. Seller shall assume responsibility for payment of all 2016 real estate taxes and special assessments (if any) which may be assessed against the premises. In addition to the monthly payment set out herein, Buyers shall pay to escrow one-twelfth (1/12) of the annual property tax on said property, including any increase in same.

7.

PROFESSIONAL FEES: Each of the parties shall be responsible for their own legal and any other professional fees (if any). Seller shall pay the realtor fees.

8.

INSURANCE: The Buyers shall, as of the date of closing designated herein, provide insurance on the property against loss and damages as follows:

Buyer
KLG

Seller
LRS
PJR

A. Fire and extended coverage insurance. Under policies providing no less restrictive coverage than that provided by standard extended coverage policies in an amount of not less than the outstanding balance of this Contract as well as any outstanding remaining unpaid balance pursuant to the terms hereof.

B. Public Liability Insurance. Public liability and property damage insurance customarily carried on similar property, but in no event with limits of less than \$1,000,000 for injury to or the death of any person, \$2,000,000 for injury to or the death of more than one person in any one accident, and \$500,000 for damages to property.

Each of the above policies shall be written by a company acceptable to the Seller and shall provide protection to the Seller either as additional named insured or by endorsement providing for payment to the Seller as its interest may appear. Each such policy shall contain an assurance from the insurer that the policies will not be cancelled without at least ten (10) days prior written notice to the Seller.

9.

INDEMNIFICATION FOR UPKEEP, UTILITIES, ETC: It is understood and agreed that all improvements made on the afore-described premises by Buyers and all utility costs and upkeep of the premises required shall be paid for by the Buyers, and Buyers agree to protect and indemnify the Seller from all costs, expenses, damages or loss by reason of said improvements, alterations, utilities and upkeep.

10.

TITLE: Seller agrees that title to said described real property shall be good and marketable, as determined in accordance with the South Dakota State Bar Association Title Standards and shall be free and clear of liens and encumbrances, except for restrictions, easements, and rights-of-way of record. Title insurance in the amount of the purchase price, as well as the transfer fee, shall be paid equally by the parties. The parties shall equally pay all other closing costs, including filing fees for recordation of deed and ancillary documents. Personal property shall be conveyed by Bill of Sale.

11.

ACREAGE DESCRIPTION: While it is believed by the parties hereto that the subject real estate consists of approximately 12.74 acres, more or less, Buyers acknowledge that they are not relying on any representations of Seller or any agent of Seller as to the exact acreage of the subject real estate. Buyers acknowledge that they have made their own independent investigation as to the total acreage

Seller:
[Signature]

Buyer:
[Signature]

involved and agree to be bound by the acreage as it actually exists without any adjustment in purchase price.

12.

PLACE OF PAYMENT: Upon execution of this Agreement, the parties agree to deposit with Old West Escrow, a good and sufficient Warranty Deed to the property described herein, together with an executed copy of this Contract. Said document shall be retained by the escrow company pending complete performance of all of the terms, covenants, and conditions of this Agreement to be performed by the Buyers. Upon such complete performance by the Buyers, the escrow company shall deliver such documents held by it to the Buyers. The Buyers are responsible for recording the Warranty Deed with the Register of Deeds. Old West Escrow's setup fee and the monthly fee to maintain the escrow account shall be paid 50% by Seller and 50% by Buyers.

13.

MECHANIC'S LIENS: Buyers shall not permit the filing of any mechanic's liens or materialman's liens on the above-described property at any time during the term of this Contract. If any mechanic's liens are filed, they shall be discharged by Buyers within a period of thirty (30) days after the Buyers receive notice of said filing. All expenses associated therewith shall be paid equally by the Buyers and Seller.

14.

PROPERTY PURCHASED IN "AS IS" CONDITION. Buyers acknowledge that they have examined the subject real estate and the improvements thereon and accepts the same in its present condition, and acknowledge that they are not relying on any representations or warranties, express or implied, of Sellers or any agent of Sellers, other than those described in this Contract, and the Buyers in buying said property are relying solely on their own judgment. Buyers hereby accept the subject real estate in its present condition. Buyers are buying the subject property in an "as is" condition, with Buyers to be responsible for the cost of all repairs necessary after the date of this Contract.

15.

ADDITIONS AND ALTERATIONS: Buyers shall make no major additions or alteration to the property described herein without the express written consent of the Seller. Upon obtaining such consent, all work shall be accomplished in a good and workmanlike manner. All additions and alterations made to the property shall be paid for by Buyers, and Buyers shall protect and indemnify Seller from all costs, expenses, damages, or loss by reason of said additions and alterations. Title to such additions and alterations shall vest in Seller and be subject to this Contract.

Buyer's
Signature

Buyer's
Signature

16.

REMOVAL OF IMPROVEMENTS: Buyers agree not to dismantle or remove any of the improvements on the subject premises without the written consent of Seller.

17.

SALE OR ASSIGNMENT: Buyers understand and agree that they shall not assign or sell the above-described property, until all amounts due under this Contract are paid in full.

18.

DEFAULT: In the event Buyers default in the performance of any of the terms, covenants, conditions or obligations of this agreement assumed by them, Seller shall have the option to declare all deferred balances due and payable. Said option shall be exercisable by giving to the Buyers by certified mail, written notice of the nature of such default. If such default is cured within thirty (30) days from the date of notice, all provisions of this Contract shall remain in full force and effect. However, if any default shall occur twice in any one (1) calendar year or four (4) times during the life of this Contract and notice of such defaults have been given to the Buyers, then any subsequent default shall be deemed to be deliberate and upon such subsequent default, Buyers shall not have the privilege to cure the default unless granted in writing by Seller in Seller's sole discretion. All costs and expenses incurred by Seller in giving Buyers Notice of Default shall be added to the balance due hereunder and shall be paid by Buyers not later than the date on which the next payment is due. In the event of the failure of the Buyers to cure such default within said thirty (30) day period or in the event Buyers shall not have the privilege to cure the default, then the entire deferred balance interest shall be accelerated and declared due and payable, and Seller shall have the right to retake possession of all the property purchase hereunder, including all buildings, improvements, utilities, service lines and other such property as may be affixed to the realty as well as any chattels to be purchased in accordance with the terms hereof and to retain all payments made by the Buyers and improvements made by them on the premises as liquidated damages for the breach of this Contract, accurate damages being incapable of ascertainment. In the event of such default, all other remedies available to the Seller under the laws of the state of South Dakota, shall accrue to the Seller.

19.

COSTS OF DEFAULT, CURING AND OTHER REMEDIES: It is specifically understood and agreed between the parties hereto that all payments made by Buyers to Seller up to the time of any default and all improvements made on the premises up to the time of any default shall be deemed as a reasonable amount for delivery of possession and for the use and occupancy of the premises to the

RG

MR

time of such default. In the event Buyers correct any alleged default under this Contract within the aforementioned thirty (30) day curative period, then there shall be no acceleration of the payment schedule provided for herein and this Contract shall continue in force as originally written. It is not the purpose of these provisions to exclude any other remedies which might be available to Seller under the laws of South Dakota. Waiver by the Seller at any time of any default hereunder on the part of the Buyers shall not constitute a waiver by Seller of any other or subsequent default by Buyers.

20.

PEACEFUL SURRENDER ON DEFAULT: In the event of default on the part of Buyers, they will, on demand, quietly and peaceably surrender the said premises and possession thereof to Seller or Seller's agent.

21.

BANKRUPTCY OR INSOLVENCY: If any proceedings in bankruptcy or insolvency be filed against the Buyers or if any writ of attachment or writ of execution be levied upon the interest herein of the Buyers and such proceeding or levy shall not be released or dismissed within ninety (90) days thereafter or if any sale of the property described herein or any part thereof should be made under any execution or other judicial process or if the Buyers shall make any assignment for the benefit of creditors or shall voluntarily institute bankruptcy or insolvency proceedings, the Seller may declare a default under this Contract.

22.

EMINENT DOMAIN: In the event any portion of the real estate described in this Contract is acquired by any political subdivision of government or by a corporation possessing the power of eminent domain, either by eminent domain proceedings or in a transaction in lieu of or under threat of eminent domain proceedings, that all proceeds resulting from such acquisition shall be applied against the latest maturing installment. If these proceeds are greater than the amount of the latest maturing installment, they shall be applied to the next latest maturing installment in like fashion until the proceeds are all applied to installments due under this Contract.

23.

HOLD HARMLESS: Buyers agree to hold the Seller and Seller's successors in interest harmless from any liability of any kind or character arising out of the use and possession of the property covered by this Contract for Deed by the Buyers or anyone claiming under them, including but not limited to reasonable attorney fees incurred by Seller for any allegations, claims or other liability to

KG

DM
MR

which the Seller is named as a party, or threatened to be made a party, arising out of Buyers use and possession of said property or anyone claiming under them.

24.

WAIVER: The waiver of any breach of this Contract by the Seller shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or any other provision in this Contract.

25.

NOTICE: Any notice pursuant hereto shall be accomplished by certified mail to the respective parties at the following address, unless notified in writing of any address change, to-wit:

SELLER:
Wild Bill's Campground & Resort, LLC
c/o Keith & Shelly Grimm
851 Ennen Dr.
Rapid City, SD 57703

BUYERS:
Duane and Melody Remington
6835 Arcadia St.
Summerset, SD 57718

26.

TIME: Time is of the essence of this Contract.

27.

BINDING UPON SUCCESSORS, HEIRS, ETC.: This Contract shall be binding upon the parties, their heirs, successors, administrators, executors, and assigns.

28.

APPLICABLE LAW: This Contract should be construed and interpreted in accordance with the laws of South Dakota.

Dated this 12th day of MAY, 2017.

SELLER:
WILD BILL'S CAMPGROUND
& RESORT, LLC

BUYERS:

By: Keith Grimm
KEITH GRIMM
Its: President

Duane Remington
DUANE REMINGTON
Melody R. Remington
MELODY REMINGTON

STATE OF SOUTH DAKOTA)
)SS.
COUNTY OF PENNINGTON)

On this the 18th day of May, 2017, before me, the undersigned Notary Public, personally appeared Keith Grimm who acknowledged himself to be the President of Wild Bill's Campground & Resort, LLC, a limited liability company, and that he, as such President, being authorized to do, executed the foregoing instrument for the purposes herein contained, by signing the name of the corporation by himself as President.



IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Jan M. Kirchoff
Notary Public

STATE OF SOUTH DAKOTA)
)SS.
COUNTY OF PENNINGTON)

On this 18th day of May, 2017, before me, the undersigned officer, personally appeared DUANE REMINGTON, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.



IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Jan M. Kirchoff
Notary Public

STATE OF SOUTH DAKOTA)
)SS.
COUNTY OF PENNINGTON)

On this 18th day of May, 2017, before me, the undersigned officer, personally appeared MELODY REMINGTON, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.



IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Jan M. Kirchoff
Notary Public

KG

DR
MR

1 STATE OF SOUTH DAKOTA
2 COUNTY OF DENNINGTON
3
4 DUNE REMINGTON and
5 MELODY REMINGTON,
6 Plaintiffs,
7 vs.
8 WILD BILL'S CAMPGROUND
9 AND RESORT, LLC, KEITH
10 GRIMM, and BRYAN IVERSON,
11 Defendants.

IN CIRCUIT COURT
SS,
SEVENTH JUDICIAL CIRCUIT

Civ. No. 18-000118
DEPOSITION OF:
KEITH GRIMM

DATE: November 7, 2018 at 8:58 a.m.

PLACE: Mooney & Solay
326 Founders Park Drive
Rapid City, SD 57702

Reported by: Jacqueline K. Melier
Registered Professional Reporter
Black Hills Reporting
1601 Mt. Rushmore Rd., Ste. 3280
Rapid City, SD 57701
605.721.2600

1

APPEARANCES

Representing the Plaintiff:

MR. MICHAEL S. BEARDSLEY
Beardsley, Jensen & Lee
Attorneys at Law
4200 Beach Drive, Suite 3
Rapid City, SD 57702

Representing the Defendant Wild Bill's Campground/Resort:

MR. JOHN K. MOONEY
Mooney & Solay
Attorneys at Law
326 Founders Park Drive
Rapid City, SD 57702

Representing the Defendant Iversen:

MR. GREGORY J. BRANDSON
Bangs, McCullen, Butler, Poye & Simons
Attorneys at Law
333 West Boulevard
Rapid City, SD 57701

INDEX

WITNESS	PAGE
KEITH GRIMM	
EXAMINATION BY MR. BEARDSLEY	3
EXAMINATION BY MR. BRANDSON	75
RE-CROSS EXAMINATION BY MR. BEARDSLEY	82

EXHIBITS

EXH. NO.	DESCRIPTION	PAGE
17	Seller's Property Condition Disclosure Statement	28
18	Photographs of various places in basement	51
19	Photographs of bridges	57
20	Customer purchase order from RCO Equipment for John Deere 2520	67

2

1 KEITH GRIMM,
2 called as a witness herein, having been first duly
3 sworn, was examined and testified as follows:
4 EXAMINATION BY MR. BEARDSLEY:
5 Q Good morning.
6 A Morning.
7 Q My name is Mike Beardsley. I represent Dune
8 and Melody Remington.
9 Could you please state your full name and
10 address for the record.
11 A Keith Grimm. 851 Ethen Drive, Rapid City,
12 South Dakota, 57703.
13 Q Have you ever had your deposition taken before?
14 A No.
15 Q Okay. I'm going to go over a few rules. First
16 one is, you need to try to let me finish my
17 question before you begin to answer.
18 And your answers need to be verbal.
19 Verbal cues are very hard for Jacqui to pick
20 up. Is that fair?
21 A Okay. Yes.
22 Q And if at any time you do start talking over me
23 or nodding "yes" or "no," I'll correct you, just
24 so we have a clean record. I'm not trying to be
25 rude.

3

1 A Right. Yes.
2 Q And you might want to speak up just a little bit
3 so she can catch what you're hearing -- what
4 you're saying.
5 A Okay.
6 Q Keith, this is probably the most important. If
7 you don't understand one of my questions, will
8 you please let me know?
9 A Yes.
10 Q Okay. And if you do answer my question, I'm
11 going to assume you understood it; is that fair?
12 A Yes.
13 Q And I don't think this is going to take all day,
14 but if at any time you need a break, you just
15 let us know and we'll take a break.
16 The only caveat to that is if we're in the
17 middle of an answer, I want you to finish the
18 answer and then we can take a break.
19 A Yes.
20 Q Okay. May I call you Keith?
21 A Yes.
22 Q Keith, where did you grow up?
23 A Rapid City.
24 Q Have you lived in Rapid your whole life?
25 A Yes.

4

1 Q Can you summarize your education for me.
 2 A Graduated from Rapid City Central in 1978. No
 3 college schooling.
 4 Q I'm sorry?
 5 A No college schooling or anything. I'm just...
 6 Q Okay. And what did you do after your graduation
 7 in '78?
 8 A I went to -- I worked for Bonanza when I was in
 9 school, and the first year or so when I got out
 10 of school. And then I worked for Rom
 11 Insulators, which no longer exists. It's an --
 12 it was an insulation company.
 13 Q Okay. Now, your job with Bonanza, were you a
 14 waiter, cook? Are we talking about the old
 15 restaurant?
 16 A Yep.
 17 Q Okay.
 18 A Busboy to dishwasher to cook to, you know.
 19 Q How long did you do that?
 20 A A couple years.
 21 Q And then Rom Insulators?
 22 A Right.
 23 Q That's an insulation company, how long were you
 24 there?
 25 A Probably a couple years again. I -- I don't

5

1 remember.
 2 Q And just a labor position there?
 3 A Yes.
 4 Q Then what did you do?
 5 A I went to work for Lloyd's Carpet Cleaning.
 6 Q How long were you at Lloyd's?
 7 A Three years.
 8 Q What were your duties at Lloyd's, just
 9 installing or business side of it?
 10 A Carpet cleaning.
 11 Q Cleaning?
 12 A Yeah. It's a cleaning business. Lloyd's Carpet
 13 Cleaning.
 14 Q Okay. Next job?
 15 A I did some roofing, you know, on my own. A
 16 roofing business.
 17 Q Did you have anybody working for you in the
 18 roofing business?
 19 A Yeah. I had Larry Hill. He's deceased. He's
 20 no longer alive.
 21 Q What was the name of the roofing business?
 22 A West River Woodworks is what we had.
 23 Q Did you do anything in addition to roofing with
 24 that company?
 25 A Yeah, we made some waterbeds and some odd-ball

6

1 stuff, but mainly that's what we were doing.
 2 Q How long was that company in existence?
 3 A Oh, a couple years, I imagine.
 4 Q And why did you move on from that?
 5 A Well, the main reason I moved on, because it was
 6 a lot of work and we found out whenever there
 7 was good work, everybody that had a hammer was
 8 shingling and roofing houses, you know, instead
 9 of -- and then the rest of the time, there
 10 wasn't enough to do, so.
 11 Q What was your next venture?
 12 A I started my own commercial laundry business,
 13 rentals, laundry business.
 14 Q Name of that company?
 15 A Grimm's Dust Control and Linen Service.
 16 Q Were you the sole owner of that?
 17 A Yes. Well, with my wife, I mean, but yes.
 18 Q Was that just in Rapid City or the whole
 19 Northern Hills?
 20 A We did everything from the western side of the
 21 state. We did -- it was based out of
 22 Rapid City.
 23 Q How long did you do that?
 24 A 10, 12 years I suppose.
 25 Q Did you sell the business?

7

1 A Sold it to Servall.
 2 Q I can't keep track what year we're on. What
 3 year did you sell it?
 4 A I sold it in '01, I believe. 2001.
 5 Q With the sale of the business, was there a sale
 6 of property as well?
 7 A No. I kept the building. He just bought the
 8 business.
 9 Q So after you sold Grimm's Dust Control and Linen
 10 Service, what did you do?
 11 A Went to work for Servall.
 12 Q Was that a part of the purchase agreement?
 13 A I was supposed to be there for, I don't remember
 14 the exact amount of time, but I was supposed to
 15 be there for transition anyway.
 16 Q Okay.
 17 A And ended up being there for a long-term --
 18 Q How long?
 19 A -- job.
 20 Well, four years before I bought the
 21 compound, and I'm still working for Servall,
 22 so.
 23 Q What are your duties with Servall?
 24 A From back then or right now?
 25 Q Currently.

8

1 A Currently. I deliver coveralls to the mines in
2 Wright, Wyoming twice a week.
3 Q And how have those duties changed from when you
4 first started working for them in 2001?
5 A Well, I was plant manager back then, and I've
6 been back there almost every year for fifteen
7 years or however long I've had the campground.
8 Q How long were you plant manager?
9 A I'm guessing three, three to four years.
10 Q And that takes us to buying the campground.
11 When did you purchase the campground?
12 A '05. 2005.
13 Q Keith, what did you do to prepare for this
14 deposition today?
15 A Just reviewed some things, talked with John, you
16 know, kind of — because I've never done
17 anything like this, so I didn't have any idea
18 what to prepare for.
19 Q Sure. And I don't want to know what you and
20 John talked about. But what did you review?
21 A Basically just give your best opinion or best
22 answer that you can give and be truthful.
23 Q Did you review certain pleadings, certain
24 documents that have been filed in this case?
25 A I — I looked at Duane's and Bryan's deposit —

9

1 depositions.
2 Q Did you review the Motion for Summary Judgment
3 and accompanying documents filed by Bryan
4 Iverson?
5 A No.
6 Q Any other documents you reviewed before today?
7 A Well, I reviewed that — basically those things
8 I'm supposed to come up with. I don't remember
9 what you call it, the — those...
10 Q Interrogatories?
11 A Yes.
12 MR. BEARDSLEY: Okay. And those are coming
13 next week, two weeks?
14 MR. MCNEE: Probably a couple weeks, yeah.
15 You wouldn't want to interrupt my vacation,
16 would you, Mike.
17 MR. BEARDSLEY: We kind of had a time crunch
18 to get this thing done.
19 Q (BY MR. BEARDSLEY:) After this lawsuit was
20 started, did you ever give any statement to any
21 insurance company?
22 A No.
23 Q Besides your attorney, John, have you talked
24 with anybody about this case?
25 A Yes.

10

1 Q Who?
2 A Really no one.
3 Q Did you talk with Bryan Iverson?
4 A Yes.
5 Q What was the substance of those discussions?
6 A I guess basically that I didn't think any of his
7 legit complaints, you know...
8 Q Did you ask Bryan Iverson any questions?
9 A Per — for? Questions of?
10 Q The transaction, real estate documents?
11 A No.
12 Q And Keith, was your wife involved in this
13 particular transaction and the sale of the
14 campground or use it —
15 A No.
16 Q — primarily you?
17 A Primarily me.
18 Q Okay. You purchased Wild Bill's in 2005. Is
19 that what it was called —
20 A Yes.
21 Q — back then?
22 A Wild Bill's Campground. We did change it to
23 Wild Bill's Campground and Resort, LLC. I don't
24 remember for sure what it was before, I guess.
25 It was Wild Bill's Campground.

11

1 Q Did you change the name immediately after the
2 purchase, if you recall?
3 A I don't know. Probably, but I don't remember.
4 Q When you purchased this campground, did you use
5 a real estate agent?
6 A Yes.
7 Q Who is that?
8 A Well, they had to — their Realtor is who I went
9 through. I don't remember what his name was
10 even.
11 Q Do you remember, was it a dual agency
12 relationship, where one Realtor represented both
13 the seller and yourself as the buyer?
14 A I believe it was one Realtor, because I didn't
15 hire a Realtor or anything to look for me.
16 Q Who did you purchase it from?
17 A The Kings. Bonnie and Chuck King.
18 Q Did you discover this because it was listed or?
19 A Yes.
20 Q How was it listed; if you recall?
21 A I believe it was in just a little magazine or
22 something.
23 Q What was the purchase price?
24 A \$75.
25 Q When you purchased it, was the campground and

12

1 resort similar to what it is currently?
 2 A No.
 3 Q Okay. Tell me the difference.
 4 A I've spent 13 years fixing things and putting
 5 things together and making things the best that
 6 I can, better and better all the time.
 7 Q Sure.
 8 A Yeah.
 9 Q And in 2005 when you purchased it, there was the
 10 main building?
 11 A Yes.
 12 Q And campsites?
 13 A Campsites and the duplex cabin.
 14 Q Have you added campsites?
 15 A No, not really added much for campsites. I've
 16 added cabins.
 17 Q How many cabins?
 18 A We have nine.
 19 Q And when you first purchased it, there was one?
 20 A One — we call it two. It's a duplex. It's got
 21 two sides. That's Cabin 1 and 2.
 22 Q What other improvements over the span of 13
 23 years did you make?
 24 A That's a huge list. I mean, from — well,
 25 probably one of the first things we did is we

13

1 had to bring in power. There was no power
 2 there. I mean, you couldn't run anything.
 3 So I had to bring in — well, Black Hills
 4 Energy now, put in new transformers and
 5 everything, and we put in new pedestals.
 6 And upgraded it all, all that, the water,
 7 the electric, the sewer, and everything to that
 8 top end, and we had to run new waterlines
 9 through the whole campground, in the buildings.
 10 They were all copper — or, not copper,
 11 galvanized piping, rusty, leaky.
 12 Q Any improvements or remodeling to the buildings?
 13 A Cabin 1 and 2 we completely gutted out and
 14 remodeled them. That was the original cabin,
 15 the duplex.
 16 Q How about the main building?
 17 A Oh, yeah. Changed things around some, you know.
 18 Made them more user friendly, I guess you would
 19 say. I mean...
 20 Q The structure remained the same?
 21 A Besides adding the deck on the outside and
 22 putting different siding on the front.
 23 Q When did you add the deck?
 24 A Right, ten years ago, I'm guessing. Don't know
 25 the exact date.

14

1 Q Did you change the parking lot?
 2 A No.
 3 Q So do you recall when you first listed the
 4 property for sale?
 5 A I'm going to say 2008 or '09.
 6 Q You listed the property with Bryan Iverson?
 7 A Yes.
 8 Q And how did that relationship come about?
 9 A Bryan was a friend of my younger brother's.
 10 They went to school together.
 11 Q Had you contacted any other real estate agents?
 12 A No.
 13 Q How long have you known Bryan?
 14 A 25, 30 years.
 15 Q And it's my understanding your brother is now
 16 deceased?
 17 A Yes.
 18 Q Did Bryan and — what's — what was your
 19 brother's name?
 20 A Les Grimm.
 21 Q Did they just go to high school together, grow
 22 up together?
 23 A I believe — well, I don't know about junior
 24 high or middle school or whatever. I know they
 25 went to high school together. I really don't

15

1 know when they first met up.
 2 Q So when you listed the property, what was your
 3 reason for trying to sell the property in 2008?
 4 A I think it was maybe stressful. It's a lot of
 5 work. It's a full-time, hard-working summer.
 6 You miss out on all summer activities whether
 7 it's family or whatever it may be. You pretty
 8 much are stuck there.
 9 Q And I'm sure you operate based on a working
 10 season. Can you tell me when that starts and
 11 ends?
 12 A Well, the — I seen that in the — it is not a
 13 three-, four-month job. It's a full, year-round
 14 job. I mean, you have to take reservations all
 15 year-round, you know.
 16 And if you're not, you know, busy with the
 17 restaurant and the campground, you're repairing
 18 things or doing things on the off-season.
 19 I think Dune was under the illusion that
 20 it's a three-month deal and you just take off
 21 and that's it.
 22 Q Sure. That's not what I asked you.
 23 What's the on-season versus the off-season
 24 for the campground?
 25 A Typically May 15th is when we kind of start the

16

1 season. Sometimes a little earlier, but usually
2 by May 15th anyway. And then depending on
3 reservations, through the middle of September,
4 maybe the end of September.
5 Q With August being the busiest month, I assume?
6 A Yes.
7 Q So from 2008, the arrangement with Mr. Iverson
8 was that during the season, the listing was
9 taken off; during the off-season, it was put
10 back on. Is that correct?
11 A I don't know as we started that way, but that's
12 the way we have been doing it. Towards the --
13 at least towards the end anyway. I don't
14 believe -- I think we had it on sale all the
15 time to start with.
16 Q Do you remember what the listing price was in
17 2008?
18 A Not for sure. It was -- I don't know for sure.
19 I think it might have been the same as the 896,
20 but.
21 Q So for ten years, it remained at the same price?
22 A Yes, or close anyway.
23 Q And Mr. Iverson was responsible for creating the
24 listing; correct?
25 A Yes.

17

1 A Yes, I guess.
2 Q For example, improvements made?
3 A Yes.
4 Q Additional cabins?
5 A Yes.
6 Q And would he ask you about other issues or
7 problems with the property?
8 A No.
9 Q And I take it he took the photographs that
10 appeared in the listings or did you?
11 A He took pictures.
12 Q And over this span of ten years, it's my
13 understanding that there were numerous
14 interested buyers that would come visit the
15 property?
16 A Yes.
17 Q And when that would occur, Mr. Iverson would
18 show the property?
19 A Yes.
20 Q In fact, I think it was his testimony that he
21 was always present during these showings; is
22 that your recollection?
23 MR. ERLANDSON: Objection; form.
24 Q (BY MR. ERLANDSON:) You can go ahead and
25 answer.

19

1 Q And essentially putting the property on the
2 market?
3 A Yes.
4 Q During this process, I assume Mr. Iverson had to
5 visit the property?
6 A Yes.
7 Q And each year Bryan was responsible for changing
8 the information on the listing if things
9 changed?
10 MR. ERLANDSON: Objection; form.
11 Q (BY MR. ERLANDSON:) Is that fair?
12 A I guess I would do improvements, and then I
13 would let him know about them, or maybe he would
14 ask me. I don't know --
15 Q Sure.
16 A -- how that went, but.
17 Q So if the property changed in any way, it was
18 your responsibility to provide that information
19 to Mr. Iverson?
20 A Yes.
21 Q And you did that?
22 A Yes.
23 Q I assume as the listing agent, in addition to
24 visiting the property, he would ask you certain
25 questions about the property; is that correct?

18

1 A Yes, I believe so.
2 Q How many real estate transactions have you been
3 involved in?
4 A Real estate? Just, I sold my laundry building
5 to an individual, Scott Sire.
6 Q Did you use a Realtor?
7 A No, I don't believe so.
8 Q Have you ever sold a house?
9 A No.
10 Q How long have you lived at your current
11 residence?
12 A Since 1980. It was built new.
13 Q And you've never been involved as a real estate
14 agent; correct?
15 A No.
16 Q When you hire a real estate agent, is it fair to
17 say that you as the seller would count on them
18 for advice?
19 A Yes.
20 Q And their job is to help sell the property;
21 correct?
22 A Yes.
23 Q And in order to facilitate that process, you as
24 the seller would need to provide information to
25 the real estate agent; correct?

20

1 A Yes.
 2 Q And that was done in this instance over the span
 3 of ten-plus years, was it not?
 4 A Yes.
 5 Q In addition to you personally providing
 6 information to your real estate agent,
 7 Mr. Iverson also was present at the property
 8 himself; correct?
 9 A What do you mean?
 10 Q Well, he showed the property numerous times —
 11 A Yes.
 12 Q — he —
 13 A Yes.
 14 Q — was familiar with the property?
 15 A Yes.
 16 Q And if there were issues or problems or damage
 17 to the property, you would have told
 18 Mr. Iverson; correct?
 19 A Yes.
 20 Q Do you have any idea how many potential buyers
 21 viewed the property in the span of ten years?
 22 A No, I don't have a — I mean, multiple.
 23 Q And if Mr. Iverson's testimony has been that it
 24 was roughly 30 times that he showed the
 25 property, you'd have no reason to disagree with

21

1 it?
 2 A No.
 3 Q Could it have been more?
 4 A I doubt it was more but I...
 5 Q So during this time frame where he shows the
 6 property roughly 30 times, explain to me how
 7 that process worked.
 8 A Well, normally people would contact him, but if
 9 somebody contacted me, then I would, you know,
 10 contact Bryan and say there's somebody
 11 interested in looking at the property, and.
 12 Q And then he would schedule a time —
 13 A To show it.
 14 Q — with —
 15 You've got to let me finish.
 16 A I'm sorry.
 17 Q I'm sorry. He would schedule a time with you to
 18 come out and show it?
 19 A No. Normally I wasn't in the showing because I
 20 was working.
 21 Q So you wouldn't participate in walking around
 22 and showing a prospective buyer the campground?
 23 A No, not usually. I wouldn't say never but I —
 24 I may take a prospective buyer that came to me
 25 and show them around some if they wanted.

22

1 Q Okay. But usually it was Bryan that would do
 2 this?
 3 A Yes.
 4 Q How many acres are on the property?
 5 A 13, a little over 13.
 6 Q 13 acres. How many campsites?
 7 A 100.
 8 Q One restaurant?
 9 A Yes.
 10 Q 9 cabins?
 11 A Yes.
 12 Q Any other outbuildings?
 13 A There's a shelter, the well house, a shed for
 14 lawn mowers.
 15 Q And a living quarters —
 16 A And —
 17 Q — correct?
 18 A In the restaurant and bar, yes.
 19 Q The living quarters is in the restaurant and
 20 bar?
 21 A Well, in the basement.
 22 Q Yeah. So when Mr. Iverson would show the
 23 property, he had to be familiar with everything
 24 on the property; correct?
 25 MR. BRUNDSON: Objection; form.

23

1 MR. WOONEY: Join.
 2 You can answer, Keith.
 3 A I — I guess.
 4 Q (BY MR. BRUNDSON:) Well, I mean, isn't that
 5 fair, that if somebody is trying to sell
 6 something, they ought to be familiar with it?
 7 A Well, I guess it depends on what "familiar with
 8 it" is. I mean, he can't know everything.
 9 Q Sure. But you would expect him to be familiar
 10 with the ins and outs of the property in order
 11 to show a potential buyer to try to convince
 12 them to buy it. That's fair, isn't it?
 13 MR. BRUNDSON: Objection; form.
 14 A Yes.
 15 Q (BY MR. BRUNDSON:) And in order for
 16 Mr. Iverson to become familiar with this
 17 extensive property, he had to learn it from
 18 somebody; correct?
 19 A I think most of the time he just would be there
 20 and take pictures of something new and...
 21 Q Sure. But —
 22 A That's kind of how it went.
 23 Q There had to have been an interaction between
 24 yourself and Mr. Iverson to inform him of your
 25 campground and how it worked in order for him to

24

1 sell it; right?

2 A I guess I don't understand what you're trying to

3 convey.

4 Q Well, if I was trying to sell a property that I

5 wasn't familiar with and I didn't own, I would

6 learn from the owner of how things worked. Is

7 that what happened here?

8 A Yes, I imagine.

9 Q During this ten-year span, how would you

10 communicate with Mr. Iverson? Was it phone

11 calls?

12 A Yes, I think it would be pretty much all phone

13 calls.

14 Q E-mails?

15 A I -- no. Not much with me.

16 Q Is it possible there could be some e-mail

17 correspondence?

18 A I don't think so but maybe.

19 Q Okay. How about text messages?

20 A Possibly some text messages. I don't know.

21 Q In addition to you providing information about

22 your campground to Mr. Iverson in order for him

23 to learn it so he could sell it, was there ever

24 a time that Mr. Iverson made suggestions to you

25 on how to better move your property, meaning

25

1 sell it?

2 A I don't -- I don't believe so.

3 Q He didn't make any business suggestions?

4 A If he did, I don't -- I don't remember them. It

5 was my business.

6 Q Sure. During the 13 years that you owned the

7 property and you worked it up, I assume it

8 wasn't just you, there were others involved?

9 A Yes. Emily.

10 Q Who was that?

11 A Well, originally it was my daughter Alicia

12 and -- pretty much all my kids. They were young

13 then, you know.

14 Q Sure.

15 Alicia, what's her last name?

16 A It's Grimm.

17 Q Okay. Anyone else?

18 A Melissa.

19 Q Is that still Grimm?

20 A No. It's Beshara.

21 Q Anyone else?

22 A Well, my wife has been involved, Shelly Grimm.

23 Q So it was kind of a --

24 A John Grimm, Tyler Grimm.

25 Q Okay. Anyone else?

26

1 A As far as family, that's -- well, probably --

2 no, that's not true. Probably some of my

3 biggest help was my parents, Dave and Gloria

4 Grimm.

5 Q Dave?

6 A Dave.

7 Q Dave. And what was your mom's name?

8 A Gloria.

9 Q Gloria. So this was kind of a family business?

10 A Yes. But most of them have got their own

11 careers and things, you know. They are not

12 really involved as much anymore.

13 Q Sure. But they would have information and

14 knowledge about certain improvements, how the

15 campground functioned, things like that?

16 A Yes.

17 Q Did your wife have a particular duty? Did she

18 handle a certain thing that you didn't handle

19 and vice versa?

20 A She did all the bookkeeping.

21 Q And reservations?

22 A No.

23 Q Anything besides the bookkeeping?

24 A I mean, she's worked up there in the restaurant

25 and bar, but.

27

1 MR. BEARDSLEY: And John, do you have a copy

2 of all the depo exhibits that have all been

3 entered?

4 MR. NOONEY: Right here.

5 MR. BEARDSLEY: He can take a quick break.

6 (Brief recess was taken.)

7 Q (BY MR. BEARDSLEY:) You've got the exhibits in

8 front of you, Keith. Would you just turn to

9 Exhibit 1. And this is the purchase agreement;

10 correct?

11 A Yes.

12 Q And on the second page there, it's signed by my

13 clients and you as the president of the company

14 on April 27, 2017; correct?

15 A Yes.

16 Q Okay.

17 (Deposition Exhibit 17 was

18 marked for identification.)

19 Q (BY MR. BEARDSLEY:) Take a look at that for me.

20 MR. FRANKSON: Do you have an extra one?

21 MR. BEARDSLEY: Yep.

22 MR. NOONEY: This was 18 then?

23 MR. BEARDSLEY: 17.

24 MR. NOONEY: 17, I'm sorry.

25 Q (BY MR. BEARDSLEY:) Have you ever seen this

28

1 document before?

2 A I don't believe so.

3 Q Do you generally understand what a Seller's

4 Property Condition Disclosure Statement is?

5 A No.

6 Q I suppose you don't. You've never sold a house;

7 right?

8 A Right.

9 Q Did you ever have any discussion with

10 Mr. Iversen regarding a disclosure statement?

11 A No.

12 Q Because you'd leave that up to him on whether or

13 not one is required?

14 A Yes.

15 Q That's part of the reason why you hire a real

16 estate agent; correct?

17 A Right.

18 Q And I know you're not familiar with it, but just

19 generally, Keith, do you understand the purpose

20 of a property disclosure statement?

21 A I assume that it's all about issues with the

22 campground or the property.

23 Q Sure. Issues that may affect a buyer's

24 decision, potential buyer's decision to buy;

25 correct?

29

1 A Yes.

2 Q And I want you to go down to Number 6, and this

3 form requires the disclosure of any problems

4 related to establishing lot lines or boundaries;

5 correct?

6 A Yes.

7 Q Number 10, the disclosure of pending litigation,

8 foreclosures, zoning, building code or

9 restrictive covenant violation notices,

10 mechanic's liens, judgments, special

11 assessments, zoning changes, or changes that

12 could affect your property.

13 Do you see that?

14 A Yes.

15 Q 19, on the second page: The seller is required

16 to disclose whether the property is located near

17 a floodplain — I'm sorry — in or near a

18 floodplain.

19 On Number 19.

20 A (Pause — Witness reading.) Yes, it is.

21 Q Yes, the property is, or yes, that's — you

22 acknowledge that's there?

23 A I acknowledge that.

24 Q Is Wild Bill's in or near a floodplain?

25 A There was a flood study or plan — or, I don't

30

1 know what you call it, but yes.

2 Q And then under xx Section II, Number 1 requires

3 the disclosure of water penetration problems in

4 walls, windows, doors, basement, or crawlspaces.

5 Do you see that?

6 A Yes.

7 Q Also requires a disclosure of water damage

8 related repairs.

9 Do you see that?

10 A Yes.

11 Q And Number 10: Any past or present damage to

12 the property, which includes floods.

13 Do you see that?

14 A Yes.

15 Q If you'd flip to the next page, there's a list

16 here, xx Systems Utilities Information. One of

17 them includes the use of a sump pump; right?

18 A Sump pump is highlighted.

19 Q Yep. And on Hazardous Conditions there are a

20 number of disclosures that need to be made,

21 including the existence of mold; correct?

22 A Yes.

23 Q And then on the very last page, Keith, under

24 Miscellaneous Information, Number 11, is kind of

25 a catch-all of any other material facts or

31

1 problems that have not been disclosed on this

2 form. Do you see that?

3 A Yes.

4 Q And because you've never seen this form before,

5 this was never completed for my client's review;

6 correct?

7 A Yes.

8 Q And would you agree with me that having a

9 portion of your building or your parking lot

10 within the right-of-way would be a problem

11 related to lot lines and boundaries?

12 MR. FRANKSON: Objection; form.

13 A Yes.

14 Q (BY MR. BEWOLLEY:) Would you agree with me

15 that code violations regarding the fire pits on

16 the campground would be related to current or

17 pending zoning code or restrictive covenant

18 violations?

19 MR. WAGNER: Objection; calls for a legal

20 conclusion.

21 Subject to that, you can answer.

22 MR. FRANKSON: Join.

23 A I was never not permitted to have fire pits

24 ever. I was permitted every year that they

25 inspected.

32

1 Q (BY MR. BEAUSLEY:) We'll get to that.
 2 And then, of course, you indicated the
 3 campground was located within a floodplain.
 4 That would have been covered by this disclosure
 5 statement; correct?
 6 MR. BRANSON: Objection; form.
 7 A Don't know.
 8 Q (BY MR. BEAUSLEY:) Bryan Iverson never
 9 informed you to fill one of these out, did he?
 10 A No.
 11 Q Was there ever any discussion whatsoever between
 12 the two of you regarding a property disclosure
 13 statement?
 14 A No.
 15 Q And if Mr. Iverson would have told you to fill
 16 one out, you would have, wouldn't you?
 17 A Yes.
 18 Q And by filling out a disclosure statement, my
 19 client would have been made aware of a number of
 20 issues with the campground?
 21 MR. BRANSON: Objection; form.
 22 A I can just say I doubt it, because he didn't
 23 want to look at anything. He did not care what
 24 the place was —
 25 Q (BY MR. BEAUSLEY:) That wasn't my question,

33

1 Keith.
 2 A Well.
 3 Q If you were required to fill out a disclosure
 4 statement, Duane and Melody Penington would have
 5 been made aware in writing, on paper, of a
 6 number of the issues with the campground that
 7 are covered within this statement; correct?
 8 A Yes.
 9 MR. NOONEY: Same objection.
 10 MR. BRANSON: Join.
 11 Q (BY MR. BEAUSLEY:) We already kind of talked
 12 about this, and I think your testimony was that
 13 the listing that was used for this particular
 14 transaction, you had some input on what was
 15 included in the listing; is that right?
 16 A Yes.
 17 Q And you revised it?
 18 A I don't know if I revised it but, I mean, I'm
 19 sure I gave information to Bryan, and Bryan put
 20 it on his listing. I didn't observe his
 21 listing. I mean...
 22 Q Okay. So at no time Mr. Iverson didn't show you
 23 the listing and say, Does that look all right?
 24 A I don't know.
 25 Q And turn to Exhibit 6 in that book, please, page

34

1 2. I don't think the pages are numbered, but
 2 under Description of Property, it has a number
 3 of bullet points. And about three-quarters of
 4 the way down it says: living quarters.
 5 Correct?
 6 A Yes.
 7 Q And the living quarters were located in the
 8 basement of the restaurant?
 9 A Yes.
 10 Q And what does that mean to you? What does
 11 "living quarters" mean to you?
 12 A Well, for me it was a place to sleep.
 13 Q And prior to the sale, there had been times that
 14 someone, in fact, did live there; correct?
 15 A Yeah. I did.
 16 Q Anyone else?
 17 A I leased the restaurant to Brandon Presley.
 18 Q And?
 19 A And — but I leased the restaurant and bar to
 20 him, and he just moved in.
 21 Q He lived in the living quarters?
 22 A Yes.
 23 Q Was there a guy named Red? A hired man, so to
 24 speak?
 25 A Yep.

35

1 Q And did Red live in the living quarters at one
 2 time?
 3 A Only after they purchased it was when he moved
 4 in there.
 5 Q Red was already working for you; right?
 6 A Yes. He quit his job to come to work for me.
 7 Q And before the sale, your testimony is that he
 8 never lived in the living quarters?
 9 A Right. Yes.
 10 Q Anyone else throughout the 13 years you operated
 11 this campground that somebody lived in the
 12 living quarters?
 13 A What's that?
 14 Q Anyone else besides Brandon Presley and Red —
 15 what's Red's last name?
 16 A It's Anthony Smith.
 17 Q Okay. I'm sorry. Anyone else besides Anthony
 18 Smith, Brandon Presley that had lived in the
 19 living quarters during that time period from
 20 when you purchased it to when you sold it?
 21 A My family, my daughter.
 22 Q Before you purchased it, was there always a
 23 living quarters?
 24 A The previous owners lived there. I mean, they
 25 lived there.

36

1 Q So you didn't have to remodel to build a living
2 quarters, it was already there?
3 A Well, it's -- it was rooms. That's all it is,
4 is rooms.
5 Q Okay. Now I want you to go to the last page of
6 Exhibit 6. And the property was advertised, as
7 we know, with living quarters. But also there
8 were pictures in the listing with a kitchen,
9 storage and laundry room, an office/bedroom, and
10 a full bath. See that?
11 A Yes.
12 Q And that's accurate, isn't it?
13 A Yes.
14 Q So it's more than just rooms?
15 A Yes.
16 Q What time period did you lease the restaurant to
17 Brandon?
18 A It was never an official lease. It was just
19 kind of... he came in and... I don't remember.
20 It was probably a four- -- four- or five-month
21 period.
22 Q Did you have a written lease agreement?
23 A No.
24 Q So to lease the restaurant, meaning he operated
25 the restaurant?

37

1 A Yes. And bar.
2 Q What was your agreement with him?
3 A I believe it was \$1,000 a month and five percent
4 of sales.
5 Q What year was this?
6 A '16. 2016.
7 Q Prior to that, had you leased the restaurant and
8 bar to anyone else?
9 A His... Josh worked for me for a summer, and he
10 wanted to try to run it that winter and it
11 didn't work out either. Same kind of
12 arrangement.
13 Q Josh?
14 A I can't think of what his last name is now.
15 Q So that was also a four- to five-month period,
16 similar terms?
17 A Yeah. I don't think it even made it that long.
18 Q And he tried to run it in the winter?
19 A Yeah.
20 Q That's probably why?
21 A Well...
22 Q What year was that?
23 A Must have been '15, must have been the fall,
24 winter of '15.
25 Q Anytime prior to that did you attempt to do a

38

1 similar arrangement?
2 A No.
3 Q Keith, are you familiar with a right-of-way
4 violation?
5 A As far as the corner of the deck?
6 Q Yeah. Just in general, are you familiar with
7 what that means?
8 A Yes.
9 Q And have you ever been notified prior to this
10 sale that any portion of Wild Bill's was
11 encroaching on the right-of-way?
12 A Yes.
13 Q When?
14 A I don't know. When I received a letter stating
15 that the corner of the deck was in the road
16 right-of-way.
17 Q Who sent you the letter?
18 A State DOT, I believe. I don't know the person
19 or...
20 Q Just one notice or multiple notices?
21 A Just one notice.
22 Q What did you do in response to that notice?
23 A Oh, it was supposed to be completed, I believe,
24 in October of '17.
25 Q What was supposed to be completed?

39

1 A The corner of the deck had to be taken off.
2 Q And you sold it in May?
3 A Uh-huh.
4 Q I'll show you the notice. It's Exhibit 7, if
5 you want to flip to it.
6 Is this the letter you're referring to?
7 A Yes, I believe so.
8 Q And it's dated November 9, 2016?
9 A Okay. And that deck had to be -- that had to be
10 fixed October 1, 2017. Yeah, right there.
11 Q So by May of 2017, nothing had been fixed?
12 A No.
13 Q The deck was still in violation?
14 A Yes.
15 Q Isn't it also true that the DOT informed you
16 that part of the parking lot was within the
17 right-of-way?
18 A No.
19 Q You never notified my clients of this DOT
20 letter, did you?
21 A No.
22 Q You never notified my clients that part of the
23 deck was located within the right-of-way?
24 No?
25 A No.

40

1 Q And you understand that having to remove a
2 portion of the deck is costly?
3 A No.
4 Q Well, it costs money, doesn't it?
5 A No. I removed it.
6 Q What did you do to remove it?
7 A Cut the corner off and put it back together with
8 the materials that were there.
9 Q Did you modify the parking lot?
10 A No.
11 Q Have you been contacted by the Department of
12 Transportation since November 9, 2016?
13 A No.
14 Q Do you have any pictures or documentation of
15 when you complied with this letter?
16 A I don't have any documentation but it would have
17 been probably in May of '18.
18 Q Did you respond and contact the DOT to let them
19 know it had been fixed?
20 A No.
21 Q Are you aware that a violation of this federal
22 regulation can subject an owner to fines?
23 A No.
24 Q Whether or not a portion of the structure was
25 within the right-of-way could affect somebody's

41

1 decision to purchase a property, couldn't it?
2 MR. BRUNDSON: Objection; form.
3 MR. NOONEY: Objection; foundation.
4 A Such a minute thing that it...
5 Q (BY MR. BEARDSLEY:) Sure. But pursuant to
6 South Dakota law and this Seller's Property
7 Disclosure Statement, an issue like your deck
8 being in the right-of-way is required to be
9 disclosed?
10 MR. NOONEY: Objection; calls for a legal
11 conclusion.
12 Subject to that, you can answer.
13 MR. BRUNDSON: Join.
14 A What was the question again?
15 Q (BY MR. BEARDSLEY:) The issue with the
16 right-of-way, the notice from the Department of
17 Transportation, pursuant to this disclosure
18 statement that we went through, that must be
19 disclosed to any potential buyer?
20 MR. NOONEY: Same objection.
21 MR. BRUNDSON: Join.
22 A I don't know nothing about a disclosure, but I
23 should have told Duane.
24 Q (BY MR. BEARDSLEY:) Did you inform Mr. Iverson
25 of this notice from the Department of

42

1 Transportation?
2 A No.
3 Q Did he know about it in any fashion?
4 MR. NOONEY: Objection; foundation.
5 MR. BRUNDSON: Same.
6 A Not that I know of.
7 Q (BY MR. BEARDSLEY:) If Mr. Iverson would have
8 presented you with a property disclosure
9 statement, then you would have notified him; is
10 that right?
11 MR. NOONEY: Objection; form and foundation.
12 MR. BRUNDSON: Join.
13 A Yes —
14 MR. NOONEY: Subject to that, you can
15 answer.
16 A — I'm sure I would have.
17 Q (BY MR. BEARDSLEY:) We've talked about — is it
18 Brandon or Brandon Presley?
19 A Brandon.
20 Q And he leased the restaurant from you, and at
21 one point lived in the living quarters?
22 A Yeah.
23 Q He's indicated that the basement flooded each
24 year. Is that accurate?
25 A My first question, what do you mean by

43

1 "flooded"? Is that foots of water or a damp
2 corner or.
3 Q Presence of water.
4 A It has damp corners, but as far as presence of
5 water standing or anything, no. It has — has
6 gotten water in it before from the snow melt
7 from the county piling it against the door.
8 They would plow it up against the building.
9 Q So it has had standing water in the basement?
10 A Not standing water. Water ran down the steps
11 into the hallway.
12 Q And this occurred on a yearly basis?
13 A No.
14 Q What years did it occur?
15 A Well, when Brandon Presley was there, there was
16 water in the basement one time that I know of.
17 Other than that, maybe one other time when
18 the — they plowed the snow up against the
19 building. That was a big issue.
20 Q How about a mold issue, was there ever any mold
21 in the basement?
22 A Yes, I'm sure there is.
23 Q During the time that you operated this, did you
24 do anything to remedy the mold situation?
25 A We put — you mean, as far as stopping the water

44

1 problem or?

2 Q Both.

3 A We put gutters on the building and tried to run

4 the water away from the building.

5 Q But there was a presence of mold in the building

6 prior to the sale?

7 A I never went in search for mold. I — but more

8 than likely, probably, yes.

9 Q Did you inform Bryan Iverson of this?

10 A No.

11 Q Would the water flooding penetration occur in

12 the spring?

13 A Usually whenever there was a massive hard rain

14 would be whenever there would be an issue. I

15 mean...

16 Q So it would — it could be anytime, really?

17 A But I don't know where the information came that

18 this thing floods every spring, because the only

19 person that's been there every spring is me.

20 None of these other guys have been there for

21 more than a few months.

22 Q Didn't Mr. Iverson ever show the property in the

23 spring?

24 A I imagine. I don't know.

25 Q So in addition to the spring, this issue could

45

1 happen during a heavy rain in the summer as

2 well?

3 A We had as much rain this last year as has been

4 on record for years, and we didn't have any

5 flooding in the basement.

6 Q Sure. But your testimony was that anytime a

7 heavy rain happened, this could happen. And my

8 question is, it didn't just happen in the

9 spring, it could also happen in the summer. Is

10 that accurate?

11 MR. BRADSHAW: Objection; form.

12 A It wasn't like it happened all the time. It

13 didn't happen, you know. You might get some

14 dampness in the corner of the building, you

15 know. It didn't flood.

16 Q (BY MR. BRADSHAW:) But you did acknowledge

17 there was mold issues?

18 A I — I would say there probably is. I didn't

19 look for mold.

20 Q You also used a sump pump in the basement;

21 correct?

22 A No. No, I did not.

23 Q Never used a sump pump?

24 A The sump pump was put in by the former owner.

25 Q And you never used it?

46

1 A It worked for a little while when we first

2 bought it. But it's been disconnected and taken

3 out for years.

4 Q When was it disconnected and taken out?

5 A I don't — years ago.

6 Q Give me an approximation, if you can.

7 A Probably... I don't know when the last time it

8 worked. Years ago.

9 Q So it's there, it's just not working?

10 A I — it's — it's not plugged in or it's not

11 hooked to power. It's not — it doesn't have a

12 way to pump anywhere. It's not hooked up.

13 Q Okay. But it's there?

14 A I'm not even sure if it's there yet or not, to

15 tell you the truth.

16 Q When you sold —

17 A I'd have to look.

18 Q When you sold the property, there was a sump

19 pump there, wasn't there?

20 A I don't know if the sump pump is there or not.

21 Q So your testimony is that while you agree there

22 was water penetration, it was never standing

23 water requiring somebody to put their belongings

24 on blocks?

25 A No. When — when Bryan — or Brandon Presley

47

1 was there, it got wet, yes. It got wet, and he

2 did put his couch on blocks, I believe.

3 Q So there was standing water requiring Brandon

4 Presley to put his possessions on blocks. You

5 were aware of that?

6 A Yes.

7 Q These issues were never disclosed to my client;

8 correct?

9 A No.

10 Q Am I correct?

11 A You're correct. No, they were not.

12 Q And you understand that mold can be a hazardous

13 condition as is listed in Exhibit 17?

14 MR. BRADSHAW: Objection; form.

15 MR. NUNEY: Calls for a legal conclusion;

16 lack of foundation.

17 Q (BY MR. BRADSHAW:) If you don't know, that's

18 fine. But would you agree that mold can be a

19 hazardous condition?

20 A I guess it can be. It's...

21 Q And the presence of mold can make a property

22 more difficult to sell; is that fair?

23 A I would imagine, yes.

24 Q And the presence of mold can affect a potential

25 buyer's decision to purchase a particular

48

1 property?
 2 MR. NOONEY: Objection; foundation.
 3 MR. BRUNSON: Join.
 4 A I would imagine, yes.
 5 Q (BY MR. BEARDSLEY:) Prior to the sale, Keith,
 6 did you do any construction work or remodeling
 7 to the walls in the basement?
 8 A Yes.
 9 Q What was done?
 10 A Took the one room, we took the bottom four feet
 11 off of the walls, the concrete — the block
 12 walls. Removed the existing materials there.
 13 Q What — and I'm sorry to interrupt you. What
 14 were the materials. Was it Sheetrock?
 15 A No. It was — well, yeah, it was Sheetrock, but
 16 it had... what do you want to call it...
 17 Paneling?
 18 A No. There was... just nailers for putting, you
 19 know, the — the Sheetrock was on there.
 20 Q Like a —
 21 A Nailers on the block.
 22 Q So like —
 23 A Something to attach to.
 24 Q Like a stick-built stud wall?
 25 A No. It wasn't a stud wall. It was just, you

49

1 know, like one-by-twos on there, maybe
 2 two-by-twos.
 3 Q So you removed the bottom four feet of the walls
 4 and replaced it with what?
 5 A With — I believe we put plywood. We put on
 6 new — new nailers, put plywood on, and then put
 7 paneling on.
 8 Q Wood paneling?
 9 A Yes.
 10 Q When you did — did you personally do this work?
 11 A Me and my father.
 12 Q When you completed this work, did you notice
 13 mold on the Sheetrock?
 14 A Yes.
 15 Q When was this construction started, completed?
 16 A It was completed sometime during the winter.
 17 Q Of?
 18 A Of, let's see, it would be '16, prior to selling
 19 the campground.
 20 Q And I assume you notified Mr. Iverson of the
 21 work you were doing and the improvement to the
 22 basement?
 23 MR. BRUNSON: Objection; form.
 24 A I don't believe I did. I don't know for sure,
 25 but I don't think I did.

50

1 Q (BY MR. BEARDSLEY:) Wouldn't that be something
 2 you'd tell your Realtor to advertise to try to
 3 sell the place?
 4 A I don't believe I did, but.
 5 Q But you could have?
 6 A I could have, yes.
 7 Q Did you hire anyone else out to complete the
 8 work or was it just you —
 9 A No.
 10 Q — and your father?
 11 A Me and my father.
 12 (Deposition Exhibit 18 was
 13 marked for identification.)
 14 Q (BY MR. BEARDSLEY:) I'm going to show you
 15 Exhibit 18, Keith. I apologize, these pictures
 16 aren't the greatest, but this packet includes
 17 photographs of various places in the basement.
 18 A Okay.
 19 Q Okay. And I just want you to flip through them.
 20 A (Pause — Witness reading.) Okay.
 21 Q Might be hard to tell, but does that look to you
 22 to be photographs of the basement that we're
 23 talking about?
 24 A I believe so, yes.
 25 Q And I believe that these photographs were

51

1 obtained when walls had to be removed and
 2 Mr. Remington discovered these issues.
 3 A I don't believe he removed any walls.
 4 Q Well, how else would he obtain — first of all,
 5 in your opinion, do these photographs, at least
 6 some of them, depict mold?
 7 MR. NOONEY: Objection; form, foundation.
 8 MR. BRUNSON: Join.
 9 A Yes.
 10 Q (BY MR. BEARDSLEY:) Well, at the time my
 11 clients looked at the property, that's not what
 12 the walls looked like, was it?
 13 A Yes. I never changed those. Those are things
 14 that never got redone and finished.
 15 Q So it's your testimony that the walls looked
 16 like this prior to my client viewing the
 17 property and he saw these?
 18 A He never viewed anything.
 19 Q So if my client were to testify that he
 20 discovered these by removing portions of the
 21 walls, you would disagree with that?
 22 A I would disagree with that, yes. I — unless he
 23 put them back.
 24 Q In any event, you never disclosed the water or
 25 the mold issues to Mr. Remington?

52

1 A No.
2 Q And the listing that we talked about also
3 indicated that you had bridges that were
4 rebuilt?
5 A Yes.
6 Q Is it two bridges?
7 A Two drive bridges and three walk bridges.
8 Q When were they rebuilt?
9 A I would say the one was seven, eight years. The
10 other one was before that, so maybe nine, ten
11 years possibly.
12 Q So they were rebuilt seven and nine years before
13 the sale?
14 A One was new re- -- wasn't an existing bridge.
15 The old existing bridge is still there. It's
16 just a...
17 Q Okay. Let me try to understand this. So one
18 drive bridge was rebuilt seven years prior to
19 the sale; correct?
20 A Yes.
21 Q And then the other drive bridge --
22 A Was built brand new. I mean, it wasn't an
23 existing one where it's at.
24 Q That was built nine years prior to the sale?
25 A Yes, approximately around there.

53

1 Q Well, seven and nine years prior to May of 2017,
2 would you consider that new?
3 A What do you mean?
4 Q Well, the property was advertised as having two
5 bridges that were widened and rebuilt,
6 indicating that this just recently occurred --
7 MR. EMMERSON: Objection; misstates the
8 record.
9 Q (BY MR. BEARDSLEY:) -- would you agree?
10 MR. NOONEY: Join.
11 A I'm guessing when they were listed, they were
12 new.
13 Q (BY MR. BEARDSLEY:) So the listing never
14 changed from the time they were rebuilt and put
15 in brand new?
16 A I don't know.
17 Q And if that were the case, a prospective buyer
18 in 2017 could conclude that these two drive
19 bridges were just recently built, even though
20 the listing hadn't changed in ten years?
21 MR. NOONEY: Objection; foundation.
22 MR. EMMERSON: Join.
23 A I don't know.
24 Q (BY MR. BEARDSLEY:) If it were the case that
25 they were never updated?

54

1 A Yes.
2 Q And if that were the case, that would be
3 misleading, wouldn't it?
4 MR. EMMERSON: Objection; form.
5 MR. NOONEY: Form; join.
6 A I guess -- I don't know.
7 Q (BY MR. BEARDSLEY:) Could be misleading?
8 MR. NOONEY: Same objection.
9 A I don't think on purpose.
10 Q (BY MR. BEARDSLEY:) Sure.
11 A I mean, if you buy a new car, you call it your
12 new car.
13 Q Well, if you buy a new car and you find out it's
14 seven years old, it's not a new car, is it?
15 A No.
16 Q And advertising it as such would be misleading?
17 A (Pause.)
18 Q Right?
19 A Yes.
20 Q So the listing was controlled by Mr. Iverson --
21 A Yes.
22 Q -- throughout all these years?
23 A Yes.
24 Q And he had an obligation to update the listing,
25 didn't he?

55

1 MR. NOONEY: Objection; calls for a legal
2 conclusion.
3 MR. EMMERSON: Join.
4 MR. NOONEY: Speculative; form.
5 Q (BY MR. BEARDSLEY:) These guys don't like the
6 word "obligation."
7 Would you have expected him to update the
8 listing to be accurate?
9 A In my mind, we built the new bridge and it was a
10 new bridge. I mean, yeah, I can see where it
11 could be possibly misleading.
12 But I would have called it the new bridge
13 because it was a new bridge.
14 Q Do you understand that, I believe on more than
15 one occasion, while my clients operated the
16 campground, a motorcycle fell through the bridge?
17 A I heard of that. They never informed me of
18 that. I never -- nobody told me of that.
19 Q So when you took the property back, the bridge
20 had already been repaired?
21 A No.
22 Q There still was a hole in it?
23 A Yes.
24 Q So there was some instance where a vehicle fell
25 through the bridge?

56

1 A I don't know what happened to the bridge.
 2 That's a good question. I'd like to know what
 3 happened to the bridge.
 4 (Deposition Exhibit 19 was
 5 marked for identification.)
 6 MR. HUNTER: Now, when it's convenient,
 7 can we take a two-minute deal?
 8 MR. HUNTER: Yeah. Sure. Can I just get
 9 through this quick?
 10 MR. HUNTER: Sure.
 11 Q (BY MR. HUNTER:) Keith, these are some
 12 photographs of either one or two bridges, I
 13 really can't tell. But this first photo, was
 14 this the work that was done by you and your
 15 father, or was this to patch up the hole?
 16 A That's to patch up the hole. That, we did not
 17 do.
 18 Q So by the time you took the property back, the
 19 hole was, in fact, patched up and fixed?
 20 A This is what it looked like when we came.
 21 Q So it was fixed. Now a vehicle can drive over
 22 it?
 23 A No. Because there was a hole, which is right
 24 here, I believe, right beside that.
 25 MR. NOON: Keith, identify what page

57

1 you're talking about, please. Page 2?
 2 A Yes, the second page -- well, there's a couple
 3 pictures here, two and three.
 4 Q (BY MR. HUNTER:) Two and three, I believe,
 5 are of the same hole.
 6 A Right.
 7 Q And you're claiming that hole was on the same
 8 bridge?
 9 A Yes. Right beside this patch.
 10 Q Okay. Since you've taken the campground back,
 11 has the patch worked?
 12 A I rebuilt it.
 13 Q What did you --
 14 A Repaired it.
 15 Q What did you do?
 16 A New timbers. Took it apart and fixed it.
 17 Q And prior -- when did you do that?
 18 A Right away in the spring, as soon as I found out
 19 it had a hole in it before we opened the
 20 campground up.
 21 Q And Mr. Remington had to go through the expense
 22 of getting the motorcycle out of the hole and
 23 then patching the hole; correct?
 24 A I don't know. I was not informed of that.
 25 Q Well, somebody paid for the patch; right?

58

1 A Yes. Somebody -- well, unless it was materials
 2 laying around there. I don't know. Doesn't
 3 look like it's anything brand new.
 4 Q Well, you'd agree with me that not only do
 5 materials cost money, but time costs money.
 6 Would you agree with that?
 7 A Yeah.
 8 MR. HUNTER: We can take a break.
 9 MR. HUNTER: Thanks.
 10 (Brief recess was taken.)
 11 Q (BY MR. HUNTER:) Keith, prior to the sale,
 12 did you ever have any issue with the fire
 13 marshal concerning the fire pits?
 14 A They would come around and inspect, and if we
 15 needed to do something, maybe usually put some
 16 gravel around the pits, anchor them down. But
 17 we were always permitted. He never never
 18 permitted us.
 19 Q Do you remember what's required for gravel, the
 20 amount of gravel around a pit?
 21 A I think it was more of being a certain distance
 22 from the trees. I don't remember, 10, 15 feet
 23 or something from the trees. Gravel, maybe a
 24 couple feet around it, you know, a ring or
 25 something.

59

1 But the problem is, we would anchor them
 2 down, and people would rip them up and move
 3 them. That's the problem. People think that
 4 they are...
 5 Q Sure.
 6 A Why do you think we anchor them down?
 7 Q So when my client purchased the campground,
 8 there were a number of gravel pits that were not
 9 in compliance; isn't that correct?
 10 MR. NOON: Objection; calls for a legal
 11 conclusion, foundation.
 12 A That I don't know. We were -- the campground
 13 wasn't open for the season when we sold it. I
 14 mean, we weren't -- when he came in and looked
 15 at it, it was in April. And so nothing had been
 16 done with any of the fire pits or anything like
 17 that at that point.
 18 Q (BY MR. HUNTER:) It had --
 19 A Every year usually we have to go put some gravel
 20 around them and re-anchor them down or whatever
 21 needs to be done.
 22 Q So it was not operational when my client
 23 purchased it?
 24 A I guess, depends on what you call "operational."
 25 Q Well, did you have campers there?

60

1 A I don't believe there was any campers there.
 2 Q Did you ever receive any written notice from the
 3 marshal about the fire pit issues?
 4 A He gave us a permit every time he came and
 5 inspected it. He would fill out a paper, which
 6 I -- which, actually he did this year after --
 7 when I got it back, he came in, inspected.
 8 I wasn't there. My daughter was there,
 9 actually. And he said, Yeah, everything is
 10 fine, you know. You're permitted for I think
 11 it's 84 fire rings, and we won't be back until
 12 August of '19.
 13 Q Okay.
 14 A Sign this thing and hang it on the wall.
 15 So that's what we did.
 16 Q And are you aware that after my client took
 17 possession of the property, the fire marshal
 18 threatened to shut him down because of the
 19 condition of the fire pits?
 20 A No. He never told me anything. I find it hard
 21 to believe that he would have threatened. He
 22 never threatened me ever. In the 13 years that
 23 I had it, he never threatened me.
 24 Q If my client Mr. Duane Rerington testified to
 25 that, you wouldn't have any reason to dispute

61

1 that occurred?
 2 A I wasn't there, so I don't know.
 3 Q So back to my question about written notice. As
 4 I understand, you eventually got a permit. But
 5 prior to that, when you would have to fix the
 6 fire pits, did you ever get a written notice
 7 saying you're in violation on 32 rings, these
 8 need to be fixed, that type of deal?
 9 A I don't know if he put that on the permit. I
 10 mean...
 11 Q So the notification --
 12 A I don't think he gave me anything separate.
 13 Q Okay. The notification that you were not in
 14 compliance would be just from his visit and
 15 orally saying, Hey, you need to fix this.
 16 A You need to put some gravel around this pit or
 17 that pit, or it's got to be reanchored because
 18 somebody, you know, tore it loose or.
 19 Q And at no time did he give you a written notice
 20 of that?
 21 A Unless it was on that permit. I don't know.
 22 Q Who is the fire marshal?
 23 A I think it's the same guy, but I don't even know
 24 what his name is. It's a younger guy. I don't
 25 think he's actually -- I don't think he's a fire

62

1 marshal. He's a forestry...
 2 Q Forest Service worker?
 3 A Yeah. I don't know. I don't know. They come
 4 around two or three of them in a truck, they
 5 don't even tell us they are coming in. They go
 6 through and do this, they come up and say, Okay,
 7 here's your permit.
 8 Q Okay. So just so I'm clear, you were never
 9 formally written up for any code violations
 10 concerning those fire pits prior to this
 11 transaction?
 12 A I don't believe I was ever formally, no.
 13 Q Never paid a fine?
 14 A No.
 15 Q Okay. How were the pits anchored down?
 16 A With rebar, two-foot long rebar with a J hook on
 17 the top, through the holes in the...
 18 Q Were they made out of old --
 19 A Wheels.
 20 Q Wheels.
 21 A Some of -- well, there's -- many, many of them
 22 were built fire pits that got grates on top and
 23 we had concrete around them.
 24 Q Were any of them buried?
 25 A As far as the rims?

63

1 Q Yeah, up to the rim?
 2 A No. Most of them were above ground.
 3 Q So campers could move them?
 4 A Well, they were anchored with rebar, but they
 5 weren't supposed to move them.
 6 Q It would just happen?
 7 A They would maybe -- I don't know what they did,
 8 if they hooked on with their pickup or a chain
 9 or something and yanked them out of there. I
 10 don't know how they did it.
 11 Q Along with the -- I believe the listing, if you
 12 turn to Exhibit 10, and it's Bates stamped
 13 RE/MAX 8.
 14 A 2018? What?
 15 MR. NOCHET: You want to go to page 8.
 16 THE WITNESS: Oh, page 8.
 17 Q (BY MR. BEARDSLEY:) On the Bates stamp in the
 18 corner.
 19 A This one?
 20 Q Yep.
 21 A Okay.
 22 Q And I assume this was a part of the listing that
 23 went with the pictures and the description of
 24 the property, is that right?
 25 A I believe so.

64

1 Q And this lists a number of improvements, new
2 appliances, and you've got the drive bridge
3 rebuilt and widened to the tune of \$20,000.
4 A For the two of them, I suppose.
5 Q So you and your father did all the labor. Are
6 you claiming just the material was \$20,000?
7 A Actually, my Uncle Don worked on the one bridge.
8 We had -- we poured concrete embankments and
9 approaches. And the steel and the bridge planks
10 and... but I --
11 Q Do you have receipts for any of the materials or
12 work that was done?
13 A I tried to contact them on that, and they said
14 they have no record of it, and I don't have any
15 idea where to find it for sure.
16 Q Who is "them"?
17 A This was -- I contacted Baker Timber.
18 Q Did you hire a concrete company to come out to
19 pour concrete?
20 A No. Me and my dad.
21 Q So the material all came from Baker Timber?
22 A No. The one bridge was Wheeler. Wheeler out of
23 Whitewood.
24 Q I don't know what that means. Is that --
25 A That's a company, Wheeler.

65

1 Q Right. Is it like a sawmill?
2 A Well, they do railroad ties and that kind of
3 stuff.
4 Q So it's similar to Baker Timber?
5 A Yes, same kind of deal. I mean...
6 Q Okay. And you've got a John Deere commercial
7 lawn mower listed here. What year was that?
8 A When did I buy it?
9 Q Yeah.
10 A I don't know, probably five years ago or
11 something. I don't know.
12 Q Was it a -- do you know what the model number
13 is, what type of mower it is?
14 A It's a zero-turn radius commercial John Deere
15 mower. I got it from RDO.
16 Q So it's a Z520?
17 A Yeah, that's probably what it is. That
18 sounds -- I'm not positive of that, but I...
19 Q And you purchased it from RDO?
20 A Yeah.
21 Q Up on Deadwood Avenue?
22 A Yes.
23 Q And in the listing document RE/MAX 0008, you
24 have it listed as a new John Deere commercial
25 lawn mower for \$8,500; correct?

66

1 A Yes.
2 Q If the purchase order indicates that mower was
3 only purchased for \$6,700, this claim on this
4 listing would be incorrect?
5 A I would have to go back and figure out if -- I
6 don't remember if I financed it and that's what
7 it came out to be, or why that would be
8 different, but.
9 (Deposition Exhibit 20 was
10 marked for identification.)
11 Q (BY MR. BEARDSLEY:) I'm going to show you
12 Exhibit 20, a customer purchase order from RDO
13 Equipment in Rapid City for a John Deere Z520.
14 And at the top corner it says, Cash Sale. Do
15 you see that? Right under the date of order.
16 A It's X'd cash sale, yes.
17 Q The total price on this piece of equipment is
18 \$6,700, and with sales tax came out to \$6,968;
19 correct?
20 A That's what it says, yes.
21 Q So the claim that this mower was \$8,500 would be
22 misleading, wouldn't it?
23 A Appears that way.
24 Q Did you provide this information on this
25 Exhibit 10, RE/MAX page 8, did you provide this

67

1 information to Mr. Iverson to include in the
2 listing?
3 A I'm guessing I did, yes.
4 Q Anything else on this document --
5 MR. NUNEY: Page 8, Mike, of Exhibit 10?
6 MR. BEARDSLEY: Yep.
7 Q (BY MR. BEARDSLEY:) -- that is incorrect?
8 A (Pause -- Witness reading.) I guess it comes
9 down to, this stuff says new, it was new when we
10 got it. But if you want to say hey, it's not
11 new anymore, then.
12 Q Sure. So in 2017, the indication that there's a
13 new John Deere mower when in fact it's a 2008
14 would not be accurate?
15 A Yes.
16 Q Are you testifying that every line item
17 indicating it's new, in fact, was not new in
18 2007?
19 A '17?
20 Q I'm sorry, 2017.
21 MR. NUNEY: Mike, just so the record is
22 clear, if you look at Exhibit 10, page 8, it
23 references as of the date of September of 2015.
24 So I don't think that -- just for clarification.
25 MR. BEARDSLEY: Sure. And we can go there.

68

1 MR. NOBLE: Okay.
 2 Q (BY MR. BEARDSLEY:) As of 2015, these items
 3 that are indicated here as new through 2015 were
 4 not, in fact, new, were they?
 5 A Some of them weren't. Some of the stuff down
 6 there was probably new.
 7 Q You'd agree with me --
 8 A So when this was put together, they were new.
 9 And then it still says they are new.
 10 Q And in fact, if they are not new, that could be
 11 misleading to a potential buyer, couldn't it?
 12 MR. BEARDSLEY: Objection: form.
 13 MR. NOBLE: John.
 14 A Yes.
 15 Q (BY MR. BEARDSLEY:) In addition to the
 16 information contained on that sheet, did you
 17 provide Mr. Iverson with financial documents for
 18 the business?
 19 A You mean for financial -- for --
 20 Q Income --
 21 A -- revenue?
 22 Q Yes.
 23 A Yes.
 24 Q Income/expense sheets?
 25 A Yes.

69

1 Q What particularly did you provide to
 2 Mr. Iverson?
 3 A You mean the revenue from the restaurant, the
 4 bar, the campground, the expenses for
 5 everything?
 6 Q So I just want to know how that process went.
 7 At the end of each season, you'd send them off
 8 to Bryan?
 9 A No, not necessarily.
 10 Q Okay. How would it work?
 11 A I think usually he -- he wanted to know what we
 12 did for revenue for that year, you know, if he
 13 was going to relist it. So he wanted a balance
 14 sheet.
 15 Q And that would include your income and expense
 16 sheets; right?
 17 A Yes.
 18 Q Can you turn to Exhibit 14.
 19 A (Witness complied.)
 20 Q Do you recognize that document?
 21 A I think that was put together from all the --
 22 yeah, balance sheets or whatever. Yearly
 23 income, yes.
 24 Q Did you put it together?
 25 A No.

70

1 Q Who did?
 2 A I don't know if this one was done by my wife or
 3 by Bryan. I don't know that for sure, but.
 4 Q Okay. This is an income comparison by year
 5 from '12, 2012 to 2016; correct?
 6 A Yes.
 7 Q Can you explain to me what the miscellaneous
 8 amounts reflect in 2014, 2015, and 2016?
 9 A I would have to ask my wife, but I'm guessing
 10 they are probably either personal expenses or
 11 maybe money that I put in to the business or --
 12 that -- I'm not the bookkeeper, so I don't know.
 13 Q She would understand these figures?
 14 A Yes.
 15 Q Okay. Can you tell me the discussions that you
 16 had with Duane Remington prior to and during the
 17 sale of this business and residence?
 18 A Well, originally I was in the bar doing
 19 paperwork when Duane and Melody came to the
 20 campground and asked me if it was for sale.
 21 Well, Anthony -- Red, whoever -- had just
 22 quit his job to come work there, so I kind of
 23 hesitated a little bit. I said, Well, yeah, I
 24 guess it is.
 25 Then he asked me if I would lease it. And I

71

1 said, No, I'm not interested in leasing it. I
 2 said, Because you got nothing into it, you know.
 3 And then at that time I told them -- you
 4 know, he said, Well, I've been camping all over
 5 the country, you know, in campgrounds all over,
 6 and I really thought it would be fun to own one.
 7 And I said, Well, it's a lot of work. Ties
 8 up all your summers. You know, you don't do
 9 anything else. You work long days. And you
 10 might want to come here with your camper and
 11 just see what it's about before you get into
 12 purchasing it.
 13 He said, No, we want to -- we like this.
 14 I've looked at it many a time, sat out here and
 15 dreamed about it, or whatever, you know, and, We
 16 want to get it.
 17 Q Okay. Then you told him to contact --
 18 A And then one --
 19 Q I'm sorry. Go ahead.
 20 A And then one other -- one other time they came
 21 and ate. I believe it was Melody and I don't
 22 remember if Duane was there or not, but I
 23 believe it was Yolanda, the kids, and her
 24 husband. I'm not sure who all was there. But
 25 anyway, they came and ate before they purchased

72

1 it.
 2 Q In that first visit, did you show them around
 3 the campground?
 4 A No.
 5 Q Did you ever show them around the campground?
 6 A Tried to. He didn't want to. He — he knew
 7 what it was, he was ready to go. Didn't care to
 8 look at anything.
 9 Q What do you mean tried to?
 10 A I asked him if he wanted to look at the cabins
 11 and look at things.
 12 Hope, I'm happy with what I see.
 13 Q Was Bryan Iverson around during —
 14 A No.
 15 Q — these discussions?
 16 A Not these, no.
 17 Q Did Bryan ever show the property to the
 18 Remingtons?
 19 A I don't believe so.
 20 (Brief interruption in the proceeding.)
 21 Q (BY MR. REMINGTON:) Before the sale, was the
 22 campground listed as a contract for deed option?
 23 A I don't know if it was listed that way or if it
 24 was just — I had always wanted to just sell it,
 25 you know.

73

1 And then the problem being is, people that
 2 have the money, don't want to work that hard.
 3 And the people that don't have the money, want
 4 it, but they can't get a loan, you know.
 5 So I decided, well, I'll try contract for
 6 deed, you know. I can, you know, get some money
 7 down and — which, I want to see anybody succeed
 8 in it. I mean, I did everything I could to put
 9 things together for him to succeed.
 10 Q Since you took the property back, have you
 11 relisted it?
 12 A No.
 13 Q What do you intend on doing with the campground
 14 now?
 15 A It's in limbo right now. I don't know. I've
 16 never been in this kind of a situation. I don't
 17 want to contribute with more things. I've had a
 18 lot of people looking at it, asking about it,
 19 and I've just been pushing them off.
 20 Q Is Bryan still showing it?
 21 A No.
 22 Q Is he involved —
 23 A No.
 24 Q — at all?
 25 A It is not actively listed now.

74

1 Q Give me just a minute here. Okay?
 2 A Okay.
 3 Q (Pauses.) After the purchase agreement was
 4 signed, did you ever have a conversation with
 5 Duane Remington and Bryan Iverson regarding any
 6 financial statements?
 7 A No.
 8 Q Do you know if your wife did?
 9 A No, she did not. She was not there any of the
 10 meetings.
 11 Q So she wasn't involved in any way on the
 12 transaction?
 13 A No.
 14 Q But she would have information regarding the
 15 financial statements that have been provided to
 16 us?
 17 A To Bryan, yes.
 18 Q Okay. And then subsequently to us?
 19 A Yes.
 20 Q Okay.
 21 A She would have prepared those.
 22 MR. REMINGTON: I don't have anything
 23 further.
 24 MR. ERLANDSON: I have a few questions.
 25 (Discussion was held off the record.)

75

1 EXAMINATION BY MR. ERLANDSON:
 2 Q Good morning, sir. My name is Greg Erlandson.
 3 I represent Bryan Iverson.
 4 A Yes.
 5 Q We've not met here until today. I have a few
 6 questions, and I'm kind of going to go through
 7 some of the claims that were made in the
 8 complaint against yourself, the campground, and
 9 my client, Bryan Iverson. Okay?
 10 A Okay.
 11 Q In the complaint it is alleged that there was
 12 prior flooding of the basement; right?
 13 A Yes.
 14 Q Did you ever have any discussions or tell
 15 Mr. Iverson at any time before the plaintiffs in
 16 this case made an offer that there were any
 17 water problems or issues in the basement?
 18 A No.
 19 Q Did you ever tell Mr. Iverson at any time that
 20 you believed that there was mold in the
 21 basement?
 22 A No.
 23 Q Did you ever tell Mr. Iverson that the deck at
 24 one point, or anytime, was located on a
 25 right-of-way?

76

1 A No.
 2 Q And as I understand it, you fixed that issue?
 3 A Yes.
 4 Q And you fixed that issue even before the
 5 property — the Remingtons made an offer on the
 6 property?
 7 A No.
 8 Q Or after?
 9 A It was afterwards.
 10 Q Okay.
 11 A When I got it back.
 12 Q Okay. I'm sorry, how much did that cost to have
 13 that fixed?
 14 A Nothing. Zero. About an hour, hour and a half.
 15 My son did it, basically.
 16 Q Okay. Basically cut off the corner?
 17 A Cut off the corner, used the materials that were
 18 there. Actually had to get rid of some because
 19 there was extra material, and it never affected
 20 — that's the reason I did it.
 21 Originally, I really wanted to argue with
 22 them. What difference does this deck that far
 23 from the road make any difference? But I
 24 decided to take care of it, be done with it.
 25 If Diane would have said, Hey, you know,

77

1 this thing is in the middle of the right-of-way,
 2 what do you think about that? I would have come
 3 up and fixed it.
 4 Q Right. Did you ever tell Mr. Iverson that you
 5 believed the parking lot on the campground was
 6 located on a right-of-way?
 7 A Nope. I didn't know that.
 8 Q Did you ever tell Mr. Iverson that you believed
 9 that any of the fire rings in the campground
 10 were not up to code at the time the Remingtons
 11 made the offer?
 12 A No.
 13 Q Or anytime thereafter?
 14 A No.
 15 Q Did you ever tell Mr. Iverson that the financial
 16 statements or information that were provided
 17 either by you or by your wife to the Remingtons
 18 were not accurate?
 19 A No.
 20 Q Did you believe the financial information that
 21 you were providing to Mr. Iverson to be
 22 accurate?
 23 A Yes.
 24 Q Did you ever tell Mr. Iverson that any of the
 25 bridges on the property were defective?

78

1 A No.
 2 Q Did you believe that any of the property — any
 3 of the bridges on the property were defective —
 4 A No.
 5 Q — or substandard —
 6 A No.
 7 Q — at any time prior to —
 8 A No.
 9 Q — the sale here?
 10 A No.
 11 Q Okay. I think you testified a couple different
 12 times in response to questions by Mr. Beardsley
 13 about the existence of mold being on the
 14 property, and —
 15 A Yes.
 16 Q I wasn't quite sure, were you actually aware
 17 that there was mold on the property? I don't
 18 want you to guess.
 19 A I didn't look for mold. I mean, logic tells me
 20 that, you know, in the walls there could be
 21 mold. I mean, it had been damp, yes. But I
 22 didn't go looking for mold. I don't think
 23 anybody did.
 24 Q I think when Mr. Beardsley was talking to you
 25 about the living quarters that were contained in

79

1 the listing information, that you defined living
 2 quarters as basically a place to sleep?
 3 A Yes.
 4 Q The cabins that you have on the property are
 5 places to sleep as well, aren't they?
 6 A Yes. I actually stayed in one of the sleeping
 7 cabins for a season when Brandon was leasing the
 8 restaurant and bar.
 9 Q Right. Were you a — people sleep in their RVs
 10 on the property as well; correct?
 11 A Yes.
 12 Q Did you ever rent out the living quarters in the
 13 main office building —
 14 A No.
 15 Q — as a residential structure?
 16 A No.
 17 Q As I understand it, people would occasionally
 18 sleep there incidental to the operation of the
 19 business?
 20 A Yes.
 21 Q Nobody ever used that property as their
 22 permanent residence?
 23 A The former owners did.
 24 Q Okay.
 25 A But we never did.

80

1 Q All right. Did you ever tell Mr. Iverson that,
2 that anyone had ever used that property as an
3 actual residence?
4 A No, I don't believe so.
5 Q Okay. And you indicated that in the winter of
6 2016, you did some construction, I believe,
7 maybe with your father?
8 A Yes.
9 Q Removing the bottom four feet of some walls in
10 the basement?
11 A Yes.
12 Q And your testimony was you didn't think you told
13 Bryan Iverson about that construction; correct?
14 A I don't believe so, no.
15 Q Okay. Any of the information that Bryan Iverson
16 got concerning the finances or operation of the
17 business, he would have received that from you
18 or your wife; correct?
19 A Yes.
20 Q He didn't take up any of the documents
21 independently?
22 A Those financial statements were given to him and
23 the tax returns were done by Paul Thorstenson
24 and were given to Bryan.
25 MR. BEARDSLEY: Okay. Thank you for your

81

1 Q Were you trying to remove everything to conceal
2 the presence of mold?
3 A No. No. To get rid of it. You know, the
4 object was to improve things. And the reason we
5 were improving it, it probably is irrelevant,
6 but Brandon Presley trashed the whole building
7 from top to bottom.
8 And we had to do a ton of reworking and
9 refixing and redoing and haul multiple, multiple
10 trailer loads of garbage out, things he wrecked,
11 and.
12 Q So you did all this work and Bryan Iverson
13 didn't know about any of it?
14 A I don't know if he knew that -- he probably knew
15 that Brandon trashed it. But actually it was
16 the locals that came around and helped me clean
17 up the mess.
18 Q But your testimony, sir, was that if Diane would
19 have just gone to the basement, he would have
20 seen these conditions of these walls -- wait,
21 wait. Let me finish.
22 A Okay.
23 Q That was your testimony. And your testimony has
24 also been that Mr. Iverson, when he showed the
25 property for the past ten years, had been in the

83

1 time. I don't have any other questions.
2 MR. BEARDSLEY: I just have a few follow-up.
3 FURTHER EXAMINATION BY MR. BEARDSLEY:
4 Q We've established that Mr. Iverson showed the
5 property roughly 30 times; right? Correct?
6 A Yes.
7 Q And you've testified that the photographs that I
8 showed you, Exhibit -- can you look for me?
9 A 17, was it?
10 MR. NOBLE: 19?
11 A 18.
12 Q (BY MR. BEARDSLEY:) Exhibit 18 depicts the way
13 the basement and the walls looked when my client
14 purchased the property. That was your
15 testimony; right?
16 A Yes.
17 Q So in the 30 times that Mr. Iverson showed the
18 property, did he ever go to the basement?
19 A Yes. I...
20 Q So he would have seen the mold and the water
21 damage in the basement; correct?
22 A I don't believe so. I think this is actually in
23 the closet. This was a part of the stuff that
24 we didn't get to. We were trying to remove
25 everything and you know, and.

82

1 basement; that's correct?
2 A Yes.
3 Q Okay.
4 A But I'm not saying he would have seen mold. You
5 had to look for mold. It wasn't just jumping
6 out at you.
7 Q Sure. And Mr. Iverson created the listing.
8 We've established that; right?
9 A Yes.
10 Q So he was aware that the bridges were not new
11 but were, in fact, rebuilt or built seven to
12 nine years ago?
13 A Yes. Because he would have made the listing
14 whenever it was done.
15 Q Also would have been aware that the new John
16 Deere mower was not new but it was a 2008;
17 correct?
18 A Well, he knew it wasn't new that year or
19 anything. I mean, he wouldn't have known it was
20 '08, I don't think. I don't know.
21 Q But he would have known it wasn't new?
22 A Right.
23 MR. BEARDSLEY: Objection; form.
24 Q (BY MR. BEARDSLEY:) You received a notice from
25 the Department of Transportation on November 9,

84

1 2016 that your structure was in the
 2 right-of-way; right?
 3 A Yes.
 4 Q And you did nothing to fix it or correspond with
 5 the Department of Transportation until after you
 6 received the property back from my client;
 7 correct?
 8 A I did not do anything to fix it.
 9 Q You didn't contact the Department of
 10 Transportation to say, this is out of line, I'm
 11 contesting this?
 12 A Well, that was my plans, but then Dene came in
 13 and got in the middle of things and we were go,
 14 go, go.
 15 It's my fault for not telling him about it.
 16 I never even thought about it. It was not that
 17 big of a deal, I didn't think.
 18 Q So the parking lot that was in the right-of-way,
 19 you didn't do anything to fix the parking lot?
 20 A I didn't know anything about the parking lot
 21 being in the right-of-way. There was no nothing
 22 ever told to me that the parking lot was in the
 23 right-of-way.
 24 Q After you fixed the deck, did the Department of
 25 Transportation come back to you to say you're

85

1 good to go?
 2 A No. No.
 3 MR. HERNDON: I don't have anything
 4 further.
 5 MR. NOONEY: Anything else?
 6 MR. EVANSON: I don't have anything.
 7 Thank you.
 8 MR. NOONEY: Jacque, I'm going to have him
 9 read and sign. Okay? Thank you.
 10 (The proceeding concluded at 11:11 a.m.)

86

1 ERRATA PAGE
 2 I, the undersigned, KEITH GRIMM, have read the
 3 foregoing transcript and, to the best of my knowledge,
 4 said transcript is true and accurate (with the
 5 exception of the following corrections listed below):
 6 PAGE/LINE CORRECTION AND REASON FOR CORRECTION
 7 _____
 8 _____
 9 _____
 10 _____
 11 _____
 12 _____
 13 _____
 14 _____
 15 _____
 16 _____
 17 _____
 18 _____
 19 _____
 20 _____
 21 _____
 22 SIGNATURE _____ DATE _____
 23 See attached sheet (a) for additional information:
 24 Yes No
 25

87

1 CERTIFICATE
 2 I, Jacqueline K. Weller, Registered Professional
 3 Reporter, a notary public in and for the State of
 4 South Dakota, Pennington County, do hereby attest that
 5 the witness was duly sworn by me prior to the taking
 6 of testimony; that said proceedings were taken by me
 7 stenographically and thereafter reduced to typewriting
 8 under my supervision; that the foregoing transcript is
 9 a true and accurate record of the testimony given to
 10 the best of my understanding and ability.
 11 I further assert that I am neither counsel for,
 12 related to, nor employed by any of the parties to this
 13 case and have no interest, financial or otherwise, in
 14 its outcome; that I have no contract with the parties,
 15 attorneys, or persons with an interest in the action
 16 that affects or has a substantial tendency to affect
 17 impartiality, that requires me to relinquish control
 18 of an original deposition transcription or copies of
 19 the transcript, or that requires me to provide any
 20 service not made available to all parties to the
 21 action.
 22 Dated this 1st day of December, 2018.
 23 /s/ Jacqueline K. Weller
 24 Registered Professional Reporter
 25 Notary Public
 My commission expires: May 3, 2019

88

IN CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT

Defendants.

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Rapid City, South Dakota

Page 2	Page 4
<p>APPEARANCES CONTINUED:</p> <p>Also Present: Mr. Duane Benington Mrs. Melody Benington Plaintiffs</p> <p style="text-align: center;">I N D E X</p> <p>WITNESS: PAGE</p> <p> BRYAN IVERSON</p> <p> Examination by MR. BEARDSLEY 3</p> <p> Examination by MR. MOONEY 83</p> <p> Further Examination by MR. BEARDSLEY 136</p> <p> Examination by MR. SKLANDSON 142</p> <p>EXHIBITS: MARKED ON PAGE</p> <p>1 - Real Estate Purchase Agreement (2 pages) 28</p> <p>2 - Agency Agreement Addendum (1 page) 30</p> <p>3 - Buyers Agency Agreement (1 page) 42</p> <p>4 - Addendum/Amendment to Purchase Agreement (1 page) 43</p> <p>5 - Addenda #1 (1 page) 44</p> <p>6 - Listing for Wild Bill's (7 pages) 49</p> <p>7 - Nov. 9, 2016 letter from DOT (2 pages) 64</p> <p>8 - Meetings with Duane Benington (1 page) 84</p> <p>9 - Real Estate Purchase Agreement, Commercial/Agricultural, REMAX 0019 - 0023 88</p> <p>10 - Listing for Wild Bill's, REMAX 0001 - 0013 95</p> <p>11 - Contract for Deed, REMAX 0026 - 0034 115</p> <p>12 - Exclusive Listing Agreement, REMAX 0041 - 0049 119</p> <p>13 - MLS listing, REMAX 0050 - 0052 120</p> <p>14 - Spreadsheets, REMAX 0053 - 0056 123</p> <p>15 - ALTA Settlement Statement, GRIMM 0027 - 0028 126</p> <p>16 - Certificate of Real Estate Value, GRIMM 0029 & 0024 137</p> <p style="text-align: center;">* * *</p>	<p>1 Q And if you do not understand a question that I ask, I'd</p> <p>2 just please ask you to ask me to clarify. And if you</p> <p>3 answer one of my questions, I'm going to assume that you</p> <p>4 understood it. Is that fair?</p> <p>5 A Yes.</p> <p>6 Q Where did you grow up?</p> <p>7 A Rapid City.</p> <p>8 Q Can you summarize your education for me?</p> <p>9 A Went to -- graduated from Rapid City Central.</p> <p>10 Q What year?</p> <p>11 A 1984, and graduated from Black Hills State in 1989.</p> <p>12 Q Any education after Black Hills State?</p> <p>13 A No.</p> <p>14 Q And your job history, please.</p> <p>15 A How far back would you like me to go?</p> <p>16 Q After high school.</p> <p>17 A I worked construction while I was going to college.</p> <p>18 Q What type of construction?</p> <p>19 A I did road construction and building.</p> <p>20 Q Residential or commercial?</p> <p>21 A Residential.</p> <p>22 Q Who did you work for?</p> <p>23 A Skull Construction, Sweetman Construction, and -- what</p> <p>24 was the last one I worked for? Stanley Johnson.</p> <p>25 Q Are those all in Rapid City?</p>
Page 3	Page 5
<p>1 (The deposition began at 10:18 a.m.)</p> <p>2 BRYAN IVERSON,</p> <p>3 called as a witness, being first duly sworn, testified as</p> <p>4 follows:</p> <p>5 EXAMINATION BY MR. BEARDSLEY:</p> <p>6 Q Good morning. My name is Mike Beardsley. I represent</p> <p>7 Duane and Melody Benington. Can you please state your</p> <p>8 full name and address for the record.</p> <p>9 A Bryan Iverson. My office address is 1240 Jackson</p> <p>10 Boulevard, Rapid City, South Dakota 57702.</p> <p>11 Q Have you ever had your deposition taken?</p> <p>12 A Have not.</p> <p>13 Q Say that again?</p> <p>14 A No.</p> <p>15 Q I'm going to go over a few ground rules then. It's</p> <p>16 important that you let me finish my question before you</p> <p>17 start to answer, okay? It's also important that you use</p> <p>18 verbal responses. If you shake your head or say</p> <p>19 "uh-huh," "huh-uh," it's very difficult for her to pick</p> <p>20 up. Is that fair?</p> <p>21 A Yes.</p> <p>22 Q And, Bryan, if you start talking over me before I finish</p> <p>23 my question, I'm going to correct you. I don't mean to</p> <p>24 be rude, but we need a good record; okay?</p> <p>25 A Understand.</p>	<p>1 A Yes.</p> <p>2 Q How long did you do that?</p> <p>3 A While I attended college.</p> <p>4 Q The entire time?</p> <p>5 A In the summers.</p> <p>6 Q Then what did you do?</p> <p>7 A I started my accounting career at Antelope Coal Company</p> <p>8 in Wyoming.</p> <p>9 Q So I assume you majored in accounting?</p> <p>10 A Yes.</p> <p>11 Q Any other majors?</p> <p>12 A Business administration.</p> <p>13 Q What did you minor in?</p> <p>14 A Did not.</p> <p>15 Q Okay. Your accounting career started when?</p> <p>16 A December '89.</p> <p>17 Q And where was that?</p> <p>18 A Antelope Coal Company.</p> <p>19 Q And where was that located?</p> <p>20 A In Wyoming.</p> <p>21 Q Where, in Wyoming?</p> <p>22 A 65 miles north of Douglas.</p> <p>23 Q Okay. How long did you stay with that company?</p> <p>24 A 10 months.</p> <p>25 Q What was your official position while working with</p>

<p>Page 6</p> <p>1 Antelope Coal Company?</p> <p>2 A Accountant.</p> <p>3 Q Did it remain that the entire 10 months?</p> <p>4 A Yes.</p> <p>5 Q Why did you leave after 10 months?</p> <p>6 A Didn't like it.</p> <p>7 Q Didn't like Wyoming?</p> <p>8 A Didn't like it.</p> <p>9 Q Were you terminated?</p> <p>10 A No.</p> <p>11 Q Then what did you do?</p> <p>12 A Went back for one semester at Black Hills State.</p> <p>13 Q For what?</p> <p>14 A To get my business degree.</p> <p>15 Q Okay. Then?</p> <p>16 A I went to work for Moyle Petroleum Company in Rapid.</p> <p>17 Q That was in '91?</p> <p>18 A Yes.</p> <p>19 Q And what did you do for Moyle?</p> <p>20 A Started out in construction and maintenance, and then</p> <p>21 went into the office for accounting and environmental.</p> <p>22 Q Construction and maintenance, what did that entail?</p> <p>23 A Maintaining the stores and construction of new stores or</p> <p>24 remodels.</p> <p>25 Q So construction, gas stations?</p>	<p>Page 8</p> <p>1 Q Any other positions at Pioneer Credit Counseling?</p> <p>2 A No.</p> <p>3 Q And how long were you there?</p> <p>4 A Until 2005.</p> <p>5 Q Then what?</p> <p>6 A Real estate.</p> <p>7 Q Why did you leave Pioneer Credit Counseling?</p> <p>8 A Wanted to do something other than accounting.</p> <p>9 Q And why did you leave Moyle Petroleum in 2001?</p> <p>10 A It was an advancement.</p> <p>11 Q So 2005 you started real estate?</p> <p>12 A 2006.</p> <p>13 Q 2006.</p> <p>14 A February of 2006.</p> <p>15 Q And how did you start that process?</p> <p>16 A Took a real estate class. Then I had to take a test.</p> <p>17 Q Where was the class?</p> <p>18 A Coldwell Banker.</p> <p>19 Q And what does that consist of? How long is it?</p> <p>20 A Two weeks, if I remember right.</p> <p>21 Q Then you took a test?</p> <p>22 A Yes.</p> <p>23 Q And after the test, you were certified as a broker</p> <p>24 associate; is that right?</p> <p>25 A Licensed.</p>
<p>Page 7</p> <p>1 A Yes. Convenience stores, yes.</p> <p>2 Q How long did you do that?</p> <p>3 A How long did I do the construction, or how long was I</p> <p>4 with Moyle Petroleum?</p> <p>5 Q The construction.</p> <p>6 A I don't know the exact years.</p> <p>7 Q Give me your best shot.</p> <p>8 A Four.</p> <p>9 Q Were you a laborer while doing construction or more of</p> <p>10 like a management role?</p> <p>11 A Laborer.</p> <p>12 Q Okay. Four years, so '95, roughly, you started doing</p> <p>13 accounting work for Moyle?</p> <p>14 A Yes, Yes.</p> <p>15 Q Okay. And who was your supervisor or boss at the time;</p> <p>16 do you remember?</p> <p>17 A Dave Larson.</p> <p>18 Q How long did you do accounting work for Moyle?</p> <p>19 A Until 2001.</p> <p>20 Q Then what did you do?</p> <p>21 A I went to work for Pioneer Credit Counseling.</p> <p>22 Q What was the nature of your position at Pioneer?</p> <p>23 A Controller.</p> <p>24 Q What does that mean?</p> <p>25 A Accountant.</p>	<p>Page 9</p> <p>1 Q Who did you work under at Coldwell Banker?</p> <p>2 A I don't know what you mean.</p> <p>3 Q Did you have a boss or a supervisor at Coldwell Banker?</p> <p>4 A The designated broker sales manager was Dave Mortimer.</p> <p>5 Q Did you pass the test the first time?</p> <p>6 A Yes.</p> <p>7 Q How long were you at Coldwell Banker?</p> <p>8 A Year and a half.</p> <p>9 Q Did you get any other certifications while at Coldwell</p> <p>10 Banker?</p> <p>11 A No.</p> <p>12 Q So your title was a licensed broker associate?</p> <p>13 A Yes.</p> <p>14 Q And is that currently your title?</p> <p>15 A Yes.</p> <p>16 Q What is the difference between a licensed broker</p> <p>17 associate and a broker's license?</p> <p>18 A I believe the broker is the one who is in charge of the</p> <p>19 broker associates.</p> <p>20 Q Reviews the work of the broker associates?</p> <p>21 A I'm not sure.</p> <p>22 Q After Coldwell Banker, 2008-ish, what did you do?</p> <p>23 A Moved to RE/MAX.</p> <p>24 Q Who hired you at RE/MAX?</p> <p>25 A Gene Hensley.</p>

<p style="text-align: right;">Page 10</p> <p>1 Q And would Gene still be considered your supervisor or 2 your boss?</p> <p>3 A No.</p> <p>4 Q Who is?</p> <p>5 A Tony Hensley.</p> <p>6 Q And, Bryan, can you tell me what the responsibilities of 7 an associate broker are?</p> <p>8 A I need more detail.</p> <p>9 Q Well, I assume you do your job five days a week or more. 10 What are your responsibilities as an associate broker to 11 RE/MAX realty?</p> <p>12 A To help my clients buy and sell property.</p> <p>13 Q Do you know what the responsibilities of a broker at 14 RE/MAX are?</p> <p>15 A The broker, no, I don't because I have not been a 16 broker.</p> <p>17 Q Well, would the broker be responsible for his or her 18 associate brokers?</p> <p>19 A Yes.</p> <p>20 Q And the broker in your office is Tony Hensley, correct?</p> <p>21 A Yes.</p> <p>22 Q Any other brokers?</p> <p>23 A Yanni Georgas is the other one. Tony is the -- I 24 believe, the designated.</p> <p>25 Q How many associate brokers are in your office?</p>	<p style="text-align: right;">Page 12</p> <p>1 A I don't want to answer.</p> <p>2 MR. BRIDGEMAN: No, I said you can answer it. Go 3 ahead.</p> <p>4 A Okay. Say again.</p> <p>5 Q (By Mr. Beardsley:) What was the advice given to you on 6 whether or not you could take the listing and sell the 7 house as is?</p> <p>8 A They said that I still -- I could sell it, but someone 9 else had beat me to it, so that's how I lost it.</p> <p>10 Q Did this conversation include discussions about a 11 Property Disclosure Statement?</p> <p>12 A No.</p> <p>13 Q You understand we're here today because of the sale of 14 Wild Bill's Campground and RV Park, correct?</p> <p>15 A Correct.</p> <p>16 Q Did you discuss that particular transaction with anyone 17 in your office at RE/MAX?</p> <p>18 A Not to my recollection.</p> <p>19 Q And if I understand you correctly, if you did discuss 20 it, it would have been with your broker and not an 21 associate broker; correct?</p> <p>22 A Yes.</p> <p>23 Q Is there anyone at your office that helps you with the 24 forms and paperwork involved in the sale of a property?</p> <p>25 A Yes.</p>
<p style="text-align: right;">Page 11</p> <p>1 A 33.</p> <p>2 Q When you have a real estate transaction, is it common to 3 discuss your deals with the other associate brokers in 4 the office?</p> <p>5 A No.</p> <p>6 Q Do you ever?</p> <p>7 A It's privileged.</p> <p>8 Q Do you ever discuss your deals with Tony Hensley or 9 Yanni Georgas or any other broker that you've worked 10 under?</p> <p>11 A If I have questions that I cannot answer.</p> <p>12 Q Such as?</p> <p>13 A Last time I asked them a question was about a person 14 wanting to sell their house as is.</p> <p>15 Q And what was your question?</p> <p>16 A If they could do it as is.</p> <p>17 Q And what did you end up doing?</p> <p>18 A I did not take the listing.</p> <p>19 Q Why not?</p> <p>20 A I lost it.</p> <p>21 Q What was the advice given to you?</p> <p>22 MR. BRIDGEMAN: Objection, form; relevance. You 23 can answer.</p> <p>24 A No.</p> <p>25 Q (By Mr. Beardsley:) Excuse me?</p>	<p style="text-align: right;">Page 13</p> <p>1 Q Who?</p> <p>2 A Our office manager, Lana Hudson.</p> <p>3 Q You say Lana?</p> <p>4 A Yes.</p> <p>5 Q And what does she do?</p> <p>6 A She is our office manager.</p> <p>7 Q Sure. What are her duties?</p> <p>8 A She checks our files. She makes sure that we have 9 everything in correct order and does our billing, 10 invoicing, and does our commission checks when we have a 11 close.</p> <p>12 Q Does she work for all of the associate brokers in the 13 office?</p> <p>14 A Yes.</p> <p>15 Q Does she put together listings for properties?</p> <p>16 A Not for me.</p> <p>17 Q And for this particular sale did she complete any of the 18 forms required for the transaction?</p> <p>19 A No.</p> <p>20 Q Who did that?</p> <p>21 A I did.</p> <p>22 Q So I take it you also put together the listing for the 23 property?</p> <p>24 A Yes.</p> <p>25 Q At the conclusion of a sale, what's the process to turn</p>

<p style="text-align: right;">Page 14</p> <p>1 the file in to get your commission check?</p> <p>2 A The forms we receive from the title company, and you</p> <p>3 give that with the file to Lana.</p> <p>4 Q Your entire file is turned over?</p> <p>5 A Yes.</p> <p>6 Q And does Lana then review the file prior to issuing you</p> <p>7 a check?</p> <p>8 A Yes.</p> <p>9 Q What is the document retention policy at your office?</p> <p>10 A How long do they keep the files?</p> <p>11 Q Yeah.</p> <p>12 A Seven years.</p> <p>13 Q So your entire file would still be kept with Lana; is</p> <p>14 that correct?</p> <p>15 A It's at our office, yes.</p> <p>16 Q Is there a handbook or any written responsibilities at</p> <p>17 BR/MAX describing your responsibilities and duties as an</p> <p>18 associate broker?</p> <p>19 A Under the new owners, I don't know if there has been.</p> <p>20 Q In May of 2017?</p> <p>21 A No.</p> <p>22 Q The prior owners, was there something?</p> <p>23 A I believe so, yes.</p> <p>24 Q What was it called?</p> <p>25 A I don't know.</p>	<p style="text-align: right;">Page 16</p> <p>1 Q Did you speak with anyone else besides your attorney?</p> <p>2 A No.</p> <p>3 Q Since this lawsuit was initiated, have you talked about</p> <p>4 it with anybody besides your attorney?</p> <p>5 A I told my brokers that it was happening, yes.</p> <p>6 Q Did you discuss in detail the substance of the Wild</p> <p>7 Bill's sale and this lawsuit?</p> <p>8 A I told them what was going on. I didn't go into detail.</p> <p>9 Q What did you tell them?</p> <p>10 A Just that I was in a lawsuit, and that I had talked to</p> <p>11 Mr. Mooney.</p> <p>12 Q You talked to Mr. Mooney about what?</p> <p>13 A It was before I was named. Excuse me.</p> <p>14 Q Did Mooney contact you?</p> <p>15 A Yes.</p> <p>16 Q And what was the substance of that conversation?</p> <p>17 A Asked me for some information, which I provided, and</p> <p>18 that was about it. It wasn't a very long conversation.</p> <p>19 Q What information?</p> <p>20 A I gave him the pamphlet, some notes I had on the</p> <p>21 meetings, and the financial information.</p> <p>22 Q When you say "pamphlet," are you referring to the</p> <p>23 listing?</p> <p>24 A Yes.</p> <p>25 Q And notes on meetings. Meetings with who?</p>
<p style="text-align: right;">Page 15</p> <p>1 Q Did you ever read it?</p> <p>2 A Yes.</p> <p>3 Q Have you ever been involved in a lawsuit?</p> <p>4 A No.</p> <p>5 Q What did you do today to prepare for this deposition?</p> <p>6 A Read through the information I received from Greg.</p> <p>7 Q Okay. And what information was that?</p> <p>8 A Questions -- I don't know the right terminology.</p> <p>9 Q Interrogatories?</p> <p>10 A Yes.</p> <p>11 Q Anything else?</p> <p>12 A That -- just have the stuff that I received from that,</p> <p>13 yeah.</p> <p>14 Q And I don't want you to tell me about any of the</p> <p>15 conversations you had with your attorney, but I do want</p> <p>16 to know what you were provided; okay? So you read</p> <p>17 through the interrogatory answers by my clients, I</p> <p>18 assume?</p> <p>19 A Yes.</p> <p>20 Q Did you review your file?</p> <p>21 A My file on Wild Bill's?</p> <p>22 Q Uh-huh.</p> <p>23 A No.</p> <p>24 Q Did you read or review anything else?</p> <p>25 A No.</p>	<p style="text-align: right;">Page 17</p> <p>1 A The Bendingtons.</p> <p>2 Q Did you also provide notes on meetings with Keith Grim?</p> <p>3 A No.</p> <p>4 Q Did you speak with anybody else regarding this lawsuit?</p> <p>5 A No.</p> <p>6 Q Were you contacted by any insurance company?</p> <p>7 A Oh, yes. I'm sorry, Rice.</p> <p>8 Q Say that again?</p> <p>9 A Rice is our insurance company.</p> <p>10 Q Okay. Did you provide a statement to the insurance</p> <p>11 company?</p> <p>12 A No. They asked for the information.</p> <p>13 MR. BRIDGESON: No, you didn't provide a</p> <p>14 statement.</p> <p>15 A No, I didn't provide a statement.</p> <p>16 Q (By Mr. Boardley:) Did they ask for your file?</p> <p>17 A Nope. They just asked for certain information.</p> <p>18 Q What information is that?</p> <p>19 A Basically, the same that I gave to Mr. Mooney.</p> <p>20 Q So the listing notes on meetings and financial</p> <p>21 information on the property, correct?</p> <p>22 A Yes.</p> <p>23 Q Anything else?</p> <p>24 A That's all I can remember.</p> <p>25 Q How do you know Keith Grim?</p>

<p style="text-align: right;">Page 18</p> <p>1 A I've known Keith Grim for a long time. He's a friend 2 of mine. 3 Q How many years? 4 A 30. 5 Q And how did you meet Keith? 6 A I was friends with his brother, Les. 7 Q What does Les do? 8 A Les is passed away. 9 Q Have you ever been in business with Keith Grim? 10 A No. 11 Q How many properties have you sold for Keith? 12 A One. 13 Q And on this property, Wild Bill's, how long were you the 14 agent prior to the sale in May of 2017? 15 A Off and on for 10 years. 16 Q So it was first listed in 2007? 17 A I believe so. 18 Q And you say "off and on". Can you tell me when it was 19 taken off the market after it was listed in 2007? 20 A I cannot. 21 Q The best of your recollection. 22 A About a year and a half. 23 Q During that first listing, were there any offers to 24 purchase? 25 A One.</p>	<p style="text-align: right;">Page 20</p> <p>1 purchase? 2 A I don't recall. 3 Q 2010, how long was it listed? 4 A Probably that same period of -- if that was the year 5 that we had it on or off, but it would be the off-season 6 is when it was listed. 7 Q And you think during this listing it was priced at \$99? 8 A If I remember correctly. 9 Q Any offers or interests in the property? 10 A I had plenty of interest in the property. I just can't 11 recall when the offers were, as far as the year is. 12 Q So prospective buyers viewed the property? 13 A Yes. 14 Q Walked through the property? 15 A Yes. 16 Q Did they have the property inspected? 17 A No. 18 Q Were there any other real estate agents involved during 19 this process? 20 A Yes. 21 Q Who? 22 A I believe her last name was Groves, was one person. 23 Kim Benning. I don't know her last name, her name was 24 Christy, I believe. 25 Q Christy?</p>
<p style="text-align: right;">Page 19</p> <p>1 Q Do you recall who did that? 2 A I do not. 3 Q That's fair. 4 Was there any inspection done on the property? 5 A Never come to terms. 6 Q What was it listed for? 7 A At that time it was listed at \$50. 8 Q How long was it off the market? 9 A To the best of my knowledge, I think six months. 10 Q And when it was relisted, talking in 2009, what was the 11 price? 12 A I believe it was still \$50. 13 Q How long on the second go-around was it listed for? 14 A If my memory serves me, that's when we went to taking it 15 off before the season started. So six months. 16 Q And after the season, did you put it back on? 17 A I would have to look in my notes. I know there was a 18 time that we kept it off for a year. I just -- I don't 19 remember the actual year for that. 20 Q Okay. So let's say you took it off for a year and then 21 relisted it again in 2010, correct? 22 A Possibly. 23 Q And do you remember the listing price? 24 A It was either \$50 or \$99. 25 Q I want to go back to the 2009 listing. Any offers to</p>	<p style="text-align: right;">Page 21</p> <p>1 A Yes. There was another lady out of Belle Fourche. 2 That's all I can think of right now. 3 Q And during this process with these numerous realtors 4 involved, any inspection ever completed? 5 A No. 6 Q Now on these walk-throughs with the property, I assume 7 you would be present, as well? 8 A Yes. 9 Q On all of them? 10 A Yes. 11 Q Okay. 2010 the property was taken off the market again 12 during the season, and just so we're clear, the season 13 runs June through August? 14 A Yes. 15 Q And then it's put back on, correct? 16 A After they're closed up, yes. 17 Q So in 2010 off-season, meaning September, back on the 18 market at what price? 19 A At that time I believe it would probably be the \$99. 20 Q And how long was it on the market? 21 A Until April. 22 Q Bryan, you originally listed this in 2007. I assume 23 that you were part of any financials that were completed 24 on the property and the business? 25 MR. KILMISTON: Objection, your.</p>

<p style="text-align: right;">Page 22</p> <p>1 A I was given the financials by Mr. Grimm.</p> <p>2 Q (By Mr. Beardsley:) So the financials were provided to</p> <p>3 you each time it was listed, correct?</p> <p>4 MR. BEARDSLEY: Objection, form.</p> <p>5 A They were not given to me immediately upon listing,</p> <p>6 because they weren't completed at that time.</p> <p>7 Q (By Mr. Beardsley:) So since 2007, at least, financials</p> <p>8 have been recorded and kept by either Grimm or you?</p> <p>9 MR. BEARDSLEY: Objection, form. And just for the</p> <p>10 purpose of your deposition, I'll object to the term</p> <p>11 "financials". If I can have a standing objection to</p> <p>12 that --</p> <p>13 MR. BEARDSLEY: Sure.</p> <p>14 MR. BEARDSLEY: -- then I won't interrupt you.</p> <p>15 A Say again.</p> <p>16 MR. BEARDSLEY: Read it back for him.</p> <p>17 (The previous question was read back by the court</p> <p>18 reporter.)</p> <p>19 A By Mr. Grimm.</p> <p>20 Q (By Mr. Beardsley:) And I suppose we could be more</p> <p>21 specific. The income and expense reports that were</p> <p>22 provided, is that what we're talking about here?</p> <p>23 A Yes.</p> <p>24 Q Did Keith and you have separate income and expense</p> <p>25 documents for each year?</p>	<p style="text-align: right;">Page 24</p> <p>1 that. That wasn't just 2010. That would be people that</p> <p>2 I have shown that I remember during the period of when I</p> <p>3 listed until when it was sold.</p> <p>4 Q During the ten-year period --</p> <p>5 A Correct.</p> <p>6 Q Got to let me finish. The ten-year period it's been on</p> <p>7 and off the market?</p> <p>8 A Yes.</p> <p>9 Q And this most recent time that it was on the market that</p> <p>10 we're discussing right now, any offers to purchase?</p> <p>11 A From the Remingtons?</p> <p>12 Q No. From any protective buyer that may have had</p> <p>13 interest in the property.</p> <p>14 A I don't recall during the exact year, no.</p> <p>15 Q Any inspections?</p> <p>16 A No.</p> <p>17 Q It was off the market in 2011 during the season, and</p> <p>18 then back on again, correct?</p> <p>19 A Yes.</p> <p>20 Q Still at 899?</p> <p>21 A Yes.</p> <p>22 Q Just for clarification, \$899,000?</p> <p>23 A Yes.</p> <p>24 Q And during this time period, it's on the market for</p> <p>25 six months; is that right?</p>
<p style="text-align: right;">Page 23</p> <p>1 A No.</p> <p>2 Q How would that work?</p> <p>3 A How would what work?</p> <p>4 Q Why didn't you have expense reports for each year?</p> <p>5 Wouldn't each year be different?</p> <p>6 A He provided me with the -- yeah, with the year. I'm</p> <p>7 not -- I don't understand what you're saying.</p> <p>8 Q Sure. So each season Keith would compile the income and</p> <p>9 expense documents and provide them to you in an effort</p> <p>10 to sell the property; is that accurate?</p> <p>11 A Yes.</p> <p>12 Q Okay. Where are we at here?</p> <p>13 After the 2010 season it's back on the market.</p> <p>14 How long was it on the market?</p> <p>15 A Again, if my memory serves me, it went until April.</p> <p>16 Q During this time, any interest in the property?</p> <p>17 A Yeah, I showed it every year.</p> <p>18 Q How many times did you show it?</p> <p>19 A I don't know.</p> <p>20 Q Ten? More than ten?</p> <p>21 A I couldn't even give you a good approximate.</p> <p>22 Q How many realtors were involved in showing it to their</p> <p>23 clients?</p> <p>24 A The list that I give you was from people during the time</p> <p>25 that I remember. I'm sorry. I should have clarified</p>	<p style="text-align: right;">Page 25</p> <p>1 A If I remember correctly, yes.</p> <p>2 Q And did you show the property during this time?</p> <p>3 A Yes.</p> <p>4 Q Any inspections?</p> <p>5 A No.</p> <p>6 Q Any offers to purchase?</p> <p>7 A There could have been. I just can't remember the years.</p> <p>8 Q At this particular time was it listed or acceptable to</p> <p>9 purchase on a contract for deed?</p> <p>10 A I know that Mr. Grimm changed his mind about doing the</p> <p>11 contract for deed. I just don't know what year that</p> <p>12 was.</p> <p>13 Q But your notes would reflect that, correct?</p> <p>14 A Yes, sir.</p> <p>15 Q Okay. So roughly May of '11 it's taken off the market</p> <p>16 again through August of '11, and then put back on the</p> <p>17 market?</p> <p>18 A I know there was a couple years in there we didn't list</p> <p>19 it again until later. I just -- I don't remember the</p> <p>20 exact --</p> <p>21 Q Sure. But, generally speaking, from 2007 to 2017 it was</p> <p>22 put on the market and taken off pursuant to the season?</p> <p>23 A Yes.</p> <p>24 Q And I take it there was a listing each time for the</p> <p>25 property?</p>

<p style="text-align: right;">Page 26</p> <p>1 A Either a listing or an addendum.</p> <p>2 Q And you created the listing addendum each time?</p> <p>3 A Yes.</p> <p>4 Q And how do you go about doing that?</p> <p>5 A We use an Exclusive Listing Agreement.</p> <p>6 Q And when you create the listing, and we'll get to it later, you have to be familiar with the property?</p> <p>7 MR. EHLANDSON: Objection, form.</p> <p>8 A Familiar, as in what?</p> <p>9 Q (By Mr. Boardsley:) What the property entails, the condition of the property? I mean, how do you create a listing if you're not familiar with the property?</p> <p>10 A I know the acres, description of the business.</p> <p>11 Q Prior to the sale of the property in May of '17, given the fact that it was listed by you for the prior 10 years, how many times would you say you've walked through the property?</p> <p>12 A I do not know.</p> <p>13 Q 50?</p> <p>14 A I don't know.</p> <p>15 Q Well, I mean, you show the property five times for 10 years, and it's on and off the market each year. Is 50 a fair estimate of how many times you've walked that property?</p> <p>16 A I just couldn't tell you.</p>	<p style="text-align: right;">Page 28</p> <p>1 Q In 2012 what was the price on the property?</p> <p>2 A 899.</p> <p>3 Q 2013 what was the price?</p> <p>4 A 899.</p> <p>5 Q Did it stay at 899 from 2014, 2015, 2016, and 2017?</p> <p>6 A Yes.</p> <p>7 Q And did the listing change over those years?</p> <p>8 A Change as how?</p> <p>9 Q The content of the listing. Now it was put together.</p> <p>10 A If Keith added anything, cabins, or if he did any updates, that was probably put on there.</p> <p>11 Q But you have access to every listing that was posted from the time you started trying to sell the property; is that right?</p> <p>12 A My listing -- my Exclusive Listing Agreement?</p> <p>13 Q No, the listing of the property that somebody would look at that would describe the buildings and the caspate and pictures, things of that nature.</p> <p>14 A Yes.</p> <p>15 (Exhibit 1 marked for identification.)</p> <p>16 Q Could you take a look at that, Bryan?</p> <p>17 A (Complied.)</p> <p>18 Q And is that the Purchase Agreement for the property that we're talking about today?</p> <p>19 A Yes.</p>
<p style="text-align: right;">Page 27</p> <p>1 Q More than 30?</p> <p>2 A I'll go with 30.</p> <p>3 Q Okay. I think your prior testimony was that when you show the property, you're present at the time?</p> <p>4 A Yes.</p> <p>5 Q So if we have documentation of how many times you showed the property, that would indicate how many times you walked through the property, as well?</p> <p>6 A Say again.</p> <p>7 Q If your file indicates how many times the property has been shown in the last 10 years, that would be reflective of how many times you actually walked the property when you showed it; correct?</p> <p>8 A I did not keep track of when I showed the property.</p> <p>9 Q You have no notation of when it was shown?</p> <p>10 A No.</p> <p>11 Q Do you keep a calendar?</p> <p>12 A Yeah.</p> <p>13 Q Would it be on your calendar?</p> <p>14 A I can't tell you for sure if it is or not, no.</p> <p>15 Q Is it your practice to put a showing down on your calendar?</p> <p>16 A It's either on a note, like a sticky note --</p> <p>17 Q Or a calendar? Do you keep a calendar at all?</p> <p>18 A Yes.</p>	<p style="text-align: right;">Page 29</p> <p>1 Q And this Purchase Agreement indicates that the purchase price was \$899,000?</p> <p>2 A Yes.</p> <p>3 Q And the finance and the purchase is by means of contract for deed with the seller, correct?</p> <p>4 A Yes.</p> <p>5 Q This agreement was signed on April 27, 2017?</p> <p>6 A Yes, by Mr. Remington. Yes.</p> <p>7 Q And closing on or before May 15, 2017; correct?</p> <p>8 A Yes.</p> <p>9 Q What was the specific date of closing?</p> <p>10 A I believe it was the 12th.</p> <p>11 Q I've seen the 12th and I've seen the 13th. That's why I asked it.</p> <p>12 A (Viewing cell phone.)</p> <p>13 MR. EHLANDSON: If you don't remember, you don't remember. That's fine. Tell him.</p> <p>14 Q (By Mr. Boardsley:) Can you tell me what you were looking at?</p> <p>15 A I was looking at my phone.</p> <p>16 Q What, on your phone? To tell you when the date of closing was?</p> <p>17 A I was on my calendar.</p> <p>18 Q It was either the 12th or the 13th, right?</p> <p>19 A The 12th.</p>

<p style="text-align: right;">Page 30</p> <p>1 Q 12th.</p> <p>2 And you drafted this document?</p> <p>3 A Yes.</p> <p>4 Q Did anyone review this document prior to the execution?</p> <p>5 A No.</p> <p>6 Q During the negotiations prior to closing, were there any</p> <p>7 changes made to the Purchase Agreement?</p> <p>8 A No.</p> <p>9 (Exhibit 2 marked for identification.)</p> <p>10 Q This is an Agency Agreement Addendum, correct?</p> <p>11 A Yes.</p> <p>12 Q And the date of this document is April 27, 2017;</p> <p>13 correct?</p> <p>14 A Yes.</p> <p>15 Q And is that your signature at the bottom of the page?</p> <p>16 A Yes.</p> <p>17 Q Indicating that you signed this document on April 27,</p> <p>18 2017, at 10 a.m.; right?</p> <p>19 A Yes.</p> <p>20 Q What's the purpose of this document?</p> <p>21 A It is to explain the agency that I was representing, and</p> <p>22 since I represented the seller and the buyer, I needed</p> <p>23 to explain what I could do.</p> <p>24 Q In addition to explaining to your clients, you</p> <p>25 understand by signing this you are also bound by the</p>	<p style="text-align: right;">Page 32</p> <p>1 Q That's it?</p> <p>2 A Yes.</p> <p>3 Q Well, doesn't it also mean that you may not knowingly</p> <p>4 say anything or do anything which might place one party</p> <p>5 at a disadvantage?</p> <p>6 A Yes.</p> <p>7 Q And that you may not represent the interests of either</p> <p>8 the seller, Keith Grimm; or my clients, the Beringtons,</p> <p>9 to the detriment of the other party?</p> <p>10 A Yes.</p> <p>11 Q So it's more than just doing what they asked you to do,</p> <p>12 isn't it?</p> <p>13 A No.</p> <p>14 Q It's not.</p> <p>15 So according to your understanding of your duty to</p> <p>16 loyalty, you don't think that includes the duty to</p> <p>17 advise your clients?</p> <p>18 A No.</p> <p>19 Q You agree that you're bound to inform each party of all</p> <p>20 facts which would affect the parties' decision to</p> <p>21 purchase the property?</p> <p>22 MR. ERLANDSON: Objection, form.</p> <p>23 A No.</p> <p>24 Q (By Mr. Beardsley:) I'd like you to take a look at</p> <p>25 Section 3 on Exhibit 2, and I want you to read the</p>
<p style="text-align: right;">Page 31</p> <p>1 terms set forth in this document?</p> <p>2 A Yes.</p> <p>3 Q And you understand that you owe the Beringtons duties of</p> <p>4 loyalty?</p> <p>5 MR. ERLANDSON: Objection, form.</p> <p>6 Q (By Mr. Beardsley:) You can answer.</p> <p>7 A Yes.</p> <p>8 Q That you owe the Beringtons duties of obedience?</p> <p>9 MR. ERLANDSON: Objection, form.</p> <p>10 A Yes.</p> <p>11 Q (By Mr. Beardsley:) Disclosure?</p> <p>12 A Yes.</p> <p>13 Q Confidentiality?</p> <p>14 A Yes.</p> <p>15 Q Reasonable care and diligence?</p> <p>16 A Yes.</p> <p>17 Q And full accounting?</p> <p>18 A Yes.</p> <p>19 Q In fact, by signing this you agreed to those duties,</p> <p>20 didn't you?</p> <p>21 MR. ERLANDSON: Objection, form.</p> <p>22 A Yes.</p> <p>23 Q (By Mr. Beardsley:) What do those mean to you?</p> <p>24 A As representing them, that means that I am to do what</p> <p>25 they have asked me to do.</p>	<p style="text-align: right;">Page 33</p> <p>1 second sentence of Subsection C into the record, please.</p> <p>2 A The broker is obligated to inform each party of all</p> <p>3 facts the broker knows which would affect the party's</p> <p>4 decision to permit the broker to represent both the</p> <p>5 owner and the buyer.</p> <p>6 Q So you would agree with me that as the real estate agent</p> <p>7 for the Beringtons you have an obligation to disclose</p> <p>8 all known material facts about the property which could</p> <p>9 affect the buyer's use or enjoyment of the property?</p> <p>10 A No.</p> <p>11 Q I want you to go down to Agent Obligations on that</p> <p>12 Exhibit 2 and please read the first sentence.</p> <p>13 A Regardless of representation, the broker shall disclose</p> <p>14 all known material facts about the property which could</p> <p>15 affect the buyer's/tenant's use or enjoyment of the</p> <p>16 property, disclose information which could have material</p> <p>17 impact on either party's ability to fulfill their</p> <p>18 obligations under the purchase/lease agreement, respond</p> <p>19 honestly and accurately to questions concerning the</p> <p>20 property and to deal honestly and fairly with all</p> <p>21 parties.</p> <p>22 Q And you were the agent on this document, correct?</p> <p>23 A Yes.</p> <p>24 Q And it says, Agent Obligations; that's what you just</p> <p>25 read from?</p>

<p style="text-align: right;">Page 34</p> <p>1 A Yes.</p> <p>2 Q Are you testifying here today that those are not your obligations?</p> <p>3</p> <p>4 A I did what the Remingtons asked me to do.</p> <p>5 Q So just so I'm clear, it's your testimony here today that your obligations were only to do what the Remingtons asked you to and have nothing to do with what's stated in this document?</p> <p>6</p> <p>7</p> <p>8</p> <p>9 MR. HILANDSON: Objection, form.</p> <p>10 A This is what they asked me to do. I did as they requested.</p> <p>11</p> <p>12 Q (By Mr. Beardsley:) And, Bryan, you understand that by signing this you agreed to follow the terms of Exhibit 2; correct?</p> <p>13</p> <p>14</p> <p>15 MR. HILANDSON: Objection, form; asked and answered.</p> <p>16</p> <p>17 A I did what they asked me to do.</p> <p>18 Q (By Mr. Beardsley:) So you're testifying here today that you did not agree to follow the duties set forth on Exhibit 2, correct?</p> <p>19</p> <p>20</p> <p>21 A I did what they asked me to do.</p> <p>22 Q And, Bryan, if you did not disclose all known material facts to your clients, that would be a breach of your obligation as a real estate agent; correct?</p> <p>23</p> <p>24</p> <p>25 MR. HILANDSON: Objection, form.</p>	<p style="text-align: right;">Page 36</p> <p>1 Q (By Mr. Beardsley:) Well, at times you represent buyers exclusively; correct?</p> <p>2</p> <p>3 A Yes.</p> <p>4 Q And at times you represent sellers exclusively?</p> <p>5 A Yes.</p> <p>6 Q So when you represent a buyer, you're telling me you can't explain what examples could affect their use or enjoyment of the property that they've purchased?</p> <p>7</p> <p>8</p> <p>9 A I'm not sure I can answer that, no.</p> <p>10 Q Well, would mold affect a buyer's use and enjoyment of a property?</p> <p>11</p> <p>12 A I don't know that.</p> <p>13 Q Would you purchase a house that had mold in it?</p> <p>14 A That's what you have inspections for.</p> <p>15 Q That's not my question. Would you purchase a house that had mold in it?</p> <p>16</p> <p>17 A Possibly.</p> <p>18 Q You understand that mold can be hazardous, correct?</p> <p>19 A Mold can also be remedied.</p> <p>20 Q You understand that mold can be hazardous, correct?</p> <p>21 A I also know it can be remedied.</p> <p>22 Q Please answer my question. Do you understand, "yes" or "no", that mold can be hazardous?</p> <p>23</p> <p>24 A Could it be? Yes.</p> <p>25 Q And it can be costly to remedy?</p>
<p style="text-align: right;">Page 35</p> <p>1 A I did what the Remingtons asked me to do.</p> <p>2 Q (By Mr. Beardsley:) I know you've said that about four times. I'm asking you if you don't disclose known material facts to your clients, that is a breach of your professional obligations, "yes" or "no"?</p> <p>3</p> <p>4</p> <p>5</p> <p>6 A No.</p> <p>7 Q No?</p> <p>8 A No.</p> <p>9 Q How long have you been a real estate agent?</p> <p>10 A Since 2005, February.</p> <p>11 Q How many transactions have you been a part of?</p> <p>12 A Off the top of my head, I don't know.</p> <p>13 Q Thousands?</p> <p>14 A No.</p> <p>15 Q Hundreds?</p> <p>16 A 2 to 300.</p> <p>17 Q Would you consider yourself an experienced real estate agent?</p> <p>18</p> <p>19 A Yes.</p> <p>20 Q Give me some examples of what could affect a buyer's use or enjoyment of a property?</p> <p>21</p> <p>22 MR. HILANDSON: Objection, form. When it's convenient for you, could we take a little break?</p> <p>23</p> <p>24 MR. BEARDSLEY: Sure, after he answers this.</p> <p>25 A I don't know what you're asking.</p>	<p style="text-align: right;">Page 37</p> <p>1 A I do not know that.</p> <p>2 Q And would you agree with me that the presence of mold could affect a purchaser's use or enjoyment of a particular property?</p> <p>3</p> <p>4</p> <p>5 A I do not know that.</p> <p>6 Q How about having part of a building or a structure in the right-of-way? Could that affect a buyer's use and enjoyment of the property?</p> <p>7</p> <p>8</p> <p>9 A I don't know that.</p> <p>10 Q Well, you understand that having a structure in the right-of-way is a violation of the federal regulation? You understand that, right?</p> <p>11</p> <p>12</p> <p>13 A I'm unaware of that.</p> <p>14 Q Are you aware that if you have a structure in the right-of-way that it needs to be removed?</p> <p>15</p> <p>16 A I'm unaware of that.</p> <p>17 Q Okay. And if you're required by law to remove a portion of a structure, that would be costly, wouldn't it?</p> <p>18</p> <p>19 A I am also unaware of that.</p> <p>20 Q You worked construction before you were a Realtor, right?</p> <p>21</p> <p>22 A As a laborer, yes.</p> <p>23 Q And you were an accountant?</p> <p>24 A Yes.</p> <p>25 Q And you're a college-educated man?</p>

<p style="text-align: right;">Page 38</p> <p>1 A Yes.</p> <p>2 Q And your testimony is that you're unaware that removing a portion of a structure is costly or not?</p> <p>3 A I'm unaware of it.</p> <p>4 Q And could having a building or structure in the right-of-way affect a buyer's use or enjoyment of the property?</p> <p>5 A I am unaware of that.</p> <p>6 Q If you purchased a property, Bryan, and the State required you to take a portion of that property and tear it down, would that affect your use of your property?</p> <p>7 A I have not experienced that, no.</p> <p>8 Q Sure. Hypothetically, if the State required you to remove a portion of your structure, let's just say it's a deck, you can't use your deck anymore, would that affect the use and enjoyment of your property?</p> <p>9 A I am unaware of that.</p> <p>10 MR. BERLANDSON: Good time?</p> <p>11 MR. HENKLEY: Yeah.</p> <p>12 (A recess was taken at this time, 11:25 a.m.</p> <p>13 The deposition resumed at 11:37 a.m.</p> <p>14 Mrs. Benington was not present at this time.)</p> <p>15 Q (By Mr. Beardsley:) Okay. Bryan, we're talking about Exhibit 2 and I was asking you questions about a buyer's use or enjoyment of the property and an agent's</p>	<p style="text-align: right;">Page 40</p> <p>1 Q Do you want to change your testimony with regard to whether sold would affect the use and enjoyment of property?</p> <p>2 A Yes.</p> <p>3 Q Yes, you do?</p> <p>4 A (Nodded.)</p> <p>5 Q And your testimony is that it would?</p> <p>6 A Yes.</p> <p>7 Q Similarly, would you like to change your testimony in regards to whether having a structure in the right-of-way would affect the use and enjoyment of the property?</p> <p>8 A Yes.</p> <p>9 Q And what's your testimony to that?</p> <p>10 A It would.</p> <p>11 Q Exhibit 2 that we've been talking about indicates that you must disclose information which could have a material impact on either party's ability to fulfill obligations under the Purchase Agreement; do you see that?</p> <p>12 A Yes.</p> <p>13 Q Can you tell me what that means to you?</p> <p>14 A Say again, please?</p> <p>15 Q Could you just tell me what that means to you.</p> <p>16 A What's the whole thing? Can you repeat that again,</p>
<p style="text-align: right;">Page 39</p> <p>1 obligation to disclose known material facts. And we were going through some examples, and I believe we left off with having a structure in the right-of-way. Do you recall those questions?</p> <p>2 A Yes.</p> <p>3 Q Have you ever previously dealt with a transaction where your client is the seller or the seller's property or structure was in the right-of-way?</p> <p>4 A I have not.</p> <p>5 Q And it's your testimony today that you don't know if that would affect a buyer's use and enjoyment of the property?</p> <p>6 A Yes, I did.</p> <p>7 Q If the property contains bridges and one of the bridges is faulty and a vehicle falls through, would that affect the use and enjoyment of the property by a buyer?</p> <p>8 A Yes.</p> <p>9 Q And if structures on the property are not in compliance with code, would that affect the use and enjoyment of the property?</p> <p>10 A Yes.</p> <p>11 Q If a seller provides misleading or inaccurate financial statements, would that affect the use and enjoyment of the property?</p> <p>12 A Yes.</p>	<p style="text-align: right;">Page 41</p> <p>1 please?</p> <p>2 Q Sure.</p> <p>3 A The whole sentence there?</p> <p>4 Q Yeah, that you must, as an agent, disclose information which could have a material impact on a party's ability to fulfill obligations under the Purchase Agreement.</p> <p>5 A Yes.</p> <p>6 Q Okay. Can you explain to me what that means?</p> <p>7 A If there were items that needed to be disclosed, they would need to be disclosed.</p> <p>8 Q Such as?</p> <p>9 A I don't know.</p> <p>10 Q Well, I mean, you know this business better than all of us sitting here. What are some items that need to be disclosed by a seller?</p> <p>11 A If the water heater was leaking, that would need to be disclosed.</p> <p>12 Q Okay. Structural defects?</p> <p>13 A Yes.</p> <p>14 Q Water damage?</p> <p>15 A Yes.</p> <p>16 Q Code violations?</p> <p>17 A Yes.</p> <p>18 Q Whether or not a property floods on a yearly basis?</p> <p>19 A Yes.</p>

Page 42

1 (Exhibit 3 marked for identification.)

2 Q Okay. Exhibit 3 is Buyers Agency Agreement; do you see

3 that?

4 A Yes.

5 Q That Buyers Agency Agreement pertains to this lawsuit

6 and sale of Wild Bill's, correct?

7 A Yes.

8 Q And what is the purpose of this form?

9 A This is to give to the client that says that they are

10 going to work with me on this transaction.

11 Q And it incorporates your work from the Purchase

12 Agreement through the end of the transaction, correct?

13 A Yes.

14 (Mrs. Bevington entered the deposition room at

15 this time.)

16 Q And on this there's a handwritten note that says, To be

17 paid by seller. I assume that's your handwriting?

18 A Yes.

19 Q And it was just the agreement that Grimm was going to

20 pay you?

21 A Yes.

22 Q And then at the bottom there, you signed this? That's

23 your signature?

24 A Yes.

25 Q And there's not a date. Can we assume it was signed by

Page 43

1 you on April 27, 2017?

2 A Yes.

3 Q All right. Now, up at the top, Bryan, in that first

4 paragraph, the last sentence indicates the broker and

5 buyer, as parties to this agreement, agree that a party

6 in breach of any of the covenants, promises, or

7 obligations arising under this contract shall be liable

8 and responsible for attorney's fee and costs that may

9 result from enforcement thereof as against the party in

10 breach. Do you see that?

11 A Yes.

12 Q And by executing this document, you agreed to that

13 provision?

14 A Yes.

15 MR. BERLANDSON: Just for the record, Mike, all the

16 highlighting that's been done in Exhibits 2 and 3, that

17 was your office; correct?

18 MR. BEARDSLEY: Yeah.

19 MR. BERLANDSON: Okay.

20 MR. BEARDSLEY: I just wanted to make it clearer

21 for the witness.

22 MR. BERLANDSON: Sure.

23 Q (By Mr. Beardsley:) Okay.

24 (Exhibit 4 marked for identification.)

25 Q Bryan, we've marked as Exhibit 4 Addendum/Amendment to

Page 44

1 Purchase Agreement, and I assume this is an addendum

2 that pertains to the Wild Bill's transaction; correct?

3 A Yes.

4 Q And the only modification, it seems, is to change the

5 wording of "Contract for Deed" to "Mortgage" in Purchase

6 Agreement and Addenda #1?

7 A Yes.

8 Q Was that ever done?

9 A No.

10 Q And I just -- I need to clarify this.

11 (Exhibit 5 marked for identification.)

12 Q And in Exhibit 5 there it says, Addenda #1. I presume

13 that that's what was referenced in Exhibit 4?

14 A Yes.

15 Q Okay. And you testified that the wording was not

16 changed, and under Number 8 it says Contract for Deed

17 instead of Mortgage?

18 A Right. This -- it was not changed.

19 Q Okay. Can you just clear this up for the record and

20 explain why there was this addendum indicating a change

21 and then there was not a change?

22 A This was a request by Brian Hagg, who prepared the

23 contract for deed, when he called up and said he wanted

24 it to be a mortgage, but then changed his mind and said

25 leave it as contract for deed. So that's why I never

Page 45

1 had Mr. Grimm's signature on here.

2 Q Okay. So Brian Hagg drafted the Contract for Deed?

3 A Yes.

4 Q And represented Grimm?

5 A Yes.

6 Q Okay. So when you listed the property the last time

7 that you listed Wild Bill's, did the listing indicate

8 that it would be sold as a Contract for Deed?

9 A It was one of the options.

10 Q And then apparently Grimm changed his mind and then

11 changed it back. If Mr. Hagg requested that it be

12 changed to a mortgage, I don't understand why he would

13 do that if Grimm didn't indicate he didn't want to do it

14 on a Contract for Deed anymore.

15 A No, that's -- Mr. Hagg called me up and asked me to

16 change it to a mortgage, but then he called me back and

17 said it would be fine being left as a Contract for Deed.

18 Q Okay.

19 A That was Mr. Hagg.

20 Q What other involvement did Mr. Hagg have in this

21 transaction, if you know?

22 A I do not.

23 Q So this document marked as Exhibit 4, this doesn't mean

24 anything? This was not part of the transaction?

25 A It was never executed because I never had Keith Grimm

<p style="text-align: right;">Page 46</p> <p>1 sign it.</p> <p>2 Q Okay.</p> <p>3 A Because Nogy called me back and asked me to keep it as</p> <p>4 Contract for Deed.</p> <p>5 Q Sure. And through your business as a Realtor you're</p> <p>6 familiar with a Seller's Property Condition Disclosure</p> <p>7 Statement?</p> <p>8 A Yes.</p> <p>9 Q What is the purpose of a Property Condition Disclosure</p> <p>10 Statement?</p> <p>11 A In selling a residence, the seller is required to</p> <p>12 complete the seller disclosure.</p> <p>13 Q Sure. I understand that. What's the purpose of doing</p> <p>14 that?</p> <p>15 A For them to answer truthful and honestly if there are</p> <p>16 any problems or no problems with the property.</p> <p>17 Q And why would the seller be obligated to do such a</p> <p>18 thing?</p> <p>19 MR. ERLANDSON: Objection, form.</p> <p>20 A Why would the seller be -- when it's a residence? A</p> <p>21 residence they are required to do a seller disclosure.</p> <p>22 Q (By Mr. Beardsley:) And that's to inform any</p> <p>23 prospective buyers of issues with the residence?</p> <p>24 A Correct.</p> <p>25 Q And this disclosure statement requires disclosure of any</p>	<p style="text-align: right;">Page 48</p> <p>1 MR. ERLANDSON: Objection, form. Just for the</p> <p>2 record, you're reciting basically a statute for him. If</p> <p>3 you want to show him the statute, the disclosure form is</p> <p>4 a statute and it would probably be helpful for him to</p> <p>5 look at it.</p> <p>6 Q (By Mr. Beardsley:) Would you like to see it?</p> <p>7 A Sure.</p> <p>8 Q Okay.</p> <p>9 MR. ERLANDSON: Just because you're asking him</p> <p>10 what's in the statute, I don't expect him to know that</p> <p>11 by heart, so --</p> <p>12 MR. BEARDSLEY: Sure. I thought he'd be familiar</p> <p>13 with it, but he can look at it.</p> <p>14 A This is not the one we use in our association.</p> <p>15 Q (By Mr. Beardsley:) It has a similar content, I</p> <p>16 believe. Well, you can tell me then, if you don't use</p> <p>17 it and say it's not included. Would past or present</p> <p>18 damage to the property, in your experience in</p> <p>19 representing a buyer or a seller, be disclosed in a</p> <p>20 proper disclosure form?</p> <p>21 A Yes.</p> <p>22 Q So even if mold can be remedied in a property, you still</p> <p>23 have to disclose that?</p> <p>24 A Yes.</p> <p>25 Q Use of a sump pump?</p>
<p style="text-align: right;">Page 47</p> <p>1 problems with lot lines or boundaries, correct?</p> <p>2 A Yes.</p> <p>3 Q And you'd agree with me that having a portion of a</p> <p>4 structure in the right-of-way would be a problem with</p> <p>5 lot lines or boundaries?</p> <p>6 A Yes.</p> <p>7 Q It also requires disclosure of pending zoning/building</p> <p>8 code restrictive covenant violation notices that could</p> <p>9 affect the property?</p> <p>10 A Yes.</p> <p>11 Q And that would include violations for fire pit</p> <p>12 regulations?</p> <p>13 A I don't recall that being on the seller disclosure, but</p> <p>14 if it is, yes.</p> <p>15 Q Well, I'm just -- I'm wondering, in your opinion, if</p> <p>16 zoning or building code or restrictive covenants, a fire</p> <p>17 pit regulation could fall within that?</p> <p>18 A Yes.</p> <p>19 Q The location of a property near a floodplain?</p> <p>20 A Yes.</p> <p>21 Q Water penetration?</p> <p>22 A Yes.</p> <p>23 Q Water damage - related repairs?</p> <p>24 A Yes.</p> <p>25 Q Past or present damage to the property?</p>	<p style="text-align: right;">Page 49</p> <p>1 A I'm not sure if that is on here, but sump pump, if it's</p> <p>2 operational, yes.</p> <p>3 Q And, in fact, there's a catchall section that requires</p> <p>4 disclosure of any other material fact or problem that</p> <p>5 may not appear specifically on that form; you understand</p> <p>6 that?</p> <p>7 A Yes.</p> <p>8 Q And as you are aware, these disclosures are required by</p> <p>9 South Dakota law, but they're also important in the real</p> <p>10 estate industry; aren't they?</p> <p>11 MR. ERLANDSON: Objection, form.</p> <p>12 A Yes.</p> <p>13 Q (By Mr. Beardsley:) And they need to be taken</p> <p>14 seriously?</p> <p>15 A Yes.</p> <p>16 Q And if a seller fails to disclose specific issues or</p> <p>17 problems with a property, that can adversely affect a</p> <p>18 prospective buyer's decision to purchase the property?</p> <p>19 A When purchasing a residential property, yes.</p> <p>20 (Exhibit 6 marked for identification.)</p> <p>21 Q Okay. Marked as Exhibit 6 is the listing for Wild</p> <p>22 Bill's Carpground, Saloon & Grill; correct?</p> <p>23 A Yes.</p> <p>24 Q And this is the listing that was operative during the</p> <p>25 transaction sale to the Rexingtons; is that right?</p>

Page 50

1 A Yes.

2 Q And I'd like you just to look through it quickly to make

3 sure that it's complete and accurate.

4 A (Complied.) Yes.

5 Q So the listings used in the previous 10 years, would

6 they have looked similar to this Exhibit Number 6?

7 A Yes.

8 Q And do you know of any material changes to the listing

9 over that time?

10 A The representation of the sleeping cabins, they were

11 added on during the course of the time that he owned it

12 so that could have changed. This building for

13 gatherings, that was added. The drive bridge was

14 changed during his time of ownership.

15 Q And I think we've established this, but I just want to

16 confirm. You, yourself, Bryan, drafted or put together

17 this particular listing?

18 A Yes.

19 Q I want you to take a look at Page 2.

20 A (Complied.)

21 Q Under Description of Property.

22 A Okay.

23 Q There are a number of things listed under this section

24 of the page, and around in the middle it says, Living

25 quarters; doesn't it?

Page 51

1 A Yes.

2 Q What does "living quarters" mean to you?

3 A An area in the building that you can go to sleep in.

4 Q So you're advertising it as a place for a human being to

5 live, right?

6 A Yes.

7 Q And, in fact, prior to the sale to the Beningtons

8 someone did live there, didn't they?

9 A I believe so, yes.

10 Q And his name is Red; is that correct?

11 A I don't know that.

12 Q Do you know who lived there?

13 A I believe the gentleman who was leasing the restaurant

14 was staying there.

15 Q Okay. And I think that was Brandon Presley, wasn't it?

16 A I believe so.

17 Q And didn't Keith have a handyman that also lived in the

18 building?

19 A I don't know.

20 Q But you're aware that prior to sale, at least one person

21 did live there?

22 A Yes.

23 Q In the living quarters that is advertised under

24 Description of Property --

25 A He was leasing the restaurant. I don't -- I didn't

Page 52

1 honestly --

2 Q I'm sorry. You've got to let me finish, okay?

3 A Yeah.

4 Q So you were aware that prior to the sale that there was

5 a person living in the living quarters, as described

6 under the Description of Property of Exhibit 6; correct?

7 A I know he was leasing the restaurant and bar. Do I know

8 that he stayed there? I do not. I never seen it.

9 Q But I thought you just testified you were aware somebody

10 was actually living there.

11 A Well, that's what I heard. I don't know personally.

12 Q But you heard somebody was living there?

13 A (Nodded.)

14 Q And if there is testimony that somebody was, in fact,

15 living in the living quarters, you'd have no reason to

16 dispute that?

17 A No.

18 Q Okay. And another term for living quarters would be a

19 "residence," wouldn't it?

20 A That is not how I described it, no.

21 Q Well, did the person living in the living quarters

22 describe it as their residence?

23 A I don't know.

24 Q Well, how would you define what a residence is?

25 A The building that this was in is an income-producing

Page 53

1 property, so I would not describe this as a residence.

2 Q That wasn't my question, but I'll go there. Do you own

3 any rental properties?

4 A I do not.

5 Q Do you understand that rental properties are income

6 producing?

7 A Yes.

8 Q And rental properties are also residences?

9 A Yes.

10 Q Okay. So would you define a residence as a dwelling for

11 somebody to live in?

12 A Yes.

13 Q I want you to flip to the last page of the listing,

14 please.

15 A (Complied.)

16 Q And, Bryan, this looks like a description of the living

17 quarters; correct?

18 A Yes.

19 Q And there's a kitchen?

20 A Yes.

21 Q And the picture indicates there's a dishwasher, a

22 kitchen sink, a refrigerator, and a stove in this

23 particular photo; is that accurate?

24 A That's a refrigerator there. This is a different room.

25 (Indicating.)

<p style="text-align: right;">Page 54</p> <p>1 Q Oh, I -- yeah, I'm talking about the photo above the 2 title "kitchen in living quarters". Do you see that 3 photo? 4 A Yes. 5 Q And that includes a stove, freezer/refrigerator, 6 dishwasher, and a kitchen sink and cabinets -- 7 A Yes. 8 Q -- in that photo? 9 A Yes. 10 Q And that's located in the main building on the property? 11 A Yes. 12 Q And then the next picture over says, Storage & Laundry 13 Room in living quarters; do you see that? 14 A Yes. 15 Q And I think that's what you were referring to. There's 16 a deep freeze and then a washer and dryer, looks like? 17 A Yes. 18 Q Okay. Then the third picture says, Office/Bedroom and 19 Full Bath; do you see that? 20 A Yes. 21 Q And all of these photos are taken from the main building 22 to describe the living quarters on this property? 23 A Yes. 24 Q In addition, this indicates that the basement has three 25 bedrooms, half a bath and a workshop area; is that</p>	<p style="text-align: right;">Page 56</p> <p>1 Q Have you worked for him that entire time? 2 A No. He sold the RR/MAX shortly after I was moved over 3 there by him. Asked to come over there by him. 4 Q Okay. And just refresh my memory. You went to RR/MAX 5 in what year? 6 A 2007. 7 Q And when did Gene sell it over to Tony? 8 A He sold it to Kelly Howie. 9 Q What year was that? 10 A I believe it was 2008. 11 Q Okay. But it's my understanding Gene is still selling 12 real estate -- 13 A Yes. 14 Q -- for RR/MAX? 15 A Yes. 16 Q So you work with Gene? 17 A Work with, yes. 18 Q Okay. And Gene is old, like this guy sitting next to 19 me, so it's safe to say he's been in the real estate 20 business for many years? 21 A Yes. 22 Q And you'd agree that he's a very respected real estate 23 agent in this state? 24 A Yes. 25 Q Very knowledgeable?</p>
<p style="text-align: right;">Page 55</p> <p>1 right? 2 A Yes. 3 Q And those are not depicted in photographs on this page, 4 correct? 5 A Yes. 6 Q So on the main building you have a bedroom and full bath 7 upstairs, correct? 8 A Yes. 9 Q A kitchen upstairs? 10 A Yes. 11 Q A laundry room upstairs? 12 A Yes. 13 Q And three bedrooms and a half bath in the basement, 14 right? 15 A Yes. 16 Q And do you know if Keith periodically stayed in the 17 living quarters? 18 A Yes. 19 Q He did? 20 A Yes. 21 Q We've already established that you know Gene Hensley, 22 correct? 23 A Yes. 24 Q How long have you known Gene? 25 A 18 years.</p>	<p style="text-align: right;">Page 57</p> <p>1 A Yes. 2 Q Are you aware that Gene Hensley has testified as an 3 expert in numerous lawsuits? 4 A I am not aware. 5 Q Would you agree that Gene Hensley is qualified to 6 provide expert opinions regarding Realtor obligations 7 and real estate transactions? 8 MR. ERLANDSON: Hold on. Objection. You're 9 calling for him to make a legal conclusion, and it's 10 well beyond the scope of this witness. 11 Q (By Mr. Beardsley:) You can answer. 12 MR. ERLANDSON: No, you can't. It's not an 13 appropriate question. 14 MR. BEARDSLEY: Then I'll certify the question. 15 MR. ERLANDSON: Go ahead. 16 Q (By Mr. Beardsley:) So just so I'm clear, I asked you 17 if you have an opinion regarding whether Gene is 18 qualified to give an expert opinion regarding real 19 estate transactions and Realtor obligations, and you're 20 going to follow the advice of counsel and not answer the 21 question; is that correct? 22 A Correct. 23 Q Have you ever assisted Gene with providing expert 24 opinions? 25 A No.</p>

<p style="text-align: right;">Page 58</p> <p>1 Q Have you ever been retained to provide expert opinions?</p> <p>2 A Once.</p> <p>3 Q Okay. Tell me about that.</p> <p>4 A It was -- well, I'm not sure if I can discuss it, to be honest with you.</p> <p>5</p> <p>6 Q Well, you don't have to tell me the names of the parties just yet; but, in general, why were you retained?</p> <p>7</p> <p>8 A To give my opinion on a value of a property.</p> <p>9 Q Did the lawsuit involve a real estate agent being sued?</p> <p>10 A No.</p> <p>11 Q I'm sorry?</p> <p>12 A No.</p> <p>13 Q What did the lawsuit involve?</p> <p>14 A I don't want to -- I don't know if I'm at liberty to say.</p> <p>15</p> <p>16 Q I think you are.</p> <p>17 A No.</p> <p>18 Q You can answer.</p> <p>19 A No thank you.</p> <p>20 MR. BEARDSLEY: Counsel?</p> <p>21 MR. ERLANDSON: Let me have a moment to discuss that with him, if you don't mind.</p> <p>22</p> <p>23 MR. BEARDSLEY: Sure. No problem.</p> <p>24 (Off the record briefly.)</p> <p>25 MR. ERLANDSON: In the case that there may be a</p>	<p style="text-align: right;">Page 60</p> <p>1 A Yes.</p> <p>2 Q Was the case tried to a jury or a court or was it settled out of court?</p> <p>3</p> <p>4 A I don't feel comfortable answering.</p> <p>5</p> <p>6 MR. BEARDSLEY: Greg, just as long as we have an understanding, we'll keep it open for this purpose, I'm fine.</p> <p>7</p> <p>8 MR. ERLANDSON: Sure.</p> <p>9 MR. MOONEY: Just for clarification, Mike and Greg, you said it involved, Bryan, the evaluation of a piece of property?</p> <p>10</p> <p>11 THE WITNESS: Yes.</p> <p>12 MR. MOONEY: That was the sole purpose of your retention?</p> <p>13</p> <p>14 THE WITNESS: Yes.</p> <p>15</p> <p>16 MR. MOONEY: Okay. I just want to make sure I understood that.</p> <p>17</p> <p>18 Q (By Mr. Beardsley:) Are you specifically familiar with any of the cases Mr. Gene Hensley has provided expert opinions in?</p> <p>19</p> <p>20 A No.</p> <p>21 Q Are you familiar with the case of Paha Sapa Adventure, LLC, versus Havasu Oasis Properties, LLC?</p> <p>22</p> <p>23 A Not completely, no.</p> <p>24 Q Are you familiar with the sale of the Horse Thief</p>
<p style="text-align: right;">Page 59</p> <p>1 confidentiality provision to prevent his disclosure, I'd be happy, if we could get a copy, to take a look at it, and if there isn't any such prohibition, then we can supplement the answer. But if there is, I just -- he's not comfortable answering the question.</p> <p>2</p> <p>3 MR. BEARDSLEY: I just want to know the nature of the lawsuit. I don't want to know the parties. I don't need to know the outcome. But in terms of any further questions, I'd like to know the nature of the lawsuit and what his opinion included.</p> <p>4</p> <p>5 MR. ERLANDSON: And I haven't seen the confidentiality provision so I can't tell you whether even discussing the nature of the suit would be a breach for him. So --</p> <p>6</p> <p>7 MR. BEARDSLEY: Sure. Then I'd just request that we keep this deposition open for those purposes.</p> <p>8</p> <p>9 MR. ERLANDSON: Sure.</p> <p>10</p> <p>11 Q (By Mr. Beardsley:) And I understand you don't feel comfortable answering that, and Greg and I will review any confidentiality document and go from there; okay?</p> <p>12</p> <p>13 A Yes.</p> <p>14 Q But you have been retained to provide an expert opinion in at least one case?</p> <p>15</p> <p>16 A Yes.</p> <p>17 Q Did you provide a report?</p>	<p style="text-align: right;">Page 61</p> <p>1 Campground?</p> <p>2 A I am not.</p> <p>3 Q Do you know where the Horse Thief Campground is?</p> <p>4 A I do.</p> <p>5 Q And Horse Thief Campground is pretty similar to Wild Bill's, isn't it?</p> <p>6</p> <p>7 A They're both campgrounds.</p> <p>8 Q How many campgrounds have you sold as an agent?</p> <p>9 A Five.</p> <p>10 Q Can you please list them for me?</p> <p>11 A Most recent was Wild Bill's. And then I sold Whispering Pines. I helped someone buy that, and then I sold it. So there's two more. Fort Walikit, and Spokane Creek.</p> <p>12</p> <p>13 Q Fort Walikit?</p> <p>14 A Yes.</p> <p>15</p> <p>16 MR. MOONEY: And you say Spokane Creek?</p> <p>17</p> <p>18 THE WITNESS: Yes.</p> <p>19 Q (By Mr. Beardsley:) Where are the last two located?</p> <p>20 A Fort Walikit is in Ouster, and Spokane Creek is Keystone.</p> <p>21 Q Do these campgrounds include cabins and RV sites?</p> <p>22 A Yes.</p> <p>23 Q Any restaurants or bars on the property?</p> <p>24 A Whispering Pines had a little food and beer area.</p> <p>25 Q Okay. Any of these properties have living quarters?</p>

Page 62	Page 64
<p>1 A Yes.</p> <p>2 Q Which ones?</p> <p>3 A I believe all of them.</p> <p>4 Q Are you aware that Gene Hensley testified that because</p> <p>5 the Horse Thief Campground contained living quarters and</p> <p>6 a residential structure, that a Property Disclosure</p> <p>7 Statement was required? Are you aware of that?</p> <p>8 A No.</p> <p>9 Q Do you disagree with Mr. Hensley's expert opinion?</p> <p>10 MR. ERLANDSON: Hold on. We're not going to</p> <p>11 answer questions about what he believes or doesn't</p> <p>12 believe about Mr. Hensley's potential testimony or</p> <p>13 expert opinions in other cases. You're here to find out</p> <p>14 facts about what he knows about this particular case.</p> <p>15 And so I'm just going to object to that line of</p> <p>16 questioning. It's irrelevant. It's bordering on</p> <p>17 harassment and it's outside of the scope of this</p> <p>18 witness.</p> <p>19 MR. BEARDSLEY: This witness has been an expert</p> <p>20 himself. He's been in the real estate business for</p> <p>21 years. I think I can ask him if he agrees with that.</p> <p>22 MR. ERLANDSON: There's a lot of real estate</p> <p>23 experts out there. You can ask him about if he's going</p> <p>24 to adopt other expert opinions. I'm just -- it seems</p> <p>25 like we're going a little bit far off course here.</p>	<p>1 A No.</p> <p>2 Q On the four other campgrounds that you have sold, or</p> <p>3 purchased and sold as an agent, all of which had living</p> <p>4 quarters on the property, did any of them include a</p> <p>5 Property Disclosure Statement?</p> <p>6 A No.</p> <p>7 Q Does RR/MAX have any specific policies or guidelines to</p> <p>8 help a broker associate determine when a Property</p> <p>9 Disclosure Statement is required?</p> <p>10 A No.</p> <p>11 Q Okay. We've talked a little bit about one of the</p> <p>12 structures being in the right-of-way. Are you familiar</p> <p>13 with that?</p> <p>14 A No.</p> <p>15 Q Were you aware that Mr. Grimm was contacted numerous</p> <p>16 times by the South Dakota Department of Transportation</p> <p>17 that part of his structure was, in fact, in the</p> <p>18 right-of-way?</p> <p>19 A No.</p> <p>20 (Exhibit 7 marked for identification.)</p> <p>21 Q Before you is Exhibit 7. It's a letter from the</p> <p>22 Department of Transportation to Keith Grimm dated</p> <p>23 November 9, 2016; correct?</p> <p>24 A Yes.</p> <p>25 Q And this was before the sale to the Remingtons?</p>
Page 63	Page 65
<p>1 MR. MOONEY: Can I ask a dumb question? Has Gene</p> <p>2 offered an opinion in this case?</p> <p>3 MR. ERLANDSON: No. Have you hired Gene?</p> <p>4 MR. BEARDSLEY: No.</p> <p>5 MR. ERLANDSON: Is he your expert?</p> <p>6 MR. BEARDSLEY: No.</p> <p>7 MR. ERLANDSON: So you're asking about an expert</p> <p>8 you've not even hired, so --</p> <p>9 MR. MOONEY: Just want to make sure I understood.</p> <p>10 MR. ERLANDSON: Okay. All right. So --</p> <p>11 Q (By Mr. Beardsley:) Well, you've known Gene for years.</p> <p>12 You've worked with him. I'm just asking if you agree</p> <p>13 with his opinion.</p> <p>14 MR. ERLANDSON: And you're vouching that's what he</p> <p>15 testified to or gave an opinion on a different case</p> <p>16 that's unrelated to this one?</p> <p>17 MR. BEARDSLEY: Yes.</p> <p>18 MR. ERLANDSON: Just so I understand for the</p> <p>19 purposes of your questioning.</p> <p>20 MR. BEARDSLEY: Yes.</p> <p>21 MR. ERLANDSON: And he's --</p> <p>22 A Not going to answer.</p> <p>23 Q (By Mr. Beardsley:) Is it your opinion that a Property</p> <p>24 Disclosure Statement is required when there is a</p> <p>25 residential structure on the property?</p>	<p>1 A Yes.</p> <p>2 Q And this letter by the Department of Transportation is</p> <p>3 informing Mr. Grimm that a portion of the deck is</p> <p>4 encroaching the right-of-way by 1.5 feet on the north</p> <p>5 side of U.S. Highway 385; do you see that?</p> <p>6 A I do.</p> <p>7 Q And the federal regulations require that that portion of</p> <p>8 the deck be removed from the right-of-way, right?</p> <p>9 A Yes.</p> <p>10 Q And it says, Please remove this portion of deck out of</p> <p>11 the right-of-way by October 1, 2017; correct?</p> <p>12 A Yes.</p> <p>13 Q And Mr. Grimm never informed you of this?</p> <p>14 A No.</p> <p>15 Q As the agent trying to sell this property, would you</p> <p>16 have liked to know about this?</p> <p>17 A I did not know.</p> <p>18 Q Sure. I understand that.</p> <p>19 Would you have liked to know that a portion of the</p> <p>20 structure was in the right-of-way and had to be removed?</p> <p>21 A I didn't know.</p> <p>22 Q Mr. Grimm should have told you about this, shouldn't he</p> <p>23 have?</p> <p>24 A I don't know.</p> <p>25 Q You would agree that if the Remingtons didn't know about</p>

<p style="text-align: right;">Page 66</p> <p>1 this and after the purchase of the property received</p> <p>2 notice from the Department of Transportation that they</p> <p>3 had to remove a portion of their deck, that that would</p> <p>4 affect the use and enjoyment of their property?</p> <p>5 A Yes.</p> <p>6 Q And, additionally, if a portion of the parking lot was</p> <p>7 in the right-of-way that had to be surrendered to the</p> <p>8 State, that would affect the use and enjoyment of the</p> <p>9 property?</p> <p>10 A Yes.</p> <p>11 Q And these additional costs could affect the decision of</p> <p>12 a potential buyer to actually even purchase the</p> <p>13 property?</p> <p>14 A I don't know.</p> <p>15 Q Well, you have a piece of property listed and a purchase</p> <p>16 price, and the prospective buyers are unaware of</p> <p>17 thousands of dollars of incurred costs after the</p> <p>18 purchase. That could affect their decision to actually</p> <p>19 make the purchase, couldn't it?</p> <p>20 A I don't know.</p> <p>21 Q Would it affect your decision to make a purchase?</p> <p>22 A I don't know.</p> <p>23 Q Would it upset you if a seller didn't disclose this to</p> <p>24 you, as the buyer of a piece of property?</p> <p>25 A I wasn't the buyer. I don't know.</p>	<p style="text-align: right;">Page 68</p> <p>1 Steve -- I'm going to spell it -- M-I-S-G-E that's</p> <p>2 listed on that document?</p> <p>3 A No.</p> <p>4 Q You don't know or, no, he did not?</p> <p>5 A I do not know.</p> <p>6 Q And you're not aware of anything that Mr. Grims did to</p> <p>7 warn my clients of this issue, are you?</p> <p>8 A I am not aware.</p> <p>9 Q But at this time this particular piece of property was</p> <p>10 listed by you, right?</p> <p>11 A Yes.</p> <p>12 Q And you didn't do anything to inform the Remingtons of</p> <p>13 this potential issue, did you?</p> <p>14 A I didn't know of it.</p> <p>15 Q When you list a property for a seller, what type of</p> <p>16 questions do you generally ask?</p> <p>17 A What they want to sell it for. What the property</p> <p>18 contains.</p> <p>19 Q Do you ever ask if a structure is in the right-of-way?</p> <p>20 A No.</p> <p>21 Q Do you ever ask about material defects?</p> <p>22 A No.</p> <p>23 Q Do you ever ask about mold?</p> <p>24 A No.</p> <p>25 Q Do you ever ask if the bridges are faulty?</p>
<p style="text-align: right;">Page 67</p> <p>1 Q I understand that. If you were buying a piece of</p> <p>2 property, seller was receiving notices from the</p> <p>3 Department of Transportation saying a portion of your</p> <p>4 building has to be removed and he sold it without</p> <p>5 telling you, would that upset you?</p> <p>6 A I was not the buyer. I don't know.</p> <p>7 Q Keith Grims was well aware that his property was in</p> <p>8 violation of federal regulations when he sold it to the</p> <p>9 Remingtons, wasn't he?</p> <p>10 MR. MCCOY: Objection, foundation.</p> <p>11 MR. BRADSHAW: Join.</p> <p>12 A I do not know.</p> <p>13 Q (By Mr. Beardsley:) Well, he received a notice from the</p> <p>14 Department of Transportation --</p> <p>15 A I see that.</p> <p>16 Q -- and that was prior to the sale, wasn't it?</p> <p>17 A Yes.</p> <p>18 Q I understand it's your position that a Property</p> <p>19 Disclosure Statement is not required in this case, but</p> <p>20 if you were selling a residential home and your client</p> <p>21 received a notice similar to that, the seller received a</p> <p>22 notice similar to that, that would have to be disclosed</p> <p>23 to the buyer, wouldn't it?</p> <p>24 A If it was a residential home, yes.</p> <p>25 Q Do you know if Keith Grims contacted Mike Carlson or</p>	<p style="text-align: right;">Page 69</p> <p>1 A No.</p> <p>2 Q Why don't you ask these questions?</p> <p>3 A Because they're working. I --</p> <p>4 Q I'm sorry. I didn't hear that.</p> <p>5 A They're working.</p> <p>6 Q They're working; what does that mean?</p> <p>7 A I -- the bridges are fine when I listed the property.</p> <p>8 Q Well, sir, in a situation like this where you represent</p> <p>9 both the seller and the buyer, wouldn't it be prudent</p> <p>10 for you to ask these simple questions to make sure that</p> <p>11 they're buying a sound piece of property, being the</p> <p>12 Remingtons?</p> <p>13 A No.</p> <p>14 Q Because, according to you, the only obligation you have</p> <p>15 is to do what they ask you to do, right?</p> <p>16 A Yes.</p> <p>17 Q In your line of work, your clients hire an agent for a</p> <p>18 reason, right?</p> <p>19 A Yes.</p> <p>20 Q And they depend on you for advice, correct?</p> <p>21 A Yes.</p> <p>22 Q Most people that make large purchases don't do it all</p> <p>23 the time, do they?</p> <p>24 A I don't know that.</p> <p>25 Q And your clients entrust you to make sure they don't get</p>

<p style="text-align: right;">Page 70</p> <p>1 a bad deal, don't they?</p> <p>2 MR. BRANDSON: Objection, form.</p> <p>3 A I don't know that.</p> <p>4 Q (By Mr. Beardsley:) When somebody retains you for your</p> <p>5 services as a real estate agent, you expect that they</p> <p>6 would trust you; correct?</p> <p>7 A Yes.</p> <p>8 Q And when you represented Duane and Melody Resington, you</p> <p>9 didn't ask one question to Keith Grimm about any</p> <p>10 problems or issues with the property?</p> <p>11 A No.</p> <p>12 Q You were familiar with this property for 10 years,</p> <p>13 personally showed it over 30 times, and never once</p> <p>14 inquired about any issues or problems with the property?</p> <p>15 A No.</p> <p>16 Q Do you think that's appropriate?</p> <p>17 A Yeah.</p> <p>18 Q We talked about Brandon Presley, I believe his name is,</p> <p>19 that leased the restaurant from Keith Grimm. You're</p> <p>20 familiar with Brandon Presley?</p> <p>21 A I never met him, no.</p> <p>22 Q And Mr. Presley has indicated that the basement of the</p> <p>23 living quarters that we talked about flooded each year.</p> <p>24 Are you aware of that?</p> <p>25 A No.</p>	<p style="text-align: right;">Page 72</p> <p>1 A If that were the case, yes.</p> <p>2 Q (By Mr. Beardsley:) And, Bryan, you would agree with me</p> <p>3 that concealing the presence of mold or any sort of</p> <p>4 water damage to a buyer is not appropriate?</p> <p>5 A I'm unaware of anyone concealing anything.</p> <p>6 Q That's not my question.</p> <p>7 Concealing the presence of mold or water damage to</p> <p>8 a prospective buyer by a seller is not an appropriate</p> <p>9 thing to do --</p> <p>10 A Yes.</p> <p>11 Q -- correct?</p> <p>12 A Yes.</p> <p>13 Q And due to this flooding, are you aware that Mr. Grimm</p> <p>14 used a sump pump in the basement?</p> <p>15 A I am not.</p> <p>16 Q And Grimm removed it prior to the sale to the Resingtons</p> <p>17 in an effort to conceal the water issues; are you aware</p> <p>18 of that?</p> <p>19 A No.</p> <p>20 Q During the 10 years that you had this property listed</p> <p>21 and you'd show it in excess of 30 times, what times of</p> <p>22 the year would you generally show the property?</p> <p>23 A Winter.</p> <p>24 Q Did you ever show it in the spring?</p> <p>25 A Yes.</p>
<p style="text-align: right;">Page 71</p> <p>1 Q Subsequent to this lawsuit are you aware that there was</p> <p>2 a mold problem in the basement of the living quarters?</p> <p>3 A No.</p> <p>4 Q Have you seen any photos of the mold?</p> <p>5 A Only from what I was given by your --</p> <p>6 Q At anytime during the 10 years of listing this property</p> <p>7 on and off, did you ever recommend to Mr. Grimm to make</p> <p>8 modifications to the living quarters or the basement?</p> <p>9 A No.</p> <p>10 Q But if Keith Grimm ever did make any modifications, he</p> <p>11 would tell you; correct?</p> <p>12 MR. BRANDSON: Objection, form.</p> <p>13 A Yes.</p> <p>14 Q (By Mr. Beardsley:) For the purpose of updating the</p> <p>15 listing?</p> <p>16 A Yes.</p> <p>17 Q Prior to selling Wild Bill's to my clients, I assure you</p> <p>18 walked through the living quarters?</p> <p>19 A Yes.</p> <p>20 Q And the basement?</p> <p>21 A Yes.</p> <p>22 Q You would agree that yearly flooding and the existence</p> <p>23 of mold is something that should be disclosed to a</p> <p>24 prospective buyer?</p> <p>25 MR. BRANDSON: Objection, form.</p>	<p style="text-align: right;">Page 73</p> <p>1 Q In fact, didn't you show it to the Resingtons in the</p> <p>2 spring?</p> <p>3 A I did not.</p> <p>4 Q Who showed it to the Resingtons?</p> <p>5 A I believe Mr. Grimm did.</p> <p>6 Q Would you agree that mold can be one of the worst</p> <p>7 structural defects in a building?</p> <p>8 MR. BRANDSON: Objection, form.</p> <p>9 A I don't know that.</p> <p>10 Q (By Mr. Beardsley:) Mold can make a structure hard to</p> <p>11 sell; fair?</p> <p>12 A I don't know that.</p> <p>13 Q You don't know that.</p> <p>14 Do you know whether or not the existence of black</p> <p>15 mold can diminish the value of a property?</p> <p>16 MR. BRANDSON: Objection, form.</p> <p>17 A I don't know that.</p> <p>18 Q (By Mr. Beardsley:) But you've given expert testimony</p> <p>19 on property valuations before, correct?</p> <p>20 A Once.</p> <p>21 Q And if there's presence of a hazardous material in the</p> <p>22 house, that could affect the value of a property?</p> <p>23 A I don't know that.</p> <p>24 Q If you're trying to sell a house, sir, and the house</p> <p>25 contains a hazardous condition, what would your</p>

<p style="text-align: right;">Page 74</p> <p>1 recommendation to the seller be?</p> <p>2 A To remedy the problem.</p> <p>3 Q Because otherwise it's harder to sell, isn't it?</p> <p>4 A I don't know that for sure.</p> <p>5 Q Would your recommendation be to also disclose the</p> <p>6 problem?</p> <p>7 A Yes.</p> <p>8 Q Okay. Why don't you go back to exhibit -- the listing.</p> <p>9 A (Complied.)</p> <p>10 Q Got it? And Page 5.</p> <p>11 A Yes.</p> <p>12 Q It indicates here there's a new drive bridge?</p> <p>13 A Yes.</p> <p>14 Q How many bridges were on the property, do you know?</p> <p>15 A To drive on, two.</p> <p>16 Q And the listing indicates that these bridges, or just</p> <p>17 this one bridge, was rebuilt?</p> <p>18 A This one bridge was rebuilt since he purchased the</p> <p>19 property.</p> <p>20 Q And do you know if Mr. Grimm made any other</p> <p>21 representations to the Remingtons that the other bridge</p> <p>22 was rebuilt and widened?</p> <p>23 A I have that on a list, yes, that it was -- I believe now</p> <p>24 timbers.</p> <p>25 Q Okay. Did you advise Keith Grimm to do that?</p>	<p style="text-align: right;">Page 76</p> <p>1 sell the property?</p> <p>2 A When someone would prove that they had the means to do a</p> <p>3 purchase, I would give them the information.</p> <p>4 Q For what purpose?</p> <p>5 A For the buyer.</p> <p>6 Q You provide the financial condition of the business to</p> <p>7 the buyer to try to sell the place?</p> <p>8 A Yes.</p> <p>9 Q And that was your goal was to sell it?</p> <p>10 A Yes.</p> <p>11 Q Were you ever provided an improvement list?</p> <p>12 A I did the improvement list.</p> <p>13 Q You did the improvement list?</p> <p>14 A Yes.</p> <p>15 Q How did you do that?</p> <p>16 A By talking to Keith, asking him the improvements that he</p> <p>17 did on the property.</p> <p>18 Q And it would be inappropriate to inflate the values on</p> <p>19 the improvement list, wouldn't it?</p> <p>20 A No.</p> <p>21 Q So according to you, if you claim an improvement was</p> <p>22 worth \$10,000 when, in fact, it was worth 8, there would</p> <p>23 be nothing wrong with that?</p> <p>24 A I was not aware of that.</p> <p>25 Q I'm just saying hypothetically, if you are not accurate</p>
<p style="text-align: right;">Page 75</p> <p>1 A To rebuild?</p> <p>2 Q Yeah.</p> <p>3 A No.</p> <p>4 Q Did you ever inspect or go look at both of the bridges?</p> <p>5 A When I showed the property, I seen them.</p> <p>6 Q And are you aware since the purchase by my clients, two</p> <p>7 different motor homes have went through the bridge?</p> <p>8 A No.</p> <p>9 Q And you'd agree with me that if the seller maintains</p> <p>10 that the bridge was rebuilt and widened when, in fact,</p> <p>11 it was not, that that would be improper?</p> <p>12 A Yes. Yes.</p> <p>13 Q The financial condition of the property, how did you</p> <p>14 obtain that information?</p> <p>15 A Mr. Grimm give me the financial information.</p> <p>16 Q What did that consist of?</p> <p>17 A Profit and loss statement.</p> <p>18 Q Anything else?</p> <p>19 A When the tax returns were completed, I would get a copy</p> <p>20 of that.</p> <p>21 Q Anything else?</p> <p>22 A No.</p> <p>23 Q What did you do with this information?</p> <p>24 A Kept it in my file.</p> <p>25 Q And how would you use this information when trying to</p>	<p style="text-align: right;">Page 77</p> <p>1 and honest in the value of the improvements, that would</p> <p>2 be inappropriate?</p> <p>3 A Yes.</p> <p>4 Q So, in other words, if you overinflate the value of the</p> <p>5 improvements, that would deceive a potential buyer;</p> <p>6 correct?</p> <p>7 A Yes.</p> <p>8 Q Tell me about your meetings with the Remingtons. When</p> <p>9 did you first meet them?</p> <p>10 A The day Mr. Remington came to my office to write the</p> <p>11 offer.</p> <p>12 Q Do you remember that day?</p> <p>13 A Pretty good.</p> <p>14 Q What day was it?</p> <p>15 A I believe it was the 27th of April.</p> <p>16 Q What was the content of that meeting?</p> <p>17 A He came to make an offer on Wild Bill's.</p> <p>18 Q And that was the day that the both of you, including</p> <p>19 Melody, executed a number of these exhibits we've talked</p> <p>20 about today; correct?</p> <p>21 A Melody actually came in on the 1st of May. She was not</p> <p>22 feeling well on the 27th, if my memory serves me.</p> <p>23 Q Was Dune with Melody on May 1st?</p> <p>24 A Yes.</p> <p>25 Q So tell me how the meeting went. Was there -- did you</p>

<p style="text-align: right;">Page 78</p> <p>1 set up a showing? Did you address financial issues?</p> <p>2 Did you address their questions? What happened?</p> <p>3 A We did the Purchase Agreement. (Indicating.)</p> <p>4 Q Did you discuss the cap rate?</p> <p>5 A No.</p> <p>6 Q What is the cap rate?</p> <p>7 A I would have to look back in my notes. I don't know</p> <p>8 what --</p> <p>9 Q Just generally speaking, describe what that means, "cap</p> <p>10 rate".</p> <p>11 A How I understand the cap rate is the expenses to the</p> <p>12 income and you end up with a cap rate.</p> <p>13 Q So it's a way to place a value on the property?</p> <p>14 A Could be.</p> <p>15 Q How else would you use it? I mean, I'm sorry, educate</p> <p>16 me on this. I'm not really sure how it works.</p> <p>17 A I never talked cap rate with Mr. Remington.</p> <p>18 Q Never?</p> <p>19 A After the fact we had talked a little bit about one,</p> <p>20 yes.</p> <p>21 Q Okay. So you had a meeting with Duane on the 27th of</p> <p>22 April 2017, and then another meeting on May 1st with</p> <p>23 Duane and Melody --</p> <p>24 A Yes.</p> <p>25 Q -- correct? Where did this meeting take place?</p>	<p style="text-align: right;">Page 80</p> <p>1 A Duane had some questions.</p> <p>2 Q Did he have some concerns?</p> <p>3 A Yes.</p> <p>4 Q And what were the concerns that he voiced to you?</p> <p>5 A About the income that he was making.</p> <p>6 Q Was there a meeting scheduled at your office where Duane</p> <p>7 and Melody showed up and you weren't there?</p> <p>8 A How it was set up was Mr. Remington was supposed to be</p> <p>9 there at 9 a.m. I had another appointment at 10. He</p> <p>10 had not showed up by 10. I left. After that time, not</p> <p>11 sure what time that was, Mrs. Remington showed up. My</p> <p>12 office called me to tell me that she was there and I was</p> <p>13 not able to come back at that time.</p> <p>14 Q Isn't it true when your office called you that they</p> <p>15 couldn't get ahold of you?</p> <p>16 A That is false. I took the call from Lana.</p> <p>17 Q Bryan, in a transaction similar to Wild Bill's</p> <p>18 Campground, or any other campground, overvaluing the</p> <p>19 business or the property would be improper, wouldn't it?</p> <p>20 A No.</p> <p>21 Q Explain that.</p> <p>22 A People think that their property is worth X amount. If</p> <p>23 there's a buyer out there willing to pay X amount --</p> <p>24 Q Misleading a prospective buyer with income and expense</p> <p>25 figures would be improper, wouldn't it?</p>
<p style="text-align: right;">Page 79</p> <p>1 A My office.</p> <p>2 Q And after the fact, when was the next meeting that you</p> <p>3 had?</p> <p>4 A I don't know the date off the top of my head.</p> <p>5 Q Prior to the sale did you inform Duane and Melody that</p> <p>6 the business makes \$240,000 in three and a half months?</p> <p>7 A Prior to sale, no.</p> <p>8 Q At anytime?</p> <p>9 A Afterward. When I give them the financial statement,</p> <p>10 they can see that.</p> <p>11 Q And then did you inform them that the cap rate was</p> <p>12 \$1,009,000?</p> <p>13 A No.</p> <p>14 Q What was your discussion then with regard to the cap</p> <p>15 rate?</p> <p>16 A I don't recall having a discussion about cap rate.</p> <p>17 Q Did you take notes of this? These meetings?</p> <p>18 A No.</p> <p>19 Q After the purchase, how many other times did you meet</p> <p>20 with Duane and Melody?</p> <p>21 A Off the top of my head, I don't remember. But I do have</p> <p>22 a note of that, yes.</p> <p>23 Q Three or four?</p> <p>24 A I'd say it was either four or five.</p> <p>25 Q And why were these meetings taking place?</p>	<p style="text-align: right;">Page 81</p> <p>1 A Yes.</p> <p>2 Q Did you do anything to verify the financial information</p> <p>3 that Mr. Grim provided to you?</p> <p>4 A I had the tax return.</p> <p>5 Q Do you know -- and if you don't, that's fair -- who</p> <p>6 prepared the financial information that was provided to</p> <p>7 you?</p> <p>8 A Do not. I don't recall.</p> <p>9 Q Have you ever sold any other properties for Mr. Grim?</p> <p>10 A No.</p> <p>11 Q Have you talked with Keith Grim about this lawsuit?</p> <p>12 A Before I was added to it, yes.</p> <p>13 Q What was your conversation?</p> <p>14 A He told me what was going on.</p> <p>15 Q Anything else?</p> <p>16 A That's it.</p> <p>17 Q What was your response?</p> <p>18 A I couldn't understand why.</p> <p>19 Q During your representing of Duane and Melody, is it your</p> <p>20 opinion that they just wanted a fair deal?</p> <p>21 MR. BRIDGESON: Objection, form.</p> <p>22 A I don't know that.</p> <p>23 Q (By Mr. Beardsley:) During the ten-plus years of</p> <p>24 listing this property, was there ever an inspection</p> <p>25 done?</p>

<p style="text-align: right;">Page 82</p> <p>1 A Not that I'm aware of.</p> <p>2 Q But there could have been?</p> <p>3 A I don't believe so.</p> <p>4 Q And if an inspection was completed, that would be in your file; correct?</p> <p>5 A Not necessarily, no.</p> <p>6 MR. BEARDSLEY: Can we just take a couple-minute break, Greg?</p> <p>7 MR. ERLANDSON: Sure.</p> <p>8 (A recess taken at this time, 12:49 p.m. A lunch recess was taken. The deposition resumed at 1:41 p.m.)</p> <p>9 Q (By Mr. Beardsley:) Bryan, you said you were previously retained as an expert and gave a property valuation opinion; correct?</p> <p>10 A Yes.</p> <p>11 Q Now that you've consulted with your attorney, can you tell me what the case was about?</p> <p>12 A It was a divorce.</p> <p>13 Q And Liz Frederick retained you?</p> <p>14 A Yes.</p> <p>15 Q And I assume from your previous answers you were never deposed in that lawsuit?</p> <p>16 A No.</p> <p>17 Q And the property valuation, would it include like a</p>	<p style="text-align: right;">Page 84</p> <p>1 Bill's Campground, LLC, and Keith Grimm personally. I'm going to use some of the documents that Mr. Beardsley has shown to you. I'm also going to use some similar documents I have just to make sure I can understand exactly the depth of the documents you had in your file; okay?</p> <p>2 A Okay.</p> <p>3 Q I'm going to show you, Mr. Iverson, what I've marked as Exhibit 8.</p> <p>4 (Exhibit 8 marked for identification.)</p> <p>5 MR. MOONEY: And so the record is clear, some of the documents I'm going to use today, Counsel, are documents that I have received from Mr. Iverson's office prior to the initiation of litigation, and my office would, in the regular course of business or practice, they would Bates stamp those so they are identifiable as to the source. These have been Bates stamped #5/WAX.</p> <p>6 Q (By Mr. Mooney:) Is this a note that was in your file, sir, that identify certain dates relative to the transaction involving the Remingtons?</p> <p>7 A Yes.</p> <p>8 Q And when you provided this, I'm just going to say, chronicle or summary, how do you go back and re-create the dates which are identified on Exhibit 8?</p> <p>9 A I went back through my notes to put this on this</p>
<p style="text-align: right;">Page 83</p> <p>1 market analysis or something?</p> <p>2 A Correct.</p> <p>3 Q And your opinion was provided, I assume, because there was a dispute between husband and the wife of the value of the home?</p> <p>4 A Correct.</p> <p>5 Q And it did not involve conduct by another real estate agent, correct?</p> <p>6 A Would I -- conduct by another agent? Was it listed you mean or -- I guess I don't understand.</p> <p>7 Q I'm just trying to confirm that your expert opinion had nothing to do with conduct by another real estate agent.</p> <p>8 A No.</p> <p>9 Q And have you ever provided an expert opinion regarding conduct of another real estate agent?</p> <p>10 A No.</p> <p>11 Q Have you ever provided expert opinion regarding conduct of a seller of a piece of property?</p> <p>12 A No.</p> <p>13 Q That's fair. I appreciate you looking into that for me and providing that information.</p> <p>14 MR. BEARDSLEY: And I don't have any further questions at this time.</p> <p>15 EXAMINATION BY MR. MOONEY:</p> <p>16 Q Bryan, my name is John Mooney and I represent Wild</p>	<p style="text-align: right;">Page 85</p> <p>1 spreadsheet.</p> <p>2 Q And when you said you went back through your notes, do you keep a daily note diary, timekeeper-type function where you can identify what you did on particular days?</p> <p>3 A No.</p> <p>4 Q You don't?</p> <p>5 A Do not.</p> <p>6 Q So for purposes of this, sir, you went back through your notes. You actually had your handwritten notes relative to this transaction?</p> <p>7 A Yes.</p> <p>8 Q Okay. Had you, at any time prior to April 27th, 2017, had you met Duane Remington?</p> <p>9 A No.</p> <p>10 Q Okay. You obviously, prior to that date, had met Keith Grimm, though; right?</p> <p>11 A Yes.</p> <p>12 Q If you had to give me your best estimate, sir, do you know about what time of day Mr. Remington would have come to your office?</p> <p>13 A I believe the appointment was around 9 a.m.</p> <p>14 MR. BEARDSLEY: Just to clarify, what date are you talking about, John?</p> <p>15 MR. MOONEY: April 27th of 2017, Mike.</p> <p>16 Q (By Mr. Mooney:) Do you still have in front of you,</p>

<p style="text-align: right;">Page 86</p> <p>1 sir, the documents that Mr. Beardsley showed you during</p> <p>2 his deposition of you today?</p> <p>3 A Uh-huh. Yes.</p> <p>4 Q I think the first thing that Mike showed you was</p> <p>5 Exhibit 1, a commercial -- it was a residential Purchase</p> <p>6 Agreement that was marked as Exhibit 1, right?</p> <p>7 A Yes.</p> <p>8 MR. ERLANDSON: Did you say "residential"?</p> <p>9 MR. WOONEY: No.</p> <p>10 MR. ERLANDSON: Oh.</p> <p>11 MR. WOONEY: Real Estate Purchase Agreement,</p> <p>12 Commercial/Agricultural. I'm sorry.</p> <p>13 MR. ERLANDSON: All right.</p> <p>14 Q (By Mr. Wooney:) That document on Page 2 would suggest</p> <p>15 that it was signed on or about 10 a.m.; is that -- do</p> <p>16 you see that? Page 2.</p> <p>17 A Yes.</p> <p>18 Q Would that be your practice, Bryan, to have parties not</p> <p>19 only date something, but also put a time to it?</p> <p>20 A Yes.</p> <p>21 Q Now prior to the Purchase Agreement being signed, which</p> <p>22 is marked as Exhibit 1, would you have had Remington</p> <p>23 sign any agency documents?</p> <p>24 A Prior to this?</p> <p>25 Q Yes.</p>	<p style="text-align: right;">Page 88</p> <p>1 A Yes.</p> <p>2 Q Okay. I'm going to show you what I'm going to mark as</p> <p>3 Exhibit 9.</p> <p>4 [Exhibit 9 marked for identification.]</p> <p>5 Q I'm going to show you this, Bryan. Let's kind of walk</p> <p>6 through Exhibit 9 if we can, okay?</p> <p>7 Exhibit 9, at least Page 1 of it, Page 1 and</p> <p>8 Page 2 would be the same as Mr. Beardsley marked as</p> <p>9 Exhibit 1, is that correct?</p> <p>10 A Yes.</p> <p>11 Q Okay. If you look at Page 2 of Exhibit 9 under</p> <p>12 Paragraph 8 where it says Other Provisions, it says, See</p> <p>13 Addenda #1. Do you see that?</p> <p>14 A Yes.</p> <p>15 Q Who, in fact, prepared that Addenda #1?</p> <p>16 A I did.</p> <p>17 Q Would that have been -- if the Purchase Agreement was</p> <p>18 signed at 10 o'clock, would the Addenda #1 had been</p> <p>19 prepared before the Purchase Agreement -- the first two</p> <p>20 pages were signed?</p> <p>21 A Yes.</p> <p>22 Q Okay. If Mr. Remington showed up at your office at</p> <p>23 about 9 o'clock on April 27th, 2017 and the Purchase</p> <p>24 Agreement, either Exhibit 1 or Exhibit 9, was signed at</p> <p>25 10 o'clock on that same morning, what was the -- what's</p>
<p style="text-align: right;">Page 87</p> <p>1 A No. It all happened the same time.</p> <p>2 Q Okay. So the question is when I look at -- I look at</p> <p>3 Exhibit 2 that Mr. Beardsley showed you, that would be</p> <p>4 an agency addendum between HS/WAK and Duane and Melody</p> <p>5 Remington. Would that have been signed before Exhibit 1</p> <p>6 was signed?</p> <p>7 A Yes.</p> <p>8 Q Okay. Something had to come first, right?</p> <p>9 A Yes.</p> <p>10 Q And at the time that Duane Remington signed the Real</p> <p>11 Estate Purchase Agreement marked as Exhibit 1, had he</p> <p>12 asked you to review any documents as concerned his</p> <p>13 prospective purchase of what I'm going to call the Wild</p> <p>14 Bill's Campground?</p> <p>15 A No. We went over the agency and then to the Purchase</p> <p>16 Agreement.</p> <p>17 Q Okay. Now when Mr. Beardsley presented these documents</p> <p>18 to you, the first document that Mike showed you was</p> <p>19 marked as Exhibit 1, and then he showed you later on</p> <p>20 this morning a document he marked as Exhibit 5, which</p> <p>21 was called the Addenda #1 of the provisions. Do you</p> <p>22 remember that?</p> <p>23 A Yes.</p> <p>24 Q Were those documents all, in fact, signed at the same</p> <p>25 time?</p>	<p style="text-align: right;">Page 89</p> <p>1 your recollection of the conversations that occurred</p> <p>2 between the time he first arrived and the time the</p> <p>3 agreement was signed, meaning the Real Estate Purchase</p> <p>4 Agreement?</p> <p>5 A We got there, went into the conference room. We went</p> <p>6 over the Relationships Disclosure, the Agency Agreement</p> <p>7 Addendum, the Buyer Agency Agreement, and then we</p> <p>8 started to go through the Purchase Agreement in which I</p> <p>9 explained the items on the Purchase Agreement. All</p> <p>10 going -- when we were going through these items, I had</p> <p>11 them sign as they were going along.</p> <p>12 Q When you say they signed, that would be Duane Remington,</p> <p>13 who is sitting to your left?</p> <p>14 A Yes.</p> <p>15 Q And also Keith Grimm, who is not here today; right?</p> <p>16 A Correct.</p> <p>17 Q When Mr. Remington first presented at your office on</p> <p>18 April 27, 2017, was he accompanied by anyone when he</p> <p>19 came that day?</p> <p>20 A No.</p> <p>21 Q Was Mr. Grimm already present at your office?</p> <p>22 A Yes.</p> <p>23 Q When you sat in the conference room, as you have</p> <p>24 described for us, other than yourself, Mr. Grimm,</p> <p>25 Mr. Remington, was anyone else present?</p>

<p style="text-align: right;">Page 90</p> <p>1 A No.</p> <p>2 Q Prior to April 27th of 2017 had you had any</p> <p>3 conversations with Keith Grimm about Mr. Remington's</p> <p>4 interest in the campground?</p> <p>5 A Yes.</p> <p>6 Q Okay. Do you have any recollection, sir, as to when</p> <p>7 Mr. Grimm might have first mentioned Duane Remington's</p> <p>8 name to you?</p> <p>9 A I don't remember the exact date.</p> <p>10 Q Okay.</p> <p>11 A But he did call and let me know that he had somebody</p> <p>12 that showed up and looked at the campground.</p> <p>13 Q Okay. Other than that, do you have any more specific</p> <p>14 recollection, Bryan, as to what Keith might have shared</p> <p>15 with you?</p> <p>16 A He called me. If I remember correctly, Mr. Remington</p> <p>17 looked at it again. They had talked, and Keith gave me</p> <p>18 the information for the Purchase Agreement and the time</p> <p>19 which they agreed to meet at my office to do the</p> <p>20 Purchase Agreement, to sign the --</p> <p>21 Q Do you have any recollection, as you sit here today, or</p> <p>22 do you have any documents that might refresh your</p> <p>23 recollection if you could look at them, as to the time</p> <p>24 that elapsed from when Mr. Grimm would have first</p> <p>25 contacted you about this and the date of April 27th?</p>	<p style="text-align: right;">Page 92</p> <p>1 transactional basis, not looking at the dollar number,</p> <p>2 but if you were to break it out from a dollar or fee or</p> <p>3 commission perspective, okay, would it still be similar</p> <p>4 to that or would it be skewed somewhat higher towards</p> <p>5 less residential then, if you know?</p> <p>6 A I'm not following you.</p> <p>7 Q Here's where I'm going. Let's say that you had ten</p> <p>8 transactions, okay? Let's say that one of those was</p> <p>9 something other than residential, okay? But let's say</p> <p>10 of the one transaction you did that wasn't residential,</p> <p>11 let's say it was a -- commission of that was a hundred</p> <p>12 times what every other commission you would have. You</p> <p>13 understand then if you look at it from a sales volume</p> <p>14 perspective that the results might be different than if</p> <p>15 you looked at it transactionally. So I was looking at</p> <p>16 personal transactional base. So what I understood you</p> <p>17 to say is hypothetically, if you had done 200</p> <p>18 transactions in the last 12 years, that 95 percent of</p> <p>19 those 200 would have been residential, approximately,</p> <p>20 right?</p> <p>21 A Correct.</p> <p>22 Q Okay. But if you were to look at it from a fee</p> <p>23 perspective or a commission perspective, would your</p> <p>24 answer be the same, that still about 95 percent of your</p> <p>25 commissions have come from residential transactions</p>
<p style="text-align: right;">Page 91</p> <p>1 Was it a week, more or less than that?</p> <p>2 A More.</p> <p>3 Q Okay. At any time when Mr. Remington was on site, were</p> <p>4 you with him prior to the Purchase Agreement being</p> <p>5 signed?</p> <p>6 A No. My first meeting with Mr. Remington was the 27th.</p> <p>7 Q Okay. Had you, at any time prior to April 27th of 2017,</p> <p>8 ever prepared a similar document that would have been</p> <p>9 identified as a Real Estate Purchase Agreement? Had you</p> <p>10 ever done that for this campground before?</p> <p>11 A Yes.</p> <p>12 Q Do you have a recollection as to how many times that had</p> <p>13 happened before?</p> <p>14 A Over the course of the listing, I would say four times.</p> <p>15 Q If you were to give me kind of an overview, Bryan, of</p> <p>16 your experience as a Realtor, which I think my notes say</p> <p>17 go back to some time to about 2006, 2007, so a little</p> <p>18 bit more than 10 years; right? If you had to give me</p> <p>19 your best estimate, I want to talk about transactions,</p> <p>20 not sales value or sales volume, okay. From a</p> <p>21 transactional perspective, what percentage of your</p> <p>22 transactions are real estate transaction -- I mean,</p> <p>23 residential transactions versus other transactions?</p> <p>24 A Residential would probably be, rough guess, 95 percent.</p> <p>25 Q And I, of course, prefaced that by the phrase just a</p>	<p style="text-align: right;">Page 93</p> <p>1 versus other transactions.</p> <p>2 A Yes.</p> <p>3 Q Okay. When you had written Purchase Agreements before</p> <p>4 for the sale of the Wild Bill's Campground, had you ever</p> <p>5 had anyone present a full price --</p> <p>6 A No.</p> <p>7 Q -- full-price offer before?</p> <p>8 A No.</p> <p>9 Q Of the five transactions that you identified, other</p> <p>10 campgrounds that you've been involved in before, I think</p> <p>11 one of them you said you had sold and you had also</p> <p>12 bought it, so that's a little bit -- it's the same</p> <p>13 transaction -- any of the five transactions that you'd</p> <p>14 ever worked on before on campgrounds, had you ever had a</p> <p>15 prospective buyer present a full-price offer before?</p> <p>16 A No.</p> <p>17 Q When Mr. Remington presented at your office, was there</p> <p>18 ever any discussion with Mr. Remington as to information</p> <p>19 he wanted to review before signing the Real Estate</p> <p>20 Purchase Agreement marked as Exhibit 1?</p> <p>21 A He had not, no.</p> <p>22 Q Did he ask for any that morning before he signed?</p> <p>23 A No.</p> <p>24 Q Had you provided Mr. Remington any information prior to</p> <p>25 his signing the Purchase Agreement?</p>

<p style="text-align: right;">Page 94</p> <p>1 A No.</p> <p>2 Q Mr. Beardsley had identified as a document in this case</p> <p>3 as Exhibit 6. This document I have right here.</p> <p>4 A Yes.</p> <p>5 Q I think it's -- you called it a sales brochure. Should</p> <p>6 that be a fair term?</p> <p>7 A Yes.</p> <p>8 Q Do you remember, as you sit here today, Bryan, is this</p> <p>9 the document as it existed in 2016?</p> <p>10 A Yes.</p> <p>11 Q The reason I ask that -- and I'm not trying to trick</p> <p>12 you, okay? I want you to look at the last page of</p> <p>13 Exhibit 6, if you would, please.</p> <p>14 A (Complied.)</p> <p>15 Q The last page I have, Bryan, depicts -- it says, main</p> <p>16 building. It has three photos and it has some text</p> <p>17 about in the middle of the page, right?</p> <p>18 A Yes.</p> <p>19 Q I'm going to show you another iteration of that same</p> <p>20 document. Before I mark it, I'm going to see if you can</p> <p>21 identify it, okay?</p> <p>22 A (Viewing document.)</p> <p>23 Q After that reference to the main building as it appears</p> <p>24 in Exhibit 6, there are a number of pages thereafter</p> <p>25 that identify improvements completed at the campground,</p>	<p style="text-align: right;">Page 96</p> <p>1 taken in this brochure, were they taken by you?</p> <p>2 A Yes.</p> <p>3 Q And these would be photos that you had taken over the</p> <p>4 years that you had had this property listed; is that</p> <p>5 accurate?</p> <p>6 A Yes.</p> <p>7 Q Okay. I note on Page 1 of Exhibit 10 right next to your</p> <p>8 picture it says, RE/MAX. And below it, it says,</p> <p>9 Commercial. Why is that insignia on there?</p> <p>10 A Because it's a commercial property.</p> <p>11 Q Okay. If, for instance, I asked you to list my home,</p> <p>12 how would that insignia be different, if at all?</p> <p>13 A There would not be "commercial" on there. It would have</p> <p>14 just been the RE/MAX.</p> <p>15 Q Do you have any idea when this Exhibit Number 10 would</p> <p>16 have been prepared in relation to the listing agreement,</p> <p>17 the one that was in effect at the time the property</p> <p>18 sold? Was it done contemporaneous with the listing</p> <p>19 agreement being signed, if you know?</p> <p>20 A No. It would have been put together, and then if</p> <p>21 anything changed, then I would make the change. Like I</p> <p>22 told Mike, the pictures of the cabins --</p> <p>23 Q Yep.</p> <p>24 A -- if Keith had done anything to the property, then I</p> <p>25 would add that.</p>
<p style="text-align: right;">Page 95</p> <p>1 a general sketch of the area, and then kind of an aerial</p> <p>2 photo of it; okay? Would these have been part of your</p> <p>3 brochure that you would have provided to either</p> <p>4 Mr. Grim or to Mr. Remington as it exists in the</p> <p>5 document you have in front of you here?</p> <p>6 A Yes.</p> <p>7 Q Okay. I'm going to mark it as Exhibit 10.</p> <p>8 (Exhibit 10 marked for identification.)</p> <p>9 Q Prior to Mr. Remington signing the Purchase Agreement,</p> <p>10 which has been marked as Exhibit 1, and as well as</p> <p>11 Exhibit 9, did you provide to Mr. Remington a copy of</p> <p>12 the sales brochure which I have now marked as</p> <p>13 Exhibit 9 -- Exhibit 10? I'm sorry.</p> <p>14 A Prior to, no.</p> <p>15 Q Do you know whether, when Mr. Remington presented at</p> <p>16 your office on April 27th, did Mr. Remington bring with</p> <p>17 him a copy of this? Did he have a copy of this sales</p> <p>18 brochure with him, if you know?</p> <p>19 A I do not know.</p> <p>20 Q Would Mr. Grim have had copies of this to provide to</p> <p>21 prospective buyers, if you know?</p> <p>22 A I do not know.</p> <p>23 Q I'd like you to take a look at Exhibit 10, if we could</p> <p>24 for a minute, Bryan. And we'll kind of walk you through</p> <p>25 front to back, if I can; okay? The photos that were</p>	<p style="text-align: right;">Page 97</p> <p>1 Q Like, for instance, if you look at Page 2 of Exhibit 10,</p> <p>2 we know that this agreement -- if we look at the tax</p> <p>3 information, that would suggest to us that this would</p> <p>4 have been the agreement in effect at the time</p> <p>5 Mr. Remington signed the document, the Purchase</p> <p>6 Agreement, right? It listed the 2016 taxes.</p> <p>7 A Yes.</p> <p>8 Q You used the term on Page 2, as well as other places in</p> <p>9 here, you reference under Description of Property, you</p> <p>10 reference, quote, living quarters, close quote.</p> <p>11 What did that mean to you when you used that term,</p> <p>12 "living quarters"?</p> <p>13 A That there was a place for whoever was running the</p> <p>14 income-producing property to stay.</p> <p>15 Q Okay. And then if you go to, again, Exhibit 10, Page 7,</p> <p>16 which is RE/MAX 0007 at the bottom, 7 of 13, there was a</p> <p>17 basement in this property. And all of the living</p> <p>18 quarters would have been in the building, which is</p> <p>19 displayed on the first page of this exhibit; right?</p> <p>20 A Correct.</p> <p>21 Q The basement has three bedrooms, it says, a half bath</p> <p>22 and a workshop area. Were those bedrooms down in the</p> <p>23 lower level, would they have been up to code? What I</p> <p>24 mean by "code," meaning would there have been proper</p> <p>25 egress and ingress windows for those bedrooms?</p>

<p style="text-align: right;">Page 98</p> <p>1 A No.</p> <p>2 Q So to the best of your knowledge, prior to Mr. Remington signing the Purchase Agreement, which I have marked as Exhibit 9, you had not provided to him a copy of the sales brochure, which I've marked as Exhibit 10; is that correct?</p> <p>3 A Correct.</p> <p>4 Q When you prepared Exhibit 9, Bryan, I want to go through this and I want to identify who provided the information for the respective lines that are filled in; okay?</p> <p>5 A Okay.</p> <p>6 Q Because Exhibit 9, as it exists, is a form that you have; then someone has to type in or fill in the blanks, so to speak; is that right?</p> <p>7 A (Nodded.)</p> <p>8 Q Is that correct?</p> <p>9 A Yes.</p> <p>10 Q Thank you. I notice at the top of this document it's denominated as a Real Estate Purchase Agreement, Commercial/Agricultural. Now would you have used a similar agreement like this if you were to sell Mr. Erickson's house for him?</p> <p>11 A No.</p> <p>12 Q Why is that?</p> <p>13 A There's a different Purchase Agreement for residential.</p>	<p style="text-align: right;">Page 100</p> <p>1 -- the reference of Wild Bill's Campground Bar & Grill,</p> <p>2 where did you get that information from?</p> <p>3 A The County.</p> <p>4 Q Okay.</p> <p>5 A The legal description.</p> <p>6 Q Okay. Yep.</p> <p>7 A Yeah.</p> <p>8 Q And the sellers, how do you know who owned the property?</p> <p>9 A Mr. Grimm.</p> <p>10 Q Okay. But you knew it was held in an entity, right?</p> <p>11 A Correct.</p> <p>12 Q Then there's some references. You see where it says right at the bottom of the first paragraph area there's a check in the box "yes;" who put that in there? Did you do that?</p> <p>13 A Yes.</p> <p>14 Q And why do you do that, sir?</p> <p>15 A So they both acknowledged that I was the person representing both the buyer and the seller.</p> <p>16 Q And those initials, as they're displayed there, would those be the initials for Duane Remington, Melody Remington, and Keith Grimm?</p> <p>17 A Yes.</p> <p>18 Q Now I think you mentioned earlier that Melody Remington wasn't there on April 27th; is that correct?</p> <p>19 A Correct.</p> <p>20 Q And she, I think you said, she came in like on May 1st; is that right?</p> <p>21 A Correct.</p> <p>22 Q Okay. Did you have any conversation with Duane Remington from the time he signed this document on April 27, 2017 until the time that his wife came in on May 1st, 2017?</p> <p>23 A I -- if my memory serves me, it was to set up the appointment to come in.</p> <p>24 Q Did he have any other inquiry of you as it concerned the terms of the agreement, though?</p> <p>25 A No.</p> <p>26 Q Okay. Under the Purchase Price, where did you get that information from?</p> <p>27 A Keith Grimm.</p> <p>28 Q Did you have any conversation with Duane Remington at your office on April 27th, or anytime thereafter, about what the purchase price was going to be?</p> <p>29 A At the time we were going through this, I asked him if that was the price he wanted to offer.</p> <p>30 Q Did Mr. Remington, at any time prior to signing the Purchase Agreement marked as Exhibit 9, ever ask you whether \$895,000 was the price he should be paying for this campground?</p>
<p style="text-align: right;">Page 99</p> <p>1 Q So let's go through the first -- I'm just going to go through it by category as it's denominated here: 1, 2, 3; you see where I'm at there?</p> <p>2 A Uh-huh.</p> <p>3 Q You got the name of the purchasers from who?</p> <p>4 A Keith.</p> <p>5 Q Okay. You got the earnest money information from whom?</p> <p>6 A Keith, and then I asked Mr. Remington at the time of the meeting if 10,000 was okay.</p> <p>7 Q Okay. And it says, after the reference to purchasers, in handwriting it says, "and/or assigns". Who gave you that information?</p> <p>8 A Mr. Remington.</p> <p>9 Q Was there some discussion when you first met with him on April 27th that there might be another prospective investor in this transaction?</p> <p>10 A Yes.</p> <p>11 Q Okay. Was there some discussion that the purchaser might ultimately be an entity of some sort other than an individual?</p> <p>12 A Yes. That's why he asked me to put that in there.</p> <p>13 Q So you had actually discussed identifying the purchaser with Mr. Remington as you filled this out then, right?</p> <p>14 A Yes.</p> <p>15 Q The next thing that's identified here is it references</p>	<p style="text-align: right;">Page 101</p> <p>1 A Correct.</p> <p>2 Q And she, I think you said, she came in like on May 1st; is that right?</p> <p>3 A Correct.</p> <p>4 Q Okay. Did you have any conversation with Duane Remington from the time he signed this document on April 27, 2017 until the time that his wife came in on May 1st, 2017?</p> <p>5 A I -- if my memory serves me, it was to set up the appointment to come in.</p> <p>6 Q Did he have any other inquiry of you as it concerned the terms of the agreement, though?</p> <p>7 A No.</p> <p>8 Q Okay. Under the Purchase Price, where did you get that information from?</p> <p>9 A Keith Grimm.</p> <p>10 Q Did you have any conversation with Duane Remington at your office on April 27th, or anytime thereafter, about what the purchase price was going to be?</p> <p>11 A At the time we were going through this, I asked him if that was the price he wanted to offer.</p> <p>12 Q Did Mr. Remington, at any time prior to signing the Purchase Agreement marked as Exhibit 9, ever ask you whether \$895,000 was the price he should be paying for this campground?</p>

<p style="text-align: right;">Page 102</p> <p>1 A No.</p> <p>2 Q Did Mr. Remington, at any time prior to signing the</p> <p>3 Purchase Agreement marked as Exhibit 9, ever make any</p> <p>4 inquiry of you as to what you believed the fair value</p> <p>5 for this business would be?</p> <p>6 A No.</p> <p>7 Q Go down to Paragraph 3, the one that says Financing.</p> <p>8 And I'm particularly -- the words that have been typed</p> <p>9 in at the end of the standard text where it says, Buyer</p> <p>10 is going with a Contract for Deed with seller - See</p> <p>11 Addenda #1.</p> <p>12 Who put that information in the Purchase</p> <p>13 Agreement?</p> <p>14 A I did.</p> <p>15 Q Okay. And did you have some conversation with</p> <p>16 Mr. Remington about the terms in Addenda #1?</p> <p>17 A We went over that when he was in to sign.</p> <p>18 Q Okay. Would you have gone through the terms of</p> <p>19 Addenda #1 prior to Mr. Remington signing it?</p> <p>20 A (No verbal answer.)</p> <p>21 Q Let me rephrase it, Bryan. I'm sorry.</p> <p>22 Prior to Duane Remington signing Exhibit Number 9,</p> <p>23 the Purchase Agreement, did you have an opportunity to</p> <p>24 walk through the ten terms identified in the Addenda #1</p> <p>25 with him?</p>	<p style="text-align: right;">Page 104</p> <p>1 Q Okay. So that would have been understood before</p> <p>2 Mr. Remington came to your office or was it discussed at</p> <p>3 your office that day?</p> <p>4 A No, that was -- that was before.</p> <p>5 Q Okay. When Mr. Grimm, on behalf of the entity, had</p> <p>6 previously been involved in discussions about the sale</p> <p>7 of the campground, were each of those prior sales always</p> <p>8 under the auspices of as is, no warranty?</p> <p>9 A To my recollection, yes.</p> <p>10 Q Okay. Now you said you've been involved in five</p> <p>11 transactions involving the sale of a campground before,</p> <p>12 right?</p> <p>13 A Yes.</p> <p>14 Q What has your general experience been in the sale of</p> <p>15 campground? Are they generally sold as is or are they</p> <p>16 typically not sold that way, if you know?</p> <p>17 A Typically, I've -- as is.</p> <p>18 Q When you were with Mr. Remington on April 27th, did he,</p> <p>19 at any time, express any concerns to you that he had</p> <p>20 some reservations about buying the campground as is and</p> <p>21 without any warranties?</p> <p>22 A Not that I remember.</p> <p>23 Q Is that something that, if it had been discussed, you'd</p> <p>24 most likely have a recollection of, though?</p> <p>25 A Yes.</p>
<p style="text-align: right;">Page 103</p> <p>1 A Yeah. We went through it at that time.</p> <p>2 Q So as we kind of chronologically go through the process</p> <p>3 here, when you got down to Paragraph Number 3 in</p> <p>4 reference to Addenda #1, would you have gone through the</p> <p>5 terms of that addenda with Mr. Remington at that time?</p> <p>6 A Yes.</p> <p>7 Q And was Mr. Grimm present, as well?</p> <p>8 A Yes.</p> <p>9 Q Okay. I want to walk through those terms, if you would,</p> <p>10 please. I think that's on the third page of Exhibit</p> <p>11 Number 9, if you can.</p> <p>12 And you would have typed up this Addenda, correct?</p> <p>13 A Correct.</p> <p>14 Q Tell me what discussions there was, if any, about the</p> <p>15 fact that the campground would be sold, quote, as is</p> <p>16 with no warranty, close quote. What discussion did you</p> <p>17 have with Mr. Remington about that?</p> <p>18 A I did not have a discussion with Mr. Remington about --</p> <p>19 I mean, other than when we were going through this.</p> <p>20 Q Did you understand when Mr. Grimm first contacted you</p> <p>21 about Mr. Remington being interested in buying the</p> <p>22 campground that it was your understanding from the</p> <p>23 beginning of this transaction that it was going to be an</p> <p>24 as is with no warranty sale? Did you understand that?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 105</p> <p>1 Q Okay. Tell me what conversations, if any, you remember</p> <p>2 as it concerns Item Number 2 on the Addenda about</p> <p>3 licensing and certificates. Was there any discussion</p> <p>4 about that?</p> <p>5 A No. This is something that I put into the offer to</p> <p>6 protect the buyer. That everything is current prior to</p> <p>7 closing.</p> <p>8 Q So that was something you thought was appropriate to put</p> <p>9 in there? That had not been discussed between Remington</p> <p>10 and Grimm; is that right?</p> <p>11 A Correct.</p> <p>12 Q Item Number 3, did that similarly come from your</p> <p>13 suggestion that it needed to be included in the Purchase</p> <p>14 Agreement?</p> <p>15 A Yes.</p> <p>16 Q Where did -- who came up with the idea for Item</p> <p>17 Number 4?</p> <p>18 A That is actually something that has been in other</p> <p>19 transactions, that the inventory is a cost to the buyer.</p> <p>20 Q Did Mr. Remington have any -- do you recall him having</p> <p>21 any discussion with you as it concerned Item Number 4?</p> <p>22 A I don't think so.</p> <p>23 Q Item Number 5 deals with training. Was that something</p> <p>24 that had been suggested by you, Mr. Grimm, or</p> <p>25 Mr. Remington, or a combination of all three of you?</p>

<p style="text-align: right;">Page 106</p> <p>1 A That is something I talked over with Mr. Grimm back when 2 we listed the property. 3 Q Similarly, where did Number 6 come from? 4 A That, I just put in there as a courtesy to the new 5 buyer. 6 Q Item Number 7, that came from whom? 7 A That also is something I've learned to put in there. 8 Q Okay. Item Number 8, where did the terms of the 9 Contract for Deed come from? 10 A Mr. Grimm. 11 Q Did you understand before Mr. Grimm came to your office 12 on April 27th that he, meaning Mr. Grimm, and 13 Mr. Benington had already come to some concurrence on 14 the terms of the Contract for Deed? 15 A Yes. Because when we went through this, everybody was 16 in agreement. 17 Q The Old West Burrow, where did that idea come from? 18 A Previous experience. 19 Q Okay. And Item Number 10, real estate taxes, insurance, 20 the date of closing; is that just a standard provision? 21 A Yes. 22 Q At any time from the time Mr. Benington came to your 23 office until the time he signed the Purchase Agreement 24 marked as Exhibit 9, did he ever express any concern to 25 you as it relates to any of the terms in the Purchase</p>	<p style="text-align: right;">Page 108</p> <p>1 Q Would that be a standard of practice in Lawrence County, 2 if you know? 3 A I don't know that. 4 Q Okay. So Item Number 1 was proffered by you. Was there 5 any discussion -- did Mr. Benington raise any concerns 6 about that prior to signing the Purchase Agreement? 7 A Not that I remember. 8 Q Item Number 2 as it concerns the CBR testing of the 9 well, whose idea was that? 10 A That also is something I put in there. 11 Q Is that something you put in all transactions involving 12 private well systems? 13 A Yes. 14 Q Okay. Item Number 3, Buyer to inspect the property and 15 the equipment that stays with the property; whose idea 16 was that? 17 A That also was mine. 18 Q And why did you put that into the transaction? 19 A Just so the buyer can go up and check what stays and to 20 make sure everything is operational. 21 Q Prior to the time that the Purchase Agreement marked as 22 Exhibit 9 was signed, did Mr. Benington ever make any 23 inquiry of you, Mr. Iverson, as to whom he might talk to 24 for the purpose of having an inspection done at the 25 campground, real or personal property? Did he make any</p>
<p style="text-align: right;">Page 107</p> <p>1 Agreement, including the addenda? 2 A No. 3 Q The next item, Number 4 on Page 1 of Exhibit 9, it 4 doesn't look like there was any changes to that other 5 than the allocation of the title insurance cost, and was 6 that discussed between the parties? 7 A No. 8 Q Okay. Who came up with a 50/50 on that? 9 A Just, I did. 10 Q Is that your, kind of, understanding of the standard in 11 the industry? 12 A Yes. 13 Q I'm going to talk to you about the language under the 14 Paragraph 5, Inspections; okay? First of all, there are 15 three -- pardon me, four different items identified in 16 that Paragraph 5, Inspections; okay? 17 A Uh-huh. 18 Q Who is proffer -- or who made the suggestion for Item 19 Number 1 as it concerns septic tanks? 20 A I did. 21 Q And why was that put in there? 22 A Septic tanks in different counties have to be pumped, 23 inspected before time of sale. 24 Q Okay. 25 A So I do that for all counties, I guess.</p>	<p style="text-align: right;">Page 109</p> <p>1 questions of you about that? 2 A No. 3 Q To the best of your knowledge, at any time between the 4 date the Purchase Agreement was signed, April 27, 2017, 5 and the date the transaction closed on May 12th of 2017, 6 do you know whether Mr. Benington ever followed up with 7 you and made any further inquiry as to whom he might 8 look at for real or personal property inspection? Did 9 he ever ask you about that? 10 A Did not. 11 Q To the best of your knowledge, did Mr. Benington ever 12 have anyone look at the property from a real or personal 13 property inspection perspective? 14 A Not that I know of. 15 Q In the campground that you've been involved in the sale 16 of before, either on behalf of the buyer or the seller, 17 do you know whether there's any standard practice in the 18 industry whether a person has the property inspected for 19 the structures, heating, ventilation, things like that? 20 Is that standard? 21 A No. 22 Q It's not standard? 23 A (Shook head.) 24 Q Now when people buy and sell houses, is it your 25 experience that typically somebody has a home inspector</p>

<p style="text-align: right;">Page 110</p> <p>1 come in?</p> <p>2 A Yes.</p> <p>3 Q But these transactions are different; is that right?</p> <p>4 A Correct.</p> <p>5 Q The last item under Paragraph 5, Category 4, Buyer may</p> <p>6 conduct any other inspection deemed appropriate at</p> <p>7 buyer's expense. At any time prior to -- any time</p> <p>8 after -- strike that, please.</p> <p>9 At any time prior to Mr. Remington signing this</p> <p>10 document, did he make any inquiry of you as it concerns,</p> <p>11 quote, other inspections he might want to have done?</p> <p>12 A No.</p> <p>13 Q To the best of your knowledge, did he ever have anyone</p> <p>14 do any other inspections?</p> <p>15 A Not that I know of.</p> <p>16 Q Then if we go down into Paragraph 5, the latter verbiage</p> <p>17 within that, I assume because you were not aware of any</p> <p>18 inspections at no time prior -- subsequent to signing</p> <p>19 the Purchase Agreement or prior to closing were you ever</p> <p>20 apprised of any concerns that Mr. Remington had?</p> <p>21 A No.</p> <p>22 Q Now if we go to Paragraph 6 on Page 2 of Exhibit 9, the</p> <p>23 prorations, where did that decision come from about</p> <p>24 seller being responsible for 100 percent of the things</p> <p>25 before closing, buyer thereafter; where did that come</p>	<p style="text-align: right;">Page 112</p> <p>1 Q I note that the agreement is dated at 10 o'clock on</p> <p>2 April 27th and it's signed -- it says, 'This agreement is</p> <p>3 void if not accepted by seller by the 27th day of April.</p> <p>4 The seller, of course, would be Mr. Grimm. But</p> <p>5 the purchasers then signed it. When did they sign it?</p> <p>6 A At the same time.</p> <p>7 Q So this was signed by both Mr. Remington and</p> <p>8 Mrs. Remington on April 27th?</p> <p>9 A No. Mrs. Remington came in on May 1st to sign it.</p> <p>10 Q Did you have any concerns when the agreement was signed</p> <p>11 just by Mr. Remington when it was presented to</p> <p>12 Mr. Grimm? Do you understand that to be a binding</p> <p>13 agreement, from your understanding? I'm not asking for</p> <p>14 a legal opinion, but did you think you needed her</p> <p>15 signature for that?</p> <p>16 A Yes.</p> <p>17 Q Okay. On Page 46, Exhibit Number 9, there's a copy of</p> <p>18 the earnest money check. And that check is dated the</p> <p>19 27th day of April, and it's signed by M. Remington, who</p> <p>20 I assume to be Melody. Did that check come with Duane</p> <p>21 when he came to the -- at the time the Purchase</p> <p>22 Agreement was signed, or did he get that later on?</p> <p>23 A That, I can't remember.</p> <p>24 Q Okay. Go to Page 4 of Exhibit 9. Oh, No, Page 5. I'm</p> <p>25 sorry. Page 5 of Exhibit 9. This is an agreement that</p>
<p style="text-align: right;">Page 111</p> <p>1 from? You?</p> <p>2 A That is from me, because he owns the property up until</p> <p>3 the date of closing.</p> <p>4 Q Where did the decision come -- under the other</p> <p>5 prorations where it talks about deposits and prepaids</p> <p>6 and things such as that, where did that idea come from?</p> <p>7 A That was something that was told to me by Mr. Grimm that</p> <p>8 him and Mr. Remington had agreed to.</p> <p>9 Q Okay. The language under the category of Survey, where</p> <p>10 did that come from?</p> <p>11 A That's -- we went over the boundary survey -- or not the</p> <p>12 boundary, but the GIS boundary off of Lawrence County.</p> <p>13 Q Okay.</p> <p>14 A And Mr. Remington said he was okay with that.</p> <p>15 Q Okay. The only other language that's included in the</p> <p>16 balance of this, there's a provision of the closing</p> <p>17 where it says on or before May 15th. Was that something</p> <p>18 that was discussed when you met with Mr. Remington and</p> <p>19 Mr. Grimm?</p> <p>20 A Yes. Mr. Remington asked me to close it as quickly as</p> <p>21 possible.</p> <p>22 Q Then the language about the addenda, you said that was</p> <p>23 included because that addenda was prepared simultaneous</p> <p>24 with the Purchase Agreement?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 113</p> <p>1 was signed by Duane and Melody Remington. Were there</p> <p>2 all signed on April 27th, the next three pages, by</p> <p>3 Melody or signed sometime thereafter?</p> <p>4 A Thereafter, on the 1st.</p> <p>5 Q When you met Duane on April 27th, did he seem at all</p> <p>6 concerned about what he was ready to buy?</p> <p>7 A No.</p> <p>8 Q Did you have any understanding as to his background as</p> <p>9 to whether he had any experience in the campground</p> <p>10 industry?</p> <p>11 A I do not know.</p> <p>12 Q Okay. Did you have any discussions with him or did he</p> <p>13 share anything as to why he wanted to get this done as</p> <p>14 quickly as possible?</p> <p>15 A I don't know.</p> <p>16 Q Okay. When you were present in your conference room</p> <p>17 with he and Mr. Grimm, do you recall any of the</p> <p>18 substance of the conversation that transpired between</p> <p>19 Mr. Remington and Mr. Grimm that morning?</p> <p>20 A Other than what we did for the Purchase Agreement, I</p> <p>21 don't recall anything.</p> <p>22 Q To the best of your knowledge, Ryan, after the</p> <p>23 agreement was signed on April 27th up until the time it</p> <p>24 closed, do you have any recollection of your interaction</p> <p>25 with Mr. or Mrs. Remington between April 27th and</p>

Page 114	Page 116
<p>1 May 12th?</p> <p>2 A Again, when Melody came in to sign on the 1st and then</p> <p>3 when Mr. Hagg completed the Contract for Deed, I called</p> <p>4 up Mr. Remington to give him a copy of that.</p> <p>5 Q Who provided the information to Brian Hagg to complete</p> <p>6 the Contract for Deed?</p> <p>7 A I did. I give him that. (Indicating.)</p> <p>8 Q So you would have sent to Brian what I have marked as</p> <p>9 Exhibit 9, the Purchase Agreement?</p> <p>10 A The first three pages.</p> <p>11 Q Just the first three pages?</p> <p>12 A Yes.</p> <p>13 Q Just the signature page and then the Addenda?</p> <p>14 A (Nodded.)</p> <p>15 Q If we look at Exhibit Number 8, which is a copy of your</p> <p>16 notes as to when you met with certain people, okay, it</p> <p>17 says on April -- pardon me, on May 8th of 2017 you would</p> <p>18 have met with Duane to review information provided by</p> <p>19 Brian Hagg, parents, Contract for Deed and other</p> <p>20 supporting documents.</p> <p>21 A Yes.</p> <p>22 Q That would have been in your office?</p> <p>23 A Yes.</p> <p>24 Q I'm going to show you what we'll mark as Exhibit</p> <p>25 Number 11.</p>	<p>1 A No.</p> <p>2 Q Had Mr. Remington asked for any profit and loss</p> <p>3 information for the campground from you?</p> <p>4 A No.</p> <p>5 Q Had he asked for any balance sheet information for the</p> <p>6 campground?</p> <p>7 A No.</p> <p>8 Q Asked for any sales tax reports for the campground?</p> <p>9 A No.</p> <p>10 Q Did that seem odd to you?</p> <p>11 A Yes.</p> <p>12 Q You have been a party to five other transactions that</p> <p>13 you mentioned to us earlier today. Had you ever seen</p> <p>14 someone purchase a campground before without making</p> <p>15 inquiry relative to the financial information like I</p> <p>16 identified? What I mean by that, tax returns, sales tax</p> <p>17 reports, income statements, profit and loss statements,</p> <p>18 balance sheets. Had you ever seen that happen before?</p> <p>19 A Not that I know of.</p> <p>20 Q And other than selling campground, Bryan, have you been</p> <p>21 involved, without naming parties, of course, had you</p> <p>22 been involved in the sale of other business</p> <p>23 opportunities before?</p> <p>24 And what I mean by "business opportunities</p> <p>25 before," some business where someone is going to go in</p>
Page 115	Page 117
<p>1 (Exhibit 11 marked for identification.)</p> <p>2 Q I'm showing you what I have marked as Exhibit Number 12</p> <p>3 (sic), and it appears to be maybe nine pages of a</p> <p>4 document denominated Contract for Deed. This would have</p> <p>5 been prepared at your request by Brian Hagg or someone</p> <p>6 in his office; is that right?</p> <p>7 A The Exhibit 11?</p> <p>8 Q Yeah.</p> <p>9 A Okay. Yes, this is what was prepared by Mr. Hagg.</p> <p>10 Q And then on May 8th you would have set down with</p> <p>11 Duane Remington and would have gone through the terms of</p> <p>12 the Contract for Deed with him; is that right?</p> <p>13 A Yes.</p> <p>14 Q First, just globally, between April 27th and May 8th did</p> <p>15 you have -- other than Mr. Remington calling to make an</p> <p>16 appointment for his wife to come sign the documents, had</p> <p>17 Mr. Remington at any time between April 27th and May 8th</p> <p>18 contacted you and made any inquiry or raise any concerns</p> <p>19 as it relates to his purchase of the campground?</p> <p>20 A No.</p> <p>21 Q Had he asked for any financial information relative to</p> <p>22 the operation of the campground?</p> <p>23 A No.</p> <p>24 Q At any time prior to May 8th of 2017 had Mr. Remington</p> <p>25 asked for any tax return information for the campground?</p>	<p>1 and make money, okay? Be it a car lot or be it a car</p> <p>2 wash or grocery store, anything like that.</p> <p>3 A Yes.</p> <p>4 Q Had you ever seen any other transaction involving the</p> <p>5 sale or the purchase of a business where a prospective</p> <p>6 buyer had not asked for some sort of financial</p> <p>7 information prior to signing the Purchase Agreement?</p> <p>8 A That I have assisted, no.</p> <p>9 Q As you met with Mr. Remington on May 1st and went over</p> <p>10 the terms of the Contract for Deed marked as</p> <p>11 Exhibit 11 -- May 8th, pardon me. It was May 8th. I'm</p> <p>12 sorry. Just globally, did Mr. Remington raise any</p> <p>13 concerns to you about the terms of the Contract for Deed</p> <p>14 when you set down and went over it with him?</p> <p>15 A Not that I recall.</p> <p>16 Q If something had been brought to your attention, would</p> <p>17 that have been something you would have gone back to</p> <p>18 Mr. Grimm with or Mr. Hagg with?</p> <p>19 A Yes.</p> <p>20 Q At any time after you met with Duane Remington on</p> <p>21 May 8th, did you ever go back to Brian Hagg and raise</p> <p>22 any concerns that had been asserted to you by</p> <p>23 Duane Remington?</p> <p>24 A No.</p> <p>25 Q At any time after you met with Duane Remington on</p>

<p style="text-align: right;">Page 118</p> <p>1 May 8th, did you go back to Keith Grim and suggest that</p> <p>2 Mr. Benington had any concerns with the Contract for</p> <p>3 Deed?</p> <p>4 A No.</p> <p>5 Q I want to take you to Page 3 of Exhibit 11, if I could,</p> <p>6 please.</p> <p>7 A (Complied.)</p> <p>8 Q And, in particular, I want to take you to the last</p> <p>9 sentence of Paragraph 5 on Page 3 where it says, Buyers</p> <p>10 acknowledge that they have examined the real property</p> <p>11 and any equipment or fixtures and furniture, pawns,</p> <p>12 collectively property, close pawns, related to the</p> <p>13 operation of the same and acknowledge that the property</p> <p>14 is acceptable.</p> <p>15 Do you recall having any conversation with</p> <p>16 Mr. Benington about his right to go in and inspect the</p> <p>17 property, real or personal?</p> <p>18 A I'm sorry. What page were you on again? I don't --</p> <p>19 Q I'm on Page 3 of Exhibit 11.</p> <p>20 A Okay. I'm sorry. Okay.</p> <p>21 Q I was referencing the last sentence of that Paragraph 5,</p> <p>22 Bryan. Do you recall having any conversation with</p> <p>23 Mr. Benington as to whether he intended to avail himself</p> <p>24 the opportunity to inspect the property?</p> <p>25 A The only time I remember anything about the inspections</p>	<p style="text-align: right;">Page 120</p> <p>1 with it.</p> <p>2 Does this appear to be that Listing Agreement and</p> <p>3 related agency addendums and things such as that?</p> <p>4 A Yes.</p> <p>5 Q Okay. I want to draw your attention, Bryan, to the last</p> <p>6 three pages of that. They're Bates stamped RE/MAX 0050</p> <p>7 through 52, I think they are. Now, I have attached</p> <p>8 those to Exhibit 12, but would they have, in fact, been</p> <p>9 a part of the Listing Agreement? Would they have been</p> <p>10 incorporated in the Listing Agreement or not?</p> <p>11 A No.</p> <p>12 Q Would it be more appropriate for those to be a separate</p> <p>13 exhibit then?</p> <p>14 A This is what is on the MLS. This is the MLS sheet</p> <p>15 printout.</p> <p>16 Q Well, let's do this then. I'm going to have you take</p> <p>17 those last three pages off.</p> <p>18 MR. WONESY: And, Greg, I'm going to have you take</p> <p>19 this and have him mark those as Exhibit 13; okay? Thank</p> <p>20 you.</p> <p>21 A (Complied.)</p> <p>22 (Exhibit 13 marked for identification.)</p> <p>23 Q Thank you. Let's look at Exhibit 12 if we can for a</p> <p>24 moment. I note, Bryan, on the top of this document</p> <p>25 under the caption Exclusive Listing Agreement there are</p>
<p style="text-align: right;">Page 119</p> <p>1 was when Duane and Melody Benington came to my office to</p> <p>2 have her sign, he said that he had seen the property a</p> <p>3 couple times now and he was comfortable.</p> <p>4 Q That would be prior to her signing the Purchase</p> <p>5 Agreement then on May 1st?</p> <p>6 A That was at the same time.</p> <p>7 Q Okay. Again, on Page 5 of Exhibit 11, Paragraph 14,</p> <p>8 other than what you just shared with me about Duane</p> <p>9 saying he had been to the property a couple times and he</p> <p>10 was fine with it, did he, at any time, raise any</p> <p>11 concerns with you that the property was being sold as</p> <p>12 is? Did he ever raise any concern about that?</p> <p>13 A No.</p> <p>14 Q Did Mr. Benington ever ask you whether he needed to have</p> <p>15 some concern and whether or not he needed some</p> <p>16 warranties or representations about the property? Did</p> <p>17 he ever ask you about that?</p> <p>18 A Not that I remember.</p> <p>19 Q I'm going to show you what I'm going to mark as</p> <p>20 Exhibit 12.</p> <p>21 (Exhibit 12 marked for identification.)</p> <p>22 Q Bryan, I'm showing you what I've marked as Exhibit 12,</p> <p>23 and it appears to be the Exclusive Listing Agreement</p> <p>24 that you would have signed with Mr. Grim in July of</p> <p>25 2016. And just take a moment to familiarize yourself</p>	<p style="text-align: right;">Page 121</p> <p>1 five different categories that these agreements could be</p> <p>2 applicable to. And this one the box is checked for</p> <p>3 Business/Industry. You would have done that, right?</p> <p>4 A Yes.</p> <p>5 Q Like, for instance, if this would have been a single</p> <p>6 family residence, you would have checked the box for RE,</p> <p>7 residential; right?</p> <p>8 A Correct.</p> <p>9 Q If it had just been a land transaction, you would have</p> <p>10 checked that box?</p> <p>11 A Yes.</p> <p>12 Q Been a multi-family, like an apartment, you would have</p> <p>13 checked that box; right?</p> <p>14 A Yes.</p> <p>15 Q What's the distinction between a commercial and a</p> <p>16 business/industry? What's the difference between those</p> <p>17 two?</p> <p>18 A Commercial would be -- to my understanding, is more of a</p> <p>19 land, commercial land.</p> <p>20 Q Okay. Take a look at exhibit -- the last three pages</p> <p>21 that you separately marked as Exhibit 13 then. The</p> <p>22 information identified on Exhibit 13, would that have</p> <p>23 come from you?</p> <p>24 A Yes.</p> <p>25 Q At the top of it, it says -- it lists a class and</p>

<p style="text-align: right;">Page 122</p> <p>1 business industry. Then underneath it says Status. It</p> <p>2 says, Sold Inner Office. What does that mean?</p> <p>3 A That means that I listed and sold the property.</p> <p>4 Q So what I see, and what I've marked as Exhibit 13 then,</p> <p>5 this would be the MGS document, and that document</p> <p>6 continues to change over time from the time it's listed</p> <p>7 to the time it's sold then?</p> <p>8 A Correct.</p> <p>9 Q So this would be the iteration after the property sold</p> <p>10 then?</p> <p>11 A Correct.</p> <p>12 Q Okay. If you go down to where it says Features about --</p> <p>13 right below the midpoint; do you see that?</p> <p>14 A Yes.</p> <p>15 Q Okay. Where it says, Documents on File, it lists</p> <p>16 financial statements, equipment lists, profit and loss</p> <p>17 statements. Would you have had that information in your</p> <p>18 file from the time you listed it or not? Or would</p> <p>19 you --</p> <p>20 A Yes.</p> <p>21 Q Okay. Bryan, I'm going to show you -- I'll show it to</p> <p>22 you and see if you can identify it, if you can. If you</p> <p>23 can't, otherwise I won't mark it. Have you seen this</p> <p>24 document before?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 124</p> <p>1 Q Yeah. Did Duane ever ask to see it?</p> <p>2 A No.</p> <p>3 Q Did Melody?</p> <p>4 A No.</p> <p>5 Q Did you -- when you met with Mr. Remington on</p> <p>6 April 27th, did you have any -- did you come to any</p> <p>7 understanding or appreciation as to what Mr. Remington's</p> <p>8 background would be?</p> <p>9 A No.</p> <p>10 Q Did he share with you whether he had any background in</p> <p>11 running a small business?</p> <p>12 A No.</p> <p>13 Q Mr. Beardsley used the term earlier today "cap rate".</p> <p>14 Did he ever use the term "cap rate" and ask you about</p> <p>15 the cap rate for this property?</p> <p>16 A No.</p> <p>17 Q And if you had been asked by Mr. or Mrs. Remington for a</p> <p>18 copy of financial information, would you have provided</p> <p>19 it to them?</p> <p>20 A Absolutely.</p> <p>21 Q When is the first time Mr. or Mrs. Remington asked to</p> <p>22 review any of the financial information for the Wild</p> <p>23 Bill's Campground?</p> <p>24 Now to be fair, there's -- on Exhibit 8, Bryan,</p> <p>25 there's a note on June 19th.</p>
<p style="text-align: right;">Page 123</p> <p>1 Q Would that have been part of your file?</p> <p>2 A Yes.</p> <p>3 (Exhibit 14 marked for identification.)</p> <p>4 Q Bryan, showing you what I've marked as Exhibit 14, and</p> <p>5 these documents are Bates stamped RE/MAX 0053 through</p> <p>6 0056. Would this information have been information that</p> <p>7 had been provided to you by Keith Grimm?</p> <p>8 A Yes.</p> <p>9 Q And from the time you had the Listing Agreement signed,</p> <p>10 would you have had this information available in your</p> <p>11 file?</p> <p>12 A Yes.</p> <p>13 Q And as a Realtor -- or as a broker, I should say, pardon</p> <p>14 me, you don't do anything to authenticate or validate</p> <p>15 information that's presented to you by clients, do you?</p> <p>16 A No.</p> <p>17 Q Okay. And the summary sheet that's prepared here, would</p> <p>18 that have been a summary sheet that you prepared? Page</p> <p>19 1 of Exhibit 14.</p> <p>20 A Yes.</p> <p>21 Q And at any time after you first met Duane Remington on</p> <p>22 April 27th up until the transaction closed on May 12th,</p> <p>23 did he ever ask to see the information that I've</p> <p>24 generally marked as Exhibit 14?</p> <p>25 A Did Duane? No.</p>	<p style="text-align: right;">Page 125</p> <p>1 A Yes.</p> <p>2 Q Would that have been the first time?</p> <p>3 A Yes.</p> <p>4 Q Did he tell you why, on June 19th, he wanted to see the</p> <p>5 financial information for the last three years?</p> <p>6 A He said that things were not adding up.</p> <p>7 Q Well, did he give you -- at this point in time he had</p> <p>8 been in possession for about five weeks, right?</p> <p>9 A Yes.</p> <p>10 Q Did he give you any more detail as to what he meant,</p> <p>11 things weren't adding up?</p> <p>12 A That the sales were not what he thought they should be.</p> <p>13 Q Well, had he, at any time prior to June 19th, given you</p> <p>14 any -- like a business case or a business plan that he</p> <p>15 had put together for his operation of this campground?</p> <p>16 A I'm sorry. Say that again.</p> <p>17 Q At any time prior to June 19th -- let me phrase my</p> <p>18 question this way, Bryan.</p> <p>19 You mentioned that Remington said to you things</p> <p>20 aren't adding up; is that right?</p> <p>21 A Yes.</p> <p>22 Q Did he give you any point of reference as to what he</p> <p>23 expected the sales to be?</p> <p>24 A No.</p> <p>25 Q Did he give you any methodology or anything he had</p>

<p style="text-align: right;">Page 126</p> <p>1 prepared where he would have forecasted what the sales 2 were going to be?</p> <p>3 A No.</p> <p>4 Q Did you make any inquiry of him what he meant by the 5 term "things aren't adding up"?</p> <p>6 A I believe what he said is that they were -- they were 7 not getting as much sales as he thought they should be.</p> <p>8 Q Did he mention whether he meant sales meaning campground 9 or cabins versus food sales, beer sales? Did he tell 10 you what type of sales they were?</p> <p>11 A No.</p> <p>12 Q At any time prior to June 19th of 2017 had Mr. Remington 13 ever made any inquiry of you as to what he might expect 14 for sales to be on a weekly or monthly basis?</p> <p>15 A No.</p> <p>16 (Mr. Remington left the deposition room at this 17 time.)</p> <p>18 Q A question Mr. Beardsley asked earlier today about when 19 the transaction closed.</p> <p>20 (Exhibit 15 marked for identification.)</p> <p>21 Q I show you Exhibit 15. Is this a copy of the Settlement 22 Statement evidencing the closing of this transaction?</p> <p>23 A Yes.</p> <p>24 Q And it says the settlement date of May 12th of 2017. 25 Would that have been the closing date then?</p>	<p style="text-align: right;">Page 128</p> <p>1 A No.</p> <p>2 Q Had you ever had any conversation prior to the time of 3 closing with Duane Remington as to who operated the food 4 and beverage side of that business historically?</p> <p>5 A I believe we talked about a little bit during the 6 Purchase Agreement, because Keith had used a third 7 party.</p> <p>8 Q Do you recall historically when Keith had used a third 9 party to do the food and beverage side of the business?</p> <p>10 A It was the previous year.</p> <p>11 Q So 2016 then?</p> <p>12 A Yes.</p> <p>13 Q Did Mr. Remington -- at any time you were present in the 14 company of both yourself, Duane, and Keith Grimm, was 15 there ever any conversation that you overheard where 16 Mr. Remington made any inquiry of Keith Grimm as to how 17 that third-party food and beverage had worked out?</p> <p>18 A I don't recall.</p> <p>19 Q Now when Mr. Remington began running the business after 20 the time of closing in May of 2017, did you come to have 21 any understanding as to who was operating the food and 22 beverage for him, or he and his wife, I should say?</p> <p>23 A I just assumed they were.</p> <p>24 Q Okay. But did he ever tell you that?</p> <p>25 A No.</p>
<p style="text-align: right;">Page 127</p> <p>1 A Yes.</p> <p>2 Q And after that date, May 12th of 2017, did you have any 3 further conversations with Mr. Remington prior to 4 June 19th of 2017 when he came to your office and asked 5 about financial information?</p> <p>6 (Mr. Remington re-entered the deposition room at 7 this time.)</p> <p>8 A No.</p> <p>9 Q Then on your notes on July -- on Exhibit 8 suggest that 10 on July 6th of 2017 you had another meeting with 11 Mr. Remington; is that right?</p> <p>12 A Yes.</p> <p>13 Q At any time from June 19th up until July 6th do you have 14 any recollection of meeting with Mr. Remington?</p> <p>15 A I do not.</p> <p>16 Q Okay. And your notes just generally reference meeting 17 with Duane to go over questions he had on the financial 18 statements. What kind of questions did he give to you, 19 have for you?</p> <p>20 A We talked about the -- what I remember of it is we 21 talked about the beer sales and the food sales.</p> <p>22 Q Now prior to the time of closing, had you ever been 23 privy to any conversations with Duane Remington when 24 he -- where he'd asked about sales volumes for beer or 25 food?</p>	<p style="text-align: right;">Page 129</p> <p>1 Q Did you come to any understanding between May 12th of 2 2017 and the time that Duane came to see you on July 6th 3 of 2017 how much time Mr. or Mrs. Remington were putting 4 in to the campground on a daily basis?</p> <p>5 A No.</p> <p>6 Q Did Mr. Remington, at any time prior to purchasing the 7 campground, ever inquire of Keith in your presence as to 8 how much time he should expect to have to work on a 9 daily basis at the campground?</p> <p>10 A No.</p> <p>11 Q After July 6th, the next reference you have to a meeting 12 with Duane was on April 4th of 2017. Tell me about that 13 meeting.</p> <p>14 A On August 8th -- or August 4th?</p> <p>15 Q August 4th, yeah.</p> <p>16 A Okay. Mr. Remington showed up at my office and just 17 what I said there, threatened to do an audit, get a 18 lawyer. He asked for the 2016 tax return, which I then 19 requested from Mr. Grimm.</p> <p>20 Q Okay. And at the time that the original Purchase 21 Agreement was signed, would you even -- would you have 22 had a copy of Mr. -- of the tax return for Wild Bill's 23 for 2016?</p> <p>24 A No.</p> <p>25 Q Did you provide these, this information, to</p>

<p style="text-align: right;">Page 130</p> <p>1 Mr. Remington when he asked for it?</p> <p>2 A I had to call up Keith to get it. Then, yes, I provided</p> <p>3 it.</p> <p>4 Q When Mr. Remington threatened to do an audit, get a</p> <p>5 lawyer, did he tell you why?</p> <p>6 A Yes.</p> <p>7 Q What did he tell you?</p> <p>8 A He said that the -- it just wasn't making as much money</p> <p>9 as he thought it was going to.</p> <p>10 Q Did he ever quantify for you what he thought it was</p> <p>11 going to make?</p> <p>12 A Not that I remember.</p> <p>13 Q Okay. Did you ever inquire of Mr. Remington how he was</p> <p>14 operating the business from the time he had taken</p> <p>15 possession in May of 2017 up until now we're into early</p> <p>16 August of 2017? Did he talk to you about what he was</p> <p>17 doing up there?</p> <p>18 A No.</p> <p>19 Q Okay. Did you know he wasn't even staying up there at</p> <p>20 night? Did you understand that?</p> <p>21 A I did not know that.</p> <p>22 Q Then on August 14th you must have had your last meeting</p> <p>23 with Mr. Remington then?</p> <p>24 A Yes.</p> <p>25 Q He came in, picked up the tax return. Did you have any</p>	<p style="text-align: right;">Page 132</p> <p>1 was?</p> <p>2 A No.</p> <p>3 Q Did they ever ask at any time what you knew about the</p> <p>4 operation of the Wild Bill's Campground?</p> <p>5 A Not that I know of, no.</p> <p>6 Q Did they ever ask you what your assessment of the</p> <p>7 financial information was for the Wild Bill's</p> <p>8 Campground?</p> <p>9 A No.</p> <p>10 Q Other than having walked through the property any number</p> <p>11 of times over a ten-year period, had you ever done</p> <p>12 anything, Bryan, to make some personal assessment as to</p> <p>13 the business opportunity available at the Wild Bill's</p> <p>14 Campground?</p> <p>15 A How do you mean?</p> <p>16 Q Well, had you ever sat down and looked at it and said if</p> <p>17 I owned this, this is what I would do different? Did</p> <p>18 you ever do that?</p> <p>19 A Yes.</p> <p>20 Q You did?</p> <p>21 A (Nodded.)</p> <p>22 Q Did you ever give any suggestions to Keith about what he</p> <p>23 should do differently at the campground?</p> <p>24 A Adding cabins.</p> <p>25 Q Okay. I was going to go down that path. At some point</p>
<p style="text-align: right;">Page 131</p> <p>1 discussion about what was in the tax return?</p> <p>2 A No.</p> <p>3 Q Did he have any more additional questions for you about</p> <p>4 his concerns about the business?</p> <p>5 A Just, again, that it wasn't making enough.</p> <p>6 Q Okay. Again, did he ever quantify for you what he</p> <p>7 thought it should be making?</p> <p>8 A Not that I recall.</p> <p>9 Q Did he ever tell you how much he was making during the</p> <p>10 2015 calendar -- 2015 summer season?</p> <p>11 A No.</p> <p>12 Q Did you have any ability to judge how Remingtons were</p> <p>13 doing in relation to how Grim had done in the past?</p> <p>14 A No.</p> <p>15 Q After August 24th of '17, did you meet with</p> <p>16 Mr. Remington any additional times?</p> <p>17 A No.</p> <p>18 Q I want to talk to you for a moment, if I can, Bryan,</p> <p>19 about Exhibit 2 that Mr. Beardsley showed you earlier</p> <p>20 today. And in particular I want to focus on the last</p> <p>21 bolded paragraph towards the bottom of the page where it</p> <p>22 says, Agent Obligations.</p> <p>23 Did Mr. or Mrs. Remington, at any time prior to</p> <p>24 the time of closing, ever make any inquiry of you as to</p> <p>25 what your understanding of that business opportunity</p>	<p style="text-align: right;">Page 133</p> <p>1 in time from the time that Keith bought it to the time</p> <p>2 it was sold, there was some, like, little stand-alone</p> <p>3 sleeping units, put it; right?</p> <p>4 A (Nodded.)</p> <p>5 Q That was an idea that you gave to Keith?</p> <p>6 A I think he had it, as well, because he had already built</p> <p>7 two.</p> <p>8 Q Okay. Other than that, did you ever make any other</p> <p>9 suggestions to Keith as to things he might want to do up</p> <p>10 at the campground?</p> <p>11 A No.</p> <p>12 Q For instance, when Mr. Grim outsourced the food and</p> <p>13 beverage side of the business, was that a suggestion you</p> <p>14 had made to him?</p> <p>15 A No.</p> <p>16 Q Did you ever make a suggestion to Duane or Melody</p> <p>17 Remington as to whether or not they'd want to be their</p> <p>18 food and beverage -- responsible for their food and</p> <p>19 beverage? Did you ever have that conversation with</p> <p>20 them?</p> <p>21 A No.</p> <p>22 Q On the third line under this Agent's obligation towards</p> <p>23 the latter part of that phrase it says, kind of, these</p> <p>24 ellipses, and it's respond honestly and accurately to</p> <p>25 questions concerning the property.</p>

Page 134

1 Did Duane Remington, at any time from the time you
 2 met him on April 27th up until you closed on May 12th of
 3 2017, did he ever ask you any questions as it concerned
 4 the campground at all?

5 A No.

6 Q Did you ever provide any information -- ever provide
 7 information to Mr. Remington that wasn't truthful and
 8 accurate to the best of your knowledge?

9 A No.

10 Q Can you think of a single question that Duane Remington
 11 asked you from the time you met him on April 27th up
 12 until May 12th, 2017 about the campground?

13 A I can't think of anything.

14 Q Did you communicate with Mr. Remington at all by e-mail
 15 or any other written form?

16 A No.

17 Q Mr. Beardsley asked you some questions today about
 18 Seller's Property Disclosure Statement. Do you remember
 19 those questions?

20 A Yes.

21 Q Yes?

22 A (Nodded.)

23 Q And the Seller's Property Disclosure Statement is
 24 something that's required under South Dakota law, right?

25 A Yes, for a residence.

Page 135

1 Q In certain applications, correct? For instance, if you
 2 have a residence that has more than X number of units,
 3 you don't have to use one; right?

4 A Correct.

5 Q Now on this property, I mean, there were cabins and
 6 stuff, right?

7 A (Nodded.)

8 Q But would those, under your understanding of the law,
 9 would those have required a property seller's disclosure
 10 statement, those cabins?

11 A No.

12 Q And why not, Bryan?

13 A Again, they were overnight cabins and they were income.

14 Q Have you ever, in a sale of a campground, ever used a
 15 seller's property disclosure statement before?

16 A I have not.

17 Q Have all of the other campgrounds you have sold, have
 18 they had some sort of a living quarters before?

19 A Yes.

20 Q Have you sold any other business, Bryan, over the years
 21 other than a campground that might have had a living
 22 quarters attached to it? Like a motel, for instance?

23 A No.

24 Q Okay. Mr. Beardsley asked you some questions about, I
 25 think it was the -- was it the Horse Thief Campground or

Page 136

1 Horse Creek Campground? Is that what Mike was talking
 2 to you about?

3 A Yes.

4 Q Was that Horse Creek?

5 A Horse Thief.

6 Q And that's the one up next to the restaurant -- or off
 7 -- by Sheridan, right?

8 A No.

9 Q Oh. Where is Horse Thief at -- or Horse Creek at?

10 A It is on the road to Sylvan Lake.

11 Q Is that a campground similar to Wild Bill's or is it
 12 dissimilar?

13 A It's bigger. It's similar but bigger.

14 Q Bigger, okay. And prior to Mike asking you about that
 15 today, had you any familiarity with that sale?

16 A No.

17 Q You hadn't seen Mr. Gene Beardsley's expert witness report
 18 he had done before?

19 A No.

20 Q Do you know whether or not there's a separate living
 21 quarters or separate house on that property?

22 A Yes.

23 Q There is?

24 A Yes.

25 Q So there's a house on there other than just a living

Page 137

1 quarters?

2 A I'm sorry. No. I apologize. No, there's living
 3 quarters above the store.

4 Q Above the store?

5 A Uh-huh.

6 Q Okay. At any time prior to this litigation being
 7 commenced, I think, in January of this year, in the
 8 conversations you had with Duane Remington, had he ever
 9 raised an issue as it concerned the South Dakota
 10 Department of Transportation right-of-way issue?

11 A I haven't, no.

12 MR. MOONEY: Take about five minutes. I think I'm
 13 done with, Bryan. I just want to run through a couple
 14 things. Make sure I didn't miss anything. Can we just
 15 take about five?

16 MR. BEARDSLEY: Yeah.

17 (A recess was taken at this time, 3:05 p.m.)
 18 (The deposition resumed at 3:17 p.m.)

19 Q (By Mr. Mooney:) Mr. Iverson, I am showing you what
 20 I've marked as Exhibit 16.

21 (Exhibit 16 marked for identification.)

22 Q And, generally, what are these two pages?

23 A A Certificate of Real Estate Value that is done at the
 24 closing.

25 Q Would this have been a document that would have been

<p style="text-align: right;">Page 138</p> <p>1 executed at the time of closing by the Remingtons and</p> <p>2 Mr. Grimm?</p> <p>3 A Yes.</p> <p>4 Q Now if this had been a residential property, how would</p> <p>5 it have been different?</p> <p>6 A The owner-occupied houses would have been different.</p> <p>7 MR. NOONEY: That's all I have. Thank you</p> <p>8 Mr. Iverson.</p> <p>9 MR. BEARDSLEY: Just a couple questions.</p> <p>10 FURTHER EXAMINATION BY MR. BEARDSLEY:</p> <p>11 Q Bryan, you indicated that prior to the transaction with</p> <p>12 Remingtons you had drawn up a Purchase Agreement four</p> <p>13 separate times for the sale of Wild Bill's; do you</p> <p>14 remember that?</p> <p>15 A Yes.</p> <p>16 Q And can you tell me why these prior negotiations failed?</p> <p>17 A Price.</p> <p>18 Q And on each of these were they offered to be sold on a</p> <p>19 Contract for Deed?</p> <p>20 A No.</p> <p>21 Q And on each of these four prior occasions were the</p> <p>22 buyers represented by an agent?</p> <p>23 A On two of them.</p> <p>24 Q Do you remember the agents?</p> <p>25 A I do not.</p>	<p style="text-align: right;">Page 140</p> <p>1 tell her to backdate them?</p> <p>2 A We already had them dated the 27th, yes.</p> <p>3 Q So you backdated them and she signed them?</p> <p>4 A Yes.</p> <p>5 Q Bryan, if a prospective buyer used financial information</p> <p>6 that is not accurate, whether or not he reviewed that,</p> <p>7 that's irrelevant, isn't it?</p> <p>8 MR. BRANSON: Objection, form.</p> <p>9 A Please repeat it.</p> <p>10 Q (By Mr. Beardsley:) Sure. If a prospective buyer</p> <p>11 requests financial information through income and</p> <p>12 expense reports and those reports are not accurate, it</p> <p>13 would not have any bearing on his decision anyway, would</p> <p>14 it?</p> <p>15 MR. BRANSON: Objection, form.</p> <p>16 A I'm not sure what you want me to answer. I apologize.</p> <p>17 Q (By Mr. Beardsley:) The financial information provided</p> <p>18 by Mr. Grimm, if it was not accurate it would be</p> <p>19 worthless to anybody, wouldn't it?</p> <p>20 A Yes.</p> <p>21 Q And you testified that at the time the Purchase</p> <p>22 Agreement was signed, April 27, 2017, you had access to</p> <p>23 all of these financial documents; do you remember that</p> <p>24 testimony?</p> <p>25 A Yes.</p>
<p style="text-align: right;">Page 139</p> <p>1 Q You answered a bunch of questions from Mr. Nooney about</p> <p>2 conversations with Duane Remington prior to the</p> <p>3 execution of the Purchase Agreement, and I just want to</p> <p>4 confirm that your testimony here today is that he didn't</p> <p>5 ever ask you about the fair value of this property?</p> <p>6 A Before the execution of the contract?</p> <p>7 Q Yes.</p> <p>8 A No.</p> <p>9 Q And you did not tell him that Keith Grimm was making</p> <p>10 between 240 and \$245,000 a year in three and a half</p> <p>11 months?</p> <p>12 A Not that I recall.</p> <p>13 Q On Exhibit 9, Number 5, there's reference to a well</p> <p>14 test, SD DOR? Do you know what -- explain that to me,</p> <p>15 will you?</p> <p>16 A The campground is required to send in a water test. I</p> <p>17 believe it's once a month.</p> <p>18 Q And, sir, if Mr. Grimm was altering the water before</p> <p>19 sending it in for approval, that would be improper,</p> <p>20 wouldn't it?</p> <p>21 A Yes.</p> <p>22 Q Were you ever aware that Mr. Grimm was doing that?</p> <p>23 A No.</p> <p>24 Q So when Melody came to your office on May 1st to sign</p> <p>25 the documents that we've been going over today, did you</p>	<p style="text-align: right;">Page 141</p> <p>1 Q Okay. Sir, then in a subsequent meeting with</p> <p>2 Mr. Remington when he requested that information, why</p> <p>3 didn't you provide it at that meeting?</p> <p>4 A He did not ask for it.</p> <p>5 Q Subsequent to closing, when he had a meeting at your</p> <p>6 office in June, I believe, he requested the financial</p> <p>7 information; correct?</p> <p>8 A Yes.</p> <p>9 Q And you told him that you didn't have it. You had to</p> <p>10 get it from Keith; isn't that right?</p> <p>11 A No, that was in August.</p> <p>12 Q So you didn't have access to the financial information</p> <p>13 the entire time?</p> <p>14 A For 2016 I did not, when he asked me for 2016 in August.</p> <p>15 Q And you don't know how many hours Duane and Melody</p> <p>16 worked that campground, do you?</p> <p>17 A I do not.</p> <p>18 Q You testified that you made suggestions to Keith on how</p> <p>19 to run that business. Approximately when did you do</p> <p>20 that?</p> <p>21 A I don't know.</p> <p>22 Q Do you have just a guess on a year?</p> <p>23 A I can't.</p> <p>24 Q So you took the time to evaluate the business and came</p> <p>25 up with a couple ideas to help Keith Grimm make it more</p>

<p style="text-align: right;">Page 142</p> <p>1 profitable; is that fair?</p> <p>2 A Yes.</p> <p>3 Q And Grimm didn't rent out the living quarters as a part</p> <p>4 of his business to make a profit, did he?</p> <p>5 A I don't know.</p> <p>6 Q That's fair.</p> <p>7 MR. BEARDSLEY: Thank you for your time. I don't</p> <p>8 have anything further.</p> <p>9 THE WITNESS: Okay.</p> <p>10 MR. ERLANDSON: Mr. Iversen, I'm just going to ask</p> <p>11 a couple questions here. I want to clear a few things</p> <p>12 up.</p> <p>13 EXAMINATION BY MR. ERLANDSON:</p> <p>14 Q Turn to Exhibit 1.</p> <p>15 A (Complied.)</p> <p>16 Q First of all, correct as if I'm wrong, are there --</p> <p>17 basically in your representation of clients in the real</p> <p>18 estate industry they fall into three categories. You</p> <p>19 represent exclusively the buyers, exclusively the</p> <p>20 sellers, or you can enter into a limited or dual agency</p> <p>21 transaction; is that correct?</p> <p>22 A Correct.</p> <p>23 Q And Exhibit 3, what's that exhibit titled?</p> <p>24 A Buyer Agency Agreement.</p> <p>25 Q Okay. And does this apply exclusively to one of those</p>	<p style="text-align: right;">Page 144</p> <p>1 talking about, was that a limited or dual agency</p> <p>2 transaction?</p> <p>3 A Yes.</p> <p>4 Q Do you know if the living quarters that were described</p> <p>5 with the campground, were they ever used as a family</p> <p>6 dwelling?</p> <p>7 A No.</p> <p>8 Q Are you aware that they were or not?</p> <p>9 A They were not.</p> <p>10 Q How many living cabins are located on that property?</p> <p>11 A At the time of the sale there was seven.</p> <p>12 Q Okay. There was also -- was it a duplex?</p> <p>13 A Yes. That's two of the seven.</p> <p>14 Q Okay. Do you know if any of those cabins were ever used</p> <p>15 as family dwellings or a residence?</p> <p>16 A No, they were not.</p> <p>17 Q Take a look at Exhibit 2. Mr. Beardsley talked to you</p> <p>18 about that for some time.</p> <p>19 A (Complied.)</p> <p>20 Q And this is a form that's basically drafted by the South</p> <p>21 Dakota Board of Realtors that is used and adopted by the</p> <p>22 Black Hills Board of Realtors and all the agents that</p> <p>23 fall underneath that group; is that fair?</p> <p>24 A Yes.</p> <p>25 Q And it appears to be three different sections to this</p>
<p style="text-align: right;">Page 143</p> <p>1 three types of transactions or representations?</p> <p>2 A Yes.</p> <p>3 Q Which one?</p> <p>4 A The dual limited -- I'm sorry. This right here?</p> <p>5 Q Yes, Exhibit 1.</p> <p>6 A This is more of a Buyer Agency Agreement that would be</p> <p>7 for if I was showing someone multiple properties. An</p> <p>8 exclusive agreement to represent buyers.</p> <p>9 Q Okay. This is where you only represent the buyers; is</p> <p>10 that correct?</p> <p>11 A Correct.</p> <p>12 Q And under Number 8 it indicates the terms of this</p> <p>13 agreement, in any event; correct?</p> <p>14 A Correct.</p> <p>15 Q And when would it have expired?</p> <p>16 A May 31st.</p> <p>17 Q Or the completion -- let's see, where are you at here --</p> <p>18 or the completion of the acquisition of the property;</p> <p>19 correct?</p> <p>20 A Correct.</p> <p>21 Q When was that?</p> <p>22 A May 12th.</p> <p>23 Q Of 2017?</p> <p>24 A Yes.</p> <p>25 Q And was this transaction with the campground we've been</p>	<p style="text-align: right;">Page 145</p> <p>1 Agency Agreement Addendum; is that correct?</p> <p>2 A Yes.</p> <p>3 Q And the first one looks as if it applies where the</p> <p>4 broker represents either the seller and -- or landlord</p> <p>5 or the buyer/tenant?</p> <p>6 A Correct.</p> <p>7 Q And the second section: If the broker appoints an</p> <p>8 associate licensee to represent the seller/landlord or</p> <p>9 buyer/tenant; is that correct?</p> <p>10 A Correct.</p> <p>11 Q Then the third category: If the buyer/tenant is</p> <p>12 represented by a broker wants to sell or see a property</p> <p>13 of a seller/landlord being represented by the same</p> <p>14 broker, correct?</p> <p>15 A Correct.</p> <p>16 Q So is Section 3 applicable to dual or limited agency?</p> <p>17 A Yes.</p> <p>18 Q And what about Section 1? Would that apply in this</p> <p>19 instance?</p> <p>20 A If I was the sole representative of the buyer or seller.</p> <p>21 Q That wasn't the case, though, in this particular</p> <p>22 instance?</p> <p>23 A No.</p> <p>24 MR. ERLANDSON: I don't have anything further.</p> <p>25 Thank you. Do you have anything?</p>

<p style="text-align: right;">Page 146</p> <p>1 MR. DEARLEY: I don't.</p> <p>2 MR. ERLANDSON: He'll read and sign.</p> <p>3 (The deposition concluded at 3:32 p.m.)</p> <p>4 * * * *</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 148</p> <p>1 STATE OF SOUTH DAKOTA)</p> <p>2) SS. CERTIFICATE</p> <p>3 COUNTY OF PENNINGTON)</p> <p>4</p> <p>5 I, JENNIE S. QUINN, Court Reporter and Notary</p> <p>6 Public, South Dakota, duly commissioned to administer oaths,</p> <p>7 certify that I placed the witness under oath before the</p> <p>8 witness testified; that the foregoing testimony of said</p> <p>9 witness was taken by me in shorthand, and that the same has</p> <p>10 been reduced to typewritten form under my supervision; that</p> <p>11 the foregoing transcript is a true and correct transcript of</p> <p>12 the questions asked, of the testimony given, and of the</p> <p>13 proceedings had.</p> <p>14 I further certify that I am not related to,</p> <p>15 employed by, or in any way associated with any of the</p> <p>16 parties to this action, or their counsel, and have no</p> <p>17 interest in its event.</p> <p>18 Witness my hand and seal at Rapid City, South</p> <p>19 Dakota, this 30th day of August 2018.</p> <p>20 </p> <p>21 JENNIE S. QUINN</p> <p>22 My Commission Expires: 08/24/24</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 147</p> <p>1 DEPONENT'S SIGNATURE PAGE</p> <p>2</p> <p>3 I, Bryan Iverson, the undersigned deponent,</p> <p>4 have this day of , 2018 read the</p> <p>5 foregoing pages 1 through 146, inclusive, have made the</p> <p>6 following change(s) (if any) to said testimony, have stated</p> <p>7 my reason(s) for each change or correction, and have signed</p> <p>8 below.</p> <p>9 Bryan Iverson</p> <p>10 Changes/Corrections</p> <p>11</p> <p>12 Page Line Desired change and reason therefor:</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25 (Use a separate sheet similarly designated for additional changes, with signature of deponent on each sheet.)</p>	

Exhibits	#				
Exhibit 1 28:20 86:5,6,22 87:5,11,19 88:9,24 93:20 95:10 115:1,7 117:11 118:5, 19 119:7	#1 44:5,12 87:21 88:13,15,18 102:11, 16,19,24 103:4		12th 28:12,13,24,25 30:1 109:5 114:1 123:22 126:24 127:2 129:1 134:2,12 143:22	2015 28:5 131:10	5
Exhibit 2 30:9 32:25 33:12 34:14,20 38:24 40:16 43:16 87:3 119:20,21,22 120:8, 23 131:19 144:17	\$		13 97:16 120:19,22 121:21,22 122:4	2016 28:5 64:23 94:9 97:6 119:25 126:11 129:18,23 141:14	5 44:11,12 74:10 87:20 105:23 107:14, 16 110:5,16 112:24, 25 118:9,21 119:7 139:13
Exhibit 3 11:1 42:1, 2 120:19,22 121:21, 22 122:4 142:14,23 143:5	\$1,009,000 79:12 \$10,000 76:22 \$240,000 79:6 \$245,000 139:10 \$899,000 24:22 29:2 101:24		13th 29:13,24 14 119:7 123:3,4,19, 24 15 29:9 126:20,21 15th 111:17 16 137:20,21 17 26:14 131:15 1984 4:11 1989 4:11 19th 124:25 125:4, 13,17 126:12 127:4, 13 1:41 82:12 1st 77:21,23 78:22 101:2,8 112:9 113:4 114:2 117:9 119:5 139:24	2017 14:20 18:14 25:21 28:5 29:7,9 30:12,16 43:1 65:11 78:22 85:12,24 88:23 89:18 90:2 91:7 101:7,8 109:4,5 114:17 115:24 126:12,24 127:2,4,10 128:20 129:2,3,12 130:15,16 134:3,12 140:22 143:23	50 26:19,23 50/50 107:8 52 120:7 57702 3:10
Exhibit 4 43:24,25 44:13 45:23 123:3,4, 19,24	0		18 137:20,21 1984 4:11 1989 4:11 19th 124:25 125:4, 13,17 126:12 127:4, 13 1:41 82:12 1st 77:21,23 78:22 101:2,8 112:9 113:4 114:2 117:9 119:5 139:24	240 139:10 24th 130:22 131:15 27 29:7 30:12,17 43:1 88:18 101:7 109:4 140:22 27th 77:15,22 78:21 85:12,24 88:23 90:2, 25 91:6,7 95:16 99:15 100:25 101:18 104:18 106:12 112:2,3,8,19 113:2,5,23,25 115:14, 17 123:22 124:6 134:2,11 140:2	6 6 49:20,21 50:6 52:6 94:3,13,24 106:3 110:22 65 5:22 6th 127:10,13 129:2, 11
Exhibit 5 44:11,12 87:20 126:20,21	0007 97:16 0050 120:6 0053 123:5 0056 123:6		2	3	7 7 64:20,21 97:15,16 106:6
Exhibit 6 49:20,21 50:6 52:6 94:3,13,24 137:20,21	1		2 30:9 32:25 33:12 34:14,20 35:16 38:24 40:16 43:16 50:19 86:14,16 87:3 88:8,11 97:1,8 99:2 105:2 108:8 110:22 131:19 144:17 200 92:17,19 2001 7:19 8:9 2005 8:4,11 2006 8:12,13,14 35:10 91:17 2007 18:16,19 21:22 22:7 25:21 56:6 91:17 2008 56:10 2008-ish 9:22 2009 19:10,25 2010 19:21 20:3 21:11,17 23:13 24:1 2011 24:17 2012 28:1 2013 28:3 2014 28:5	3 32:25 42:1,2 43:16 99:3 102:7 103:3 105:12 108:14 118:5, 9,19 142:14,23 143:5 145:16 30 18:4 27:1,2 70:13 72:21 300 35:16 31st 143:16 33 11:1 385 65:5 3:05 137:17 3:17 137:18 3:32 p.m. 146:3	8 8 44:16 76:22 84:9,10, 24 88:12 106:8 114:15 124:24 127:9 143:12 89 5:16 899 19:24 20:7 21:19 24:20 26:2,4,5 8th 114:17 115:10,14, 17,24 117:11,21 118:1 129:14
Exhibit 7 38:21 64:20,21			2	3	9 9 64:23 80:9 85:21 89:3,4,6,7,11,23,24 95:11,13 98:4,8,12 101:23 102:3,22 103:11 108:24 107:3 108:22 110:22 112:17,24,25 114:9 139:13
Exhibit 8 84:9,10,24 114:15 124:24 127:9	1 28:20 65:11 86:5,6, 22 87:5,11,19 88:7,9, 24 93:20 95:10 96:7 99:2 107:3,19 108:4 123:19 145:18 1.5 65:4 10 5:24 6:3,5 18:15 26:16,22 27:11 30:18 50:5 55:25 70:12 71:6 72:20 80:9,10 88:15 88:18,25 91:18 95:7, 8,13,23 98:7,15 97:1, 15 98:5 108:19 112:1 10,000 99:9 100 110:24 10:18 3:1 11 25:15,16 114:25 115:1,7 117:11 118:5, 19 119:7 11:25 38:20 11:37 38:21 12 92:16 115:2 119:20,21,22 120:8, 23 1240 3:9 12:49 82:10		2 30:9 32:25 33:12 34:14,20 35:16 38:24 40:16 43:16 50:19 86:14,16 87:3 88:8,11 97:1,8 99:2 105:2 108:8 110:22 131:19 144:17 200 92:17,19 2001 7:19 8:9 2005 8:4,11 2006 8:12,13,14 35:10 91:17 2007 18:16,19 21:22 22:7 25:21 56:6 91:17 2008 56:10 2008-ish 9:22 2009 19:10,25 2010 19:21 20:3 21:11,17 23:13 24:1 2011 24:17 2012 28:1 2013 28:3 2014 28:5	3 32:25 42:1,2 43:16 99:3 102:7 103:3 105:12 108:14 118:5, 9,19 142:14,23 143:5 145:16 30 18:4 27:1,2 70:13 72:21 300 35:16 31st 143:16 33 11:1 385 65:5 3:05 137:17 3:17 137:18 3:32 p.m. 146:3	8 8 44:16 76:22 84:9,10, 24 88:12 106:8 114:15 124:24 127:9 143:12 89 5:16 899 19:24 20:7 21:19 24:20 26:2,4,5 8th 114:17 115:10,14, 17,24 117:11,21 118:1 129:14
Exhibit 9 88:3,4,6,7, 11,24 95:11,13 98:4, 8,12 101:23 102:3,22 103:10,11 108:24 107:3 108:22 110:22 112:17,24,25 114:9 139:13			2	3	9 9 64:23 80:9 85:21 89:3,4,6,7,11,23,24 95:11,13 98:4,8,12 101:23 102:3,22 103:11 108:24 107:3 108:22 110:22 112:17,24,25 114:9 139:13 91 6:17 95 7:12 91:24 92:18, 24
Exhibit 10 95:7,8, 13,23 96:7,15 97:1,15 98:5			2	3	
Exhibit 11 114:24, 25 115:1,7 117:11 118:5,19 119:7			2	3	
Exhibit 12 115:2 119:20,21,22 120:8, 23			2	3	
Exhibit 13 120:19, 22 121:21,22 122:4			2	3	
Exhibit 14 123:3,4, 19,24			2	3	
Exhibit 15 126:20, 21			2	3	
Exhibit 16 137:20, 21			2	3	

950 19:7,12,24	54:24	21 87:11,16 88:17,19, 24 89:3,4,6,7,8,9 90:18,20 91:4,9 93:20,25 95:9 96:16, 19 97:2,4,6 98:3,19, 21,25 101:12,23 102:3,13,23 105:14 106:16,23 107:1 108:6,21 109:4 110:19 111:24 112:1, 2,10,13,22,25 113:20, 23 114:9 117:7 119:5, 23 120:2,9,10,25 123:9 128:6 129:21 138:12 139:3 140:22 142:24 143:6,8,13 145:1	apprised 110:20 approval 139:19 approximately 92:19 141:19 April 21:21 23:15 29:7 30:12,17 43:1 77:15 78:22 85:12,24 88:23 89:18 90:2,25 91:7 95:16 99:15 100:25 101:7,16 104:18 106:12 109:4 112:2,3,8,19 113:2,5, 23,25 114:17 115:14, 17 123:22 124:6 128:12 134:2,11 140:22 area 51:3 54:25 61:24 95:1 97:22 100:13 arising 43:7 arrived 89:2 asserted 117:22 assessment 132:6, 12 assigns 89:11 assisted 57:23 117:8 associate 8:24 9:12,17 10:7,10,18,25 11:3 12:21 13:12 14:18 64:8 145:8 associates 9:19,20 association 48:14 assume 4:3 5:9 10:9 15:18 21:6,22 42:17, 25 44:1 71:17 82:22 83:3 110:17 112:20 assumed 128:23 attached 120:7 135:22 attended 5:3 attention 117:16 120:5 attorney 15:15 16:1, 4 82:17 attorney's 43:6 audit 129:17 130:4 August 21:13 25:16 129:14,15 130:16,22 131:15 141:11,14 auspices 104:8	authenticate 123:14 avail 118:23 aware 37:14 49:8 51:20 52:4,9 57:2,4 62:4,7 64:15 67:7 68:6,8 70:24 71:1 72:13,17 75:6 76:24 82:1 110:17 139:22 144:8
A	additional 68:11 131:3,16 additionally 66:8 address 3:8,9 78:1, 2 administration 5:12 adopt 62:24 adopted 144:21 advancement 8:10 Adventure 60:22 adversely 49:17 advertised 51:23 advertising 51:4 advice 11:21 12:5 57:20 69:20 advise 32:17 74:25 aerial 95:1 affect 32:20 33:3,9, 15 35:20 36:7,10 37:3,7 38:6,11,16 39:11,15,19,23 40:2, 11 47:9 49:17 66:4,8, 11,16,21 73:22 Afterward 79:9 agency 30:10,21 42:2,5 86:23 87:4,15 89:6,7 120:3 142:20, 24 143:6 144:1 145:1, 16 agent 16:14 33:6,11, 22,24 34:24 35:9,18 41:4 56:23 58:9 61:8 64:3 65:15 69:17 70:5 83:8,9,12,15 131:22 138:22 agent's 38:25 133:22 agents 20:18 138:24 144:22 agree 32:19 33:6 34:19 37:2 43:5 47:3 56:22 57:5 63:12 65:25 71:22 72:2 73:6 75:9 agreed 31:19 34:13 43:12 90:19 111:8 agreement 26:5 28:15,23 29:1,7 30:7, 10 33:18 40:19 41:6 42:2,5,12,19 43:5 44:1,6 78:3 88:6,11, 21 87:11,16 88:17,19, 24 89:3,4,6,7,8,9 90:18,20 91:4,9 93:20,25 95:9 96:16, 19 97:2,4,6 98:3,19, 21,25 101:12,23 102:3,13,23 105:14 106:16,23 107:1 108:6,21 109:4 110:19 111:24 112:1, 2,10,13,22,25 113:20, 23 114:9 117:7 119:5, 23 120:2,9,10,25 123:9 128:6 129:21 138:12 139:3 140:22 142:24 143:6,8,13 145:1 agreements 93:3 121:1 agrees 62:21 ahead 12:3 57:15 ahold 80:15 allocation 107:5 altering 139:18 amount 80:22,23 analysis 83:1 and/or 99:11 answering 59:5,19 80:4 answers 15:17 35:24 62:22 Antelope 5:7,16 6:1 anymore 38:15 45:14 anytime 71:6 79:8 101:18 apartment 121:12 apologize 137:2 140:16 apparently 45:10 appears 94:23 115:3 119:23 144:25 applicable 121:2 145:18 applications 135:1 applies 145:3 apply 142:25 145:18 appointment 80:9 85:21 101:10 115:16 appoints 145:7 appreciation 124:7	B back 4:15 6:12 19:16,25 21:15,17 22:16,17 23:13 24:18 25:16 45:11,16 46:3 74:8 78:7 80:13 84:23,25 85:2,8 91:17 95:25 106:1 117:17, 21 118:1 backdate 140:1 backdated 140:3 background 113:8 124:8,10 bad 70:1 balance 111:16 116:5,18 Banker 8:18 9:1,3,7, 10,22 bar 52:7 100:1 bars 61:23 base 92:16 basement 54:24 55:13 70:22 71:2,8,20 72:14 97:17,21 basically 17:19 48:2 142:17 144:20 basis 41:24 92:1 126:14 129:4,9 Bates 84:16,17 120:6 123:5 bath 54:19,25 55:6, 13 97:21 Beardsley 3:5,6 11:25 12:5 17:18 22:2,7,13,16,20 26:10 29:18 31:6,11,23 32:24 34:12,18 35:2, 24 36:1 38:19,23 43:18,20,23 46:22 48:6,12,15 49:13 57:11,14,16 58:20,23 59:6,15,18 60:5,18 61:18 62:19 63:4,6,		

11,17,20,23 67:13 70:4 71:14 72:2 73:10,18 81:23 82:7, 13 83:22 84:2 85:22 86:1 87:3,17 88:8 94:2 124:13 126:18 131:19 134:17 135:24 137:16 138:9,10 140:10,17 142:7 144:17 146:1	bound 30:25 32:19 boundaries 47:1,5 boundary 111:11, 12 box 100:14 121:2,6, 10,13 boxes 138:6 Brandon 51:15 70:18,20 breach 34:23 35:4 43:6,10 59:13 break 35:23 82:8 92:2 Brian 44:22 45:2 114:5,8,19 115:5 117:21 bridge 50:13 74:12, 17,18,21 75:7,10 bridges 39:14 68:25 69:7 74:14,18 75:4 briefly 58:24 bring 95:16 brochure 84:5 85:3, 12,18 98:1 98:5 broker 8:23 9:4,12, 16,18,19,20 10:7,10, 13,15,16,17,20 11:9 12:20,21 14:18 33:2, 3,4,13 43:4 64:8 123:13 145:4,7,12,14 broker's 9:17 brokers 10:18,22,25 11:3 13:12 16:5 brother 18:6 brought 117:16 Bryan 3:2,9,22 10:6 21:22 28:21 34:12,22 38:9,23 43:3,25 50:16 53:16 60:10 72:2 80:17 82:13 83:25 86:18 88:5 90:14 91:15 94:6,15 95:24 98:8 102:21 113:22 116:20 118:22 119:22 120:5,24 122:21 123:4 124:24 125:18 131:18 132:12 135:12,20 137:13 138:11 140:5 building 4:19 37:6 38:5 47:16 50:12 51:3,18 52:25 54:10, 21 55:6 67:4 73:7 94:16,23 97:18	buildings 28:17 built 133:6 bunch 139:1 business 5:12 6:14 18:9 21:24 28:13 41:13 46:5 58:20 62:20 76:6 79:6 80:19 84:15 102:5 116:22, 24,25 117:5 122:1 124:11 125:14 128:4, 9,19 130:14 131:4,25 132:13 133:13 135:20 141:19,24 142:4 business/ industry 121:3,16 buy 10:12 61:12 109:24 113:6 buyer 24:12 30:22 33:5 36:6 39:16 43:5 48:19 66:12,24,25 67:6,23 69:9 71:24 72:4,8 76:6,7 77:5 80:23,24 89:7 93:15 100:19 102:9 105:6, 19 106:5 108:14,19 109:16 110:5,25 117:6 140:5,10 142:24 143:6 145:20 buyer's 33:9 35:20 36:10 37:7 38:8,24 39:11 49:18 110:7 buyer's/tenant's 33:15 buyer/tenant 145:5,9,11 buyers 20:12 36:1 42:2,5 46:23 66:16 95:21 118:9 138:22 142:19 143:8,9 buying 67:1 69:11 103:21 104:20	94:5 114:3 calling 57:9 115:15 campground 12:14 49:22 61:1,3,5 62:5 80:18 84:1 87:14 90:4,12 91:10 93:4 94:25 100:1 101:25 103:15,22 104:7,11, 15,20 108:25 109:15 113:9 115:19,22,25 116:3,6,8,14,20 124:23 125:15 126:8 129:4,7,9 132:4,8,14, 23 133:10 134:4,12 135:14,21,25 138:1, 11 139:16 141:16 143:25 144:5 campgrounds 61:7,8,21 84:2 93:10, 14 135:17 campsite 28:17 cap 78:4,6,9,11,12,17 79:11,14,16 124:13, 14,15 caption 120:25 car 117:1 care 31:15 career 5:7,15 Carlson 67:25 case 58:25 59:23 60:2,22 62:14 63:2,15 67:19 72:1 82:18 94:2 125:14 145:21 cases 60:19 62:13 catchall 49:3 categories 121:1 142:16 category 99:2 110:5 111:9 145:11 cell 29:15 Central 4:9 Certificate 137:23 certificates 105:3 certifications 9:9 certified 8:23 certify 57:14 change 28:7,8 40:1, 9 44:4,20,21 45:16 98:21 122:6 changed 25:10 44:16,18,24 45:10,11, 12 50:12,14 96:21	charge 9:18 check 14:1,7 100:14 108:19 112:18,20 checked 121:2,6, 10,13 checks 13:8,10 Christy 20:24,25 chronicle 84:23 chronologically 103:2 City 3:10 4:7,9,25 claim 76:21 clarification 24:22 60:9 clarified 23:25 clarify 4:2 44:10 85:22 class 8:16,17 121:25 clear 21:12 34:5 44:19 57:16 84:11 142:11 clearer 43:20 client 39:7 42:9 67:20 clients 10:12 15:17 23:23 30:24 32:8,17 34:23 35:4 68:7 69:17,25 71:17 75:6 123:15 142:17 close 13:11 97:10 103:16 111:20 118:12 closed 21:16 109:5 113:24 123:22 126:19 134:2 closing 29:9,11,22 30:6 105:7 106:20 110:19,25 111:3,16 126:22,25 127:22 128:3,20 131:24 137:24 138:1 141:5 Coal 5:7,18 6:1 code 39:19 41:22 47:8,16 97:23,24 Coldwell 8:18 9:1,3, 7,9,22 collectively 118:12 college 4:17 5:3 college-educated 37:25 combination 105:25
--	--	--	--	--

comfortable 59:5, 19 60:4 119:3	condition 26:11 48:8,9 73:25 75:13 76:8	14:14 17:21 19:21 21:15 22:3 24:5,18 25:13 27:13 29:5,9 30:10,13 33:22 34:14, 20,24 36:2,18,20 42:6,12 43:17 44:2 46:24 47:1 49:22 51:10 52:6 53:17 55:4,7,22 57:21,22 64:23 65:11 69:20 70:6 71:11 72:11 73:19 77:6,20 78:25 82:5,15 83:2,6,8 88:9 89:18 92:21 97:20 98:6,7,16 100:11,25 101:1,4 103:12,13 105:11 110:4 121:6 122:8,11 135:1,4 141:7 142:16,21,22 143:10,11,13,14,19, 20 145:1,6,9,10,14,15	D	depend 89:20
commenced 137:7	conduct 83:7,9,12, 15,17 110:6	correctly 12:19 20:8 25:1 90:16	daily 85:3 129:4,9	depicted 55:3
commercial 4:20 88:5 96:9,10,13 121:15,18,19	conference 89:5, 23 113:16	cost 105:19 107:5	Dakota 3:10 49:9 64:15 134:24 137:9 144:21	depicts 94:15
Commercial/ agricultural 86:12 98:20	confidentiality 31:13 59:1,12,20	costly 36:25 37:18 38:3	damage 41:20 47:23,25 48:18 72:4,7	deposed 82:23
commission 13:10 14:1 92:3,11,12,23	confirm 50:16 83:11 139:4	costs 43:8 68:11,17	date 29:11,21 30:12 42:25 79:4 85:15,22 86:19 90:9,25 108:20 109:4,5 111:3 126:24, 25 127:2	deposition 3:1,11 15:5 22:10 38:21 42:14 59:16 82:11 86:2 126:16 127:6 137:18 146:3
commissions 92:25	considered 10:1	counsel 57:20 58:20 84:12	dated 64:22 112:1, 18 140:2	deposits 111:5
common 11:2	consist 8:19 75:18	Counseling 7:21 8:1,7	dates 84:19,24	depth 84:5
communicate 134:14	construction 4:17, 18,19,23 6:20,22,23, 25 7:3,5,9 37:20	County 100:3 108:1 111:12	Dave 7:17 9:4	describe 28:17 52:22 53:1 54:22 78:9
company 5:7,18,23 6:1,16 14:2 17:6,9,11 128:14	consulted 82:17	couple 25:18 119:3, 9 137:13 138:9 141:25 142:11	day 77:10,12,14,18 85:19 89:19 104:3 112:3,19	describing 14:17
compile 23:8	contact 16:14	couple-minute 82:7	deals 11:3,8 105:23	description 26:13 50:21 51:24 52:6 53:16 97:9 100:5
complete 13:17 46:12 50:3 114:5	contacted 17:6 64:15 67:25 90:25 103:20 115:18	court 22:17 60:2,3	days 10:9 85:4	designated 9:4 10:24
completed 21:4,23 22:6 75:19 82:4 94:25 114:3	contained 62:5	courtesy 106:4	deal 33:20 70:1 81:20	detail 10:8 16:6,8 125:10
completely 60:24	contemporaneous § 95:18	covenant 47:8	dealt 39:6	determine 64:8
completion 143:17,18	content 28:9 48:15 77:16	covenants 43:6 47:16	deceive 77:5	detriment 32:9
compliance 39:18	continues 122:6	create 26:6,11	December 5:16	diary 85:3
Complied 28:22 50:4,20 53:15 74:9 94:14 118:7 120:21 142:15 144:19	contract 25:9,11 29:4 43:7 44:5,16,23, 25 45:2,8,14,17 46:4 102:10 108:9,14 114:3,6,19 115:4,12 117:10,13 118:2 138:19 139:6	Creek 61:13,16,19 136:1,4,9	decision 32:20 33:4 49:18 66:11,18,21 110:23 111:4 140:13	difference 9:16 121:16
conceal 72:17	Controller 7:23	current 105:6	deck 38:15 65:3,8,10 66:3	differently 132:23
concealing 72:3,5, 7	Convenience 7:1	Custer 61:19	deed 25:9,11 29:5 44:5,16,23,25 45:2,8, 14,17 46:4 102:10 106:9,14 114:3,6,19 115:4,12 117:10,13 118:3 138:19	difficult 3:19
concern 106:24 119:12,15	convenient 35:23		deep 54:16	diligence 31:15
concerned 87:12 101:11 105:21 113:6 134:3 137:9	conversation 12:10 16:16,18 81:13 101:5,17 102:15 113:18 118:15,22 128:2,15 133:19		define 52:24 53:10	diminish 73:15
concerns 80:2,4 104:19 105:2 107:19 108:5,8 110:10,20 112:10 115:18 117:13,22 118:2 119:11 131:4	conversations 15:15 89:1 90:3 105:1 127:3,23 137:8 139:2		denominated 96:19 99:2 115:4	disadvantage 32:5
concluded 146:3	copies 95:20		DEFR 108:8 139:14	disagree 52:8
conclusion 13:25 57:9	copy 59:2 75:19 95:11,17 99:4 112:17 114:4,15 124:19 125:21 129:22		Department 64:16, 22 65:2 66:2 67:3,14 137:10	disclose 33:7,13,16 34:22 35:3 39:1 40:17 41:4 48:23 49:16 66:23 74:5
concurrence 106:13	correct 3:23 10:20 12:14,15,21 13:9			disclosure 41:9,10, 15,17 48:19 67:22 71:23

104:2,23 105:9 107:6 111:18	117:20,23,25 119:1,8 123:21,25 124:1 127:17,23 128:3,14 129:2,12 133:16 134:1,10 137:8 139:2 141:15	entrust 69:25	executed 45:25 77:19 139:1	explain 30:21,23 36:7 41:8 44:20 80:21 139:14
discussing 24:10 59:13		environmental 6:21	executing 43:12	explained 89:9
discussion 79:14, 16 93:18 99:14,16 103:16,18 105:3,21 108:5 131:1	due 72:13	equipment 108:15 118:11 122:16	execution 30:4 139:3,6	explaining 30:24
discussions 12:10 103:14 104:8 113:12	duly 3:3	ERLANDSON 11:22 12:2 17:13 21:25 22:4,9,14 26:8 29:16 31:5,9,21 32:22 34:9,15,25 35:22 38:18 43:15,19,22 46:19 48:1,9 49:11 57:6,12,15 58:21,25 59:11,17 60:8 62:10, 22 63:3,5,7,10,14,18, 21 67:11 70:2 71:12, 25 73:8,16 81:21 82:9 86:8,10,13 140:8,15 142:10,13 145:24 146:2	exhibit 26:20 30:9 32:25 33:12 34:14,20 38:24 40:16 42:1,2 43:24,25 44:11,12,13 45:23 49:20,21 50:6 52:6 64:20,21 74:8 84:9,10,24 86:5,6,22 87:3,5,11,19,20 88:3, 4,6,7,9,11,24 93:20 94:3,13,24 95:7,8,10, 11,13,23 96:7,15 97:1,15,19 98:4,5,8, 12 101:23 102:3,22 103:10 106:24 107:3 108:22 110:22 112:17,24,25 114:9, 15,24 115:1,2,7 117:11 118:5,19 119:7,20,21,22 120:8, 13,19,22,23 121:20, 21,22 122:4 123:3,4, 19,24 124:24 126:20, 21 127:9 131:19 137:20,21 139:13 142:14,23 143:5 144:17	express 104:19 106:24
dishwasher 53:21 54:6	duties 13:7 14:17 31:3,8,19 34:19			F
displayed 97:19 100:20	duty 32:15,16			
dispute 52:16 83:4	dwelling 53:10 144:6			fact 26:15 31:19 49:3,4 51:7 52:14 64:17 73:1 75:10 76:22 78:19 79:2 87:24 89:15 103:15 120:8
dissimilar 136:12	dwelling 144:15			facts 32:20 33:3,8,14 34:23 35:4 39:1 62:14
distinction 121:15	E	Erlandson's 98:22		failed 138:16
divorce 82:19		Escrow 106:17		fails 49:16
document 14:9 30:2,4,12,17,20 31:1 33:22 34:8 43:12 45:23 59:20 68:2 86:14 87:18,20 91:8 94:2,3,9,20,22 95:5 97:5 98:18 101:6 110:10 116:4 120:24 122:5,24 137:25	e-mail 134:14	established 50:15 55:21		fair 3:20 4:4 19:3 26:23 73:11 81:5,20 83:20 94:6 102:4 124:24 139:5 142:1,6 144:23
documentation 27:6	earlier 100:24 119:13 124:13 128:18 131:19	estate 8:6,11,16 11:2 20:16 33:6 34:24 35:9,17 49:10 58:12, 19,22 57:7,19 58:9 62:20,22 70:5 83:7, 12,15 88:11 87:11 89:3 91:9,22 93:19 98:19 106:19 137:23 142:18	exhibits 43:16 77:19	fairly 33:20
documents 22:25 23:9 84:2,4,5,12,13 86:1,23 87:12,17,24 90:22 114:20 115:16 122:15 123:5 139:25 140:23	earnest 99:7 112:18	estimate 26:23 85:18 91:19	existed 94:9	fall 47:17 142:18 144:23
dollar 92:1,2	educate 78:15	evaluate 141:24	existence 71:22 73:14	falls 39:15
dollars 68:17	education 4:8,12	evaluation 60:10	exists 95:4 98:12	false 80:16
Douglas 5:22	effect 96:17 97:4	event 143:13	expect 48:10 70:5 126:13 129:8	familiar 26:7,9,12 46:6 48:12 60:16,22, 25 64:12 70:12,20
drafted 30:2 45:2 50:16 144:20	effort 23:9 72:17	evidencing 126:22	expected 125:23	familiarity 136:15
draw 120:5	egress 97:25	exact 7:6 24:14 25:20 90:9	expense 22:21,24 23:4,9 80:24 110:7 140:12	familiarize 119:25
drawn 138:12	elapsed 90:24	EXAMINATION 3:5 83:24 138:10 142:13	expenses 78:11	family 121:6 144:5, 15
drive 50:13 74:12,15	ellipses 133:24	examined 118:10	experience 48:18 91:16 104:14 106:18 109:25 113:8	faulty 39:15 68:25
dryer 54:16	encroaching 65:4	examples 35:20 36:7 39:2	experienced 35:17 39:12	Features 122:12
dual 142:20 143:4 144:1 145:16	end 11:17 42:12 78:12 102:9	excess 72:21	expert 57:3,6,18,23 58:1 59:22 60:19 62:9,13,19,24 63:6,7 73:18 82:14 83:11,14, 17 136:17	February 8:14 35:10
Duane 3:7 70:8 77:23 78:21,23 79:5, 20 80:1,6 81:19 85:13 87:4,10 89:12 90:7 100:21 101:5,17 102:22 112:20 113:1, 5 114:18 115:11	enforcement 43:9	exclusive 26:5 28:15 119:23 120:25 143:8	expired 143:15	federal 37:11 65:7 67:8
	enjoyment 33:9,15 35:21 36:8,10 37:3,8 38:6,16,25 39:11,16, 19,23 40:2,11 66:4,8	exclusively 36:2,4 142:19,25		fee 43:8 92:2,22
	entail 6:22	Excuse 11:25 16:13		feel 59:18 60:4
	entails 26:10			feeling 77:22
	enter 142:20			feet 65:4
	entered 42:14			figures 80:25
	entire 5:4 6:3 14:4, 13 55:1 141:13			file 14:1,3,4,6,13 15:20,21 17:16 27:10
	entirely 98:19 100:10 104:5			

75:24 82:5 84:5,18 122:15,18 123:1,11	Frederick 82:20	Grill 49:22 100:1	happy 59:2	house 11:14 12:7 36:13,15 73:22,24 98:22 136:21,25
files 13:8 14:10	freeze 54:18	Grimm 17:2,25 18:1, 9 22:1,8,19 25:10 32:8 42:19 45:4,10, 13,25 64:15,22 65:3, 13,22 67:7,25 68:6 70:9,19 71:7,10 72:13,16 73:5 74:20, 25 75:15 81:3,9,11 84:1 85:16 89:15,21, 24 90:3,7,24 95:4,20 100:9,22 101:16 103:7,20 104:5 105:10,24 106:1,10, 11,12 111:7,19 112:4, 12 113:17,19 117:18 118:1 119:24 123:7 128:14,16 129:19 131:13 133:12 138:2 139:9,18,22 140:18 141:25 142:3	harassment 62:17	houses 109:24
fill 98:13	freezer/ refrigerator 54:5		hard 73:10	Howie 58:8
filled 98:10 99:23	friend 18:1		harder 74:3	Hudson 13:2
finance 29:4	friends 18:6		Havasu 60:23	huh-uh 3:19
financial 16:21 17:20 39:22 75:13,15 76:6 78:1 79:9 81:2,6 115:21 116:15 117:6 122:16 124:18,22 125:5 127:5,17 132:7 140:5,11,17,23 141:6, 12	front 85:25 95:5,25		hazardous 36:18, 20,23 73:21,25	human 51:4
financials 21:23 22:1,2,7,11	fulfill 33:17 40:18 41:6		He'll 148:2	hundred 92:11
Financing 102:7	full 3:8 31:17 54:19 55:6 93:5		head 3:18 35:12 79:4,21 109:23	Hundreds 35:15
find 82:13	full-price 93:7,15		hear 69:4	husband 83:4
fine 29:17 45:17 60:7 69:7 119:10	function 85:3		heard 52:11,12	hypothetically 38:13 75:25 92:17
finish 3:16,22 24:5 52:2	furniture 118:11		heart 48:11	
fire 47:11,16		G	heater 41:16	
fixtures 118:11			heating 109:19	
flip 53:13			held 100:10	idea 98:15 105:16 108:17 109:9,15 111:6 133:5
flooded 70:23	gas 6:25	Grimm's 45:1	helped 61:12	ideas 141:25
flooding 71:22 72:13	gatherings 50:13	grocery 117:2	helpful 49:4	identifiable 84:16
floodplain 47:19	gave 16:20 17:19 63:15 82:14 90:17 99:11 133:5	ground 3:15	helps 12:23	identification 28:20 30:9 42:1 43:24 44:11 49:20 64:20 84:10 89:4 95:8 115:1 119:21 120:22 123:3 126:20 137:21
floods 41:24	Gene 9:25 10:1 55:21,24 56:7,11,16, 18 57:2,5,17,23 60:19 62:4 63:1,3,11 136:17	group 144:23	Hensley 9:25 10:5, 20 11:6 55:21 57:2,5 60:19 62:4	identified 84:24 91:9 93:9 94:2 98:25 102:24 107:15 116:18 121:22
focus 131:20	general 58:7 95:1 104:14	Groves 20:22	Hensley's 62:9,12 136:17	identify 84:19 85:4 94:21,25 98:9 122:22
follow 34:13,19 57:20	generally 25:21 68:16 72:22 78:9 104:15 123:24 127:16 137:22	grow 4:6	high 4:16	identifying 99:22
food 61:24 126:9 127:21,25 128:3,9,17, 21 133:12,18	gentleman 51:13	guess 83:10 91:24 107:25 141:22	higher 92:4	immediately 22:5
forecasted 128:1	Georgas 10:23 11:9	guesstimate 23:21	highlighting 43:16	impact 33:17 40:18 41:5
form 11:22 21:25 22:4,9 28:8 31:5,8,21 32:22 34:9,15,25 35:22 42:8 48:10 48:1,3,20 49:5,11 70:2 71:12,25 73:8,16 81:21 98:12 134:15 140:8,15 144:20	GIS 111:12	guidelines 64:7	Highway 65:5	important 3:16,17 49:9
forms 12:24 13:18 14:2	give 7:7 14:3 23:21, 24 35:20 42:9 57:18 58:6 75:15 76:3 79:9 85:18 91:15,18 114:4, 7 125:7,10,22,25 127:18 132:22	guy 56:18	Hills 4:11,12 6:12 144:22	improper 75:11 80:19,25 139:19
Fort 61:13,14,19	globally 115:14 117:12		hire 89:17	improvement 76:11,12,13,19,21
foundation 67:10	go-around 19:13	half 9:8 18:22 54:25 55:13 79:8 97:21 139:10	hired 9:24 63:3,8	improvements 76:16 77:1,5 94:25
Fourche 21:1	goal 76:9	handbook 14:16	historically 128:4,8	inaccurate 39:22
	good 3:6,24 23:21 38:18 77:13	handwriting 42:17 99:11	history 4:14	inappropriate 76:16 77:2
	graduated 4:9,11	handwritten 42:16 85:9	Hold 57:8 62:10	include 12:10 47:11 61:21 64:4 82:25
	Greg 15:6 59:19 60:5,10 82:8 120:18	handyman 51:17	home 67:20,24 83:5 98:11 109:25	
		happen 116:18	homes 75:7	
		happened 78:2 87:1 91:13	honest 58:5 77:1	
		happening 10:5	honestly 33:19,20 46:15 52:1 133:24	
			Horse 60:25 61:3,5 62:5 135:25 136:1,4, 5,9	
			hours 141:15	

<p>included 46:17 59:10 105:13 111:15, 23</p> <p>includes 32:16 54:5</p> <p>including 77:18 107:1</p> <p>income 22:21,24 23:8 53:5 78:12 80:5, 24 116:17 135:13 140:11</p> <p>income-producing 52:25 97:14</p> <p>incorporated 120:10</p> <p>incorporates 42:11</p> <p>incurred 68:17</p> <p>indicating 30:17 44:20 53:25 78:3 114:7</p> <p>individual 98:20</p> <p>industry 49:10 107:11 109:18 113:10 122:1 142:18</p> <p>inflate 76:18</p> <p>inform 32:19 33:2 46:22 68:12 79:5,11</p> <p>information 15:6,7 16:17,19,21 17:12,17, 18,21 33:16 40:17 41:4 75:14,15,23,25 78:3 81:2,6 83:21 90:18 93:18,24 97:3 98:9 99:7,12 100:2 101:15 102:12 114:5, 18 115:21,25 116:3,5, 15 117:7 121:22 122:17 123:6,10,15, 23 124:18,22 125:5 127:5 129:25 132:7 134:6,7 140:5,11,17 141:2,7,12</p> <p>informed 65:13</p> <p>informing 65:3</p> <p>ingress 97:25</p> <p>initials 100:20,21</p> <p>initiated 16:3</p> <p>initiation 84:14</p> <p>inquire 129:7 130:13</p> <p>inquired 70:14</p>	<p>inquiry 101:11 102:4 106:23 109:7 110:10 115:18 116:15 126:4,13 128:16 131:24</p> <p>insignia 98:9,12</p> <p>inspect 75:4 108:14 118:16,24</p> <p>inspected 20:16 107:23 109:18</p> <p>inspection 19:4 21:4 81:24 82:4 108:24 109:8,13 110:6</p> <p>inspections 24:15 25:4 38:14 107:14,18 110:11,14,18 118:25</p> <p>inspector 109:25</p> <p>instance 98:11 97:1 121:5 133:12 135:1, 22 145:19,22</p> <p>insurance 17:6,9, 10 108:19 107:5</p> <p>intended 118:23</p> <p>interaction 113:24</p> <p>interest 20:10 23:16 24:13 90:4</p> <p>interested 103:21</p> <p>interests 20:9 32:7</p> <p>interrogatories 15:9</p> <p>interrogatory 15:17</p> <p>interrupt 22:14</p> <p>inventory 105:19</p> <p>investor 99:16</p> <p>invoicing 13:10</p> <p>involve 58:9,13 83:7</p> <p>involved 12:24 15:3 20:18 21:4 23:22 60:10 83:10 104:6,10 109:15 118:21,22</p> <p>involvement 45:20</p> <p>involving 84:20 104:11 108:11 117:4</p> <p>irrelevant 62:16 140:7</p> <p>issue 68:7,13 137:9, 10</p> <p>issues 48:23 49:16 70:10,14 72:17 78:1</p>	<p>issuing 14:6</p> <p>item 105:2,12,16,21, 23 108:6,8,19 107:18 108:4,8,14 110:5</p> <p>items 41:9,14 89:9, 10 107:3,15</p> <p>iteration 94:19 122:9</p> <p>Iverson 3:2,9 84:8 108:23 137:19 138:8 142:10</p> <p>Iverson's 84:13</p> <p style="text-align: center;">J</p> <p>Jackson 3:9</p> <p>January 137:7</p> <p>job 4:14 10:9</p> <p>John 83:25 85:23</p> <p>Johnsen 4:24</p> <p>Join 57:11</p> <p>judge 131:12</p> <p>July 119:24 127:9, 10,13 129:2,11</p> <p>June 21:13 124:25 125:4,13,17 128:12 127:4,13 141:8</p> <p>Jury 60:2</p> <p style="text-align: center;">K</p> <p>Keith 17:2,25 18:1,5, 9,11 22:24 23:8 28:10 32:8 45:25 51:17 55:16 64:22 67:25 70:9,19 71:10 74:25 78:16 81:11 84:1 85:16 89:15 90:3,14, 17 98:24 99:8,8 100:22 101:16 118:1 123:7 128:6,8,14,16 129:7 130:2 132:22 133:1,5,9 139:9 141:10,18,25</p> <p>Kelly 56:8</p> <p>Keystone 61:20</p> <p>Kim 20:23</p> <p>kind 89:5 91:15 96:1, 24 103:2 107:10 127:18 133:23</p> <p>kitchen 53:19,22 54:2,6 55:9</p>	<p>knew 100:10 132:3</p> <p>knowingly 32:3</p> <p>knowledge 19:9 98:2 109:3,11 110:13 113:22 134:8</p> <p>knowledgeable 56:25</p> <p style="text-align: center;">L</p> <p>laborer 7:9,11 37:22</p> <p>lady 21:1</p> <p>Lake 138:10</p> <p>Lana 13:2,3 14:3,6, 13 80:16</p> <p>land 121:9,19</p> <p>landlord 145:4</p> <p>language 107:13 111:9,15,22</p> <p>large 69:22</p> <p>Larson 7:17</p> <p>laundry 54:12 55:11</p> <p>law 37:17 49:9 134:24 135:8</p> <p>Lawrence 108:1 111:12</p> <p>lawsuit 15:3 16:3,7, 10 17:4 42:5 58:9,13 59:7,9 71:1 81:11 82:23</p> <p>lawsuits 57:3</p> <p>lawyer 129:18 130:5</p> <p>leaking 41:16</p> <p>learned 106:7</p> <p>leased 70:19</p> <p>leasing 51:13,25 52:7</p> <p>leave 6:5 8:7,9 44:25</p> <p>left 39:2 45:17 80:10 89:13 126:16</p> <p>legal 57:9 100:5 112:14</p> <p>Les 18:6,7,8</p> <p>letter 64:21 85:2</p> <p>level 97:23</p> <p>liable 43:7</p> <p>liberty 58:14</p>	<p>license 9:17</p> <p>licensed 8:25 9:12, 16</p> <p>licensee 145:8</p> <p>licensing 105:3</p> <p>limited 142:20 143:4 144:1 145:16</p> <p>lines 47:1,5 98:10</p> <p>list 23:24 25:18 61:10 68:15 74:23 78:11,12, 13,19 96:11</p> <p>listed 18:16,19 19:6, 7,13 20:3,6 21:22 22:3 24:3 25:8 26:15 45:6,7 50:23 66:15 68:2,10 69:7 72:20 83:9 96:4 97:6 108:2 122:3,6,18</p> <p>listing 11:18 12:5 13:22 16:23 17:20 18:23 19:23,25 20:7 22:5 25:24 26:1,2,5,6, 12 28:7,9,12,15,16 45:7 49:21,24 50:8,17 53:13 71:6,15 74:8,16 81:24 91:14 95:16,18 119:23 120:2,9,10,25 123:9</p> <p>listings 13:15 50:5</p> <p>lists 121:25 122:15, 16</p> <p>litigation 84:14 137:6</p> <p>live 51:5,8,21 53:11</p> <p>lived 51:12,17</p> <p>living 50:24 51:2,23 52:5,10,12,15,18,21 53:16 54:2,13,22 55:17 61:25 62:5 64:3 70:23 71:2,8,16 97:10,12,17 135:18, 21 136:20,25 137:2 142:3 144:4,10</p> <p>Liz 82:20</p> <p>LLC 60:23 84:1</p> <p>located 5:19 54:10 61:18 144:10</p> <p>location 47:19</p> <p>long 5:2,23 7:2,3,18 8:3,19 9:7 14:10 18:16 18:1,13 19:8,13 20:3 21:20 23:14 35:9 55:24 60:5</p> <p>looked 50:6 90:12,</p>
--	---	---	---	---

17 92:15 132:16	121:21 122:4 123:3,4, 24 126:20 137:20,21	mine 18:2 108:17	negotiations 30:6 138:16	133:22
loss 75:17 116:2,17 122:16	market 18:19 19:8 21:11,18,20 23:13,14 24:7,9,17,24 25:15, 17,22 26:22 83:1	minor 5:13	night 130:20	obligations 33:11, 18,24 34:3,6 35:5 40:19 41:8 43:7 57:6, 19 131:22
lost 11:20 12:9	material 33:8,14,10 34:22 35:4 39:1 40:18 41:5 49:4 50:8 68:21 73:21	minute 85:24	Nodded 40:6 52:13 98:15 114:14 132:21 133:4 134:22 135:7	obtain 75:14
lot 47:1,5 62:22 66:6 117:1	meaning 21:17 89:3 97:24 106:12 126:8	misleading 39:22 80:24	Nooney 16:11,12,14 17:19 60:9,13,16 61:16 63:1,9 67:10 63:24,25 84:11,16 85:24,25 86:9,11,14 120:18 137:12,19 138:7 139:1	occasions 138:21
lower 97:23	means 29:4 31:24 40:22,24 41:8 76:2 78:9 122:3	MLS 120:14 122:5	north 5:22 65:4	occurred 89:1
loyalty 31:4 32:16	meant 125:10 126:4, 8	modification 44:4	notation 27:15	October 65:11
lunch 82:10	meet 18:5 77:9 79:19 90:19 131:15	modifications 71:8,10	note 27:23 42:18 79:22 84:18 85:3 96:7 112:1 120:24 124:25	odd 116:10
M	meeting 77:16,25 78:21,22,25 79:2 80:6 91:8 99:9 127:10,14, 18 128:11,13 130:22 141:1,3,5	mold 38:10,13,16,18, 19,20,23 37:2 40:2 48:22 68:23 71:2,4,23 72:3,7 73:6,10,15	notes 18:20,25 17:2, 20 19:17 25:13 78:7 79:17 84:25 85:2,9 91:16 114:16 127:9, 16	off-season 20:5 21:17
made 30:7 74:20 107:19 109:7 115:18 126:13 128:16 133:14 141:18	meetings 16:21,25 17:2,20 77:8 79:17,25	moment 58:21 119:25 120:24 131:19	notice 66:2 67:13, 21,22 98:18	offer 77:11,17 93:7, 15 101:21 105:5
main 54:10,21 55:6 94:15,23	Melody 3:7 70:8 77:19,21,23 78:23 79:5,20 80:7 81:19 87:4 100:21,24 112:20 113:1,3 114:2 119:1 124:3 133:16 139:24 141:15	money 99:7 112:18 117:1 130:8	notices 47:8 67:2	offered 63:2 138:18
Maintaining 8:23	memory 19:14 23:15 56:4 77:22 101:9	month 139:17	November 64:23	offers 18:23 19:25 20:9,11 24:10 25:8
maintains 75:9	mention 126:8	monthly 128:14	number 44:16 50:6, 23 77:19 92:1 94:24 98:15 102:22 103:3, 11 105:2,12,17,21,23 106:3,6,8,19 107:3,19 108:4,8,14 112:17 114:15,25 115:2 132:10 135:2 139:13 143:12	office 3:9 6:21 10:20,25 11:4 12:17, 23 13:2,6,13 14:9,15 43:17 77:10 79:1 80:6,12,14 84:13,14 85:20 88:22 89:17,21 90:19 93:17 95:16 101:18 104:2,3 108:11,23 114:22 115:6 119:1 122:2 127:4 129:16 139:24 141:6
maintenance 6:20, 22	mentioned 90:7 100:24 116:13 125:19	months 5:24 6:3,5 19:9,15 24:25 79:6 139:11	numerous 21:3 57:3 64:15	Office/bedroom 54:18
majored 5:9	met 70:21 85:13,15 89:23 89:14 111:18 113:5 114:16,18 117:20,25 123:21 124:5 134:2,11	morning 3:6 87:20 88:25 93:22 113:19	O	official 5:25
major 5:11	methodology 125:25	mortgage 44:5,17, 24 45:12,16	Oasis 60:23	open 59:16 60:6
make 43:20 50:2 57:9 60:16 63:9 66:19,21 69:10,22,25 71:7,10 73:10 77:17 84:4 98:21 102:3 108:20,22,25 110:10 115:15 117:1 126:4 130:11 131:24 132:12 133:8,16 137:14 141:25 142:4	middle 60:24 94:17	Mortimer 9:4	operated 128:3	operating 128:21 130:14
makes 13:8 79:6	midpoint 122:13	motel 135:22	obedience 31:8	operation 115:22 118:13 125:15 132:4
making 80:5 116:14 130:8 131:5,7,9 139:9	Mike 3:6 43:15 60:9 67:25 85:24 86:4 87:18 96:22 136:1,14	motor 75:7	object 22:10 62:15	operational 49:2 108:20
man 37:25	miles 5:22	moved 8:23 66:2	objection 11:22 21:25 22:4,9,11 28:8 31:5,9,21 32:22 34:9, 15,25 35:22 46:19 48:1 49:11 57:8 67:10 70:2 71:12,25 73:8,16 81:21 140:8,15	operative 49:24
management 7:10	mind 25:10 44:24 45:10 58:22	multiple 143:7	obligated 33:2 46:17	opinion 47:15 57:17,18 58:8 59:10, 22 62:9 63:2,13,15,23 81:20 82:15 83:3,11, 14,17 112:14
manager 9:4 13:2,6		N	obligation 33:7 34:24 39:1 69:14	opinions 57:8,24 58:1 60:20 62:13,24
mark 88:2 94:20 95:7 114:24 119:19 120:19 122:23		named 16:13		opportunities 116:23,24
marked 28:20 30:9 42:1 43:24,25 44:11 45:23 49:20,21 64:20 84:8,10 86:6,22 87:11,19,20 88:4,8 93:20 95:8,10,12 98:3,5 101:23 102:3 106:24 108:21 114:8 115:1,2 117:10 119:21,22 120:22		names 58:6		opportunity 102:23 118:24 131:25 132:13

93:24 95:3 98:4,9 114:5,18 123:7 124:18 130:2 140:17	98:19 98:20 99:21 100:14 102:12 105:5, 8 106:4,7 107:21 108:10,11,18 125:15 133:3	10:11,14 12:17 14:17 58:2,4,14 64:7 64:17 87:4 96:8,14 97:16 120:6 123:5	recorded 22:8	77:10 78:17 80:8,11 85:13,19 87:5,10 88:22 89:12,17,25 90:16 91:3,8 93:17, 18,24 95:4,9,11,15,16 97:5 98:2 99:8,13,23 100:21,22,24 101:8, 17,22 102:2,16,19,22 103:5,17,18,21 104:2, 18 105:9,20,25 106:13,22 108:5,22 109:6,11 110:9,20 111:8,14,18,20 112:7, 8,9,11,19 113:1,19,25 114:4 115:11,15,17, 24 116:2 117:9,12,20, 23,25 118:2,16,23 119:1,14 123:21 124:5,17,21 125:19 126:12,16 127:3,6,11, 14,23 128:3,13,16,19 129:3,6,16 130:1,4, 13,23 131:16,23 133:17 134:1,7,10,14 137:8 139:2 141:2
providing 57:23 83:21	putting 129:3	read 15:1,8,16,24 22:16,17 32:25 33:12, 25 148:2	Red 51:10	Remington's 90:3, 7 124:7
provision 43:13 59:1,12 108:20 111:16	Q	ready 113:8	reference 94:23 97:9,10 99:10 100:1 103:4 125:22 127:16 129:11 139:13	Remingtons 17:1 24:11 31:3,6 32:8 33:7 34:4,7 35:1 49:25 51:7 64:25 65:25 67:9 68:12 69:12 72:16 73:1,4 74:21 77:8 84:20 86:22 131:12 138:1, 12
provisions 87:21 88:12	qualified 57:5,16	real 8:6,11,16 11:2 20:18 33:6 34:24 35:9,17 48:9 56:12, 18,22 57:7,18 58:9 62:20,22 70:5 83:7, 12,15 86:11 87:10 89:3 91:9,22 93:19 98:19 106:19 108:25 109:8,12 118:10,17 137:23 142:17	referenced 44:13	remodels 6:24
prudent 69:9	quantify 130:10 131:6	Realtor 37:20 46:5 57:6,19 91:16 123:13	references 99:25 100:12	remove 37:17 38:14 65:10 66:3
pump 48:25 49:1 72:14	quarters 50:25 51:2,23 52:5,15,16,21 53:17 54:2,13,22 55:17 61:25 62:5 64:4 70:23 71:2,6,18 97:10,12,18 135:18, 22 136:21 137:1,3 142:3 144:4	realtors 21:3 23:22 144:21,22	referencing 118:21	removed 37:15 65:8,20 67:4 72:16
pumped 107:22	question 3:16,23 4:1 11:13,15 22:17 36:15,22 53:2 57:13, 14,21 59:5 63:1 70:9 72:6 87:2 125:18 126:18 134:10	realty 10:11	referring 16:22 54:15	removing 38:2
purchase 18:24 20:1 24:10 25:6,9 28:23 29:1,4 30:7 32:21 38:13,15 40:19 41:6 42:11 44:1,5 49:18 68:1,12,15,18, 19,21 75:6 76:3 78:3 79:19 86:5,11,21 87:11,13,15 88:17,19, 23 89:3,8,9 90:18,20 91:4,9 93:3,20,25 95:9 97:5 98:3,19,25 101:14,19,23 102:3, 12,23 105:13 108:23, 25 108:6,21 109:4 110:19 111:24 112:21 113:20 114:9 115:19 116:14 117:5,7 119:4 128:6 129:20 138:12 139:3 140:21	questioning 62:16 63:19	reason 52:15 69:18 94:11	reflect 25:13	rent 142:3
purchase/lease 33:16	questions 4:3 11:11 15:8 33:19 38:24 39:4 59:9 62:11 68:16 69:2,10 78:2 80:1 83:23 109:1 127:17,18 131:3 133:25 134:3,17,19 135:24 138:9 139:1 142:11	Reasonable 31:16	reflective 27:12	rental 53:3,5,8
purchased 36:8 38:9 64:3 74:18	quickly 50:2 111:20 113:14	rebuild 75:1	refresh 56:4 90:22	repairs 47:23
purchaser 99:18,22	quote 97:10 103:15, 16 110:11	rebuilt 74:17,18,22 75:10	refrigerator 53:22, 24	repeat 40:25 140:9
purchaser's 37:3	R	recall 19:1 20:2,11 24:14 39:4 47:13 79:16 81:8 105:20 113:17,21 117:15 118:15,22 128:8,18 131:8 139:12	regard 40:1 79:14	rephrase 102:21
purchasers 99:5, 10 112:5	raise 108:5 115:18 117:12,21 119:10,12	recent 24:9 61:11	regular 84:15	report 59:25 136:17
purchases 69:22	raised 137:9	recess 38:20 82:10, 11 137:17	regulation 37:11 47:17	reports 22:21 23:4 116:8,17 140:12
purchasing 49:19 129:6	Rapid 3:10 4:7,9,25 6:16	reciting 48:2	regulations 47:12 65:7 67:8	represent 3:6 32:7 33:4 36:1,4,6 69:8 83:25 142:19 143:8,9 145:8
purpose 22:10 30:20 42:8 46:9,13 60:5,13 71:14 76:4 108:24	rate 78:4,6,10,11,12, 17 79:11,15,16 124:13,14,15	recollection 12:18 18:21 89:1 90:5,14, 21,23 91:12 104:3,24 113:24 127:14	related 47:23 118:12 120:3	representation 33:13 50:10 142:17
purposes 59:18 63:19 85:8	re-create 84:23	recommend 71:7	relates 105:25 115:19	
pursuant 25:22	re-entered 127:6	recommendation 74:1,5	relation 96:16 131:13	
put 13:15,22 19:16 21:15 25:18,22 27:21 28:9,11 50:16 94:25	RE/MAX 9:23,24	record 3:8,24 33:1 43:15 44:19 48:2 58:24 64:11	Relationships 89:8	
		receive 14:2	relative 84:19 85:9 115:21 116:15	
		received 15:6,12 66:1 67:13,21 84:13	relevance 11:22	
		receiving 67:2	relisted 19:10,21	
		recent 24:9 61:11	remain 6:3	
		recess 38:20 82:10, 11 137:17	remedied 36:19,21 48:22	
		reciting 48:2	remedy 38:25 74:2	
		recollection 12:18 18:21 89:1 90:5,14, 21,23 91:12 104:3,24 113:24 127:14	remember 7:16 6:20 17:24 19:19,23 20:8 23:25 24:2 25:1, 7,19 29:16,17 77:12 79:21 87:22 90:9,16 94:8 104:22 105:1 108:7 112:23 118:25 119:18 127:20 130:12 134:18 138:14,24 140:23	
		record 3:8,24 33:1 43:15 44:19 48:2 58:24 64:11	Remington 3:7 29:8 38:22 42:14 70:8	

representations 74:21 119:16 143:1	result 43:9	136:15 138:13 144:11	September 21:17	101:6 106:23 108:22
representative 145:20	results 92:14	sales 9:4 91:20	septic 107:18,22	109:4 112:2,5,7,10,
represented 30:22 45:4 70:8 138:22 145:12,13	resumed 38:21 82:11 137:18	92:13 94:5 95:12,17 98:5 104:7 116:8,16 125:12,23 126:1,7,8, 9,10,14 127:21,24	serves 19:14 23:15 77:22 101:9	19,22 113:1,2,3,23 119:24 123:9 128:21 140:3,22
representing 30:21 31:24 48:19 81:19 100:19	retained 58:1,7 59:22 82:14,20	Saloon 48:22	services 70:5	signing 30:25 31:19 34:13 93:19,25 85:9 98:3 101:22 102:2,19, 22 108:6 110:9,18 117:7 119:4
represents 145:4	retains 70:4	Sapa 60:22	set 31:1 34:19 78:1 80:8 101:9 115:10 117:9,14	similar 48:15 50:6 61:5 67:21,22 80:17 84:3 91:8 92:3 98:21 136:11,13
request 44:22 59:15 115:5	retention 14:9 60:14	sat 132:16	settled 80:3	similarly 40:9 105:12 106:3
requested 34:11 45:11 129:19 141:2,6	return 81:4 115:25 129:18,22 130:25 131:1	scheduled 80:8	settlement 126:21, 24	simple 69:10
requests 140:11	returns 75:19 116:16	school 4:16	shake 3:18	simultaneous 111:23
require 65:7	review 14:6 15:20, 24 30:4 59:19 87:12 93:19 114:18 124:22	scope 57:10 62:17	share 113:13 124:10	single 121:5 134:10
required 13:18 37:17 38:10,13 46:11, 21 49:8 62:7 63:24 64:9 67:19 134:24 135:9 139:18	reviewed 140:6	Scull 4:23	shared 80:14 119:8	sink 53:22 54:6
requires 46:25 47:7 49:3	Reviews 9:20	SD 139:14	sheet 116:5 120:14 123:17,18	sir 25:14 69:8 73:24 84:19 85:8,18 86:1 90:6 100:17 139:18 141:1
reservations 104:20	Rice 17:7,9	section 32:25 49:3 50:23 145:7,16,18	sheets 116:18	sit 90:21 94:8
residence 46:11, 20,21,23 52:19,22,24 53:1,10 121:6 134:25 135:2 144:15	right-of-way 37:7, 11,15 38:6 39:3,8 40:11 47:4 64:12,18 65:4,8,11,20 66:7 68:19 137:10	sections 144:25	Sheridan 136:7	site 91:3
residences 53:8	road 4:19 136:10	sell 10:12 11:14 12:6, 8 23:10 28:13 56:7 65:18 68:17 73:11,24 74:3 76:1,7,9 96:21 109:24 145:12	shook 109:23	sites 61:21
residential 4:20,21 49:19 62:6 63:25 67:20,24 86:5,8 91:23,24 92:5,9,10, 19,25 98:25 121:7 138:4	role 7:10	seller 29:5 30:22 32:8 39:7,22 41:15 42:17 46:11,12,17,20, 21 47:13 48:19 49:16 66:23 67:2,21 68:15 69:9 72:8 74:1 75:9 83:18 100:19 102:10 109:18 110:24 112:3, 4 145:4,20	shot 7:7	sitting 41:14 56:18 89:13
respected 56:22	rough 91:24	seller's 39:7 46:6 134:18,23 135:9,15	show 23:18 25:2 26:21 27:4 48:3 72:21,22,24 73:1 84:8 86:2,5 94:19 114:24 119:19 122:21 126:21	situation 69:8
respective 88:10	roughly 7:12 25:15	seller/landlord 145:8,13	showed 23:17 27:6, 13,14 70:13 73:4 75:5 80:7,10,11 86:1,4 87:3,18,19 88:22 90:12 129:16 131:19	sketch 95:1
respond 33:18 133:24	rude 3:24	sellers 36:4 100:8 142:20	showing 23:22 27:21 78:1 115:2 119:22 123:4 137:19 143:7	skewed 92:4
response 81:17	rules 3:15	selling 46:11 56:11 67:20 71:17 116:20	shown 24:2 27:11, 15 84:3	sleep 51:3
responses 3:18	run 137:13 141:19	semester 6:12	sic 115:3	sleeping 50:10 133:3
responsibilities 10:6,10,13 14:18,17	running 97:13 124:11 128:19	send 139:16	side 65:5 126:4,9 133:13	small 124:11
responsible 10:17 43:8 110:24 133:18	runs 21:13	sending 139:19	sign 46:1 86:23 89:11 90:20 102:17 112:5,9 114:2 115:16 119:2 139:24 148:2	sold 18:11 24:3 45:8 56:2,8 61:8,11,12 64:2,3 67:4,8 81:9 93:11 96:18 103:15 104:15,18 119:11 122:2,3,7,9 133:2 135:17,20 138:18
restaurant 51:13, 25 52:7 70:19 136:6	RV 12:14 61:21	sentence 33:1,12 41:3 43:4 118:9,21	signature 30:15 42:23 45:1 112:15 114:13	sole 60:13 145:20
restaurants 81:23	safe 56:19	separate 22:24 120:12 138:20,21 138:13	signed 29:7 30:17 42:22,25 86:15,21 87:5,6,10,24 88:18, 20,24 89:3,12 91:5 93:22 96:19 97:5	sort 72:3 89:19 117:6 135:18
restrictive 47:8,16	sale 12:13,24 13:17, 25 16:7 18:14 26:14 42:8 49:25 51:7,20 52:4 60:25 64:25 67:16 72:16 79:5,7 93:4 103:24 104:6,11, 14 107:23 109:15 116:22 117:5 136:14	separately 121:21	South 3:10 49:9 64:16 134:24 137:9 144:20	sound 69:11

speak 16:1 17:4 98:14	Storage 54:12	systems 108:12	thereof 43:9	titled 142:23
speaking 25:21 78:9	store 117:2 137:3,4	T	Thief 60:25 61:3,5 62:5 135:25 138:5,9	today 12:13 15:5 28:24 34:2,5,18 39:10 77:20 84:12 88:2 89:15 90:21 94:8 116:13 124:13 128:18 131:20 134:17 136:15 139:4,25
specific 22:21 28:11 49:16 64:7 90:13	stores 6:23 7:1	taking 19:14 79:25	thing 40:25 48:18 72:9 86:4 99:25	told 16:5,8 65:22 81:14 96:22 111:7 141:9
specifically 49:5 60:16	stove 53:22 54:5	talk 91:19 107:13 108:23 130:16 131:18	things 28:18 50:23 109:19 110:24 111:6 120:3 125:6,11,19 126:5 133:9 137:14 142:11	Tony 10:5,20,23 11:8 58:7
spell 68:1	strike 110:8	talked 16:3,10,12 64:11 70:18,23 77:19 78:17,19 81:11 90:17 106:1 127:20,21 128:5 144:17	third-party 128:17	top 35:12 43:3 79:4, 21 98:18 120:24 121:25
Spokane 61:13,16, 19	structural 41:18 73:7	talking 3:22 19:10 22:22 26:24 38:23 40:16 54:1 76:18 85:23 136:1 144:1	thought 48:12 52:9 105:8 125:12 128:7 130:9,10 131:7	track 27:14
spreadsheet 85:1	structures 39:18 64:12 109:19	talks 111:5	thousands 35:13 66:17	training 105:23
spring 72:24 73:2	stuff 15:12 135:6	tanks 107:19,22	threatened 129:17 130:4	transaction 11:2 12:16 13:18 39:6 42:10,12 44:2 45:21, 24 49:25 80:17 84:20 85:10 91:22 92:10 93:13 99:16 103:23 108:18 109:5 117:4 121:9 123:22 126:18, 22 138:11 142:21 143:25 144:2
stamp 84:16	Subsection 33:1	tax 75:19 81:4 97:2 115:25 116:8,16 129:18,22 130:25 131:1	timbers 74:24	transactional 91:21 92:1,16
stamped 84:17 120:6 123:5	subsequent 71:1 110:18 141:1,5	taxes 97:8 108:19	time 5:4 7:15 9:5 11:13 18:1 19:7,18 21:19 22:3,6 23:16,24 24:9,24 26:2,8,24 26:2 27:4 28:13 38:18,20,22 42:15 45:6 50:9,11,14 56:1 68:9 69:23 80:10,11, 13 82:10 83:23 85:12, 19 86:19 87:1,10,25 89:2 90:18,23 91:3,7, 17 95:17 97:4 99:8 101:6,7,20,22 102:2 103:1,5 104:19 106:22,23 107:23 108:21 109:3 110:7,9, 18 112:6,21 113:23 115:17,24 117:20,25 118:25 119:6,10 122:6,7,18 123:9,21 124:21 125:2,7,13,17 126:12,17 127:7,13, 22 128:2,13,20 129:2, 3,6,8,20 130:14 131:23,24 132:3 133:1 134:1,11 137:6, 17 138:1 140:21 141:13,24 142:7 144:11,18	transactionally 92:16
stand-alone 133:2	substance 16:6,16 113:18	tear 38:10	timbers 74:24	transactions 35:11 57:7,19 91:19,22,23 92:8,18,25 93:1,9,13 104:11 105:19 108:11 110:3 116:12 143:1
standard 102:9 106:20 107:10 108:1 109:17,20,22	sued 58:9	telling 36:6 67:5	time 5:4 7:15 9:5 11:13 18:1 19:7,18 21:19 22:3,6 23:16,24 24:9,24 26:2,8,24 26:2 27:4 28:13 38:18,20,22 42:15 45:6 50:9,11,14 56:1 68:9 69:23 80:10,11, 13 82:10 83:23 85:12, 19 86:19 87:1,10,25 89:2 90:18,23 91:3,7, 17 95:17 97:4 99:8 101:6,7,20,22 102:2 103:1,5 104:19 106:22,23 107:23 108:21 109:3 110:7,9, 18 112:6,21 113:23 115:17,24 117:20,25 118:25 119:6,10 122:6,7,18 123:9,21 124:21 125:2,7,13,17 126:12,17 127:7,13, 22 128:2,13,20 129:2, 3,6,8,20 130:14 131:23,24 132:3 133:1 134:1,11 137:6, 17 138:1 140:21 141:13,24 142:7 144:11,18	transpired 113:18
standing 22:11	suggest 86:14 97:3 118:1 127:9	ten 23:20 92:7 102:24	timbers 74:24	Transportation 64:16,22 65:2 66:2 67:3,14 137:10
Stanley 4:24	suggested 105:24	ten-plus 81:23	time 5:4 7:15 9:5 11:13 18:1 19:7,18 21:19 22:3,6 23:16,24 24:9,24 26:2,8,24 26:2 27:4 28:13 38:18,20,22 42:15 45:6 50:9,11,14 56:1 68:9 69:23 80:10,11, 13 82:10 83:23 85:12, 19 86:19 87:1,10,25 89:2 90:18,23 91:3,7, 17 95:17 97:4 99:8 101:6,7,20,22 102:2 103:1,5 104:19 106:22,23 107:23 108:21 109:3 110:7,9, 18 112:6,21 113:23 115:17,24 117:20,25 118:25 119:6,10 122:6,7,18 123:9,21 124:21 125:2,7,13,17 126:12,17 127:7,13, 22 128:2,13,20 129:2, 3,6,8,20 130:14 131:23,24 132:3 133:1 134:1,11 137:6, 17 138:1 140:21 141:13,24 142:7 144:11,18	trick 94:11
start 3:17,22 8:15	suggestion 105:13 107:18 133:13,16	ten-year 24:4,6 132:11	time 5:4 7:15 9:5 11:13 18:1 19:7,18 21:19 22:3,6 23:16,24 24:9,24 26:2,8,24 26:2 27:4 28:13 38:18,20,22 42:15 45:6 50:9,11,14 56:1 68:9 69:23 80:10,11, 13 82:10 83:23 85:12, 19 86:19 87:1,10,25 89:2 90:18,23 91:3,7, 17 95:17 97:4 99:8 101:6,7,20,22 102:2 103:1,5 104:19 106:22,23 107:23 108:21 109:3 110:7,9, 18 112:6,21 113:23 115:17,24 117:20,25 118:25 119:6,10 122:6,7,18 123:9,21 124:21 125:2,7,13,17 126:12,17 127:7,13, 22 128:2,13,20 129:2, 3,6,8,20 130:14 131:23,24 132:3 133:1 134:1,11 137:6, 17 138:1 140:21 141:13,24 142:7 144:11,18	true 80:14
started 5:7,15 6:20 7:12 8:11 19:15 28:13 89:8	suits 59:13	term 22:10 52:18 94:6 97:8,11 124:13, 14 126:5	time 5:4 7:15 9:5 11:13 18:1 19:7,18 21:19 22:3,6 23:16,24 24:9,24 26:2,8,24 26:2 27:4 28:13 38:18,20,22 42:15 45:6 50:9,11,14 56:1 68:9 69:23 80:10,11, 13 82:10 83:23 85:12, 19 86:19 87:1,10,25 89:2 90:18,23 91:3,7, 17 95:17 97:4 99:8 101:6,7,20,22 102:2 103:1,5 104:19 106:22,23 107:23 108:21 109:3 110:7,9, 18 112:6,21 113:23 115:17,24 117:20,25 118:25 119:6,10 122:6,7,18 123:9,21 124:21 125:2,7,13,17 126:12,17 127:7,13, 22 128:2,13,20 129:2, 3,6,8,20 130:14 131:23,24 132:3 133:1 134:1,11 137:6, 17 138:1 140:21 141:13,24 142:7 144:11,18	trust 70:6
state 3:7 4:11,12 6:12 38:9,13 58:23 86:8	summarize 4:8	terms 19:5 31:1 34:13 59:6 101:12 102:16,18,24 103:5,9 106:8,14,25 115:11 117:10,13 143:12	time 5:4 7:15 9:5 11:13 18:1 19:7,18 21:19 22:3,6 23:16,24 24:9,24 26:2,8,24 26:2 27:4 28:13 38:18,20,22 42:15 45:6 50:9,11,14 56:1 68:9 69:23 80:10,11, 13 82:10 83:23 85:12, 19 86:19 87:1,10,25 89:2 90:18,23 91:3,7, 17 95:17 97:4 99:8 101:6,7,20,22 102:2 103:1,5 104:19 106:22,23 107:23 108:21 109:3 110:7,9, 18 112:6,21 113:23 115:17,24 117:20,25 118:25 119:6,10 122:6,7,18 123:9,21 124:21 125:2,7,13,17 126:12,17 127:7,13, 22 128:2,13,20 129:2, 3,6,8,20 130:14 131:23,24 132:3 133:1 134:1,11 137:6, 17 138:1 140:21 141:13,24 142:7 144:11,18	truthful 46:15 134:7
stated 34:8	summary 84:23 123:17,18	terminology 15:8	time 5:4 7:15 9:5 11:13 18:1 19:7,18 21:19 22:3,6 23:16,24 24:9,24 26:2,8,24 26:2 27:4 28:13 38:18,20,22 42:15 45:6 50:9,11,14 56:1 68:9 69:23 80:10,11, 13 82:10 83:23 85:12, 19 86:19 87:1,10,25 89:2 90:18,23 91:3,7, 17 95:17 97:4 99:8 101:6,7,20,22 102:2 103:1,5 104:19 106:22,23 107:23 108:21 109:3 110:7,9, 18 112:6,21 113:23 115:17,24 117:20,25 118:25 119:6,10 122:6,7,18 123:9,21 124:21 125:2,7,13,17 126:12,17 127:7,13, 22 128:2,13,20 129:2, 3,6,8,20 130:14 131:23,24 132:3 133:1 134:1,11 137:6, 17 138:1 140:21 141:13,24 142:7 144:11,18	turn 13:25 142:14
statement 12:11 17:10,14,15 46:7,10, 25 62:7 63:24 64:5,9 67:19 75:17 79:9 126:22 134:18,23 135:10,15	summer 131:10	test 8:16,21,23 9:5 139:14,16	time 5:4 7:15 9:5 11:13 18:1 19:7,18 21:19 22:3,6 23:16,24 24:9,24 26:2,8,24 26:2 27:4 28:13 38:18,20,22 42:15 45:6 50:9,11,14 56:1 68:9 69:23 80:10,11, 13 82:10 83:23 85:12, 19 86:19 87:1,10,25 89:2 90:18,23 91:3,7, 17 95:17 97:4 99:8 101:6,7,20,22 102:2 103:1,5 104:19 106:22,23 107:23 108:21 109:3 110:7,9, 18 112:6,21 113:23 115:17,24 117:20,25 118:25 119:6,10 122:6,7,18 123:9,21 124:21 125:2,7,13,17 126:12,17 127:7,13, 22 128:2,13,20 129:2, 3,6,8,20 130:14 131:23,24 132:3 133:1 134:1,11 137:6, 17 138:1 140:21 141:13,24 142:7 144:11,18	turned 14:4
statements 39:23 116:17 122:16,17 127:18	summers 5:5	testified 3:3 44:15 52:9 57:2 62:4 83:15 140:21 141:18	time 5:4 7:15 9:5 11:13 18:1 19:7,18 21:19 22:3,6 23:16,24 24:9,24 26:2,8,24 26:2 27:4 28:13 38:18,20,22 42:15 45:6 50:9,11,14 56:1 68:9 69:23 80:10,11, 13 82:10 83:23 85:12, 19 86:19 87:1,10,25 89:2 90:18,23 91:3,7, 17 95:17 97:4 99:8 101:6,7,20,22 102:2 103:1,5 104:19 106:22,23 107:23 108:21 109:3 110:7,9, 18 112:6,21 113:23 115:17,24 117:20,25 118:25 119:6,10 122:6,7,18 123:9,21 124:21 125:2,7,13,17 126:12,17 127:7,13, 22 128:2,13,20 129:2, 3,6,8,20 130:14 131:23,24 132:3 133:1 134:1,11 137:6, 17 138:1 140:21 141:13,24 142:7 144:11,18	typical 4:18 68:15 98:13 126:10
stations 8:25	sump 48:25 49:1 72:14	testimony 27:3 34:5 38:2 39:10 40:1, 7,9,14 52:14 62:12 73:18 139:4 140:24	time 5:4 7:15 9:5 11:13 18:1 19:7,18 21:19 22:3,6 23:16,24 24:9,24 26:2,8,24 26:2 27:4 28:13 38:18,20,22 42:15 45:6 50:9,11,14 56:1 68:9 69:23 80:10,11, 13 82:10 83:23 85:12, 19 86:19 87:1,10,25 89:2 90:18,23 91:3,7, 17 95:17 97:4 99:8 101:6,7,20,22 102:2 103:1,5 104:19 106:22,23 107:23 108:21 109:3 110:7,9, 18 112:6,21 113:23 115:17,24 117:20,25 118:25 119:6,10 122:6,7,18 123:9,21 124:21 125:2,7,13,17 126:12,17 127:7,13, 22 128:2,13,20 129:2, 3,6,8,20 130:14 131:23,24 132:3 133:1 134:1,11 137:6, 17 138:1 140:21 141:13,24 142:7 144:11,18	typed 102:8 103:12
Status 122:1	supervisor 7:15 9:3 10:1	testing 108:8	time 5:4 7:15 9:5 11:13 18:1 19:7,18 21:19 22:3,6 23:16,24 24:9,24 26:2,8,24 26:2 27:4 28:13 38:18,20,22 42:15 45:6 50:9,11,14 56:1 68:9 69:23 80:10,11, 13 82:10 83:23 85:12, 19 86:19 87:1,10,25 89:2 90:18,23 91:3,7, 17 95:17 97:4 99:8 101:6,7,20,22 102:2 103:1,5 104:19 106:22,23 107:23 108:21 109:3 110:7,9, 18 112:6,21 113:23 115:17,24 117:20,25 118:25 119:6,10 122:6,7,18 123:9,21 124:21 125:2,7,13,17 126:12,17 127:7,13, 22 128:2,13,20 129:2, 3,6,8,20 130:14 131:23,24 132:3 133:1 134:1,11 137:6, 17 138:1 140:21 141:13,24 142:7 144:11,18	types 143:1
statute 48:2,3,4,10	supplement 59:4	text 94:16 102:9	time 5:4 7:15 9:5 11:13 18:1 19:7,18 21:19 22:3,6 23:16,24 24:9,24 26:2,8,24 26:2 27:4 28:13 38:18,20,22 42:15 45:6 50:9,11,14 56:1 68:9 69:23 80:10,11, 13 82:10 83:23 85:12, 19 86:19 87:1,10,25 89:2 90:18,23 91:3,7, 17 95:17 97:4 99:8 101:6,7,20,22 102:2 103:1,5 104:19 106:22,23 107:23 108:21 109:3 110:7,9, 18 112:6,21 113:23 115:17,24 117:20,25 118:25 119:6,10 122:6,7,18 123:9,21 124:21 125:2,7,13,17 126:12,17 127:7,13, 22 128:2,13,20 129:2, 3,6,8,20 130:14 131:23,24 132:3 133:1 134:1,11 137:6, 17 138:1 140:21 141:13,24 142:7 144:11,18	typically 104:16,17 109:25
stay 5:23 28:5 97:14	supporting 114:20			
stayed 52:8 55:16	suppose 22:20			
staying 51:14 130:19	supposed 80:8			
stays 106:15,19	surrendered 88:7			
Steve 68:1	survey 111:9,11			
sticky 27:23	Sweetman 4:23			
	sworn 3:3			
	Sylvan 136:10			

<p>U</p> <p>U.S. 85:5</p> <p>uh-huh 3:19 15:22 86:3 89:4 107:17 137:5</p> <p>ultimately 99:19</p> <p>unaware 37:13,18, 19 38:2,4,8,17 66:16 72:5</p> <p>underneath 122:1 144:23</p> <p>understand 3:25 4:1 12:13,18 23:7 30:25 31:3 34:12 36:18,20,22 37:10,12 45:12 46:13 49:5 53:5 59:18 63:18 65:18 67:1,18 78:11 81:18 83:10 84:4 92:13 103:20,24 106:11 112:12 130:20</p> <p>understanding 32:15 56:11 60:6 103:22 107:10 112:13 113:8 121:18 124:7 128:21 129:1 131:25 135:8</p> <p>understood 4:4 60:17 63:9 92:16 104:1</p> <p>units 133:3 135:2</p> <p>unrelated 63:16</p> <p>updates 28:11</p> <p>updating 71:14</p> <p>upset 66:23 67:5</p> <p>upstairs 55:7,9,11</p>	<p>93:1 126:9</p> <p>viewed 20:12</p> <p>viewing 29:15 94:22</p> <p>violation 37:11 47:8 67:8</p> <p>violations 41:22 47:11</p> <p>voiced 80:4</p> <p>void 112:3</p> <p>volume 81:20 92:13</p> <p>volumes 127:24</p> <p>vouching 63:14</p>	<p>wife 83:4 101:7 115:16 128:22</p> <p>Wild 12:14 15:21 16:8 18:13 42:6 44:2 45:7 49:21 81:5,11 71:17 77:17 80:17 83:25 87:13 93:4 100:1 124:22 129:22 132:4,7,13 136:11 139:13</p> <p>windows 97:25</p> <p>Winter 72:23</p> <p>wondering 47:15</p> <p>wording 44:5,15</p> <p>words 77:4 102:8</p> <p>work 4:22 8:16 7:13, 18,21 9:1,20 13:12 23:2,3 42:10,11 56:16,17 69:17 129:8</p> <p>worked 4:17,24 11:9 37:20 56:1 63:12 93:14 128:17 141:16</p> <p>working 5:25 69:3, 5,6</p> <p>works 78:16</p> <p>workshop 54:25 97:22</p> <p>worst 73:6</p> <p>worth 76:22 80:22</p> <p>worthless 140:19</p> <p>write 77:10</p> <p>written 14:16 93:3 134:15</p> <p>wrong 76:23 142:16</p> <p>Wyoming 5:8,20,21 6:7</p>	<p>71:6 72:20 81:23 91:18 92:18 96:4 125:5 135:20</p> <p>Z</p> <p>zoning 47:16</p> <p>zoning/building 47:7</p>
<p>V</p> <p>validate 123:14</p> <p>valuation 82:14,25</p> <p>valuations 73:19</p> <p>values 76:18</p> <p>vehicle 30:15</p> <p>ventilation 109:19</p> <p>verbal 3:18 102:20</p> <p>verbiage 110:16</p> <p>verify 81:2</p> <p>versus 60:23 91:23</p>	<p>W</p> <p>W-I-E-G-E 68:1</p> <p>walk 88:5 96:24 102:24 103:9</p> <p>walk-throughs 21:6</p> <p>walked 20:14 26:16, 23 27:8,12 71:18 132:10</p> <p>wanted 8:8 43:20 44:23 81:20 93:19 101:21 113:13 125:4</p> <p>wanting 11:14</p> <p>warn 68:7</p> <p>warranties 104:21 119:16</p> <p>warranty 103:16,24 104:8</p> <p>wash 117:2</p> <p>washer 54:16</p> <p>water 41:16,20 47:21,23 72:4,7,17 139:16,18</p> <p>week 10:9 91:1</p> <p>weekly 126:14</p> <p>weeks 8:20 125:8</p> <p>Welikit 61:13,14,19</p> <p>West 106:17</p> <p>wether 136:20</p> <p>Whispering 61:11, 24</p> <p>widened 74:22 75:10</p>	<p>Y</p> <p>Yanni 10:23 11:9</p> <p>year 4:10 9:8 18:22 19:18,19,20 20:4,11 22:25 23:4,5,8,17 24:14 25:11 26:22 56:5,9 70:23 72:22 128:10 137:7 139:10 141:22</p> <p>yearly 41:24 71:22</p> <p>years 7:6,12 14:12 18:3,15 25:7,18 26:16,22 27:11 28:7 50:5 55:25 56:20 62:21 63:11 70:12</p>	



Wild Bill's Campground, Saloon & Grill

21372 U.S. Highway 385
Deadwood, SD 57732

Bryan Iverson
Broker Associate
Re/Max Results
1240 Jackson Blvd.
Rapid City, SD 57702
(605)484-9422 Cell
(605)341-4300 Office
bryan9422@gmail.com



APP.092

Address
21372 US Hwy 385
Deadwood, SD 57732

Legal Description

Lot E ex H1 (.04AC) & H2 (.06ac) &
Lot E-2 of HES 137 Acres: 11.21
Sec 18, Township 4 North, Range 4 East
Tracts 0091-A & 0091-B Acres: 1.53
Sec 17, Township 4 North, Range 4 East

Property Tax Information

Lawrence County

Parcel # 14000-00404-180-02
Taxes Payable in 2016: \$4,798.40

Parcel # 14000-00404-170-15
Taxes Payable in 2016: \$1200.72

Total Taxes Payable in 2016: \$5,999.12

Listing Price: \$899,000

Description of Property

- 12.74 Acres
- Well with new filtration system
- 98+ Total sites
- 9 - 50 amp full hook-ups
- 16 - 30 amp full hook-ups
- 5 - 30 amp electric & water sites
- 14 - 30 electrical sites
- 11 pop-up/tent sites
- Numerous Tent Sites
- Duplex cabin each side has 2 beds, bathroom, kitchen, & fireplace
- 7 Sleeping cabins with 2 beds, table & refrigerator
- Updated Shower/laundry house
- Play area
- Saloon & Grill
- Store
- Living quarters
- 3 Walking bridges & 2 driving bridges
- Wi-Fi in certain areas of campground
- Malt liquor license
- Bear Butte & Strawberry creeks meet on the property
- Snowmobile Trail on property
- 5 miles from Deadwood



Duplex Cabin



Each Unit has the following:

- 2 Beds and Futon
- Gas Fireplace
- Bathroom with Shower
- Kitchen
- Table & chairs
- Parking next to unit
- Outside seating

6 Sleeping Cabins



- 2 Beds
- Refrigerator
- Table & Chairs

Camping Sites



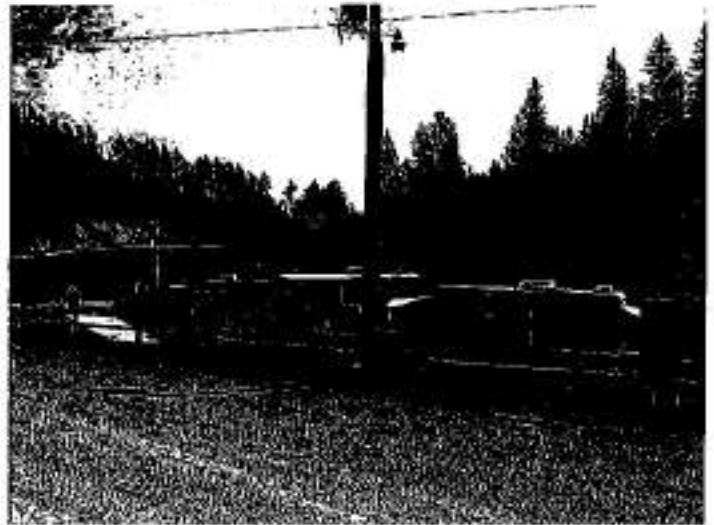
16 - 30 amp Full Hook-up Sites



9 - 50 amp Full Hook-up Sites



14 - 30 amp Electrical Sites



5 - 30 amp Electrical & Water Sites



Other Camp Sites or possible future expansion of Electrical or Full Hook-up Sites.

APP.095

Other Features and Facilities



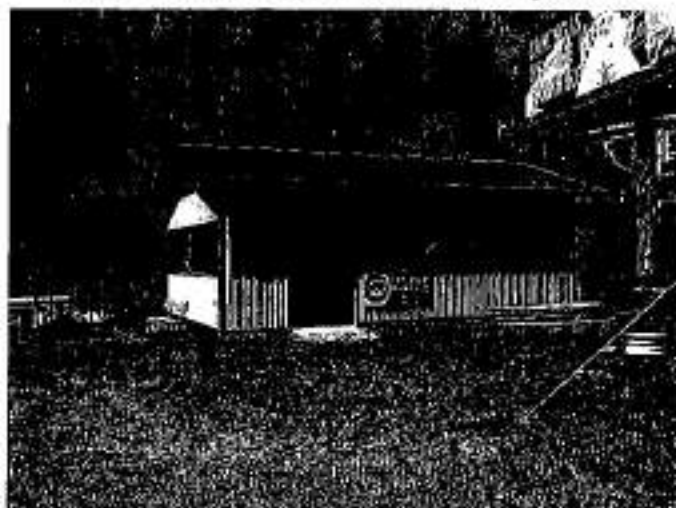
Shower House, Laundry & Game Room



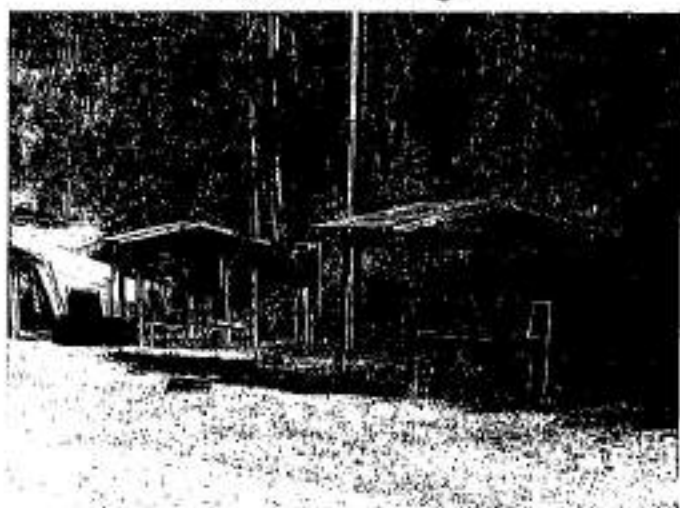
Well House and Filtration System



New Drive Bridge



Building for Gatherings



Part of the New Electrical Service

Main Building



Main Building w/ Living Quarters



Saloon & Dining Area



Grill & Back Bar Area



View of Bar & Dining Area

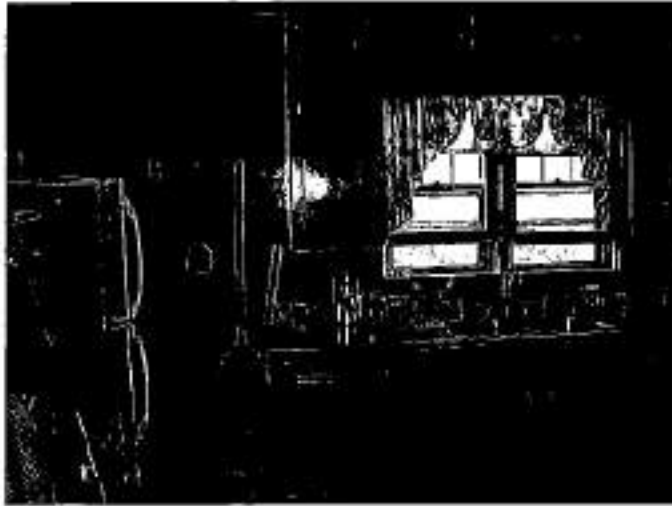


New Covered Deck Area

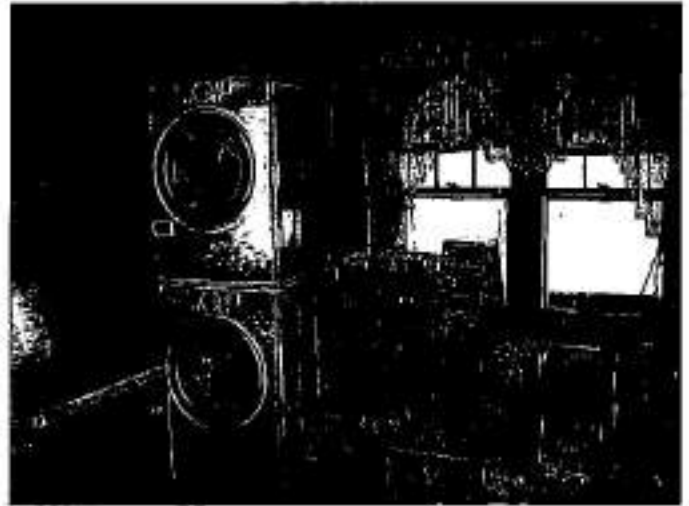


Custom Built Chairs & Tables

Main Building



Kitchen in Living Quarters



Storage & Laundry Room in Living Qtrs.



Office/Bedroom and Full Bath

The Living Quarters main level: kitchen (pictured above), living room (pictured above, used as storage area and laundry) , and bedroom with full bath (bedroom currently used as office and storage). Basement has 3 bedrooms, 1/2 bath and workshop area. Living Quarters is the back portion of the main level shared with the Bar, Grill and Store area and a full basement.

Page 2	Page 4
<p>APPENDANCES CONTINUED:</p> <p>Also Present: Mr. Melody Benington</p> <p>Plaintiff</p> <p>Mr. Bryan Iverson</p> <p>Defendant</p> <p style="text-align: center;">I N D E X</p> <p>WITNESS: PAGE</p> <p>DONNE BENINGTON</p> <p>Examination by MR. ERLANDSON 3</p> <p>EXHIBITS: MARKED ON PAGE</p> <p>** No exhibits were marked during the deposition.</p> <p style="text-align: center;">* * *</p>	<p>1 anything.</p> <p>2 A That's fine.</p> <p>3 Q It's just really important that we get a fair and</p> <p>4 accurate transcription of what occurs here, okay?</p> <p>5 A Okay.</p> <p>6 Q All right. So where are you from?</p> <p>7 A South Dakota.</p> <p>8 Q And tell me a little bit about your background, your</p> <p>9 educational background.</p> <p>10 A High school, some college.</p> <p>11 Q Where did you go to college?</p> <p>12 A National College of Business here in town.</p> <p>13 Q When was that?</p> <p>14 A I was 32. I'm 62 now. 30 years ago.</p> <p>15 Q Did you get a degree?</p> <p>16 A No.</p> <p>17 Q What were you studying?</p> <p>18 A Business law.</p> <p>19 Q How long did you go there?</p> <p>20 A Year.</p> <p>21 Q And so you're looking for a business law degree?</p> <p>22 A They thought I was going to. No, I wasn't. I was</p> <p>23 looking for an engineering degree.</p> <p>24 Q So why did you leave school or college?</p> <p>25 A I was paying for myself and I ran out of money.</p>
Page 3	Page 5
<p>1 DONNE BENINGTON,</p> <p>2 called as a witness, being first duly sworn, testified as</p> <p>3 follows:</p> <p>4 EXAMINATION BY MR. ERLANDSON:</p> <p>5 Q All right. State your name, please.</p> <p>6 A Donne A. Benington.</p> <p>7 Q Have you ever had your deposition taken before, sir?</p> <p>8 A Yes. One time.</p> <p>9 Q And in what kind of case?</p> <p>10 A What was it for? Maybe I didn't. I think it was</p> <p>11 Mr. Nooney.</p> <p>12 THE WITNESS: (To Mr. Nooney) Did I give a</p> <p>13 deposition, Mr. Nooney? I don't know.</p> <p>14 A I don't believe so.</p> <p>15 MR. NOONEY: I have no recollection.</p> <p>16 A Oh.</p> <p>17 Q (By Mr. Erlandson:) Okay. Well, you've been here for</p> <p>18 the deposition of my client, Bryan Iverson, have this</p> <p>19 morning. The instructions that Mr. Beardsley gave apply</p> <p>20 equally to your deposition. The number one rule we want</p> <p>21 to make sure we follow is that if you don't understand</p> <p>22 my question, ask me and I'll repeat it for you; okay, or</p> <p>23 restate it in a different way.</p> <p>24 A Yep.</p> <p>25 Q I'm not going to try to confuse you or trick you or</p>	<p>1 Q Approximately what year was that?</p> <p>2 A 30 years ago, two thousand -- what's 30 years ago?</p> <p>3 MR. NOONEY: 1987?</p> <p>4 A Somewhere around there.</p> <p>5 Q Okay. What did you do after that?</p> <p>6 A I started in the electrical industry with Brink</p> <p>7 Electric.</p> <p>8 Q What did you do there?</p> <p>9 A I was a ground man up to a foreman.</p> <p>10 Q How long did you do that?</p> <p>11 A To present. Not with Brink's. With Brink's probably</p> <p>12 13 years.</p> <p>13 Q Where did you go after Brink?</p> <p>14 A I went to a company called Besler Incorporated here in</p> <p>15 town.</p> <p>16 Q How do you spell that?</p> <p>17 A B-E-S-L-E-R, Incorporated. I was a foreman for them</p> <p>18 until '94, I believe; 1994.</p> <p>19 Q Until 1994?</p> <p>20 A Yeah. Or, no, I can't remember the dates, but I was</p> <p>21 there for, I think, about 13 years.</p> <p>22 Q Okay. Where did you go after that?</p> <p>23 A A company called Energy Erectors out of Leesburg,</p> <p>24 Florida.</p> <p>25 Q Energy Erectors?</p>

<p style="text-align: right;">Page 6</p> <p>1 A Uh-huh.</p> <p>2 Q Okay.</p> <p>3 A And I worked with them up to four years ago, and then I</p> <p>4 worked for Bushnell Corporation, which is an engineering</p> <p>5 firm out of Houston, Texas.</p> <p>6 Q How do you spell that name?</p> <p>7 A B-U-S-H-E-L-L, Corporation.</p> <p>8 Q What do you do for them?</p> <p>9 A I'm a manager for -- site manager.</p> <p>10 Q What does that entail?</p> <p>11 A Building power stations and power transmission lines and</p> <p>12 then service capacitor banks, HVDC yards. So --</p> <p>13 Q Okay. So fair to say that since you went to National</p> <p>14 Business College for that one year there, you've been in</p> <p>15 the electrical --</p> <p>16 A Yes, sir.</p> <p>17 Q -- industry?</p> <p>18 A Yes.</p> <p>19 Q In some capacity or another?</p> <p>20 A Yes.</p> <p>21 Q And looks like you had about four -- or at least four or</p> <p>22 five jobs --</p> <p>23 A Uh-huh.</p> <p>24 Q -- up until now?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 8</p> <p>1 A Several of them. Many of them.</p> <p>2 Q Okay. How many homes have you purchased, do you</p> <p>3 believe?</p> <p>4 A Probably six, seven.</p> <p>5 Q All in South Dakota?</p> <p>6 A Yes, sir. All in Rapid City.</p> <p>7 Q Did you use realtors?</p> <p>8 A Yes.</p> <p>9 Q Who would be some of the realtors you've used?</p> <p>10 A The only one I've used was Bryan's office. I can't</p> <p>11 remember now. Get back to me on that one. I'll think</p> <p>12 of it.</p> <p>13 Q Okay. If you remember, let your attorney know.</p> <p>14 A Remember, I'm 62 years old, so I can't remember what I</p> <p>15 did yesterday.</p> <p>16 Q All right. Do you recall what years you would have</p> <p>17 purchased or sold any of those homes?</p> <p>18 A No. I don't remember. Started back in '75, probably,</p> <p>19 '75, '76.</p> <p>20 Q You said you've lived in a lot of RV parks in the past,</p> <p>21 A Traveled the United States.</p> <p>22 Q And is that a hobby or part of your job?</p> <p>23 A That's part of my job.</p> <p>24 Q And so tell me about some of those parks that you've</p> <p>25 lived in and your experiences.</p>
<p style="text-align: right;">Page 7</p> <p>1 Q Yes?</p> <p>2 A Just kept progressing up.</p> <p>3 Q Okay. What did you do to prepare for your deposition?</p> <p>4 And I don't want to know about any conversations you</p> <p>5 might have had with your attorney, okay?</p> <p>6 A Didn't do much to prepare for them. Just show up, tell</p> <p>7 the truth.</p> <p>8 Q All right. Did you review any documents?</p> <p>9 A No. I reviewed them prior to. I mean, not --</p> <p>10 Q Right.</p> <p>11 A You know, months ago.</p> <p>12 Q Tell me about your experience purchasing any kind of a</p> <p>13 business or business entity.</p> <p>14 A Well, I wanted to retire, so I wanted a little something</p> <p>15 to do on the side. So I've lived in a lot of RV parks,</p> <p>16 so I thought it would be fun to own one.</p> <p>17 Q Okay. Prior to this particular transaction, which I'm</p> <p>18 going to call Wild Bill's Campground or Wild Bill's,</p> <p>19 okay? Had you ever been involved in any commercial real</p> <p>20 estate transaction?</p> <p>21 A No.</p> <p>22 Q Have you ever made an offer before that on any</p> <p>23 commercial property or business entity?</p> <p>24 A No. Residential, yes.</p> <p>25 Q Okay. And have you ever purchased a home before?</p>	<p style="text-align: right;">Page 9</p> <p>1 A I don't really -- what do you want to know?</p> <p>2 Q Just kind of traveling all over for work and you'd</p> <p>3 stay --</p> <p>4 A We'd just stay at an RV park. Either an RV park or</p> <p>5 motel. But I owned an RV. Stayed at RV parks.</p> <p>6 Q So prior to time of this Wild Bill's transaction you</p> <p>7 would be familiar with RV parks, in general?</p> <p>8 A Well, not familiar with -- yeah, to some degree. I</p> <p>9 mean, I know what they are, but --</p> <p>10 Q Sure.</p> <p>11 A -- I've never ran one or -- yeah.</p> <p>12 Q Tell me about Wild Bill's. How did you first become</p> <p>13 aware that it was on the market?</p> <p>14 A Again, I wanted to retire. I wanted to find something</p> <p>15 to do, so we went driving around and we were going to</p> <p>16 buy another one. That deal fell through, so we were</p> <p>17 driving through the Black Hills and we stopped in to</p> <p>18 Wild Bill's, and Keith just happened to be there. So I</p> <p>19 visited with Keith.</p> <p>20 My wife and I walked in, asked him if he was still</p> <p>21 wanting to sell because we knew it was on the Internet</p> <p>22 for sale, and he said, yeah. And I asked him if he</p> <p>23 wanted to lease it. He said, no. I didn't want to</p> <p>24 lease it either, but -- so I asked him what kind of</p> <p>25 money he made. He told me he made good money, and so</p>

<p style="text-align: right;">Page 10</p> <p>1 that kind of started us looking. So --</p> <p>2 Q Do you recall when that might have been?</p> <p>3 A That was prior to our buy date. About a month before,</p> <p>4 I'd imagine.</p> <p>5 Q Looking at your Purchase Agreement, that was April 27,</p> <p>6 2017?</p> <p>7 A Probably in March, I would say. Might have even been in</p> <p>8 April. First part maybe.</p> <p>9 Q When did you first meet Bryan Iverson?</p> <p>10 A When we had our first meeting when Keith, Keith told me</p> <p>11 that they were -- they were going to use Bryan.</p> <p>12 Q And would that be the day you signed the Purchase</p> <p>13 Agreement?</p> <p>14 A I believe so.</p> <p>15 Q Okay.</p> <p>16 A I can't remember, because I never -- I never stored</p> <p>17 that. I didn't think I've ever be sitting here, so I</p> <p>18 don't remember.</p> <p>19 Q But you remember signing the Purchase Agreement --</p> <p>20 A Oh, absolutely. Yeah.</p> <p>21 Q Let me finish my question, sir. You remember signing</p> <p>22 the Purchase Agreement on a particular day, right?</p> <p>23 A Yes. But I don't remember what day, because -- I do</p> <p>24 remember signing it, yes. But --</p> <p>25 Q And you don't recall meeting Mr. Iverson before that day</p>	<p style="text-align: right;">Page 12</p> <p>1 think we came up with the number of 300,000, and so we</p> <p>2 had to call him back and say I can't -- I can't get the</p> <p>3 300,000. It's 200,000 and we'd like to buy it.</p> <p>4 And we asked him if he would take any money off of</p> <p>5 the price, as to why we paid full price. He wouldn't do</p> <p>6 it because I didn't have the 300,000 and he would carry</p> <p>7 us for the full price.</p> <p>8 Q Do you recall when that phone call was?</p> <p>9 A Oh, it was several days after we met. I can't remember</p> <p>10 that day, but it was in -- right around the first of</p> <p>11 April.</p> <p>12 Q Have any other conversations with him prior to the time</p> <p>13 you went and signed the Purchase Agreement?</p> <p>14 A I think we stopped up there another time -- another</p> <p>15 couple times and just kind of walked through the</p> <p>16 property.</p> <p>17 Q How many times did you walk through the property prior</p> <p>18 to signing the Purchase Agreement?</p> <p>19 A Probably three. Two, three. It wasn't ours yet so we</p> <p>20 couldn't really get into anything and snoop around, but</p> <p>21 we did walk the property imagining what we'd do with the</p> <p>22 place.</p> <p>23 Q Sure. And Mr. Iverson was never there during one of</p> <p>24 your walk-throughs, correct?</p> <p>25 A No, sir.</p>
<p style="text-align: right;">Page 11</p> <p>1 you signed the Purchase Agreement, correct?</p> <p>2 A Yes, I do. Yes, I do. When I met -- I did meet with</p> <p>3 Bryan and -- but I can't remember what we discussed.</p> <p>4 Q Okay. I believe Mr. Iverson's testimony was the first</p> <p>5 time he ever met you was the day you signed the Purchase</p> <p>6 Agreement.</p> <p>7 A And that could be, too. Not sign the paperwork, but</p> <p>8 just signed the Purchase Agreement. Okay, no. Yeah,</p> <p>9 you're right. Yeah, probably was the first time I met</p> <p>10 him.</p> <p>11 Q Okay. So you were driving around sometime in March or</p> <p>12 maybe earlier April of 2017 and you met with</p> <p>13 Keith Grims; correct?</p> <p>14 A Yes.</p> <p>15 Q And tell me a little bit more detail about what you</p> <p>16 talked about and the information you obtained from him.</p> <p>17 A My wife and I walked in and we got visiting with him.</p> <p>18 Got around to he wanted to sell the property and we</p> <p>19 asked him how much he made per year. He said it was</p> <p>20 235,000, and he made that in three and a half months.</p> <p>21 Q Okay.</p> <p>22 A So that kind of prompted us to maybe we better pursue</p> <p>23 this. So I think later on we called and made Keith an</p> <p>24 offer on -- or asked him if he would be willing to sell</p> <p>25 it to us with money down on a contract for deed. I</p>	<p style="text-align: right;">Page 13</p> <p>1 Q Tell me the prior deal that you had made on a campground</p> <p>2 that fell through.</p> <p>3 A We were going to lease a campground from a little lady</p> <p>4 that owned Custer Crazy Horse Campground, and she was</p> <p>5 going to lease it to us, but she made a mistake and</p> <p>6 signed a purchase agreement with some other people and</p> <p>7 they held her feet to the fire and made her sell it to</p> <p>8 them.</p> <p>9 Q Okay.</p> <p>10 A Who they now own and we're friends with. So --</p> <p>11 Q When was that deal?</p> <p>12 A Just prior to Wild Bill's, starting Wild Bill's.</p> <p>13 Q Sometime in March maybe?</p> <p>14 A March probably, yes, sir.</p> <p>15 Q Did you have a real estate agent?</p> <p>16 A No. I was dealing with her directly.</p> <p>17 Q What was her name?</p> <p>18 A Kim Chi. She was from Dallas, Texas, and she owned</p> <p>19 Custer Crazy Horse Campground.</p> <p>20 Q Did you actually get a purchase agreement?</p> <p>21 A No. She already signed one with somebody else and they</p> <p>22 put her feet to it. We never had anything. We weren't</p> <p>23 going to purchase. We were going to lease it.</p> <p>24 Q Okay. Did you have any paperwork --</p> <p>25 A No.</p>

Page 14

1 Q -- back and forth about any of the terms?

2 A No. We started getting the term papers going so she had

3 to sell it and everything was destroyed, but --

4 Q Okay. All right. Tell me about -- I think you said you

5 went through the first time in March with Keith Grinn

6 when you showed up there, and you'd seen the property on

7 the Internet; is that right?

8 A Yes. We knew it was for sale. Let's just put it that

9 way.

10 Q Okay. And you drove up there, looked around, talked to

11 Keith. He'd given you some information. You had called

12 and did some negotiations back and forth, at least once?

13 A With Keith, yes.

14 Q And those were over the terms, correct, of --

15 A Just other the money down and if he was willing to do a

16 contract for deed, and -- because I didn't have the

17 money to buy one, so contract for deed was the way to go

18 for us.

19 Q All right.

20 A So I think when he told us what kind of money he made,

21 that kind of had a lot of influence on us.

22 Q All right. So what did you do prior to the time you

23 came -- well, scratch that.

24 Is it fair to say that you concluded your

25 negotiations and came up with a deal and went to

Page 15

1 Bryan Iverson to have him do the paperwork?

2 A To some degree, yes. There was some other parties that

3 was talked about at the closing that we -- was never

4 discussed.

5 Q Okay. And just tell me about that. It's my

6 understanding you had a deal, at least everyone thought

7 you had a deal, and then you went and had Mr. Iverson

8 help you out with the paperwork to get finalized?

9 A Basically, it was just money down. It was \$17,000 that

10 they wanted me to put down towards the purchase that I

11 had never -- that I hadn't thought of or knew of or

12 anything until I got there.

13 Apparently there was reservations and we were --

14 we put it as down. We didn't have any choice on that.

15 So --

16 Q Right. Okay.

17 So you went over to Mr. Iverson's real estate

18 office, is that correct, on April 27th?

19 A Yeah, when -- yes.

20 Q And was that in the morning? Do you recall about what

21 time?

22 A I would say in the morning. I don't remember, but it

23 was in the morning, sure.

24 Q I think the documents indicate that you signed at

25 10 a.m. the morning of April 27th. Does that sound

Page 16

1 familiar?

2 A Yes.

3 Q And who was all there at that meeting?

4 A Bryan and Keith and I.

5 Q Prior to the time you got there, had you done any

6 inspections of the property yourself?

7 A We looked at it.

8 Q Okay.

9 A Most of the inspections that you see I need to include

10 it, I never knew about until after I purchased it. Then

11 I started getting letters from the state and I started

12 getting five separate visits, which you would never know

13 if you bought the property until after the fact.

14 Because I didn't know the property and built it on -- off

15 the right way until I got a letter from the state.

16 I didn't know that things needed to be in

17 compliance because I've never read a document before

18 until the fire marshal stopped up and said I'm going to

19 close he's going to shut me down. That's been fighting

20 with the last couple years to do it, not a lot of

21 time left and, by golly, I'm going to do it or have

22 going to shut me down.

23 Q So you didn't have any inspections done --

24 A No.

25 Q -- prior to the -- let me --

Page 17

1 MR. BEARDSLEY: You've got to let him finish and

2 then --

3 THE WITNESS: Oh, I'm sorry. Sorry. Sorry.

4 MR. BEARDSLEY: Slow down. Just --

5 Q (By Mr. Beardsley) You didn't have any inspections

6 done before April 27, 2017; correct?

7 A No.

8 Q And you went to Mr. Iverson's office that morning with

9 the understanding that you were going to sign a purchase

10 agreement; is that correct?

11 A Yes.

12 Q Okay. And when you got there, tell me about what

13 happened. How did everything transpire?

14 A Well, I think we just had some idle chat. Keith was

15 sitting beside me, and before we signed -- before we

16 signed I asked Keith, I said, Keith is this double? And

17 Keith looked at me and he goes, yeah, I did it.

18 Well, yeah, he did it. His payments weren't as

19 high as mine, and so, yes, he made it happen, but he was

20 under different circumstances. So when I asked him if

21 the place was worth it, and he said, absolutely. So --

22 Q Okay.

23 A And then we signed papers, I remember.

24 Q Before you signed the papers, did Mr. Iverson make any

25 representations to you about the property?

<p style="text-align: right;">Page 18</p> <p>1 A Yes. When we first met, my wife was with me. We went 2 in Bryan's office and I asked him -- we said, Keith 3 makes \$235,000 a year; is that right? Bryan said, no, 4 it's more like 240 to 245 a year. So, hey, that sounds 5 a lot better. 6 Q Sure. When was that meeting? 7 A That was made prior to closing. 8 Q Okay. And I'm asking you about prior to the time you 9 signed the April 27th, 2017 Purchase Agreement did 10 Mr. Iverson make any representations to you about the 11 property? 12 A I don't understand your question. About the property or 13 the price or what? 14 Q About the price, about the deal, about the -- 15 A The price. I just said the price, yes. 16 Q So you said it was after. You said that meeting was in 17 May -- 18 A That was before we -- 19 Q Let me finish my question, okay? 20 A I'm sorry. Sorry. 21 Q You've got to let me finish my -- 22 A I will. 23 Q -- question -- 24 A I will. 25 Q -- otherwise we're going to have a very long day today,</p>	<p style="text-align: right;">Page 20</p> <p>1 came up for the signing, so there was the three of us, 2 and then later on Melody came up for the signing and 3 that's kind of where -- but I don't remember -- I mean, 4 if I knew we were going to go through this, I would have 5 kept dates and everything else, but I didn't. 6 Q That's my next question. You didn't have a calendar or 7 notebook or anything? 8 A No, sir. 9 Q Okay. It might be easier for me to just start going 10 through the documents, and I'll try my best -- 11 A Sure. 12 Q -- to kind of go in chronological order. 13 MR. HUNTER: Off the record for a second. 14 (An off-the-record discussion was held at this 15 time.) 16 Q Okay. Take a look at Exhibit 1. It says, Real Estate 17 Purchase Agreement, Commercial/Agricultural; correct? 18 A Yes. 19 Q And are your initials at the bottom? 20 A Yes. 21 Q Did you sign the next page? 22 A Yes. 23 Q Do you believe you signed it on April 27th, 2017 at 24 10 a.m.? 25 A Yes.</p>
<p style="text-align: right;">Page 19</p> <p>1 and maybe tomorrow, okay? 2 A Okay. 3 Q I thought you said that the conversation you had with 4 Mr. Iverson was with your wife, as well -- 5 A Yes. 6 Q -- in his office. 7 A Yes. 8 Q And that was, though, in May; correct? 9 A I don't remember. 10 Q Your wife -- 11 A It was prior -- it was prior to purchasing, because the 12 money was the very important thing for us. So Keith 13 told us 235. Bryan says 240 to 245. So we take their 14 word for it. I have an expert sitting there that I 15 don't know anything about, and I have an expert that's 16 representing me telling me what this thing made, so 17 that's what I have to go by. 18 Q But your first contact with Mr. Iverson was April 27th, 19 2017; correct? 20 A I can't remember. I honestly can't remember. 21 Q Okay. And that's all I need. 22 You were at his office and you said that 23 Keith Grims was there, as well; correct? 24 A When we -- when we first met Bryan, he wasn't with us. 25 It was just Melody and I. During the close there Keith</p>	<p style="text-align: right;">Page 21</p> <p>1 Q Did your wife sign it? 2 A Yes. 3 Q At that time? 4 A Yes. 5 Q Do you know if she was there? There was some indication 6 she might have not been present when you first met with 7 Mr. Iverson and Grims at your office and that she might 8 have signed it a few days later. 9 A It was later. 10 Q Okay. 11 A I'm just looking at the date here. I'm sorry. 12 Q All right. Did you read this document? 13 A Yes. 14 Q And you understood by signing this that Mr. Iverson was 15 a limited agent? 16 A Whatever that means, yes. He explained that to me, that 17 he was a limited agent representing both myself and 18 Keith Grims. 19 Q Okay. And it actually says here towards the bottom of 20 the first numbered paragraph here it says, Purchaser 21 and seller acknowledge that neither is the limited agent 22 of both parties to this transaction as outlined in 23 Section 3 of the Agency Agreement Addendum. Do you see 24 that? 25 A Yes.</p>

<p style="text-align: right;">Page 22</p> <p>1 (Mrs. Kensington left the deposition room at this</p> <p>2 time.)</p> <p>3 Q And then if we look at the Agency Agreement Addendum,</p> <p>4 which is Exhibit 2; do you see that there?</p> <p>5 A Yes.</p> <p>6 Q And there's a Section 3 there, correct?</p> <p>7 A Yes.</p> <p>8 Q And you agreed that he would be your limited agent as</p> <p>9 outlined in Section 3 of Exhibit 2, correct?</p> <p>10 A Yes.</p> <p>11 Q Whose idea was it to include the four items under</p> <p>12 inspections? Do you see that? Under Exhibit 1.</p> <p>13 A It wasn't mine. I don't know. Bryan's?</p> <p>14 Q All right. In any event, it looks like if it wasn't</p> <p>15 your idea, someone provided some contingencies for you</p> <p>16 so that you could conduct any kind of inspections that</p> <p>17 you might want to conduct; is that fair?</p> <p>18 A Yeah. Fair.</p> <p>19 Q And you would have 30 days to conduct as many</p> <p>20 inspections of whatever kind you wanted to conduct for</p> <p>21 30 days, correct?</p> <p>22 A Yes.</p> <p>23 Q And if any of those inspections, no matter what they</p> <p>24 were, bed bugs, wood ticks, anything, weren't</p> <p>25 satisfactory to you, you could get out of this deal and</p>	<p style="text-align: right;">Page 24</p> <p>1 wasn't anything wrong with it and I inspect it, I'm</p> <p>2 happy with it, I'm good. Then you don't need an</p> <p>3 inspection.</p> <p>4 But I need to explain that those things came later</p> <p>5 on. Later on in the purchase it wasn't I walked in</p> <p>6 there and go, oh, the grates need to be redone. Those</p> <p>7 were told to me at a later date.</p> <p>8 I didn't know the basement flooded until I had a</p> <p>9 meeting with Brandon Presley. That was later past the</p> <p>10 30 days. I was already screwed.</p> <p>11 Q And I don't want to go forward. I'm talking about on</p> <p>12 April 27, 2017. I'm just --</p> <p>13 A No.</p> <p>14 Q We'll get to that point.</p> <p>15 A No inspection, right. Okay.</p> <p>16 Q All right. But you understood it was being sold as is</p> <p>17 when you signed this document?</p> <p>18 A Yes.</p> <p>19 Q And when you spoke with Mr. Criss earlier, I believe it</p> <p>20 was in March, did he indicate to you that he was going</p> <p>21 to be selling the property as is or --</p> <p>22 A He never mentioned that to me. I got as is through</p> <p>23 Bryan.</p> <p>24 Q Okay. On that April 27th date?</p> <p>25 A Yes, sir.</p>
<p style="text-align: right;">Page 23</p> <p>1 renegotiate or terminate the contract; correct?</p> <p>2 A Yes.</p> <p>3 Q Exhibit 1 incorporates or references Addenda III; do you</p> <p>4 see that?</p> <p>5 A Where are you at here?</p> <p>6 Q If you look at Page 2 of Exhibit 1.</p> <p>7 A Oh, yes. Yes.</p> <p>8 Q And Addenda III is Exhibit 5; do you see that?</p> <p>9 Duane, if you turn to Exhibit 5.</p> <p>10 A This here?</p> <p>11 Q Yeah, keep going. There you go.</p> <p>12 A Okay.</p> <p>13 Q That's the addenda that's incorporated and part of</p> <p>14 Exhibit 1, correct?</p> <p>15 A Yes.</p> <p>16 Q And was that actually typed up by the time you got to</p> <p>17 the meeting on April 27th?</p> <p>18 A Yes.</p> <p>19 Q And did you go over that with Bryan?</p> <p>20 A Yes.</p> <p>21 Q And Bryan went over it with you and discussed that the</p> <p>22 campground was going to be sold as is with no warranty?</p> <p>23 A Yes.</p> <p>24 Q And what did that mean to you?</p> <p>25 A It meant that if I go up there and look at it and there</p>	<p style="text-align: right;">Page 25</p> <p>1 Q All right. And the terms that are contained in this</p> <p>2 addenda here, 1 through 10, did you have any questions</p> <p>3 or concerns about any of those terms?</p> <p>4 A No.</p> <p>5 Q And did you ask any questions on April 27th, 2017 about</p> <p>6 any of those terms to Mr. Iverson?</p> <p>7 A No. I don't believe I had any questions at the time.</p> <p>8 Q All right. What was your time frame for closing?</p> <p>9 A Beginning of season because we had -- we had big</p> <p>10 payments to make so we wanted to close ASAP to get the</p> <p>11 ball rolling on the campground.</p> <p>12 Q And you closed on which day?</p> <p>13 A Well, 27th -- whatever date we closed on. I can't</p> <p>14 remember. I don't know. What's it say here?</p> <p>15 Q The information that we have indicates that you closed</p> <p>16 on May 12th, 2017 --</p> <p>17 A Oh, May 12th, 2017 we signed --</p> <p>18 Q -- is that right?</p> <p>19 A May 12th.</p> <p>20 Q Okay. So you signed the Purchase Agreement April 27th?</p> <p>21 A Closed on the 12th.</p> <p>22 Q Closed on May 12th, right?</p> <p>23 A Yep.</p> <p>24 Q Which is about two weeks?</p> <p>25 A Uh-huh.</p>

Page 26

1 Q "Yes?"

2 A Yes.

3 Q That's about a two-week time period?

4 A Yes. Somewhere in there, yes.

5 Q And you made a full-price offer for \$899,000; correct?

6 A We were basically told we had to pay full price because

7 I couldn't come up with \$300,000 down. So Keith said he

8 would take \$200,000 if we paid full price. So we had no

9 negotiating power. I couldn't even make an offer.

10 So --

11 Q Well, you certainly -- you could have, correct?

12 A No. He told me he wouldn't do it.

13 Q All right.

14 A So if he told me no, guy means no in my book. I mean,

15 you can always ask, but --

16 Q Correct. And you didn't hire Mr. Iverson to negotiate

17 for you, correct?

18 A No, I didn't, because Keith said he wouldn't budge.

19 Q All right. And you didn't hire Mr. Iverson to go look

20 for other campground opportunities, did you?

21 A No, because we did our homework and this was the only

22 one that we were interested in.

23 Q All right. Did you have any questions of Mr. Iverson

24 before to May 24th, 2013?

25 A Yeah. I asked him at one point in time if this place

Page 27

1 was worth it. He said, yes. That's when we sat down,

2 and I have Bryan don't remember. Apparently, because he

3 set down and did a cap -- no, we did a cap rate labor

4 on, when we did the cap rate. But the only thing I

5 remember asking Bryan is if this place was worth it, and

6 he said he made 240, 245,000 a year, Keith did, and we

7 would bid this.

8 So as somebody who's representing me, or

9 supposedly representing me, I take that word as gospel,

10 Q Can you give me a better idea of when this conversation

11 occurred?

12 A I can't remember when it was. To be honest, I just

13 don't remember.

14 Q Do you know if it was before or after closing?

15 A When he told me it made 245, it was before we did

16 anything. The cap rate came, I believe, after we closed

17 when I was questioning the financials.

18 Q Okay. Who else was at the meeting with Bryan when he

19 supposedly told you that the property makes two

20 hundred --

21 A My wife.

22 Q -- \$240,000 in three months?

23 A My wife. Three and a half months. Sorry.

24 Q Okay.

25 A Three and a half months.

Page 28

1 Q And where was that meeting?

2 A Bryan's office.

3 Q Anyone else present other than Bryan and your wife?

4 A No.

5 Q Did you keep any notes?

6 A No.

7 Q Did your wife keep any notes?

8 A No.

9 Q Did you pass that information on to anyone else after

10 you had the discussion with Mr. Iverson?

11 MR. BRADSHAW: When? I'm sorry. Just to clarify

12 the time frame.

13 Q (By Mr. Bradshaw:) I'm sorry. Prior to closing did

14 you go to anyone, perhaps, who might have been providing

15 financing and say, you know, Bryan Iverson told me this

16 place makes \$240,000 in three and a half months?

17 A Yes. I told what was going to be my partner that, but

18 he decided he didn't want to be partners, so I took it

19 myself.

20 Q Okay. Who is that?

21 A His name is Keith Brink.

22 Q Does he work at Brink Electric?

23 A No.

24 Q Okay.

25 A He owns a fencing company. Fence Crafters.

Page 29

1 Q And so you told him, though, that Bryan had made

2 representations --

3 A I did.

4 Q -- representations --

5 A Yes.

6 MR. BRADSHAW: Got to let him finish.

7 A I'm sorry.

8 Q -- about the profitability of the business, right?

9 A Yes.

10 Q And making \$240,000 in 3.5 months sounds like a pretty

11 good deal to me.

12 A Sounds like a really good deal to me.

13 Q Why did Keith turn it down?

14 A Apparently he had it for 13 years and was tired of it,

15 is what he told me.

16 Q Keith had what?

17 A Campground for -- oh, Keith Brink?

18 MR. MOONEY: Brink.

19 Q Right.

20 A He couldn't come up with the down.

21 Q Okay.

22 A Ergo, the 300,000 I couldn't come up with. I could only

23 come up with 2.

24 Q During this discussion where you claim Mr. Iverson told

25 you it made 240,000 in three and a half months, did he

Page 30

1 tell you if that was net or gross or explain that in any
2 fashion?

3 A Gross.

4 Q Gross. Did he tell you what it netted?

5 A No.

6 Q Do you have any idea how much it would have cost to
7 operate the campground on a yearly basis?

8 A To some degree, but I thought if I could make 50, 60,
9 \$70,000 a year, I'd be happy out of retirement.

10 Q Sure. Did you ask for any documents prior to closing to
11 verify any of those figures?

12 A The reason I didn't ask for financials is because the
13 financials where you don't have anything -- well, they
14 have a lot to do with the pricing of it, but I wanted
15 the cap rate so we knew what the campground was worth.
16 And I asked Bryan if it was worth it and I asked Keith
17 if it was worth the price and they both assured me, yes,
18 they were. So I can look at a financial statement and
19 it doesn't tell me anything. If it made a half a
20 million dollars, I still don't know what the property is
21 worth. If you had a cap rate that tells you where the
22 property is, what it's worth and -- so the financials
23 don't mean a whole lot to me because they don't tell the
24 whole story. And if the financials are wrong, what good
25 are they anyway?

Page 31

1 Q And do you believe that any of the financial information
2 that was provided to you was inaccurate?

3 A I do.

4 Q And what was inaccurate about it?

5 A I had Bryan -- or Presley come to my office and he
6 brought me his financial statements and I compared them
7 to Keith's.

8 Q Okay.

9 A They were different. I, at one point in time after
10 purchase, I asked Bryan what these miscellaneous charges
11 were on his financials. Nobody could explain it. You
12 have a bar, a restaurant, a campground and you have
13 miscellaneous fees on your financial statements? What
14 could it possibly be?

15 A A store, bar, and a restaurant and an RV park, I
16 don't understand what could be miscellaneous.

17 Q Okay.

18 A I don't know.

19 Q All right.

20 A And then I think -- there's some things that I think
21 that Bryan and Keith -- they both said that they didn't
22 know the correct cost and -- because they didn't know the
23 difference, so I don't know if it was a mistake or not.
24 I don't really know. I don't know if it was a mistake or
25 not. I don't know if it was a mistake or not.

Page 32

1 they just weren't right.

2 We were working the property from 7:00 in the
3 morning until midnight, both of us, seven days a week,
4 and we couldn't teach the business. Louis said we
5 made -- we were doing twice the business that Keith did,
6 but for some reason we weren't making it. And we
7 weren't spending it. We were working it.

8 Q And I just want to be clear that I understand exactly
9 what information you had concerning the financials prior
10 to time of closing on May 12th, 2017.

11 As I understand it, the only information you had
12 concerning the financials was a representation from
13 Mr. Giam that he made approximately \$235,000 in three
14 and a half months.

15 A Yes.

16 Q And you also --

17 MR. BRIANSON: I'm sorry?

18 MR. ROONEY: I didn't say anything.

19 Q (By Mr. Brianston:) And you also indicated that you had
20 a conversation with Mr. Iverson during which he
21 indicated that the property made approximately, or
22 grossed approximately, 240 in 3.5 months.

23 A Yes.

24 Q Correct?

25 A Yes.

Page 33

1 Q And as you sit here today, do you know for sure whether
2 that conversation with Mr. Iverson occurred before or
3 after closing?

4 A I know it was before.

5 Q Okay. And then I believe you also said that you asked
6 both Mr. Giam and Mr. Iverson if it was a good deal for
7 you?

8 A If it was worth the money, because it's a lot of money.

9 Q Right.

10 A So who else do I ask?

11 Q Well, I -- so you asked both of them and they both told
12 you yes?

13 A Yes.

14 Q And would you believe -- did you have an indication or
15 believe that the seller might indicate to you if you
16 were overpaying for the property?

17 A No, but I figured my real estate agent would because he
18 represented me.

19 Q But, as I understand it, you testified here earlier
20 today that you came there to his office before having
21 anything about the financials, at least from him, with
22 the idea that you were going to pay the listing price;
23 correct?

24 A Yeah, because we didn't have a choice. I told you that
25 Keith wouldn't let it go any cheaper because we didn't

<p>Page 34</p> <p>1 have the fall around down.</p> <p>2 Q But that didn't have anything to do with my client,</p> <p>3 correct? He didn't set the price, correct?</p> <p>4 A Somebody set the asking price. And I asked Keith who</p> <p>5 set it. He told me he didn't know. He was just a</p> <p>6 simple man, so the only person I knew who could set it</p> <p>7 and knew cap rates was Mr. Iverson.</p> <p>8 Q In any event, though, you knew that -- you didn't make a</p> <p>9 counteroffer for the \$99; correct?</p> <p>10 A We couldn't.</p> <p>11 Q You didn't, correct?</p> <p>12 A We were told we couldn't.</p> <p>13 Q Other than the financials, did you ask any questions of</p> <p>14 my client at any time prior to closing concerning the</p> <p>15 condition of the property?</p> <p>16 A No.</p> <p>17 Q Other than what you already talked to, did you ask my</p> <p>18 client at any time prior to closing any questions</p> <p>19 concerning the business?</p> <p>20 A No.</p> <p>21 Q Would you take a look at Exhibit 6, please.</p> <p>22 A (Complied.)</p> <p>23 Q Have you seen this document before?</p> <p>24 A Yes.</p> <p>25 Q When's the first time you saw it?</p>	<p>Page 36</p> <p>1 means there's no water?</p> <p>2 A No water.</p> <p>3 Q No water or sewer in there, correct?</p> <p>4 A Correct.</p> <p>5 Q What about the duplex cabin? Is there water service to</p> <p>6 that?</p> <p>7 A It had water and sewer, but they were rental property.</p> <p>8 Q What do you mean "rental property"?</p> <p>9 A For rent.</p> <p>10 Q Aren't the cabins for rent, too?</p> <p>11 A That's what you were just talking about.</p> <p>12 Q Right.</p> <p>13 A Two cabins.</p> <p>14 Q Okay. Yes.</p> <p>15 A They're rental property.</p> <p>16 Q You could live in those, as well. You didn't have to</p> <p>17 rent them if you purchased the property, correct?</p> <p>18 A No, the -- the upstairs bar part was not made for</p> <p>19 rental. It was made to live in for whoever was running</p> <p>20 the place.</p> <p>21 Q And, I'm sorry. Maybe I'm not being clear. I'm talk</p> <p>22 about the duplex cabin.</p> <p>23 A Yes. They are not livable. You could live in them.</p> <p>24 Q Right. And that's my question. You could live in</p> <p>25 those, correct?</p>
<p>Page 35</p> <p>1 A I don't know. I think we pulled this up online, I</p> <p>2 think, or -- I've seen this.</p> <p>3 Q Did you see it anytime prior to closing?</p> <p>4 A Or Keith had it when we went up there. Yes, prior to</p> <p>5 closing.</p> <p>6 Q Yes, you saw it prior to closing?</p> <p>7 A Yes.</p> <p>8 Q Did you use it prior to the time you signed the initial</p> <p>9 Purchase Agreement on April 27th?</p> <p>10 A Yes.</p> <p>11 Q Did you discuss this or any of its contents with my</p> <p>12 client at any time prior to closing?</p> <p>13 A No.</p> <p>14 Q What was your understanding as to the reference in</p> <p>15 Exhibit 6 of living quarters?</p> <p>16 A You could live there. It's a residence.</p> <p>17 Q Where?</p> <p>18 A In the bar.</p> <p>19 Q Okay.</p> <p>20 A Upstairs and down.</p> <p>21 Q Well, you could live in the cabins, too, couldn't you?</p> <p>22 A No. They're not -- because they were dry cabins except</p> <p>23 for two of them, and they were small and you couldn't</p> <p>24 live in them.</p> <p>25 Q You couldn't live in the -- you said "dry cabins". That</p>	<p>Page 37</p> <p>1 A Yes.</p> <p>2 Q They have water and sewer?</p> <p>3 A Yes.</p> <p>4 Q So it could be a residence just as much as any other --</p> <p>5 A Could be, yes.</p> <p>6 Q Right. Did you plan on residing and living at the</p> <p>7 property?</p> <p>8 A Part time.</p> <p>9 Q Okay. What time was that?</p> <p>10 A Night. When the bar -- we'd stay late or --</p> <p>11 Q Okay.</p> <p>12 A Because we have a home in Rapid.</p> <p>13 Q So it's my understanding that you purchased it and you</p> <p>14 maintained a residence, though, in Box Elder or Black</p> <p>15 Hawk?</p> <p>16 A Sumneret.</p> <p>17 Q Sumneret. I'm sorry. So you lived in Sumneret as</p> <p>18 your primary residence, correct?</p> <p>19 A Yes.</p> <p>20 Q And when you purchased this property, you had no</p> <p>21 intention of moving or changing your permanent residence</p> <p>22 to the campground, correct?</p> <p>23 A If we sold our house, we would probably move up there.</p> <p>24 Q Okay.</p> <p>25 A But, indirectly, we stayed there more than we stayed at</p>

Page 38

1 our house.

2 Q Okay.

3 A So we basically lived there. Well, not lived there, but

4 most of the time. 90 percent.

5 Q Did Mr. Iverson ever make any representations to you

6 concerning whether or not any part of the property had

7 been used as a residence in the past?

8 A Mr. Iverson, I believe he knew that Preston Bradley --

9 or the guy who leased the bar and restaurant lived

10 there, and he knew that Keith stayed there or lived

11 there and Brandon also lived there -- stayed there. So

12 anyone knew that and I know that Keith did and I know

13 that Brandon Bradley did, too.

14 Q Okay. My question was did he ever make any

15 representations to you concerning any of the property

16 being used as residential structures?

17 A No. Besides on the brochure, but, yes.

18 Q Turn to Exhibit 7, please.

19 A (Complied.)

20 Q This appears to be a letter to Mr. Orin from the

21 Department of Transportation concerning an encroachment

22 on a right-of-way, correct?

23 A Yes.

24 Q Do you have any information that Mr. Iverson had

25 knowledge of either this letter or the encroachment at

Page 39

1 any time prior to your May 12, 2017 closing?

2 A I don't really know how to answer that. He should have

3 known, because you know where the boundaries are on a

4 property when you sell it. I would --

5 Q And when I'm asking you questions about what he knew, I

6 want to know if you know or have information that he

7 actually knew. Not about what he should have known or

8 might have known. I need to know directly from you what

9 information you had, if any, that he actually knew.

10 A No.

11 Q So you don't have any information that Mr. Iverson knew

12 about this letter or the subject of this letter prior to

13 closing. Correct?

14 A No.

15 Q Do you have any information that Mr. Iverson knew at any

16 time prior to closing that there had been any prior

17 flooding in the basement of the property?

18 A Not personal.

19 Q Do you have any information that Mr. Iverson knew of the

20 existence of mold in the basement at any time prior to

21 closing?

22 A Not personally.

23 Q Do you have any information that Mr. Iverson knew that

24 the deck and/or parking lot on the campground was

25 located on the right-of-way?

Page 40

1 A No, not personally.

2 Q Do you have any information that prior to closing that

3 Mr. Iverson had knowledge that a majority of the five

4 rings in the campground were not up to code?

5 A No.

6 Q Do you have any information that prior to closing

7 Mr. Iverson knew or believed that any of the financial

8 statements that were provided to you that were not

9 accurate?

10 A No, not personally.

11 Q Do you have any information that Mr. Iverson knew at any

12 time prior to closing that certain bridges on the

13 property had been rebuilt or widened?

14 A Yeah, it was in the sale bill. It was in the

15 disclosure.

16 Q And what do you recall about being represented in the

17 disclosure you're referencing?

18 A Bridges were rebuilt and widened.

19 Q You said "bridges," plural?

20 A One was new and one was rebuilt and widened.

21 Q Take a look at Exhibit 6.

22 A (Complied.)

23 Q That was one of the listing pamphlets, correct?

24 A It was a little disclosure sheet I got at closing.

25 Q You got that at closing?

Page 41

1 A Prior to closing. It says new drive bridge on one of

2 the. The other one said it was rebuilt -- just rebuilt

3 and widened.

4 Q To that the improvement -- list of improvements?

5 A Yes.

6 Q Do you have any information that Mr. Iverson, prior to

7 closing, did not believe that any of the list of

8 improvements that were contained that you're referencing

9 was not true or accurate?

10 A No.

11 Q Do you have any information that Mr. Iverson knew

12 anything prior to closing that motor homes had fallen

13 through the bridges of the campground?

14 A No. That happened later on in the season.

15 Q That happened after closing?

16 A That happened after closing, yep. Prior to, I don't

17 think anybody knew.

18 Q Do you have any information that Mr. Iverson knew

19 anytime prior to closing that there were any structural

20 or foundational defects with the property?

21 A That's a hard one. I'm gonna have to say yes on this,

22 because after showing up for 18 years, you've got to

23 know it flooded in the basement, yes.

24 Q Okay. How?

25 A Common knowledge. Common sense would tell you. Just

<p style="text-align: right;">Page 42</p> <p>1 looking at it would tell you if you had a general idea.</p> <p>2 I've never -- I haven't shown the place for 16 years.</p> <p>3 If I had shown the place for 16 years, I would have</p> <p>4 knowledge of it.</p> <p>5 Q You're guessing, though; correct?</p> <p>6 A No, I'm not guessing. I would know it.</p> <p>7 Q Well, I want to know --</p> <p>8 A I'm a professional in my field. I would know what this</p> <p>9 is.</p> <p>10 Q What evidence do you have that he knew of any structural</p> <p>11 or foundational defects in the property prior to the</p> <p>12 time of closing?</p> <p>13 A None.</p> <p>14 Q You've made an attorney fee claim in this case; is that</p> <p>15 correct?</p> <p>16 A Yes.</p> <p>17 Q And have you paid attorney's fees yet in this claim?</p> <p>18 MR. BEARDSLEY: Objection, irrelevant.</p> <p>19 Q You're making a claim for attorney's fees and we're</p> <p>20 entitled to know what those are and the basis of those</p> <p>21 claims, because if you're not -- if you're going to</p> <p>22 waive your claim for attorney's fees, then I won't</p> <p>23 inquire. But --</p> <p>24 MR. BEARDSLEY: You can answer if you paid</p> <p>25 attorney's fees. Go ahead.</p>	<p style="text-align: right;">Page 44</p> <p>1 damages including prejudgment interest. Do you know</p> <p>2 what those damages are?</p> <p>3 A No.</p> <p>4 Q How much in damages are you seeking in this case?</p> <p>5 MR. BEARDSLEY: Objection. It will be determined</p> <p>6 at a later date at the time of trial.</p> <p>7 Q Do you know?</p> <p>8 A I don't know.</p> <p>9 Q Do you want to -- are you still paying on the Contract</p> <p>10 for Deed?</p> <p>11 A No.</p> <p>12 Q Is it your intention to rescind the agreement or get out</p> <p>13 of the Contract for Deed and not purchase the</p> <p>14 campground, or do you want the campground and damages or</p> <p>15 do you know?</p> <p>16 MR. BEARDSLEY: Objection, asking for a legal</p> <p>17 conclusion.</p> <p>18 A Again. Ask me again.</p> <p>19 Q (By Mr. Branson:) Why don't you just tell me, what</p> <p>20 are you looking to get in this lawsuit? What kind of</p> <p>21 damages from my client? That's --</p> <p>22 A I want to be made whole.</p> <p>23 Q And how do we do that?</p> <p>24 A My money back.</p> <p>25 Q How much do you want back?</p>
<p style="text-align: right;">Page 43</p> <p>1 A I haven't paid them thus far, but I will.</p> <p>2 Q (By Mr. Branson:) Okay. How much have you paid in</p> <p>3 attorney's fees?</p> <p>4 A I haven't paid anything as of yet.</p> <p>5 Q Okay. Do you have a fee agreement?</p> <p>6 A Yes.</p> <p>7 Q And is it a contingency or hourly basis?</p> <p>8 A It was an hourly basis.</p> <p>9 Q Okay. And what rate?</p> <p>10 A 275, I think, for one and 175 for the paralegal, I</p> <p>11 believe.</p> <p>12 Q Okay. We need to raise our rates.</p> <p>13 So are you paying attorney's fees in the event</p> <p>14 that you don't prevail?</p> <p>15 A I'll have to, yes.</p> <p>16 Q Okay. And do you get monthly billing statements?</p> <p>17 A Yes.</p> <p>18 Q And do you know how much the -- how much in fees and</p> <p>19 expenses have been incurred so far?</p> <p>20 A I think we're between 5 and \$6,000 as of before this.</p> <p>21 Q Okay. Did you review the Complaint before it was filed?</p> <p>22 A Yes.</p> <p>23 Q Do you believe it to be accurate?</p> <p>24 A Yes.</p> <p>25 Q You've asked for damages in this case for compensatory</p>	<p style="text-align: right;">Page 45</p> <p>1 A All of it.</p> <p>2 Q And you want to give the campground back?</p> <p>3 A Yes. I already have.</p> <p>4 Q Well, that's my question. Do you want to give the</p> <p>5 campground back to Mr. Grant?</p> <p>6 A Already have, yes.</p> <p>7 Q Already have, okay.</p> <p>8 A Yes, sir.</p> <p>9 Q So you want your -- how much do you have into it?</p> <p>10 A 217,000 plus what I put in it.</p> <p>11 Q Okay. How much have you put into it?</p> <p>12 A I'd have to sit down and figure it out, but not a whole</p> <p>13 lot. Probably another -- I couldn't -- I couldn't tell</p> <p>14 you. I couldn't guess.</p> <p>15 Q Okay.</p> <p>16 A Say another 10, 15,000.</p> <p>17 Q Well, at some point I'm going to want to know</p> <p>18 specifically what your damage claim is and I want to</p> <p>19 reserve the right to talk to you about that.</p> <p>20 A Yes, sir.</p> <p>21 Q So if you could get that information to your lawyer.</p> <p>22 A Yes, sir.</p> <p>23 Q So we'll leave your deposition open if you're -- unless</p> <p>24 you're prepared to talk about what your specific damages</p> <p>25 are to my client, other than you want your 217 back plus</p>

<p style="text-align: right;">Page 46</p> <p>1 10 to \$15,000; is that right?</p> <p>2 A Yeah.</p> <p>3 Q You've asked for costs and disbursements. Do you know</p> <p>4 how much those are?</p> <p>5 A No.</p> <p>6 Q You're seeking punitive damages?</p> <p>7 A I'm unaware of that. I don't know. Yes.</p> <p>8 Q Do you know what punitive damages are?</p> <p>9 A Yes.</p> <p>10 Q What's your understanding as to punitive damages?</p> <p>11 A Punishment.</p> <p>12 Q I'm sorry?</p> <p>13 A A punishment fine, basically.</p> <p>14 Q Okay. And do you believe you're entitled to punitive</p> <p>15 damages from Mr. Iverson?</p> <p>16 A If it's a dishonest thing, yes, I do.</p> <p>17 Q Do you believe that he was dishonest to you?</p> <p>18 A I do believe -- yes, I do. To a degree, I do.</p> <p>19 Q And what was he dishonest to you about?</p> <p>20 A Saying that he doesn't know about these things. There's</p> <p>21 some things I can understand it, but there's some things</p> <p>22 that he's got to know about. He's got to know about.</p> <p>23 Q These are just things that you don't have specific</p> <p>24 evidence of that he --</p> <p>25 A No.</p>	<p style="text-align: right;">Page 48</p> <p>1 A Yes.</p> <p>2 Q You could have hired a lawyer in those two weeks there</p> <p>3 and had him look everything over for you, correct?</p> <p>4 A I didn't feel the need because I had representation.</p> <p>5 Q You could have hired a lawyer, couldn't you?</p> <p>6 A But I had a real estate agent that was supposed to be</p> <p>7 working for me also.</p> <p>8 Q Well, he was a limited agent. You understood that?</p> <p>9 A I don't understand that part of it.</p> <p>10 Q Okay.</p> <p>11 A He represented both myself and Keith, and Mr. Grimm.</p> <p>12 Q You understood the documents you signed, though?</p> <p>13 A Yes.</p> <p>14 Q Is that fair to say?</p> <p>15 A Yes.</p> <p>16 Q Okay. So you had a couple weeks there where you could</p> <p>17 have gotten inspections, correct?</p> <p>18 A Yes, but the inspections wouldn't have done any good</p> <p>19 anyway because all this stuff came after the fact.</p> <p>20 After we purchased it, yes.</p> <p>21 Q And you could have hired any number of professionals to</p> <p>22 go out there and assist you in this transaction,</p> <p>23 correct?</p> <p>24 A I thought I had a professional assisting me in this</p> <p>25 transaction.</p>
<p style="text-align: right;">Page 47</p> <p>1 Q -- knew about --</p> <p>2 MR. HANDELEY: Let him finish.</p> <p>3 A I'm sorry.</p> <p>4 Q -- but you feel he should have known about, correct?</p> <p>5 A Yes.</p> <p>6 Q How much are you claiming in punitive damages from</p> <p>7 Iverson?</p> <p>8 MR. HANDELEY: Objection, lack of foundation.</p> <p>9 That's to be determined by a jury.</p> <p>10 Q At any time prior to -- or on that date of April 27,</p> <p>11 2017, did Mr. Iverson tell you that you had to sign</p> <p>12 those documents that day or force you to sign those</p> <p>13 documents?</p> <p>14 A No.</p> <p>15 Q Did he force you to sign that Contract for Deed on</p> <p>16 May 12th, 2017?</p> <p>17 A No.</p> <p>18 Q And you've been around long enough. You know you</p> <p>19 weren't compelled to sign those documents, correct?</p> <p>20 A Mostly. Correct.</p> <p>21 Q And you had a couple weeks between the time you signed</p> <p>22 the Purchase Agreement and the Contract for Deed to do</p> <p>23 whatever you wanted to do to try and satisfy yourself</p> <p>24 that you were getting a deal that you were comfortable</p> <p>25 with, correct?</p>	<p style="text-align: right;">Page 49</p> <p>1 Q Okay. You were in a hurry to close --</p> <p>2 A Yes.</p> <p>3 Q -- before the season, correct?</p> <p>4 A Yes.</p> <p>5 Q You understood you were purchasing the property as is,</p> <p>6 correct?</p> <p>7 A Yes.</p> <p>8 Q In fact, you specifically acknowledged that you weren't</p> <p>9 relying on the representations of Mr. Grimm or</p> <p>10 Mr. Iverson when you closed on the property, correct?</p> <p>11 A Yes.</p> <p>12 Q That you weren't relying on them. That you had done</p> <p>13 everything you needed to do to satisfy yourself that the</p> <p>14 deal was going to work for you, correct?</p> <p>15 A From what I saw, yes. From what was disclosed, yes.</p> <p>16 Q Take a look at Exhibit 11, please.</p> <p>17 A (Complied.)</p> <p>18 Q Did you sign this Contract for Deed?</p> <p>19 A Yes.</p> <p>20 Q Appears you signed it on May 12th, 2017, correct?</p> <p>21 A Yes.</p> <p>22 Q Where were you at when you did that?</p> <p>23 A Bryan's office.</p> <p>24 Q Bryan --</p> <p>25 A Iverson's office in a meeting room.</p>

<p style="text-align: right;">Page 50</p> <p>1 Q -- Iverson? You didn't go to a title company to do that?</p> <p>2 A Oh, sorry. Title company. I keep thinking of the wrong one. Yes, title company. Sorry.</p> <p>3 Q All right. Do you remember what title company?</p> <p>4 A Pennington County, wasn't it? Pennington County Title.</p> <p>5 Q Had you received the Contract for Deed prior to the time of closing on May 12th?</p> <p>6 A Yes.</p> <p>7 Q Do you recall when?</p> <p>8 A What's that again?</p> <p>9 Q When did you first see the Contract for Deed?</p> <p>10 A The day of our signing in Bryan's office.</p> <p>11 Q You signed the Contract for Deed at the title company, though, correct?</p> <p>12 A Yes. But I thought this was the same thing we signed in Bryan's office, I thought.</p> <p>13 Q No. You --</p> <p>14 A Yeah, this is the closing. I'm sorry. Yes.</p> <p>15 Q All right. I just want to make sure we're on the same page.</p> <p>16 A Yes. I'm sorry. I got confused here.</p> <p>17 Q So you signed the Purchase Agreement on April 27th?</p> <p>18 A Yes.</p> <p>19 Q And the Contract for Deed on May 12th, correct?</p>	<p style="text-align: right;">Page 52</p> <p>1 Q All right.</p> <p>2 A If I remember right. But I can't --</p> <p>3 Q Same, that might be right. I mean, as I understand it, on April 27th you signed the Purchase Agreement --</p> <p>4 A Yes.</p> <p>5 Q -- which was three pages. It had the first two pages plus the Addendum, which --</p> <p>6 A Well, that's probably what it was then.</p> <p>7 Q Okay. And it says we're going to do a Contract for Deed later.</p> <p>8 A Yes. Well, that's why I'm confused. Okay.</p> <p>9 Q But Mr. Iverson testified that on or about May 8th he gave you a copy of the Contract for Deed that you ultimately signed on May 12th. Does that sound correct?</p> <p>10 A Not this whole thing. I don't remember that. No, I don't remember that.</p> <p>11 Q Do you remember reading the Contract for Deed?</p> <p>12 A Yes.</p> <p>13 Q And you agreed to all its terms by your signature, correct?</p> <p>14 A Yes.</p> <p>15 Q And on Page 3 of 9, which is Bates stamped RE/MAX 0028, under Section 5, the last sentence you acknowledged that you've examined the real property and any equipment or fixtures and furniture (collectively "property") related</p>
<p style="text-align: right;">Page 51</p> <p>1 A Yes.</p> <p>2 Q When did you first see the Contract for Deed?</p> <p>3 A May 12th.</p> <p>4 Q Okay. The day you signed it?</p> <p>5 A Yes.</p> <p>6 Q Mr. Iverson testified that he believed that a couple days prior to closing he gave you a copy of the Contract for Deed to look at?</p> <p>7 A A preliminary -- it was a three-pager or just a couple-pager.</p> <p>8 Q Okay.</p> <p>9 A But this whole thing I did not see until May 12th.</p> <p>10 Q Okay. Then you say Mr. Iverson gave you a preliminary Contract for Deed?</p> <p>11 A I don't know. I thought it was like a little three-page -- I'm not -- I'm not sure.</p> <p>12 Q Do you have a copy of that in your file anywhere? I haven't seen anything --</p> <p>13 A No, I don't know.</p> <p>14 Q -- like that.</p> <p>15 A I thought there was a preliminary contract that was given to me when we went in on the 27th, and then this one was signed on the 12th, but it was only a three-pager and it was contingent to this one being done.</p>	<p style="text-align: right;">Page 53</p> <p>1 to the operation of the same and acknowledge that the property is acceptable; correct?</p> <p>2 A Yes.</p> <p>3 Q And if you turn to Page 5 of 9 RE/MAX 0030 you understood that you were purchasing it in its as is condition, correct?</p> <p>4 A Yes.</p> <p>5 Q And that you were going to be responsible for all costs of all repairs necessary after the date of the contract, correct?</p> <p>6 A Yes. Can I add something to that?</p> <p>7 Q Sure.</p> <p>8 A I signed this Contract for Deed in as is condition because I went up and looked at the property. What I know about the property seems good to me, but all these problems came after the fact. So, yes, I did sign this as is, but the problems came later on.</p> <p>9 If they came within the first 30 days, I'm sure I would have went to Bryan's office and said, Bryan, we have a problem here. This is messed up. This is messed up. By that time the 30 days is over and there's nothing I could do about it. I was stuck with it. And unforeseeable things that Mr. Grimm knew in the beginning.</p> <p>10 Q Well, you understood you were taking the risk by</p>

Page 54

1 purchasing --

2 A Not the risk from what I'd seen with the inspection.

3 MR. HARRISLEY: Wait.

4 A Sorry. Sorry.

5 Q (By Mr. Brandon:) You understand that purchasing

6 property as is you're taking a risk of any potential

7 conditions that could arise, correct?

8 A I don't -- I didn't -- I don't understand that part. As

9 is in the way it is when you buy it, when you purchase

10 it, right?

11 Q With no representations or warranties as contained in

12 your Contract for Deed, correct?

13 A That's unforeseeable, no. I mean, you don't go buy a

14 car, the paint falls off of it and you go, oh, well, I

15 bought the car, okay? There's nothing I can do about

16 it.

17 Q Why don't you go ahead and read Section 14 into the

18 record for me on Exhibit 11, please. Page 5 of 9.

19 A Property purchased in "as is" condition. Buyers

20 acknowledge that they have examined the subject real

21 estate and the improvements thereof and accept the same

22 in its present condition -- its present condition and

23 knowledge that they have -- they are not relying on any

24 representations or warranties, express or implied, of

25 sellers or any agent of sellers other than those

Page 55

1 described in this contract, and the buyers in buying

2 said property are relying solely on their own judgment.

3 Buyers hereby accept subject real estate in its present

4 condition. Buyers are buying the subject property in

5 "as is" condition, with buyers to be responsible for

6 costs of all repairs necessary after the date of this

7 contract.

8 Q So you bought that property in its present condition

9 relying solely on your own judgment, correct?

10 A Yes. After my inspection, yes.

11 Q Okay. I heard your counsel talk about mold, and

12 actually black mold even earlier in the deposition of

13 Mr. Tamm. Do you have mold on your property?

14 A Yes.

15 Q Can you tell me it been tested?

16 A No. It closed it down because it is black mold.

17 Q And how do you know that?

18 A I've seen black mold before.

19 Q But you haven't had any testing done?

20 A No. We closed it down and got out of there.

21 Q Do you know if you've hired any experts in this case?

22 A I have no idea.

23 Q Okay. When did you first see that mold on your wall?

24 (Scribbled out)

25 A After I had the meeting with Mr. Tamm and Mr. Tamm told

Page 56

1 asked me if I knew it flooded every year. And I said

2 no, I didn't. So that prompted me to go down with my

3 flashlight and die in the corners, and it's about a foot

4 high on the walls, and at that time I noticed somebody

5 tried to conceal it.

6 Q And how not?

7 A By tearing out some walls and replacing them with new

8 2 x 4s, and you could just kind of see where it's been

9 replaced.

10 Q Okay. Did you fill out a certificate of real estate

11 value?

12 A No.

13 Q Is your wife going to be back today?

14 A Yes. Yes.

15 MR. HARRISLEY: Want to take a little break here,

16 and, actually, it's about quarter to 5. I don't know

17 that I'm going to get done by 5, and I'm sure you've got

18 some questioning. So maybe we'll just figure out what

19 we're going to do from here and continue when we can.

20 So --

21 MR. ROONEY: Off the record, please.

22 (An off-the-record discussion was held at this

23 time. A recess was taken at this time, 4:49 p.m.

24 The deposition resumed at 4:53 p.m.)

25 Q (By Mr. Brandon:) Well, it's close to 5. I think

Page 57

1 what we're going to do -- have you ever been involved in

2 a prior lawsuit?

3 A Yes.

4 Q Tell me about it.

5 A Well, I had a company that -- I owned a company -- I was

6 part owner in a company, and they basically -- I don't

7 know how I can say this -- took away my shares. They

8 stole money from the company, and we went and we closed

9 the doors, so I tried to sue them, and that was

10 basically it. Nothing ever came of it.

11 Q Okay. Did they actually sue out a Complaint? Did you

12 file a lawsuit?

13 A Yes. John had it with me for probably a year and a

14 half, and then I took it to another attorney and he said

15 that I was supposed to win the thing and they didn't

16 have any money and I -- I would probably wind up with

17 nothing and still have to pay attorney's fees.

18 Q Okay.

19 A So I dropped it.

20 Q Were there any depositions taken in that case?


21 A No.

22 Q Any other lawsuits other than that one?

23 A No.

24 Q Have you ever been charged with a crime?

25 A Traffic.

<p style="text-align: right;">Page 58</p> <p>1 Q Traffic tickets, okay.</p> <p>2 A Other than that, no.</p> <p>3 MR. BRUNDSON: Just one minute.</p> <p>4 (Off the record briefly.)</p> <p>5 MR. BRUNDSON: I think for the purpose of today</p> <p>6 I'm done. We did have a couple of areas where we'd kind</p> <p>7 of like to follow up, but if you can get me more</p> <p>8 information on your damages, I don't know that I will</p> <p>9 need to talk to you again about it or not, but that</p> <p>10 would be helpful.</p> <p>11 Do you have -- can anyone stay past 5 if we needed</p> <p>12 to? I'm just trying to think. Your wife is here.</p> <p>13 THE WITNESS: Oh-yeah.</p> <p>14 MR. BRUNDSON: And if we want to reconvene, if</p> <p>15 it's, you know, a half-hour deal where she doesn't have</p> <p>16 a whole bunch of knowledge? I can --</p> <p>17 MR. BRUNDSON: Well, let me make a phone call.</p> <p>18 MR. BRUNDSON: I don't want to -- if you need to</p> <p>19 go, though, go.</p> <p>20 (An off-the-record discussion was held at this</p> <p>21 time.)</p> <p>22 MR. BRUNDSON: All right. We'll go ahead and</p> <p>23 conclude his deposition for now.</p> <p>24 MR. BRUNDSON: I don't have any questions.</p> <p>25 Mr. Mooney will --</p>	<p style="text-align: right;">Page 60</p> <p>1 STATE OF SOUTH DAKOTA } 2 } ss. CERTIFICATE 3 COUNTY OF BURLINGTON }</p> <p>4 I, JENNIE S. QUINN, Court Reporter and Notary</p> <p>5 Public, South Dakota, duly commissioned to administer oaths,</p> <p>6 certify that I placed the witness under oath before the</p> <p>7 witness testified; that the foregoing testimony of said</p> <p>8 witness was taken by me in shorthand, and that the same has</p> <p>9 been reduced to typewritten form under my supervision; that</p> <p>10 the foregoing transcript is a true and correct transcript of</p> <p>11 the questions asked, of the testimony given, and of the</p> <p>12 proceedings had.</p> <p>13 I further certify that I am not related to,</p> <p>14 employed by, or in any way associated with any of the</p> <p>15 parties to this action, or their counsel, and have no</p> <p>16 interest in its event.</p> <p>17 Witness my hand and seal at Rapid City, South</p> <p>18 Dakota, this 31st day of August 2016.</p> <p>19 </p> <p>20 JENNIE S. QUINN</p> <p>21 My Commission Expires: 08/24/21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 59</p> <p>1 MR. MOONEY: I'll reserve mine until, yeah,</p> <p>2 whenever we find time.</p> <p>3 MR. BRUNDSON: And my client will waive the</p> <p>4 reading of the deposition.</p> <p>5 MR. BRUNDSON: All right. Thank you.</p> <p>6 (The deposition concluded at 5:03 p.m.)</p> <p>7 * * * *</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	



Department of Transportation

Rapid City Area Office

P.O. Box 1970

Rapid City, South Dakota 57709

605.394.2248 FAX: 605.394.1904

November 9, 2016

Keith A Grimm
21372 US Hwy 385
Deadwood, SD 57732

Re: P 0385(54)115; PCN 04WG; Lawrence County
Mill & Resurfacing, Pipe Work, Spot Erosion Repair & Guardrail Upgrades
Encroachments

Dear Mr. Keith Grimm

As seen in the enclosed photo, a portion of your deck is encroaching in the Right-of-Way by 1.5 feet on the North side of US Highway 385. Federal Regulations require that this portion of the deck needs to be removed from the ROW in order to obtain federal funding to construct the subject project.

Please remove this portion of deck out of the Right-of-Way by October 1, 2017.

If further information is needed, please contact me at 605.394.2248. Thank you in advance for your anticipated cooperation.

Sincerely,

DEPARTMENT OF TRANSPORTATION

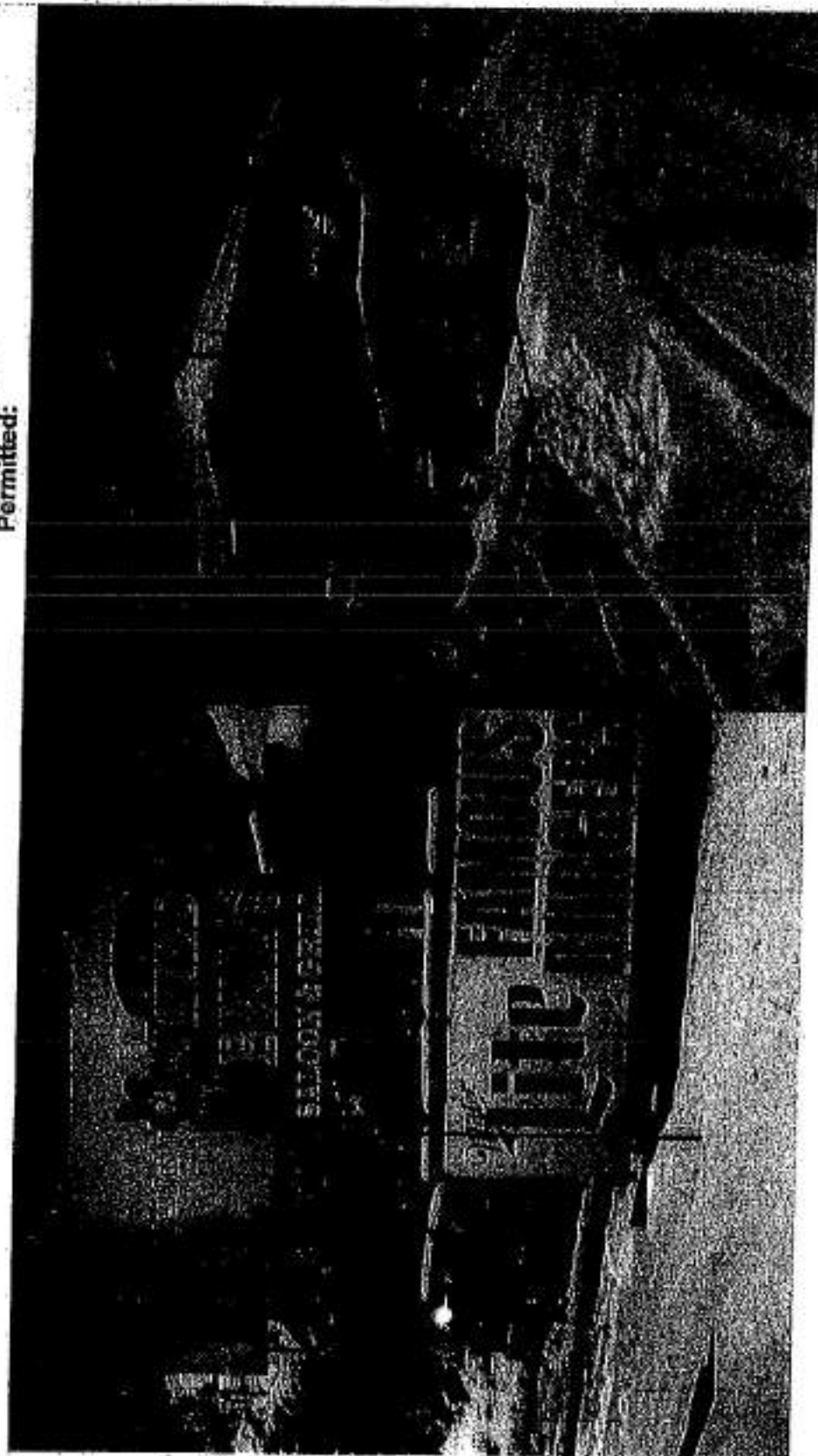
Mike Carlson
Area Engineer


Steve Wiege
Transportation Specialist

cc: File



P 0385(54)115 Lawrence County
PCN 04WG
Hwy SD385
Picture #9
MRM 116.85 Rt
Deck Encroaches 1.5 ft
Clear Zone: No
Permitted:



Wild Bill's Campground
Improvements Completed thru 9/30/15

Description	Amount
New Roof, Gutters & Soffits on Shower House and Office	\$ 4,000
Shower House painted	\$ 1,500
Drive Bridge rebuilt and widened	\$ 20,000
Three Walk Bridges redone	\$ 6,500
Sod for 50 amp Sites	\$ 2,000
Gravel throughout campground and new 30 amp sites	\$ 3,000
Building Refaces	\$ 2,500
New Signage	\$ 2,000
Larger Grill installed	\$ 1,000
New Refrigerator	\$ 500
Beer Cooler Compressor	\$ 500
Remodel and paint in Bar/Grill area	\$ 4,500
New Reservation Software for 2 computers	\$ 4,000
Purchase Golf Cart	\$ 500
New Washer & Dryer	\$ 1,800
New Water Pipes for 30 amp full service sites	\$ 4,500
Well House insulated, sided, new metal exterior, propane tank, electric heater backup, Water System installed including chlorinator, iron out injection system	\$ 12,000
New Fire Pits @ \$100 each	\$ 2,000
Built 2 sleeping cabins & Furnished	\$ 25,000
Remodeled existing Duplex Cabin w/ new furnishings	\$ 12,000
All New Power Transformers and Poles (BHP)	\$ 4,000
Electrical sub-panels and new 30 amp and 50 amp sites	\$ 25,000
Trenching for electric, sewer, water and groundwork and compacting	\$ 20,000
New Split rail fence and Entry posts	\$ 2,500
New metal building for storage and workshop (21x14)	\$ 5,500
New John Deere Commercial Lawn Mower	\$ 8,500
Remodel Restrooms in Bar/Grill area	\$ 3,000
New Metal Roof on the Duplex Cabin	\$ 2,500
New 20 x 64 Covered Deck (8/09)	\$ 21,200
Remodel Men/Womens Shower/bath area	\$ 14,000
Drive Bridge rebuilt and widened (2nd bridge)	\$ 16,000
Built 2 sleeping cabins & Furnished (2011)	\$ 10,000
Pavillion/Picnic Shelter (2012)	\$ 10,000
Built 2 Sleeping Cabins & Furnishing (2015)	\$ 12,000
Total Improvements since Purchased	\$ 264,000

Wild Bill's Campground and Resort
Price Sheet Information

<u>Regular Season</u>	2013	2015
Tent Site	\$ 17.25	\$ 19.25
10 Amp Water & Electric	\$ 19.50	\$ 22.50
30 Amp Electric	\$ 21.50	\$ 24.00
20-30 Amp Electric/Water	\$ 24.00	\$ 27.00
30 Amp Full Hookup	\$ 28.00	\$ 30.00
50 Amp Full Hookup	\$ 32.00	\$ 34.00
Cabin 1 (Full Amenities)	\$ 95.00	\$ 105.00
Cabin 2 (Full Amenities)	\$ 95.00	\$ 105.00
Cabin 4	\$ 50.00	\$ 55.00
Cabin 5	\$ 50.00	\$ 55.00
Cabin 6	\$ 50.00	\$ 60.00
Cabin 7	\$ 50.00	\$ 60.00
Additional Adult Tent Full Hookup	\$ 5.00	\$ 5.00
Additional Adult Cabin 1 or 2	\$ 8.00	\$ 8.00
Additional Adult Cabin 6 or 7	\$ 8.00	\$ 8.00
<u>Rally Rates</u>		
Tent Site	\$ 33.00	\$ 33.00
10 Amp Water & Electric	\$ 40.00	\$ 45.00
30 Amp Electric	\$ 40.00	\$ 45.00
20-30 Amp Electric/Water	\$ 45.00	\$ 50.00
30 Amp Full Hookup	\$ 60.00	\$ 70.00
50 Amp Full Hookup	\$ 75.00	\$ 85.00
Cabin 1 (Full Amenities)	\$ 175.00	\$ 195.00
Cabin 2 (Full Amenities)	\$ 175.00	\$ 195.00
Cabin 4	\$ 100.00	\$ 110.00
Cabin 5	\$ 100.00	\$ 110.00
Cabin 6	\$ 100.00	\$ 110.00
Cabin 7	\$ 100.00	\$ 110.00
Additional Adult Tent Full Hookup	\$ 16.50	\$ 16.50
Additional Adult Cabin 1 or 2	\$ 16.50	\$ 16.50
Additional Adult Cabin 6 or 7	\$ 16.50	\$ 16.50

JOHN DEERE

Customer Purchase Order for John Deere AG and C&CE Products

(US Only)

RC0001380 A

Deal # 146439

Customer # 2800004

[illegible]

IMPORTANT WARRANTY NOTICE: The John Deere warranty applicable to new John Deere product(s) is printed on page 2. There is no warranty on used products. The new product warranty is part of this contract. Please read it carefully. YOUR RIGHTS AND REMEDIES PERTAINING TO THIS PURCHASE ARE LIMITED AS SET FORTH IN THE WARRANTY AND THIS CONTRACT. IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS ARE NOT MADE AND ARE EXCLUDED UNLESS SPECIFICALLY PROVIDED IN THE JOHN DEERE WARRANTY. The Customer's signature below acknowledges receipt of the warranty statement.

ACKNOWLEDGEMENTS - I (We) promise to pay the balance due (line 7) shown above in cash, or to execute a Time Sale Agreement (Retail Installment Contract), or a Loan Agreement, for the purchase price of the Product, plus additional charges shown thereon or execute a Lease Agreement, on or before delivery of the Product ordered herein. Despite physical delivery of the Product, title shall remain in the seller until one of the foregoing is accomplished. I (We) hereby grant a security interest to RDO Equipment Co. in the Product.

Customer's Signature _____ Accepted By _____
(Authorized Signature of Seller)

Customer's Signature _____ Date Accepted _____ Salesman Bill D. Stanley

DELIVERY ACKNOWLEDGEMENT ▶	DELIVERED ON:	WARRANTY BEGINS	SIGNATURE: (DEALER)
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WARRANTY FOR NEW JOHN DEERE AGRICULTURAL PRODUCTS AND LIMITED WARRANTY FOR NEW JOHN DEERE COMMERCIAL & CONSUMER EQUIPMENT (U.S. Only)

A. GENERAL PROVISIONS—With respect to purchases in the United States, "John Deere" means Deere & Company, 1 John Deere Place, Moline, IL 61265, and with respect to purchases in Canada, "John Deere" means John Deere Limited, 295 Hunter Road, P. O. Box 1050, Guelph, Ontario L4M 4H5. The warranties described below are provided by John Deere to the original purchaser of new Agricultural and Commercial Consumer Equipment (Equipment) purchased from John Deere or authorized John Deere dealers (the "selling dealer"). These warranties apply only to Equipment intended for sale in Canada and the US. Under these warranties, John Deere will repair or replace, at its option, any part covered insofar as the warranties which it is found to be defective in material or workmanship during the applicable warranty term. Warranty service must be performed by a dealer or service center located in Canada or the US, and authorized by John Deere to sell and/or service the type of Equipment involved (the "authorized dealer"). The authorized dealer will also only repair or reconditioned parts or components furnished or approved by John Deere. Warranty service will be performed without charge to the purchaser for parts and/or labor. However, the purchaser will be responsible for any service call and/or transportation of Equipment to and from the authorized dealer's place of business (except where prohibited by law), for any premium charged for overtime labor requested by the purchaser and for any service and/or maintenance not strictly related to any defect covered under these warranties. These warranties are transferable, provided an authorized John Deere dealer is notified of the ownership change, and John Deere approves the warranty transfer.

6. WHAT IS WARRANTED - Subject to paragraph C, all parts of any new Equipment are warranted for the number of months or operating hours specified below. Each warranty begins on the date of delivery of the Equipment to the purchaser, (except for certain agricultural tillage, planting, cultivating, and harvesting products which may have a defined warranty start date, but only if established by John Deere and noted for the seller dealer on the Purchase Order.

AGRICULTURAL EQUIPMENT WARRANTIES	
AGRICULTURAL PRODUCTS	WARRANTY TERM
TRACTORS	24 Months - or 2,000 Hours, Whichever Comes First*
Tractors used in Earthmoving Applications (except those specific models and configurations approved by John Deere as having a five-year warranty in scraper applications)	60 Days
GENERATORS	6 Months
OTHER PRODUCTS, including Ag Management Solutions (AMS) Products	12 Months
Engines in Self-Propelled Equipment other than Tractors	24 Months - or 2,000 Hours, Whichever Comes First

*Engines from Covered manufacturers 13.6 through 24 - Engines block, cylinder head, rocker arm cover, timing gear assembly, overhead valves and all ancillary parts within these limits. Also includes the fuel injection pump, fuel injector, fuel pump, fueler dumper, manifold, and engine oil cooler. All other engine related items are not covered by this warranty 13 through 24.

SWATHES, MOWERS, PLOW GRADERS AND DISC DRAGS: A replacement part will be furnished without charge if a bearing failure occurs and the amount of wear is less than the wear limits established by John Deere Engineering Inc.

COMMERCIAL & CONSUMER EQUIPMENT WARRANTIES	
LAWN & GARDEN EQUIPMENT	WARRANTY TERM
(1) All Lawn & Garden Equipment and Attachments and Compact Series Tractors (except for equipment listed in 2 below)	24 Months in Private Residential - Personal Use 12 Months in Any Other Application
(2) Residential E-Z-Trak Mowers, 180, L180, LA100 and G180 Series Tractors and Attachments	24 Months in Private Residential - Personal Use
(3) Z540 Series Z-Trak Mowers and Attachments	24 Months or 360 Hours, Whichever Comes First
(4) X300 Series Tractors and Attachments	48 Months or 360 Hours, Whichever Comes First
(5) X500 Series Tractors and Attachments	60 Months or 500 Hours, Whichever Comes First
(6) X700 Series Tractors and Attachments	60 Months or 700 Hours, Whichever Comes First
(7) Walk-Behind Mower under 35"	24 Months in Private Residential - Personal Use

COMMERCIAL EQUIPMENT		WARRANTY TERM
1) Wide Area Mowers, Front Mower Tractor Units (with about 25 HP or 4 stroke engines), Commercial Z-TRAK Mowers, Commercial Walk Behind Mowers (35" or larger), and Z-TRAK Mower Decks		24 Months
2) Utility Tractors, Compact Utility Tractors		24 Months or 2000 Hours, Whichever Comes First
3) Power Units on Compact Utility Tractors (components see "below")		24 Months or 2000 Hours, Whichever Comes First
4) Other Utility Vehicles (except Compact Series), Tractor Loader Backhoes (TLB), other power decks, implements, and attachments for Equipment listed in 1, 2 and 3		12 Months or 1000 Hours, Whichever Comes First

UTILITY ALL TERRAIN VEHICLES	WARRANTY TERM
Utility All Terrain Vehicles (ATV) and attachments	6 Months

* INCLUDED IN COMPACT UTILITY TRACTOR POWERTRAIN WARRANTY: Cylinders, block, crank, head, valve covers, oil pan, timing gear covers, flywheel, bushing, and all parts mounted herein (does not include fuel, electrical, cooling, intake or exhaust components). Excludes: accessories, accessories, accessories, accessories, accessories, and all parts contained herein (coolant and intake manifold, alternator, dry clutch, parts or assembly of them).

C. (1) ITEMS COVERED SEPARATELY - (1) Tires, radios, and batteries are warranted under separate warranty documents provided with each product; (2) Non-John Deere engines in self-propelled Forage Harvesters are warranted separately by their respective manufacturer; (3) John Deere is not responsible for Vermeer fuel injection pumps and nozzles during the original manufacturer's warranty period. When the pump/nozzle clear's warranty is less than the engine warranty, John Deere will provide warranty during the remainder of the original engine warranty term; (4) John Deere Hand-Held/Potable products are covered by a separate warranty; (5) When applicable, a separate emissions warranty statement will be provided by the selling Dealer; (6) Frontier Equipment™ products are warranted by the original manufacturer. Contact a Frontier Equipment™ Dealer for details.™

(1) WHAT IS NOT WARRANTED - Pursuant to the terms of these warranties, JOHN DEERE IS NOT RESPONSIBLE FOR THE FOLLOWING: (1) Used Equipment; (2) Any Equipment that has been altered or modified in ways not approved by John Deere, including, but not limited to, adding injection pump fuel delivery above John Deere specifications and modifying combine grain tank; (3) Depreciation or damage caused by normal wear, lack of reasonable and proper maintenance, failure to follow operating instructions or recommendations, in use, lack of proper protection during storage, vandalism, theft, the elements or collisions or accidents; (4) Normal maintenance parts and/or service, including but not limited to, oil, filters, coolants and coolers, cutting parts, belts, brakes and clutch linings; (5) UATV if used for racing or any other competitive purpose or activity.

D. SECURING WARRANTY SERVICE -To secure warranty service on the purchaser must, (1) report the Equipment defect to an authorized dealer and request warranty service within the applicable warranty term; (2) present evidence of the warranty start date of the valid proof of purchase; and, (3) make the Equipment available to the authorized dealer within a reasonable time of time.

E. NO IMPLIED WARRANTY, REPRESENTATION OR CONDITION -To secure warranty service, purchaser must: (1) report the product defect to an authorized dealer and request repair within the applicable warranty time, (2) present evidence of the warranty start date, and (3) make the product available to the dealer or service center within a reasonable period of time.

NO DEALER WARRANTY -To the extent permitted by law, neither John Deere nor any company affiliated with it makes any warranties, representations, conditions or promises, express or implied as to the quality, performance or the freedom from defect of the Equipment covered by these warranties other than those set forth above. **WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, IF THEY ARE APPLICABLE, SHALL BE LIMITED IN SCOPE AND DURATION TO THE APPLICABLE PERIOD OF WARRANTY SET FORTH ON THIS PAGE. THE PURCHASER'S ONLY REMEDY IN CONNECTION WITH A BREACH OR PERFORMANCE OF ANY WARRANTY ON JOHN DEERE EQUIPMENT ARE THOSE SET FORTH ON THIS PAGE. JOHN DEERE, JOHN DEER TRACTOR, JOHN DEERE OR ANY COMPANY AFFILIATED WITH JOHN DEERE IS NOT LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES.** (Note: Some jurisdictions do not allow exclusion of or lowering an implied warranty due to the exclusion or limitation of incidental or consequential damages as to the above limitations and exclusions may not apply to you.) In the event the above warranty fails to correct purchaser's performance problem covered by defects in workmanship and/or materials, purchaser's exclusive remedy shall be limited to payment by John Deere of actual damages to an amount not to exceed the amount paid for the product. This warranty gives you specific legal rights, and you may also have other rights which vary from jurisdiction to jurisdiction.

G. If further information is desired, contact the selling Dealer or John Deere at 1-800-905-5323 (Agricultural) or 1-800-557-8233 (Commercial & Consumer Equipment).

IN THE SUPREME COURT
OF THE STATE OF SOUTH DAKOTA

Appeal No. 30480

DUANE REMINGTON AND MELODY REMINGTON

Plaintiffs/Appellants

vs.

**WILD BILL'S CAMPGROUND AND RESORT, LLC.;
KEITH GRIMM, AND BRYAN IVERSON**

Defendants/Appellees.

APPEAL FROM THE CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT
PENNINGTON COUNTY, SOUTH DAKOTA

THE HONORABLE JEFFREY CONNOLLY
Circuit Court Judge

APPELLEE'S BRIEF

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NOTICE OF APPEAL FILED ON OCTOBER 2, 2023

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	3
PRELIMINARY STATEMENT.....	5
JURISDICTIONAL STATEMENT	5
STATEMENT OF THE LEGAL ISSUES	5
STATEMENT OF THE CASE.....	7
STATEMENT OF THE FACTS.....	8
ARGUMENT AND AUTHORITIES	19
I. Whether the Circuit Court erred in finding that no genuine issue of material fact existed that Iverson did not violate the South Dakota Residential Disclosure Statutes	19
II. Whether the Circuit Court erred in finding that no genuine issue of material fact existed that Iverson did not engage in fraudulent misrepresentation	27
III. Whether the Circuit Court erred in finding that no genuine issue of material fact existed that Iverson did not engage in fraudulent concealment	28
IV. Whether the Circuit Court erred in finding that no genuine issue of material fact existed that Iverson did not engage in willful and wanton misconduct	29
V. Whether the Circuit Court erred in finding that no genuine issue of material fact existed that Iverson did not breach any fiduciary duties to Remingtons.....	37
VI. Whether the Circuit Court erred in finding that no genuine issue of material fact existed that Iverson did not breach the terms of the limited agency agreement.....	33
CONCLUSION.....	33
CERTIFICATE OF COMPLIANCE.....	35
CERTIFICATE OF SERVICE	36
APPENDIX INDEX	37

TABLE OF AUTHORITIES

<i>Dinsmore v. Piper Jaffray, Inc.</i> , 1999 SD 56, 593 N.W.2d 41.....	7, 31
<i>Div. of Occupational Safety & Health of Indus. Comm'n v. Ball, Ball & Brosamer</i> , 837 P.2d 174 (AZ. Ct. App. 1992).....	6, 29
<i>Drier v. Great Am. Ins. Co.</i> , 409 N.W.2d 357 (SD 1987).....	6, 18, 27, 28, 29
<i>Engelhart v. Kramer</i> , 1997 SD 124, 570 N.W.2d 550.....	5, 24
<i>Estate of Johnson by & through Johnson v. Weber</i> , 2017 SD 36, 898 N.W.2d 718.....	6, 27
<i>Frazier v. Hartford Fire Ins. Co.</i> , 51 SD 40, 211 N.W. 973 (1927).....	6, 31
<i>Fuller v. Croston</i> , 2006 SD 110, 725 N.W.2d 600.....	5, 24, 25
<i>Godbe v. City of Rapid City</i> , 2022 SD 1, 969 N.W.2d 208.....	19, 25
<i>Hurney v. Locke</i> , 308 N.W.2d 764 (SD 1981).....	7, 31
<i>In re Estate of Gossman</i> , 1996 SD 124, 555 N.W.2d 102.....	24
<i>Jacquot v. Rozum</i> , 2010 SD 84, 790 N.W.2d 498.....	31
<i>LPN Trust v. Farrar Outdoor Advertising, Inc.</i> , 1996 SD 97, 552 N.W.2d 796.....	19
<i>Lucero v. Van Wie</i> , 1999 SD 109, 598 N.W.2d 893.....	26
<i>Moore v. Williams</i> , 192 P.3d 1275 (Ok.Ct.App. 2008).....	5, 25
<i>Niesche v. Wilkinson</i> , 2013 SD 90, 841 N.W.2d 250.....	19
<i>Olson v. Berggren</i> , 2021 SD 58, 965 N.W.2d 442.....	19
<i>Oxton v. Rudland</i> , 2017 SD 35, 897 N.W.2d 356.....	26, 27
<i>R.J. Miller, Inc. v. Harrington</i> , 618 N.W.2d 460 (2000).....	23, 24
<i>Saiz v. Horn</i> , 2003 SD 94, 668 N.W.2d 332.....	5, 6, 20, 30, 31
<i>Strassburg v. Citizens State Bank</i> , 1998 SD 72, 581 N.W.2d 510.....	6, 28
<i>Tibke v. McDougall</i> , 479 N.W.2d 898 (SD 1992).....	25

STATUTES

SDCL § 15-6-56 (c).....	18
SDCL § 15-26A-3.....	5
SDCL § 36-21A-78.....	30
SDCL § 36-21A-132.....	30
SDCL § 36-21A-136.....	30
SDCL § 36-21A-140.....	7, 30, 31, 32, 33
SDCL § 36-21A-148.....	25
SDCL § 43-4-37.....	5, 19, 20, 21, 22
SDCL § 43-4-38.....	7, 14, 18, 19, 20, 26
SDCL § 43-4-44.....	5, 19, 20
12 USCS § 1464 (A).....	22
24 CFR 35.110.....	22

PRELIMINARY STATEMENT

Plaintiffs/Appellants, Duane Remington and Melody Remington (collectively referred to as "Buyers", "Remingtons", or their individual first names of "Duane", or "Melody"). Defendant/Appellees, Wild Bill's Campground and Resort, LLC, and Defendant/Appellee, Keith A. Grimm (collectively referred to as "Seller"). Defendant/Appellee, Bryan Iverson (referred to as "Iverson"). References to the record as reflected by the clerk's index are referenced by "R" following by the page number. Documents in the Appendix are referenced by "APP." followed by the number designation. Citations to the February 22, 2019, motions hearing are referenced by "T" followed by the page number and line.

JURISDICTIONAL STATEMENT

Buyers appeal from the Order Granting Iverson's Motion for Summary Judgment. (R 300). Buyers filed a Notice of Appeal on October 2, 2023. (R 815). The clerk submitted the certificate on October 16, 2023. Jurisdiction in this Court is proper pursuant to SDCL § 15-26A-3.

STATEMENT OF THE LEGAL ISSUES

Issue 1: Whether the Circuit Court erred in finding that no genuine issue of material fact existed that Iverson did not violate the South Dakota Residential Disclosure Statutes.

Circuit Court Ruling: The Circuit Court held that Iverson did not violate the South Dakota Residential Disclosure Statutes.

Legal Authorities:

Saiz v. Horn, 2003 SD 94, 668 N.W.2d 332

Engelhart v. Kramer, 1997 SD 124, 570 N.W.2d 550

Fuller v. Croston, 2006 SD 110, 725 N.W.2d 600

Moore v. Williams, 192 P.3d 1275 (Ok.Ct.App. 2008)

SDCL §§ 43-4-37 through 43-4-44

Issue 2: Whether the Circuit Court erred in finding that no genuine issue of material fact existed that Iverson did not engage in fraudulent misrepresentation.

Circuit Court Ruling: The Circuit Court held that there was no genuine issue of material fact that Iverson did not engage in fraudulent misrepresentation.

Legal Authorities:

Estate of Johnson by & through Johnson v. Weber, 2017 SD 36, 898 N.W.2d 718

Drier v. Great Am. Ins. Co., 409 N.W.2d 357 (SD 1987)

Issue 3: Whether the Circuit Court erred in finding that no genuine issue of material fact existed that Iverson did not engage in fraudulent concealment.

Circuit Court Ruling: The Circuit Court held that there was no genuine issue of material fact that Iverson did not engage in fraudulent concealment.

Legal Authorities:

Strassburg v. Citizens State Bank, 1998 SD 72, 581 N.W.2d 510

Drier v. Great Am. Ins. Co., 409 N.W.2d 357 (SD 1987)

Issue 4: Whether the Circuit Court erred in finding that no genuine issue of material fact existed that Iverson did not engage in willful and wanton misconduct.

Circuit Court Ruling: The Circuit Court ruled that no genuine issue of material fact existed that Iverson did not engage in willful and wanton misconduct.

Legal Authorities:

Drier v. Great Am. Ins. Co., 409 N.W.2d 357 (SD 1987)

Div. of Occupational Safety & Health of Indus. Comm'n v. Ball, Ball & Brosamer, 837 P.2d 174, (AZ. Ct. App. 1992)

Issue 5: Whether the Circuit Court erred in finding that no genuine issue of material fact existed that Iverson did not breach any fiduciary duties to Buyers.

Circuit Court Holding: The Circuit Court ruled that no genuine issue of material fact existed that Iverson did not breach any fiduciary duty.

Legal Authorities:

Frazier v. Hartford Fire Ins. Co., 51 SD 40, 211 N.W. 973 (1927).

Saiz v. Horn, 2003 SD 94, 668 N.W.2d 332

Hurney v. Locke, 308 N.W.2d 764 (SD 1981)

Dinsmore v. Piper Jaffray, Inc., 1999 SD 56, 593 N.W.2d 41

SDCL § 36-21A-140

Issue 6: Whether the Circuit Court erred in finding that no genuine issue of material fact existed that Iverson did not breach the terms of the limited agency agreement.

Circuit Court Ruling: The Circuit Court held that no genuine issue of material fact existed that Iverson did not breach the terms of the limited agency agreement.

Legal Authorities:

SDCL § 36-21A-140

STATEMENT OF THE CASE

This action arises out of the sale of a commercial business, a campground, from Seller to Buyers. Iverson is a real estate agent and listed the campground for Seller. Iverson was a disclosed limited agent for both Seller and Buyer.

After the purchase, Buyers claimed to have discovered defects on the property. However, the alleged defects were never disclosed to the Buyers because Iverson had no knowledge of them and, because it was a commercial property transaction, no residential property disclosure statement was required.

The Circuit Court did not err in granting Iverson's Motion for Summary Judgment finding that no disputed material fact exists concerning Iverson's knowledge of material defects with the Business prior to the sale. The Circuit Court was also correct in granting Iverson's Motion for Summary Judgment and holding that a residential property disclosure statement was not required pursuant to SDCL § 43-4-38. Iverson respectfully requests this Court affirm the Circuit Court's decisions dismissing all of Buyers' claims.

STATEMENT OF THE FACTS

On or about July 21, 2016, Seller hired Iverson to attempt to sell its business, which consisted of a campground (98+ campsites, utility hookups, rental cabins, shower buildings, and main building), saloon (including malt beverage license), and grill ("Business") located in Deadwood, Lawrence County, South Dakota. (APP. 002 and 007). Seller and Iverson acknowledged that no residential disclosure statement was required because the sale was that of a business and not a residential structure. (APP. 002 and 056 (no disclosure statement because involved sale of a business, "Wild Bill's Campground" and classifying listing of "BI Business/Industry" rather than residential)).

On or about July 21, 2016, Iverson listed the Business in the multiple listing service with a "BUSINESS/INDUSTRY" classification—not residential real estate. (APP. 056). Further, the listing describes the Business as 101 units operated from May through September, and an "excellent opportunity to own a campground, bar & grill". *Id.* The Business was located in a commercial zone within Lawrence County, South Dakota. (APP. 003).

Sometime in April of 2017, Remingtons, who had stayed in several RV parks, wanted to retire and "thought it would be fun to own one." (APP. 079). He and his wife were driving around and stopped in Wild Bill's Campground and Seller was there. *Id.* They had seen the Business listed for sale on the internet and asked him if it was still for sale. *Id.* Mr. Remington asked "what kind of money he made" and Seller responded he

made “good money” or grossed (not netted¹) about \$235,000 in three and a half months. *Id.* (APP. 079-080 and 084) (Iverson never told Buyers what the Business netted).

Buyers subsequently walked through the Business about three times and then, on April 27, 2017, Mr. Remington went to Iverson’s office to write an offer on the Business. (APP. 003 and 080). Iverson had never met Mr. Remington before that day. (APP. 080 and 155). They knew the bar part of the Business had a living space “for whoever was running the place” and they intended on living there part-time, at most as they had a primary residence in Summerset, South Dakota. (APP. 086). The living quarters were located in the basement of the restaurant and bar. (APP. 105 at 023). The living quarters had never been leased out as a residence. Instead, people who ran either the campground or bar/restaurant stayed in the living quarters for a short period of time. (APP. 109).

By way of background, Iverson had received a call from Seller indicating Buyers had visited the Business, told him the terms for a purchase agreement (e.g. purchase price, “as-is with no warranty” sale), and said they would be in to his office to “do the Purchase Agreement....” (APP. 154 and 158). Buyers testified that basically they and Seller had negotiated all the terms of the sale of the Business, except for the down payment, and went to Iverson to have him do the paperwork. (APP. 080-081). Buyers testified they did not hire Iverson to negotiate the terms of the deal he had already struck with Seller or to look for any other campground opportunities. (APP. 081). Iverson went over the transaction documents and discussed with Buyers that “the [Business] was going to be sold as is with no warranty.” (APP. 083). Prior to closing Buyers didn’t ask Iverson

¹ Buyers’ omit this distinction in their brief. Appellants’ br. at 16.

a single question concerning either the condition of the property or about the Business. (APP. 085).

Upon arrival, Iverson fully explained to Buyers that he was the listing and selling agent and could only act as a disclosed limited agent of both parties to the transaction. (APP. 154 and 003). Iverson provided and explained all of the required real estate agency forms such as the "Real Estate Relationships Disclosure" (APP. 061), "Agency Agreement Addendum" (APP. 062), and "Buyers Agency Agreement" (APP. 063)(which would have only applied had Iverson exclusively represented Buyers as opposed to both Seller and Buyers). The Real Estate Relationship Disclosure explains that Iverson, as a limited agent, "may not be able to continue to provide other fiduciary services previously provided to the client." (APP. 061). Since Iverson was representing both the Seller and Buyers, Section III of the Agency Agreement Addendum applied, which provided in part, that Iverson could not represent the interests of one over the other but that he was required to "[d]isclose all known material facts" about the property. (APP. 062).

That same day, Seller entered into a Real Estate Purchase Agreement Commercial/Agricultural ("Purchase Agreement") under which Buyers agreed to purchase the Business through a contract for deed. (APP. 003 and 064). Additionally, the Purchase Agreement disclosed that: Iverson was a limited agent of both parties; Buyers were required to "inspect the property"; and Buyers were "deemed to have approved and accepted the property in its present condition and any real estate licensee having anything to do with [the] transaction does not have any further obligation to [Buyers] as to such inspections or agreement." (APP. 064).

Again, Iverson had never met Buyers prior to that day. (APP. 003). Buyers asked Iverson to close the deal on the Business as “quickly as possible”, because they “wanted to close ASAP to get the ball rolling on the campground.” (APP. 160 and 083).

Iverson inserted four inspection contingencies into the Purchase Agreement to protect the Buyers (septic tank inspection, well test, buyer to inspect property and equipment, and buyer may conduct “any other inspections” they wanted). (APP. 064 and 082). Iverson also put several provisions in the Addenda to protect the Buyers. (APP. 066 and 158).

On or about May 12, 2017, Seller and Buyers entered into the contract for deed (“Contract for Deed”) contemplated in the Commercial Purchase Agreement. (APP. 003 and 067).

The Contract for Deed provided, in part, the following:

PROPERTY PURCHASED IN "AS IS" CONDITION. Buyers acknowledge that they have examined the subject real estate and the improvements thereon and accepts the same in its present condition, and acknowledge that they are not relying on any representations or warranties, express or implied, of Sellers or any agent of Sellers, other than those described in this Contract, and the Buyers in buying said property are relying solely on their own judgment. *Buyers hereby accept the subject real estate in its present condition. Buyers are buying the subject property in an "as is" condition, with Buyers to be responsible for the cost of all repairs necessary after the date of this Contract.*

Id. (emphasis added).

Despite purchasing the property “as-is” and agreeing to take responsibility for “the costs of all repairs necessary” after closing, Buyers did not obtain a single inspection of the Business prior to closing. *Id.* (APP. 159). In fact, Buyers even refused Seller’s

request to show them around the Business and cabins to “look at things” prior to making an offer. (APP. 118). Buyer declined and said, “Nope, I’m happy with what I see.” *Id.*

Buyers did not raise any concerns about the purchase of the property or even ask for any financial information prior to closing. (APP. 161) (never asked for tax returns, profit and loss information, balance sheet information, sales tax reports). Buyers never asked for Iverson’s assessment of the financial information or operations of the Business. (APP. 165). In fact, from the time of the purchase agreement to closing, Buyers never asked Iverson a single question concerning the Business at all. *Id.* Buyers conceded that they did not rely on any representations of Seller or Iverson when they closed on the Business and that they had done everything they needed to do to satisfy themselves the deal was going to work for them. (APP. 089).

Buyers also raised no concerns over the terms of the Contract for Deed. (APP. 161). This was the first transaction Iverson had ever seen where a prospective buyer of a business did not ask for *any* financial information prior to entering into a purchase agreement. *Id.* The very first time Buyers asked to review any financial information on the Business was *over a month after closing*. (APP. 163).

At no time prior to closing of the Business sale did Iverson have any knowledge of the following *alleged* material defects (“Material Defects”) at the Business as referenced in paragraph 11 of Plaintiffs’ Complaint:

- a. Prior flooding of the basement (APP. 087²);

² Buyers’ characterization of this issue as “flooding” is misleading and erroneous as Grimm testified he disagreed that any “flooding” had occurred. (APP. 110).

- b. Existence of mold in the basement (APP. 087, 111 and 118)(Seller never told Iverson about any water or mold in the basement);
- c. The deck and parking lot on the campground located on a right of way (APP. 086, 087, 110, 118-119³);
- d. A majority of the fire rings in the campground were not up to code (APP. 087);
- e. The financial statements provided to Plaintiffs are not accurate and significantly overinflated the value of the property (APP. 087 and 119)(Seller believed the financial information was accurate);
- f. That Seller intentionally misrepresented that all the bridges on the property had been rebuilt and widened (APP. 087); and
- g. That a number of motorhomes have fallen through the bridges on the Campground. (APP. 087 and 119)(however, such incidences happened after closing of the transaction).

(APP. 004, 024-054).

Iverson never, at any time, gave Buyers a copy of the sales pamphlet, which mentions the "living quarters". (APP. 046 and 156). Iverson did know that part of the commercial property included "living quarters" for the person who was running the Business to stay. *Id.* He did not believe the "living quarters" had ever been used as "family dwellings or a residence." (APP. 168). Importantly, Seller never told Iverson that "anyone had ever used [the] property as an actual residence." (APP. 120). As such, Iverson believed the sale of the Business did not implicate the residential disclosure statutes because it was a business that included cabins and living quarters. (APP. 166). He had sold campgrounds before that all had some sort of living quarters but never concluded a residential disclosure statement was required. *Id.*

³ This issue is a red herring as it was addressed by Grimm in about 90 minutes at no cost after Buyers gave the campground back. *Id.* at 077.

At the time of purchase, Buyers acknowledged that neither the Business nor any part of the property was classified as owner-occupied and would not be occupied or used by Buyers as a principal residence. (APP. 007). Buyers did not purchase the Business for the purposes of living in any of the structures and did not live in or rent the structure they claimed to be a residence. (T 18). Further, Buyers completed the Certificate of Real Estate Value indicating the Business property would not be used as a residence. (APP. 166).

Buyers closed on the deal, began operating the Business, and then discovered certain issues they claimed should have been disclosed to them. They alleged that Iverson intentionally and negligently failed to disclose structural and foundational defects within the residence and surrounding property, pursuant to SDCL § 43-4-38. (R2 (Complaint) at ¶13). However, as detailed herein, Buyers produced no evidence to support their allegations that Iverson had actual knowledge of any of the claimed Material Defects or any other matter they allege he should have but failed to disclose to them. (APP. 004-008). Each of the claimed non-disclosures and Buyers lack of proof are detailed as follows:

A. Basement Flooding.

Buyers failed to produce any facts or documents supporting their claims that Iverson had personal knowledge of any flooding and simply stated that he “knew or should have known of the conditions with the basement.” (APP. 004 and 087)(Buyer admits having no information that Iverson knew of any prior flooding).

B. Mold.

Buyers had no facts or documents supporting their claims that Iverson had personal knowledge of mold and simply guessed that he “was the only person allowed to show the property [and] would have had to have an inspection done at some point and noticed the mold in the basement from the flooding.” (APP. 005 and 087). Further, Duane admitted that the substance he thought might be mold was never tested or confirmed as mold. (APP. 091).

C. Deck and Parking Lot Issues.

Likewise, Buyers were unable to produce any facts or documents supporting their claims that Iverson had personal knowledge of any issues with the deck or parking lot being on a right of way or requiring removal by the State of South Dakota. (APP. 005). When asked for any facts supporting the allegations, Buyers stated that “Mr. Iverson was the realtor for a number of years prior to the sale and knew or should have known of the issues with the deck and parking lot,” *Id.* Buyers responded to a request to supplement the answer by stating, in part:

The “specific facts regarding [Mr. Iverson’s] knowledge will not be fully developed until depositions in this case”; that Mr. Iverson told Plaintiff he was the “RV park salesman” for the area; that Mr. Iverson knew the “legal description of the property, and had to be familiar with the property in order to sell it.”

Id.

D. Fire Rings.

Buyers have no evidence that Iverson had personal knowledge of any code issues with the fire rings at the Business. (APP. 005). When asked for any facts supporting the

allegation, Buyers state that “Mr. Iverson was the professional on the property and *should have known* the fire rings were not compliant with any code requirement.” *Id.* (emphasis added).

E. Financial Statements.

Buyers failed to produce any facts or documents supporting their claims that Iverson had personal knowledge that any financial statements provided to them were not correct. (APP. 005-006). When asked for any facts supporting the allegations, Buyers stated:

On several occasions I visited Mr. Iverson’s office and told him things did not seem right as far as the financial statements. We went over them together and found miscellaneous things that Mr. Iverson could not explain, such as miscellaneous assets and the Grimm’s also listed 2016 as 2015’s financial statements and the 2015 Sturgis Rally was one of the largest on record.

Id.

Buyers failed to mention that they asked questions about the financial statements *after*, not before, closing. (APP. 163).

F. Bridges / Motorhome Falling Through.

Buyers were unable to produce any evidence supporting their claims that Iverson had personal knowledge that any of the bridges on the property had not been rebuilt and widened at the Business or that a motorhome had fallen through a bridge (albeit, after closing) as part of the operation of the Business. (APP. 006).

G. Non-Disclosed Facts.

Buyers were asked to provide the “facts supporting any contention [Mr. Iverson]

had personal knowledge ... of any information that [they] allege he should have, but did not disclose to [them].” (APP. 006-007). Buyers had no such facts and have simply responded that “Mr. Iverson along with [Seller] should have furnished a full disclosure on the property before May 12, 2017”, the closing date. *Id.*

H. Structural or Foundational Defects.

Buyers have no facts supporting their claim that Iverson, at any time prior to closing, had knowledge of any structural or foundational defect as alleged in their Complaint. (APP. 007⁴).

I. “Material Defects”.

Buyers claimed that Iverson should have disclosed certain “material defects with the property” as alleged in paragraphs 15 and 16 of their Complaint, which they identify as follows:

The bridge was not rebuilt as advertised, fire rings had to be rebuilt, mold and water damage in basement, deck and parking lot were not in compliance with the right of way, and financial statements were misleading.

Yet, Buyers produced no facts supporting their claim that Iverson, at any time prior to closing, had knowledge of *any* such material defect. (APP. 007).

In January of 2018, Buyers sued Seller and Iverson. Remingtons brought the following claims against Iverson:

⁴ Plaintiffs’ response directed the reader to their Answer to Interrogatory No. 4 stating Iverson “knew or should have known of the issues with the deck and parking lot.”

- a. Intentional or negligent failure to disclose defect pursuant to SDCL § 43-4-38
- b. Fraudulent misrepresentation
- c. Fraudulent concealment
- d. Willful and wanton misconduct
- e. Breach of fiduciary duty arising out of the limited representation agreement
- f. Breach of contract by Bryan Iverson

(R2).

The Circuit Court granted Iverson's Motion for Summary Judgment on all of Buyers' claims against him. (APP. 001). Buyers on appeal claim the Circuit Court erred in the following two respects: 1) finding no disputed material fact exists concerning Iverson's knowledge of material defects with the property; and 2) finding that a property disclosure statement was not required for the sale of the property.

Buyers do not address the other claims dismissed by the Circuit Court of: fraudulent misrepresentation; fraudulent concealment; or willful and wanton misconduct. Therefore, they are deemed abandoned. *Drier v. Great Am. Ins. Co.*, 409 N.W.2d 357, 361 (SD 1987)(holding "an issue or argument not briefed and supported by authority is considered abandoned").

STANDARD OF REVIEW

[Summary] judgment shall be rendered forthwith 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.

SDCL § 15-6-56 (c).

[The Court views] the evidence in favor of the nonmoving party and reasonable doubts are resolved against the moving party, but the nonmoving party ... must have presented specific facts showing that a genuine, material issue for trial existed. ... A disputed fact is not 'material' unless it would affect the outcome of the suit under the governing substantive law. ... Further, a nonmoving party's mere general allegations and denials which do not set forth specific facts will not prevent the issuance of summary judgment.

Niesche v. Wilkinson, 2013 SD 90, ¶ 9, 841 N.W.2d 250, 253–54 (internal quotations and citations omitted).

The construction and application of statutes are reviewed de novo, with no deference to the trial court. *LPN Trust v. Farrar Outdoor Advertising, Inc.*, 1996 SD 97, ¶ 8, 552 N.W.2d 796, 798.

Buyers, in opposing summary judgment, were required to “substantiate [their] allegations with sufficient probative evidence that would permit a finding in [their] favor on more than mere speculation, conjecture, or fantasy.” *Godbe v. City of Rapid City*, 2022 SD 1, ¶ 21, 969 N.W.2d 208, 213 (citation omitted). “Mere speculation and general assertions, without some concrete evidence, are not enough to avoid summary judgment.” *Id.* See also *Olson v. Berggren*, 2021 SD 58, ¶ 37, 965 N.W.2d 442, 454–55 (citations omitted). Moreover, “cases of fraud and deceit require a higher degree of specificity in order to avert summary judgment.” *Id.* Without “specific material facts” from which it can reasonably be inferred that the defendant had “specific” knowledge, the opposing party cannot prevent summary judgment. *Id.*

ARGUMENT AND AUTHORITIES

I. The Circuit Court did not err in finding that no material fact existed that Iverson did not violate the South Dakota Residential Disclosure Statutes

The Circuit Court dismissed Buyers’ claim that Iverson intentionally or negligently failed to disclose defects pursuant to SDCL § 43-4-38.

Buyers claimed Iverson was liable to them pursuant to the South Dakota residential real estate disclosure statutes, SDCL §§ 43-4-37 through 43-4-44 (“Residential Disclosure Statutes”). (R2 at ¶¶ 12-17). The Circuit Court was correct for numerous reasons.

A. Real Estate Agents Not Liable for Violations of SDCL § 43-4-38

This Court has explicitly ruled that SDCL § 43-4-38 “of course, imposes no duty on [a real estate agent]” who has “no duty to uncover and disclose defects in the Seller’s property.” *Saiz v. Horn*, 2003 SD 94, ¶ 11, 668 N.W.2d 332, 336 (holding an agent does, however, have a duty to inform buyers that, “by law, the Seller must give them a disclosure statement” when applicable). The Residential Disclosure Statutes definitions and required statement evince a clear legislative intent to only hold Sellers, not real estate agents, liable for defects in residential disclosure statements. See SDCL §§ 43-4-37 (Iverson neither a “buyer” nor a “Seller”) and 43-4-44 (“Any agent representing any party to this transaction makes no representations and is not responsible for any conditions existing in the property.”).

B. Residential Disclosure Statutes only Apply to Residential Buyers and Residential Sellers of Residential Real Property, Not Commercial Transactions

The Residential Disclosure Statutes are inapplicable in the sale of this Business. Simply stated, Buyers were not “buyers” under the Residential Disclosure Statutes because in purchasing the Business, they were not “negotiating or attempting to become an owner of residential real property....” SDCL § 43-4-37(1). Instead, they wanted to and did purchase a Business that was wholly located in a commercial zone which, incidentally, had a basement living quarters. If Buyers’ position is accepted then every lodge, hotel, campground, and commercial business where an owner or employee had ever stayed overnight would be subject to the Residential Disclosure Statutes.

Next, Wild Bill's Campground was not a "Seller" under the Residential Disclosure Statutes as it was not the owner of "residential real property." SDCL § 43-4-37(4). "Residential real property," is defined as "all residential real property consisting of not more than four family dwelling units, all of which are contained in one structure[.]" SDCL § 43-4-37(3). The "living quarters" at the Business were never represented to be suitable as a "family dwelling unit". Moreover, the "living quarters" were located in the basement of the commercial building in a Business located in a commercial, not residential, zoning area, that were listed, advertised and sold in a commercial—not residential—property transaction. The "living quarters" simply do not meet the definition of "residential real property" and, therefore, the South Dakota residential real estate disclosure laws do not apply. *Id.*

The Nebraska statute cited by Buyers is easily distinguishable. The South Dakota and Nebraska definitions of residential property are vastly different. South Dakota defines residential property as "*all residential real property* consisting of not more than four *family* dwelling units, all of which are contained in one structure[.]" SDCL § 43-4-37 (emphasis added). The Nebraska disclosure statute defines residential real property as "real property which is being *used primarily for residential purposes* on which no fewer than one or more than four dwelling units are located[.]" Neb.Rev.Stat. § 76-2,120(1)(c)(emphasis added).

Consideration of the "primary purpose" of the real property under the Nebraska statute leaves room that the disclosure statutes are applicable in a mixed use transaction, but only when the primary purpose of the real property is residential. *Id.* The South Dakota statute does not allow such inquiry and necessarily means that the entire property

must meet the definition of residential real property. SDCL § 43-4-37. Thus, the living quarters at issue clearly do not meet the South Dakota definition and, further, would not even meet the Nebraska definition as the Business that was purchased was not used “primarily for residential purposes” but was used primarily as a campground with cabins, campsites, saloon, restaurant, etc. *Id.*

The South Dakota courts have not elaborated on what constitutes “residential real property” under SDCL § 43-4-37. However, other definitions and interpretations of “residential property” are instructive and show that the living quarters at the Business clearly do not transform this commercial transaction into a residential home sale. *See* 12 USCS § 1464 (A) (the terms residential real property or residential real estate mean “leaseholds, homes ... and, combinations of homes or dwelling units and business property, involving only minor or incidental business use, or property to be improved by construction of such structures”); and 24 CFR 35.110 (“Residential property means a dwelling unit, common areas, building exterior surfaces, and any surrounding land, including outbuildings, fences and play equipment affixed to the land, belonging to an owner and available for use by residents, but not including land used for ... commercial ... or other non-residential purposes, and not including paint on the pavement of parking lots, garages, or roadways.”).

Here, it is clear the Business, which is located in a commercial zone, is then commercial, not residential, property. *See* <https://thelawdictionary.org/commercial-property/> (commercial property is “[p]roperty used for retail or trade and not zoned residential) and <https://www.sharestates.com/glossary/residential-property/> (“Residential property is any building or unit zoned and purposed as living space.”).

Buyers' one case in support of their claim that a disclosure statement is required in this commercial transaction is the Nebraska Supreme Court decision in *R.J. Miller, Inc. v. Harrington*. 618 N.W.2d 460 (2000). This case is inapplicable and easily distinguishable. First, as referenced above, the residential real property definition in Nebraska is vastly different from that provided in South Dakota and allows application of the residential disclosure statutes in mixed-use situations where the primary purpose of the real estate remains residential. Second, the occupant or renter of the apartment in *Miller* was not the purchaser of the business or tavern whereas here the occupants of the living space lived there incidental to the operation of the primary business. The residential rental unit in *Miller*, on the third floor of the building, was entirely separate from the bar. Here, the living space is included within and incidental to operation of the Business.

Moreover, in *Miller*, the Nebraska Supreme Court ultimately affirmed a directed verdict in favor of the Sellers and their real estate agent because the district court found the Sellers had *no actual knowledge* of the alleged defects. *Id.* Furthermore, in *Miller*, zoning regulations allowed a dwelling to be located above the bar in a business district zoned primarily for commercial use. *Id.* at 462. Buyers provided no evidence that the basement dwelling was even allowed to be utilized as a "residence" in the commercial district. Finally, the *Miller* court held something more than circumstantial evidence was required to defeat summary judgment.

Buyers can cite only to *Miller*, nearly 24 years old, which has never, ever, been repeated or cited by any other court for the proposition that a commercial property sale that included a residential rental unit requires a residential property disclosure. *Miller*,

supra. The Court should reject Buyers' attempt to impose the residential real property disclosure laws on commercial property that has a space that is used as living quarters incidental to the operation of the business. Failure to do so would be contrary to the legislature's intent as reflected in the Residential Disclosure Statutes and lead to "strained, unpractical or absurd" results. *In re Estate of Gossman*, 1996 SD 124, ¶ 6, 555 N.W.2d 102, 104. The relief Buyers seek is only available through the legislature amending the disclosure statutes to require adherence to the disclosure laws when a commercial property contains any portion that may be used as a family dwelling.

C. Iverson Had No Knowledge of the Alleged Defects

Even if Iverson, as a real estate agent could be held liable under the Residential Disclosure Statutes, Buyers must prove he had knowledge of the alleged defects or information they claim should have been disclosed. *See Miller, supra*, at 465 (upholding dismissal of plaintiff's claims because there was no proof, circumstantial or otherwise, that Sellers had "actual knowledge" of the defects), *Engelhart v. Kramer*, 1997 SD 124, ¶ 20, 570 N.W.2d 550, 554 (holding that "with the adoption of South Dakota's detailed disclosure statutes the doctrine of *caveat emptor* has been abandoned in favor of full and complete disclosure of defects of *which the Seller is aware*."') (emphasis added) and *Fuller v. Croston*, 2006 SD 110, ¶ 23, 725 N.W.2d 600, 608 (noting one "obvious purpose of the disclosure statutes is 'to provide prospective buyers with information about material defects *known to the Seller* concerning the property.'"') (emphasis added).

There is no dispute of material fact that Buyers have no evidence that Iverson⁵ had any such knowledge. (APP. 002-023). Buyers had to show that Iverson was actually aware of material defects in order to prevent summary judgment. *Moore v. Williams*, 192 P.3d 1275, 1278–79 (Ok.Ct.App. 2008). The Court in *Moore* held that although the realtor breached a duty to provide Sellers with a disclosure form, the only remedy a buyer may pursue is when a real estate licensee has actual knowledge of a defect prior to acceptance of an offer which is not revealed to the buyer. *Id.* (affirming summary judgment in favor of realtor). Buyers cannot hold Mr. Iverson liable for any misrepresentation by Seller unless they can show he knew of the misrepresentation. *Fuller v. Croston*, 2006 SD 110, ¶ 38, 725 N.W.2d 600, 611 (citing SDCL § 36–21A–148).

Mere conjecture, speculation and general assertions “without some concrete evidence” that Mr. Iverson should have had such knowledge because he was familiar with the property or the Seller does not create a genuine issue of material fact. *Godbe, supra*. Buyers’ unfounded and unsupported claims against Mr. Iverson are exactly the type of “sham claims” that should be disposed of by way of summary judgment. *Tibke v. McDougall*, 479 N.W.2d 898, 904 (SD 1992)(citation omitted).

⁵ Pursuant to SDCL § 36–21A–148, Iverson could be held liable for misrepresentations of the Seller only if he had knowledge of the misrepresentation. *Fuller v. Croston*, ¶ 39. Again, Plaintiffs have no evidence that Iverson had knowledge of any claimed misrepresentation. *Id.*

D. Buyers Waived the Right to a Disclosure Statement, if One was Required

Buyers purchased the property “as is” and waived their rights under SDCL § 43-4-38. *Lucero v. Van Wie*, 1999 SD 109, ¶¶ 16-17, 598 N.W.2d 893, 898. Remington “attempts to use the disclosure statutes to escape a freely entered contract.” *Id.* The Court has previously stated: “The basic premise in the law is that when the parties reduce an agreement to writing and sign it, that written agreement is entitled to enforcement.” *Id.* (citations omitted). “As a general principle, one who accepts a written contract is conclusively presumed to know its contents and to assent to them, in the absence of fraud, misrepresentation or other wrongful act by another contracting party.” *Id.* (citations omitted).

Under the facts of this case, where the Buyers “initiated the sale”, were “familiar with the property”, refused to inspect the Business they were buying, “the disclosure statutes do not provide the umbrella protection [they] would like to assert.” *Id.* They “entered into an enforceable contract and purchased the property “as is,” the result of which was to waive disclosure requirements.” *Id.*

Both the circumstances and contract language support that the Buyers’ intent was to waive any disclosure requirements. *Oxton v. Rudland*, 2017 SD 35, ¶ 22, 897 N.W.2d 356, 362. Buyers appear to assert that the mere allegation of fraud or misrepresentation is enough to save them from the “as is” provision in their contract. Such an assertion is incorrect as more than mere speculation or conjecture is required. In *Oxton*, there was direct and incontrovertible evidence of a misrepresentation where the Seller had previously received a disclosure statement on the home that clearly disclosed the presence of expansive soil, which the Seller had subsequently failed to disclose to

Oxtons. *Id.* No such evidence exists in the present case. Buyers simply assert an impermissible “could have, should have, would have had to” standard upon Iverson.

II. The Circuit Court did not err in finding that no material fact existed that Iverson did not engage in fraudulent misrepresentation⁶

The Circuit Court dismissed Buyers’ claim that Iverson had made fraudulent misrepresentations.

Buyers claimed, *inter alia*, that Iverson committed fraudulent misrepresentation by suppressing knowledge of defects or material facts to them concerning the Business. (R2 at ¶¶ 18-27).

A claim of fraudulent misrepresentation is established by proving:

- 1) A defendant made a representation as a statement of fact;
- 2) The representation was untrue;
- 3) The defendant knew the representation was untrue or he made the representation recklessly;
- 4) The defendant made the representation with intent to deceive the plaintiff and for the purpose of inducing the plaintiff to act upon it;
- 5) The plaintiff justifiably relied on the representation;
- 6) The plaintiff suffered damage as a result.

Estate of Johnson by & through Johnson v. Weber, 2017 SD 36, ¶ 27, 898 N.W.2d 718, 729, reh’g denied (July 28, 2017)(citations omitted).

Buyers’ claim was properly dismissed as there was no genuine issue of material fact that Buyers did not particularly describe what representations were made by Iverson

⁶ Iverson asserts that Buyers have abandoned this issue by failing to argue or support with authority in their opening brief. *Drier, supra*. Iverson addresses the issue in the event the Court finds the issue was not abandoned. *Id.*

as a statement of fact and, more importantly, have admitted that they have no evidence that Iverson knew any “representation was untrue”. *Id.* “In fraud and deceit claims, ‘summary judgment is proper when a plaintiff produces no evidence of deceitful intent on defendant’s part....’” *Id.* (citation omitted).

III. The Circuit Court did not err in finding that no material fact existed that Iverson did not engage in fraudulent concealment⁷

The Circuit Court dismissed Buyers’ claim that Iverson engaged in fraudulent concealment. Buyers’ “Fraudulent Concealment” claim alleged that the Defendants fraudulently and intentionally concealed or suppressed known defects with the Business. (R2 at ¶¶ 28-33). Fraudulent concealment is not a separate cause of action but, instead, a doctrine that may serve to toll the applicable statute of limitations when proven. *Strassburg v. Citizens State Bank*, 1998 SD 72, ¶ 14, 581 N.W.2d 510, 515. Even so, Buyers were unable to create a genuine issue of material fact that Iverson had any of the alleged knowledge they claim was concealed. Therefore, Buyers’ claim was properly dismissed by the Circuit Court.

⁷ Iverson asserts that Buyers have abandoned this issue by failing to argue or support with authority in their opening brief. *Drier, supra*. Iverson addresses the issue in the event the Court finds the issue was not abandoned. *Id.*

IV. The Circuit Court did not err in finding that no material fact existed that Iverson did not engage in willful and wanton misconduct⁸

The Circuit Court dismissed Buyers' claim that Iverson had engaged in willful and wanton misconduct. Buyers' alleged willful and wanton misconduct claiming Iverson refused to disclose defects he knew or should have known existed in the property. (R2 at ¶¶ 34-36). As addressed previously, there exists no genuine issue of material fact that Iverson did not have knowledge of any of the defects Buyers claim should have been disclosed. (APP. 002-504). Buyers' position, boiled down to its essence, is that Iverson *should have known* of the alleged defects, which is clearly insufficient to support any claim of willful or wanton behavior or intentional tort. *See Div. of Occupational Safety & Health of Indus. Comm'n v. Ball, Ball & Brosamer*, 837 P.2d 174, 179 (AZ. Ct. App. 1992)(holding a "could have known" standard is both too broad and too infallible to fit the test of "willful." The "could have known" standard implicitly substitutes a non-existent potential knowledge for the actual knowledge possessed at the time of the accident. Actual knowledge, not potential knowledge, is the prerequisite for the assessment of "willful.").

V. The Circuit Court did not err in finding that no material fact existed that Iverson did not breach any fiduciary duties to Buyers

The Circuit Court properly dismissed Buyers' claim that Iverson had breached fiduciary duties owed to them pursuant to the limited agency agreement. Iverson was

⁸ Iverson asserts that Buyers have abandoned this issue by failing to argue or support with authority in their opening brief. *Drier, supra*. Iverson addresses the issue in the event the Court finds the issue was not abandoned. *Id.*

acting as a limited agent for Seller and Buyers with their informed written consent.

Iverson's duties and obligations as their limited agent are statutorily defined:

- (1) To perform the terms of any written agreement made with the client;
- (2) To exercise reasonable skill and care for the client;
- (3) To present all written offers to and from the client in a timely manner regardless of whether the client is already a party to a contract to purchase property or is already a party to a contract or a letter of intent to lease;
- (4) To disclose to the client adverse material facts known⁹ by the licensee;
- (5) To advise the client to obtain expert advice as to material matters about which the licensee knows but the specifics of which are beyond the expertise of the licensee;
- (6) To account in a timely manner for all money and property received; and
- (7) To comply with any applicable federal, state, and local laws, rules, regulations, and ordinances, including fair housing and civil rights statutes or regulations.

SDCL § 36-21A-140.

Buyers state that Iverson owed them a fiduciary duty. Iverson, respectfully submits that as a disclosed limited agent his obligations were set forth in SDCL § 36-21A-140, which does not contain the fiduciary duty language that is imposed upon real estate agents in single agency transactions. The statutes governing single agency representations adopt the common law fiduciary language upon real estate agents to “promote the interest of the client with the utmost good faith, loyalty, and fidelity...” SDCL §§ 36-21A-132 (agent representing only the Seller) and § 36-21A-136 (agent only representing the buyer). The South Dakota Legislature did not include the fiduciary

⁹ Contrary to Buyers’ assertions, South Dakota law imposes no duty on a real estate agent “to uncover and disclose defects in the Seller’s property.” *Saiz v. Horn*, 668 N.W.2d 332, 336 *Id.* at 336. Iverson’s only duty towards Remingtons with regard to listing was to “substantiate that the information taken in the listing agreement is accurate.” SDCL § 36-21A-78. There is no allegation that anything in the listing agreement is inaccurate. (APP. 054).

language in the limited agency statute because it is not possible for a real estate agent to be a fiduciary as he/she cannot “serve two masters” at the same time. *Frazier v. Hartford Fire Ins. Co.*, 51 SD 40, 45, 211 N.W. 973, 976 (1927).

Only one of the cases Buyers cite in support of their proposition that Iverson owed them a fiduciary involves a limited agency relationships like theirs with Iverson. In *Jacquot v. Rozum*, this Court approved the use of two jury instructions concerning a real estate agent’s fiduciary duties in a case that involved a limited agency transaction. 2010 SD 84, ¶ 22, 790 N.W.2d 498, 506. However, the cases relied upon by the Court concerned single agency transactions. *See Saiz v. Horn*, 2003 SD 94, 668 N.W.2d 332 (holding buyer’s agent “owed a fiduciary duty” to buyers) and *Hurney v. Locke*, 308 N.W.2d 764 (SD 1981)(holding that exclusive Sellers’ agent owed Sellers a “duty of utmost good faith, integrity and loyalty”).

Iverson respectfully submits that the Court in *Rozum* may have inadvertently overlooked the single agency nature of the real estate relationship in *Saiz* and *Hurney* as well as the South Dakota Legislature’s omission of the fiduciary duty language (i.e. to “promote the interest of the client with the utmost good faith, loyalty, and fidelity”) in the statute defining the obligations of limited agents in South Dakota. In a limited agency transaction such as this, it is simply not possible—and in fact is contrary to the agency agreement addendum—for a real estate agent like Iverson to “act primarily for the benefit” of Buyers over the Seller. *Dinsmore v. Piper Jaffray, Inc.*, 1999 SD 56, ¶ 19, 593 N.W.2d 41, 46 (citation omitted). A sports analogy demonstrates the inherent conflict of imposing the part of single agent duties (i.e. to “promote the interests of the client with the utmost good faith and fidelity”) into the limited or dual agency relationship. Consider

two adversarial teams in the same game sharing one coach. The coach may offer some benefit to both teams but cannot favor one team over the other. The coach certainly cannot share what she believes might be a weakness in the other to the team.

Nonetheless, Iverson concedes that a limited agent's obligation to "exercise reasonable skill and care for the client" would have required him to advise both Buyers and Seller that a disclosure statement was needed if the South Dakota residential disclosure laws would have been applicable to the sale of the Business. *See* SDCL § 36-21A-140 (2). However, since a Residential Disclosure Statement was not required, there is no genuine issue of material fact that Iverson complied with SDCL § 36-21A-140.

Buyers claim that Iverson disavowed his contractual obligations and the claimed fiduciary duties in his deposition.¹⁰ However, examination of his full deposition testimony provides needed clarification. Buyers' counsel asked Iverson to agree that duties applicable only to agents representing buyers exclusively applied to limited agents like him who represented both sides to the transaction. (APP. 139-140)(Buyers' counsel references language from section I on exclusive agency rather than section III on limited agency) and (APP. 062). The commercial purchase agreement clearly indicates that Iverson is the limited agent of both parties as outlined in Section III of the Agency Agreement Addendum. (APP. 064).

¹⁰ Buyers' reliance on the Buyers Agency Agreement is misplaced as it is inapplicable in limited agency transactions and would only apply if Iverson was their "exclusive agent". (APP. 063)(subtitled "Exclusive Agreement to Represent Buyers").

VI. The Circuit Court did not err in finding that no material fact existed that Iverson did not breach the terms of the limited agency agreement

The Circuit Court dismissed Buyers' claim that Iverson had breached the terms of the limited agency agreement by "not disclosing all known material facts regarding the property". (R2 at ¶46). Buyers were and are unable to create a genuine issue of material fact that Iverson had failed to disclose "adverse material facts known" by him or otherwise breached the terms of the Agency Agreement Addendum, SDCL § 36-21A-140(4) and (APP. 062).

CONCLUSION

Buyers secured the limited agent services of Iverson after they had already fully negotiated a deal with Seller for the purchase of the Business. Prior to even meeting Iverson, Buyers had their minds made up, refused to do even cursory walk throughs with Seller, and just wanted to get the deal done as soon as possible so they could open the Business for the start of the camping season. They knew the Business and property was being bought "as-is" and proceeded without exercising any of the inspection opportunities Iverson had included in the purchase agreement for their benefit. Incredibly, prior to closing on a nearly \$1 million dollar business, they neither asked a single question nor asked for any documentation concerning the financial aspect of the Business or the condition of the property.

After the purchase, Buyers had cold feet and wanted to get out of the Contract for Deed and give the Business back, which they did after raising various unsupported claims to try and justify their change of heart and avoid liability. As demonstrated herein, the

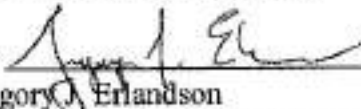
Residential Disclosure Statutes simply do not apply as neither the parties nor subject matter of the transaction meet the definition of a residential transfer.

Honestly, most of the alleged material defects have nothing to do with the claimed residence (i.e. bridge, deck, fire rings, etc.). Buyers' invitation to the Court to expand the Residential Disclosure Statutes in this matter should be rejected as it would lead to absurd results contrary to the Residential Disclosure Laws. Further, Buyers offered only speculation and conjecture about Iverson's knowledge of the alleged defects, which the Circuit Court correctly found did not create any genuine issue of material fact.

Iverson respectfully requests the Court affirm the trial court.

Dated this 15th day of February, 2024.

BANGS, McCULLEN, BUTLER,
FOYE & SIMMONS, L.L.P.

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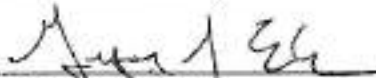
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CERTIFICATE OF COMPLIANCE

Pursuant to SDC.L. §15-26A-66(b)(4), I certify that Appellee's Brief complies with the type volume limitation provided for in the South Dakota Codified Laws. This Brief contains 8,111 words and 42,528 characters. I have relied on the word and character count of our processing system used to prepare this Brief. The original Appellee's brief and all copies are in compliance with this rule.

Dated this 15th day of February, 2024.

BANGS, McCULLEN, BUTLER,
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CERTIFICATE OF SERVICE

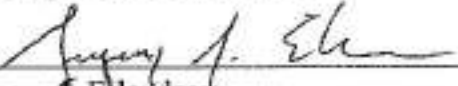
I certify that, on February 15, 2024, I served copies of this document upon each of the listed people by the following means:

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APPENDIX INDEX

	Page(s)
1. Order Granting Bryan Iverson's Motion for Summary Judgment.....	APP. 001
2. Iverson's Statement of Material Facts.....	APP. 002
3. Affidavit of Bryan Iverson.....	APP. 024
4. Listing Agreement	APP. 055
5. MLS Listing.....	APP. 058
6. Real Estate Relationship Disclosure.....	APP. 061
7. Agency Agreement Addendum.....	APP. 062
8. Buyers Agency Agreement.....	APP. 063
9. Purchase Agreement and Addenda #1.....	APP. 064
10. Contract for Deed.....	APP. 067
11. Deposition of Duane Remington.....	APP. 076
12. Deposition of Keith Grimm.....	APP. 100
13. Deposition of Bryan Iverson.....	APP. 131

STATE OF SOUTH DAKOTA
COUNTY OF PENNINGTON
DUANE REMINGTON and
MELODY REMINGTON,

Plaintiffs,

vs.

WILD BILL'S CAMPGROUND AND
RESORT, LLC, KEITH GRIMM,
and BRYAN IVERSON

Defendants.

IN CIRCUIT COURT


SEVENTH JUDICIAL CIRCUIT
51CIV18-000118

**ORDER GRANTING BRYAN
IVERSON'S MOTION FOR
SUMMARY JUDGMENT**

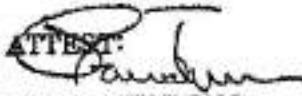
Hearings were held on defendant Bryan Iverson's Motion for Summary Judgment on October 5, 2018 and February 22, 2019. Bryan Iverson appeared personally and through counsel, Gregory James Erlandson. Plaintiffs appeared through counsel Michael Beardsley. Wild Bill's Campground and Resort, LLC, and Keith Grimm was present through their attorney Robert Galbraith.

Based upon the pleadings on file and the arguments of counsel, the Court grants defendant Bryan Iverson's Motion for Summary Judgment thereby dismissing all of Plaintiffs' claims against him.

BY THE COURT:


The Honorable Jeff Connolly
Circuit Court Judge

ATTEST:



RANAE TRUMAN,
Clerk of Courts



Deputy

Pennington County, SD
FILED
IN CIRCUIT COURT

FEB 27 2019

Ranae Truman, Clerk of Courts
By  Deputy

51CIV18-000118

Order Granting Motion for Summary Judgment

Page 1 of 1

STATE OF SOUTH DAKOTA)
)SS
COUNTY OF PENNINGTON)

IN CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT

DUANE REMINGTON and)
MELODY REMINGTON,)
)
 Plaintiffs,)
)
vs.)
)
)
)
WILD BILL'S CAMPGROUND)
AND RESORT, LLC, KEITH)
GRIMM, and BRYAN IVERSON)
)
)
 Defendants.)

51CIV18-000118

**DEFENDANT BRYAN
IVERSON'S STATEMENT
OF UNDISPUTED
MATERIAL FACTS**

Defendant Bryan Iverson ("Iverson"), pursuant to SDCL § 15-6-56(c)(1), provides this Statement of Undisputed Material Facts in support of his Motion for Summary Judgment.

1. Iverson is a licensed real estate broker, registered with the South Dakota Department of Labor and associated with RE/MAX Results, in Rapid City, South Dakota. Affidavit of Bryan Iverson ("Iverson Affidavit") at ¶1.

2. On or about July 21, 2016, Wild Bill's Campground and Resort, LLC ("WBRC") hired Iverson to attempt to sell its business, which consisted of a campground (98+ campsites, utility hookups, rental cabins, shower buildings, and main building), saloon (including malt beverage license), and grill ("Business") located in Deadwood, Lawrence County, South Dakota. *Id.* at ¶2.

3. WBRC and Iverson acknowledged that no residential disclosure statement was required because the sale was that of a business and not a residential structure. *Id.* at ¶3 and attached Ex. 1 (Exclusive Listing Agreement).

4. On or about July 21, 2016, Iverson listed the Business in the multiple listing service. *Id.* at ¶5 and attached Ex. 2 (MLS listing sheet).

5. The Business is located in a commercial zone within Lawrence County, South Dakota. *Id.* at ¶6.

6. On April 27, 2017, Duane Remington went to Iverson's office to write an offer on the Business. *Id.* at ¶7.

7. Iverson explained to Duane Remington that he was the listing and selling agent and could only act as a disclosed limited agent of both parties to the transaction. *Id.* at ¶8.

8. On April 27, 2017, WBCR entered into a Real Estate Purchase Agreement Commercial/Agricultural ("Commercial Purchase Agreement") under which Plaintiffs agreed to purchase the Business through a contract for deed. *Id.* at ¶9 and attached Ex. 3 (Commercial Purchase Agreement).

9. Iverson had never met either Duane or Melody Remington prior to April 27, 2017. *Id.* at ¶10.

10. On or about May 12, 2017, WBCR and Plaintiffs entered into the contract for deed ("Contract for Deed") contemplated in the Commercial Purchase Agreement. *Id.* at ¶11 and attached Ex. 4 ("Contract for Deed").

11. The Contract for Deed provided, in part, the following:

PROPERTY PURCHASED IN "AS IS" CONDITION. Buyers acknowledge that they have examined the subject real estate and the improvements thereon and accepts the same in its present condition, and acknowledge that they are not relying on any representations or warranties, express or implied, of Sellers or any agent of Sellers, other than those described in this Contract, and the Buyers in buying said property are relying solely on their own judgment. Buyers hereby accept the subject real estate in its present condition. Buyers are buying the subject property in an "as is" condition, with Buyers to be responsible for the cost of all repairs necessary after the date of this Contract.

Id.

12. Iverson represented WBCR in the transaction as the listing and disclosed limited agent. *Id.* at ¶12.

13. At no time prior to closing of the transaction did Iverson have any knowledge of the following alleged material defects ("Material Defects") of the Campground as referenced in paragraph 11 of Plaintiffs' Complaint:

- a. Prior flooding of the basement;
- b. Existence of mold in the basement;
- c. The deck and parking lot on the campground is located on a right of way;
- d. A majority of the fire rings in the campground are not up to code;
- e. The financial statements provided to Plaintiffs are not accurate and significantly overinflated the value of the property;
- f. That WBCR intentionally misrepresented that the bridges on the property had been rebuilt and widened; and
- g. That a number of motorhomes have fallen through the bridges on the Campground.

Id. at ¶13.

14. Plaintiffs allege that Iverson intentionally and negligently failed to disclose structural and foundational defects within the residence and surrounding property, pursuant to SDCL § 43-4-38. Complaint at ¶13.

15. Plaintiffs have no evidence to support their allegations that Iverson had knowledge of any of the claimed Material Defects. Ex. A (Plaintiffs' Responses to Defendant Bryan Iverson's First Set of Interrogatories and Requests for Production of Documents filed March 20, 2018).

16. **Basement Flooding.** Plaintiffs are unable to produce any facts supporting their claims that Iverson had personal knowledge of any flooding and simply state that he "knew or should have known of the conditions with the basement." *Id.* at p. 1. Plaintiffs admit they have no documents supporting their allegation that Mr. Iverson possessed such knowledge. *Id.*

17. **Mold.** Plaintiffs are unable to produce any facts supporting their claims that Iverson had personal knowledge of mold and simply state that he "was the only person allowed to saw the property [and] would have had to have an inspection done at some point and noticed the mold in the basement from the flooding." *Id.* at pp. 1-2. Plaintiffs admit they have no documents supporting their allegation that Iverson possessed such knowledge. *Id.*

18. **Deck and Parking Lot Issues.** Plaintiffs are unable to produce any facts supporting their claims Iverson had personal knowledge of any issues with the deck or parking lot being on a right of way or requiring removal by the State of South Dakota. *Id.* at pp. 2-3. When asked for any facts supporting the allegations, Plaintiffs state that "Mr. Iverson was the realtor for a number of years prior to the sale and knew or should have known of the issues with the deck and parking lot." *Id.* Plaintiffs admit they have no documents supporting their allegation that Iverson possessed such knowledge. *Id.* Plaintiffs responded to counsel's request to supplement the interrogatory answer by stating, in part:

The "specific facts regarding [Mr. Iverson's] knowledge will not be fully developed until depositions in this case" that Mr. Iverson told Plaintiff he was the "RV park salesman" for the area; that Mr. Iverson knew the "legal description of the property, and had to be familiar with the property in order to sell it."

(Ex. B (April 23, 2018, letter from Plaintiffs' counsel)).

19. **Fire Rings.** Plaintiffs are unable to produce any facts supporting their claims that Iverson had personal knowledge of any code issues with the fire rings at the Campground. Ex. A at p. 3. When asked for any facts supporting the allegation, Plaintiffs state that "Mr. Iverson was the professional on the property and should have known the fire rings were not compliant with any code requirement." *Id.* Plaintiffs admit they have no documents supporting their allegation that Iverson possessed such knowledge. *Id.*

20. **Financial Statements.** Plaintiffs are unable to produce any facts supporting their claims that Iverson had personal knowledge that any financial statements provided to them were not correct. *Id.* When asked for any facts supporting the allegations, Plaintiffs state:

On several occasions I visited Mr. Iverson's office and told him things did not seem right as far as the financial statements. We went over them together and found miscellaneous things that Mr. Iverson could not explain, such as miscellaneous assets and the Grimm's also listed 2016 as 2015's financial statements and the 2016 Sturgis Rally was one of the largest on record. Mr. Iverson was going to get some financial documents and after waiting several weeks he told me I could come pick them up on a certain day at 10:00 am. My wife went to get them and Mr. Iverson was not there and he had left nothing with his secretary to give us. The secretary tried to reach him by phone and was not able to. Both secretaries said it was unlike him to disappear without telling anyone and that it was strange.

Id.

21. **Bridges.** Plaintiffs are unable to produce any facts supporting their claims that Iverson had personal knowledge that any of the bridges on the property had not been rebuilt and widened at the Campground. *Id.* at 4. When asked for any facts supporting the allegation, Plaintiffs state that "An improvement disclosure was given to us at closing that stated the bridges had been recently rebuilt and widened. The boards were rotted and that is why a bus fell through the bridge." *Id.* Plaintiffs admit they have no documents supporting their allegation that Iverson possessed such knowledge. *Id.*

22. **Motorhome Falling through Bridges.** Plaintiffs are unable to produce any facts supporting their claims that Iverson had personal knowledge that any motorhome fell through any bridge at the Campground. *Id.* When asked for any facts supporting the allegation, Plaintiffs state that "An improvement disclosure was given to us at closing that stated the bridges had been recently rebuilt and widened. The boards were rotted and that is why a bus fell through the bridge." *Id.* Plaintiffs admit they have no documents supporting their allegation that Iverson possessed such knowledge. *Id.*

23. **Non-Disclosed Facts.** Plaintiffs were asked to provide the "facts supporting any contention [Mr. Iverson] had personal knowledge ... of any information that you allege he should have, but did not disclose to you." *Id.* Plaintiffs responded that "Mr. Iverson along with Mr. Grimm should have furnished a full disclosure on the property before May 12, 2017", the closing date. *Id.*

24. **Campground Not a Residence.** The Campground is not a legal residence. Plaintiffs were asked to provide any facts supporting their contention that any part of the Campground was ever used as a residence. Ex. A at p. 4 and Ex. B at p. 1. Plaintiffs state that a prior lessee of the Campground and an employee had previously stayed in a room in the basement. Ex. A at p. 4. Plaintiffs never applied for owner/occupant taxes and have never resided at the Campground. *Id.* at p. 5.

25. **Advertisement.** The Campground was advertised for sale as a business or "RV Park/Campground" consisting of a RV park, kitchen, and grill, which included, *inter alia*, 12.74 acres, 98+ campsites, a shower house, seven cabins and a main building that included an office, store, kitchen, grill, and "living quarters" ("Living Quarters"). Iverson Affidavit at *14 and attached Ex. 5 (Sales Brochure PLP53-60).

26. **Upon purchase,** Plaintiffs acknowledged that the Business or property was not classified as owner-occupied and would not be either occupied or used by Plaintiffs as a principal residence. *Id.* at *15 and attached Ex. 6 (Certificate of Real Estate Value dated May 12, 2019).

27. **Structural or Foundational Defects.** Plaintiffs have no facts supporting their claim that Iverson, at any time prior to closing, had knowledge of any structural or foundational defect as alleged in their Complaint. Ex. A at p. 5¹ and Ex. B.

28. **"Material Defects"** Plaintiffs describe the "material defects with the property" as alleged in paragraphs 15 and 16 of their Complaint as follows:

The bridge was not rebuilt as advertised, fire rings had to be rebuilt, mold and water damage in basement, deck and parking lot were not in compliance with the right of way, and financial statements were misleading.

29. **Iverson's Knowledge of Material Defects.** Plaintiffs have no facts supporting their claim that Iverson, at any time prior to closing, had knowledge of any Material Defects as defined and identified by Plaintiffs.

¹ Plaintiffs' response directs the reader to their Answer to Interrogatory 4 stating Iverson "knew or should have known of the issues with the deck and parking lot."

Ex. A at p. 6 (alleging Iverson "knew or should have known" but providing no supporting facts) and Ex. B (no facts supporting any actual knowledge) at p. 1.

30. Other "Defects" Plaintiffs have no facts or supporting documentation that Iverson knew or should have known of the following "defects" as alleged in paragraph 35 of their Complaint:

- a. Flooding issues with the basement;
- b. Hazardous mold growth;
- c. The location of the deck and parking lot on the right of way;
- d. The fire rings were not up to code due to lack of gravel around them;
- e. The inaccuracy and overinflated value of the financial statements provided to Plaintiffs; and
- f. The poor condition of the bridges, which Seller intentionally misrepresented and concealed.

Ex. A at p. 6 and attached Ex. B (no facts supporting any actual knowledge) at p. 1.

31. Attorney's Fee Claim. Plaintiffs have no basis for their attorney fee claim against Iverson. Ex. A at p. 6 and Ex. B at p. 2 (advising the basis of attorney fee claim is "fraud and deceit" which, if proven to a jury allow "punitive damages and attorney's fees...through the operation of South Dakota law.").

Dated this 29th day of May, 2018.

BANGS, McCULLEN, BUTLER,
FOYE & SIMMONS, L.L.P.

By: /s/ Gregory J. Erlandson

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ATTORNEYS FOR DEFENDANT BRYAN IVERSON

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 29, 2018, he served a copy of this legal document upon the persons herein designated, all on the date shown, by electronically filing a copy of the same via the ECF filing system.

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ATTORNEYS FOR DEFENDANTS
WILD BILL'S CAMPGROUND & RESORT, LLC,
AND KEITH GRIMM

/s/ Gregory J. Erlandson
GREGORY J. ERLANDSON

STATE OF SOUTH DAKOTA)
COUNTY OF PENNINGTON) SS

IN CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT

DUANE REMINGTON and
MELODY REMINGTON,

Civ. No. 18-000118

Plaintiffs,

vs.

WILD BILL'S CAMPGROUND AND
RESORT, LLC.; KEITH GRIMM, and
BRYAN IVERSON,

Defendants.

**PLAINTIFFS RESPONSES TO
DEFENDANT BRYAN IVERSON'S
FIRST SET OF
INTERROGATORIES AND
REQUEST FOR PRODUCTION OF
DOCUMENTS**

INTERROGATORY 1: Please state the full name, residence address, and telephone number of each and every person who assisted in responding to these Interrogatories and Requests for Production of Documents.

RESPONSE: Duane and Melody Remington and their attorneys.

INTERROGATORY 2: State the facts supporting Your contention that Defendant had personal knowledge, at any time prior to the May 12, 2017 closing of the Transaction, that "[e]very year the basement floods" as alleged in Your Complaint.

RESPONSE: We believe that Mr. Iverson and Keith Grimm are good friends and Mr. Iverson knew or should have known of the conditions with the basement.

REQUEST FOR PRODUCTION 1: Produce a copy of all writings and documents relating to the preceding interrogatory.

RESPONSE: None at this time. Discovery is ongoing.

INTERROGATORY 3: State the facts supporting Your contention that Defendant had personal knowledge, at any time prior to the May 12, 2017 closing of the Transaction, that, "The annual flooding caused mold to grow, which was deliberately covered up and by the Seller" as alleged in Your Complaint.

RESPONSE: The property had been for sale for several years and Mr. Iverson was the only person allowed to show the property. We met with the people that



Service Document

bought the Custer Crazy Horse Campground and they told us that they were very interested in buying Wild Bill's but wanted another realtor to come and look at the property to see if it was worth what Keith Grimm was asking and if there was any problems with the buildings. Mr. Grimm would not allow anyone but Mr. Iverson to inspect the property. If Mr. Iverson was the only one allowed to show the property he would have had to have an inspection done at some point and noticed the mold in the basement from the flooding.

REQUEST FOR PRODUCTION 2: Produce a copy of all writings and documents relating to the preceding Interrogatory.

RESPONSE: None at this time. Discovery is ongoing.

INTERROGATORY 4: State the facts supporting Your contention that Defendant had personal knowledge, at any time prior to the May 12, 2017 closing of the Transaction, that "The State of South Dakota is requiring removal of the deck and parking lot on the campground because Seller built the deck and parking lot on a right of way, which Seller was aware of prior to the sale" as alleged in Your Complaint.

RESPONSE: Mr. Iverson was the realtor for a number of years prior to the sale and knew or should have known of the issues with the deck and parking lot.

REQUEST FOR PRODUCTION 3: Produce a copy of all writings and documents relating to the preceding Interrogatory.

RESPONSE: None at this time. Discovery is ongoing.

INTERROGATORY 5: State the facts supporting Your contention that Defendant had personal knowledge, at any time prior to the May 12, 2017 closing of the Transaction, that either the deck or parking lot were built on a right of way.

RESPONSE: See response to Interrogatory No. 4.

REQUEST FOR PRODUCTION 4: Produce a copy of all writings and documents relating to the preceding Interrogatory.

RESPONSE: None at this time. Discovery is ongoing.

INTERROGATORY 6: State the facts supporting your contention that Defendant had personal knowledge, at any time prior to the May 12, 2017 closing of the Transaction, that the State of South Dakota would require removal of the deck and parking lot as alleged in Your Complaint.

REQUEST FOR PRODUCTION 5: Produce a copy of all writings and documents relating to the preceding Interrogatory.

RESPONSE: None at this time. Discovery is ongoing.

INTERROGATORY 7: State the facts supporting your contention that Defendant had personal knowledge, at any time prior to the May 12, 2017 closing of the Transaction, that any fire rings were not compliant with any code requirement as alleged in Your Complaint.

RESPONSE: Mr. Iverson was the professional on the property and should have known the fire rings were not compliant with any code requirement.

REQUEST FOR PRODUCTION 6: Produce a copy of all writings and documents relating to the preceding Interrogatory.

RESPONSE: None at this time. Discovery is ongoing.

INTERROGATORY 8: State the facts supporting your contention that Defendant had personal knowledge, at any time prior to the May 12, 2017 closing of the Transaction, that any financial statement or "value of the subject real estate" provided to Plaintiffs were inaccurate with regard to the value of the property as alleged in Your Complaint.

RESPONSE: On several occasions I visited Mr. Iverson's office and told him things did not seem right as far as the financial statements. We went over them together and found miscellaneous things that Mr. Iverson could not explain, such as miscellaneous assets and the Grimm's also listed 2016 as 2015's financial statements and the 2015 Sturgis Rally was one of the largest on record. Mr. Iverson was going to get some financial documents and after waiting several weeks he told me I could come pick them up on a certain day at 10:00 am. My wife went to get them and Mr. Iverson was not there and he had left nothing with his secretary to give us. The secretary tried to reach him by phone and was not able to. Both secretaries said it was unlike him to disappear without telling anyone and that it was strange.

Brandon Pressley rented the bar and restaurant income tax statement did not match Mr. Grimm's statement.

REQUEST FOR PRODUCTION 7: Produce a copy of all writings and documents relating to the preceding Interrogatory.

RESPONSE: See financial documents. (Bates No. PLF.0001-00041.)

INTERROGATORY 9: State the facts supporting Your contention that Defendant had personal knowledge, at any time prior to the May 12, 2017 closing of the Transaction, that any of the bridges on the property had been not been rebuilt and widened as alleged in Your Complaint.

RESPONSE: An improvement disclosure was given to us at closing that stated the bridges had been recently rebuilt and widened. The boards were rotted and that is why a bus fell through the bridge.

REQUEST FOR PRODUCTION 8: Produce a copy of all writings and documents relating to the preceding interrogatory.

RESPONSE: None at this time. Discovery is ongoing.

INTERROGATORY 10: State the facts supporting your contention that Defendant had personal knowledge, at any time prior to the May 12, 2017 closing of the Transaction, that any motorhome had fallen through any bridge on the property as alleged in Your Complaint.

RESPONSE: See response to Interrogatory No. 9.

REQUEST FOR PRODUCTION 9: Produce a copy of all writings and documents relating to the preceding interrogatory

RESPONSE: None at this time. Discovery is ongoing.

INTERROGATORY 11: State the facts supporting any contention that Defendant had personal knowledge, at any time prior to the May 12, 2017 closing of the Transaction, of any information that you allege he should have, but did not, disclosed to you.

RESPONSE: Mr. Iverson along with Mr. Grimm should have furnished a full disclosure on the property before May 12, 2017.

REQUEST FOR PRODUCTION 10: Produce a copy of all writings and documents relating to the preceding interrogatory.

RESPONSE: N/A.

INTERROGATORY 12: State the facts supporting any contention that any part of the property included in the Transaction was every used as residential real property.

RESPONSE: Brandon Pressley leased the bar and restaurant. Brandon, his wife and children lived down stairs and the basement flooded while they lived there and ruined everything they owned. Mr. Grimm also had another employee that was helping with repairs staying in a basement room.

REQUEST FOR PRODUCTION 11: Produce a copy of all writings and documents relating to the preceding Interrogatory.

RESPONSE: N/A.

INTERROGATORY 13: State whether you have used any part of the property as a personal residence and, if so:

- a. the identity of and description of the residential structure;
- b. whether you applied for any owner/occupied tax status;
- c. whether you maintained any other residences;
- d. whether the property was listed, marketed, or advertised as containing a residence;
- e. whether the property used as a residence is compliant with any code or governmental regulation applicable to residential structures.

RESPONSE: We own a home in Summerset, South Dakota and drove home each night after closing. We did not apply for owner/occupant taxes. The living quarters was and still is advertised on the internet and said to call Mr. Iverson for information.

REQUEST FOR PRODUCTION 12: Produce a copy of all writings and documents relating to the preceding Interrogatory

RESPONSE: See attached internet advertisement. (Bates No. PLF.00051-00052.)

INTERROGATORY 14: Identify and describe the "structural [or] foundational defects within the residence and surrounding property" as alleged in ¶13 of Your Complaint.

RESPONSE: See Complaint.

REQUEST FOR PRODUCTION 13: Produce a copy of all writings and documents relating to the preceding Interrogatory.

RESPONSE: See Complaint.

INTERROGATORY 15: State the facts supporting your contention that Defendant had personal knowledge, at any time prior to the May 12, 2017 closing of the Transaction, of any "structural [or] foundational defects within the residence and surrounding property" as alleged in ¶13 of Your Complaint.

RESPONSE: See answer to interrogatory 4.

REQUEST FOR PRODUCTION 14: Produce a copy of all writings and documents relating to the preceding Interrogatory.

RESPONSE: None at this time. Discovery is ongoing.

INTERROGATORY 16: Identify and describe the "material defects with the property" as alleged in ¶¶15 and 16 of Your Complaint.

RESPONSE: The bridge was not rebuilt as advertised, fire rings had to be rebuilt, mold and water damage in basement, deck and parking lot were not in compliance with the right of way, and financial statements were misleading.

REQUEST FOR PRODUCTION 15: Produce a copy of all writings and documents relating to the preceding Interrogatory.

RESPONSE: N/A.

INTERROGATORY 17: State the facts supporting your contention that Defendant had personal knowledge, at any time prior to the May 12, 2017 closing of the Transaction, of the "material defects with the property" alleged in ¶¶15 and 16 of Your Complaint.

RESPONSE: See response to Interrogatory No. 4.

REQUEST FOR PRODUCTION 16: Produce a copy of all writings and documents relating to the preceding Interrogatory.

RESPONSE: None at this time. Discovery is ongoing.

INTERROGATORY 18: State the facts supporting your contention that Defendant knew or should have known of the defects set forth in ¶35 of Your Complaint.

RESPONSE: Mr. Iverson and Mr. Grimm should of provided a full disclosure of the property. See also response to Interrogatory No. 4.

REQUEST FOR PRODUCTION 17: Produce a copy of all writings and documents relating to the preceding Interrogatory.

RESPONSE: None at this time. Discovery is ongoing.

INTERROGATORY 19: State the factual and legal basis supporting your claim for attorney's fees against Defendant.

RESPONSE: Objection. Calls for a legal conclusion. Pursuant to said objection, attorney fees are recoverable through operation of South Dakota law.

REQUEST FOR PRODUCTION 18: Produce a copy of all writings and documents relating to the preceding Interrogatory, including but not limited to all law firm billing invoices, fee agreements, and time entries showing legal services performed (with redacted attorney client communications or work product).

RESPONSE: Objection. The request is premature and will be provided at the conclusion of this matter to the Court.

INTERROGATORY 20: Have you, or your agents, attorneys, or any other person acting on your behalf, undertaken or caused to be undertaken any investigation with regard to the incident which is the subject of this litigation? If your answer is in the affirmative, please state:

- a. The date and place of each investigation;
- b. The name and address of the person who authorized each such investigation;
- c. The name and address of the person who conducted each such investigation;
- d. The subject matter and result of each such investigation;
- e. Whether a written report was furnished by any such investigator, and if so, by whom;
- f. The full name, address and telephone number of the person or persons who have present possession, dominion, custody or control of each such Investigative report.

RESPONSE: Not at this time.

REQUEST FOR PRODUCTION 19: Produce a copy of all writings and documents relating to the preceding Interrogatory.

RESPONSE: N/A.

INTERROGATORY 21: Have You, Your agents or attorneys, or any other person acting on your behalf, taken or caused to be taken any photograph, images, film, videotape, or other audio or visual recording with regard to this matter? If the answer is "yes," please state:

- a. The date and place of each such recording;
- b. The name and address of the person who authorized such recording;
- c. The name and address of the photographer, videographer, or recorder; and
- d. The full name and current, complete address of the person or persons having present possession, dominion, custody, or control of each such photograph, image, film, videotape, or other audio or visual recording.

RESPONSE: I authorized my daughter to take pictures of the basement in September after we noticed the mold as it started to develop an odor.

REQUEST FOR PRODUCTION 20: Produce a copy of all writings and documents relating to the preceding Interrogatory.

RESPONSE: See attached photos of mold in basement. (Bates No. PLF 00041-00051.)

INTERROGATORY 22: Other than the action herein, have you ever been a party in a civil lawsuit or proceeding? If so, for each lawsuit or proceeding, state:

- a. Whether you were the plaintiff or the defendant;
- b. The nature of the plaintiff's claim;
- c. The court or agency and place of filing;
- d. The date of filing;
- e. The names of all parties other than "yourself" involved in the action;
- f. The present status of each suit or claim;
- g. If concluded, the final result of each suit or claim;
- h. The amount of judgment or settlement or benefit in any concluded suit or claim.

RESPONSE: No.

INTERROGATORY 23: Please state whether or not any person made any statement, either oral or written, while being interviewed or questioned by You or on Your behalf or by any other person pertaining to his or her knowledge of any fact or circumstance relevant to any of Your claims or allegations. If any person has made such a statement, for each statement, please indicate:

- a. The name, address, occupation and relationship to "you," if any, of the maker;
- b. Date of making;
- c. Place of making;
- d. If written, was the statement signed or unsigned;
- e. The names and addresses of all "persons" present at the time of the making;
- f. The names and addresses of all "persons" present at the time of the Signing; and
- g. The names and addresses of each person now having possession or custody of any such statement, whether it is the original or a copy.

RESPONSE: The materials sought, to the extent that such may exist, were prepared in anticipation of litigation or for trial for the Plaintiffs or their attorney and constitute attorney-work product and are subject to discovery only upon a showing that the party seeking the discovery has substantial need

of the materials in the preparation of its case and that it is unable without undue hardship to obtain the substantial equivalent of the materials by other means. Subject to this objection, none.

REQUEST FOR PRODUCTION 21: Produce a copy of all writings and documents relating to the preceding Interrogatory.

RESPONSE: N/A.

INTERROGATORY 24: As to each statement identified above, as long as the statement is not a privileged communication or was not prepared in anticipation of the trial of the above-entitled action by or for You or by or for Your representative, please state, in detail, the substance of all statements by all Persons.

If you contend that the statement is a privileged communication, please state the factual and legal basis of the privilege.

If you contend that the statement was prepared in anticipation of the trial of the above-entitled action by or for you or by or for your representative, please state the factual and legal basis of the privilege or claim.

RESPONSE: See response to Interrogatory No. 23.

INTERROGATORY 25: Do You have knowledge of, or have in Your possession or control, any notes, reports of conversations or interviews, paraphrasing of conversations, phonetic recordings of conversations, stenographic verbatim reports of conversations, transcripts of phonetic records or similar "documents" concerning communications or statements of or by any party or their representatives that pertain in any manner to any of the claims or defenses in this case? If so, for each such note, report, recording, transcript, memoranda, or "document," please state:

- a. The time and date taken or obtained;
- b. The place taken or obtained;
- c. The name and address of each person who took or obtained it;
- d. The names and addresses of all "persons" present at the time and place it was taken or obtained;
- e. The names and addresses of each person now having or who has had possession or control thereof; and
- f. A detailed statement of the contents thereof.

RESPONSE: See response to Interrogatory No. 23.

INTERROGATORY 26: Please state the substance of any admissions made by or attributable to any Defendant or their agents or representatives. For each such admission, please indicate:

- a. Whether it is in writing or is oral;
- b. If it is in writing, who has custody of the document;
- c. Who was present when the admission was made;
- d. When the admission was made; and
- e. Where the admission was made.

RESPONSE: Discovery is ongoing.

INTERROGATORY 27: Please state the substance of any declarations against interest made by or attributable to any Defendant or its agents or representatives. For each such declaration, please indicate:

- a. Whether it is in writing or oral;
- b. If it is in writing, who has custody of the document;
- c. Who was present when the declaration was made;
- d. When the declaration was made; and
- e. Where the declaration was made.

RESPONSE: Discovery is ongoing.

INTERROGATORY 28: List all exhibits and "documents" that may be offered by you as evidence in this trial.

RESPONSE: Objection. The applicable rules of discovery do not require the identification of a party's trial exhibits or documents and writings to be offered as evidence until the time of trial. Without waiving the foregoing objection, Plaintiff states that she will identify her trial exhibits to be offered as evidence in connection with any pre-trial order entered by the court imposing such requirement upon the parties.

INTERROGATORY 29: Please list all the commercial or residential sale, lease, or purchase transactions you have been a party to.

RESPONSE: Wild Bill's Campground and Resort.

[Space intentionally left blank]

Dated this ____ day of March, 2018.

Duane Remington

STATE OF SOUTH DAKOTA)
) ss.
COUNTY OF)

Duane Remington, being first duly sworn, deposes and states that he has read Defendant Iverson's First Set of Interrogatories and Request for Production of Documents and knows the contents thereof; that the same is true of his own knowledge, except as to matters herein stated on information and belief, and as to these matters he believes it to be true.

Subscribed and sworn to before me this ____ day of _____, 2018.

(SEAL)

Notary Public, South Dakota
My Commission Expires:

Dated this ____ day of March, 2018.

Melody Remington

STATE OF SOUTH DAKOTA)
COUNTY OF) ss.

Melody Remington, being first duly sworn, deposes and states that she has read Defendant Iverson's First Set of Interrogatories and Request for Production of Documents and knows the contents thereof; that the same is true of her own knowledge, except as to matters herein stated on information and belief, and as to these matters she believes it to be true.

Subscribed and sworn to before me this ____ day of _____, 2018.

(SEAL)

Notary Public, South Dakota
My Commission Expires:



Beardsley Jensen & Lee

ATTORNEYS AT LAW

PROF. L.L.C.

STEVEN C. BEARDSLEY
GARY D. JENSEN
BRAD J. LEE

4200 Beach Drive • Suite 3 • P.O. Box 9579 • Rapid City, SD 57709
Phone: (605) 721-2800 • Fax: (605) 721-2891
WWW.BJLAWFIRM.COM
Also Licensed in NE, ND, NY

JESSICA L. LARSON
BRETT A. POPP
MICHAEL S. BEARDSLEY
MATTHEW J. MCINTOSH

e-mail
mbeardsley@blackhillsdata.com

April 23, 2018

Mr. Gregory J. Erlandson
838 West Boulevard, Ste. 400
P.O. Box 2670
Rapid City, SD 57709

Re: Duane and Melody Remington v. Wild Bill's Campground and Resort,
Keith Grimm and Bryan Iverson
Our File No.: 1927

Dear Greg:

This letter is in response to your correspondence dated March 20, 2018.

Interrogatory Nos. 4, 15, 17, 18: You indicate that my client's response that Mr. Iverson either knew or should of known of the issues with the deck and parking lot is not sufficient. First of all, specific facts regarding your client's knowledge will not be fully developed until depositions in this case. Secondly, your client informed Mr. Remington he was the "RV park salesman" for the area. Mr. Iverson was in possession of the legal description of the property, and had to be familiar with the property in order to sell it. Therefore, he should have been aware that the deck and parking lot were on the right of way. Discovery is ongoing and this answer will be supplemented if necessary.

Interrogatory No. 13:

- (a.) See Re/Max listing for Wild Bill's Campground (Bates No. PLF.00054-00060.)
- (d.) See Re/Max listing for Wild Bill's Campground (Bates No. PLP.00054-00060.)
- (e.) Unknown as the Remington's did not use the property as a residence.

Interrogatory No. 14: The structural and foundation defects became evident when we learned the basement floods every spring and caused substantial mold growth.

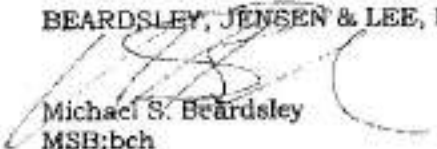


Interrogatory No. 19: Regarding attorneys' fees, this case involves allegations of fraud and deceit. If those matters are proved to a jury, punitive damages and attorney's fees are recoverable through the operation of South Dakota law.

If you would like to discuss further, give me a call.

Sincerely,

BEARDSLEY, JENSEN & LEE, Prof. L.L.C.



Michael S. Beardsley
MSB:bch

cc: Client (by e-mail)
John Nooney (by e-mail)

Previously

STATE OF SOUTH DAKOTA)	IN CIRCUIT COURT
)SS	
COUNTY OF PENNINGTON)	SEVENTH JUDICIAL CIRCUIT
DUANE REMINGTON and)	51CIV18-000118
MELODY REMINGTON,)	
)	
Plaintiffs,)	
)	
vs.)	AFFIDAVIT OF BRYAN
)	IVERSON
)	
WILD BILL'S CAMPGROUND)	
AND RESORT, LLC, KEITH)	
GRIMM, and BRYAN IVERSON)	
)	
Defendants.)	

I, Bryan Iverson, upon my oath, state the following:

1. I am a licensed real estate broker, registered with the South Dakota Department of Labor and associated with RE/MAX Results, in Rapid City, South Dakota.
2. On or about July 21, 2016, Wild Bill's Campground and Resort, LLC ("WBCR") hired me to attempt to sell its business, which consisted of a campground (98+ campsites, utility hookups, rental cabins, shower buildings, and main building), saloon (including malt beverage license), and grill ("Business") located in Deadwood, Lawrence County, South Dakota.
3. No residential disclosure statement was required because the sale was that of a business and not a residential structure.
4. Exhibit 1 is a true and correct copy of the Exclusive Listing Agreement between WBCR and me.
5. Exhibit 2 is a true and correct copy of the multiple listing service for the Business, which was first listed on July 21, 2016.
6. The Business is located in a commercial zone within Lawrence County, South Dakota.

51CIV18-000118

Affidavit of Bryan Iverson

Page 1 of 3

7. I first met Duane Remington on April 27, 2017, when he came to my office wanting to make an offer on the Business.

8. I explained to Mr. Remington that I was the listing and selling agent and could only act as a disclosed limited agent of both parties to the transaction.

9. Exhibit 3 is a true and correct copy of the April 27, 2017, Real Estate Purchase Agreement Commercial/Agricultural between WBCR and the Remingtons.

10. I had never met either Duane or Melody Remington prior to April 27, 2017.

11. Exhibit 4 is a true and correct copy of the contract for deed ("Contract for Deed") contemplated in the Commercial Purchase Agreement.

12. I represented WBCR in the transaction as the listing and disclosed limited agent.

13. At no time prior to closing of the transaction did I have any knowledge of the following *alleged* material defects ("Material Defects") of the Business as referenced in paragraph 11 of Plaintiffs' Complaint:

- a. Prior flooding of the basement;
- b. Existence of mold in the basement;
- c. The deck and parking lot on the campground is located on a right of way;
- d. A majority of the fire rings in the campground are not up to code;
- e. The financial statements provided to Plaintiffs are not accurate and significantly overinflated the value of the property;
- f. That WBCR intentionally misrepresented that the bridges on the property had been rebuilt and widened; and
- g. That a number of motorhomes have fallen through the bridges on the Campground.

14. Exhibit 5 is a true and correct copy of a brochure I prepared concerning the Business.

15. Exhibit 6 is a true and correct copy of the Certificate of Real Estate Value dated May 12, 2017.

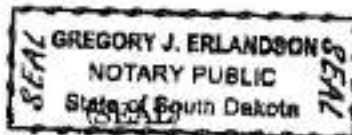
Dated this 29th day of May, 2018.


Bryan Iverson

STATE OF SOUTH DAKOTA:
SS
COUNTY OF PENNINGTON:

On the above date before me, the undersigned officer, personally appeared, the above-stated person, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.




NOTARY PUBLIC

My Commission Expires
October 4, 2018

My Commission Expires: _____



**EXCLUSIVE LISTING AGREEMENT
BLACK HILLS ASSOCIATION OF REALTORS®**



☐ RE Residential ☐ LD Land ☐ MF Multi-Family ☐ CI Commercial ☒ BI Business/Industry

THIS IS A LEGAL AND BINDING CONTRACT, IF NOT FULLY UNDERSTOOD, SEEK LEGAL ADVICE

Term Commences July 21, 2016 expires December 31, 2017 at 12:01 A.M. If a Buyer enters into a purchase agreement with Seller during the term of this agreement, the termination of this agreement shall extend to and include the date of closing under the purchase agreement with said Buyer only.

1. **LEGAL DESCRIPTION.** The undersigned Seller warrants that he/she is the owner of record of the property or has the written authority to execute this Agreement on behalf of the owner of record and hereby grants the undersigned Broker, for the above term, the exclusive irrevocable right and privilege to sell the following property legally described as:

Parcel 1: Lot E ex. H1 (.04 ac) & H2 (.06 ac) & Lot E-2 of HES 137 on Section 16 T4N R4E

Parcel 2: Tracts 0091A & 0091B in Section 17 T4N R4E

Total Acres 12.74

County: Lawrence State: South Dakota

Also known as: Wild Bill's Campground, 21372 US Hwy 385 Deadwood, SD 57732

2. **TERMS:** For the sum of \$ 877,000.00 on the following terms: Cash or New Loan

or, with Seller's consent, for any sum or on other terms which price includes all encumbrances, taxes, assessments and discount points charged at time of closing by mortgagee, as agreed upon by Buyer and Seller.

3. **PERSONAL PROPERTY:** The following personal property shall be conveyed by Seller to Buyer, free of liens and without warranty of condition, by bill of sale at closing and in accordance with its terms:
See Attached List

4. **DEFINITION:** The term "sale" shall be deemed to include any exchange, trade, lease or option to purchase to which the Seller consents. In the event of a sale, the Broker is permitted to represent and receive compensation from both parties.

5. **PROFESSIONAL FEE:** If a purchaser is procured for the property by the Broker, by any other cooperating broker, by the Seller, or by any other person at the price and upon the terms stated above, or at any other price or upon any other terms accepted by the Seller during the term of this Agreement or if exchanged or optioned during the term of this contract and said option is exercised, or if within 60 days after the expiration of this agreement, the property is sold to any person to whom the property was shown the Seller agrees to pay a fee for professional services of 6% of the sales price plus required sales taxes and an applicable transaction fee of \$0.00. Seller

further agrees that Broker or Broker's authorized representative may act as escrow agent for all money, transaction papers, and documents associated with this transaction. If this property is listed with another licensed real estate broker after expiration of this listing, this contract shall be null and void in its entirety. In the event that an option is accepted by the Seller, all money received for said option shall be divided 50% to the Seller and 50% to the Broker with the Broker not to receive more than the above agreed upon professional fee. The Broker and Seller, as parties to this agreement, agree that a party in breach of any of the covenants, promises or obligations arising under this contract shall be liable and responsible for attorney's fees and costs that may result from enforcement thereof as against the party in breach.

6. **EARNEST MONEY:** The Listing Office shall deposit and hold all deposits, including earnest money until the sale is closed. If earnest money deposited by the Buyer is forfeited, the earnest money, less expenses, shall be divided 50 % to Seller and 50 % to Listing Office. However, in no case may the Listing Office's share exceed the compensation stated herein. Seller understands that per SDCL 36-21A-81, both Buyer and Seller must agree in writing to release of earnest money.

7. **PROCEEDS DISBURSEMENT:** It is agreed that the Listing Office and/or Closing Agent shall hold the balance of the sales price for account of Seller until all expenses incurred on the Seller's behalf, relating to the sale of this property, have been paid.

Seller(s) K.G.
(Initials)

and Listing Office Broker/Agent RES
(Initials)

have read



Order: 845360-820148 8050922

Prepared by: Bryan Irwin | 765 MAX Results | bryan@maxresults.com

Filed: 5/30/2018 12:25 PM CST Pennington County, South Dakota 51CIV18-000118

APP. 027

8. **TRANSFER OF TITLE:** Seller represents the title of the property to be good and merchantable and hereby warrants that all known encumbrances, liens or clouds on title are disclosed. In the event of a sale, exchange or trade, Seller, at their expense, will convey to the Buyer good and merchantable title to said property by Warranty Deed or such other conveyance instrument, sufficient to convey good and merchantable title, properly signed and with the necessary State Transfer Fee for recording paid by Seller. Further, Seller, at their expense, shall promptly furnish to the Buyer an Owner's Policy of Title Insurance in the amount of the purchase price.

9. **NON-DISCRIMINATION:** This property is offered for sale regardless of race, religion, creed, color, sex, handicap, familial status, ancestry, national origin, or any other protected class under law.

10. **MULTIPLE LISTING SERVICE:** Any listing taken on a contract to be filed with the multiple listing service is subject to the rules and regulations of the service upon signature of the seller(s).

11. **SELLER AUTHORIZES BROKER, BY INITIALS IN THE APPROPRIATE SPACE TO:**

1. List and market the herein property with the local MULTIPLE LISTING SERVICE (MLS) within 72 hours pursuant to MLS Rules and Regulations. Yes KG / No /

2. Withhold the herein property from the local MULTIPLE LISTING SERVICE (MLS) by completing and signing a Certification to Withhold Property Listing from Multiple Listing Service form. Yes / No KG /

a. Seller understands that withholding property from the MLS impacts property exposure by NOT marketing to all other area REALTORS®. Yes / No /

b. Seller understands that withholding property from the MLS impacts property exposure by NOT notifying potential buyers working with other REALTORS® or using the MLS online website. Yes / No /

Listing agent shall file said Certification to Withhold with the MLS within 72 hours (a signed copy of the Certification to Withhold will be provided to the Black Hills Association of REALTORS®).

3. Seller authorizes broker, by initials in the appropriate space to:

a. Place a FOR SALE sign on the property. Yes / No KG /

b. Place a LOCKBOX on the property. Yes / No KG /

c. Cooperate with other Brokers, including Brokers representing a buyer, and Seller further agrees Broker may compensate selling Brokers. Yes KG / No /

d. Request mortgagee, if any, to release financial information to listing office. Yes KG / No /

e. Request utility companies to release utility information to listing office. Yes KG / No /

f. Advertise by computerized or other media. Yes KG / No /

12. **SELLER'S PROPERTY DISCLOSURE STATEMENT:** Seller hereby agrees to indemnify and hold Broker and Brokers agent harmless from any claim(s) arising out of misrepresented or incomplete disclosure statements made by Seller. Seller agrees to fill out a Seller's Property Disclosure Statement, if applicable, and have it available for inspection on the premises. By state law (SDCL 43-4-38) this disclosure must be shared with other Brokers and potential Buyers before a Purchase Agreement is written.

☒ The parties acknowledge that no disclosure statement is required by reason of the following: Business

13. **LEAD PAINT DISCLOSURE:** Seller shall complete and submit a lead-based paint disclosure if property is residential and built prior to 1978 as required by federal regulation.

14. **AGENCY DISCLOSURE:** The seller acknowledges that they have received a copy of an Agency Relationship Disclosure and agree in writing to the applicable Agency Relationships as shown in the herein attached Agency Addendum.

Seller(s) KG and Listing Office Broker/Agent BA have read this page
(Initials) (Initials)

Page 2 of 3

South: 605.605.1000 FAX: 605.605.1001
Prepared by: Elyse A. Jensen | REALTOR | eys@eysrealty.com

15. **DISPUTE RESOLUTION:** Seller agrees that any dispute or claim arising out of or relating to the sale of this property shall be submitted to mediation in accordance with the rules and procedures of the Sellers/Buyers Dispute Resolution System. Any costs of mediation will be shared equally between the Buyer and Seller.
16. **TAX CONSEQUENCES:** The Seller acknowledges that there may be tax consequences arising out of the sale of this property and that they are advised to seek competent tax advice.
17. **OTHER:**

1. If Listing Agent represents the Buyer, commission to be 5%

The undersigned hereby agree to the above terms and acknowledge receipt of a copy of this agreement.

Dated this 21st day of July, 2016

Keith Grimm, President

Seller's Name - Printed or Typed

X Keith Grimm President
Seller's Signature

Seller's Name - Printed or Typed

RE/MAX Results

Listing Company

Bryan Iverson

Listing Agent

X
Seller's Signature
Anthony Henry

Designated Broker's Signature

Bryan Iverson
Listing Agent's Signature

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This form is authorized for the use of the members of the Black Hills Association of REALTORS® only. (revised) BHAR 10/16

Page 3 of 3

Revised: 04/06/2016/04-06/0002

Prepared by: Bryan Iverson | RE/MAX Results | bryan@422@gmail.com |

ALL FIELDS DETAIL

MLS #	129714	Parking # of Spaces	31+ spaces
Class	BUSINESS	Will Sell	All
Industry	INDUSTRY	Type of Sale Desired	Asset
Status	ACTIVE	Gross Income	150001
Type	Accommodation	Business Days	Summer Only
Area	Norham Hills	Total Square Foot	1500-1899
Asking Price	\$899,000	Business	Real Estate
Address	21372 HWY 385		Included
City	Deadwood		
State	SD		
Zip	57732		
Sale/Rent	For Sale		
IDX Include	Y		

S D M S

GENERAL

VOW Include	Yes	VOW Address	Yes
VOW Comment	Yes	VOW AVM	Yes
Number of Units	101	Agent	BRYAN IVERSON - Cell: 605-484-9422
Listing Office 1	REMAX RESULTS - PHW: 605-341-4300	Compensation Y/N	Yes
Compensation to Buyers Ag	3%	Business Name	Wild Bill's Campground
Business Description	Campground, Saloon & Grill	Owner Name	W B Campground & Resort, LLC
Listing Date	7/21/2016	Business Hours	Open Daily May - September
Legal	See Addendum	Taxes	\$400 approx.
Tax Year	2015	Tax Returns Available Y/N	Yes
Owners Salary In Expenses	Yes	County	Lawrence
Associated Document Count	0	Auction Y/N	No
Exclusion on File	No	Short Sale	No
Update Date	7/22/2016	Status Date	7/22/2016
HotSheet Date	7/22/2016	Price Date	7/22/2016
Input Date	7/22/2016 10:59 AM	Original Price	\$899,000
Days On Market	1	Geocode Quality	Exact Match With Bing
Picture	32		

FEATURES

REAL ESTATE	BUSINESS ENTITY	DOCUMENTS ON FILE	VIEW
Owned	LLC	Financial Statements	Hills
Include in Price	TRAINING INCLUDED	Equipment List	Creek
LOCATION	1-2 Weeks	Profit/Loss Statements	Trees
Free Standing	NUMBER OF EMPLOYEES	SHOWING INSTRUCTIONS	Meadow
Black Hills	1-5	Call List Agent	
		See Remarks	

PUBLIC REMARKS

Excellent Opportunity & Location! Wild Bill's Campground, Saloon & Grill is approx. 6 miles from Deadwood on Hwy 385. There is 12.74 acres, 98+ total campsites with 9 - 50 amp full hook-up, 16 - 30 amp full hook-up, 14 - 30 amp electric only sites, 6 - 30 amp electric & water sites, shower house w/ laundry & game room, 1 duplex cabin, & 7 sleeping cabins. Main building includes office, store, saloon, grill, and living quarters. Bear Butte Creek & Strawberry Creek meet on the property. Retail on & off sale Malt Beverage License. Some of the improvements: New electrical service (plenty for future expansion), water filtration system, water lines, 7 sleeping cabins, 24x60 Deck onto Bar & Grill building, remodeled Mens & Womens bathrooms & showers, and many more (list available). This excellent opportunity to own a campground, bar & grill so close to Deadwood and other wonderful attractions in the Black Hills. Listed by Bryan Iversen (605)484-9422 with ReMax Results

AGENT ONLY REMARKS

Please call Listing Agent to set-up showing. Confidentiality agreement to be signed before receiving financial information and must be a qualified buyer. Owner will carry contract for deed with \$200,000 down payment.

ADDENDUM

Please go to www.wildbillscamp.com to view campground web-site. Legal Description: Parcel 1: Lot E ex H1 (04 ac) & H2 (06 ac) & Lot E 2 of HES 137 in Sec 18 T4N R4E Parcel 2: Tracts 0091-A & 0091-B in Sec 17 T4N R4E

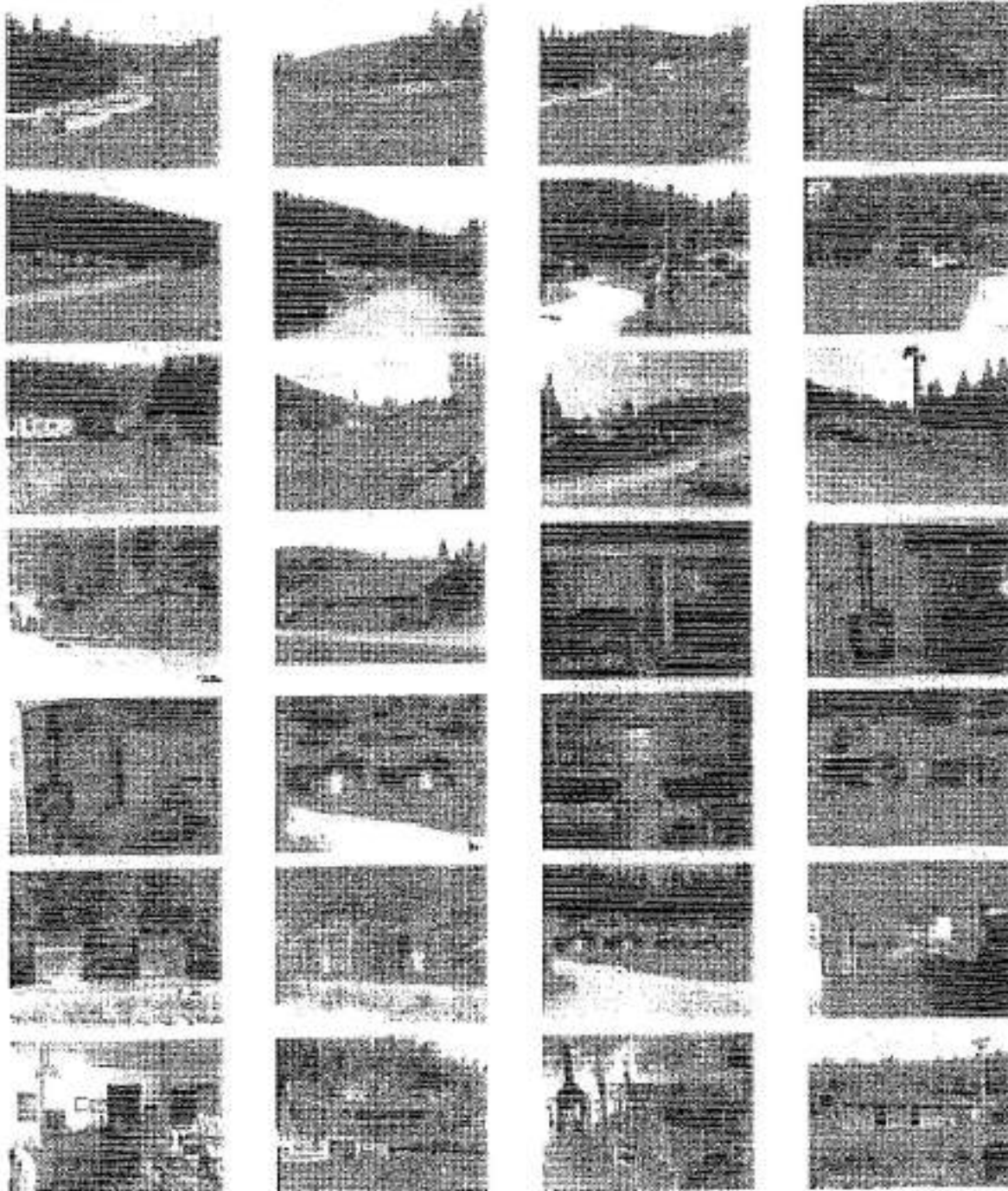
ADDITIONAL PICTURES

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<http://blackhills.paragonreals.com/ParagonLS/Reports/Report.mvc?listingId=129714&screenWidth=160...> 7/22/2016

Filed: 5/30/2018 12:25 PM CST Pennington County, South Dakota 51CIV18-000118
APP. 030





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APP. 031



DISCLAIMER

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Filed: 5/30/2018 12:25 PM CST Pennington County, South Dakota 51CIV18-000118

APP. 032

**REAL ESTATE PURCHASE AGREEMENT
COMMERCIAL/AGRICULTURAL**

(This is a legally binding contract. If you do not understand it, seek legal advice)

1. EARNEST MONEY DEPOSIT - PARTIES TO CONTRACT - PROPERTY.

Purchasers: Dustin & Melody Remington Asst/for Ass:mas

Broker hereby acknowledges receipt of Earnest Money in the amount of (\$ 10,000.00) Ten Thousand and 00/100 DOLLARS

Cash ☐ Check ☒ to be deposited the next legal banking day after acceptance of this offer on the property legally described as:

Wild Bill's Campground Bar & Grill

Lot B-er H1 (.04 ac) & H2 (.06 ac) & Lot B-2 of HRS 137 Acres, 11.21 Sec. 18 Township 4 North, Range 4 East T88N0291-A & 0091-B Acres, 1.53 Sec. 17 Township 4 North, Range 4 East

also known as: 21172 US Hwy 385, Deadwood, SD 57732

Sellers: Wild Bill's Campground & Resort, LLC

Purchaser and Seller acknowledge that ~~Broker is the limited agent of both parties to this transaction~~ as outlined in Section III of the Agency Agreement Addendum and authorized by Purchaser and Seller

Yes ☒ No ☐ (Initials) Purchaser DR MR Seller KG, J N/A

2. PURCHASE PRICE. The total price is to be (\$ 899,000.00) Eight Hundred Ninety-Nine Thousand and 00/100 DOLLARS

After earnest money herein is credited, an additional down payment of \$ 0 is to be paid by Purchaser on or before _____. After earnest money and down payment are herein credited, the remaining balance is to be paid by Purchaser at closing.

3. FINANCING. If this offer is contingent upon Purchaser obtaining a new loan, Purchaser agrees to immediately make application for and diligently endeavor to procure such loan without delay, and to sign the note and mortgage within five (5) days after they are ready. ~~Buyer is going with a Contract for Deed with the Seller - See Addendum 1~~

4. TITLE. Marketable title shall be conveyed by Warranty Deed, subject to conditions, zoning, restrictions, and easements of record, if any, which do not interfere with or restrict the existing use of the property. An Abstract of Title shall be continued to date and furnished promptly to buyer for examination. In lieu of an Abstract of Title, an owner's policy of Title Insurance in the amount of purchase price may be substituted with cost to be distributed as follows: Seller: 50% Purchaser: 50%

5. INSPECTIONS. This offer is ~~contingent~~ upon the following inspections: 1) Sentis Tanks to be pumped, inspected or provide information from last time completed - Seller Expense. 2) Well Test with the SD DENR are up to date and acceptable - Seller Expense. 3) Buyer to inspect the property and the Equipment that stays with the property. 4) Buyer may conduct any other inspection deemed appropriate at Buyers Expense.

Inspections shall be completed within 30 days of acceptance of this offer.

Should the results of any inspections not be satisfactory to Purchaser, then, within this same period, Purchaser shall notify Seller or Listing Broker in writing of the specific dissatisfaction and at which time parties may renegotiate or terminate this contract. If Purchaser fails to specifically approve or disapprove any inspections within the time specified, then Purchaser shall be deemed to have approved and accepted the property in its present condition and any real estate licensee having anything to do with this transaction does not have any further obligation to Purchaser as to such inspections or agreement.

INITIALS: PURCHASER DR MR SELLER KG, J

Page 1 of 2

4. **PRORATIONS.** Taxes are to be paid as follows: The 2016 real estate taxes paid in 2017 shall be paid 100% by Seller and 0% by Purchaser. Real estate taxes assessed this year and payable next year will be ☒ prorated to the date of closing.

Other provisions: 1) All deposits and prepaids for 2017 reservations will be used as initial down payment on the Contract for Deed as of 4/27/17, the balance is \$17,000. Any additional deposits from 4/27/17 until closing will be paid to the Buyer.

7. **SURVEY:** Current County GIS Boundary Survey to be acceptable with the Buyers.
8. **OTHER PROVISIONS:** See Addenda #1
9. **CLOSING/POSSESSION.** Possession and closing shall be given to Purchaser on or before (date) 05/15/17, provided, however, delivery of possession is conditioned upon closing.
10. **EARNEST MONEY/DEPOSITS.** Listing office shall deposit and hold all earnest money and other deposits until sale is closed. If this offer is not accepted by Seller, or if Purchaser is unable to secure financing, if so contingent, or if no agreement is reached regarding conditions found on inspection report(s), this agreement is void and Purchaser's money shall be returned in full, less any expenses incurred on Purchaser's behalf, including any inspection ordered by Purchaser.
11. **ADDENDA TO THIS AGREEMENT.** The following documents are addenda to this contract and are attached and become part of this contract by reference. If none, so state. 1) Addendum #1

12. **TIME IS OF THE ESSENCE OF THIS CONTRACT.**

Dated this 27th day of April, 2017 at 10:00 a.m.

This agreement is void if not accepted by Seller by the 27th day of April, 2017 by 5:00 p.m.

[Signature]
Purchaser

[Signature]
Purchaser

On this 27th day of April, 2017 the foregoing offer is:
(month) (year)

(Initial) ACCEPTED K.G., NOT ACCEPTED /, COUNTERED /

[Signature] President 4/27/17
Seller

THE FOLLOWING IS FOR INFORMATION PURPOSES ONLY:

Re/Max of Rapid City
Selling Company

Bryan Iverson
Selling Licensee

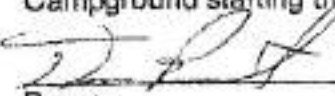
Re/Max of Rapid City
Listing Company

Bryan Iverson
Listing Licensee


SDREC/COM-AGPUR/AGREE/8-99
Page 2 of 2

Addenda #1: Other Provisions:

1. Seller and Buyer agree that Wild Bill's Campground is being ~~sold as is~~ with no warranty.
2. All Licenses and Certificates associated with the campground to be current prior to closing. After closing Buyer is responsible to transfer all License and Certificates.
3. All Rights to Wild Bill's Campground Saloon and Grill – Name, Logos, Website, Domain Name, Business Phone Number and/or any other use of the name to go to the Buyers.
4. The cost of all existing inventory and supplies to be reimbursed to the Seller at the time that the Buyer assumes the business.
5. Seller to provide training at the start of the season at the start and the close of the season. Also will be available during the season.
6. Seller to provide list of all Suppliers and Vendors associated with the campground.
7. Seller to provide a Disclosure to Hold Harmless the Buyers for any legal action or litigation that may have happened before the transfer of ownership to the Buyers.
8. Contract for Deed – \$200,000 down at closing with the remainder to be amortized over 20 years at 5.5%. Equal monthly payments to be made by the 5th of each month over the next 240 months. Buyers reserve the right to payoff the loan early without penalty.
9. Payments to be setup with Old West Escrow Company (Fee to be split 50% Seller and 50% Buyer).
10. Buyers will be responsible for Real Estate Taxes and Insurance for the Campground starting the day of closing.

 4-27-17
Buyer Date

 4/27/17
Seller Date

 4-27-17
Buyer Date

Seller Date

DUANE OR MELODY REMINGTON
 12001 LAMAR BLVD
 BLACK HAWK SD 57701-6655-431-6231

5657
 12-2280000

4-27-17

Pay to the order of Remington Property Co \$10,000.00
John Howard Joll, no 1

HIGHMARK
 CHECKS ONLY
 NO CASH VALUE
 EXPIRES 12/31/2018

John Howard Joll M. Remington

CONTRACT FOR DEED

THIS AGREEMENT is made and entered into this 12 day of May, 2017, between Wild Bill's Campground and Resort, LLC, of 851 Ennen Drive, Rapid City, South Dakota 57703, (hereinafter Seller) and Duane and Melody Remington, of 6835 Arcadia Street, Somerset, South Dakota 57718, (hereinafter Buyers).

1.

REAL PROPERTY. That if Buyers shall first make the payments and perform the covenants hereinafter set out on Buyers' part to be made and performed, the Seller hereby covenants and agrees to convey and assure good and merchantable title to the Buyers, in fee simple, free and clear of all encumbrances and liens except for easements, special assessments, reservations, restrictions, and rights-of-way of record, by good and sufficient Warranty Deed (same to be deposited in escrow at time of closing), to the following real property, to-wit: Wild Bill's Campground Bar & Grill, 21372 US Hwy 385, Deadwood, Lawrence County, South Dakota, legally described as:

LOT E AND LOT E-1 OF H.E.S. 137 LOCATED IN SECTION 17 AND SECTION 18 TOWNSHIP 4 NORTH, RANGE 4 EAST, B.H.M., LAWRENCE COUNTY, SOUTH DAKOTA, ACCORDING TO PLAT BOOK 4 PAGE 126 AND PLAT BOOK 6 PAGE 214 EXCEPT LOT E-1 AND E-3 OF THE SUBDIVISION OF LOT E AND EXCEPT LOTS H1 AND H2 IN LOT E ACCORDING TO PLAT DOC #2001-4464.

TRACT NO. 0091-A LOCATED IN SECTION 18, TOWNSHIP 4 NORTH, RANGE 4 EAST, ACCORDING TO PLAT DOCUMENT NO. 89-1596 AND TRACT NO. 0091-B LOCATED IN SECTION 17, TOWNSHIP 4 NORTH, RANGE 4 EAST, LAWRENCE COUNTY, SOUTH DAKOTA, ACCORDING TO PLAT DOCUMENT NO. 89-1597.

2.

PERSONAL PROPERTY AND CHATTELS. The personal property/chattels to be purchased in accordance with the terms and conditions of this Contract, include the following:

- A. The trade name, "Wild Bill's Campground Saloon and Grill," and all trademarks and logos, signage, website(s) and other marketing titles, slogans or techniques, and the current business phone number.
- B. All equipment, furniture, furnishings, trade fixtures, supplies and miscellaneous personal property of the business known as "Wild Bill's Campground Saloon and Grill" and located on the business premises in Deadwood, South Dakota. (Reference list of chattels attached hereto as Exhibit "A" and incorporated herein by this reference)

Buyer: KG

Page 1 of 8



DR
MR

- C. The cost of all existing inventory and supplies to be reimbursed to the Sellers as of date of closing.
- D. The Good Will of the business known as "Wild Bill's Campground Saloon and Grill" as operated and conducted in Deadwood, South Dakota.
- E. Seller to provide a list of all suppliers and vendors associated with the Campground.
- F. All applicable licenses and certificates associated with the campground the parties agree will be current and in good standing as of date of closing. After closing, Buyers agree to transfer all such licenses and certificates.

The above referenced personal property and chattels shall be conveyed by good and merchantable Bill of Sale, which shall be held in escrow until all sums due and owing hereunder have been paid in full. Further in this regard, the Purchase Agreement dated April 27, 2017 executed by the parties hereto and all addendums thereto, shall be incorporated herein by this reference and unless modified by this Contract, shall be binding upon the parties.

3.

PURCHASE PRICE AND METHOD OF PAYMENTS: As purchase price for the above-described property, Buyers shall pay the sum of Eight Hundred Ninety-Nine Thousand Dollars and No Cents (\$899,000.00) in the following manner:

- A. **Earnest Money.** Both parties acknowledge Buyers' earnest money deposit in the amount of Ten Thousand Dollars and No Cents (\$10,000.00), the receipt of which is hereby acknowledged by Seller.
- B. **Deposits.** Both parties acknowledge that all deposits and prepaids for 2017 reservations in the amount of Seventeen Thousand Dollars and No Cents (\$17,000.00) will be used as the initial down payment by Buyers.
- C. **Down Payment:** The sum of One Hundred Ninety Thousand Dollars and No Cents (\$190,000.00) down payment will be paid by Buyers to Seller on date of closing.
- D. **Balance:** The balance of Six Hundred Eighty-Two Thousand Dollars and No Cents (\$682,000.00) shall be amortized over a period of twenty (20) years with monthly payments commencing June 5, 2017, to be paid to Seller's escrow account to be established at Old West Escrow, 2800 Jackson Blvd, #406, Rapid City, South Dakota 57702, along with instructions to release the Warranty Deed to Buyers upon completion of all payments provided in this Contract. The monthly payment shall be Four Thousand Six Hundred Ninety-One Dollars and Thirty-Nine Cents (\$4,691.39) with interest commencing as of date of closing, at the rate of Five and One-Half Percent (5.5%) annually.

[Signature]

[Signature]

The Amortization Schedule is attached hereto as Exhibit "B." The first payment shall be due and payable June 5, 2017, and due each consecutive month thereafter on the 5th of the month.

The parties acknowledge that Seller currently owes on a Note in the approximate amount of \$350,000.00, secured by a Mortgage against the subject property. The Escrow Company shall first pay Seller's Note at Security First Bank from the Buyers monthly payments, and then forward any remaining payment to the Seller. One Hundred Thousand Dollars of the down payment remitted in accordance with this Contract to Seller by Buyers shall be applied to the balance of said Note at time of closing.

4.

POSSESSION: The parties agree that Buyers may assume possession of the real property described herein on date of closing, which is currently scheduled for May 12, 2017 at Pennington Title Company in Rapid City, South Dakota.

5.

RIGHT TO INSPECT: During the life and term of this Contract, Buyers will keep and maintain the subject premises, and all structures and improvements thereon, in a good state of condition and repair, at least equal to their present condition, reasonable wear and tear by the elements and normal depreciation alone expected. Buyer shall permit no waste on said premises. Seller or its agent, shall have the right to inspect the subject premises from time to time upon reasonable notice and at reasonable times for the purpose of enforcing this paragraph. Buyers acknowledge that they have examined the real property and any equipment or fixtures and furniture (collectively "property") related to the operation of same and acknowledge that the property is acceptable.

6.

TAXES AND SPECIAL ASSESSMENTS: Taxes shall be prorated to date of closing. Seller shall assume responsibility for payment of all 2016 real estate taxes and special assessments (if any) which may be assessed against the premises. In addition to the monthly payment set out herein, Buyers shall pay to escrow one-twelfth (1/12) of the annual property tax on said property, including any increase in same.

7.

PROFESSIONAL FEES: Each of the parties shall be responsible for their own legal and any other professional fees (if any). Seller shall pay the realtor fees.

8.

INSURANCE: The Buyers shall, as of the date of closing designated herein, provide insurance on the property against loss and damages as follows:

[Signature]
Buyer

Page 5 of 9

[Signature]
Seller

A. Fire and extended coverage insurance. Under policies providing no less restrictive coverage than that provided by standard extended coverage policies in an amount of not less than the outstanding balance of this Contract as well as any outstanding remaining unpaid balance pursuant to the terms hereof.

B. Public Liability Insurance. Public liability and property damage insurance customarily carried on similar property, but in no event with limits of less than \$1,000,000 for injury to or the death of any person, \$2,000,000 for injury to or the death of more than one person in any one accident, and \$500,000 for damages to property.

Each of the above policies shall be written by a company acceptable to the Seller and shall provide protection to the Seller either as additional named insured or by endorsement providing for payment to the Seller as its interest may appear. Each such policy shall contain an assurance from the insurer that the policies will not be cancelled without at least ten (10) days prior written notice to the Seller.

9.

INDEMNIFICATION FOR UPKEEP, UTILITIES, ETC: It is understood and agreed that all improvements made on the afore-described premises by Buyers and all utility costs and upkeep of the premises required shall be paid for by the Buyers, and Buyers agree to protect and indemnify the Seller from all costs, expenses, damages or loss by reason of said improvements, alterations, utilities and upkeep.

10.

TITLE: Seller agrees that title to said described real property shall be good and marketable, as determined in accordance with the South Dakota State Bar Association Title Standards and shall be free and clear of liens and encumbrances, except for restrictions, easements, and rights-of-way of record. Title insurance in the amount of the purchase price, as well as the transfer fee, shall be paid equally by the parties. The parties shall equally pay all other closing costs, including filing fees for recordation of deed and ancillary documents. Personal property shall be conveyed by Bill of Sale.

11.

ACREAGE DESCRIPTION: While it is believed by the parties hereto that the subject real estate consists of approximately 12.74 acres, more or less, Buyers acknowledge that they are not relying on any representations of Seller or any agent of Seller as to the exact acreage of the subject real estate. Buyers acknowledge that they have made their own independent investigation as to the total acreage

Attest:
J.S. G.

Page 4 of 7

By: [Signature]
Date: [Signature]

involved and agree to be bound by the acreage as it actually exists without any adjustment in purchase price.

12.

PLACE OF PAYMENT: Upon execution of this Agreement, the parties agree to deposit with Old West Escrow, a good and sufficient Warranty Deed to the property described herein, together with an executed copy of this Contract. Said document shall be retained by the escrow company pending complete performance of all of the terms, covenants, and conditions of this Agreement to be performed by the Buyers. Upon such complete performance by the Buyers, the escrow company shall deliver such documents held by it to the Buyers. The Buyers are responsible for recording the Warranty Deed with the Register of Deeds. Old West Escrow's setup fee and the monthly fee to maintain the escrow account shall be paid 50% by Seller and 50% by Buyers.

13.

MECHANIC'S LIENS: Buyers shall not permit the filing of any mechanic's liens or materialman's liens on the above-described property at any time during the term of this Contract. If any mechanic's liens are filed, they shall be discharged by Buyers within a period of thirty (30) days after the Buyers receive notice of said filing. All expenses associated therewith shall be paid equally by the Buyers and Seller.

14.

PROPERTY PURCHASED IN "AS IS" CONDITION. Buyers acknowledge that they have examined the subject real estate and the improvements thereon and accept the same in its present condition, and acknowledge that they are not relying on any representations or warranties, express or implied, of Sellers or any agent of Sellers, other than those described in this Contract, and the Buyers in buying said property are relying solely on their own judgment. Buyers hereby accept the subject real estate in its present condition. Buyers are buying the subject property in an "as is" condition, with Buyers to be responsible for the cost of all repairs necessary after the date of this Contract.

15.

ADDITIONS AND ALTERATIONS: Buyers shall make no major additions or alteration to the property described herein without the express written consent of the Seller. Upon obtaining such consent, all work shall be accomplished in a good and workmanlike manner. All additions and alterations made to the property shall be paid for by Buyers, and Buyers shall protect and indemnify Seller from all costs, expenses, damages, or loss by reason of said additions and alterations. Title to such additions and alterations shall vest in Seller and be subject to this Contract.

Buyer
PLG

Page 3 of 9

1722
PAC

16.

REMOVAL OF IMPROVEMENTS: Buyers agree not to dismantle or remove any of the improvements on the subject premises without the written consent of Seller.

17.

SALE OR ASSIGNMENT: Buyers understand and agree that they shall not assign or sell the above-described property, until all amounts due under this Contract are paid in full.

18.

DEFAULT: In the event Buyers default in the performance of any of the terms, covenants, conditions or obligations of this agreement assumed by them, Seller shall have the option to declare all deferred balances due and payable. Said option shall be exercisable by giving to the Buyers by certified mail, written notice of the nature of such default. If such default is cured within thirty (30) days from the date of notice, all provisions of this Contract shall remain in full force and effect. However, if any default shall occur twice in any one (1) calendar year or four (4) times during the life of this Contract and notice of such defaults have been given to the Buyers, then any subsequent default shall be deemed to be deliberate and upon such subsequent default, Buyers shall not have the privilege to cure the default unless granted in writing by Seller in Seller's sole discretion. All costs and expenses incurred by Seller in giving Buyers Notice of Default shall be added to the balance due hereunder and shall be paid by Buyers not later than the date on which the next payment is due. In the event of the failure of the Buyers to cure such default within said thirty (30) day period or in the event Buyers shall not have the privilege to cure the default, then the entire deferred balance interest shall be accelerated and declared due and payable, and Seller shall have the right to retake possession of all the property purchase hereunder, including all buildings, improvements, utilities, service lines and other such property as may be affixed to the realty as well as any chattels to be purchased in accordance with the terms hereof and to retain all payments made by the Buyers and improvements made by them on the premises as liquidated damages for the breach of this Contract, accurate damages being incapable of ascertainment. In the event of such default, all other remedies available to the Seller under the laws of the state of South Dakota, shall accrue to the Seller.

19.

COSTS OF DEFAULT, CURING AND OTHER REMEDIES: It is specifically understood and agreed between the parties hereto that all payments made by Buyers to Seller up to the time of any default and all improvements made on the premises up to the time of any default shall be deemed as a reasonable amount for delivery of possession and for the use and occupancy of the premises to the


Buyer

Page 2 of 2


Seller

time of such default. In the event Buyers correct any alleged default under this Contract within the aforementioned thirty (30) day curative period, then there shall be no acceleration of the payment schedule provided for herein and this Contract shall continue in force as originally written. It is not the purpose of these provisions to exclude any other remedies which might be available to Seller under the laws of South Dakota. Waiver by the Seller at any time of any default hereunder on the part of the Buyers shall not constitute a waiver by Seller of any other or subsequent default by Buyers.

20.

PEACEFUL SURRENDER ON DEFAULT: In the event of default on the part of Buyers, they will, on demand, quietly and peaceably surrender the said premises and possession thereof to Seller or Seller's agent.

21.

BANKRUPTCY OR INSOLVENCY: If any proceedings in bankruptcy or insolvency be filed against the Buyers or if any writ of attachment or writ of execution be levied upon the interest herein of the Buyers and such proceeding or levy shall not be released or dismissed within ninety (90) days thereafter or if any sale of the property described herein or any part thereof should be made under any execution or other judicial process or if the Buyers shall make any assignment for the benefit of creditors or shall voluntarily institute bankruptcy or insolvency proceedings, the Seller may declare a default under this Contract.

22.

EMINENT DOMAIN: In the event any portion of the real estate described in this Contract is acquired by any political subdivision of government or by a corporation possessing the power of eminent domain, either by eminent domain proceedings or in a transaction in lieu of or under threat of eminent domain proceedings, that all proceeds resulting from such acquisition shall be applied against the latest maturing installment. If these proceeds are greater than the amount of the latest maturing installment, they shall be applied to the next latest maturing installment in like fashion until the proceeds are all applied to installments due under this Contract.

23.

HOLD HARMLESS: Buyers agree to hold the Seller and Seller's successors in interest harmless from any liability of any kind or character arising out of the use and possession of the property covered by this Contract for Deed by the Buyers or anyone claiming under them, including but not limited to reasonable attorney fees incurred by Seller for any allegations, claims or other liability to

KG

DAK
MR

which the Seller is named as a party, or threatened to be made a party, arising out of Buyers use and possession of said property or anyone claiming under them.

24.

WAIVER: The waiver of any breach of this Contract by the Seller shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or any other provision in this Contract.

25.

NOTICE: Any notice pursuant hereto shall be accomplished by certified mail to the respective parties at the following address, unless notified in writing of any address change, to-wit:

SELLER:
Wild Bill's Campground & Resort, LLC
c/o Keith & Shelly Grimm
851 Ennen Dr.
Rapid City, SD 57703

BUYERS:
Duane and Melody Remington
6835 Arcadia St.
Summerset, SD 57715

26.

TIME: Time is of the essence of this Contract.

27.

BINDING UPON SUCCESSORS, HEIRS, ETC.: This Contract shall be binding upon the parties, their heirs, successors, administrators, executors, and assigns.

28.

APPLICABLE LAW: This Contract should be construed and interpreted in accordance with the laws of South Dakota.

Dated this 12th day of MAY, 2017.

SELLER:
WILD BILL'S CAMPGROUND
& RESORT, LLC

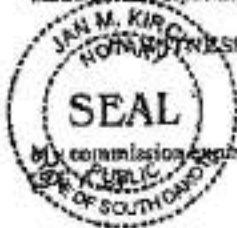
BUYERS:

By: Keith Grimm
KEITH GRIMM
Its: President

Duane Remington
DUANE REMINGTON
Melody K. Remington
MELODY REMINGTON

STATE OF SOUTH DAKOTA)
)SS.
COUNTY OF PENNINGTON)

On this the 18th day of May, 2017, before me, the undersigned Notary Public, personally appeared Keith Grieson who acknowledged himself to be the President of Wild Bill's Campground & Resort, LLC, a limited liability company, and that he, as such President, being authorized so to do, executed the foregoing instrument for the purposes herein contained, by signing the name of the corporation by himself as President.



IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

[Signature]
Notary Public

My commission expires: 1-4-2022

STATE OF SOUTH DAKOTA)
)SS.
COUNTY OF PENNINGTON)

On this 12th day of May, 2017, before me, the undersigned officer, personally appeared DUANE REMINGTON, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.



IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

[Signature]
Notary Public

My commission expires: 1-4-2022

STATE OF SOUTH DAKOTA)
)SS.
COUNTY OF PENNINGTON)

On this 12th day of May, 2017, before me, the undersigned officer, personally appeared MELODY REMINGTON, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.



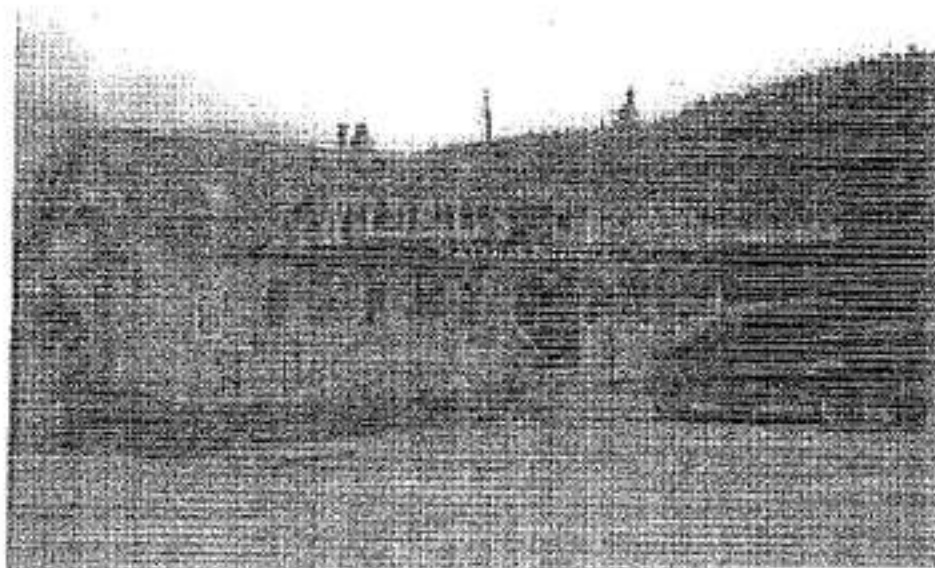
IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

[Signature]
Notary Public

My commission expires: 1-4-2022

KG

DAR
MR



Wild Bill's Campground, Saloon & Grill

21372 U.S. Highway 385
Deadwood, SD 57732

Bryan Iverson
Broker Associate
Re/Max Results
1240 Jackson Blvd.
Rapid City, SD 57702
(605)484-9422 Cell
(605)341-4300 Office
bryan9422@gmail.com



PLF.00054

Address
21372 US Hwy 385
Deadwood, SD 57732

Legal Description

Lot E ex H1 (.04AC) & H2 (.06ac) &
Lot E-2 of HES 137 Acres: 11.21
Sec 18, Township 4 North, Range 4 East
Tracts 0091-A & 0091-B Acres: 1.53
Sec 17, Township 4 North, Range 4 East

Property Tax Information

Lawrence County

Parcel # 14000-00404-180-02
Taxes Payable in 2016: \$4,798.40

Parcel # 14000-00404-170-15
Taxes Payable in 2016: \$1200.72

Total Taxes Payable in 2016: \$5,999.12

Listing Price: \$899,000

Description of Property

- 12.74 Acres
- Well with new filtration system
- 98+ Total sites
- 9 - 50 amp full hook-ups
- 16 - 30 amp full hook-ups
- 5 - 30 amp electric & water sites
- 14 - 30 electrical sites
- 11 pop-up/tent sites
- Numerous Tent Sites
- Duplex cabin each side has 2 beds, bathroom, kitchen, & fireplace
- 7 Sleeping cabins with 2 beds, table & refrigerator
- Updated Shower/laundry house
- Play area
- Saloon & Grill
- Store
- Living quarters
- 3 Walking bridges & 2 driving bridges
- Wi-Fi in certain areas of campground
- Malt liquor license
- Bear Butte & Strawberry creeks meet on the property
- Snowmobile Trail on property
- 5 miles from Deadwood



PLF.00055

Duplex Cabin



Each Unit has the following:

- 2 Beds and Futon
- Gas Fireplace
- Bathroom with Shower
- Kitchen
- Table & chairs
- Parking next to unit
- Outside seating

6 Sleeping Cabins



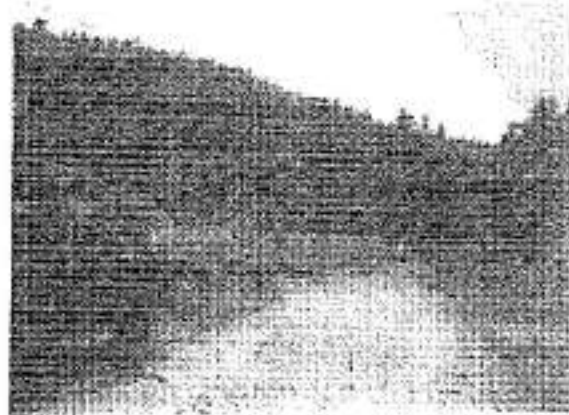
- 2 Beds
- Refrigerator
- Table & Chairs

PLF.00056

Camping Sites



16 - 30 amp Full Hook-up Sites



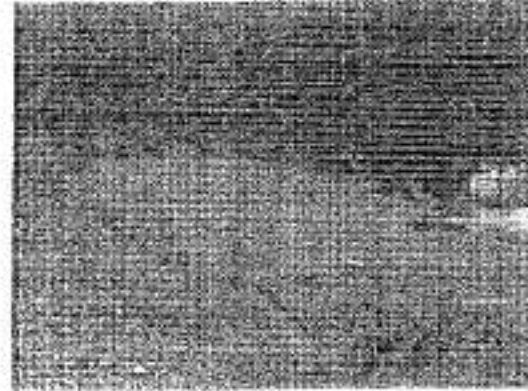
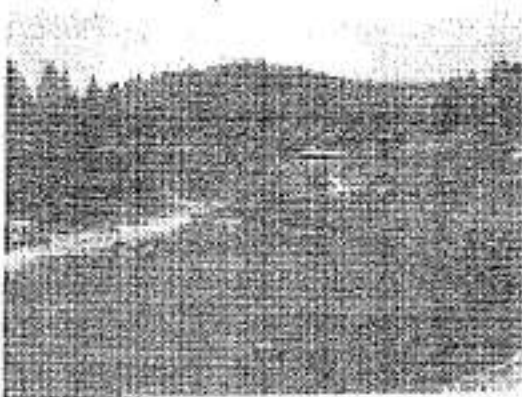
9 - 50 amp Full Hook-up Sites



14 - 30 amp Electrical Sites

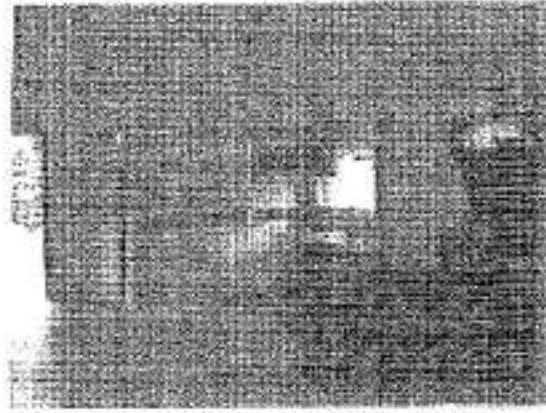
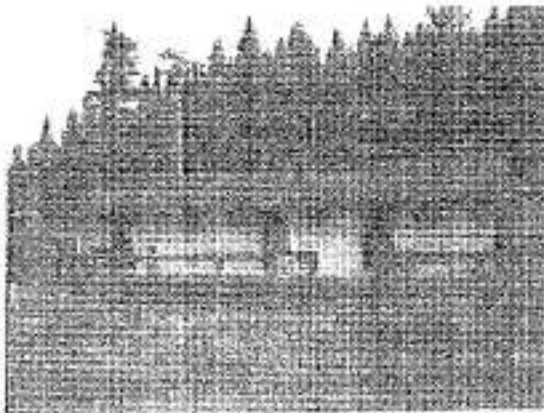


5 - 30 amp Electrical & Water Sites

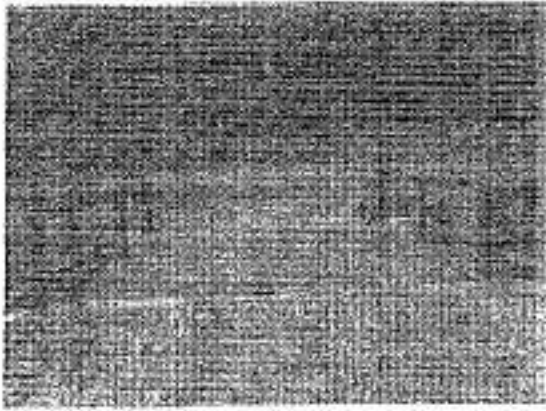
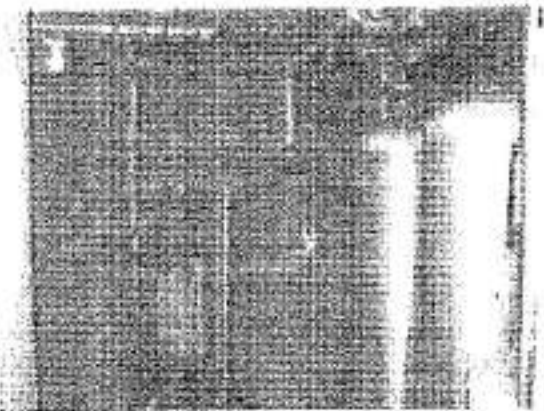


Other Camp Sites or possible future expansion of Electrical or Full Hook-up Sites.
PLP.00057

Other Features and Facilities

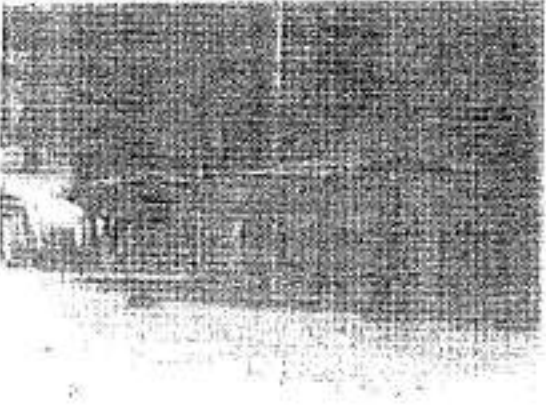
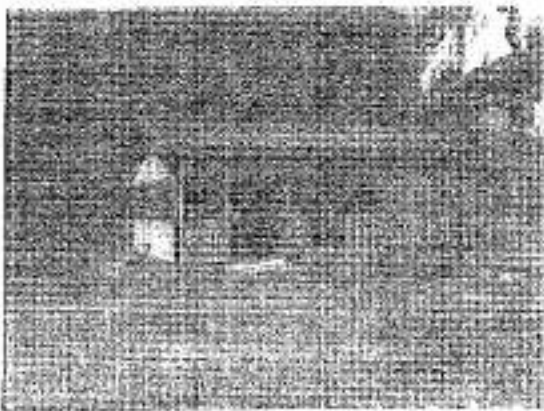


Shower House, Laundry & Game Room



Well House and Filtration System

New Drive Bridge



Building for Gatherings

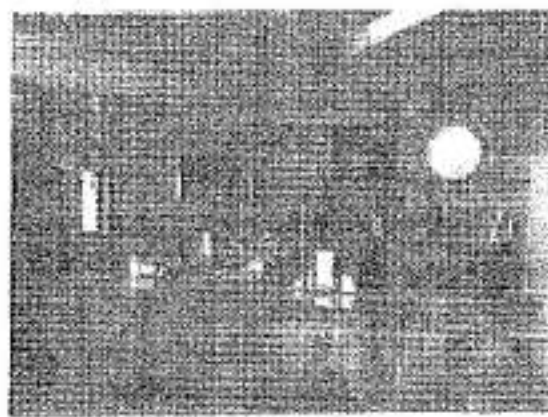
Part of the New Electrical Service

PLF.00058

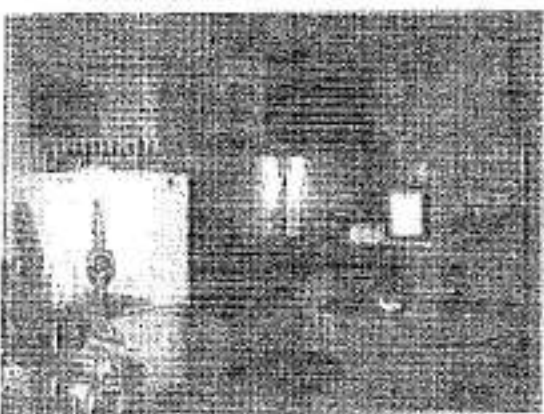
Main Building



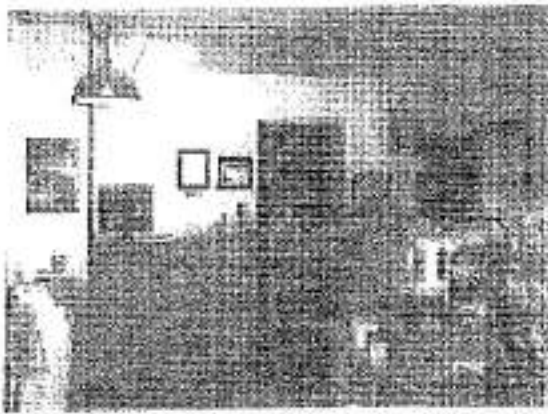
Main Building w/ Living Quarters



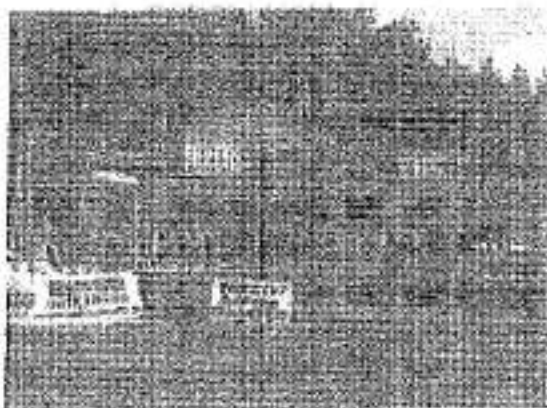
Saloon & Dining Area



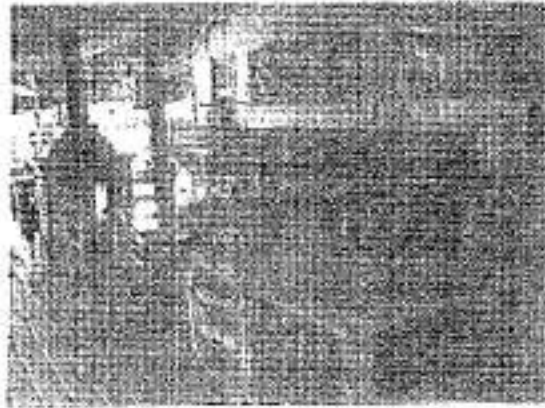
Grill & Back Bar Area



View of Bar & Dining Area



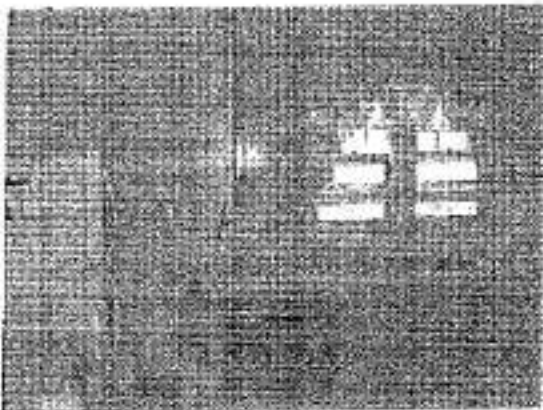
New Covered Deck Area



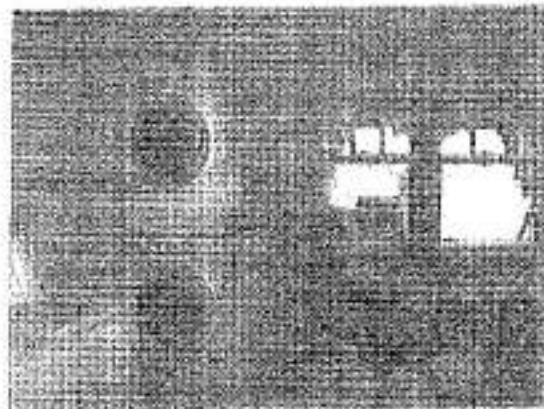
Custom Built Chairs & Tables

PLF.00059

Main Building



Kitchen in Living Quarters



Storage & Laundry Room in Living Qtrs.



Office/Bedroom and Full Bath

The Living Quarters main level: kitchen (pictured above), living room (pictured above, used as storage area and laundry), and bedroom with full bath (bedroom currently used as office and storage). Basement has 3 bedrooms, 1/2 bath and workshop area. Living Quarters is the back portion of the main level shared with the Bar, Grill and Store area and a full basement.

PLF.00060

CERTIFICATE OF REAL ESTATE .LUE [SDCL 7-9-7(4)]

COURTHOUSE USE ONLY

Book _____ Page _____

STATE OF SOUTH DAKOTA, COUNTY OF

Lawrence

Ratio Card No. _____

Seller(s): Wild Bill's Campground and Resort, LLC (605) 890-2779
 Name _____ Phone Number _____
 Mailing Address: 851 Emmen Dr. Rapid City SD 57703
 Street/Box Number _____ City _____ State/Zip Code _____
 Buyer(s): Duane and Melody Remington (605) 431-1432
 Name _____ Phone Number _____
 Current Mailing Address: 6835 Arcadia St Summerset SD 57718
 Street/Box Number _____ City _____ State/Zip Code _____
 NEW Mailing Address: _____ _____
 Street/Box Number _____ City _____ State/Zip Code _____

OWNER OCCUPIED - THIS BOX TO BE COMPLETED BY BUYER ONLY

These items are important to complete for property to continue to be classified as owner occupied for a lower property tax rate.

Property is currently classified as owner-occupied

YES ☐ NO ☒

Property will be occupied by buyer on _____ (date)

YES ☐ NO ☒

Property will be principal residence of buyer on the above stated date

YES ☐ NO ☒

Do you own any other residential property in the United States?

YES ☐ NO ☒

If yes, state location _____

Signature (BUYER ONLY) _____

Legal Description (Please include the number of acres for unplatted properties)

See Attached

(1) Date of Instrument 5-12-17

(2) Type of Instrument:

Contract for Deed ☒
Quit Claim Deed ☐
Warranty Deed ☐Executor's Deed ☐
Trustee's Deed ☐
Administrator's Deed ☐Mineral Deed ☐
Gift ☐
Other (Specify) _____

(3) Items Involved in Transaction

(a) Was this property offered for sale to the general public?

YES ☒ NO ☐

(b) Relationship between buyer and seller?

YES ☐ NO ☒(c) Property was sold by owner ☐ agent ☒(d) Actual Consideration Exchanged: \$ 895,000.00(e) Adjusted price paid for real estate: \$ 494,995.00

(actual consideration less amount paid for major items of personal property which are listed below)

In the blanks below, list any major items of personal property and their value which were included in the total purchase price (i.e. furniture, inventory, crops, leases, franchises):

Equipment - 205,100Goodwill - 200,000(4) Was there Buyer Financing? YES ☒ NO ☐ If yes, items (a) and (b) below MUST be completed

(a) Type of Buyer Financing - Check where applicable

Conventional Bank Loan <input type="checkbox"/>	Like Kind Exchange <input type="checkbox"/>
Cash Sale <input type="checkbox"/>	Assumed mortgage <input type="checkbox"/>
FHA, FmHA, SOHA Loan <input type="checkbox"/>	Farm Credit Service <input type="checkbox"/>
Contract for Deed <input checked="" type="checkbox"/>	(must complete part (b))

(b) Contract for Deed: YES ☒ NO ☐ (If yes, MUST complete items below)

Down Payment	<u>\$217,000.00</u>	Interest Rate	<u>8.5%</u>
Monthly/Yearly Payment	<u>\$1,091.18</u>	No. of Payments	<u>240</u>
		Ballon Payment	

Melody K. Remington
 (Signature of Seller, Buyer or agent of _____)

5-12-17
 (Date)

EXHIBIT

6

CERTIFICATE OF REAL ESTATE VALUE [SDCL 7-9-7(4)]

COURTHOUSE USE ONLY

Book _____ Page _____

STATE OF SOUTH DAKOTA, COUNTY OF

Lawrence

Radio Card No. _____

Seller(s): <u>Keith A. Grimm</u>		<u>(605) 390-2779</u>
Name		Phone Number
Mailing Address:	<u>851 Ennen Dr.</u>	<u>Rapid City</u>
Street/Box Number	City	State/Zip Code
		<u>SD 57703</u>
Buyer(s): <u>Duane and Melody Remington</u>		<u>(605) 431-1432</u>
Name		Phone Number
Current Mailing Address:	<u>6835 Arcadia St.</u>	<u>Summerset</u>
Street/Box Number	City	State/Zip Code
		<u>SD 57718</u>
NEW		
Mailing Address:		
Street/Box Number	City	State/Zip Code

OWNER OCCUPIED - THIS BOX TO BE COMPLETED BY BUYER ONLY

These items are important to complete for property to continue to be classified as owner occupied for a lower property tax rate.

Property is currently classified as owner-occupied	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
Property will be occupied by buyer on _____ (date)	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
Property will be principal residence of buyer on the above stated date	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
Do you own any other residential property in the United States?	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> If yes, state location _____

Signature (BUYER ONLY) _____

Legal Description (Please include the number of acres for unplatted properties)

See attached

(1) Date of Instrument 5-12-17

(2) Type of Instrument:

Contract for Deed <input type="checkbox"/>	Executor's Deed <input type="checkbox"/>	Mineral Deed <input type="checkbox"/>
Quit Claim Deed <input type="checkbox"/>	Trustee's Deed <input type="checkbox"/>	G.A. <input type="checkbox"/>
Warranty Deed <input checked="" type="checkbox"/>	Administrator's Deed <input type="checkbox"/>	Other (Specify) _____

(3) Items Involved in Transaction

(a) Was this property offered for sale to the general public?	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	(d) Actual Consideration Exchanged: <u>\$898,000.00</u>
(b) Relationship between buyer and seller?	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	(e) Adjusted price paid for real estate: <u>\$499,000.00</u>
(c) Property was sold by owner <input type="checkbox"/> agent <input checked="" type="checkbox"/>		(Actual consideration less amount paid for major items of personal property which are listed below)

In the blanks below, list any major items of personal property and their value which were included in the total purchase price (i.e. furniture, inventory, crops, leases, franchises):

Equipment - \$200,000
Goodwill - \$200,000

(4) Was there Buyer Financing YES ☒ NO ☐ If yes, Items (a) and (b) below MUST be completed

(a) Type of Buyer Financing - Check where applicable		(b) Contract for Deed YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> (If yes, MUST complete items below)	
Conventional Bank Loan <input type="checkbox"/>	Like Kind Exchange <input type="checkbox"/>	Down Payment	<u>\$217,000.00</u>
Cash Sale <input type="checkbox"/>	Assumed mortgage <input type="checkbox"/>	Monthly/Yearly Payment	<u>\$4,001.36</u>
FHA, FmHA, SDHA Loan <input type="checkbox"/>	Farm Credit Service <input type="checkbox"/>	Interest Rate	<u>5.5%</u>
Contract for Deed <input checked="" type="checkbox"/>	(Must complete part (b))	No. of Payments	<u>240</u>
		Ballon Payment	

Melody R. Remington
(Signature of Seller, Buyer or agent of _____)

5-12-17
(Date)



EXCLUSIVE LISTING AGREEMENT BLACK HILLS ASSOCIATION OF REALTORS®



☐ RE Residential ☐ LD Land ☐ MF Multi-Family ☐ CI Commercial ☒ BI Business/Industry

THIS IS A LEGAL AND BINDING CONTRACT, IF NOT FULLY UNDERSTOOD, SEEK LEGAL ADVICE

Term Commences July 21, 2016 expires December 31, 2017 at 12:01 A.M. If a Buyer enters into a purchase agreement with Seller during the term of this agreement, the termination of this agreement shall extend to and include the date of closing under the purchase agreement with said Buyer only.

1. **LEGAL DESCRIPTION.** The undersigned Seller warrants that he/she is the owner of record of the property or has the written authority to execute this Agreement on behalf of the owner of record and hereby grants the undersigned Broker, for the above term, the exclusive irrevocable right and privilege to sell the following property legally described as:

Parcel 1: Lot E ex. H1(.04 ac) & H2 (.06 ac) & Lot E-2 of HES 137 on Section 18 T4N R4E

Parcel 2: Tracts 0091A & 0091B in Section 17 T4N R4E

Total Acres 12.74

County: Lawrence, State: South Dakota

Also known as: Wild Bill's Campground, 21372 US Hwy 385 Deadwood, SD 57732

2. **TERMS:** For the sum of \$ \$99,000.00, on the following terms: Cash or New Loan

or, with Seller's consent, for any sum or on other terms which price includes all encumbrances, taxes, assessments and discount points charged at time of closing by mortgagee, as agreed upon by Buyer and Seller.

3. **PERSONAL PROPERTY:** The following personal property shall be conveyed by Seller to Buyer, free of liens and without warranty of condition, by bill of sale at closing and in accordance with its terms:
See Attached List

4. **DEFINITION:** The term "sale" shall be deemed to include any exchange, trade, lease or option to purchase to which the Seller consents. In the event of a sale, the Broker is permitted to represent and receive compensation from both parties.

5. **PROFESSIONAL FEE:** If a purchaser is procured for the property by the Broker, by any other cooperating broker, by the Seller, or by any other person at the price and upon the terms stated above, or at any other price or upon any other terms accepted by the Seller during the term of this Agreement or if exchanged or optioned during the term of this contract and said option is exercised, or if within 60 days after the expiration of this agreement, the property is sold to any person to whom the property was shown the Seller agrees to pay a fee for professional services of 6% of the sales price plus required sales taxes and an applicable transaction fee of \$0.00. Seller further agrees that Broker or Broker's authorized representative may act as escrow agent for all money, transaction papers, and documents associated with this transaction. If this property is listed with another licensed real estate broker after expiration of this listing, this contract shall be null and void in its entirety. In the event that an option is accepted by the Seller, all money received for said option shall be divided 50% to the Seller and 50% to the Broker with the Broker not to receive more than the above agreed upon professional fee. The Broker and Seller, as parties to this agreement, agree that a party in breach of any of the covenants, promises or obligations arising under this contract shall be liable and responsible for attorney's fees and costs that may result from enforcement thereof as against the party in breach.

6. **EARNEST MONEY:** The Listing Office shall deposit and hold all deposits, including earnest money until the sale is closed. If earnest money deposited by the Buyer is forfeited, the earnest money, less expenses, shall be divided 50 % to Seller and 50 % to Listing Office. However, in no case may the Listing Office's share exceed the compensation stated herein. Seller understands that per SDCL 36-21A-81, both Buyer and Seller must agree in writing to release of earnest money.

7. **PROCEEDS DISBURSEMENT:** It is agreed that the Listing Office and/or Closing Agent shall hold the balance of the sales price for account of Seller until all expenses incurred on the Seller's behalf, relating to the sale of this property, have been paid.

Seller(s) KG and Listing Office Broker/Agent BRJ have read this page
(Initials) (Initials)

Page 1 of 3

ReMax 045

DocId: 346510-807146-905922

Prepared by: Ryan Jensen | REW@Realtors | bje@422@gmail.com

APP. 055

8. **TRANSFER OF TITLE:** Seller represents the title of the property to be good and merchantable and hereby warrants that all known encumbrances, liens or clouds on title are disclosed. In the event of a sale, exchange or trade, Seller, at their expense, will convey to the Buyer good and merchantable title to said property by Warranty Deed or such other conveyance instrument, sufficient to convey good and merchantable title, properly signed and with the necessary State Transfer Fee for recording paid by Seller. Further, Seller, at their expense, shall promptly furnish to the Buyer an Owner's Policy of Title Insurance in the amount of the purchase price.
9. **NON-DISCRIMINATION:** This property is offered for sale regardless of race, religion, creed, color, sex, handicap, familial status, ancestry, national origin, or any other protected class under law.
10. **MULTIPLE LISTING SERVICE:** Any listing taken on a contract to be filed with the multiple listing service is subject to the rules and regulations of the service upon signature of the seller(s).
11. **SELLER AUTHORIZES BROKER, BY INITIALS IN THE APPROPRIATE SPACE TO:**

1. List and market the herein property with the local MULTIPLE LISTING SERVICE (MLS) within 72 hours pursuant to MLS Rules and Regulations. Yes KG / No /
2. Withhold the herein property from the local MULTIPLE LISTING SERVICE (MLS) by completing and signing a Certification to Withhold Property Listing from Multiple Listing Service form. Yes / No KG /
- a. Seller understands that withholding property from the MLS impacts property exposure by NOT marketing to all other area REALTORS*. Yes / No /
- b. Seller understands that withholding property from the MLS impacts property exposure by NOT notifying potential buyers working with other REALTORS* or using the MLS online website. Yes / No /

Listing agent shall file said Certification to Withhold with the MLS within 72 hours (a signed copy of the Certification to Withhold will be provided to the Black Hills Association of REALTORS).*

3. Seller authorizes broker, by initials in the appropriate space to:
- a. Place a FOR SALE sign on the property. Yes / No KG /
- b. Place a LOCKBOX on the property. Yes / No KG /
- c. Cooperate with other Brokers, including Brokers representing a buyer, and Seller further agrees Broker may compensate selling Brokers. Yes KG / No /
- d. Request mortgagee, if any, to release financial information to listing office. Yes KG / No /
- e. Request utility companies to release utility information to listing office. Yes KG / No /
- f. Advertise by computerized or other media. Yes KG / No /

12. **SELLER'S PROPERTY DISCLOSURE STATEMENT:** Seller hereby agrees to indemnify and hold Broker and Brokers agent harmless from any claim(s) arising out of misrepresented or incomplete disclosure statements made by Seller. Seller agrees to fill out a Seller's Property Disclosure Statement, if applicable, and have it available for inspection on the premises. By state law (SDCL 43-4-38) this disclosure must be shared with other Brokers and potential Buyers before a Purchase Agreement is written.

☒ The parties acknowledge that no disclosure statement is required by reason of the following: Business

13. **LEAD PAINT DISCLOSURE:** Seller shall complete and submit a lead-based paint disclosure if property is residential and built prior to 1978 as required by federal regulation.
14. **AGENCY DISCLOSURE:** The seller acknowledges that they have received a copy of an Agency Relationship Disclosure and agree in writing to the applicable Agency Relationships as shown in the herein attached Agency Addendum.

Seller(s) KG and Listing Office Broker/Agent BA have read this page
(Initials) (Initials)

15. **DISPUTE RESOLUTION:** Seller agrees that any dispute or claim arising out of or relating to the sale of this property shall be submitted to mediation in accordance with the rules and procedures of the Sellers/Buyers Dispute Resolution System. Any costs of mediation will be shared equally between the Buyer and Seller.

16. **TAX CONSEQUENCES:** The Seller acknowledges that there may be tax consequences arising out of the sale of this property and that they are advised to seek competent tax advice.

17. **OTHER:**

1. If Listing Agent represents the Buyer, commission to be 5%

The undersigned hereby agree to the above terms and acknowledge receipt of a copy of this agreement.

Dated this 21st day of July, 2014

Keith Grimm, President

Seller's Name - Printed or Typed

X Keith Grimm President
Seller's Signature

Seller's Name - Printed or Typed

RE/MAX Results

Listing Company

Bryan Iverson

Listing Agent

X
Seller's Signature

Anthony Henry
Designated Broker's Signature

Bryan Iverson
Listing Agent's Signature

ALL FIELDS DETAIL



MLS #	129714	Parking # of Spaces	31+ spaces
Class	BUSINESS	Will Sell	All
Industry	INDUSTRY	Type of Sale Desired	Asset
Status	ACTIVE	Gross Income	150001
Type	Accommodation		-300000
Area	Northern Hills	Business Days	Summer Only
Asking Price	\$699,000	Total Square Foot	1500-1999
Address	21372 HWY 385	Business	Real Estate
City	Deadwood		Included
State	SD		
Zip	57732		
Sale/Rent	For Sale		
IDX Include	Y		

GENERAL

VOW Include	Yes	VOW Address	Yes
VOW Comment	Yes	VOW AVM	Yes
Number of Units	101	Agent	BRYAN IVerson - Cell: 605-484-8422
Listing Office 1	RE/MAX RESULTS - FRW: 605-341-4300	Compensation VRC Y/N	Yes
Compensation to Buyers Ag	3%	Business Name	Wild Bills Campground
Business Description	Campground, Saloon & Grill	Owner Name	W B Campground & Resort, LLC
Listing Date	7/21/2016	Business Hours	Open Daily May- September
Legal	See Addendum	Taxes	\$400 approx.
Tax Year	2015	Tax Returns Available Y/N	Yes
Owners Salary in Expenses	Yes	County	Lawrence
Associated Document Count	0	Auction Y/N	No
Exclusion on File	No	Short Sale	No
Update Date	7/22/2016	Status Date	7/22/2016
HotSheet Date	7/22/2016	Price Date	7/22/2016
Input Date	7/22/2016 10:59 AM	Original Price	\$699,000
Days On Market	1	Geocode Quality	Exact Match With Bing
Picture	32		

FEATURES

REAL ESTATE	BUSINESS ENTITY	DOCUMENTS ON FILE	VIEW
Owned	LLC	Financial Statements	Hills
Include in Price	TRAINING INCLUDED	Equipment List	Creek
LOCATION	1-2 Weeks	Profit/Loss Statements	Trees
Free Standing	NUMBER OF EMPLOYEES	SHOWING INSTRUCTIONS	Meadow
Black Hills	1-5	Call List Agent	
		See Remarks	

PUBLIC REMARKS

Excellent Opportunity & Location! Wild Bill's Campground, Saloon & Grill is approx. 5 miles from Deadwood on Hwy 385. There is 12.74 acres, 88+ total campsites with 9 - 50 amp full hook-up, 16 - 30 amp full hook-up, 14 - 30 amp electric only sites, 5 - 30 amp electric & water sites, shower house w/ laundry & game room, 1 duplex cabin, & 7 sleeping cabins. Main building includes office, store, saloon, grill, and living quarters. Bear Butte Creek & Strawberry Creek meet on the property. Retail on & off sale Malt Beverage License. Some of the improvements: New electrical service (plenty for future expansion), water filtration system, water lines, 7 sleeping cabins. 24x50 Deck onto Bar & Grill building, remodeled Mens & Womens bathrooms & showers, and many more (list available). This excellent opportunity to own a campground, bar & grill so close to Deadwood and other wonderful attractions in the Black Hills. Listed by Bryan Iverson (605)484-8422 with Re/Max Results

AGENT ONLY REMARKS

Please call Listing Agent to set-up showing. Confidentiality agreement to be signed before receiving financial information and must be a qualified buyer. Owner will carry contract for deed with \$200,000 down payment.

ADDENDUM

Please go to www.wildbillscamp.com to view campgrounds web-site. Legal Description: Parcel 1: Lot E ex H1 (.04 ac) & H2 (.06 ac) & Lot E-2 of HES 137 in Sec 16 T4N R4E Parcel 2: Tracts C081-A & D081-B in Sec 17 T4N R4E

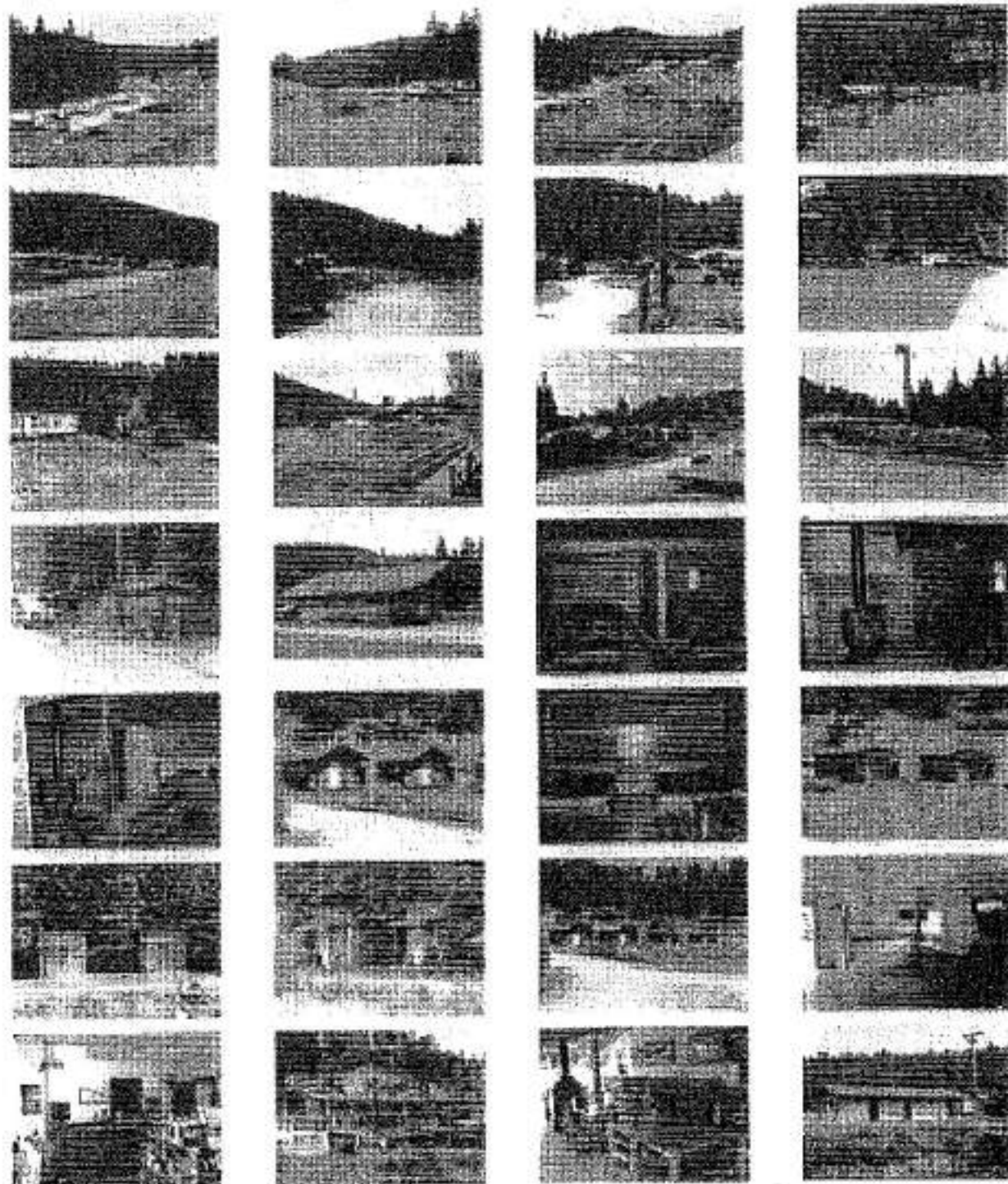
ADDITIONAL PICTURES

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ReMax 042

<http://blackhills.paragonreels.com/ParagonLS/Reports/Report.mv?listingIDs=129714&screenWidth=160...> 7/22/2016

APP. 058



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 RelMax 043

<http://blackhills.paragonreels.com/ParagonLS/Reports/Report.mvc?listingId=129714&screenWidth=160...> 7/22/2016

APP. 059



DISCLAIMER

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REAL ESTATE RELATIONSHIPS DISCLOSURE

South Dakota real estate brokers are required to develop and maintain a written office policy that sets forth agency and brokerage relationships that the broker may establish. The broker must disclose in writing the types of agency and brokerage relationships the broker offers to consumers and to allow a consumer the right to choose or refuse among the various real estate relationships. The following real estate relationships are permissible under South Dakota law.

☒ **Single Agent-Seller's/Landlord's Agent:** Works on behalf of the seller/landlord and owes duties to the seller/landlord, which include good faith, loyalty, and fidelity. The agent will negotiate on behalf of and act as an advocate for the seller/landlord. The agent may not disclose confidential information without express authority of the seller or landlord.

☒ **Single Agent-Buyer's/Tenant's Agent:** Works on behalf of the buyer/tenant and owes duties to the buyer/tenant which include good faith, loyalty, and fidelity. The agent will negotiate on behalf of and act as an advocate for the buyer/tenant. The agent may not disclose confidential information without express authority of the buyer or tenant.

☒ **Designated Agent:** Works on behalf of the seller/landlord or buyer/tenant and owes the same duties to the client as that of a single agent. A seller/landlord or buyer/tenant with an appointed agency agreement is represented by agents specifically named in the agreement. Any agents of the firm not named in the agreement do not represent the seller/landlord or buyer/tenant. The named appointed agent acts solely on behalf of his or her client and may only share confidential information about the client with the agent's responsible broker or the broker's designee who is also named in the agreement. Other agents in the firm have no duties to the seller/landlord or buyer/tenant and may act solely on behalf of another party in the transaction. The responsible broker and the broker's designee act as a disclosed limited agent when appointed agents within the same firm are representing their respective clients in the same transaction.

☒ **Disclosed Limited Agent:** Works on behalf of more than one client in a transaction, requiring the informed written consent of the clients before doing so. A limited agent may not disclose confidential information about one client to another without written permission releasing that information. While working to put the transaction together, agents in a limited agency transaction cannot negotiate nor advocate solely on behalf of either the seller/landlord or buyer/tenant. ~~A limited agent may not be used to continue to represent one party in a transaction after the other party has been represented by another agent.~~

☒ **Transaction Broker:** Exercises reasonable skill and care in assisting one or more parties with a real estate transaction without being an advocate for any party. Although the transaction broker will help facilitate the transaction, the licensee will serve as a neutral party, offering no client-level services (such as negotiation) to the customer. The transaction broker may not disclose confidential information about a party to another without written permission releasing that information.

Duties of a buyer, tenant, landlord, or seller: The duties of the real estate licensees in a real estate transaction do not relieve a party to a transaction from the responsibility to protect the party's own interests. Persons should carefully read all documents to ensure that they adequately express their understanding of the transaction. If legal or tax advice is desired, consult a competent professional in that field.

All real estate licensees must provide disclosure of all actually known adverse material facts about the subject property or a party's ability to perform its obligations.

South Dakota law requires a written agreement which sets forth the duties and obligations of the parties as described in the brokerage relationships itemized above.

The office policy of Re/Max Results (company) is to offer only those services marked above.
By Bryan Iverson (licensee)

Acknowledgment: I have been presented with an overview of the brokerage relationship options available and hereby acknowledge receipt of:

Real Estate Relationships Disclosure form
Consumer Real Estate Information Guide (residential property sales transaction only)

I understand that receipt of these materials is for disclosure purposes only and does not constitute a contract or agreement with the licensee.

Signature [Signature] Date 4-27-17 Time 10:00 am/pm

Signature [Signature] Date 4-27-17 Time 10:00 am/pm

By marking a box and signing below, it is understood that the consumer is working without the benefit of client or transaction broker representation.

- ☐ Buyer/tenant understands that Broker is not representing Buyer/Tenant as a client or working with Buyer/Tenant as a transaction broker. Buyer further understands that Broker is acting as agent for the seller or is assisting the seller as a transaction broker.
- ☐ Seller/Landlord understands that Broker is not representing Seller/Landlord as a client or working with Seller/Landlord as a transaction broker. Seller further understands that Broker is acting as agent for the buyer or is assisting the buyer as a transaction broker.

Signature(s) _____ Date _____ Time _____ am/pm

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See also: 006119-000149-N02001

Prepared by Bryan Iverson | RE/Max Results | bryan@222bimmo.com

Re/Max 038



AGENCY AGREEMENT ADDENDUM



This addendum is attached to and made a part of the ☒ Exclusive Listing Agreement ☐ Buyer Agency Agreement dated 7/21/16 between Re/Max Results (Brokerage Firm) and Wild Bill's Campground & Resort LLC (Client).

I. IF THE BROKER REPRESENTS THE ☒ SELLER/LANDLORD or ☐ BUYER/TENANT: If a broker enters into an agreement to represent an seller/landlord or buyer/tenant as a client, the broker and all licensees associated with that broker represent the client. An agent/subagent owes the client the duties of loyalty, obedience, disclosure, confidentiality, reasonable care and diligence, and full accounting.

II. ~~IF THE BROKER APPOINTS AN ASSOCIATE LICENSEE TO REPRESENT THE~~ ☐ SELLER/LANDLORD or ☐ BUYER/TENANT: If a broker enters into an agreement to represent a seller/landlord or buyer/tenant as a client, the broker appoints N/A as the client's appointed agent. For the purposes of this addendum, the client shall have an agency relationship with ONLY the appointed agent, the responsible broker _____ and, if applicable, responsible broker's designated broker _____.

The responsible broker may appoint other affiliated licensees during the term of the brokerage agreement should the appointed agent not be able to fulfill the terms of the brokerage agreement or as by agreement between the responsible broker and the client. An appointment of another affiliated licensee or an additional affiliated licensee does not relieve the first appointed agent of any duties owed to the client. In an appointed agency relationship, the responsible broker and, if applicable, the responsible broker's designated broker will act in a limited agency capacity.

~~III. IF A BUYER/TENANT REPRESENTED BY A BROKER WANTS TO SEE A PROPERTY OF A SELLER/LANDLORD BEING REPRESENTED BY THE SAME BROKER:~~ A real estate broker acting directly or through an associate licensee or appointed agent can legally be the agent of both the seller/landlord and the buyer/tenant in a transaction, but only with the knowledge and written consent of both parties. Upon such consent the broker, associate licensee or appointed agent represents both the seller/landlord and the buyer/tenant and the following provisions will govern the actions of the broker:

- The broker may not knowingly say anything or do anything which might place one party at a disadvantage, disclose personal confidences of one party or the other party, or any other information a party specifically instructs the broker in writing not to disclose, unless disclosure is required by law.
- The broker may not, without the prior express written consent of the owner, disclose to the buyer/tenant that the owner might accept a price less than the listing price, nor shall the broker, without the prior express written consent of the buyer/tenant, disclose to the owner that the buyer/tenant may be willing to pay a higher price, or accept terms less favorable to the buyer/tenant than those indicated in the buyer's/tenant's previous offer.
- ~~The broker may not represent the interests of either the owner or buyer/tenant to the detriment of the other party.~~ The broker is obligated to inform each party of all facts the broker knows which would affect the party's decision to permit the broker to represent both the owner and the buyer/tenant.

CONSENT AGREEMENT: If the seller/landlord elects to negotiate with a buyer/tenant that is a client of the broker, or a buyer/tenant elects to negotiate with a seller/landlord that is a client of the broker, it is understood that both parties will be required to confirm, in writing, their election to have the broker act as a consensual limited agent.

AGENT OBLIGATIONS: Regardless of representation, the broker shall: ~~disclose all known material facts~~ about the property which could affect the buyer's/tenant's use or enjoyment of the property, disclose information which could have a material impact on either party's ability to fulfill their obligations under the purchase/lease agreement, respond honestly and accurately to questions concerning the property, and deal honestly and fairly with all parties. The duties of the broker in a real estate transaction do not relieve an owner or buyer/tenant from the responsibility to protect their own interests. You should carefully read all documents to assure that they adequately express your understanding of the transaction. If you have questions regarding the duties and responsibilities of the broker, you should resolve those questions before proceeding further.

Having read and understood this information about agency, I instruct Broker as initiated below:			
I agree to an appointed agency relationship as described in section II above. Yes <u>1</u> / No <u>1</u> N/A <u>KG</u>			
I agree to a potential limited agency representation as described in section III above. Yes <u>KG</u> / No <u>1</u> N/A <u>1</u>			
<input type="checkbox"/> Buyer/Tenant	<input checked="" type="checkbox"/> Seller/Landlord	(date/time) <u>7/21/16 10AM</u>	<input type="checkbox"/> Buyer/Tenant
<input checked="" type="checkbox"/> Broker	<input checked="" type="checkbox"/> Seller/Landlord	(date/time) <u>7/21/16 10AM</u>	<input type="checkbox"/> Buyer/Tenant
by <u>Anthony Henry</u>		by <u>[Signature]</u>	(date/time) <u>7/21/16 10AM</u>
(date/time) <u>7/21/16 10AM</u>		(date/time) <u>7/21/16 10AM</u>	(date/time) <u>7/21/16 10AM</u>

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Broker: 24802-100146-000000

Prepared by: Bryan Jensen | RE/MAX Results | bryan@remax.com

Re/Max 648



REALTOR

BUYERS AGENCY AGREEMENT

(EXCLUSIVE AGREEMENT TO REPRESENT BUYERS)

(This is a legally binding contract. If you do not understand it, seek legal advice.)



Broker will assist Buyer as Buyer's exclusive agent under the terms specified herein. Buyer represents to Broker that Buyer has not employed, retained, contracted with nor in any other manner engaged another broker to assist in acquiring an interest in the property that is within the scope of this Agency Agreement. Buyer agrees to protect, defend, indemnify, and hold Broker harmless from any claims, demands, suits, actions by or on behalf of another Broker and all expenses related thereto, including reasonable attorney's fees, arising from any breach of this representation by Buyer. The Broker and Buyer, as parties to this agreement, agree that a party in breach of any of the covenants, promises or obligations arising under this contract shall be liable and responsible for attorney's fees and costs that may result from enforcement thereof as against the party in breach.

- Buyer gives Broker the exclusive right to locate and/or assist in negotiations for the purchase, exchange, or option to purchase property (purchase) at a price and with terms acceptable to Buyer.
- Buyer agrees to compensate Buyer's Broker. **THE AMOUNT OF COMPENSATION SHALL BE** _____ percent of the selling price OR \$ _____, whichever is greater, plus appropriate sales/service tax, which may be satisfied in whole or in part by payments from a cooperating Broker or Seller of properties sold by a Broker or Seller. Buyer agrees to pay Broker _____ of purchase price, but said amount will be reduced by any amount paid by Seller.
- Buyer acknowledges that they have received a copy of an Agency Relationship Disclosure and agree in writing to the applicable Agency Relationships as shown in the herein attached Agency Addendum.
- Buyer acknowledges and consents that Broker may represent other buyers who may have an interest in presenting purchase agreements on any given property for sale by a Seller.
- BUYER'S OBLIGATION: Buyer will:**
 - Work exclusively with Broker for the purchase of property.
 - Provide Broker with accurate and relevant personal financial information to determine Buyer's ability to purchase property.
 - Compensate Broker as outlined in paragraph two (2) if Buyer purchases property or defaults on an Agreement to purchase during the period of this contract.
 - Compensate Broker as outlined in paragraph two (2) if Buyer purchases a property within 60 days after the end of this Agreement which Broker has shown to Buyer during the term of this Agreement. If Buyer enters into an Exclusive Agreement with another broker after expiration of this agreement, this agreement shall be null and void in its entirety.
- Description of property desired:**
 - Type of property: WIA BH's Campground Bar & Grill
 - General location: Northern Black Hills
 - Price range: _____
- Other Provisions:** Only for this transaction
- This agreement shall begin April 27, 2017 at 5:40 ☐ a.m. / ☒ p.m., and shall continue until the earlier of May 31, 2017 at 5:00 ☐ a.m. / ☒ p.m., or completion of the acquisition of the property.

However, if a purchase agreement is entered into by Buyers during the term of this agreement, the termination thereof shall extend to and include the date of closing under said purchase agreement as to the purchase property only.

Receipt of a copy of this contract by the buyer has been acknowledged.

Duane Remington _____ 4-27-17
Buyer's Name - Typed or Printed Buyer's Signature Date
Melody Remington _____ 4-27-17
Buyer's Name - Typed or Printed Buyer's Signature Date
6835 Arcadia St., Summerset, SD 57718
Address Anthony Hensley _____
Broker by Agent: 5/2/17 _____ Date: 4/27/17

THIS AGREEMENT IS EXTENDED TO:

Receipt of a copy of this contract by the buyer has been acknowledged.

Buyer: _____ Date: _____
Buyer: _____ Date: _____
Broker: _____ by Agent: _____ Date: _____

REAL ESTATE PURCHASE AGREEMENT COMMERCIAL/AGRICULTURAL

(This is a legally binding contract. If you do not understand it, seek legal advice)

1. EARNEST MONEY DEPOSIT - PARTIES TO CONTRACT - PROPERTY.

Purchasers: Duane & Melody Remington And/or Assignors

Broker hereby acknowledges receipt of Earnest Money in the amount of (\$ 10,000.00)
Ten Thousand and 00/100 DOLLARS

Cash ☐ Check ☒ to be deposited the next legal banking day after acceptance of this offer on the property legally described as:

Wild Bill's Campground Bar & Grill

Lot E ex H1 (.04 ac) & H2 (.06 ac) & Lot E-2 of HES 137 Acres: 11.21 Sec. 18 Township 4 North Range 4 East Tracts 0091-A
& 0091-B Acres: 1.53 Sec. 17 Township 4 North Range 4 East

also known as: 21372 US Hwy 385, Deadwood, SD 57732

Sellers: Wild Bill's Campground & Resort, LLC

Purchaser and Seller acknowledge that Broker is the limited agent of both parties to this transaction as outlined in Section III of
the Agency Agreement Addendum and authorized by Purchaser and Seller

Yes ☒ No ☐ (Initials) Purchaser DR, MR Seller KG, J N/A

2. PURCHASE PRICE. The total price is to be (\$ 899,000.00) Eight Hundred, Ninety-Nine Thousand and 00/100 DOLLARS

After earnest money herein is credited, an additional down payment of \$ 0 is to be paid by Purchaser on or before ____.
After earnest money and down payment are herein credited, the remaining balance is to be paid by Purchaser at closing.

3. FINANCING. If this offer is contingent upon Purchaser obtaining a new loan, Purchaser agrees to immediately make application for and diligently endeavor to procure such loan without delay, and to sign the note and mortgage within five (5) days after they are ready. Buyer is going with a Contract for Deed with the Seller - See Addenda #1

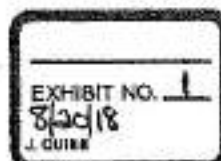
4. TITLE. Merchantable title shall be conveyed by Warranty Deed, subject to conditions, zoning, restrictions, and easements of record, if any, which do not interfere with or restrict the existing use of the property. An Abstract of Title shall be continued to date and furnished promptly to buyer for examination. In lieu of an Abstract of Title, an owner's policy of Title Insurance in the amount of purchase price may be substituted with cost to be distributed as follows: Seller: 50% Purchaser: 50%

5. INSPECTIONS. This offer is contingent upon the following inspections: 1) Septic Tanks to be pumped, inspected or provide information from last time completed - Seller Expense. 2) Well Test with the SD DENR are up to date and acceptable - Seller Expense 3) Buyer to inspect the property and the Equipment that stays with the property. 4) Buyer may conduct any other inspection deemed appropriate at Buyer's Expense.

Inspections shall be completed within 30 days of acceptance of this offer.

Should the results of any inspections not be satisfactory to Purchaser, then, within this same period, Purchaser shall notify Seller or
Listing Broker in writing of the specific dissatisfaction and at which time parties may renegotiate or terminate this contract. If
Purchaser fails to specifically approve or disapprove any inspections within the time specified, then Purchaser shall be deemed to
have approved and accepted the property in its present condition and any real estate licenses having anything to do with this
transaction does not have any further obligation to Purchaser as to such inspections or agreement.

INITIALS: PURCHASER DR, MR SELLER KG, J



Page 1 of 2

APP. 064

6. PRORATIONS. Taxes are to be paid as follows: The 2016 real estate taxes paid in 2017 shall be paid 100% by Seller and 0% by Purchaser. Real estate taxes assessed this year and payable next year will be ☒ will not be ☐ prorated to the date of closing.

Other prorations: 1) All deposits and prepaids for 2017 reservations will be used as initial down payment on the Contract for Deed as of 4/27/17 the balance is \$17,000. Any additional deposits from 4/27/17 until closing will be paid to the Buyer.

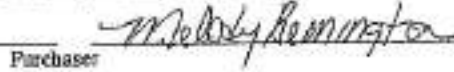
7. SURVEY: Current County GIS Boundary Survey to be acceptable with the Buyers.
8. OTHER PROVISIONS: See addenda #1
9. CLOSING/POSSESSION. Possession and closing shall be given to Purchaser on or before (date) 05/15/17, provided, however, delivery of possession is conditioned upon closing.
10. EARNEST MONEY/DEPOSITS. Listing office shall deposit and hold all earnest money and other deposits until sale is closed. If this offer is not accepted by Seller, or if Purchaser is unable to secure financing, if so contingent, or if no agreement is reached regarding conditions found on inspection report(s), this agreement is void and Purchaser's money shall be returned in full, less any expenses incurred on Purchaser's behalf, including any inspection ordered by Purchaser.
11. ADDENDA TO THIS AGREEMENT. The following documents are addenda to this contract and are attached and become part of this contract by reference. If none, so state. 1) Addenda #1

12. TIME IS OF THE ESSENCE OF THIS CONTRACT.

Dated this 27th day of April, 2017 at 9:00 a.m.

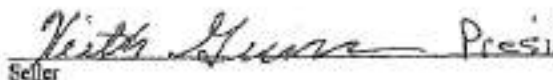
This agreement is void if not accepted by Seller by the 27th day of April, 2017 by 5:00 p.m.


Purchaser


Purchaser

On this 27th day of April, 2017, the foregoing offer is:
(month) (year)

(Initial) ACCEPTED KG; NOT ACCEPTED; COUNTERED

 President 4/27/17
Seller

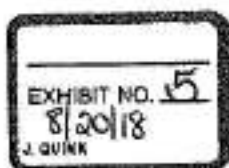
THE FOLLOWING IS FOR INFORMATION PURPOSES ONLY:

Re/Max of Rapid City
Selling Company

Bryan Iverson
Selling Licensee

Re/Max of Rapid City
Listing Company

Bryan Iverson
Listing Licensee



Addenda #1: Other Provisions:

1. Seller and Buyer agree that Wild Bill's Campground is being sold as-is with no warranty.
2. All Licenses and Certificates associated with the campground to be current prior to closing. After closing Buyer is responsible to transfer all License and Certificates.
3. All Rights to Wild Bill's Campground Saloon and Grill – Name, Logos, Website, Domain Name, Business Phone Number and/or any other use of the name to go to the Buyers.
4. The cost of all existing inventory and supplies to be reimbursed to the Seller at the time that the Buyer assumes the business.
5. Seller to provide training at the start of the season at the start and the close of the season. Also will be available during the season.
6. Seller to provide list of all Suppliers and Vendors associated with the campground.
7. Seller to provide a Disclosure to Hold Harmless the Buyers for any legal action or litigation that may have happened before the transfer of ownership to the Buyers.
8. Contract for Deed – \$200,000 down at closing with the remainder to be amortized over 20 years at 5.5%. Equal monthly payments to be made by the 5th of each month over the next 240 months. Buyers reserve the right to payoff the loan early without penalty.
9. Payments to be setup with Old West Escrow Company (Fee to be split 50% Seller and 50% Buyer).
10. Buyers will be responsible for Real Estate Taxes and Insurance for the Campground starting the day of closing.

Buyer

Date

Seller

Date

Buyer

Date

Seller

Date

CONTRACT FOR DEED

THIS AGREEMENT is made and entered into this 12 day of May, 2017, between Wild Bill's Campground and Resort, LLC, of 851 Ennen Drive, Rapid City, South Dakota 57703, (hereafter Seller) and Duane and Melody Remington, of 6835 Arcadia Street, Summerest, South Dakota 57718, (hereafter Buyers).

1.

REAL PROPERTY. That if Buyers shall first make the payments and perform the covenants hereinafter set out on Buyers' part to be made and performed, the Seller hereby covenants and agrees to convey and assure good and merchantable title to the Buyers, in fee simple, free and clear of all encumbrances and liens except for easements, special assessments, reservations, restrictions, and rights-of-way of record, by good and sufficient Warranty Deed (same to be deposited in escrow at time of closing), to the following real property, to-wit: Wild Bill's Campground Bar & Grill, 21372 US Hwy 385, Deadwood, Lawrence County, South Dakota, legally described as:

LOT E AND LOT E-2 OF R.E.S. 137 LOCATED IN SECTION 17 AND SECTION 18 TOWNSHIP 4 NORTH, RANGE 4 EAST, S.B.M., LAWRENCE COUNTY, SOUTH DAKOTA, ACCORDING TO PLAT BOOK 4 PAGE 126 AND PLAT BOOK 6 PAGE 214 EXCEPT LOT E-1 AND E-3 OF THE SUBDIVISION OF LOT E AND EXCEPT LOTS H1 AND H2 IN LOT E ACCORDING TO PLAT DOC #2001-4464.

TRACT NO. 0091-A LOCATED IN SECTION 18, TOWNSHIP 4 NORTH, RANGE 4 EAST, ACCORDING TO PLAT DOCUMENT NO. 89-1596 AND TRACT NO. 0091-B LOCATED IN SECTION 17, TOWNSHIP 4 NORTH, RANGE 4 EAST, LAWRENCE COUNTY, SOUTH DAKOTA, ACCORDING TO PLAT DOCUMENT NO. 89-1597.

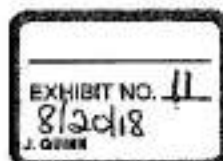
2.

PERSONAL PROPERTY AND CHATTELS. The personal property/chatteles to be purchased in accordance with the terms and conditions of this Contract, include the following:

- A. The trade name, "Wild Bill's Campground Saloon and Grill," and all trademarks and logos, signage, website(s) and other marketing files, slogans or techniques, and the current business phone number.
- B. All equipment, furniture, furnishings, trade fixtures, supplies and miscellaneous personal property of the business known as "Wild Bill's Campground Saloon and Grill" and located on the business premises in Deadwood, South Dakota. (Reference list of chattels attached hereto as Exhibit "A" and incorporated herein by this reference)

8/2/18

Page 1 of 2



REMAX 0026

APP. 067

- C. The cost of all existing inventory and supplies to be reimbursed to the Sellers as of date of closing.
- D. The Good Will of the business known as "Wild Bill's Campground Saloon and Grill" as operated and conducted in Deadwood, South Dakota.
- E. Seller to provide a list of all suppliers and vendors associated with the Campground.
- F. All applicable licenses and certificates associated with the campground the parties agree will be current and in good standing as of date of closing. After closing, Buyers agree to transfer all such licenses and certificates.

The above referenced personal property and chattels shall be conveyed by good and merchantable Bill of Sale, which shall be held in escrow until all sums due and owing hereunder have been paid in full. Further in this regard, the Purchase Agreement dated April 27, 2017 executed by the parties hereto and all addendums thereto, shall be incorporated herein by this reference and unless modified by this Contract, shall be binding upon the parties.

3.

PURCHASE PRICE AND METHOD OF PAYMENTS: As purchase price for the above-described property, Buyers shall pay the sum of Eight Hundred Ninety-Nine Thousand Dollars and No Cents (\$899,000.00) in the following manner:

A. **Earnest Money.** Both parties acknowledge Buyers' earnest money deposit in the amount of Ten Thousand Dollars and No Cents (\$10,000.00), the receipt of which is hereby acknowledged by Seller.

B. **Deposits.** Both parties acknowledge that all deposits and prepaids for 2017 reservations in the amount of Seventeen Thousand Dollars and No Cents (\$17,000.00) will be used as the initial down payment by Buyers.

C. **Down Payment:** The sum of One Hundred Ninety Thousand Dollars and No Cents (\$190,000.00) down payment will be paid by Buyers to Seller on date of closing.

D. **Balance:** The balance of Six Hundred Eighty-Two Thousand Dollars and No Cents (\$682,000.00) shall be amortized over a period of twenty (20) years with monthly payments commencing June 5, 2017, to be paid to Seller's escrow account to be established at Old West Escrow, 2800 Jackson Blvd, #406, Rapid City, South Dakota 57702, along with instructions to release the Warranty Deed to Buyers upon completion of all payments provided in this Contract. The monthly payment shall be Four Thousand Six Hundred Ninety-One Dollars and Thirty-Nine Cents (\$4,691.39) with interest commencing as of date of closing, at the rate of Five and One-Half Percent (5.5%) annually.

KG

Page 2 of 3

REX
PAC

REMAX 0027

APP. 068

The Amortization Schedule is attached hereto as Exhibit "B." The first payment shall be due and payable June 5, 2017, and due each consecutive month thereafter on the 5th of the month.

The parties acknowledge that Seller currently owes on a Note in the approximate amount of \$350,000.00, secured by a Mortgage against the subject property. The Escrow Company shall first pay Seller's Note at Security First Bank from the Buyers monthly payments, and then forward any remaining payment to the Seller. One Hundred Thousand Dollars of the down payment remitted in accordance with this Contract to Seller by Buyers shall be applied to the balance of said Note at time of closing.

4.

POSSESSION: The parties agree that Buyers may assume possession of the real property described herein on date of closing, which is currently scheduled for May 12, 2017 at Pennington Title Company in Rapid City, South Dakota.

5.

RIGHT TO INSPECT: During the life and term of this Contract, Buyers will keep and maintain the subject premises, and all structures and improvements thereon, in a good state of condition and repair, at least equal to their present condition, reasonable wear and tear by the elements and normal depreciation alone expected. Buyer shall permit no waste on said premises. Seller or its agent, shall have the right to inspect the subject premises from time to time upon reasonable notice and at reasonable times for the purpose of enforcing this paragraph. Buyers acknowledge that they have examined the real property and any equipment or fixtures and furniture (collectively "property") related to the operation of same and acknowledge that the property is acceptable.

6.

TAXES AND SPECIAL ASSESSMENTS: Taxes shall be prorated to date of closing. Seller shall assume responsibility for payment of all 2016 real estate taxes and special assessments (if any) which may be assessed against the premises. In addition to the monthly payment set out herein, Buyers shall pay to escrow one-twelfth (1/12) of the annual property tax on said property, including any increase in same.

7.

PROFESSIONAL FEES: Each of the parties shall be responsible for their own legal and any other professional fees (if any). Seller shall pay the realtor fees.

8.

INSURANCE: The Buyers shall, as of the date of closing designated herein, provide insurance on the property against loss and damages as follows:

Buyer
KJ

Page 2 of 9

Seller
JDK
TJR

REMAX 0028

APP. 069

A. Fire and extended coverage insurance. Under policies providing no less restrictive coverage than that provided by standard extended coverage policies in an amount of not less than the outstanding balance of this Contract as well as any outstanding remaining unpaid balance pursuant to the terms hereof.

B. Public Liability Insurance. Public liability and property damage insurance customarily carried on similar property, but in no event with limits of less than \$1,000,000 for injury to or the death of any person, \$2,000,000 for injury to or the death of more than one person in any one accident, and \$500,000 for damages to property.

Each of the above policies shall be written by a company acceptable to the Seller and shall provide protection to the Seller either as additional named insured or by endorsement providing for payment to the Seller as its interest may appear. Each such policy shall contain an assurance from the insurer that the policies will not be cancelled without at least ten (10) days prior written notice to the Seller.

9.

INDEMNIFICATION FOR UPKEEP, UTILITIES, ETC: It is understood and agreed that all improvements made on the afore-described premises by Buyers and all utility costs and upkeep of the premises required shall be paid for by the Buyers, and Buyers agree to protect and indemnify the Seller from all costs, expenses, damages or loss by reason of said improvements, alterations, utilities and upkeep.

10.

TITLE: Seller agrees that title to said described real property shall be good and marketable, as determined in accordance with the South Dakota State Bar Association Title Standards and shall be free and clear of liens and encumbrances, except for restrictions, easements, and rights-of-way of record. Title insurance in the amount of the purchase price, as well as the transfer fee, shall be paid equally by the parties. The parties shall equally pay all other closing costs, including filing fees for recordation of deed and ancillary documents. Personal property shall be conveyed by Bill of Sale.

11.

ACREAGE DESCRIPTION: While it is believed by the parties hereto that the subject real estate consists of approximately 12.74 acres, more or less, Buyers acknowledge that they are not relying on any representations of Seller or any agent of Seller as to the exact acreage of the subject real estate. Buyers acknowledge that they have made their own independent investigation as to the total acreage

Buyer
K4

Page 4 of 5

Seller
TAR
TAR

REMAX 0029

APP. 070

Involved and agree to be bound by the acreage as it actually exists without any adjustment in purchase price.

12.

PLACE OF PAYMENT: Upon execution of this Agreement, the parties agree to deposit with Old West Escrow, a good and sufficient Warranty Deed to the property described herein, together with an executed copy of this Contract. Said document shall be retained by the escrow company pending complete performance of all of the terms, covenants, and conditions of this Agreement to be performed by the Buyers. Upon such complete performance by the Buyers, the escrow company shall deliver such documents held by it to the Buyers. The Buyers are responsible for recording the Warranty Deed with the Register of Deeds. Old West Escrow's setup fee and the monthly fee to maintain the escrow account shall be paid 50% by Seller and 50% by Buyers.

13.

MECHANIC'S LIENS: Buyers shall not permit the filing of any mechanic's liens or materialman's liens on the above-described property at any time during the term of this Contract. If any mechanic's liens are filed, they shall be discharged by Buyers within a period of thirty (30) days after the Buyers receive notice of said filing. All expenses associated therewith shall be paid equally by the Buyers and Seller.

14.

PROPERTY PURCHASED IN "AS IS" CONDITION. Buyers acknowledge that they have examined the subject real estate and the improvements thereon and accept the same in its present condition, and acknowledge that they are not relying on any representations or warranties, express or implied, of Seller or any agent of Seller, other than those described in this Contract, and the Buyers in buying said property are relying solely on their own judgment. ~~Buyers hereby accept the subject real estate in its present condition. Buyers are buying the subject property in an "as is" condition, with Buyers to be responsible for the cost of all repairs necessary after the date of this Contract.~~

15.

ADDITIONS AND ALTERATIONS: Buyers shall make no major additions or alteration to the property described herein without the express written consent of the Seller. Upon obtaining such consent, all work shall be accomplished in a good and workmanlike manner. All additions and alterations made to the property shall be paid for by Buyers, and Buyers shall protect and indemnify Seller from all costs, expenses, damages, or loss by reason of said additions and alterations. Title to such additions and alterations shall vest in Seller and be subject to this Contract.

54

Page Six 8

Buyer
TDR
FAR

REMAX 0030

APP. 071

16.

REMOVAL OF IMPROVEMENTS: Buyers agree not to dismantle or remove any of the improvements on the subject premises without the written consent of Seller.

17.

SALE OR ASSIGNMENT: Buyers understand and agree that they shall not assign or sell the above-described property, until all amounts due under this Contract are paid in full.

18.

DEFAULT: In the event Buyers default in the performance of any of the terms, covenants, conditions or obligations of this agreement assumed by them, Seller shall have the option to declare all deferred balances due and payable. Said option shall be exercisable by giving to the Buyers by certified mail, written notice of the nature of such default. If such default is cured within thirty (30) days from the date of notice, all provisions of this Contract shall remain in full force and effect. However, if any default shall occur twice in any one (1) calendar year or four (4) times during the life of this Contract and notice of such defaults have been given to the Buyers, then any subsequent default shall be deemed to be deliberate and upon such subsequent default, Buyers shall not have the privilege to cure the default unless granted in writing by Seller in Seller's sole discretion. All costs and expenses incurred by Seller in giving Buyers Notice of Default shall be added to the balance due hereunder and shall be paid by Buyers not later than the date on which the next payment is due. In the event of the failure of the Buyers to cure such default within said thirty (30) day period or in the event Buyers shall not have the privilege to cure the default, then the entire deferred balance interest shall be accelerated and declared due and payable, and Seller shall have the right to retake possession of all the property purchase hereunder, including all buildings, improvements, utilities, service lines and other such property as may be affixed to the realty as well as any chattels to be purchased in accordance with the terms hereof and to retain all payments made by the Buyers and improvements made by them on the premises as liquidated damages for the breach of this Contract, accurate damages being incapable of ascertainment. In the event of such default, all other remedies available to the Seller under the laws of the state of South Dakota, shall accrue to the Seller.

19.

COSTS OF DEFAULT, CURING AND OTHER REMEDIES: It is specifically understood and agreed between the parties hereto that all payments made by Buyers to Seller up to the time of any default and all improvements made on the premises up to the time of any default shall be deemed as a reasonable amount for delivery of possession and for the use and occupancy of the premises to the

Buyers
15/5/21

Page 4 of 9

15/5/21
15/5/21
15/5/21

REMAX 0031

APP. 072

time of such default. In the event Buyers correct any alleged default under this Contract within the aforementioned thirty (30) day curative period, then there shall be no acceleration of the payment schedule provided for herein and this Contract shall continue in force as originally written. It is not the purpose of these provisions to exclude any other remedies which might be available to Seller under the laws of South Dakota. Waiver by the Seller at any time of any default hereunder on the part of the Buyers shall not constitute a waiver by Seller of any other or subsequent default by Buyers.

20.

PEACEFUL SURRENDER ON DEFAULT: In the event of default on the part of Buyers, they will, on demand, quietly and peaceably surrender the said premises and possession thereof to Seller or Seller's agent.

21.

BANKRUPTCY OR INSOLVENCY: If any proceedings in bankruptcy or insolvency be filed against the Buyers or if any writ of attachment or writ of execution be levied upon the interest herein of the Buyers and such proceeding or levy shall not be released or dismissed within ninety (90) days thereafter or if any sale of the property described herein or any part thereof should be made under any execution or other judicial process or if the Buyers shall make any assignment for the benefit of creditors or shall voluntarily institute bankruptcy or insolvency proceedings, the Seller may declare a default under this Contract.

22.

EMINENT DOMAIN: In the event any portion of the real estate described in this Contract is acquired by any political subdivision of government or by a corporation possessing the power of eminent domain, either by eminent domain proceedings or in a transaction in lieu of or under threat of eminent domain proceedings, that all proceeds resulting from such acquisition shall be applied against the latest maturing installment. If these proceeds are greater than the amount of the latest maturing installment, they shall be applied to the next latest maturing installment in like fashion until the proceeds are all applied to installments due under this Contract.

23.

HOLD HARMLESS: Buyers agree to hold the Seller and Seller's successors in interest harmless from any liability of any kind or character arising out of the use and possession of the property covered by this Contract for Deed by the Buyers or anyone claiming under them, including but not limited to reasonable attorney fees incurred by Seller for any allegations, claims or other liability to

KG

DAK
MR

which the Seller is named as a party, or threatened to be made a party, arising out of Buyers use and possession of said property or anyone claiming under them.

24.

WAIVER: The waiver of any breach of this Contract by the Seller shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or any other provision in this Contract.

25.

NOTICE: Any notice pursuant hereto shall be accomplished by certified mail to the respective parties at the following address, unless notified in writing of any address change, to-wit:

SELLER:
Wild Bill's Campground & Resort, LLC
c/o Keith & Shelly Grimm
851 Eunon Dr.
Rapid City, SD 57703

BUYERS:
Duane and Melody Remington
6835 Areadio St.
Summerset, SD 57718

26.

TIME: Time is of the essence of this Contract.

27.

BINDING UPON SUCCESSORS, HEIRS, ETC.: This Contract shall be binding upon the parties, their heirs, successors, administrators, executors, and assigns.

28.

APPLICABLE LAW: This Contract should be construed and interpreted in accordance with the laws of South Dakota.

Dated this 12th day of MAY, 2017.

SELLER:
WILD BILL'S CAMPGROUND
& RESORT, LLC

BUYERS:

By: Keith Grimm
KEITH GRIMM
Its: President

Duane Remington
DUANE REMINGTON
Melody K. Remington
MELODY REMINGTON

STATE OF SOUTH DAKOTA)
)SS.
COUNTY OF PENNINGTON)

On this the 12th day of May, 2017, before me, the undersigned Notary Public, personally appeared Keith Grimm who acknowledged himself to be the President of Wild Bill's Campground & Resort, LLC, a limited liability company, and that he, as such President, being authorized so to do, executed the foregoing instrument for the purposes herein contained, by signing the name of the corporation by himself as President.



IN WITNESS WHEREOF, I have hereunto set my hand and official seal.
My commission expires: 1-4-2022
Notary Public

STATE OF SOUTH DAKOTA)
)SS.
COUNTY OF PENNINGTON)

On this 12th day of May, 2017, before me, the undersigned officer, personally appeared DUANE REMINGTON, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.



IN WITNESS WHEREOF, I have hereunto set my hand and official seal.
My commission expires: 1-4-2022
Notary Public

STATE OF SOUTH DAKOTA)
)SS.
COUNTY OF PENNINGTON)

On this 12th day of May, 2017, before me, the undersigned officer, personally appeared MELODY REMINGTON, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.



IN WITNESS WHEREOF, I have hereunto set my hand and official seal.
My commission expires: 1-4-2022
Notary Public

KG

PAGE 1

DR
MR

REMAX 0034

APP. 075

STATE OF SOUTH DAKOTA)

IN CIRCUIT COURT

COUNTY OF PENNINGTON)

SEVENTH JUDICIAL CIRCUIT

DUANE REMINGTON and
MELODY REMINGTON,

Plaintiffs,

vs.

WILD BILL'S CAMPGROUND
AND RESORT, LLC; KEITH
GRIMM; and BRYAN IVERSON,

Defendants.

51CIV18-000118

Deposition of:

DUANE REMINGTON

BEFORE: Jeanne Speck Quinn
Court Reporter and Notary Public
Rapid City, South Dakota

DATE: August 20, 2018 at 3:30 p.m.

PLACE: Bangs, McCullen, Butler,
Foye & Simmons, LLP
333 West Boulevard, Suite 400
Rapid City, South Dakota

APPEARANCES:

Representing the Plaintiffs:

MR. MICHAEL S. BEARDSLEY
Beardsley, Jensen & Lee
4200 Beach Drive, #3
Rapid City, South Dakota

Representing the Defendant:
(Bryan Iverson)

MR. GREGORY J. ERLANDSON
Bangs, McCullen, Butler,
Foye & Simmons, LLP
333 West Boulevard
Suite 400
Rapid City, South Dakota

Representing the Defendant:
(Wild Bill's & Keith Grimm)

MR. JOHN K. NOONEY
Nooney & Solay
326 Founders Park Drive
Rapid City, South Dakota

APPEARANCES CONTINUED:

Also Present:

Ms. Melody Remington
Plaintiff

Mr. Bryan Iverson
Defendant

I N D E X

WITNESS:

PAGE

DUANE REMINGTON

Examination by MR. ERLANDSON

3

EXHIBITS:

MARKED ON PAGE

** No exhibits were marked during the deposition.

* * *

<p>1 DUANE REMINGTON,</p> <p>2 called as a witness, being first duly sworn, testified as</p> <p>3 follows:</p> <p>4 EXAMINATION BY MR. ERLANDSON:</p> <p>5 Q All right. State your name, please.</p> <p>6 A Duane A. Remington.</p> <p>7 Q Have you ever had your deposition taken before, sir?</p> <p>8 A Yes. One time.</p> <p>9 Q And in what kind of case?</p> <p>10 A What was it for? Maybe I didn't. I think it was</p> <p>11 Mr. Nooney.</p> <p>12 THE WITNESS: (To Mr. Nooney:) Did I give a</p> <p>13 deposition, Mr. Nooney? I don't know.</p> <p>14 A I don't believe so.</p> <p>15 MR. NOONEY: I have no recollection.</p> <p>16 A Oh.</p> <p>17 Q (By Mr. Erlandson:) Okay. Well, you've been here for</p> <p>18 the deposition of my client, Bryan Iverson, here this</p> <p>19 morning. The instructions that Mr. Beardsley gave apply</p> <p>20 equally to your deposition. The number one rule we want</p> <p>21 to make sure we follow is that if you don't understand</p> <p>22 my question, ask me and I'll repeat it for you; okay, or</p> <p>23 restate it in a different way.</p> <p>24 A Yep.</p> <p>25 Q I'm not going to try to confuse you or trick you or</p>	<p>5</p> <p>1 Q Approximately what year was that?</p> <p>2 A 30 years ago, two thousand -- what's 30 years ago?</p> <p>3 MR. NOONEY: 1987?</p> <p>4 A Somewhere around there.</p> <p>5 Q Okay. What did you do after that?</p> <p>6 A I started in the electrical industry with Brink</p> <p>7 Electric.</p> <p>8 Q What did you do there?</p> <p>9 A I was a ground man up to a foreman.</p> <p>10 Q How long did you do that?</p> <p>11 A To present. Not with Brink's. With Brink's probably</p> <p>12 13 years.</p> <p>13 Q Where did you go after Brink?</p> <p>14 A I went to a company called Besler Incorporated here in</p> <p>15 town.</p> <p>16 Q How do you spell that?</p> <p>17 A B-E-S-L-E-R, Incorporated. I was a foreman for them</p> <p>18 until '94, I believe; 1994.</p> <p>19 Q Until 1994?</p> <p>20 A Yeah. Or, no, I can't remember the dates, but I was</p> <p>21 there for, I think, about 13 years.</p> <p>22 Q Okay. Where did you go after that?</p> <p>23 A A company called Energy Erectors out of Leesburg,</p> <p>24 Florida.</p> <p>25 Q Energy Erectors?</p>
<p>4</p> <p>1 anything.</p> <p>2 A That's fine.</p> <p>3 Q It's just really important that we get a fair and</p> <p>4 accurate transcription of what occurs here, okay?</p> <p>5 A Okay.</p> <p>6 Q All right. So where are you from?</p> <p>7 A South Dakota.</p> <p>8 Q And tell me a little bit about your background, your</p> <p>9 educational background.</p> <p>10 A High school, some college.</p> <p>11 Q Where did you go to college?</p> <p>12 A National College of Business here in town.</p> <p>13 Q When was that?</p> <p>14 A I was 32. I'm 62 now. 30 years ago.</p> <p>15 Q Did you get a degree?</p> <p>16 A No.</p> <p>17 Q What were you studying?</p> <p>18 A Business law.</p> <p>19 Q How long did you go there?</p> <p>20 A Year.</p> <p>21 Q And so you're looking for a business law degree?</p> <p>22 A They thought I was going to. No, I wasn't. I was</p> <p>23 looking for an engineering degree.</p> <p>24 Q So why did you leave school or college?</p> <p>25 A I was paying for myself and I ran out of money.</p>	<p>6</p> <p>1 A Uh-huh.</p> <p>2 Q Okay.</p> <p>3 A And I worked with them up to four years ago, and then I</p> <p>4 worked for Dashiell Corporation, which is an engineering</p> <p>5 firm out of Houston, Texas.</p> <p>6 Q How do you spell that name?</p> <p>7 A D-A-S-H-I-E-L-L, Corporation.</p> <p>8 Q What do you do for them?</p> <p>9 A I'm a manager for -- site manager.</p> <p>10 Q What does that entail?</p> <p>11 A Building power stations and power transmission line and</p> <p>12 then service capacitor banks, MVDC yards. So --</p> <p>13 Q Okay. So fair to say that since you went to National</p> <p>14 Business College for that one year there, you've been in</p> <p>15 the electrical --</p> <p>16 A Yes, sir.</p> <p>17 Q -- industry?</p> <p>18 A Yes.</p> <p>19 Q In some capacity or another?</p> <p>20 A Yes.</p> <p>21 Q And looks like you had about four -- or at least four or</p> <p>22 five jobs --</p> <p>23 A Uh-huh.</p> <p>24 Q -- up until now?</p> <p>25 A Yes.</p>

<p>7</p> <p>1 Q Yes?</p> <p>2 A Just kept progressing up.</p> <p>3 Q Okay. What did you do to prepare for your deposition?</p> <p>4 And I don't want to know about any conversations you</p> <p>5 might have had with your attorney, okay?</p> <p>6 A Didn't do much to prepare for them. Just show up, tell</p> <p>7 the truth.</p> <p>8 Q All right. Did you review any documents?</p> <p>9 A No. I reviewed them prior to. I mean, not --</p> <p>10 Q Right.</p> <p>11 A You know, months ago.</p> <p>12 Q Tell me about your experience purchasing any kind of a</p> <p>13 business or business entity.</p> <p>14 A Well, I wanted to retire, so I wanted a little something</p> <p>15 to do on the side. So I've lived in a lot of RV parks,</p> <p>16 so I thought it would be fun to own one.</p> <p>17 Q Okay. Prior to this particular transaction, which I'm</p> <p>18 going to call Wild Bill's Campground or Wild Bill's,</p> <p>19 okay? Had you ever been involved in any commercial real</p> <p>20 estate transaction?</p> <p>21 A No.</p> <p>22 Q Have you ever made an offer before that on any</p> <p>23 commercial property or business entity?</p> <p>24 A No. Residential, yes.</p> <p>25 Q Okay. And have you ever purchased a home before?</p>	<p>8</p> <p>1 A I don't really -- what do you want to know?</p> <p>2 Q Just kind of traveling all over for work and you'd</p> <p>3 stay --</p> <p>4 A We'd just stay at an RV park. Either an RV park or</p> <p>5 motel. But I owned an RV. Stayed at RV parks.</p> <p>6 Q So prior to time of this Wild Bill's transaction you</p> <p>7 would be familiar with RV parks, in general?</p> <p>8 A Well, not familiar with -- yeah, to some degree. I</p> <p>9 mean, I know what they are, but --</p> <p>10 Q Sure.</p> <p>11 A -- I've never ran one or -- yeah.</p> <p>12 Q Tell me about Wild Bill's. How did you first become</p> <p>13 aware that it was on the market?</p> <p>14 A Again, I wanted to retire. I wanted to find something</p> <p>15 to do, so we went driving around and we were going to</p> <p>16 buy another one. That deal fell through, so we were</p> <p>17 driving through the Black Hills and we stopped in to</p> <p>18 Wild Bill's and Keith just happened to be there. So I</p> <p>19 talked with Keith.</p> <p>20 My wife and I walked in, asked him if he was still</p> <p>21 wanting to sell because we knew it was on the Internet</p> <p>22 for sale, and he said, yeah. And I asked him if he</p> <p>23 wanted to lease it. He said, no. I didn't want to</p> <p>24 lease it either, but -- so I asked him what kind of</p> <p>25 money he made. He told me he made good money, and so</p>
<p>8</p> <p>1 A Several of them. Many of them.</p> <p>2 Q Okay. How many homes have you purchased, do you</p> <p>3 believe?</p> <p>4 A Probably six, seven.</p> <p>5 Q All in South Dakota?</p> <p>6 A Yes, sir. All in Rapid City.</p> <p>7 Q Did you use realtors?</p> <p>8 A Yes.</p> <p>9 Q Who would be some of the realtors you've used?</p> <p>10 A The only one I've used was Bryan's office. I can't</p> <p>11 remember now. Get back to me on that one. I'll think</p> <p>12 of it.</p> <p>13 Q Okay. If you remember, let your attorney know.</p> <p>14 A Remember, I'm 52 years old, so I can't remember what I</p> <p>15 did yesterday.</p> <p>16 Q All right. Do you recall what years you would have</p> <p>17 purchased or sold any of those homes?</p> <p>18 A No. I don't remember. Started back in '75, probably,</p> <p>19 '75, '76.</p> <p>20 Q You said you've lived in a lot of RV parks in the past.</p> <p>21 A Traveled the United States.</p> <p>22 Q And is that a hobby or part of your job?</p> <p>23 A That's part of my job.</p> <p>24 Q And so tell me about some of those parks that you've</p> <p>25 lived in and your experiences.</p>	<p>10</p> <p>1 that kind of started us looking. So --</p> <p>2 Q Do you recall when that might have been?</p> <p>3 A That was prior to our buy date. About a month before,</p> <p>4 I'd imagine.</p> <p>5 Q Looking at your Purchase Agreement, that was April 27,</p> <p>6 2017?</p> <p>7 A Probably in March, I would say. Might have even been in</p> <p>8 April. First part maybe.</p> <p>9 Q When did you first meet Bryan Iverson?</p> <p>10 A When we had our first meeting when Keith, Keith told me</p> <p>11 that they were -- they were going to use Bryan.</p> <p>12 Q And would that be the day you signed the Purchase</p> <p>13 Agreement?</p> <p>14 A I believe so.</p> <p>15 Q Okay.</p> <p>16 A I can't remember, because I never -- I never stored</p> <p>17 that. I didn't think I've ever be sitting here, so I</p> <p>18 don't remember.</p> <p>19 Q But you remember signing the Purchase Agreement --</p> <p>20 A Oh, absolutely. Yeah.</p> <p>21 Q Let me finish my question, sir. You remember signing</p> <p>22 the Purchase Agreement on a particular day, right?</p> <p>23 A Yes. But I don't remember what day, because -- I do</p> <p>24 remember signing it, yes. But --</p> <p>25 Q And you don't recall meeting Mr. Iverson before that day</p>

<p style="text-align: center;">11</p> <p>1 you signed the Purchase Agreement, correct?</p> <p>2 A Yes, I do. Yes, I do. When I met -- I did meet with</p> <p>3 Bryan and -- but I can't remember what we discussed.</p> <p>4 Q Okay. I believe Mr. Iverson's testimony was the first</p> <p>5 time he ever met you was the day you signed the Purchase</p> <p>6 Agreement.</p> <p>7 A And that could be, too. Not sign the paperwork, but</p> <p>8 just signed the Purchase Agreement. Okay, no. Yeah,</p> <p>9 you're right. Yeah, probably was the first time I met</p> <p>10 him.</p> <p>11 Q Okay. So you were driving around sometime in March or</p> <p>12 maybe earlier April of 2017 and you met with</p> <p>13 Keith Grimm; correct?</p> <p>14 A Yes.</p> <p>15 Q And tell me a little bit more detail about what you</p> <p>16 talked about and the information you obtained from him.</p> <p>17 A My wife and I walked in and we got visiting with him.</p> <p>18 Got around to he wanted to sell the property and we</p> <p>19 asked him how much he made per year. He said it was</p> <p>20 235,000, and he made that in three and a half months.</p> <p>21 Q Okay.</p> <p>22 A So that kind of prompted us to maybe we better pursue</p> <p>23 this. So I think later on we called and made Keith an</p> <p>24 offer on -- or asked him if he would be willing to sell</p> <p>25 it to us with money down on a contract for deed. I</p>	<p style="text-align: center;">13</p> <p>1 Q Tell me the prior deal that you had made on a campground</p> <p>2 that fell through.</p> <p>3 A We were going to lease a campground from a little lady</p> <p>4 that owned Custer Crazy Horse Campground, and she was</p> <p>5 going to lease it to us, but she made a mistake and</p> <p>6 signed a purchase agreement with some other people and</p> <p>7 they held her feet to the fire and made her sell it to</p> <p>8 them.</p> <p>9 Q Okay.</p> <p>10 A Who they now own and we're friends with. So --</p> <p>11 Q When was that deal?</p> <p>12 A Just prior to Wild Bill's, starting Wild Bill's.</p> <p>13 Q Sometime in March maybe?</p> <p>14 A March probably, yes, sir.</p> <p>15 Q Did you have a real estate agent?</p> <p>16 A No. I was dealing with her directly.</p> <p>17 Q What was her name?</p> <p>18 A Kim Chi. She was from Dallas, Texas, and she owned</p> <p>19 Custer Crazy Horse Campground.</p> <p>20 Q Did you actually get a purchase agreement?</p> <p>21 A No. She already signed one with somebody else and they</p> <p>22 put her feet to it. We never had anything. We weren't</p> <p>23 going to purchase. We were going to lease it.</p> <p>24 Q Okay. Did you have any paperwork --</p> <p>25 A No.</p>
<p style="text-align: center;">12</p> <p>1 think we came up with the number of 300,000, and so we</p> <p>2 had to call him back and say I can't -- I can't get the</p> <p>3 300,000. It's 200,000 and we'd like to buy it.</p> <p>4 And we asked him if he would take any money off of</p> <p>5 the price, as to why we paid full price. He wouldn't do</p> <p>6 it because I didn't have the 300,000 and he would carry</p> <p>7 us for the full price.</p> <p>8 Q Do you recall when that phone call was?</p> <p>9 A Oh, it was several days after we met. I can't remember</p> <p>10 that day, but it was in -- right around the first of</p> <p>11 April.</p> <p>12 Q Have any other conversations with him prior to the time</p> <p>13 you went and signed the Purchase Agreement?</p> <p>14 A I think we stopped up there another time -- another</p> <p>15 couple times and just kind of walked through the</p> <p>16 property.</p> <p>17 Q How many times did you walk through the property prior</p> <p>18 to signing the Purchase Agreement?</p> <p>19 A Probably three. Two, three. It wasn't ours yet so we</p> <p>20 couldn't really get into anything and snoop around, but</p> <p>21 we did walk the property imagining what we'd do with the</p> <p>22 place.</p> <p>23 Q Sure. And Mr. Iverson was never there during one of</p> <p>24 your walk-throughs, correct?</p> <p>25 A No, sir.</p>	<p style="text-align: center;">14</p> <p>1 Q -- back and forth about any of the terms?</p> <p>2 A No. We started getting the term papers going so she had</p> <p>3 to sell it and everything was destroyed, but --</p> <p>4 Q Okay. All right. Tell me about -- I think you said you</p> <p>5 went through the first time in March with Keith Grimm</p> <p>6 when you showed up there, and you'd seen the property on</p> <p>7 the Internet; is that right?</p> <p>8 A Yes. We knew it was for sale. Let's just put it that</p> <p>9 way.</p> <p>10 Q Okay. And you drove up there, looked around, talked to</p> <p>11 Keith. He'd given you some information. You had called</p> <p>12 and did some negotiations back and forth, at least once?</p> <p>13 A With Keith, yes.</p> <p>14 Q And those were over the terms, correct, or --</p> <p>15 A Just over the money down and if he was willing to do a</p> <p>16 contract for deed, and -- because I didn't have the</p> <p>17 money to buy one, so contract for deed was the way to go</p> <p>18 for us.</p> <p>19 Q All right.</p> <p>20 A So I think when he told us what kind of money he made,</p> <p>21 that kind of had a lot of influence on us.</p> <p>22 Q All right. So what did you do prior to the time you</p> <p>23 came -- well, scratch that.</p> <p>24 Is it fair to say that you concluded your</p> <p>25 negotiations and came up with a deal and went to</p>

<p>15</p> <p>1 Bryan Iverson to have him do the paperwork?</p> <p>2 A To some degree, yes. There was some other monies that</p> <p>3 was talked about at the closing that we -- was never</p> <p>4 discussed.</p> <p>5 Q Okay. And just tell me about that. It's my</p> <p>6 understanding you had a deal at least everyone thought</p> <p>7 you had a deal and then you went and had Mr. Iverson</p> <p>8 help you out with the paperwork to get it closed?</p> <p>9 A Basically, it was just money down. It was \$17,000 that</p> <p>10 they wanted me to put down towards the purchase that I</p> <p>11 had never -- that I hadn't thought of or knew of or</p> <p>12 anything until I got there.</p> <p>13 Apparently there was reservations and we were --</p> <p>14 we put it as down. We didn't have any choice on that.</p> <p>15 So --</p> <p>16 Q Right. Okay.</p> <p>17 So you went over to Mr. Iverson's real estate</p> <p>18 office, is that correct, on April 27th?</p> <p>19 A Yeah, when -- yes.</p> <p>20 Q And was that in the morning? Do you recall about what</p> <p>21 time?</p> <p>22 A I would say in the morning. I don't remember, but it</p> <p>23 was in the morning, sure.</p> <p>24 Q I think the documents indicate that you signed at</p> <p>25 10 a.m. the morning of April 27th. Does that sound</p>	<p>17</p> <p>1 MR. BEARDSLEY: You've got to let him finish and</p> <p>2 then --</p> <p>3 THE WITNESS: Oh, I'm sorry. Sorry. Sorry.</p> <p>4 MR. BEARDSLEY: Slow down. Just --</p> <p>5 Q (By Mr. Erdanson:) You didn't have any inspections</p> <p>6 done before April 27, 2017; correct?</p> <p>7 A No.</p> <p>8 Q And you went to Mr. Iverson's office that morning with</p> <p>9 the understanding that you were going to sign a purchase</p> <p>10 agreement, is that correct?</p> <p>11 A Yes.</p> <p>12 Q Okay. And when you got there, tell me about what</p> <p>13 happened. How did everything transpire?</p> <p>14 A Well, I think we just had some idle chat. Keith was</p> <p>15 setting beside me, and before we signed -- before we</p> <p>16 signed I asked Keith, I said, Keith is this doable? And</p> <p>17 Keith looked at me and he goes, yeah, I did it.</p> <p>18 Well, yeah, he did it. His payments weren't as</p> <p>19 high as mine, and so, yes, he made it happen, but he was</p> <p>20 under different circumstances. So when I asked him if</p> <p>21 the place was worth it, and he said, absolutely. So --</p> <p>22 Q Okay.</p> <p>23 A And then we signed papers, I remember.</p> <p>24 Q Before you signed the papers, did Mr. Iverson make any</p> <p>25 representations to you about the property?</p>
<p>16</p> <p>1 familiar?</p> <p>2 A Yes.</p> <p>3 Q And who was all there at that meeting?</p> <p>4 A Bryan and Keith and I.</p> <p>5 Q Prior to the time you got there, had you done any</p> <p>6 inspections of the property yourself?</p> <p>7 A We looked at it.</p> <p>8 Q Okay.</p> <p>9 A Most of the inspections that you see I need to inspect</p> <p>10 it, I never knew about until after I purchased it. Then</p> <p>11 I started getting letters from the State and I started</p> <p>12 getting fire marshal visits, which you would never know</p> <p>13 if you bought the property until after the fact.</p> <p>14 Because I didn't know the property was built on -- off</p> <p>15 the right-of-way until I got a letter from the State.</p> <p>16 I didn't know that things needed to be in</p> <p>17 compliance because I've never owned a campground before</p> <p>18 until the fire marshal stopped up and said I'm going to</p> <p>19 do or he's going to shut me down. He's been fighting</p> <p>20 with Keith the last couple years to do it, and I'm the</p> <p>21 new owner and, by golly, I'm going to do it or he's</p> <p>22 going to shut me down.</p> <p>23 Q So you didn't have any inspections done --</p> <p>24 A No.</p> <p>25 Q -- prior to the -- let me --</p>	<p>18</p> <p>1 A Yes. When we first met, my wife was with me. We went</p> <p>2 in Bryan's office and I asked him -- we said, Keith</p> <p>3 makes \$235,000 a year; is that right? Bryan said, no,</p> <p>4 it's more like 240 to 245 a year. So, hey, that sounds</p> <p>5 a lot better.</p> <p>6 Q Sure. When was that meeting?</p> <p>7 A That was made prior to closing.</p> <p>8 Q Okay. And I'm asking you about prior to the time you</p> <p>9 signed the April 27th, 2017 Purchase Agreement did</p> <p>10 Mr. Iverson make any representations to you about the</p> <p>11 property?</p> <p>12 A I don't understand your question. About the property or</p> <p>13 the price or what?</p> <p>14 Q About the price, about the deal, about the --</p> <p>15 A The price. I just said the price, yes.</p> <p>16 Q So you said it was after. You said that meeting was in</p> <p>17 May --</p> <p>18 A That was before we --</p> <p>19 Q Let me finish my question, okay?</p> <p>20 A I'm sorry. Sorry.</p> <p>21 Q You've got to let me finish my --</p> <p>22 A I will.</p> <p>23 Q -- question --</p> <p>24 A I will.</p> <p>25 Q -- otherwise we're going to have a very long day today.</p>

<p>18</p> <p>1 and maybe tomorrow; okay?</p> <p>2 A Okay.</p> <p>3 Q I thought you said that the conversation you had with</p> <p>4 Mr. Iverson was with your wife, as well --</p> <p>5 A Yes.</p> <p>6 Q -- in his office.</p> <p>7 A Yes.</p> <p>8 Q And that was, though, in May; correct?</p> <p>9 A I don't remember.</p> <p>10 Q Your wife --</p> <p>11 A It was prior -- it was prior to purchasing, because the</p> <p>12 money was the very important thing for us. So Keith</p> <p>13 told us 235. Bryan says 240 to 245. So we take their</p> <p>14 word for it. I have an expert sitting there that I</p> <p>15 don't know anything about, and I have an expert that's</p> <p>16 representing me telling me what this thing made, so</p> <p>17 that's what I have to go by.</p> <p>18 Q But your first contact with Mr. Iverson was April 27th,</p> <p>19 2017; correct?</p> <p>20 A I can't remember. I honestly can't remember.</p> <p>21 Q Okay. And that's all I need.</p> <p>22 You were at his office and you said that</p> <p>23 Keith Grimm was there, as well; correct?</p> <p>24 A When we -- when we first met Bryan, he wasn't with us.</p> <p>25 It was just Melody and I. During the close there Keith</p>	<p>21</p> <p>1 Q Did your wife sign it?</p> <p>2 A Yes.</p> <p>3 Q At that time?</p> <p>4 A Yes.</p> <p>5 Q Do you know if she was there? There was some indication</p> <p>6 she might have not been present when you first met with</p> <p>7 Mr. Iverson and Grimm at your office and that she might</p> <p>8 have signed it a few days later.</p> <p>9 A It was later.</p> <p>10 Q Okay.</p> <p>11 A I'm just looking at the date here. I'm sorry.</p> <p>12 Q All right. Did you read this document?</p> <p>13 A Yes.</p> <p>14 Q And you understood by signing this that Mr. Iverson was</p> <p>15 a limited agent?</p> <p>16 A Whatever that means, yes. He explained that to me, that</p> <p>17 he was a limited agent representing both myself and</p> <p>18 Keith Grimm.</p> <p>19 Q Okay. And it actually says here towards the bottom of</p> <p>20 the first numbered paragraph here it says, Purchaser</p> <p>21 and seller acknowledge that broker is the limited agent</p> <p>22 of both parties to this transaction as outlined in</p> <p>23 Section 3 of the Agency Agreement Addendum. Do you see</p> <p>24 that?</p> <p>25 A Yes.</p>
<p>20</p> <p>1 came up for the signing, so there was the three of us,</p> <p>2 and then later on Melody came up for the signing and</p> <p>3 that's kind of where -- but I don't remember -- I mean,</p> <p>4 if I knew we were going to go through this, I would have</p> <p>5 kept dates and everything else, but I didn't.</p> <p>6 Q That's my next question. You didn't have a calendar or</p> <p>7 notebook or anything?</p> <p>8 A No, sir.</p> <p>9 Q Okay. It might be easier for me to just start going</p> <p>10 through the documents, and I'll try my best --</p> <p>11 A Sure.</p> <p>12 Q -- to kind of go in chronological order.</p> <p>13 MR. ERLANDSON: Off the record for a second.</p> <p>14 (An off-the-record discussion was held at this</p> <p>15 time.)</p> <p>16 Q Okay. Take a look at Exhibit 1. It says, Real Estate</p> <p>17 Purchase Agreement, Commercial/Agricultural; correct?</p> <p>18 A Yes.</p> <p>19 Q And are your initials at the bottom?</p> <p>20 A Yes.</p> <p>21 Q Did you sign the next page?</p> <p>22 A Yes.</p> <p>23 Q Do you believe you signed it on April 27th, 2017 at</p> <p>24 10 a.m.?</p> <p>25 A Yes.</p>	<p>22</p> <p>1 (Mrs. Remington left the deposition room at this</p> <p>2 time.)</p> <p>3 Q And then if we look at the Agency Agreement Addendum,</p> <p>4 which is Exhibit 2; do you see that there?</p> <p>5 A Yes.</p> <p>6 Q And there's a Section 3 there, correct?</p> <p>7 A Yes.</p> <p>8 Q And you agreed that he would be your limited agent as</p> <p>9 outlined in Section 3 of Exhibit 2, correct?</p> <p>10 A Yes.</p> <p>11 Q Whose idea was it to include the four items under</p> <p>12 inspections? Do you see that? Under Exhibit 2.</p> <p>13 A It wasn't mine. I don't know. Bryan's?</p> <p>14 Q All right. In any event, it looks like if it wasn't</p> <p>15 your idea, someone provided some contingencies for you</p> <p>16 so that you could conduct any kind of inspections that</p> <p>17 you might want to conduct; is that fair?</p> <p>18 A Yeah, fair.</p> <p>19 Q And you would have 30 days to conduct as many</p> <p>20 inspections of whatever kind you wanted to conduct for</p> <p>21 30 days, correct?</p> <p>22 A Yes.</p> <p>23 Q And if any of those inspections, no matter what they</p> <p>24 were, bed bugs, wood ticks, anything, weren't</p> <p>25 satisfactory to you, you could get out of this deal and</p>

<p>23</p> <p>1 renegotiate or terminate the contract; correct?</p> <p>2 A Yes.</p> <p>3 Q Exhibit 1 incorporates or references Addenda #1; do you</p> <p>4 see that?</p> <p>5 A Where are you at here?</p> <p>6 Q If you look at Page 2 of Exhibit 1.</p> <p>7 A Oh, yes. Yes.</p> <p>8 Q And Addenda #1 is Exhibit 5; do you see that?</p> <p>9 Duane, if you turn to Exhibit 5.</p> <p>10 A This here?</p> <p>11 Q Yeah, keep going. There you go.</p> <p>12 A Okay.</p> <p>13 Q That's the addenda that's incorporated and part of</p> <p>14 Exhibit 1, correct?</p> <p>15 A Yes.</p> <p>16 Q And was that actually typed up by the time you got to</p> <p>17 the meeting on April 27th?</p> <p>18 A Yes.</p> <p>19 Q And did you go over that with Bryan?</p> <p>20 A Yes.</p> <p>21 Q And Bryan was even it with you and discussed that the</p> <p>22 campground was going to be sold as is with no warranty?</p> <p>23 A Yes.</p> <p>24 Q And what did that mean to you?</p> <p>25 A It meant that if I go up there and look at it and there</p>	<p>25</p> <p>1 Q All right. And the terms that are contained in this</p> <p>2 addenda here, 1 through 10, did you have any questions</p> <p>3 or concerns about any of those terms?</p> <p>4 A No.</p> <p>5 Q And did you ask any questions on April 27th, 2017 about</p> <p>6 any of those terms to Mr. Iverson?</p> <p>7 A No. I don't believe I had any questions at the time.</p> <p>8 Q All right. What was your time frame for closing?</p> <p>9 A Beginning of season because we had -- we had big</p> <p>10 payments to make so we wanted to close ASAP to get the</p> <p>11 ball rolling on the campground.</p> <p>12 Q And you closed on which day?</p> <p>13 A Well, 27th -- whatever date we closed on. I can't</p> <p>14 remember. I don't know. What's it say here?</p> <p>15 Q The information that we have indicates that you closed</p> <p>16 on May 12th, 2017 --</p> <p>17 A Oh, May 12th, 2017 we signed --</p> <p>18 Q -- is that right?</p> <p>19 A May 12th.</p> <p>20 Q Okay. So you signed the Purchase Agreement April 27th?</p> <p>21 A Closed on the 12th.</p> <p>22 Q Closed on May 12th, right?</p> <p>23 A Yep.</p> <p>24 Q Which is about two weeks?</p> <p>25 A Uh-huh.</p>
<p>24</p> <p>1 wasn't anything wrong with it and I inspect it, I'm</p> <p>2 happy with it, I'm good. Then you don't need an</p> <p>3 inspection.</p> <p>4 But I need to explain that these things came later</p> <p>5 on. Later on in the purchase it wasn't I walked in</p> <p>6 there and go, oh, the gates need to be redone. Those</p> <p>7 were told to me at a later date.</p> <p>8 I didn't know the basement flooded until I had a</p> <p>9 meeting with Brandon Presley. That was later past the</p> <p>10 30 days. I was already screwed.</p> <p>11 Q And I don't want to go forward. I'm talking about on</p> <p>12 April 27, 2017. I'm just --</p> <p>13 A No.</p> <p>14 Q We'll get to that point.</p> <p>15 A No inspection, right. Okay.</p> <p>16 Q All right. But you understood it was being sold as is</p> <p>17 when you signed this document?</p> <p>18 A Yes.</p> <p>19 Q And when you spoke with Mr. Grimm earlier, I believe it</p> <p>20 was in March, did he indicate to you that he was going</p> <p>21 to be selling the property as is or --</p> <p>22 A He never mentioned that to me. I got as is through</p> <p>23 Bryan.</p> <p>24 Q Okay. On that April 27th date?</p> <p>25 A Yes, sir.</p>	<p>26</p> <p>1 Q "Yes?"</p> <p>2 A Yes.</p> <p>3 Q That's about a two-week time period?</p> <p>4 A Yes. Somewhere in there, yes.</p> <p>5 Q And you made a full-price offer for \$899,000; correct?</p> <p>6 A We were basically told we had to pay full price because</p> <p>7 I couldn't come up with \$300,000 down. So Keith said he</p> <p>8 would take \$200,000 if we paid full price. So we had no</p> <p>9 negotiating power. I couldn't even make an offer.</p> <p>10 So --</p> <p>11 Q Well, you certainly -- you could have, correct?</p> <p>12 A No. He told me he wouldn't do it.</p> <p>13 Q All right.</p> <p>14 A So if he told me no, guy means no in my book. I mean,</p> <p>15 you can always ask, but --</p> <p>16 Q Correct. And you didn't hire Mr. Iverson to negotiate</p> <p>17 for you, correct?</p> <p>18 A No, I didn't, because Keith said he wouldn't budge.</p> <p>19 Q All right. And you didn't hire Mr. Iverson to go look</p> <p>20 for other campground opportunities, did you?</p> <p>21 A No, because we did our homework and this was the only</p> <p>22 one that we were interested in.</p> <p>23 Q All right. Did you have any questions of Mr. Iverson</p> <p>24 prior to May 12th, 2017?</p> <p>25 A Yeah. I asked him at one point in time if this place</p>

<p style="text-align: center;">27</p> <p>1 was worth it. He said, yes. That's when we sat down, 2 and I know Bryan don't remember, apparently, because we 3 sat down and did a cap -- no, we did a cap rate later 4 on, when we did the cap rate. But the only thing I 5 remember asking Bryan is if the place was worth it, and 6 he said he made 240, \$240,000 a year, Keith did, and we 7 would be fine.</p> <p>8 So as somebody who's representing me, or 9 supposedly representing me, I take that word as gospel.</p> <p>10 Q Can you give me a better idea of when this conversation 11 occurred?</p> <p>12 A I can't remember when it was. To be honest, I just 13 don't remember.</p> <p>14 Q Do you know if it was before or after closing?</p> <p>15 A When he told me it made 245, it was before we did 16 anything. The cap rate came, I believe, after we closed 17 when I was questioning the financials.</p> <p>18 Q Okay. Who else was at the meeting with Bryan when he 19 supposedly told you that the property makes two 20 hundred --</p> <p>21 A My wife.</p> <p>22 Q -- \$240,000 in three months?</p> <p>23 A My wife. Three and a half months. Sorry.</p> <p>24 Q Okay.</p> <p>25 A Three and a half months.</p>	<p style="text-align: center;">29</p> <p>1 Q And so you told him, though, that Bryan had made 2 representations --</p> <p>3 A I did.</p> <p>4 Q -- representations --</p> <p>5 A Yes.</p> <p>6 MR. BEARDSLEY: Got to let him finish.</p> <p>7 A I'm sorry.</p> <p>8 Q -- about the profitability of the business, right?</p> <p>9 A Yes.</p> <p>10 Q And making \$240,000 in 3.5 months sounds like a pretty 11 good deal to me.</p> <p>12 A Sounds like a really good deal to me.</p> <p>13 Q Why did Keith turn it down?</p> <p>14 A Apparently he had it for 13 years and was tired of it, 15 is what he told me.</p> <p>16 Q Keith had what?</p> <p>17 A Campground for -- uh, Keith Brink?</p> <p>18 MR. NOONET: Brink.</p> <p>19 Q Right.</p> <p>20 A He couldn't come up with the down.</p> <p>21 Q Okay.</p> <p>22 A Ergo, the 300,000 I couldn't come up with. I could only 23 come up with 2.</p> <p>24 Q During this discussion where you claim Mr. Iverson told 25 you he made 240,000 in three and a half months, did he</p>
<p style="text-align: center;">28</p> <p>1 Q And where was that meeting?</p> <p>2 A Bryan's office.</p> <p>3 Q Anyone else present other than Bryan and your wife?</p> <p>4 A No.</p> <p>5 Q Did you keep any notes?</p> <p>6 A No.</p> <p>7 Q Did your wife keep any notes?</p> <p>8 A No.</p> <p>9 Q Did you pass that information on to anyone else after 10 you had the discussion with Mr. Iverson?</p> <p>11 MR. BEARDSLEY: When? I'm sorry. Just to clarify 12 the time frame.</p> <p>13 Q (By Mr. Erlanson:) I'm sorry. Prior to closing did 14 you go to anyone, perhaps, who might have been providing 15 financing and say, you know, Bryan Iverson told me this 16 place makes \$240,000 in three and a half months?</p> <p>17 A Yes. I told what was going to be my partner that, but 18 he decided he didn't want to be partners, so I took it 19 myself.</p> <p>20 Q Okay. Who is that?</p> <p>21 A His name is Keith Brink.</p> <p>22 Q Does he work at Brink Electric?</p> <p>23 A No.</p> <p>24 Q Okay.</p> <p>25 A He owns a fencing company. Fence Crafters.</p>	<p style="text-align: center;">30</p> <p>1 tell you if that was net or gross or explain that in any 2 way?</p> <p>3 A Gross.</p> <p>4 Q Gross. Did he tell you what it netted?</p> <p>5 A No.</p> <p>6 Q Do you have any idea how much it would have cost to 7 operate the campground on a yearly basis?</p> <p>8 A To some degree, but I thought if I could make 50, 60, 9 \$70,000 a year, I'd be happy out of retirement.</p> <p>10 Q Sure. Did you ask for any documents prior to closing to 11 verify any of those figures?</p> <p>12 A The reason I didn't ask for financials is because the 13 financials where you don't have anything -- well, they 14 have a lot to do with the pricing of it, but I wanted 15 the cap rate so we knew what the campground was worth. 16 And I asked Bryan if it was worth it and I asked Keith 17 if it was worth the price and they both assured me, yes, 18 they were. So I can look at a financial statement and 19 it doesn't tell me anything. If it made a half a 20 million dollars, I still don't know what the property is 21 worth. If you had a cap rate that tells you where the 22 property is, what it's worth and -- so the financials 23 don't mean a whole lot to me because they don't tell the 24 whole story. And if the financials are wrong, what good 25 are they anyway?</p>

<p style="text-align: right;">31</p> <p>1 Q And do you believe that any of the financial information 2 that was provided to you was inaccurate?</p> <p>3 A I do.</p> <p>4 Q And what was inaccurate about it?</p> <p>5 A I had Bryan -- or Presley come to my office and he 6 brought me his financial statements and I compared them 7 to Keith's.</p> <p>8 Q Okay.</p> <p>9 A They were different. I, at one point in time after 10 purchase, I asked Bryan what these miscellaneous charges 11 were on his financials. Nobody could explain it. You 12 have a bar, a restaurant, a campground and you have 13 miscellaneous fees on your financial statements? What 14 could it possibly be?</p> <p>15 A store, bar, and a restaurant and an RV park, I 16 don't understand what could be miscellaneous.</p> <p>17 Q Okay.</p> <p>18 A I don't know.</p> <p>19 Q All right.</p> <p>20 A And along with -- there's other things. We used 21 different years' financial statements because he didn't 22 have the correct ones and -- because he didn't run the 23 restaurant. So he used the prior year, which was the 24 biggest rally that we had. The 75th was the biggest 25 rally, so he used that year for his deductions and -- so</p>	<p style="text-align: right;">33</p> <p>1 Q And as you sit here today, do you know for sure whether 2 that conversation with Mr. Iverson occurred before or 3 after closing?</p> <p>4 A I know it was before.</p> <p>5 Q Okay. And then I believe you also said that you asked 6 both Mr. Grimm and Mr. Iverson if it was a good deal for 7 you?</p> <p>8 A If it was worth the money, because it's a lot of money.</p> <p>9 Q Right.</p> <p>10 A So who else do I ask?</p> <p>11 Q Well, I -- so you asked both of them and they both told 12 you yes?</p> <p>13 A Yes.</p> <p>14 Q And would you believe -- did you have an indication or 15 believe that the seller might indicate to you if you 16 were overpaying for the property?</p> <p>17 A No, but I figured my real estate agent would because he 18 represented me.</p> <p>19 Q But, as I understand it, you testified here earlier 20 today that you came there to his office before hearing 21 anything about the financials, at least from him, with 22 the idea that you were going to pay the listing price; 23 correct?</p> <p>24 A Yeah, because we didn't have a choice. I told you that 25 Keith wouldn't let it go any cheaper because we didn't</p>
<p style="text-align: right;">32</p> <p>1 they just weren't right.</p> <p>2 We were working the property from 7:00 in the 3 morning until midnight, both of us, seven days a week 4 and we couldn't touch his numbers. Locals said we 5 made -- we were doing twice the business that Keith did, 6 but for some reason we weren't making it. And we 7 weren't spending it. We were working it.</p> <p>8 Q And I just want to be clear that I understand exactly 9 what information you had concerning the financials prior 10 to time of closing on May 12th, 2017.</p> <p>11 A As I understand it, the only information you had 12 concerning the financials was a representation from 13 Mr. Grimm that he made approximately \$235,000 in three 14 and a half months.</p> <p>15 A Yes.</p> <p>16 Q And you also --</p> <p>17 MR. ERLANDSON: I'm sorry?</p> <p>18 MR. NOONEY: I didn't say anything.</p> <p>19 Q (By Mr. Erlandson:) And you also indicated that you had 20 a conversation with Mr. Iverson during which he 21 indicated that the property made approximately, or 22 grossed approximately, 240 in 3.5 months.</p> <p>23 A Yes.</p> <p>24 Q Correct?</p> <p>25 A Yes.</p>	<p style="text-align: right;">34</p> <p>1 have the full amount down.</p> <p>2 Q But that didn't have anything to do with my client, 3 correct? He didn't set the price, correct?</p> <p>4 A Somebody set the asking price. And I asked Keith who 5 set it. He told me he didn't know. He was just a 6 single man, so the only person I knew who could set it 7 and knew cap rates was Mr. Iverson.</p> <p>8 Q In any event, though, you knew that -- you didn't make a 9 counteroffer for the 899, correct?</p> <p>10 A We couldn't.</p> <p>11 Q You didn't, correct?</p> <p>12 A We were told we couldn't.</p> <p>13 Q Other than the financials, did you ask any questions of 14 my client at any time prior to closing concerning the 15 condition of the property?</p> <p>16 A No.</p> <p>17 Q Other than what you already talked to, did you ask my 18 client at any time prior to closing any questions 19 concerning the business?</p> <p>20 A No.</p> <p>21 Q Would you take a look at exhibit 6, please.</p> <p>22 A (Complied.)</p> <p>23 Q Have you seen this document before?</p> <p>24 A Yes.</p> <p>25 Q When's the first time you saw it?</p>

<p>35</p> <p>1 A I don't know. I think we pulled this up online, I</p> <p>2 think, or -- I've seen this.</p> <p>3 Q Did you see it anytime prior to closing?</p> <p>4 A Or Keith had it when we went up there. Yes, prior to</p> <p>5 closing.</p> <p>6 Q Yes, you saw it prior to closing?</p> <p>7 A Yes.</p> <p>8 Q Did you see it prior to the time you signed the initial</p> <p>9 Purchase Agreement on April 27th?</p> <p>10 A Yes.</p> <p>11 Q Did you discuss this or any of its contents with my</p> <p>12 client at any time prior to closing?</p> <p>13 A No.</p> <p>14 Q What was your understanding as to the reference in</p> <p>15 Exhibit 6 of living quarters?</p> <p>16 A You could live there. It's a residence.</p> <p>17 Q Where?</p> <p>18 A In the bar.</p> <p>19 Q Okay.</p> <p>20 A Upstairs and down.</p> <p>21 Q Well, you could live in the cabins, too, couldn't you?</p> <p>22 A No. They're not -- because they were dry cabins except</p> <p>23 for two of them, and they were small and you couldn't</p> <p>24 live in them.</p> <p>25 Q You couldn't live in the -- you said "dry cabins". That</p>	<p>37</p> <p>1 A Yes.</p> <p>2 Q They have water and sewer?</p> <p>3 A Yes.</p> <p>4 Q So it could be a residence just as much as any other --</p> <p>5 A Could be, yes.</p> <p>6 Q Right. Did you plan on residing and living at the</p> <p>7 property?</p> <p>8 A Part time.</p> <p>9 Q Okay. What time was that?</p> <p>10 A Night. When the bar -- we'd stay late or --</p> <p>11 Q Okay.</p> <p>12 A Because we have a home in Rapid.</p> <p>13 Q So it's my understanding that you purchased it and you</p> <p>14 maintained a residence, though, in Box Elder or Black</p> <p>15 Hawk?</p> <p>16 A Summerset.</p> <p>17 Q Summerset. I'm sorry. So you lived in Summerset as</p> <p>18 your primary residence, correct?</p> <p>19 A Yes.</p> <p>20 Q And when you purchased this property, you had no</p> <p>21 intention of moving or changing your permanent residence</p> <p>22 to the campground, correct?</p> <p>23 A If we sold our house, we would probably move up there.</p> <p>24 Q Okay.</p> <p>25 A But, indirectly, we stayed there more than we stayed at</p>
<p>36</p> <p>1 means there's no water?</p> <p>2 A No water.</p> <p>3 Q No water or sewer in them, correct?</p> <p>4 A Correct.</p> <p>5 Q What about the duplex cabin? Is there water service to</p> <p>6 that?</p> <p>7 A It had water and sewer, but they were rental property.</p> <p>8 Q What do you mean "rental property"?</p> <p>9 A For rent.</p> <p>10 Q Aren't the cabins for rent, too?</p> <p>11 A That's what you were just talking about.</p> <p>12 Q Right.</p> <p>13 A Two cabins.</p> <p>14 Q Okay. Yes.</p> <p>15 A They're rental property.</p> <p>16 Q You could live in those, as well. You didn't have to</p> <p>17 rent them if you purchased the property, correct?</p> <p>18 A No, the -- the upstairs bar part was not made for</p> <p>19 rental. It was made to live in for whoever was running</p> <p>20 the place.</p> <p>21 Q And, I'm sorry. Maybe I'm not being clear. I'm talk</p> <p>22 about the duplex cabin.</p> <p>23 A Yes. They are not livable. You could live in them.</p> <p>24 Q Right. And that's my question. You could live in</p> <p>25 those, correct?</p>	<p>38</p> <p>1 our house.</p> <p>2 Q Okay.</p> <p>3 A So we basically lived there. Well, not lived there, but</p> <p>4 most of the time. 90 percent.</p> <p>5 Q Did Mr. Iverson ever make any representations to you</p> <p>6 concerning whether or not any part of the property had</p> <p>7 been used as a residence in the past?</p> <p>8 A Mr. Iverson, I believe he knew that Preston Bradley --</p> <p>9 or the guy who leased the bar and restaurant lived</p> <p>10 there, and he knew that Keith stayed there or lived</p> <p>11 there and Brandon also lived there -- stayed there. So</p> <p>12 Bryan knew that and I knew that Keith did and I knew</p> <p>13 that Brandon Presley did, too.</p> <p>14 Q Okay. My question was did he ever make any</p> <p>15 representations to you concerning any of the property</p> <p>16 being used as residential structures?</p> <p>17 A No. Besides on the brochure, but, yes.</p> <p>18 Q Turn to Exhibit 7, please.</p> <p>19 A (Complied.)</p> <p>20 Q This appears to be a letter to Mr. Grimes from the</p> <p>21 Department of Transportation concerning an encroachment</p> <p>22 on a right-of-way, correct?</p> <p>23 A Yes.</p> <p>24 Q Do you have any information that Mr. Iverson had</p> <p>25 knowledge of either this letter or the encroachment at</p>

<p style="text-align: right;">39</p> <p>1 any time prior to your May 12, 2017 closing?</p> <p>2 A I don't really know how to answer that. He should have</p> <p>3 known, because you know where the boundaries are on a</p> <p>4 property when you sell it. I would --</p> <p>5 Q And when I'm asking you questions about what he knew, I</p> <p>6 want to know if you know or have information that he</p> <p>7 actually knew. Not about what he should have known or</p> <p>8 might have known. I need to know directly from you what</p> <p>9 information you had, if any, that he actually knew.</p> <p>10 A No.</p> <p>11 Q So you don't have any information that Mr. Iverson knew</p> <p>12 about this letter or the subject of this letter prior to</p> <p>13 closing. Correct?</p> <p>14 A No.</p> <p>15 Q Do you have any information that Mr. Iverson knew at any</p> <p>16 time prior to closing that there had been any pool</p> <p>17 flooding in the basement of the property?</p> <p>18 A Not personal.</p> <p>19 Q Do you have any information that Mr. Iverson knew of the</p> <p>20 existence of mold in the basement at any time prior to</p> <p>21 closing?</p> <p>22 A Not personally.</p> <p>23 Q Do you have any information that Mr. Iverson knew that</p> <p>24 the deck and/or parking lot on the campground was</p> <p>25 located on the right of way?</p>	<p style="text-align: right;">41</p> <p>1 A Prior to closing. It says new drive bridge on one of</p> <p>2 them. The other one said it was rebuilt -- just rebuilt</p> <p>3 and widened.</p> <p>4 Q Is that the improvement -- list of improvements?</p> <p>5 A Yes.</p> <p>6 Q Do you have any information that Mr. Iverson, prior to</p> <p>7 closing, did not believe that any of the list of</p> <p>8 improvements that were contained that you're referencing</p> <p>9 was not true or accurate?</p> <p>10 A No.</p> <p>11 Q Do you have any information that Mr. Iverson knew</p> <p>12 anytime prior to closing that there were any structural</p> <p>13 defects with the property?</p> <p>14 A No. That happened later on in the season.</p> <p>15 Q That happened after closing?</p> <p>16 A That happened after closing, yes. Prior to, I don't</p> <p>17 think anybody knew.</p> <p>18 Q Do you have any information that Mr. Iverson knew</p> <p>19 anytime prior to closing that there were any structural</p> <p>20 or foundational defects with the property?</p> <p>21 A That's a hard one. I'm gonna have to say yes on this,</p> <p>22 because after showing up for 10 years, you've got to</p> <p>23 know it flooded in the basement, yes.</p> <p>24 Q Okay. How?</p> <p>25 A Common knowledge. Common sense would tell you. Just</p>
<p style="text-align: right;">40</p> <p>1 A No, not personally.</p> <p>2 Q Do you have any information that prior to closing that</p> <p>3 Mr. Iverson had knowledge that a majority of the trees</p> <p>4 in the campground were not up to code?</p> <p>5 A No.</p> <p>6 Q Do you have any information that prior to closing</p> <p>7 Mr. Iverson knew or believed that any of the structural</p> <p>8 statements that were provided to you that were not</p> <p>9 accurate?</p> <p>10 A No, not personally.</p> <p>11 Q Do you have any information that Mr. Iverson knew at any</p> <p>12 time prior to closing that certain bridges on the</p> <p>13 property had been rebuilt or widened?</p> <p>14 A Yeah, it was in the sale bill. It was in the</p> <p>15 disclosure.</p> <p>16 Q And what do you recall about being represented in the</p> <p>17 disclosure you're referencing?</p> <p>18 A Bridges were rebuilt and widened.</p> <p>19 Q You said "bridges," plural?</p> <p>20 A One was new and one was rebuilt and widened.</p> <p>21 Q Take a look at Exhibit 6.</p> <p>22 A (Complied.)</p> <p>23 Q That was one of the listing pamphlets, correct?</p> <p>24 A It was a little disclosure sheet I got at closing.</p> <p>25 Q You got that at closing?</p>	<p style="text-align: right;">42</p> <p>1 looking at it would tell you if you had a general idea.</p> <p>2 I've never -- I haven't shown the place for 10 years.</p> <p>3 If I had shown the place for 10 years, I would have</p> <p>4 knowledge of it.</p> <p>5 Q You're guessing, though; correct?</p> <p>6 A No, I'm not guessing. I would know it.</p> <p>7 Q Well, I want to know --</p> <p>8 A I'm a professional in my field. I would know what this</p> <p>9 is.</p> <p>10 Q What evidence do you have that he knew of any structural</p> <p>11 or foundational defects in the property prior to the</p> <p>12 time of closing?</p> <p>13 A None.</p> <p>14 Q You've made an attorney fee claim in this case; is that</p> <p>15 correct?</p> <p>16 A Yes.</p> <p>17 Q And have you paid attorney's fees yet in this claim?</p> <p>18 MR. BEARDSLEY: Objection, irrelevant.</p> <p>19 Q You're making a claim for attorney's fees and we're</p> <p>20 entitled to know what those are and the basis of those</p> <p>21 claims, because if you're not -- if you're going to</p> <p>22 waive your claim for attorney's fees, then I won't</p> <p>23 inquire. But --</p> <p>24 MR. BEARDSLEY: You can answer if you paid</p> <p>25 attorney's fees. Go ahead.</p>

<p style="text-align: right;">43</p> <p>1 A I haven't paid them thus far, but I will.</p> <p>2 Q (By Mr. Erlanson:) Okay. How much have you paid in attorney's fees?</p> <p>3 A I haven't paid anything as of yet.</p> <p>4 Q Okay. Do you have a fee agreement?</p> <p>5 A Yes.</p> <p>6 Q And is it a contingency or hourly basis?</p> <p>7 A It was an hourly basis.</p> <p>8 Q Okay. And what rate?</p> <p>9 A 275, I think, for one and 175 for the paralegal, I believe.</p> <p>10 Q Okay. We need to raise our rates.</p> <p>11 So are you paying attorney's fees in the event that you don't prevail?</p> <p>12 A I'll have to, yes.</p> <p>13 Q Okay. And do you get monthly billing statements?</p> <p>14 A Yes.</p> <p>15 Q And do you know how much the -- how much in fees and expenses have been incurred so far?</p> <p>16 A I think we're between 5 and \$6,000 as of before this.</p> <p>17 Q Okay. Did you review the Complaint before it was filed?</p> <p>18 A Yes.</p> <p>19 Q Do you believe it to be accurate?</p> <p>20 A Yes.</p> <p>21 Q You've asked for damages in this case for compensatory</p>	<p style="text-align: right;">45</p> <p>1 A All of it.</p> <p>2 Q And you want to give the campground back?</p> <p>3 A Yes. I already have.</p> <p>4 Q Well, that's my question. Do you want to give the campground back to Mr. Grimm?</p> <p>5 A Already have, yes.</p> <p>6 Q Already have, okay.</p> <p>7 A Yes, sir.</p> <p>8 Q So you want your -- how much do you have into it?</p> <p>9 A 217,000 plus what I put in it.</p> <p>10 Q Okay. How much have you put into it?</p> <p>11 A I'd have to sit down and figure it out, but not a whole lot. Probably another -- I couldn't -- I couldn't tell you. I couldn't guess.</p> <p>12 Q Okay.</p> <p>13 A Say another 10, 15,000.</p> <p>14 Q Well, at some point I'm going to want to know specifically what your damage claim is and I want to reserve the right to talk to you about that.</p> <p>15 A Yes, sir.</p> <p>16 Q So if you could get that information to your lawyer.</p> <p>17 A Yes, sir.</p> <p>18 Q So we'll leave your deposition open if you're -- unless you're prepared to talk about what your specific damages are to my client, other than you want your 217 back plus</p>
<p style="text-align: right;">44</p> <p>1 damages including prejudgment interest. Do you know what those damages are?</p> <p>2 A No.</p> <p>3 Q How much in damages are you seeking in this case?</p> <p>4 A NIL. BEARDSLEY: Objection. It will be determined at a later date at the time of trial.</p> <p>5 Q Do you know?</p> <p>6 A I don't know.</p> <p>7 Q Do you want to -- are you still paying on the Contract for Deed?</p> <p>8 A No.</p> <p>9 Q Is it your intention to rescind the agreement or get out of the Contract for Deed and not purchase the campground, or do you want the campground and damages or do you know?</p> <p>10 A MR. BEARDSLEY: Objection, asking for a legal conclusion.</p> <p>11 A Again. Ask me again.</p> <p>12 Q (By Mr. Erlanson:) Why don't you just tell me, what are you looking to get in this lawsuit? What kind of damages from my client? That's --</p> <p>13 A I want to be made whole.</p> <p>14 Q And how do we do that?</p> <p>15 A My money back.</p> <p>16 Q How much do you want back?</p>	<p style="text-align: right;">46</p> <p>1 10 to \$15,000; is that right?</p> <p>2 A Yeah.</p> <p>3 Q You've asked for costs and disbursements. Do you know how much those are?</p> <p>4 A No.</p> <p>5 Q You're seeking punitive damages?</p> <p>6 A I'm unaware of that. I don't know. Yes.</p> <p>7 Q Do you know what punitive damages are?</p> <p>8 A Yes.</p> <p>9 Q What's your understanding as to punitive damages?</p> <p>10 A Punishment.</p> <p>11 Q I'm sorry?</p> <p>12 A A punishment fine, basically.</p> <p>13 Q Okay. And do you believe you're entitled to punitive damages from Mr. Iverson?</p> <p>14 A If it's a dishonest thing, yes, I do.</p> <p>15 Q Do you believe that he was dishonest to you?</p> <p>16 A I do believe -- yes, I do. To a degree, I do.</p> <p>17 Q And what was he dishonest to you about?</p> <p>18 A Saying that he doesn't know about these things. There's some things I can understand it, but there's some things that he's got to know about. He's got to know about.</p> <p>19 Q Those are just things that you don't have specific evidence of that he --</p> <p>20 A No.</p>

<p>47</p> <p>1 Q -- knew about --</p> <p>2 MR. BEARDSLEY: Let him finish.</p> <p>3 A I'm sorry.</p> <p>4 Q -- but you feel he should have known about, correct?</p> <p>5 A Yes.</p> <p>6 Q How much are you claiming in punitive damages from</p> <p>7 Iverson?</p> <p>8 MR. BEARDSLEY: Objection, lack of foundation.</p> <p>9 That's to be determined by a jury.</p> <p>10 Q At any time prior to -- or on that date of April 27,</p> <p>11 2017, did Mr. Iverson tell you that you had to sign</p> <p>12 those documents that day or force you to sign those</p> <p>13 documents?</p> <p>14 A No.</p> <p>15 Q Did he force you to sign that Contract for Deed on</p> <p>16 May 12th, 2017?</p> <p>17 A No.</p> <p>18 Q And you've been around long enough. You know you</p> <p>19 weren't compelled to sign those documents; correct?</p> <p>20 A Exactly. Correct.</p> <p>21 Q And you had a couple weeks between the time you signed</p> <p>22 the Purchase Agreement and the Contract for Deed to do</p> <p>23 whatever you wanted to do to try and satisfy yourself</p> <p>24 that you were getting a deal that you were comfortable</p> <p>25 with, correct?</p>	<p>49</p> <p>1 Q Okay. You were in a hurry to close --</p> <p>2 A Yes.</p> <p>3 Q -- before the season, correct?</p> <p>4 A Yes.</p> <p>5 Q You understood you were purchasing the property as is,</p> <p>6 correct?</p> <p>7 A Yes.</p> <p>8 Q In fact, you specifically acknowledged that you weren't</p> <p>9 relying on the representations of Mr. Grimm or</p> <p>10 Mr. Iverson when you closed on the property, correct?</p> <p>11 A Yes.</p> <p>12 Q That you weren't relying on them. That you had done</p> <p>13 everything you needed to do to satisfy yourself that the</p> <p>14 deal was going to work for you, correct?</p> <p>15 A From what I saw, yes. From what was disclosed, yes.</p> <p>16 Q Take a look at Exhibit 11, please.</p> <p>17 A (Complied.)</p> <p>18 Q Did you sign this Contract for Deed?</p> <p>19 A Yes.</p> <p>20 Q Appears you signed it on May 12th, 2017; correct?</p> <p>21 A Yes.</p> <p>22 Q Where were you at when you did that?</p> <p>23 A Bryan's office.</p> <p>24 Q Bryan --</p> <p>25 A Iverson's office in a meeting room.</p>
<p>48</p> <p>1 A Yes.</p> <p>2 Q You could have hired a lawyer in those two weeks there</p> <p>3 and had him look everything over for you, correct?</p> <p>4 A I didn't feel the need because I had representation.</p> <p>5 Q You could have hired a lawyer, couldn't you?</p> <p>6 A But I had a real estate agent that was supposed to be</p> <p>7 working for me also.</p> <p>8 Q Well, he was a limited agent. You understood that?</p> <p>9 A I don't understand that part of it.</p> <p>10 Q Okay.</p> <p>11 A He represented both myself and Keith, and Mr. Grimm.</p> <p>12 Q You understood the documents you signed, though?</p> <p>13 A Yes.</p> <p>14 Q Is that fair to say?</p> <p>15 A Yes.</p> <p>16 Q Okay. So you had a couple weeks there where you could</p> <p>17 have gotten inspections, correct?</p> <p>18 A Yes, but the inspections wouldn't have done any good</p> <p>19 anyway because all this stuff came after the fact.</p> <p>20 After we purchased it, yes.</p> <p>21 Q And you could have hired any number of professionals to</p> <p>22 go out there and assist you in this transaction,</p> <p>23 correct?</p> <p>24 A I thought I had a professional assisting me in this</p> <p>25 transaction.</p>	<p>50</p> <p>1 Q -- Iverson? You didn't go to a title company to do</p> <p>2 that?</p> <p>3 A Oh, sorry. Title company. I keep thinking of the wrong</p> <p>4 one. Yes, title company. Sorry.</p> <p>5 Q All right. Do you remember what title company?</p> <p>6 A Pennington County, wasn't it? Pennington County Title.</p> <p>7 Q Had you received the Contract for Deed prior to the time</p> <p>8 of closing on May 12th?</p> <p>9 A Yes.</p> <p>10 Q Do you recall when?</p> <p>11 A What's that again?</p> <p>12 Q When did you first see the Contract for Deed?</p> <p>13 A The day of our signing in Bryan's office.</p> <p>14 Q You signed the Contract for Deed at the title company,</p> <p>15 though; correct?</p> <p>16 A Yes. But I thought this was the same thing we signed in</p> <p>17 Bryan's office, I thought.</p> <p>18 Q No. You --</p> <p>19 A Yeah, this is the closing. I'm sorry. Yes.</p> <p>20 Q All right. I just want to make sure we're on the same</p> <p>21 page.</p> <p>22 A Yes. I'm sorry. I got confused here.</p> <p>23 Q So you signed the Purchase Agreement on April 27th?</p> <p>24 A Yes.</p> <p>25 Q And the Contract for Deed on May 12th, correct?</p>

<p>51</p> <p>1 A Yes.</p> <p>2 Q When did you first see the Contract for Deed?</p> <p>3 A May 12th.</p> <p>4 Q Okay. The day you signed it?</p> <p>5 A Yes.</p> <p>6 Q Mr. Iverson testified that he believes that a couple</p> <p>7 days prior to closing he gave you a copy of the Contract</p> <p>8 for Deed to look at?</p> <p>9 A A preliminary -- it was a three-pager or just a</p> <p>10 couple-pager.</p> <p>11 Q Okay.</p> <p>12 A But this whole thing I did not see until May 12th.</p> <p>13 Q Okay. Then you say Mr. Iverson gave you a preliminary</p> <p>14 Contract for Deed?</p> <p>15 A I don't know. I thought it was like a little</p> <p>16 three-page -- I'm not -- I'm not sure.</p> <p>17 Q Do you have a copy of that in your file anywhere? I</p> <p>18 haven't seen anything --</p> <p>19 A No, I don't know.</p> <p>20 Q -- like that.</p> <p>21 A I thought there was a preliminary contract that was</p> <p>22 given to me when we went in on the 27th, and then this</p> <p>23 one was signed on the 12th, but it was only a</p> <p>24 three-pager and it was contingent to this one being</p> <p>25 done.</p>	<p>53</p> <p>1 to the operation of the same and acknowledge that the</p> <p>2 property is acceptable, correct?</p> <p>3 A Yes.</p> <p>4 Q And if you turn to Page 5 of 9 RE/MAX 0030 you</p> <p>5 understood that you were purchasing it in its as is</p> <p>6 condition, correct?</p> <p>7 A Yes.</p> <p>8 Q And that you were going to be responsible for all costs</p> <p>9 of all repairs necessary after the date of the contract,</p> <p>10 correct?</p> <p>11 A Yes. Can I add something to that?</p> <p>12 Q Sure.</p> <p>13 A I signed this Contract for Deed in as is condition</p> <p>14 because I went up and looked at the property. What I</p> <p>15 know about the property seems good to me, but all these</p> <p>16 problems came after the fact. So, yes, I did sign this</p> <p>17 as is, but the problems came later on.</p> <p>18 If they came within the first 30 days, I'm sure I</p> <p>19 would have went to Bryan's office and said, Bryan, we</p> <p>20 have a problem here. This is messed up. This is messed</p> <p>21 up. By that time the 30 days is over and there's</p> <p>22 nothing I could do about it. I was stuck with it. And</p> <p>23 unforeseeable things that Mr. Grimm knew in the</p> <p>24 beginning.</p> <p>25 Q Well, you understood you were taking the risk by</p>
<p>52</p> <p>1 Q All right.</p> <p>2 A If I remember right. But I can't --</p> <p>3 Q Duane, that might be right. I mean, as I understand it,</p> <p>4 on April 27th you signed the Purchase Agreement --</p> <p>5 A Yes.</p> <p>6 Q -- which was three pages. It had the first two pages</p> <p>7 plus the Addendum, which --</p> <p>8 A Well, that's probably what it was then.</p> <p>9 Q Okay. And it says we're going to do a Contract for Deed</p> <p>10 later.</p> <p>11 A Yes. Well, that's why I'm confused. Okay.</p> <p>12 Q But Mr. Iverson testified that on or about May 8th he</p> <p>13 gave you a copy of the Contract for Deed that you</p> <p>14 ultimately signed on May 12th. Does that sound correct?</p> <p>15 A Not this whole thing. I don't remember that. No, I</p> <p>16 don't remember that.</p> <p>17 Q Do you remember reading the Contract for Deed?</p> <p>18 A Yes.</p> <p>19 Q And you agreed to all its terms by your signature,</p> <p>20 correct?</p> <p>21 A Yes.</p> <p>22 Q And on Page 3 of 9, which is Bates stamped RE/MAX 0028,</p> <p>23 under Section 5, the last sentence you acknowledged that</p> <p>24 you've examined the real property and any equipment or</p> <p>25 fixtures and furniture (collectively "property") related</p>	<p>54</p> <p>1 purchasing --</p> <p>2 A Not the risk from what I'd seen with the inspection.</p> <p>3 MR. BEARDSLEY: Wait.</p> <p>4 A Sorry. Sorry.</p> <p>5 Q (By Mr. Branson:) You understand that purchasing</p> <p>6 property as is you're taking a risk of any potential</p> <p>7 conditions that could arise, correct?</p> <p>8 A I don't -- I didn't -- I don't understand that part. As</p> <p>9 is is the way it is when you buy it, when you purchase</p> <p>10 it, right?</p> <p>11 Q With no representations or warranties as contained in</p> <p>12 your Contract for Deed, correct?</p> <p>13 A That's unforeseeable, no. I mean, you don't go buy a</p> <p>14 car, the paint falls off of it and you go, oh, well, I</p> <p>15 bought the car; okay? There's nothing I can do about</p> <p>16 it.</p> <p>17 Q Why don't you go ahead and read Section 14 into the</p> <p>18 record for me on Exhibit 13, please. Page 5 of 9.</p> <p>19 A Property purchased in "as is" condition. Buyers</p> <p>20 acknowledge that they have examined the subject real</p> <p>21 estate and the improvements thereof and accept the same</p> <p>22 in its present condition -- its present condition and</p> <p>23 knowledge that they have -- they are not relying on any</p> <p>24 representations or warranties, express or implied, of</p> <p>25 sellers or any agent of sellers other than those</p>

<p>55</p> <p>1 described in this contract, and the buyers in buying</p> <p>2 said property are relying solely on their own judgment.</p> <p>3 Buyers hereby accept subject real estate in its present</p> <p>4 condition. Buyers are buying the subject property in</p> <p>5 "as is" condition, with buyers to be responsible for</p> <p>6 costs of all repairs necessary after the date of this</p> <p>7 contract.</p> <p>8 Q So you bought that property in its present condition</p> <p>9 relying solely on your own judgment, correct?</p> <p>10 A Yes. After my inspection, yes.</p> <p>11 Q Okay. I heard your counsel talk about mold, and</p> <p>12 actually black mold even earlier in the deposition of</p> <p>13 Mr. Iverson. Do you have mold on your property?</p> <p>14 A Yes.</p> <p>15 Q And has it been tested?</p> <p>16 A No. We closed it down because it is black mold.</p> <p>17 Q And how do you know that?</p> <p>18 A I've seen black mold before.</p> <p>19 Q But you haven't had any testing done?</p> <p>20 A No. We closed it down and got out of there.</p> <p>21 Q Do you know if you've hired any experts in this case?</p> <p>22 A I have no idea.</p> <p>23 Q Okay. When did you first see that mold or what you</p> <p>24 think is mold?</p> <p>25 A After I had the meeting with Brandon and he came up and</p>	<p>57</p> <p>1 what we're going to do -- have you ever been involved in</p> <p>2 a prior lawsuit?</p> <p>3 A Yes.</p> <p>4 Q Tell me about it.</p> <p>5 A Well, I had a company that -- I owned a company -- I was</p> <p>6 part owner in a company, and they basically -- I don't</p> <p>7 know how I can say this -- took away my shares. They</p> <p>8 stole money from the company, and we went and we closed</p> <p>9 the doors, so I tried to sue them, and that was</p> <p>10 basically it. Nothing ever came of it.</p> <p>11 Q Okay. Did they actually sue out a Complaint? Did you</p> <p>12 file a lawsuit?</p> <p>13 A Yes. John had it with me for probably a year and a</p> <p>14 half, and then I took it to another attorney and he said</p> <p>15 that I was supposed to win the thing and they didn't</p> <p>16 have any money and I -- I would probably wind up with</p> <p>17 nothing and still have to pay attorney's fees.</p> <p>18 Q Okay.</p> <p>19 A So I dropped it.</p> <p>20 Q Were there any depositions taken in that case?</p> <p>21 A No.</p> <p>22 Q Any other lawsuits other than that one?</p> <p>23 A No.</p> <p>24 Q Have you ever been charged with a crime?</p> <p>25 A Traffic.</p>
<p>56</p> <p>1 asked me if I knew it flooded every year. And I said</p> <p>2 no, I didn't. So that prompted me to go down with my</p> <p>3 flashlight and dig in the corners, and it's about a foot</p> <p>4 high on the walls, and at that time I noticed somebody</p> <p>5 tried to conceal it.</p> <p>6 Q And how so?</p> <p>7 A By tearing out some walls and replacing them with new</p> <p>8 2 x 4s, and you could just kind of see where it's been</p> <p>9 replaced.</p> <p>10 Q Okay. Did you fill out a certificate of real estate</p> <p>11 value?</p> <p>12 A No.</p> <p>13 Q Is your wife going to be back today?</p> <p>14 A Yes. Yes.</p> <p>15 MR. ERLANDSON: Want to take a little break here,</p> <p>16 and, actually, it's about quarter to 5. I don't know</p> <p>17 that I'm going to get done by 5, and I'm sure you've got</p> <p>18 some questioning. So maybe we'll just figure out what</p> <p>19 we're going to do from here and continue when we can.</p> <p>20 So --</p> <p>21 MR. NOONEY: Off the record, Jeanne.</p> <p>22 (An off-the-record discussion was held at this</p> <p>23 time. A recess was taken at this time, 4:40 p.m.</p> <p>24 The deposition resumed at 4:53 p.m.)</p> <p>25 Q (By Mr. Erlandson:) Well, it's close to 5. I think</p>	<p>58</p> <p>1 Q Traffic tickets, okay.</p> <p>2 A Other than that, no.</p> <p>3 MR. ERLANDSON: Just one minute.</p> <p>4 (Off the record briefly.)</p> <p>5 MR. ERLANDSON: I think for the purpose of today</p> <p>6 I'm done. We did have a couple of areas where we'd kind</p> <p>7 of like to follow up, but if you can get me more</p> <p>8 information on your damages, I don't know that I will</p> <p>9 need to talk to you again about it or not, but that</p> <p>10 would be helpful.</p> <p>11 Do you have -- can anyone stay past 5 if we needed</p> <p>12 to? I'm just trying to think. Your wife is here.</p> <p>13 THE WITNESS: Uh-huh.</p> <p>14 MR. ERLANDSON: And if we want to reconvene, if</p> <p>15 it's, you know, a half-hour deal where she doesn't have</p> <p>16 a whole bunch of knowledge? I can --</p> <p>17 MR. BEARDSLEY: Well, let me make a phone call.</p> <p>18 MR. ERLANDSON: I don't want to -- if you need to</p> <p>19 go, though, go.</p> <p>20 (An off-the-record discussion was held at this</p> <p>21 time.)</p> <p>22 MR. ERLANDSON: All right. We'll go ahead and</p> <p>23 conclude his deposition for now.</p> <p>24 MR. BEARDSLEY: I don't have any questions.</p> <p>25 Mr. Nooney will --</p>

1 MR. NOONEY: I'll reserve mine until, yeah,
2 whenever we find time.

3 MR. BEARDSLEY: And my client will waive the
4 reading of the deposition.

5 MR. ERLANDSON: All right. Thank you.

6 (The deposition concluded at 5:03 p.m.)

7 * * * *

1 STATE OF SOUTH DAKOTA)
2) SS. CERTIFICATE
3 COUNTY OF PENNINGTON)

4 I, JEANNE S. QUINN, Court Reporter and Notary
5 Public, South Dakota, duly commissioned to administer oaths,
6 certify that I placed the witness under oath before the
7 witness testified; that the foregoing testimony of said
8 witness was taken by me in shorthand, and that the same has
9 been reduced to typewritten form under my supervision; that
10 the foregoing transcript is a true and correct transcript of
11 the questions asked, of the testimony given, and of the
12 proceedings had.

13 I further certify that I am not related to,
14 employed by, or in any way associated with any of the
15 parties to this action, or their counsel, and have no
16 interest in its event.

17 Witness my hand and seal at Rapid City, South
18 Dakota, this 31st day of August 2018.

19
20
21 JEANNE S. QUINN
My Commission Expires: 08/24/24

<p>\$</p> <p>\$15,000 [1] - 46:1 \$17,000 [1] - 15:9 \$200,000 [1] - 26:8 \$235,000 [2] - 18:3, 32:13 \$240,000 [3] - 27:22, 28:16, 29:10 \$245,000 [1] - 27:6 \$300,000 [1] - 26:7 \$6,000 [1] - 43:20 \$70,000 [1] - 30:8 \$999,000 [1] - 26:5</p> <p>*</p> <p>'75 [2] - 8:18, 8:19 '76 [1] - 8:19 '94 [1] - 5:16</p>	<p>200,000 [1] - 12:3 2017 [10] - 10:6, 11:12, 17:6, 18:9, 19:19, 20:23, 24:12, 25:5, 26:16, 25:17, 26:24, 32:10, 39:1, 47:11, 47:16, 49:20 2018 [2] - 1:13, 60:18 217 [5] - 45:25 217,000 [1] - 45:10 236 [1] - 19:13 236,000 [1] - 11:20 240 [4] - 18:4, 19:13, 27:6, 32:22 240,000 [1] - 29:25 245 [2] - 18:4, 19:13, 27:15 27 [4] - 10:5, 17:6, 24:12, 47:10 275 [1] - 43:10 27th [1] - 15:18, 15:25, 16:9, 18:18, 20:23, 23:17, 24:24, 25:5, 25:13, 25:20, 35:9, 60:23, 51:22, 52:4</p> <p>3</p> <p>3 [3] - 1:18, 2:8, 21:23, 22:6, 22:9, 52:22 3.6 [2] - 29:10, 32:22 30 [3] - 4:14, 5:2, 22:19, 22:21, 24:10, 53:18, 53:21 300,000 [1] - 12:1, 12:3, 12:6, 29:22 31st [1] - 60:18 32 [1] - 4:14 326 [1] - 1:25 333 [2] - 1:15, 1:22 3:30 [1] - 1:13</p> <p>4</p> <p>400 [2] - 1:15, 1:22 4200 [1] - 1:19 4:48 [1] - 56:23 4:53 [1] - 56:24 4s [1] - 58:8</p>	<p>60 [3] - 30:8 61CIV18-000116 [1] - 1:4 5:03 [1] - 59:5</p> <p>6</p> <p>6 [1] - 34:21, 35:15, 40:21 60 [1] - 30:8 62 [1] - 4:14, 8:14</p> <p>7</p> <p>7 [1] - 38:18 75th [1] - 31:24 7:00 [1] - 32:2</p> <p>8</p> <p>899 [1] - 34:9 8th [1] - 52:12</p> <p>9</p> <p>9 [3] - 52:22, 53:4, 54:18 90 [1] - 38:4</p> <p>A</p> <p>a.m. [2] - 15:25, 20:24 absolutely [2] - 10:20, 17:21 accept [2] - 54:21, 55:3 acceptable [1] - 53:2 accurate [2] - 4:4, 40:9, 41:9, 43:23 acknowledge [2] - 21:21, 53:1, 54:20 acknowledged [2] - 49:8, 52:23 action [1] - 60:15 add [1] - 53:11 Addenda [2] - 23:3, 23:8 addenda [2] - 23:13, 25:2 Addendum [1] - 21:23 addendum [2] - 22:3, 52:7 administer [1] - 60:5 agency [2] - 21:23, 22:3</p>	<p>agent [3] - 13:15, 21:15, 21:17, 21:21, 22:8, 33:17, 48:5, 48:8, 54:25 ago [1] - 4:14, 5:2, 6:3, 7:11 agreed [2] - 22:8, 52:19 Agreement [10] - 10:5, 10:13, 10:19, 10:22, 11:1, 11:6, 11:8, 12:13, 12:18, 18:9, 20:17, 25:20, 35:9, 47:22, 50:23, 52:4 agreement [1] - 13:6, 13:20, 17:10, 21:23, 22:3, 43:5, 44:12 ahead [3] - 42:25, 54:17, 58:22 amount [1] - 34:1 AND [1] - 1:8 answer [2] - 39:2, 42:24 anytime [2] - 35:3, 41:12, 41:19 anyway [2] - 30:25, 48:19 APPEARANCES [2] - 1:17, 2:1 apply [1] - 3:19 April [10] - 10:5, 10:8, 11:12, 12:11, 15:19, 15:25, 17:8, 18:9, 19:18, 20:23, 23:17, 24:12, 24:24, 25:5, 25:20, 35:9, 47:10, 50:23, 52:4 areas [1] - 58:6 arise [1] - 54:7 ASAP [1] - 25:10 assist [1] - 48:22 assisting [1] - 48:24 associated [1] - 60:14 assured [1] - 30:17 attorney [4] - 7:5, 8:13, 42:14, 57:14 attorney's [1] - 42:17, 42:19, 42:22, 42:25, 43:3, 43:13, 57:17 August [2] - 1:13, 60:18 aware [1] - 9:13</p>	<p>4:8, 4:8 ball [1] - 25:11 Bange [2] - 1:14, 1:21 banks [1] - 6:12 bar [3] - 31:12, 31:15, 35:18, 36:18, 37:10, 38:9 basement [4] - 24:8, 39:17, 39:20, 41:23 basis [3] - 30:7, 42:20, 43:7, 43:8 Bates [1] - 52:22 Beach [1] - 1:19 BEARDSLEY [10] - 1:18, 17:1, 17:4, 28:11, 29:5, 42:18, 42:24, 44:5, 44:16, 47:2, 47:8, 54:3, 58:17, 58:24, 59:3 Beardsley [2] - 1:18, 3:19 become [1] - 9:12 bed [1] - 22:24 BEFORE [1] - 1:11 beginning [2] - 25:9, 53:24 believes [1] - 51:6 beside [1] - 17:15 Besler [1] - 5:14 BESLER [1] - 5:17 best [1] - 20:10 better [2] - 11:22, 18:5, 27:10 between [2] - 43:20, 47:21 big [1] - 25:9 biggest [2] - 31:24 bill [1] - 40:14 Bill's [3] - 1:24, 7:18, 9:5, 9:12, 9:18, 13:12 BILL'S [1] - 1:8 billing [1] - 43:15 bit [2] - 4:8, 11:15 Black [2] - 9:17, 37:14 black [3] - 55:12, 55:16, 55:18 book [1] - 26:14 bottom [2] - 20:19, 21:19 bought [2] - 16:13, 54:15, 55:8 Boulevard [2] - 1:15, 1:22 boundaries [1] - 39:3 Box [1] - 37:14 Bradley [1] - 38:8 Brandon [4] - 24:9,</p>																																																																																																						
<p>2 [3] - 22:4, 22:9, 23:6, 29:23, 55:8 20 [1] - 1:13</p>	<p>5 [1] - 23:8, 23:9, 43:20, 52:23, 53:4, 54:18, 56:16, 56:17, 56:25, 58:11</p>	<p>6 [1] - 34:21, 35:15, 40:21 60 [1] - 30:8 62 [1] - 4:14, 8:14</p>	<p>7 [1] - 38:18 75th [1] - 31:24 7:00 [1] - 32:2</p>	<p>8 [1] - 34:21, 35:15, 40:21 60 [1] - 30:8 62 [1] - 4:14, 8:14</p>	<p>7 [1] - 38:18 75th [1] - 31:24 7:00 [1] - 32:2</p>	<p>8 [1] - 34:21, 35:15, 40:21 60 [1] - 30:8 62 [1] - 4:14, 8:14</p>	<p>7 [1] - 38:18 75th [1] - 31:24 7:00 [1] - 32:2</p>	<p>8 [1] - 34:21, 35:15, 40:21 60 [1] - 30:8 62 [1] - 4:14, 8:14</p>	<p>7 [1] - 38:18 75th [1] - 31:24 7:00 [1] - 32:2</p>	<p>8 [1] - 34:21, 35:15, 40:21 60 [1] - 30:8 62 [1] - 4:14, 8:14</p>	<p>7 [1] - 38:18 75th [1] - 31:24 7:00 [1] - 32:2</p>	<p>8 [1] - 34:21, 35:15, 40:21 60 [1] - 30:8 62 [1] - 4:14, 8:14</p>	<p>7 [1] - 38:18 75th [1] - 31:24 7:00 [1] - 32:2</p>	<p>8 [1] - 34:21, 35:15, 40:21 60 [1] - 30:8 62 [1] - 4:14, 8:14</p>	<p>7 [1] - 38:18 75th [1] - 31:24 7:00 [1] - 32:2</p>	<p>8 [1] - 34:21, 35:15, 40:21 60 [1] - 30:8 62 [1] - 4:14, 8:14</p>	<p>7 [1] - 38:18 75th [1] - 31:24 7:00 [1] - 32:2</p>	<p>8 [1] - 34:21, 35:15, 40:21 60 [1] - 30:8 62 [1] - 4:14, 8:14</p>	<p>7 [1] - 38:18 75th [1] - 31:24 7:00 [1] - 32:2</p>	<p>8 [1] - 34:21, 35:15, 40:21 60 [1] - 30:8 62 [1] - 4:14, 8:14</p>	<p>7 [1] - 38:18 75th [1] - 31:24 7:00 [1] - 32:2</p>	<p>8 [1] - 34:21, 35:15, 40:21 60 [1] - 30:8 62 [1] - 4:14, 8:14</p>	<p>7 [1] - 38:18 75th [1] - 31:24 7:00 [1] - 32:2</p>	<p>8 [1] - 34:21, 35:15, 40:21 60 [1] - 30:8 62 [1] - 4:14, 8:14</p>	<p>7 [1] - 38:18 75th [1] - 31:24 7:00 [1] - 32:2</p>	<p>8 [1] - 34:21, 35:15, 40:21 60 [1] - 30:8 62 [1] - 4:14, 8:14</p>	<p>7 [1] - 38:18 75th [1] - 31:24 7:00 [1] - 32:2</p>	<p>8 [1] - 34:21, 35:15, 40:21 60 [1] - 30:8 62 [1] - 4:14, 8:14</p>	<p>7 [1] - 38:18 75th [1] - 31:24 7:00 [1] - 32:2</p>	<p>8 [1] - 34:21, 35:15, 40:21 60 [1] - 30:8 62 [1] - 4:14, 8:14</p>	<p>7 [1] - 38:18 75th [1] - 31:24 7:00 [1] - 32:2</p>	<p>8 [1] - 34:21, 35:15, 40:21 60 [1] - 30:8 62 [1] - 4:14, 8:14</p>	<p>7 [1] - 38:18 75th [1] - 31:24 7:00 [1] - 32:2</p>	<p>8 [1] - 34:21, 35:15, 40:21 60 [1] - 30:8 62 [1] - 4:14, 8:14</p>	<p>7 [1] - 38:18 75th [1] - 31:24 7:00 [1] - 32:2</p>	<p>8 [1] - 34:21, 35:15, 40:21 60 [1] - 30:8 62 [1] - 4:14, 8:14</p>	<p>7 [1] - 38:18 75th [1] - 31:24 7:00 [1] - 32:2</p>	<p>8 [1] - 34:21, 35:15, 40:21 60 [1] - 30:8 62 [1] - 4:14, 8:14</p>	<p>7 [1] - 38:18 75th [1] - 31:24 7:00 [1] - 32:2</p>	<p>8 [1] - 34:21, 35:15, 40:21 60 [1] - 30:8 62 [1] - 4:14, 8:14</p>	<p>7 [1] - 38:18 75th [1] - 31:24 7:00 [1] - 32:2</p>	<p>8 [1] - 34:21, 35:15, 40:21 60 [1] - 30:8 62 [1] - 4:14, 8:14</p>	<p>7 [1] - 38:18 75th [1] - 31:24 7:00 [1] - 32:2</p>	<p>8 [1] - 34:21, 35:15, 40:21 60 [1] - 30:8 62 [1] - 4:14, 8:14</p>	<p>7 [1] - 38:18 75th [1] - 31:24 7:00 [1] - 32:2</p>	<p>8 [1] - 34:21, 35:15, 40:21 60 [1] - 30:8 62 [1] - 4:14, 8:14</p>	<p>7 [1] - 38:18 75th [1] - 31:24 7:00 [1] - 32:2</p>	<p>8 [1] - 34:21, 35:15, 40:21 60 [1] - 30:8 62 [1] - 4:14, 8:14</p>	<p>7 [1] - 38:18 75th [1] - 31:24 7:00 [1] - 32:2</p>	<p>8 [1] - 34:21, 35:15, 40:21 60 [1] - 30:8 62 [1] - 4:14, 8:14</p>	<p>7 [1] - 38:18 75th [1] - 31:24 7:00 [1] - 32:2</p>	<p>8 [1] - 34:21, 35:15, 40:21 60 [1] - 30:8 62 [1] - 4:14, 8:14</p>	<p>7 [1] - 38:18 75th [1] - 31:24 7:00 [1] - 32:2</p>	<p>8 [1] - 34:21, 35:15, 40:21 60 [1] - 30:8 62 [1] - 4:14, 8:14</p>	<p>7 [1] - 38:18 75th [1] - 31:24 7:00 [1] - 32:2</p>	<p>8 [1] - 34:21, 35:15, 40:21 60 [1] - 30:8 62 [1] - 4:14, 8:14</p>	<p>7 [1] - 38:18 75th [1] - 31:24 7:00 [1] - 32:2</p>	<p>8 [1] - 34:21, 35:15, 40:21 60 [1] - 30:8 62 [1] - 4:14, 8:14</p>	<p>7 [1] - 38:18 75th [1] - 31:24 7:00 [1] - 32:2</p>	<p>8 [1] - 34:21, 35:15, 40:21 60 [1] - 30:8 62 [1] - 4:14, 8:14</p>	<p>7 [1] - 38:18 75th [1] - 31:24 7:00 [1] - 32:2</p>	<p>8 [1] - 34:21, 35:15, 40:21 60 [1] - 30:8 62 [1] - 4:14, 8:14</p>	<p>7 [1] - 38:18 75th [1] - 31:24 7:00 [1] - 32:2</p>	<p>8 [1] - 34:21, 35:15, 40:21 60 [1] - 30:8 62 [1] - 4:14, 8:14</p>	<p>7 [1] - 38:18 75th [1] - 31:24 7:00 [1] - 32:2</p>	<p>8 [1] - 34:21, 35:15, 40:21 60 [1] - 30:8 62 [1] - 4:14, 8:14</p>	<p>7 [1] - 38:18 75th [1] - 31:24 7:00 [1] - 32:2</p>	<p>8 [1] - 34:21, 35:15, 40:21 60 [1] - 30:8 62 [1] - 4:14, 8:14</p>	<p>7 [1] - 38:18 75th [1] - 31:24 7:00 [1] - 32:2</p>	<p>8 [1] - 34:21, 35:15, 40:21 60 [1] - 30:8 62 [1] - 4:14, 8:14</p>	<p>7 [1] - 38:18 75th [1] - 31:24 7:00 [1] - 32:2</p>	<p>8 [1] - 34:21, 35:15, 40:21 60 [1] - 30:8 62 [1] - 4:14, 8:14</p>	<p>7 [1] - 38:18 75th [1] - 31:24 7:00 [1] - 32:2</p>	<p>8 [1] - 34:21, 35:15, 40:21 60 [1] - 30:8 62 [1] - 4:14, 8:14</p>	<p>7 [1] - 38:18 75th [1] - 31:24 7:00 [1] - 32:2</p>	<p>8 [1] - 34:21, 35:15, 40:21 60 [1] - 30:8 62 [1] - 4:14, 8:14</p>	<p>7 [1] - 38:18 75th [1] - 31:24 7:00 [1] - 32:2</p>	<p>8 [1] - 34:21, 35:15, 40:21 60 [1] - 30:8 62 [1] - 4:14, 8:14</p>	<p>7 [1] - 38:18 75th [1] - 31:24 7:00 [1] - 32:2</p>	<p>8 [1] - 34:21, 35:15, 40:21 60 [1] - 30:8 62 [1] - 4:14, 8:14</p>	<p>7 [1] - 38:18 75th [1] - 31:24 7:00 [1] - 32:2</p>	<p>8 [1] - 34:21, 35:15, 40:21 60 [1] - 30:8 62 [1] - 4:14, 8:14</p>	<p>7 [1] - 38:18 75th [1] - 31:24 7:00 [1] - 32:2</p>	<p>8 [1] - 34:21, 35:15, 40:21 60 [1] - 30:8 62 [1] - 4:14, 8:14</p>	<p>7 [1] - 38:18 75th [1] - 31:24 7:00 [1] - 32:2</p>	<p>8 [1] - 34:21, 35:15, 40:21 60 [1] - 30:8 62 [1] - 4:14, 8:14</p>	<p>7 [1] - 38:18 75th [1] - 31:24 7:00 [1] - 32:2</p>	<p>8 [1] - 34:21, 35:15, 40:21 60 [1] - 30:8 62 [1] - 4:14, 8:14</p>	<p>7 [1] - 38:18 75th [1] - 31:24 7:00 [1] - 32:2</p>	<p>8 [1] - 34:21, 35:15, 40:21 60 [1] - 30:8 62 [1] - 4:14, 8:14</p>	<p>7 [1] - 38:18 75th [1] - 31:24 7:00 [1] - 32:2</p>	<p>8 [1] - 34:21, 35:15, 40:21 60 [1] - 30:8 62 [1] - 4:14, 8:14</p>	<p>7 [1] - 38:18 75th [1] - 31:24 7:00 [1] - 32:2</p>	<p>8 [1] - 34:21, 35:15, 40:21 60 [1] - 30:8 62 [1] - 4:14, 8:14</p>	<p>7 [1] - 38:18 75th [1] - 31:24 7:00 [1] - 32:2</p>	<p>8 [1] - 34:21, 35:15, 40:21 60 [1] - 30:8 62 [1] - 4:14, 8:14</p>	<p>7 [1] - 38:18 75th [1] - 31:24 7:00 [1] - 32:2</p>	<p>8 [1] - 34:21, 35:15, 40:21 60 [1] - 30:8 62 [1] - 4:14, 8:14</p>	<p>7 [1] - 38:18 75th [1] - 31:24 7:00 [1] - 32:2</p>	<p>8 [1] - 34:21, 35:15, 40:21 60 [1] - 30:8 62 [1] - 4:14, 8:14</p>	<p>7 [1] - 38:18 75th [1] - 31:24 7:00 [1] - 32:2</p>	<p>8 [1] - 34:21, 35:15, 40:21 60 [1] - 30:8 62 [1] - 4:14, 8:14</p>	<p>7 [1] - 38:18 75th [1] - 31:24 7:00 [1] - 32:2</p>	<p>8 [1] - 34:21, 35:15, 40:21 60 [1] - 30:8 62 [1] - 4:14, 8:14</p>	<p>7 [1] - 38:18 75th [1] - 31:24 7:00 [1] - 32:2</p>	<p>8 [1] - 34:21, 35:1</p>

38:11, 38:13, 55:25 break [v] - 56:15 bridge [v] - 41:1 bridges [v] - 40:12, 40:18, 40:19, 41:13 briefly [v] - 58:4 Brink [v] - 8:6, 5:13, 28:21, 28:22, 29:17, 29:18 Brink's [v] - 5:11 brochure [v] - 38:17 broker [v] - 21:21 brought [v] - 31:6 BRYAN [v] - 1:9 Bryan [v] - 1:21, 2:3, 3:18, 10:9, 10:11, 11:3, 15:1, 16:4, 18:3, 19:13, 19:24, 23:19, 23:21, 24:23, 27:2, 27:5, 27:18, 28:3, 28:15, 29:1, 30:16, 31:5, 31:10, 38:12, 49:24, 53:19 Bryan's [v] - 8:10, 18:2, 22:13, 28:2, 49:23, 50:13, 50:17, 53:19 budge [v] - 26:18 bugs [v] - 22:24 building [v] - 6:11 built [v] - 16:14 bunch [v] - 58:16 business [v] - 4:12, 4:18, 4:21, 7:13, 7:23, 29:8, 32:5, 34:19 Business [v] - 6:14 Butler [v] - 1:14, 1:21 buy [v] - 9:16, 10:3, 12:3, 14:17, 54:9, 54:13 buyers [v] - 54:19, 55:1, 55:3, 55:4, 55:5 buying [v] - 55:1, 55:4 BY [v] - 3:4	13:19, 15:17, 23:22, 25:11, 25:20, 29:17, 30:7, 30:16, 31:12, 37:22, 38:24, 40:4, 41:13, 44:14, 45:2, 45:5 Campground [v] - 7:18 cap [v] - 27:3, 27:4, 27:16, 30:15, 30:21, 34:7 capacitor [v] - 6:12 capacity [v] - 6:19 car [v] - 54:14, 54:15 carry [v] - 12:6 case [v] - 3:9, 42:14, 43:25, 44:4, 55:21, 57:20 certain [v] - 40:12 certainly [v] - 28:11 CERTIFICATE [v] - 60:1 certificate [v] - 56:10 certify [v] - 60:6, 60:13 changing [v] - 37:21 charged [v] - 57:24 charges [v] - 31:10 chat [v] - 17:14 cheaper [v] - 33:25 Chi [v] - 13:18 choice [v] - 15:14, 33:24 chronological [v] - 20:12 CIRCUIT [v] - 1:1, 1:2 circumstances [v] - 17:20 City [v] - 1:12, 1:16, 1:19, 1:23, 1:25, 5:6, 60:17 claim [v] - 29:24, 42:14, 42:17, 42:19, 42:22, 45:18 claiming [v] - 47:6 claims [v] - 42:21 clarify [v] - 28:11 clear [v] - 32:8, 36:21 client [v] - 3:18, 34:2, 34:14, 34:16, 35:12, 44:21, 45:25, 59:3 close [v] - 19:25, 25:10, 49:1, 56:25 closed [v] - 25:12, 25:13, 25:15, 25:21, 25:22, 27:16, 49:10, 55:16, 55:20, 67:8	closing [v] - 18:3, 18:7, 25:8, 27:14, 28:13, 30:16, 32:10, 33:3, 34:14, 34:18, 35:3, 35:5, 35:5, 35:12, 39:1, 39:13, 39:16, 39:21, 40:2, 40:6, 40:12, 40:24, 40:25, 41:1, 41:7, 41:12, 41:15, 41:16, 41:19, 42:12, 50:8, 50:19, 61:7 code [v] - 40:4 collectively [v] - 52:25 college [v] - 4:10, 4:11, 4:24 College [v] - 4:12, 6:14 comfortable [v] - 47:24 commercial [v] - 7:19, 7:23 commercial/ agricultural [v] - 20:17 Commission [v] - 60:21 commissioned [v] - 60:5 common [v] - 41:25 company [v] - 5:14, 6:23, 28:25, 50:1, 50:3, 50:4, 50:5, 50:14, 57:5, 57:6, 57:8 compared [v] - 31:5 compelled [v] - 47:19 compensatory [v] - 43:25 complaint [v] - 43:21, 57:11 compliance [v] - 16:17 Complied [v] - 34:22, 38:19, 40:22, 49:17 conceal [v] - 58:5 concerning [v] - 32:9, 32:12, 34:14, 34:19, 38:6, 38:15, 38:21 concerns [v] - 25:3 conclude [v] - 58:23 concluded [v] - 14:24, 59:6 conclusion [v] - 44:17 condition [v] - 34:15,	53:8, 53:13, 54:19, 54:22, 55:4, 55:5, 55:8 conditions [v] - 54:7 conduct [v] - 22:16, 22:17, 22:19, 22:20 confuse [v] - 3:25 confused [v] - 50:22, 52:11 contact [v] - 19:18 contained [v] - 25:1, 41:8, 54:11 contents [v] - 36:11 contingencies [v] - 22:15 contingency [v] - 43:7 contingent [v] - 51:24 continue [v] - 56:19 CONTINUED [v] - 2:1 contract [v] - 11:25, 14:16, 14:17, 23:1, 51:7, 51:21, 52:8, 53:9, 55:1, 55:7 Contract [v] - 44:9, 44:13, 47:15, 47:22, 49:18, 50:7, 50:12, 50:14, 50:25, 51:2, 51:14, 52:13, 52:17, 53:13, 54:12 conversation [v] - 19:3, 27:10, 32:20, 33:2 conversations [v] - 7:4, 12:12 copy [v] - 51:7, 51:17, 52:13 corners [v] - 56:3 Corporation [v] - 6:4 corporation [v] - 6:7 correct [v] - 11:1, 11:13, 12:24, 14:14, 15:18, 17:8, 17:10, 19:8, 19:19, 19:23, 20:17, 22:8, 22:9, 22:21, 23:1, 23:14, 26:5, 29:11, 26:16, 26:17, 31:22, 32:24, 33:23, 34:3, 34:9, 34:11, 36:3, 36:4, 36:17, 36:25, 37:18, 37:22, 38:22, 39:13, 40:23, 42:5, 42:15, 47:4, 47:19, 47:20, 47:25, 48:3, 48:17, 48:23, 49:3, 49:6, 49:10, 49:14, 49:20, 50:15, 50:25, 52:14,	52:20, 53:2, 53:6, 53:10, 54:7, 54:12, 55:9, 60:10 cost [v] - 30:6 costs [v] - 48:3, 53:8, 55:6 counsel [v] - 55:11, 60:15 counteroffer [v] - 34:9 COUNTY [v] - 1:2, 60:2 County [v] - 60:6 couple [v] - 12:16, 16:20, 47:21, 48:16, 51:6, 51:10, 58:6 couple-pager [v] - 51:10 COURT [v] - 1:1 Court [v] - 1:12, 60:4 Crafters [v] - 28:25 Crazy [v] - 13:4, 13:19 crime [v] - 57:24 Custer [v] - 13:4, 13:19
D				
DAKOTA [v] - 1:1, 60:1 Dakota [v] - 1:12, 1:16, 1:19, 1:23, 1:25, 4:7, 8:5, 60:5, 60:16 Dallas [v] - 13:18 damage [v] - 45:18 damages [v] - 43:25, 44:1, 44:2, 44:4, 44:14, 44:21, 45:24, 48:6, 48:8, 48:10, 48:15, 47:6, 58:8 Dashell [v] - 6:4 DASHIELL [v] - 6:7 DATE [v] - 1:13 date [v] - 10:3, 21:11, 24:7, 24:24, 25:13, 44:6, 47:10, 53:9, 55:6 dates [v] - 5:20, 20:5 days [v] - 12:9, 21:8, 22:19, 22:21, 24:10, 32:3, 51:7, 53:18, 53:21 deal [v] - 9:16, 13:1, 13:11, 14:25, 15:8, 15:7, 18:14, 22:25, 29:11, 29:12, 33:6, 47:24, 49:14, 58:15				

<p>dealing [1] - 13:16 decided [1] - 28:16 deck [1] - 39:24 deductions [1] - 31:25 Deed [1] - 44:10, 44:13, 47:15, 47:22, 49:18, 50:7, 50:12, 50:14, 50:25, 51:2, 51:14, 52:13, 52:17, 54:12 deed [2] - 11:25, 14:16, 14:17, 51:8, 52:9, 53:13 defects [2] - 41:20, 42:11 Defendant [2] - 1:20, 1:24, 2:4 Defendants [1] - 1:10 degree [1] - 4:15, 4:21, 4:23, 9:8, 15:2, 30:8, 45:18 Department [1] - 38:21 Deposition [1] - 1:5 deposition [2] - 2:11, 3:7, 3:13, 3:18, 3:20, 7:3, 22:1, 45:23, 58:12, 58:24, 58:23, 59:4, 59:8 depositions [1] - 57:20 described [1] - 55:1 destroyed [1] - 14:3 detail [1] - 11:15 determined [1] - 44:5, 47:9 different [1] - 3:23, 17:20, 31:9, 31:21 dig [1] - 56:3 directly [2] - 13:18, 39:8 disbursements [1] - 46:3 disclosed [1] - 49:15 disclosure [1] - 40:15, 40:17, 40:24 discuss [1] - 35:11 discussed [1] - 11:3, 15:4, 23:21 discussion [1] - 20:14, 28:10, 28:24, 56:22, 58:20 dishonest [2] - 46:18, 46:17, 46:19 doable [1] - 17:16 document [2] - 21:12, 24:17, 34:23 documents [2] - 7:8,</p>	<p>15:24, 20:10, 30:10, 47:12, 47:13, 47:19, 48:12 dollars [1] - 30:20 done [1] - 16:5, 16:23, 17:6, 48:18, 49:12, 51:25, 55:19, 56:17, 56:20 doors [1] - 57:9 down [1] - 11:25, 14:15, 15:9, 15:10, 15:14, 16:19, 16:22, 17:4, 26:7, 27:1, 27:3, 29:13, 29:20, 34:1, 35:20, 45:12, 55:16, 55:20, 56:2 drive [1] - 41:1 Drive [2] - 1:10, 1:25 driving [1] - 9:15, 9:17, 11:11 dropped [1] - 57:19 drove [1] - 14:10 dry [2] - 35:22, 35:25 DUANE [1] - 1:4, 1:6, 2:7, 3:1 Duane [1] - 3:6, 23:9, 52:3 duty [2] - 3:2, 60:5 duplex [2] - 36:5, 36:22 during [1] - 2:11, 12:23, 19:25, 29:24, 32:20</p>	<p>Erectors [2] - 5:23, 5:25 erge [1] - 29:22 ERLANDSON [1] - 1:20, 2:8, 3:4, 20:13, 32:17, 56:16, 58:3, 58:5, 58:14, 58:18, 58:22, 59:5 Erlandson [1] - 3:17, 17:5, 28:13, 32:19, 43:2, 44:16, 54:5, 56:25 estate [1] - 7:20, 13:15, 15:17, 20:16, 33:17, 48:6, 54:21, 55:3, 56:10 event [1] - 22:14, 34:8, 43:13, 60:16 evidence [2] - 42:10, 46:24 exactly [1] - 32:8, 47:20 Examination [1] - 2:8 EXAMINATION [1] - 3:4 examined [1] - 52:24, 54:20 except [1] - 35:22 Exhibit [1] - 20:16, 22:4, 22:9, 22:12, 23:3, 23:6, 23:8, 23:9, 23:14, 34:21, 35:15, 38:18, 40:21, 49:16, 54:18 EXHIBITS [1] - 2:10 exhibits [1] - 2:11 existence [1] - 39:20 expenses [1] - 43:19 experience [1] - 7:12 experiences [1] - 8:25 expert [2] - 18:14, 19:15 experts [1] - 55:21 Expires [1] - 60:21 explain [1] - 24:4, 30:1, 31:11 explained [1] - 21:16 express [1] - 54:24</p>	<p>falls [1] - 54:14 familiar [1] - 9:7, 9:8, 16:1 far [2] - 43:1, 43:19 fashion [1] - 30:2 fee [2] - 42:14, 43:5 fees [1] - 31:13, 42:17, 42:19, 42:22, 42:25, 43:3, 43:13, 43:18, 57:17 feet [2] - 13:7, 13:22 fell [2] - 9:16, 13:2 fence [1] - 28:25 fencing [1] - 28:25 few [1] - 21:8 field [1] - 42:8 fighting [1] - 18:19 figure [2] - 45:12, 56:18 figured [1] - 33:17 figures [1] - 30:11 file [2] - 51:17, 57:12 filed [1] - 43:21 fill [1] - 56:10 finalized [1] - 15:8 financial [2] - 30:18, 31:1, 31:6, 31:13, 31:21, 40:7 financials [1] - 27:17, 30:12, 30:13, 30:22, 30:24, 31:11, 32:9, 32:12, 33:21, 34:13 financing [1] - 28:15 fine [1] - 4:2, 27:7, 46:13 finish [2] - 10:21, 17:1, 18:19, 18:21, 28:6, 47:2 fire [2] - 13:7, 18:12, 16:18, 40:3 firm [1] - 6:5 first [2] - 3:2, 9:12, 10:8, 10:9, 10:10, 11:4, 11:9, 12:10, 14:5, 18:1, 19:18, 19:24, 21:6, 21:20, 34:25, 50:12, 51:2, 52:8, 53:18, 55:23 five [1] - 6:22 fixtures [1] - 52:25 flashlight [1] - 56:3 flooded [1] - 24:8, 41:23, 56:1 flooding [1] - 39:17 Florida [1] - 5:24 follow [2] - 3:21, 58:7 follows [1] - 3:3 foot [1] - 56:3</p>	<p>force [2] - 47:12, 47:16 foregoing [1] - 60:7, 60:10 foreman [2] - 5:9, 5:17 form [1] - 60:9 forth [1] - 14:1, 14:12 forward [1] - 24:11 foundation [1] - 47:8 foundational [2] - 41:20, 42:11 Founders [1] - 1:25 four [1] - 6:3, 6:21, 22:11 Foye [2] - 1:15, 1:21 frame [2] - 25:8, 28:12 friends [1] - 13:10 full [2] - 12:5, 12:7, 26:5, 26:5, 26:8, 34:1 full-price [1] - 26:5 fun [1] - 7:16 furniture [1] - 52:25</p>
G				
<p>general [2] - 9:7, 42:1 given [2] - 14:11, 51:22, 60:11 golly [1] - 16:21 gonna [1] - 41:21 gospel [1] - 27:9 grates [1] - 24:8 GREGORY [1] - 1:20 GRIMM [1] - 1:9 Grimm [1] - 1:24, 11:13, 14:5, 19:23, 21:7, 21:18, 24:19, 32:13, 33:8, 38:20, 45:5, 48:11, 49:9, 53:23 gross [2] - 30:1, 30:3, 30:4 grossed [1] - 32:22 ground [1] - 5:9 guess [1] - 45:14 guessing [1] - 42:5, 42:6 guy [2] - 26:14, 38:9</p>				
H				
<p>half [2] - 11:20, 27:23, 27:25, 28:16, 29:25, 30:19, 32:14, 57:14, 58:15</p>				

<p>half-hour [v] - 58:15 hand [v] - 60:17 happy [v] - 24:2, 30:9 hard [v] - 41:21 Hawk [v] - 37:15 heard [v] - 55:11 hearing [v] - 33:20 held [v] - 13:7, 20:14, 56:22, 58:20 help [v] - 15:8 helpful [v] - 58:10 hereby [v] - 55:3 high [v] - 4:10, 17:19, 56:4 Hills [v] - 9:17 hire [v] - 26:16, 26:19 hired [v] - 48:2, 48:5, 48:21, 55:21 hobby [v] - 8:22 home [v] - 7:25, 37:12 homes [v] - 8:2, 8:17, 41:12 homework [v] - 26:21 honest [v] - 27:12 honestly [v] - 19:20 Horse [v] - 13:4, 13:19 hour [v] - 58:15 hourly [v] - 43:7, 43:8 house [v] - 37:23, 38:1 Houston [v] - 6:5 hundred [v] - 27:20 hurry [v] - 49:1 HVDC [v] - 6:12</p>	<p>include [v] - 22:11 including [v] - 44:1 incorporated [v] - 5:14 incorporated [v] - 5:17, 23:13 incorporates [v] - 23:3 incurred [v] - 43:19 indicate [v] - 15:24, 24:20, 33:15 indicated [v] - 32:18, 32:21 indicates [v] - 26:15 indication [v] - 21:5, 33:14 indirectly [v] - 37:25 industry [v] - 8:6, 6:17 influence [v] - 14:21 information [v] - 11:16, 14:11, 25:15, 28:9, 31:1, 32:9, 32:11, 38:24, 39:6, 39:9, 39:11, 39:15, 39:19, 39:23, 40:2, 40:6, 40:11, 41:6, 41:11, 41:18, 45:21, 58:8 initial [v] - 35:8 initials [v] - 20:19 inquire [v] - 42:23 inspect [v] - 16:9, 24:1 inspection [v] - 24:3, 24:15, 54:2, 55:10 inspections [v] - 16:6, 16:9, 16:23, 17:5, 22:12, 22:16, 22:20, 22:23, 48:17, 48:18 instructions [v] - 3:19 intention [v] - 37:21, 44:12 interest [v] - 44:1, 60:16 interested [v] - 26:22 Internet [v] - 9:21, 14:7 involved [v] - 7:19, 57:1 irrelevant [v] - 42:18 items [v] - 22:11 IVERSON [v] - 1:9 Iverson [v] - 1:21, 2:3, 3:18, 10:9, 10:25, 12:23, 15:1, 15:7, 17:24, 18:10, 19:4, 19:18, 21:7, 21:14,</p>	<p>25:6, 26:16, 26:18, 26:23, 28:10, 28:15, 29:24, 32:20, 33:2, 33:6, 34:7, 38:5, 38:8, 38:24, 39:11, 39:15, 39:19, 39:23, 40:3, 40:7, 40:11, 41:6, 41:11, 41:18, 46:15, 47:7, 47:11, 49:10, 50:1, 51:6, 51:13, 52:12, 55:13 Iverson's [v] - 11:4, 15:17, 17:8, 49:25</p>	<p>known [v] - 39:3, 39:7, 39:8, 47:4</p>	<p>21:11, 42:1, 44:20 looks [v] - 5:21, 22:14</p>
			L	M
			<p>lack [v] - 47:8 lady [v] - 13:3 last [v] - 16:20, 52:23 late [v] - 37:10 law [v] - 4:18, 4:21 lawsuit [v] - 44:20, 57:2, 57:12 lawsuits [v] - 57:22 lawyer [v] - 45:21, 48:2, 48:5 lease [v] - 9:23, 9:24, 13:3, 13:5, 13:23 leased [v] - 38:9 least [v] - 6:21, 14:12, 15:6, 33:21 leave [v] - 4:24, 45:23 Lee [v] - 1:18 Leesburg [v] - 5:23 left [v] - 22:1 legal [v] - 44:16 letter [v] - 16:15, 38:20, 38:26, 39:12 letters [v] - 16:11 limited [v] - 21:15, 21:17, 21:21, 22:8, 48:8 line [v] - 6:11 list [v] - 41:4, 41:7 listing [v] - 33:22, 40:23 livable [v] - 38:23 live [v] - 38:16, 35:21, 35:24, 35:25, 36:16, 36:19, 36:23, 36:24 lived [v] - 7:15, 8:20, 8:25, 37:17, 38:3, 38:9, 38:10, 38:11 living [v] - 35:15, 37:8 LLC [v] - 1:8 LLP [v] - 1:15, 1:21 locals [v] - 32:4 located [v] - 38:25 look [v] - 20:16, 22:3, 23:6, 23:25, 26:19, 30:18, 34:21, 40:21, 48:3, 49:16, 51:8 looked [v] - 14:10, 16:7, 17:17, 53:14 looking [v] - 4:21, 4:23, 10:1, 10:5,</p>	<p>maintained [v] - 37:14 majority [v] - 40:3 man [v] - 5:9, 34:6 manager [v] - 6:9 March [v] - 10:7, 11:11, 13:13, 13:14, 14:5, 24:20 MARKED [v] - 2:10 marked [v] - 2:11 market [v] - 9:13 marshal [v] - 16:12, 16:18 matter [v] - 22:23 McCullion [v] - 1:14, 1:21 mean [v] - 7:9, 9:9, 20:3, 23:24, 26:14, 30:23, 36:8, 52:3, 54:13 means [v] - 21:16, 25:14, 36:1 meant [v] - 23:25 meet [v] - 10:9, 11:2 meeting [v] - 10:10, 10:25, 16:3, 18:6, 18:16, 23:17, 24:9, 27:18, 28:1, 49:25, 55:25 Melody [v] - 2:2, 19:25, 20:2 MELODY [v] - 1:6 mentioned [v] - 24:22 messed [v] - 53:20 met [v] - 11:2, 11:5, 11:9, 11:12, 12:9, 18:1, 19:24, 21:6 MICHAEL [v] - 1:18 midnight [v] - 32:3 might [v] - 7:5, 10:2, 10:7, 20:9, 21:6, 21:7, 22:17, 28:14, 33:15, 39:8, 52:3 million [v] - 30:20 mine [v] - 17:18, 22:13, 59:1 minute [v] - 58:3 miscellaneous [v] - 31:10, 31:13, 31:16 mistake [v] - 13:5 mold [v] - 39:20, 55:11, 55:12, 55:13,</p>
<p>I</p> <p>idea [v] - 22:11, 22:15, 27:10, 30:6, 33:22, 42:1, 55:22 idle [v] - 17:14 imagine [v] - 10:4 imagining [v] - 12:21 implied [v] - 54:24 important [v] - 4:3, 19:12 improvement [v] - 41:4 improvements [v] - 41:4, 41:8, 54:21 IN [v] - 1:1 inaccurate [v] - 31:2, 31:4</p>				
		<p>J</p> <p>JEANNE [v] - 60:4, 60:20 Jeanne [v] - 1:11, 56:21 Jensen [v] - 1:18 job [v] - 8:22, 8:23 jobs [v] - 8:22 John [v] - 57:13 JOHN [v] - 1:24 judgment [v] - 55:2, 55:9 JUDICIAL [v] - 1:2 jury [v] - 47:9</p>		
		<p>K</p> <p>keep [v] - 23:11, 28:5, 28:7, 50:3 Keith [v] - 1:24, 9:18, 9:19, 10:10, 11:13, 11:23, 14:5, 14:11, 14:13, 16:4, 16:20, 17:14, 17:16, 17:17, 18:2, 19:12, 19:23, 19:25, 21:15, 26:7, 26:18, 27:6, 28:21, 29:13, 29:18, 29:17, 30:16, 32:5, 33:25, 34:4, 35:4, 38:10, 38:12, 46:11 KEITH [v] - 1:8 Keith's [v] - 31:7 kapt [v] - 7:2, 20:5 Kim [v] - 13:18 kind [v] - 3:9, 7:12, 9:2, 9:24, 10:1, 11:22, 12:15, 14:20, 14:21, 20:3, 20:12, 22:16, 22:20, 44:20, 56:8, 58:8 knowledge [v] - 38:25, 40:3, 41:25, 42:4, 54:23, 58:16</p>		

<p>55:16, 55:18, 55:23, 55:24</p> <p>money [n] - 4:25, 9:25, 11:25, 12:4, 14:15, 14:17, 14:20, 15:9, 19:12, 33:8, 44:24, 57:8, 57:18</p> <p>monies [n] - 15:2</p> <p>month [n] - 10:3</p> <p>monthly [n] - 43:16</p> <p>months [n] - 7:11, 11:20, 27:22, 27:23, 27:25, 28:16, 29:10, 29:25, 32:14, 32:22</p> <p>morning [n] - 3:19, 16:20, 15:22, 15:23, 15:25, 17:8, 32:3</p> <p>most [q] - 16:9, 38:4</p> <p>motel [n] - 9:5</p> <p>motor [n] - 41:12</p> <p>move [v] - 37:23</p> <p>moving [n] - 37:21</p> <p>MR [n] - 1:20, 1:24, 2:8, 3:4, 3:15, 5:3, 17:1, 17:4, 20:13, 28:11, 29:8, 29:18, 32:17, 32:18, 42:18, 42:24, 44:5, 44:16, 47:2, 47:8, 54:3, 56:15, 56:21, 58:3, 58:5, 58:14, 58:17, 58:18, 58:22, 58:24, 59:1, 59:3, 59:5</p> <p>N</p> <p>name [n] - 3:5, 6:6, 13:17, 28:21</p> <p>National [n] - 4:12, 6:13</p> <p>necessary [n] - 53:9, 55:6</p> <p>need [n] - 16:9, 19:21, 24:2, 24:4, 24:6, 39:8, 43:12, 48:4, 58:9, 58:18</p> <p>needed [n] - 16:16, 49:13, 58:11</p> <p>negotiate [n] - 25:16</p> <p>negotiating [n] - 26:9</p> <p>negotiations [n] - 14:12, 14:25</p> <p>net [n] - 30:1</p> <p>netted [n] - 30:4</p> <p>never [n] - 9:11, 10:16, 12:23, 13:22, 15:3, 15:11, 16:10, 16:12, 16:17, 24:22,</p>	<p>42:2</p> <p>new [n] - 16:21, 40:20, 41:1, 58:7</p> <p>next [n] - 20:6, 20:21</p> <p>night [n] - 37:10</p> <p>nobody [n] - 31:11</p> <p>none [n] - 42:13</p> <p>NOONEY [n] - 1:24, 3:15, 5:3, 29:18, 32:18, 56:21, 59:1</p> <p>Nooney [n] - 1:24, 3:11, 3:12, 3:13, 58:25</p> <p>Notary [n] - 1:12, 60:4</p> <p>notebook [n] - 20:7</p> <p>notes [n] - 28:5, 28:7</p> <p>nothing [n] - 53:22, 54:15, 57:10, 57:17</p> <p>noticed [n] - 56:4</p> <p>number [n] - 3:20, 12:1, 48:21</p> <p>numbers [n] - 32:4</p> <p>numeraled [n] - 21:20</p> <p>O</p> <p>oath [n] - 60:8</p> <p>oaths [n] - 60:5</p> <p>objection [n] - 42:18, 44:5, 44:16, 47:8</p> <p>obtained [n] - 11:16</p> <p>occurred [n] - 27:11, 33:2</p> <p>occurs [n] - 4:4</p> <p>OF [n] - 1:1, 1:2, 60:1, 60:2</p> <p>off-the-record [n] - 20:14, 56:22, 58:20</p> <p>offer [n] - 7:22, 11:24, 26:5, 26:9</p> <p>office [n] - 8:10, 15:18, 17:8, 18:2, 19:6, 19:22, 21:7, 28:2, 31:5, 33:20, 49:23, 49:25, 50:13, 50:17, 53:19</p> <p>old [n] - 8:14</p> <p>ON [n] - 2:10</p> <p>once [n] - 14:12</p> <p>one [n] - 3:8, 3:20, 6:14, 7:16, 8:10, 8:11, 9:11, 9:16, 12:23, 13:21, 14:17, 26:22, 26:25, 31:9, 40:20, 40:23, 41:1, 41:2, 41:21, 43:10, 50:4, 51:23, 51:24, 57:22,</p>	<p>58:3</p> <p>ones [n] - 31:22</p> <p>online [n] - 35:1</p> <p>open [n] - 45:23</p> <p>operate [n] - 30:7</p> <p>operation [n] - 53:1</p> <p>opportunities [n] - 26:20</p> <p>order [n] - 20:12</p> <p>otherwise [n] - 18:25</p> <p>outlined [n] - 21:22, 22:9</p> <p>overpaying [n] - 33:16</p> <p>own [n] - 7:16, 13:10, 55:2, 55:9</p> <p>owned [n] - 9:5, 13:4, 13:18, 16:17, 57:5</p> <p>owner [n] - 16:21, 57:6</p> <p>owns [n] - 28:25</p> <p>P</p> <p>p.m. [n] - 1:13, 60:23, 56:24, 59:6</p> <p>PAGE [n] - 2:6, 2:10</p> <p>Page [n] - 23:6, 52:22, 53:4, 54:18</p> <p>page [n] - 20:21, 50:21, 51:16</p> <p>pager [n] - 51:9, 51:10, 51:24</p> <p>pages [n] - 62:6</p> <p>paid [n] - 12:5, 26:8, 42:17, 42:24, 43:1, 43:2, 43:4</p> <p>paint [n] - 54:14</p> <p>pamphlets [n] - 40:23</p> <p>papers [n] - 14:2, 17:23, 17:24</p> <p>paperwork [n] - 11:7, 13:24, 15:1, 15:8</p> <p>paragraph [n] - 21:20</p> <p>paralegal [n] - 43:10</p> <p>park [n] - 9:4, 31:15</p> <p>Park [n] - 1:25</p> <p>parking [n] - 39:24</p> <p>perks [n] - 7:15, 8:20, 8:24, 9:6, 9:7</p> <p>part [n] - 8:22, 8:23, 10:8, 23:13, 36:18, 37:8, 38:6, 48:9, 54:8, 57:6</p> <p>particular [n] - 7:17, 10:22</p>	<p>parties [n] - 21:22, 60:16</p> <p>partner [n] - 28:17</p> <p>partners [n] - 28:18</p> <p>pass [n] - 28:9</p> <p>past [n] - 8:20, 24:9, 38:7, 58:11</p> <p>pay [n] - 26:6, 33:22, 57:17</p> <p>paying [n] - 4:25, 43:13, 44:9</p> <p>payments [n] - 17:18, 25:10</p> <p>PENNINGTON [n] - 1:2, 60:2</p> <p>Pennington [n] - 50:6</p> <p>people [n] - 13:5</p> <p>per [n] - 11:19</p> <p>percent [n] - 38:4</p> <p>perhaps [n] - 28:14</p> <p>period [n] - 26:3</p> <p>permanent [n] - 37:21</p> <p>person [n] - 34:5</p> <p>personal [n] - 39:18</p> <p>personally [n] - 39:22, 40:1, 40:16</p> <p>phone [n] - 12:8, 58:17</p> <p>PLACE [n] - 1:14</p> <p>place [n] - 12:22, 17:21, 26:25, 27:5, 28:16, 39:20, 42:2, 42:3</p> <p>placed [n] - 60:6</p> <p>Plaintiff [n] - 2:2</p> <p>Plaintiffs [n] - 1:6, 1:18</p> <p>plan [n] - 37:6</p> <p>plural [n] - 40:19</p> <p>plus [n] - 45:10, 46:25, 52:7</p> <p>point [n] - 24:14, 26:25, 31:9, 45:17</p> <p>possibly [n] - 31:14</p> <p>potential [n] - 54:6</p> <p>power [n] - 6:11, 26:9</p> <p>prejudgment [n] - 44:1</p> <p>preliminary [n] - 51:9, 51:13, 51:21</p> <p>prepare [n] - 7:3, 7:6</p> <p>prepared [n] - 45:24</p> <p>present [n] - 6:11, 21:8, 28:3, 54:22, 55:3, 56:8</p> <p>Present [n] - 2:2</p> <p>Presley [n] - 24:9,</p>	<p>31:5, 38:13</p> <p>Praston [n] - 38:8</p> <p>pretty [n] - 29:10</p> <p>prevail [n] - 43:14</p> <p>price [n] - 12:5, 12:7, 18:13, 18:14, 18:15, 26:5, 26:6, 26:8, 30:17, 33:22, 34:3, 34:4</p> <p>pricing [n] - 30:14</p> <p>primary [n] - 37:18</p> <p>problem [n] - 53:20</p> <p>problems [n] - 53:16, 53:17</p> <p>proceedings [n] - 60:12</p> <p>professional [n] - 42:8, 48:24</p> <p>professionals [n] - 48:21</p> <p>profitability [n] - 29:8</p> <p>progressing [n] - 7:2</p> <p>prompted [n] - 11:22, 58:2</p> <p>property [n] - 7:23, 11:18, 12:16, 12:17, 12:21, 14:6, 16:6, 16:13, 16:14, 17:25, 18:11, 18:12, 24:21, 27:18, 30:20, 36:22, 32:2, 32:21, 33:16, 34:15, 36:7, 36:8, 36:15, 36:17, 37:7, 37:20, 38:6, 38:15, 39:4, 39:17, 40:13, 41:20, 42:11, 49:5, 49:10, 52:24, 52:25, 53:2, 53:14, 53:15, 54:6, 54:19, 55:2, 56:4, 55:8, 55:13</p> <p>provided [n] - 22:15, 31:2, 40:8</p> <p>providing [n] - 28:14</p> <p>Public [n] - 1:12, 60:5</p> <p>pulled [n] - 35:1</p> <p>punishment [n] - 46:11, 46:13</p> <p>punitive [n] - 46:6, 46:8, 46:10, 46:14, 47:6</p> <p>purchase [n] - 13:6, 13:20, 13:23, 15:10, 17:9, 24:5, 31:10, 44:13, 54:9</p> <p>Purchase [n] - 10:5, 10:12, 10:19, 10:22, 11:1, 11:5, 11:8, 12:13, 12:18, 18:9,</p>
---	--	--	---	--

20:17, 25:20, 35:9, 47:22, 50:23, 52:4 purchased [p] - 7:25, 8:2, 8:17, 16:10, 36:17, 37:13, 37:20, 48:20, 54:19 purchaser [p] - 21:20 purchasing [p] - 7:12, 19:11, 49:5, 53:5, 54:1, 54:5 purpose [p] - 58:5 pursue [p] - 11:22 put [p] - 13:22, 14:8, 15:10, 15:14, 45:10, 45:11	reason [p] - 30:12, 32:6 rebuilt [p] - 40:13, 40:18, 40:20, 41:2 received [p] - 50:7 recess [p] - 56:23 recollection [p] - 3:15 reconvene [p] - 58:14 record [p] - 20:13, 20:14, 54:18, 58:21, 58:22, 58:4, 58:20 redone [p] - 24:6 reduced [p] - 60:9 reference [p] - 35:14 references [p] - 23:3 referencing [p] - 40:17, 41:8 related [p] - 62:26, 60:13 relying [p] - 49:9, 49:12, 54:23, 55:2, 55:9 remember [p] - 5:20, 8:11, 8:13, 8:14, 8:18, 10:16, 10:18, 10:19, 10:21, 10:23, 10:24, 11:3, 12:9, 15:22, 17:23, 19:9, 19:20, 20:3, 25:14, 27:2, 27:5, 27:12, 27:13, 50:5, 52:2, 52:15, 52:16, 52:17 REMINGTON [p] - 1:4, 1:5, 1:6, 2:7, 3:1 Remington [p] - 2:2, 3:6, 22:1 renegotiate [p] - 23:1 rent [p] - 36:9, 36:10, 36:17 rental [p] - 36:7, 36:8, 36:15, 36:19 repairs [p] - 53:9, 55:6 repeat [p] - 3:22 replaced [p] - 56:9 replacing [p] - 56:7 Reporter [p] - 1:12, 60:4 representation [p] - 32:12, 48:4 representations [p] - 17:25, 19:10, 29:2, 29:4, 38:5, 38:15, 49:9, 54:11, 54:24 represented [p] - 33:18, 40:16, 48:11 representing [p] -	19:16, 21:17, 27:8, 27:9 Representing [p] - 1:18, 1:20, 1:24 rescind [p] - 44:12 reservations [p] - 15:13 reserve [p] - 45:19, 59:1 residence [p] - 35:16, 37:4, 37:14, 37:18, 37:21, 38:7 residential [p] - 7:24, 38:16 residing [p] - 37:6 RESORT [p] - 1:8 responsible [p] - 53:8, 55:5 restate [p] - 3:23 restaurant [p] - 31:12, 31:15, 31:23, 38:9 resumed [p] - 56:24 retire [p] - 7:14, 8:14 retirement [p] - 30:9 review [p] - 7:8, 43:21 reviewed [p] - 7:9 right-of-way [p] - 16:15, 36:22, 39:25 rings [p] - 40:4 risk [p] - 53:25, 54:2, 54:6 rolling [p] - 25:11 room [p] - 22:1, 49:25 rule [p] - 3:20 run [p] - 31:22 running [p] - 36:19 RV [p] - 7:15, 8:20, 9:4, 9:5, 9:7, 31:15	41:14, 49:3 second [p] - 20:13 section [p] - 21:23, 22:6, 22:9, 52:23, 54:17 see [p] - 16:9, 21:23, 22:4, 22:12, 23:4, 23:8, 35:3, 35:8, 50:12, 51:2, 51:12, 55:23, 56:8 seeking [p] - 44:4, 45:6 sell [p] - 9:21, 11:18, 11:24, 13:7, 14:3, 39:4 seller [p] - 21:21, 33:15 sellers [p] - 54:25 selling [p] - 24:21 sense [p] - 41:25 sentence [p] - 52:23 service [p] - 6:12, 36:5 set [p] - 27:3, 34:3, 34:4, 34:5, 34:8 setting [p] - 17:15 seven [p] - 8:4, 32:3 SEVENTH [p] - 1:2 several [p] - 8:1, 12:9 sewer [p] - 36:3, 36:7, 37:2 shares [p] - 57:7 sheet [p] - 40:24 shorthand [p] - 60:8 show [p] - 7:6 showed [p] - 14:6 showing [p] - 41:22 shown [p] - 42:2, 42:3 shut [p] - 16:19, 16:22 side [p] - 7:15 sign [p] - 11:7, 17:9, 20:21, 21:1, 47:11, 47:12, 47:16, 47:19, 49:18, 53:16 signature [p] - 52:19 signed [p] - 10:12, 11:1, 11:5, 11:8, 12:13, 13:6, 13:21, 15:24, 17:15, 17:16, 17:23, 17:24, 18:9, 20:23, 21:8, 24:17, 25:17, 25:20, 35:8, 47:21, 48:12, 49:20, 50:14, 50:16, 50:23, 51:4, 51:23, 52:4, 52:14, 53:13 signing [p] - 10:19,	10:21, 10:24, 12:18, 20:1, 20:2, 21:14, 50:13 Simmons [p] - 1:15, 1:21 simple [p] - 34:6 sit [p] - 33:1, 45:12 site [p] - 6:8 sitting [p] - 10:17, 19:14 six [p] - 8:4 slow [p] - 17:4 small [p] - 35:23 snoop [p] - 12:20 Solay [p] - 1:24 sold [p] - 8:17, 23:22, 24:16, 37:23 solely [p] - 55:2, 55:9 someone [p] - 22:15 sometime [p] - 11:11, 13:13 somewhere [p] - 5:4, 28:4 sorry [p] - 17:3, 18:20, 21:11, 27:23, 28:11, 28:13, 29:7, 32:17, 36:21, 37:17, 46:12, 47:3, 50:3, 50:4, 50:19, 50:22, 54:4 sound [p] - 15:25, 52:14 sounds [p] - 18:4, 29:10, 29:12 SOUTH [p] - 1:1, 60:1 South [p] - 1:12, 1:16, 1:19, 1:23, 1:25, 4:7, 8:5, 60:5, 60:17 specific [p] - 45:24, 46:23 specifically [p] - 45:18, 49:6 Speck [p] - 1:11 spell [p] - 5:16, 6:6 spending [p] - 32:7 SS [p] - 60:1 stamped [p] - 52:22 start [p] - 20:9 started [p] - 5:6, 8:18, 10:1, 14:2, 16:11 starting [p] - 13:12 STATE [p] - 1:1, 60:1 state [p] - 3:6, 16:11, 16:15 statement [p] - 30:18 statements [p] - 31:6, 31:13, 31:21, 40:8, 43:16
--	---	--	--	--

<p>States [i] - 8:21 stations [i] - 6:11 stay [i] - 9:3, 9:4, 37:10, 58:11 stayed [i] - 9:5, 37:25, 38:10, 38:11 still [i] - 9:20, 30:20, 44:9, 57:17 stole [i] - 57:8 stopped [i] - 9:17, 12:14, 16:18 store [i] - 31:15 stored [i] - 10:16 story [i] - 30:24 structural [i] - 41:19, 42:10 structures [i] - 38:16 stuck [i] - 53:22 studying [i] - 4:17 stuff [i] - 48:19 subject [i] - 39:12, 54:20, 55:3, 55:4 sue [i] - 57:8, 57:11 Suite [i] - 1:15, 1:22 Sunset [i] - 37:16, 37:17 supervision [i] - 60:9 supposed [i] - 48:6, 57:15 supposedly [i] - 27:9, 27:19 sworn [i] - 3:2</p>	<p>29:25, 32:13, 51:9, 51:16, 51:24, 52:6 three-page [i] - 51:16 three-pager [i] - 51:9, 51:24 throughs [i] - 12:24 tickets [i] - 58:1 ticks [i] - 22:24 tired [i] - 29:14 title [i] - 50:1, 50:3, 50:4, 50:5, 50:6, 50:14 today [i] - 18:25, 33:1, 33:20, 58:13, 58:5 tomorrow [i] - 19:1 took [i] - 28:18, 57:7, 57:14 touch [i] - 32:4 towards [i] - 16:10, 21:19 town [i] - 4:12, 5:15 traffic [i] - 57:25, 58:1 transaction [i] - 7:17, 7:20, 9:6, 21:22, 48:22, 48:25 transcript [i] - 60:10 transcription [i] - 4:4 transmission [i] - 6:11 transpire [i] - 17:13 Transportation [i] - 38:21 traveled [i] - 8:21 traveling [i] - 9:2 trial [i] - 44:6 trick [i] - 3:25 tried [i] - 58:5, 57:9 true [i] - 41:9, 60:19 truth [i] - 7:7 try [i] - 3:25, 20:10, 47:23 trying [i] - 58:12 turn [i] - 23:9, 29:13, 38:18, 53:4 twice [i] - 32:5 two [i] - 5:2, 12:19, 25:24, 26:3, 27:19, 35:23, 36:13, 48:2, 52:6 two-week [i] - 26:3 typed [i] - 23:16 typewritten [i] - 60:9</p>	<p>U ultimately [i] - 52:14 unaware [i] - 48:7 under [i] - 17:20, 22:11, 22:12, 52:23, 60:6, 60:9 understood [i] - 21:14, 24:16, 48:6, 48:12, 49:5, 63:5, 63:25 unforeseeable [i] - 53:23, 54:13 United [i] - 8:21 unless [i] - 45:23 up [i] - 5:9, 6:3, 6:24, 7:2, 7:6, 12:1, 12:14, 14:6, 14:10, 14:25, 16:18, 20:1, 20:2, 23:16, 23:25, 26:7, 29:20, 29:22, 29:23, 35:1, 35:4, 37:23, 40:4, 41:22, 53:14, 53:20, 53:21, 55:25, 57:16, 58:7 upstairs [i] - 35:20, 38:18</p>	<p>West [i] - 1:15, 1:22 whole [i] - 30:23, 30:24, 44:22, 45:12, 51:12, 52:15, 58:16 widened [i] - 40:13, 40:18, 40:20, 41:3 wife [i] - 9:20, 11:17, 18:1, 18:4, 19:10, 21:1, 27:21, 27:23, 28:3, 28:7, 58:13, 58:12 Wild [i] - 1:24, 7:18, 9:6, 9:12, 9:18, 13:12 WILD [i] - 1:8 willing [i] - 11:24, 14:15 win [i] - 57:15 wind [i] - 57:16 WITNESS [i] - 2:6, 3:12, 17:3, 58:13 Witness [i] - 60:17 witness [i] - 3:2, 60:5, 60:7, 60:8 wood [i] - 22:24 word [i] - 19:14, 27:9 worth [i] - 17:21, 27:1, 27:5, 30:15, 30:16, 30:17, 30:21, 30:22, 33:8</p>
<p>T tearing [i] - 56:7 term [i] - 14:2 terminate [i] - 23:1 terms [i] - 14:1, 14:14, 25:1, 25:3, 25:6, 52:19 tested [i] - 55:15 testified [i] - 3:2, 33:19, 51:6, 52:12, 60:7 testimony [i] - 11:4, 60:7, 60:11 testing [i] - 55:19 Texas [i] - 6:5, 13:18 THE [i] - 3:12, 17:3, 58:13 thereof [i] - 54:21 thinking [i] - 50:3 thousand [i] - 5:2 three [i] - 11:20, 12:19, 20:1, 27:22, 27:23, 27:25, 28:16,</p>		<p>V value [i] - 56:11 verify [i] - 30:11 visited [i] - 9:19 visiting [i] - 11:17 visits [i] - 16:12 vs [i] - 1:7</p>	<p>Y yards [i] - 6:12 year [i] - 4:20, 5:1, 6:14, 11:19, 18:3, 18:4, 27:6, 30:9, 31:23, 31:25, 56:1, 57:13 yearly [i] - 30:7 years [i] - 4:14, 5:2, 5:12, 5:21, 6:3, 8:14, 8:16, 16:20, 28:14, 41:22, 42:2, 42:3 years' [i] - 31:21 yesterday [i] - 8:15 yourself [i] - 16:6, 47:23, 49:13</p>
	<p>W wait [i] - 54:3 waive [i] - 42:22, 59:3 walk [i] - 12:17, 12:21, 12:24 walk-throughs [i] - 12:24 walked [i] - 9:20, 11:17, 12:15, 24:6 walls [i] - 56:4, 56:7 warranties [i] - 54:11, 54:24 warranty [i] - 23:22 water [i] - 38:11, 36:2, 36:3, 36:5, 36:7, 37:2 week [i] - 26:3, 32:3 weeks [i] - 25:24, 47:21, 48:2, 48:18</p>		

DEPOSITION OF: KEITH GRIMM

1-4

1 STATE OF SOUTH DAKOTA
2 COUNTY OF HENDRICKS
3
4 SUVE REMINGTON and
5 MELODY REMINGTON,
6
7 Plaintiff,
8
9 vs.
10 WILD HILLS CRENSHAW
11 AND SONS, LLC, KEITH
12 GRIMM, and MELBA JENSEN,
13
14 Defendants.

IN CIRCUIT COURT
SS.
HENDRICKS JUDICIAL CIRCUIT

Cir. No. 16-000114

DEPOSITION OF:
KEITH GRIMM

DATE: November 7, 2018 at 8:58 a.m.

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1

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INDEX

WITNESS	PAGE
KEITH GRIMM	
EXAMINATION BY MR. HANCOCK	3
CROSS-EXAMINATION BY MR. BRUNSWICK	76
FURTHER EXAMINATION BY MR. HANCOCK	82

EXHIBITS

EXH. NO.	DESCRIPTION	PAGE
17	Seller's Property Condition Disclosure Statement	28
18	Photographs of various places in basement	51
19	Photographs of bridges	57
20	Customer purchase order from RCO Equipment for John Deere 3520	67

2

KEITH GRIMM

1 called as a witness herein, having been first duly
2 sworn, was examined and testified as follows:

3 EXAMINATION BY MR. HANCOCK:

4 Q Good morning.

5 A Morning.

6 Q My name is Mike Hancock. I represent Suve
7 and Melody Remington.

8 Could you please state your full name and
9 address for the record.

10 A Keith Grimm. 851 Emma Drive, Rapid City,
11 South Dakota, 57701.

12 Q Have you ever had your deposition taken before?

13 A No.

14 Q Okay. I'm going to go over a few rules. First
15 one is, you need to try to let me finish my
16 question before you begin to answer.

17 And your answers need to be verbal.

18 Nonverbal cues are very hard for Jacque to pick
19 up. Is that fair?

20 A Okay. Yes.

21 Q And if at any time you do start talking over me
22 or nodding "yes" or "no," I'll correct you, just
23 so we have a clean record. I'm not trying to be
24 rude.

3

1 A Right. Yes.

2 Q And you might want to speak up just a little bit
3 so she can catch what you're hearing — what
4 you're saying.

5 A Okay.

6 Q Keith, this is probably the most important. If
7 you don't understand one of my questions, will
8 you please let me know?

9 A Yes.

10 Q Okay. And if you do answer my question, I'm
11 going to assume you understood it; is that fair?

12 A Yes.

13 Q And I don't think this is going to take all day,
14 but if at any time you need a break, you just
15 let us know and we'll take a break.

16 The only caveat to that is if we're in the
17 middle of an answer, I want you to finish the
18 answer and then we can take a break.

19 A Yes.

20 Q Okay. May I call you Keith?

21 A Yes.

22 Q Keith, where did you grow up?

23 A Rapid City.

24 Q How long have you lived in Rapid your whole life?

25 A Yes.

4

1 Q Can you summarize your education for me.
 2 A Graduated from Rapid City Central in 1978. No
 3 college schooling.
 4 Q I'm sorry?
 5 A No college schooling or anything. I'm just...
 6 Q Okay. And what did you do after your graduation
 7 in '78?
 8 A I went to -- I worked for Boveras when I was in
 9 school, and the first year or so when I got out
 10 of school. And then I worked for Pem
 11 Insulators, which no longer exists. It's an --
 12 it was an insulation company.
 13 Q Okay. Now, your job with Boveras, were you a
 14 writer, cook? Are we talking about the old
 15 restaurant?
 16 A Yep.
 17 Q Okay.
 18 A Busy to dishwasher to cook to, you know.
 19 Q How long did you do that?
 20 A A couple years.
 21 Q And then Pem Insulators?
 22 A Right.
 23 Q That's an insulation company, how long were you
 24 there?
 25 A Probably a couple years again. I -- I don't

5

1 remember.
 2 Q And just a labor position there?
 3 A Yes.
 4 Q Then what did you do?
 5 A I went to work for Lloyd's Carpet Cleaning.
 6 Q How long were you at Lloyd's?
 7 A Three years.
 8 Q What were your duties at Lloyd's, just
 9 installing or business side of it?
 10 A Carpet cleaning.
 11 Q Cleaning?
 12 A Yeah. It's a cleaning business. Lloyd's Carpet
 13 Cleaning.
 14 Q Okay. Next job?
 15 A I did some roofing, you know, on my own. A
 16 roofing business.
 17 Q Did you have anybody working for you in the
 18 roofing business?
 19 A Yeah. I had Larry Hill. He's deceased. He's
 20 no longer alive.
 21 Q What was the name of the roofing business?
 22 A West River Woodworks is what we had.
 23 Q Did you do anything in addition to roofing with
 24 that company?
 25 A Yeah, we made some waterbeds and some oddball

6

1 stuff, but mainly that's what we were doing.
 2 Q How long was that company in existence?
 3 A Oh, a couple years, I imagine.
 4 Q And why did you move on from that?
 5 A Well, the main reason I moved on, because it was
 6 a lot of work and we found out whenever there
 7 was good work, everybody that had a hammer was
 8 shingling and roofing houses, you know, instead
 9 of -- and then the rest of the time, there
 10 wasn't enough to do, so.
 11 Q What was your next venture?
 12 A I started my own commercial laundry business,
 13 rentals, laundry business.
 14 Q Name of that company?
 15 A Grim's Dust Control and Linen Service.
 16 Q Were you the sole owner of that?
 17 A Yes. Well, with my wife, I mean, but yes.
 18 Q Was that just in Rapid City or the whole
 19 Northern Hills?
 20 A We did everything from the western side of the
 21 state. We did -- it was based out of
 22 Rapid City.
 23 Q How long did you do that?
 24 A 10, 12 years I suppose.
 25 Q Did you sell the business?

7

1 Sold it to Servall.
 2 Q I can't keep track what year we're on. What
 3 year did you sell it?
 4 A I sold it in '90, I believe. 2011.
 5 Q With the sale of the business, was there a sale
 6 of property as well?
 7 A No. I kept the building. He just bought the
 8 business.
 9 Q So after you sold Grim's Dust Control and Linen
 10 Service, what did you do?
 11 A Went to work for Servall.
 12 Q Was that a part of the purchase agreement?
 13 A I was supposed to be there for, I don't remember
 14 the exact amount of time, but I was supposed to
 15 be there for transition anyway.
 16 Q Okay.
 17 A And ended up being there for a long-term --
 18 Q How long?
 19 A -- job.
 20 Well, four years before I bought the
 21 campground, and I'm still working for Servall,
 22 so.
 23 Q What are your duties with Servall?
 24 A From back then or right now?
 25 Q Currently.

8

1 A Currently, I deliver coveralls to the mines in
2 Wright, Wyoming twice a week.
3 Q And how have those duties changed from when you
4 first started working for them in 2001?
5 A Well, I was plant manager back then, and I've
6 been back there almost every year for unteen
7 years or however long I've had the campground.
8 Q How long were you plant manager?
9 A I'm guessing three, three to four years.
10 Q And that takes us to buying the campground.
11 When did you purchase the campground?
12 A '05, 2005.
13 Q Keith, what did you do to prepare for this
14 deposition today?
15 A Just reviewed some things, talked with John, you
16 know, kind of -- because I've never done
17 anything like this, so I didn't have any idea
18 what to prepare for.
19 Q Sure. And I don't want to know what you and
20 John talked about. But what did you review?
21 A Basically just give your best opinion or best
22 answer that you can give and be truthful.
23 Q Did you review certain pleadings, certain
24 documents that have been filed in this case?
25 A I -- I looked at Dore's and Bryan's depositions --

9

1 Q Who?
2 A Family members.
3 Q Did you talk with Bryan Benson?
4 A Yes.
5 Q What was the substance of those discussions?
6 A I guess basically that I didn't think any of his
7 legit complaints, you know...
8 Q Did you ask Bryan Benson any questions?
9 A Per -- for? Questions of?
10 Q The transaction, real estate documents?
11 A No.
12 Q And Keith, was your wife involved in this
13 particular transaction and the sale of the
14 campground or was it --
15 A No.
16 Q -- primarily you?
17 A Primarily me.
18 Q Okay. You purchased Wild Bill's in 2005. Is
19 that what it was called --
20 A Yes.
21 Q -- back then?
22 A Wild Bill's Campground. We did change it to
23 Wild Bill's Campground and Resort, LLC. I don't
24 remember for sure what it was before, I guess.
25 It was Wild Bill's Campground.

11

1 depositions.
2 Q Did you review the Motion for Summary Judgment
3 and accompanying documents filed by Bryan
4 Benson?
5 A No.
6 Q Any other documents you reviewed before today?
7 A Well, I reviewed that -- basically those things
8 I'm supposed to come up with. I don't remember
9 what you call it, the -- those...
10 Q Interrogatories?
11 A Yes.
12 MR. BEARDLEY: Okay. And those are coming
13 next week, two weeks?
14 MR. NOONEN: Probably a couple weeks, yeah.
15 You wouldn't want to interrupt my vacation,
16 would you, Mike.
17 MR. BEARDLEY: We kind of had a time crunch
18 to get this thing done.
19 Q (BY MR. BEARDLEY:) After this lawsuit was
20 started, did you ever give any statement to any
21 insurance company?
22 A No.
23 Q Besides your attorney, John, have you talked
24 with anybody about this case?
25 A Yes.

10

1 Q Did you change the name immediately after the
2 purchase, if you recall?
3 A I don't know. Probably, but I don't remember.
4 Q When you purchased this campground, did you use
5 a real estate agent?
6 A Yes.
7 Q Who is that?
8 A Well, they had to -- their Realtor is who I work
9 through. I don't remember what his name was
10 even.
11 Q Do you remember, was it a dual agency
12 relationship, where one Realtor represented both
13 the seller and yourself as the buyer?
14 A I believe it was one Realtor, because I didn't
15 hire a Realtor or anything to look for me.
16 Q Who did you purchase it from?
17 A The Kings. Bonnie and Chuck King.
18 Q Did you discover this because it was listed on?
19 A Yes.
20 Q How was it listed, if you recall?
21 A I believe it was in just a little magazine or
22 something.
23 Q What was the purchase price?
24 A \$75.
25 Q When you purchased it, was the campground and

12

1 resort similar to what it is currently?
 2 A No.
 3 Q Okay. Tell me the difference.
 4 A I've spent 13 years fixing things and putting
 5 things together and making things the best that
 6 I can, better and better all the time.
 7 Q Sure.
 8 A Yeah.
 9 Q And in 2005 when you purchased it, there was the
 10 main building?
 11 A Yes.
 12 Q And carpites?
 13 A Carports and the duplex cabin.
 14 Q Have you added carpites?
 15 A No, not really added much for carpites. I've
 16 added cabins.
 17 Q How many cabins?
 18 A We have nine.
 19 Q And when you first purchased it, there was one?
 20 A One -- we call it two. It's a duplex. It's got
 21 two sides. That's Cabin 1 and 2.
 22 Q What other improvements over the span of 13
 23 years did you make?
 24 A That's a huge list. I mean, from -- well,
 25 probably one of the first things we did is we

13

1 had to bring in power. There was no power
 2 there. I mean, you couldn't run anything.
 3 So I had to bring in -- well, Black Hills
 4 Energy now, put in new transformers and
 5 everything, and we put in new pedestals.
 6 And upgraded it all, all that, the water,
 7 the electric, the sewer, and everything to that
 8 top end, and we had to run new waterlines
 9 through the whole campground, in the buildings.
 10 They were all copper -- or, not copper,
 11 galvanized piping, rusty, leaky.
 12 Q Any improvements or remodeling to the buildings?
 13 A Cabin 1 and 2 we completely gutted out and
 14 remodeled them. That was the original cabin,
 15 the duplex.
 16 Q How about the main building?
 17 A Oh, yeah. Changed things around some, you know.
 18 Made them more user friendly, I guess you would
 19 say. I mean...
 20 Q The structure remained the same?
 21 A Besides adding the deck on the outside and
 22 putting different siding on the front.
 23 Q When did you add the deck?
 24 A Right, ten years ago, I'm guessing. I don't know
 25 the exact date.

14

1 Q Did you change the parking lot?
 2 A No.
 3 Q So do you recall when you first listed the
 4 property for sale?
 5 A I'm going to say 2008 or '09.
 6 Q You listed the property with Bryan Iverson?
 7 A Yes.
 8 Q And how did that relationship come about?
 9 A Bryan was a friend of my younger brother's.
 10 They went to school together.
 11 Q Had you contacted any other real estate agents?
 12 A No.
 13 Q How long have you known Bryan?
 14 A 25, 30 years.
 15 Q And it's my understanding your brother is now
 16 deceased?
 17 A Yes.
 18 Q Did Bryan and -- what's -- what was your
 19 brother's name?
 20 A Les Grimm.
 21 Q Did they just go to high school together, grew
 22 up together?
 23 A I believe -- well, I don't know about junior
 24 high or middle school or whatever. I know they
 25 went to high school together. I really don't

15

1 know when they first met up.
 2 Q So when you listed the property, what was your
 3 reason for trying to sell the property in 2008?
 4 A I think it was maybe stressful. It's a lot of
 5 work. It's a full-time, hard-working summer.
 6 You miss out on all summer activities whether
 7 it's family or whatever it may be. You pretty
 8 much are stuck there.
 9 Q And I'm sure you operate based on a working
 10 season. Can you tell me when that starts and
 11 ends?
 12 A Well, the -- I mean that in the -- it is not a
 13 three-, four-month job. It's a full, year-round
 14 job. I mean, you have to take reservations all
 15 year-round, you know.
 16 And if you're not, you know, busy with the
 17 restaurant and the campground, you're repairing
 18 things or doing things on the off-season.
 19 I think Dave was under the illusion that
 20 it's a three-month deal and you just take off
 21 and that's it.
 22 Q Sure. That's not what I asked you.
 23 What's the on-season versus the off-season
 24 for the campground?
 25 A Typically May 15th is when we kind of start the

16

1 season. Sometimes a little earlier, but usually
2 by May 15th anyway. And then depending on
3 reservations, through the middle of September,
4 maybe the end of September.
5 Q With August being the busiest month, I assume?
6 A Yes.
7 Q So from 2006, the arrangement with Mr. Dawson
8 was that during the season, the listing was
9 taken off; during the off-season, it was put
10 back on. Is that correct?
11 A I don't know as we started that way, but that's
12 the way we have been doing it. Towards the —
13 at least towards the end anyway. I don't
14 believe — I think we had it on sale all the
15 time to start with.
16 Q Do you remember what the listing price was in
17 2008?
18 A Not for sure. It was — I don't know for sure.
19 I think it might have been the same as the \$99,
20 but.
21 Q So for ten years, it remained at the same price?
22 A Yes, or close anyway.
23 Q And Mr. Dawson was responsible for creating the
24 listing; correct?
25 A Yes.

17

1 A Yes, I guess.
2 Q For example, improvements made?
3 A Yes.
4 Q Additional cabins?
5 A Yes.
6 Q And would he ask you about other issues or
7 problems with the property?
8 A No.
9 Q And I take it he took the photographs that
10 appeared in the listings or did you?
11 A He took pictures.
12 Q And over this span of ten years, it's my
13 understanding that there were numerous
14 interested buyers that would come visit the
15 property?
16 A Yes.
17 Q And when that would occur, Mr. Dawson would
18 show the property?
19 A Yes.
20 Q In fact, I think it was his testimony that he
21 was always present during these showings; is
22 that your recollection?
23 MR. BRANESON: Objection; form.
24 Q (BY MR. BRANESON:) You can go ahead and
25 answer.

19

1 Q And essentially putting the property on the
2 market?
3 A Yes.
4 Q During this process, I assume Mr. Dawson had to
5 visit the property?
6 A Yes.
7 Q And each year Bryn was responsible for changing
8 the information on the listing if things
9 changed?
10 MR. BRANESON: Objection; form.
11 Q (BY MR. BRANESON:) Is that fair?
12 A I guess I would do improvements, and then I
13 would let him know about them, or maybe he would
14 ask me. I don't know —
15 Q Sure.
16 A — how that went, but.
17 Q So if the property changed in any way, it was
18 your responsibility to provide that information
19 to Mr. Dawson?
20 A Yes.
21 Q And you did that?
22 A Yes.
23 Q I assume as the listing agent, in addition to
24 visiting the property, he would ask you certain
25 questions about the property; is that correct?

18

1 A Yes, I believe so.
2 Q How many real estate transactions have you been
3 involved in?
4 A Real estate? Just, I sold my laundry building
5 to an individual, Scott Sam.
6 Q Did you use a Realtor?
7 A No, I don't believe so.
8 Q Have you ever sold a house?
9 A No.
10 Q How long have you lived at your current
11 residence?
12 A Since 1980. It was built new.
13 Q And you've never been involved as a real estate
14 agent; correct?
15 A No.
16 Q When you hire a real estate agent, is it fair to
17 say that you as the seller would count on them
18 for advice?
19 A Yes.
20 Q And their job is to help sell the property;
21 correct?
22 A Yes.
23 Q And in order to facilitate that process, you as
24 the seller would need to provide information to
25 the real estate agent; correct?

20

1 A Yes.
 2 Q And that was done in this instance over the span
 3 of ten-plus years, was it not?
 4 A Yes.
 5 Q In addition to you personally providing
 6 information to your real estate agent,
 7 Mr. Iverson also was present at the property
 8 himself; correct?
 9 A What do you mean?
 10 Q Well, he showed the property numerous times --
 11 A Yes.
 12 Q -- he --
 13 A Yes.
 14 Q -- was familiar with the property?
 15 A Yes.
 16 Q And if there were issues or problems or changes
 17 to the property, you would have told
 18 Mr. Iverson; correct?
 19 A Yes.
 20 Q Do you have any idea how many potential buyers
 21 viewed the property in the span of ten years?
 22 A No, I don't have a -- I mean, multiple.
 23 Q And if Mr. Iverson's testimony has been that it
 24 was roughly 30 times that he showed the
 25 property, you'd have no reason to disagree with

21

1 Q Okay. But usually it was Ryan that would do
 2 this?
 3 A Yes.
 4 Q How many acres are on the property?
 5 A 13, a little over 13.
 6 Q ~~13 acres. How many properties?~~
 7 ~~100.~~
 8 Q ~~One restaurant?~~
 9 A Yes.
 10 Q ~~9 others?~~
 11 A Yes.
 12 Q Any other outbuildings?
 13 A There's a ~~shed~~; the well house, a shed for
 14 lawn mowers.
 15 Q And a ~~living quarters~~ --
 16 A And --
 17 Q -- correct?
 18 A In the restaurant and bar, yes.
 19 Q ~~The living quarters is in the restaurant and~~
 20 ~~bar.~~
 21 ~~Well, in the basement.~~
 22 Q Yeah. So when Mr. Iverson would show the
 23 property, he had to be familiar with everything
 24 on the property; correct?
 25 MR. BRUNSON: Objection; imm.

23

1 it?
 2 A No.
 3 Q Could it have been more?
 4 A I doubt it was more but I...
 5 Q So during this time frame where he shows the
 6 property roughly 30 times, explain to us how
 7 that process worked.
 8 A Well, normally people would contact him, but if
 9 somebody contacted me, then I would, you know,
 10 contact Ryan and say there's somebody
 11 interested in looking at the property, and.
 12 Q And then he would schedule a time --
 13 A To show it.
 14 Q -- with --
 15 A You've got to let me finish.
 16 A I'm sorry.
 17 Q I'm sorry. He would schedule a time with you to
 18 come out and show it?
 19 A No. Normally I wasn't in the showing because I
 20 was working.
 21 Q So you wouldn't participate in walking around
 22 and showing a prospective buyer the campground?
 23 A No, not usually. I wouldn't say never but I --
 24 I say take a prospective buyer that come to me
 25 and show them around some if they wanted.

22

1 MR. NOON: Join.
 2 You can answer, Keith.
 3 A I -- I guess.
 4 Q ~~(BY MR. BRUNSON:)~~ Well, I mean, isn't that
 5 fair, that if somebody is trying to sell
 6 something, they ought to be familiar with it?
 7 A Well, I guess it depends on what "familiar with
 8 it" is. I mean, he can't know everything.
 9 Q Sure. But you would expect him to be familiar
 10 with the ins and outs of the property in order
 11 to show a potential buyer to try to convince
 12 them to buy it. That's fair, isn't it?
 13 MR. BRUNSON: Objection; imm.
 14 A Yes.
 15 Q ~~(BY MR. BRUNSON:)~~ And in order for
 16 Mr. Iverson to become familiar with this
 17 extensive property, he had to learn it from
 18 somebody; correct?
 19 A I think most of the time he just would be there
 20 and take pictures of something new and...
 21 Q Sure. But --
 22 A That's kind of how it went.
 23 Q There had to have been an interaction between
 24 yourself and Mr. Iverson to inform him of your
 25 campground and how it worked in order for him to

24

1 sell it, right?
 2 A I guess I don't understand what you're trying to
 3 convey.
 4 Q Well, if I was trying to sell a property that I
 5 wasn't familiar with and I didn't own, I would
 6 learn first the owner of how things worked. Is
 7 that what happened here?
 8 A Yes, I imagine.
 9 Q During this ten-year span, how would you
 10 communicate with Mr. Iversen? Was it phone
 11 calls?
 12 A Yes, I think it would be pretty much all phone
 13 calls.
 14 Q E-mail?
 15 A I -- no. Not such with me.
 16 Q Is it possible there could be some e-mail
 17 correspondence?
 18 A I don't think so but maybe.
 19 Q Okay. How about text messages?
 20 A Possibly some text messages. I don't know.
 21 Q In addition to you providing information about
 22 your company to Mr. Iversen in order for him
 23 to learn it so he could sell it, was there ever
 24 a time that Mr. Iversen made suggestions to you
 25 on how to better sell your property, naming

25

1 A As far as family, that's -- well, probably --
 2 no, that's not true. Probably some of my
 3 biggest help was my parents, Dave and Gloria
 4 Grimm.
 5 Q Dave?
 6 A Dave.
 7 Q Dave. And what was your son's name?
 8 A Gloria.
 9 Q Gloria. So this was kind of a family business?
 10 A Yes. But most of them have got their own
 11 careers and things, you know. They are not
 12 really involved in such anymore.
 13 Q Sure. But they would have information and
 14 knowledge about certain improvements, how the
 15 company functioned, things like that?
 16 A Yes.
 17 Q Did your wife have a particular duty? Did she
 18 handle a certain thing that you didn't handle
 19 and vice versa?
 20 A She did all the bookkeeping.
 21 Q And renovations?
 22 A No.
 23 Q Anything besides the bookkeeping?
 24 A I mean, she's worked up there in the restaurant
 25 and bar, but.

27

1 sell it?
 2 A I don't -- I don't believe so.
 3 Q He didn't make any business suggestions?
 4 A If he did, I don't -- I don't remember them. It
 5 was my business.
 6 Q Sure. During the 13 years that you owned the
 7 property and you worked it up, I assume it
 8 wasn't just you, there were others involved?
 9 A Yes. Really.
 10 Q Who was that?
 11 A Well, originally it was my daughter Alicia
 12 and -- pretty much all my kids. They were young
 13 then, you know.
 14 Q Sure.
 15 Alicia, what's her last name?
 16 A It's Grimm.
 17 Q Okay. Anyone else?
 18 A Melissa.
 19 Q Is that still Grimm?
 20 A No. It's Behrens.
 21 Q Anyone else?
 22 A Well, my wife has been involved, Shelly Grimm.
 23 Q So it was kind of a --
 24 A John Grimm, Tyler Grimm.
 25 Q Okay. Anyone else?

26

1 MR. BEARDSLEY: And John, do you have a copy
 2 of all the depo exhibits that have all been
 3 entered?
 4 MR. NOCKY: Right here.
 5 MR. BEARDSLEY: We can take a quick break.
 6 (Brief recess was taken.)
 7 Q (BY MR. BEARDSLEY:) You've got the exhibits in
 8 front of you, Keith. Would you just turn to
 9 Exhibit 1. And this is the purchase agreement;
 10 correct?
 11 A Yes.
 12 Q And on the second page there, it's signed by my
 13 clients and you as the president of the company
 14 on April 27, 2017; correct?
 15 A Yes.
 16 Q Okay.
 17 Deposition Exhibit 17 was
 18 marked for identification.)
 19 Q (BY MR. BEARDSLEY:) Take a look at that for me.
 20 MR. BEARDSLEY: Do you have an extra one?
 21 MR. BEARDSLEY: Yep.
 22 MR. NOCKY: This was 18 then?
 23 MR. BEARDSLEY: 17.
 24 MR. NOCKY: 17, I'm sorry.
 25 Q (BY MR. BEARDSLEY:) Have you ever seen this

28

1 document before?

2 A I don't believe so.

3 Q Do you generally understand what a Seller's

4 Property Condition Disclosure Statement is?

5 A No.

6 Q I suppose you don't. You've never sold a house,

7 right?

8 A Right.

9 Q Did you ever have any discussion with

10 Mr. Iverson regarding a disclosure statement?

11 A No.

12 Q Because you'd leave that up to him on whether or

13 not one is required?

14 A Yes.

15 Q That's part of the reason why you hire a real

16 estate agent; correct?

17 A Right.

18 Q And I know you're not familiar with it, but just

19 generally, Keith, do you understand the purpose

20 of a property disclosure statement?

21 A I assume that it's all about issues with the

22 campground or the property.

23 Q Sure. Issues that may affect a buyer's

24 decision, potential buyer's decision to buy;

25 correct?

29

1 A Yes.

2 Q And I want you to go down to Number 6, and this

3 form requires the disclosure of any problems

4 related to establishing lot lines or boundaries;

5 correct?

6 A Yes.

7 Q Number 10, the disclosure of pending litigation,

8 foreclosure, zoning, building code or

9 restrictive covenant violation notices,

10 mechanic's liens, judgments, special

11 assessments, zoning changes, or changes that

12 could affect your property.

13 Do you see that?

14 A Yes.

15 Q 19, on the second page: The seller is required

16 to disclose whether the property is located near

17 a floodplain - I'm sorry - in or near a

18 floodplain.

19 On Number 19.

20 A [Pause - Witness reading.] Yes, it is.

21 Q Yes, the property is, or yes, that's - you

22 acknowledge that's there?

23 A I acknowledge that.

24 Q Is Wild Bill's in or near a floodplain?

25 A There was a flood study or plan - or, I can't

30

1 know what you call it, but yes.

2 Q And then under xx Section II, Number 1 requires

3 the disclosure of water penetration problems in

4 walls, windows, doors, basement, or crawlspace.

5 Do you see that?

6 A Yes.

7 Q Also requires a disclosure of water damage

8 related repairs.

9 Do you see that?

10 A Yes.

11 Q And Number 10: Any past or present damage to

12 the property, which includes floods.

13 Do you see that?

14 A Yes.

15 Q If you'd flip to the next page, there's a list

16 here, xx System Utilities Information. One of

17 them includes the use of a sump pump; right?

18 A Sump pump is highlighted.

19 Q Yep. And on Responder Conditions there are a

20 number of disclosures that need to be made,

21 including the existence of mold; correct?

22 A Yes.

23 Q And then on the very last page, Keith, under

24 Miscellaneous Information, Number 11, is kind of

25 a catch-all of any other material facts or

31

1 problems that have not been disclosed on this

2 form. Do you see that?

3 A Yes.

4 Q And because you've never seen this form before,

5 this was never completed for my client's review;

6 correct?

7 A Yes.

8 Q And would you agree with me that having a

9 portion of your building or your parking lot

10 within the right-of-way would be a problem

11 related to lot lines and boundaries?

12 MR. HUNTER: Objection form.

13 A Yes.

14 Q (BY MR. HUNTER:) Would you agree with me

15 that code violations regarding the fire pits on

16 the campground would be related to current or

17 pending zoning code or restrictive covenant

18 violations?

19 MR. HUNTER: Objection; calls for a legal

20 conclusion.

21 Subject to that, you can answer.

22 MR. HUNTER: Join.

23 A I was never not permitted to have fire pits

24 over. I was permitted every year that they

25 inspected.

32

1 Q (BY MR. BENDISLEY:) We'll get to that.
 2 And then, of course, you indicated the
 3 campground was located within a floodplain.
 4 That would have been covered by this disclosure
 5 statement, correct?
 6 MR. ERLANDSON: Objection; form.
 7 A Don't know.
 8 Q (BY MR. BENDISLEY:) Bryan Iverson never
 9 informed you to fill one of those out, did he?
 10 A No.
 11 Q Was there ever any discussion whatsoever between
 12 the two of you regarding a property disclosure
 13 statement?
 14 A No.
 15 Q And if Mr. Iverson would have told you to fill
 16 one out, you would have, wouldn't you?
 17 A Yes.
 18 Q And by filling out a disclosure statement, my
 19 client would have been made aware of a number of
 20 issues with the campground?
 21 MR. ERLANDSON: Objection; form.
 22 A I can just say I didn't do it, because he didn't
 23 want to look at anything. He did not care what
 24 the place was --
 25 Q (BY MR. BENDISLEY:) That wasn't my question,

33

1 Keith.
 2 A Well,
 3 Q If you were required to fill out a disclosure
 4 statement, Dawn and Hilary Benington would have
 5 been made aware in writing, on paper, of a
 6 number of the issues with the campground that
 7 are covered within this statement; correct?
 8 A Yes.
 9 MR. NOONEY: Sans objection.
 10 MR. ERLANDSON: Join.
 11 Q (BY MR. BENDISLEY:) We already kind of talked
 12 about this, and I think your testimony was that
 13 the listing that was used for this particular
 14 transaction, you had some input on what was
 15 included in the listing; is that right?
 16 A Yes.
 17 Q And you reviewed it?
 18 A I don't know if I reviewed it but, I mean, I'm
 19 sure I gave information to Bryan, and Bryan put
 20 it on his listing. I didn't observe his
 21 listing. I mean...
 22 Q Okay. So at no time Mr. Iverson didn't show you
 23 the listing and say, Does that look all right?
 24 A I don't know.
 25 Q And turn to Exhibit 6 in that book, please, page

34

1 2. I don't think the pages are numbered, but
 2 under Description of Property, it has a number
 3 of bullet points. And about three-quarters of
 4 the way down it says: Living quarters.
 5 Correct?
 6 A Yes.
 7 Q And the living quarters were located in the
 8 basement of the restaurant?
 9 A Yes.
 10 Q And what does that mean to you? What does
 11 "Living quarters" mean to you?
 12 A Well, for me it was a place to sleep.
 13 Q And prior to the sale, there had been times that
 14 someone, in fact, did live there; correct?
 15 A Yeah. I did.
 16 Q Anyone else?
 17 A I leased the restaurant to Brandon Presley.
 18 Q And?
 19 A And -- but I leased the restaurant and bar to
 20 him, and he just moved in.
 21 Q He lived in the living quarters?
 22 A Yes.
 23 Q Was there a guy named Red? A hired man, so to
 24 speak?
 25 A Yep.

35

1 Q And did Red live in the living quarters at one
 2 time?
 3 A Only after they purchased it was when he moved
 4 in there.
 5 Q Red was already working for you; right?
 6 A Yes. He quit his job to come to work for me.
 7 Q And before the sale, your testimony is that he
 8 never lived in the living quarters?
 9 A Right. Yes.
 10 Q Anyone else throughout the 13 years you operated
 11 this campground that somebody lived in the
 12 living quarters?
 13 A What's that?
 14 Q Anyone else besides Brandon Presley and Red --
 15 what's Red's last name?
 16 A It's Anthony Smith.
 17 Q Okay. I'm sorry. Anyone else besides Anthony
 18 Smith, Brandon Presley that had lived in the
 19 living quarters during that time period from
 20 when you purchased it to when you sold it?
 21 A My family, my daughter.
 22 Q Before you purchased it, was there always a
 23 living quarters?
 24 A The previous owners lived there. I mean, they
 25 lived there.

36

1 Q So you didn't have to remodel to build a living
2 quarters, it was already there?
3 A Well, it's -- it was rooms. That's all it is,
4 in rooms.
5 Q Okay. Now I want you to go to the last page of
6 Exhibit 6. And the property was advertised, as
7 we know, with living quarters. But also there
8 were pictures in the listing with a kitchen,
9 storage and laundry room, an office/bedroom, and
10 a full bath. See that?
11 A Yes.
12 Q And that's accurate, isn't it?
13 A Yes.
14 Q So it's more than just rooms?
15 A Yes.
16 Q What time period did you lease the restaurant to
17 Brandon?
18 A It was never an official lease. It was just
19 kind of... he came in and... I don't remember.
20 It was probably a four- or four- or five-month
21 period.
22 Q Did you have a written lease agreement?
23 A No.
24 Q So to lease the restaurant, meaning he operated
25 the restaurant?

37

1 A Yes. And bar.
2 Q What was your agreement with him?
3 A I believe it was \$1,000 a month and five percent
4 of sales.
5 Q What year was this?
6 A '16, 2016.
7 Q Prior to that, had you leased the restaurant and
8 bar to anyone else?
9 A His... Josh worked for me for a summer, and he
10 wanted to try to run it that winter and it
11 didn't work out either. Same kind of
12 arrangement.
13 Q Josh?
14 A I can't think of what his last name is now.
15 Q So that was also a four- to five-month period,
16 similar lease?
17 A Yeah. I don't think it even made it that long.
18 Q And he tried to run it in the winter?
19 A Yeah.
20 Q That's probably why?
21 A Well...
22 Q What year was that?
23 A Not have been '15, must have been the fall,
24 winter of '15.
25 Q Anytime prior to that did you attempt to do a

38

1 similar arrangement?
2 A No.
3 Q Keith, are you familiar with a right-of-way
4 violation?
5 A As far as the corner of the deck?
6 Q Yeah. Just in general, are you familiar with
7 what that means?
8 A Yes.
9 Q And have you ever been notified prior to this
10 sale that any portion of Wild Bill's was
11 encroaching on the right-of-way?
12 A Yes.
13 Q When?
14 A I don't know. When I received a letter stating
15 that the corner of the deck was in the road
16 right-of-way.
17 Q Who sent you the letter?
18 A State DOT, I believe. I don't know the person
19 or...
20 Q Just one notice or multiple notices?
21 A Just one notice.
22 Q What did you do in response to that notice?
23 A Oh, it was supposed to be completed, I believe,
24 in October of '17.
25 Q What was supposed to be completed?

39

1 A The corner of the deck had to be taken off.
2 Q And you sold it in May?
3 A Uh-huh.
4 Q I'll show you the notice. It's Exhibit 7, if
5 you want to flip to it.
6 Is this the letter you're referring to?
7 A Yes, I believe so.
8 Q And it's dated November 9, 2016?
9 A Okay. And that deck had to be -- that had to be
10 fixed October 1, 2017. Yeah, right there.
11 Q So by May of 2017, nothing had been fixed?
12 A No.
13 Q The deck was still in violation?
14 A Yes.
15 Q Isn't it also true that the DOT informed you
16 that part of the parking lot was within the
17 right-of-way?
18 A No.
19 Q You never notified my clients of this DOT
20 letter, did you?
21 A No.
22 Q You never notified my clients that part of the
23 deck was located within the right-of-way?
24 A No?
25 A No.

40

1 Q And you understand that having to remove a
2 portion of the deck is costly?
3 A No.
4 Q Well, it costs money, doesn't it?
5 A No. I moved it.
6 Q What did you do to remove it?
7 A Cut the corner off and put it back together with
8 the materials that were there.
9 Q Did you modify the padding lot?
10 A No.
11 Q Have you been contacted by the Department of
12 Transportation since November 9, 2016?
13 A No.
14 Q Do you have any pictures or documentation of
15 when you complied with this letter?
16 A I don't have any documentation but it would have
17 been probably in May of '16.
18 Q Did you respond and contact the DOT to let them
19 know it had been fixed?
20 A No.
21 Q Are you aware that a violation of this federal
22 regulation can subject an owner to fines?
23 A No.
24 Q Whether or not a portion of the structure was
25 within the right-of-way could affect somebody's

41

1 decision to purchase a property, couldn't it?
2 MR. EDWARDS: Objection; form.
3 MR. NOONEY: Objection; foundation.
4 A Such a minute thing that it...
5 Q (BY MR. BEARDSLEY:) Sure. But pursuant to
6 South Dakota law and this Seller's Property
7 Disclosure Statement, an issue like your deck
8 being in the right-of-way is required to be
9 disclosed?
10 MR. NOONEY: Objection; calls for a legal
11 conclusion.
12 Subject to that, you can answer.
13 MR. EDWARDS: Join.
14 A What was the question again?
15 Q (BY MR. BEARDSLEY:) The issue with the
16 right-of-way, the notice from the Department of
17 Transportation, pursuant to this disclosure
18 statement that we went through, that must be
19 disclosed to any potential buyer?
20 MR. NOONEY: Same objection.
21 MR. EDWARDS: Join.
22 A I don't know nothing about a disclosure, but I
23 should have told them.
24 Q (BY MR. BEARDSLEY:) Did you inform Mr. Dawson
25 of this notice from the Department of

42

1 ~~Transportation~~
2 ~~to~~
3 Q Did he know about it in any fashion?
4 MR. NOONEY: Objection; foundation.
5 MR. EDWARDS: Same.
6 A Not that I know of.
7 Q (BY MR. BEARDSLEY:) If Mr. Dawson would have
8 presented you with a property disclosure
9 statement, then you would have notified him; is
10 that right?
11 MR. NOONEY: Objection; form and foundation.
12 MR. EDWARDS: Join.
13 A Yes --
14 MR. NOONEY: Subject to that, you can
15 answer.
16 A -- I'm sure I would have.
17 Q (BY MR. BEARDSLEY:) We've talked about -- is it
18 Brandon or Brandon Brasley?
19 A Brandon.
20 Q And he leased the restaurant from you, and at
21 one point lived in the living quarters?
22 A Yeah.
23 Q He's indicated that the basement flooded each
24 year. Is that accurate?
25 A My first question, what do you mean by

43

1 ~~Witness~~: Is that floods of water or a deep
2 corner or.
3 Q ~~Presence of water~~
4 A It has deep corners, but as far as presence of
5 water standing or anything, no. ~~It has been~~
6 ~~other water that came from the snow melt~~
7 ~~from the north going it against the door~~
8 ~~they would flood it up against the building~~
9 Q ~~So it has had standing water in the basement?~~
10 A ~~Not standing water, water ran over the steps~~
11 ~~into the hallway~~
12 Q ~~And this occurred on a yearly basis?~~
13 A ~~No~~
14 Q ~~What year did it occur?~~
15 A Well, when Brandon Brasley was there, there was
16 water in the basement one time that I know of.
17 Other than that, maybe one other time when
18 the -- they plowed the snow up against the
19 building. That was a big issue.
20 Q How about a mold issue, was there ever any mold
21 in the basement?
22 A Yes, I'm sure there is.
23 Q During the time that you operated this, did you
24 do anything to remedy the mold situation?
25 A We put -- you know, as far as stopping the water

44

1 problem or?

2 Q Both.

3 A We put gutters on the building and tried to run

4 the water away from the building.

5 Q But there was a presence of mold in the building

6 prior to the sale?

7 A ~~It never came in south or mold. I don't know~~

8 ~~that mold, probably, yes.~~

9 Q ~~Did you inform Ryan, I mean of this?~~

10 A ~~No.~~

11 Q Would the water flooding penetration occur in

12 the spring?

13 A Usually whenever there was a massive hard rain

14 would be whenever there would be an issue. I

15 mean...

16 Q So it would — it could be anytime, really?

17 A But I don't know where the information came that

18 this thing floods every spring, because the only

19 person that's been there every spring is me.

20 None of these other guys have been there for

21 more than a few months.

22 Q Didn't Mr. Brown ever show the property in the

23 spring?

24 A I imagine. I don't know.

25 Q So in addition to the spring, this issue could

45

1 happen during a heavy rain in the summer as

2 well?

3 A We had as much rain this last year as has been

4 on record for years, and we didn't have any

5 flooding in the basement.

6 Q Sure. But your testimony was that anytime a

7 heavy rain happened, this could happen. And my

8 question is, it didn't just happen in the

9 spring, it could also happen in the summer. Is

10 that accurate?

11 MR. BRUNSON: Objections form.

12 A It wasn't like it happened all the time. It

13 didn't happen, you know. You might get some

14 dampness in the corner of the building, you

15 know. It didn't flood.

16 Q (BY MR. BRUNSON:) But you did acknowledge

17 there was mold issues?

18 A I — I would say there probably is. I didn't

19 look for mold.

20 Q You also used a sump pump in the basement;

21 correct?

22 A No. No, I did not.

23 Q Never used a sump pump?

24 A The sump pump was put in by the former owner.

25 Q And you never used it?

46

1 A It worked for a little while when we first

2 bought it. But it's been disconnected and taken

3 out for years.

4 Q When was it disconnected and taken out?

5 A I don't — years ago.

6 Q Give me an approximation, if you can.

7 A Probably... I don't know when the last time it

8 worked. Years ago.

9 Q So it's there, it's just not working?

10 A I — it's — it's not plugged in or it's not

11 hooked to power. It's not — it doesn't have a

12 way to pump anywhere. It's not hooked up.

13 Q Okay. But it's there?

14 A I'm not even sure if it's there yet or not, to

15 tell you the truth.

16 Q When you sold —

17 A I'd have to look.

18 Q When you sold the property, there was a sump

19 pump there, wasn't there?

20 A I don't know if the sump pump is there or not.

21 Q So your testimony is that while you agree there

22 was water penetration, it was never standing

23 water requiring somebody to put their belongings

24 on blocks?

25 A No. When — when Ryan — or Brandon Presley

47

1 was there, it got wet, yes. It got wet, and he

2 did put his couch on blocks, I believe.

3 Q So there was standing water requiring Brandon

4 Presley to put his possessions on blocks. You

5 were aware of that?

6 A Yes.

7 Q These issues were never disclosed to my client;

8 correct?

9 A No.

10 Q Am I correct?

11 A You're correct. No, they were not.

12 Q And you understand that mold can be a hazardous

13 condition as is listed in Exhibit 17?

14 MR. BRUNSON: Objections form.

15 MR. MOORE: Calls for a legal conclusion:

16 lack of foundation.

17 Q (BY MR. BRUNSON:) If you don't know, that's

18 fine. But would you agree that mold can be a

19 hazardous condition?

20 A I guess it can be. It's...

21 Q And the presence of mold can make a property

22 more difficult to sell; is that fair?

23 A I would imagine, yes.

24 Q And the presence of mold can affect a potential

25 buyer's decision to purchase a particular

48

1 property?
 2 MR. ROONEY: Objection; foundation.
 3 MR. SWANSON: Join.
 4 A I would imagine, yes.
 5 Q (BY MR. BEARDSLEY:) Prior to the sale, Keith,
 6 did you do any construction work or remodeling
 7 to the walls in the basement?
 8 A Yes.
 9 Q What was done?
 10 A Took the one room, we took the bottom four feet
 11 off of the walls, the concrete -- the block
 12 walls. Removed the existing materials there.
 13 Q What -- and I'm sorry to interrupt you. What
 14 were the materials. Was it Sheetrock?
 15 A No. It was -- well, yeah, it was Sheetrock, but
 16 it had... What do you want to call it...
 17 Remolding?
 18 A No. There was... just nailers for putting, you
 19 know, the -- the Sheetrock was on there.
 20 Q Like a --
 21 A Nailers on the block.
 22 Q So like --
 23 A Something to attach to.
 24 Q Like a stick-built stud wall?
 25 A No. It wasn't a stud wall. It was just, you

49

1 know, like one-by-two on there, maybe
 2 two-by-two.
 3 Q So you removed the bottom four feet of the walls
 4 and replaced it with what?
 5 A With -- I believe we put plywood. We put on
 6 new -- new nailers, put plywood on, and then put
 7 paneling on.
 8 Q Wood paneling?
 9 A Yes.
 10 Q When you did -- did you personally do this work?
 11 A Me and my father.
 12 Q When you completed this work, did you notice
 13 mold on the Sheetrock?
 14 A Yes.
 15 Q When was this construction started, completed?
 16 A It was completed sometime during the winter.
 17 Q Of?
 18 A Of, let's see, it would be '16, prior to selling
 19 the campground.
 20 Q And I assume you notified Mr. Pearson of the
 21 work you were doing and the improvement to the
 22 basement?
 23 MR. SWANSON: Objection; form.
 24 A I don't believe I did. I don't know for sure,
 25 but I don't think I did.

50

1 Q (BY MR. BEARDSLEY:) Wouldn't that be something
 2 you'd tell your Realtor to advertise to try to
 3 sell the place?
 4 A I don't believe I did, but.
 5 Q But you could have?
 6 A I could have, yes.
 7 Q Did you hire anyone else out to complete the
 8 work or was it just you --
 9 A No.
 10 Q -- and your father?
 11 A No and my father.
 12 (Deposition Exhibit 18 was
 13 marked for identification.)
 14 Q (BY MR. BEARDSLEY:) I'm going to show you
 15 Exhibit 18, Keith. I apologize, these pictures
 16 aren't the greatest, but this packet includes
 17 photographs of various places in the basement.
 18 A Okay.
 19 Q Okay. And I just want you to flip through them.
 20 A (Pause -- Witness reading.) Okay.
 21 Q Might be hard to tell, but does that look to you
 22 to be photographs of the basement that we're
 23 talking about?
 24 A I believe so, yes.
 25 Q And I believe that these photographs were

51

1 obtained when walls had to be removed and
 2 Mr. Penington discovered these issues.
 3 A I don't believe he removed any walls.
 4 Q Well, how else would he obtain -- first of all,
 5 in your opinion, do these photographs, at least
 6 some of them, depict mold?
 7 MR. ROONEY: Objection; form, foundation.
 8 MR. SWANSON: Join.
 9 A Yes.
 10 Q (BY MR. BEARDSLEY:) Well, at the time my
 11 clients looked at the property, that's not what
 12 the walls looked like, was it?
 13 A Yes. I never charged those. Those are things
 14 that never got redone and finished.
 15 Q So it's your testimony that the walls looked
 16 like this prior to my client viewing the
 17 property and he saw those?
 18 A He never viewed anything.
 19 Q So if my client were to testify that he
 20 discovered these by removing portions of the
 21 walls, you would disagree with that?
 22 A I would disagree with that, yes. I -- unless he
 23 put them back.
 24 Q In any event, you never disclosed the water or
 25 the mold issues to Mr. Penington?

52

2 A No.
 3 Q And the listing that we talked about also
 4 indicated that you had bridges that were
 5 rebuilt?
 6 A Yes.
 7 Q Is it two bridges?
 8 A Two drive bridges and three walk bridges.
 9 Q When were they rebuilt?
 10 A I would say the one was seven, eight years. The
 11 other one was before that, so maybe nine, ten
 12 years possibly.
 13 Q So they were rebuilt seven and nine years before
 14 the sale?
 15 A One was new or -- wasn't an existing bridge.
 16 The old existing bridge is still there. It's
 17 just a...
 18 Q Okay. Let me try to understand this. So one
 19 drive bridge was rebuilt seven years prior to
 20 the sale; correct?
 21 A Yes.
 22 Q And then the other drive bridge --
 23 A Was built brand new. I mean, it wasn't an
 24 existing one where it's at.
 25 Q That was built nine years prior to the sale?
 A Yes, approximately around there.

53

1 Q Well, seven and nine years prior to May of 2017,
 2 would you consider that new?
 3 A What do you mean?
 4 Q Well, the property was advertised as having two
 5 bridges that were widened and rebuilt,
 6 indicating that this just recently occurred --
 7 MR. BRANSON: Objection; misstates the
 8 record.
 9 Q (BY MR. HENCKLEY:) -- would you agree?
 10 MR. NOONEY: Join.
 11 A I'm guessing when they were listed, they were
 12 new.
 13 Q (BY MR. HENCKLEY:) So the listing never
 14 changed from the time they were rebuilt and put
 15 in brand new?
 16 A I don't know.
 17 Q And if that were the case, a prospective buyer
 18 in 2017 could conclude that these two drive
 19 bridges were just recently built, even though
 20 the listing hadn't changed in ten years?
 21 MR. NOONEY: Objection; foundation.
 22 MR. BRANSON: Join.
 23 A I don't know.
 24 Q (BY MR. HENCKLEY:) If it were the case that
 25 they were never updated?

54

1 A Yes.
 2 Q And if that were the case, that would be
 3 misleading, wouldn't it?
 4 MR. BRANSON: Objection; form.
 5 MR. NOONEY: They join.
 6 A I guess -- I don't know.
 7 Q (BY MR. HENCKLEY:) Could be misleading?
 8 MR. NOONEY: Same objection.
 9 A I don't think on purpose.
 10 Q (BY MR. HENCKLEY:) Sure.
 11 A I mean, if you buy a new car, you call it your
 12 new car.
 13 Q Well, if you buy a new car and you find out it's
 14 seven years old, it's not a new car, is it?
 15 A No.
 16 Q And advertising it as such would be misleading?
 17 A (Pause.)
 18 Q Right?
 19 A Yes.
 20 Q So the listing was controlled by Mr. Dawson --
 21 A Yes.
 22 Q -- throughout all these years?
 23 A Yes.
 24 Q And he had an obligation to update the listing,
 25 didn't he?

55

1 MR. NOONEY: Objection; calls for a legal
 2 conclusion.
 3 MR. BRANSON: Join.
 4 MR. NOONEY: Speculative; form.
 5 Q (BY MR. HENCKLEY:) These guys don't like the
 6 word "obligation."
 7 Would you have expected him to update the
 8 listing to be accurate?
 9 A In my mind, we built the new bridge and it was a
 10 new bridge. I mean, yeah, I can see where it
 11 could be possibly misleading.
 12 But I would have called it the new bridge
 13 because it was a new bridge.
 14 Q Do you understand that, I believe on more than
 15 one occasion, while my clients operated the
 16 campground, a motorcycle fell through the bridge?
 17 A I heard of that. They never informed me of
 18 that. I never -- nobody told me of that.
 19 Q So when you took the property back, the bridge
 20 had already been repaired?
 21 A No.
 22 Q There still was a hole in it?
 23 A Yes.
 24 Q So there was some instance where a vehicle fell
 25 through the bridge?

56

1 A I don't know what happened to the bridge.
 2 That's a good question. I'd like to know what
 3 happened to the bridge.
 4 (Deposition Exhibit 19 was
 5 marked for identification.)
 6 MR. BRANSON: Well, when it's convenient,
 7 can we take a two-minute deal?
 8 MR. BEARDSLEY: Yeah. Sure. Can I just get
 9 through this quick?
 10 MR. BRANSON: Sure.
 11 Q (BY MR. BEARDSLEY:) Keith, these are some
 12 photographs of either one or two bridges, I
 13 really can't tell. But this first photo, was
 14 this the work that was done by you and your
 15 father, or was this to patch up the hole?
 16 A That's to patch up the hole. That, we did not
 17 do.
 18 Q So by the time you took the property back, the
 19 hole was, in fact, patched up and fixed?
 20 A This is what it looked like when we came.
 21 Q So it was fixed. Now a vehicle can drive over
 22 it?
 23 A No. Because there was a hole, which is right
 24 here, I believe, right beside that.
 25 MR. HEDNEY: Keith, identify what page

57

1 you're talking about, please. Page 27
 2 A Yes, the second page -- well, there's a couple
 3 pictures here, two and three.
 4 Q (BY MR. BEARDSLEY:) Two and three, I believe,
 5 are of the same hole.
 6 A Right.
 7 Q And you're claiming that hole was on the same
 8 bridge?
 9 A Yes. Right beside this patch.
 10 Q Okay. Since you've taken the campground back,
 11 has the patch worked?
 12 A I rebuilt it.
 13 Q What did you --
 14 A Repaired it.
 15 Q What did you do?
 16 A New timbers. Took it apart and fixed it.
 17 Q And prior -- when did you do that?
 18 A Right away in the spring, as soon as I found out
 19 it had a hole in it before we opened the
 20 campground up.
 21 Q And Mr. Remington had to go through the expense
 22 of getting the motorhome out of the hole and
 23 then patching the hole; correct?
 24 A I don't know. I was not informed of that.
 25 Q Well, somebody paid for the patch; right?

58

1 A Yes. Somebody -- well, unless it was materials
 2 laying around there. I don't know. Doesn't
 3 look like it's anything brand new.
 4 Q Well, you'd agree with me that not only do
 5 materials cost money, but time costs money.
 6 Would you agree with that?
 7 A Yeah.
 8 MR. BEARDSLEY: We can take a break.
 9 MR. BRANSON: Thanks.
 10 (Brief recess was taken.)
 11 Q (BY MR. BEARDSLEY:) Keith, prior to the sale,
 12 did you ever have any issues with the fire
 13 needed surrounding the fire pits?
 14 A They would come around and inspect, and if we
 15 needed to do something, maybe usually put some
 16 gravel around the pits, anchor them down. But
 17 we were always permitted. He never never
 18 permitted us.
 19 Q Do you remember what's required for gravel, the
 20 amount of gravel around a pit?
 21 A I think it was some of being a certain distance
 22 from the trees. I don't remember, 10, 15 feet
 23 or something from the trees. Gravel, maybe a
 24 couple feet around it, you know, a ring or
 25 something.

59

1 But the problem is, we would anchor them
 2 down, and people would rip them up and move
 3 them. That's the problem. People think that
 4 they are...
 5 Q Sure.
 6 A Why do you think we anchor them down?
 7 Q So when my client purchased the campground,
 8 there were a number of gravel pits that were not
 9 in compliance; isn't that correct?
 10 MR. HEDNEY: Objections calls for a legal
 11 conclusion, foundation.
 12 A That I don't know. We were -- the campground
 13 wasn't open for the season when we sold it. I
 14 mean, we weren't -- when he came in and looked
 15 at it, it was in April. And so nothing had been
 16 done with any of the fire pits or anything like
 17 that at that point.
 18 Q (BY MR. BEARDSLEY:) It had --
 19 A Every year usually we have to go put some gravel
 20 around them and anchor them down or whatever
 21 needs to be done.
 22 Q So it was not operational when my client
 23 purchased it?
 24 A I guess, depends on what you call "operational."
 25 Q Well, did you have campers there?

60

1 A I don't believe there was any campers there.
 2 Q Did you ever receive any written notice from the
 3 marshal about the fire pit issue?
 4 A He gave us a permit every time he came and
 5 inspected it. He would fill out a paper, which
 6 I -- which, actually he did this year after --
 7 when I got it back, he came in, inspected.
 8 I wasn't there. My daughter was there,
 9 actually. And he said, Yeah, everything is
 10 fine, you know. You're permitted for I think
 11 it's 60 fire rings, and we won't be back until
 12 August of '19.
 13 Q Okay.
 14 A Sign this thing and hang it on the wall.
 15 So that's what we did.
 16 Q And are you aware that after my client took
 17 possession of the property, the fire marshal
 18 threatened to shut his down because of the
 19 condition of the fire pits?
 20 A No. He never told me anything. I find it hard
 21 to believe that he would have threatened. He
 22 never threatened me ever. In the 13 years that
 23 I had it, he never threatened me.
 24 Q If my client Mr. Dave Rasmussen testified to
 25 that, you wouldn't have any reason to dispute

63

1 marshal. He's a forestry...
 2 Q Forest Service worker?
 3 A Yeah. I don't know. I don't know. They come
 4 around two or three of them in a truck, they
 5 don't even tell us they are coming in. They go
 6 through and do this, they come up and say, Okay,
 7 here's your permit.
 8 Q Okay. So just so I'm clear, you were never
 9 formally written up for any code violations
 10 concerning those fire pits prior to this
 11 transaction?
 12 A I don't believe I was ever formally, no.
 13 Q Never paid a fine?
 14 A No.
 15 Q Okay. How were the pits anchored down?
 16 A With rebar, two-foot long rebar with a J hook on
 17 the top, through the holes in the...
 18 Q Were they made out of old --
 19 A Wheels.
 20 Q Wheels.
 21 A Sure of -- well, there's -- many, many of them
 22 were built fire pits that got grades on top and
 23 we had concrete around them.
 24 Q Were any of them buried?
 25 A As far as the rings?

63

1 that occurred?
 2 A I wasn't there, so I don't know.
 3 Q So back to my question about written notice. As
 4 I understand, you eventually got a permit. But
 5 prior to that, when you would have to fix the
 6 fire pits, did you ever get a written notice
 7 saying you're in violation on 32 rings, these
 8 need to be fixed, that type of deal?
 9 A I don't know if he put that on the permit. I
 10 mean...
 11 Q So the notice --
 12 A I don't think he gave me anything separate.
 13 Q Okay. The notification that you were not in
 14 compliance would be just from his visit and
 15 orally saying, Hey, you need to fix this.
 16 A You need to put some gravel around this pit or
 17 that pit, or it's got to be reanchored because
 18 somebody, you know, tore it loose or.
 19 Q And at no time did he give you a written notice
 20 of that?
 21 A Unless it was on that permit. I don't know.
 22 Q Who is the fire marshal?
 23 A I think it's the same guy, but I don't even know
 24 what his name is. It's a younger guy. I don't
 25 think he's actually -- I don't think he's a fire

62

1 Q Yeah, up to the rim?
 2 A No. Most of them were above ground.
 3 Q So campers could move them?
 4 A Well, they were anchored with rebar, but they
 5 weren't supposed to move them.
 6 Q It would just happen?
 7 A They would maybe -- I don't know what they did,
 8 if they hooked on with their pickup or a chain
 9 or something and jerked them out of there. I
 10 don't know how they did it.
 11 Q Along with the -- I believe the listing, if you
 12 turn to Exhibit 10, and it's Bates stamped
 13 RE/MAX 8.
 14 A 2013? What?
 15 MR. NIXON: You want to go to page 8.
 16 THE WITNESS: Oh, page 8.
 17 Q (MR. BEAUCHEP:) On the Bates stamp in the
 18 corner,
 19 A This one?
 20 Q Yep.
 21 A Okay.
 22 Q And I assume this was a part of the listing that
 23 went with the pictures and the description of
 24 the property; is that right?
 25 A I believe so.

64

1 Q And this lists a number of improvements, new
2 appliances, and you've got the drive bridge
3 rebuilt and widened to the tune of \$20,000.
4 A For the two of them, I suppose.
5 Q So you and your father did all the labor. Are
6 you claiming just the material was \$20,000?
7 A Actually, my uncle Ben worked on the one bridge.
8 He had -- we poured concrete embankments and
9 approaches. And the steel and the bridge planks
10 and... but I --
11 Q Do you have receipts for any of the materials or
12 work that was done?
13 A I tried to contact them on that, and they said
14 they have no record of it, and I don't have any
15 idea where to find it for sure.
16 Q Who is "them"?
17 A This was -- I contacted Baker Timber.
18 Q Did you hire a concrete company to come out to
19 your concrete?
20 A No. He and my dad.
21 Q So the material all came from Baker Timber?
22 A No. The one bridge was Wheeler. Wheeler out of
23 Whitewood.
24 Q I don't know what that means. Is that --
25 A That's a company, Wheeler.

65

1 Q Right. Is it like a sawmill?
2 A Well, they do railroad ties and that kind of
3 stuff.
4 Q So it's similar to Baker Timber?
5 A Yes, same kind of deal. I mean...
6 Q Okay. And you've got a John Deere commercial
7 lawn mower listed here. What year was that?
8 A When did I buy it?
9 Q Yeah.
10 A I don't know, probably five years ago or
11 something. I don't know.
12 Q Was it a -- do you know what the model number
13 is, what type of mower it is?
14 A It's a zero-turn radius commercial John Deere
15 mower. I got it from RCO.
16 Q So it's a Z520?
17 A Yeah, that's probably what it is. That
18 sounds -- I'm not positive of that, but I...
19 Q And you purchased it from RCO?
20 A Yeah.
21 Q Up on Deadwood Avenue?
22 A Yes.
23 Q And in the listing document RE/MAX 0008, you
24 have it listed as a new John Deere commercial
25 lawn mower for \$8,500; correct?

66

1 A Yes.
2 Q If the purchase order indicates that mower was
3 only purchased for \$6,700, this claim on this
4 listing would be incorrect?
5 A I would have to go back and figure out if -- I
6 don't remember if I financed it and that's what
7 it came out to be, or why that would be
8 different, but.
9 (Deposition Exhibit 20 was
10 marked for identification.)
11 Q (BY MR. BEARDSLEY:) I'm going to show you
12 Exhibit 20, a customer purchase order from RCO
13 Equipment in Rapid City for a John Deere Z520.
14 And at the top corner it says, Cash Sale. Do
15 you see that? Right under the date of order.
16 A It's X'd cash sale, yes.
17 Q The total price on this piece of equipment is
18 \$6,700, and with sales tax came out to \$6,968;
19 correct?
20 A That's what it says, yes.
21 Q So the claim that this mower was \$8,500 would be
22 misleading, wouldn't it?
23 A Appears that way.
24 Q Did you provide this information on this
25 Exhibit 10, RE/MAX page 8, did you provide this

67

1 information to Mr. Iverson to include in the
2 listing?
3 A I'm guessing I did, yes.
4 Q Anything else on this document --
5 MR. HOONEY: Page 8, Mike, of Exhibit 10?
6 MR. BEARDSLEY: Yep.
7 Q (BY MR. BEARDSLEY:) -- that is incorrect?
8 A (Pause -- witness reading.) I guess it comes
9 down to, this stuff says new, it was new when we
10 got it. But if you want to say hey, it's not
11 new anymore, then.
12 Q Sure. So in 2017, the indication that there's a
13 new John Deere mower when in fact it's a 2008
14 would not be accurate?
15 A Yes.
16 Q Are you testifying that every time item
17 indicating it's new, in fact, was not new in
18 2007?
19 A '17?
20 Q I'm sorry, 2017.
21 MR. HOONEY: Mike, just so the record is
22 clear, if you look at Exhibit 10, page 8, it
23 references as of the date of September of 2015.
24 So I don't think that -- just for clarification.
25 MR. BEARDSLEY: Sure. And we can go there.

68

1 MR. NIXON: Okay.
 2 Q (BY MR. BEPPOLESE:) As of 2015, these items
 3 that are indicated here as new through 2015 were
 4 not, in fact, new, were they?
 5 A Some of them weren't. Some of the stuff down
 6 there was probably new.
 7 Q You'd agree with me --
 8 A So when this was put together, they were new.
 9 And then it still says they are new.
 10 Q And in fact, if they are not new, that could be
 11 misleading to a potential buyer, couldn't it?
 12 MR. BEPPOLESE: Objection, form.
 13 MR. NIXON: Join.
 14 A Yes.
 15 Q (BY MR. BEPPOLESE:) In addition to the
 16 information contained on that sheet, did you
 17 provide Mr. Iverson with financial documents for
 18 the business?
 19 A You mean for financial -- for --
 20 Q Income --
 21 A -- revenue?
 22 Q Yes.
 23 A Yes.
 24 Q Income/expenses sheets?
 25 A Yes.

69

1 Q What particularly did you provide to
 2 Mr. Iverson?
 3 A You mean the revenue from the restaurant, the
 4 bar, the campground, the expenses for
 5 everything?
 6 Q So I just want to know how that process went.
 7 At the end of each season, you'd send them off
 8 to Bryan?
 9 A No, not necessarily.
 10 Q Okay. How would it work?
 11 A I think usually he -- he wanted to know what we
 12 did for revenue for that year, you know, if he
 13 was going to relist it. So he wanted a balance
 14 sheet.
 15 Q And that would include your income and expense
 16 sheets, right?
 17 A Yes.
 18 Q Can you turn to Exhibit 14.
 19 A (Witness complied.)
 20 Q Do you recognize that document?
 21 A I think that was put together from all the --
 22 yeah, balance sheets or whatever. Yearly
 23 income, yes.
 24 Q Did you put it together?
 25 A No.

70

1 Q Who did?
 2 A I don't know if this one was done by my wife or
 3 by Bryan. I don't know that for sure, but.
 4 Q Okay. This is an income comparison by year
 5 from '12, 2012 to 2016; correct?
 6 A Yes.
 7 Q Can you explain to me what the miscellaneous
 8 amounts reflect in 2014, 2015, and 2016?
 9 A I would have to ask my wife, but I'm guessing
 10 they are probably either personal expenses or
 11 maybe money that I put in to the business or --
 12 that -- I'm not the bookkeeper, so I don't know.
 13 Q She would understand these figures?
 14 A Yes.
 15 Q Okay. Can you tell me the discussions that you
 16 had with Duane Remington prior to and during the
 17 sale of this business and residence?
 18 A Well, originally I was in the bar doing
 19 paperwork when Duane and Melody came to the
 20 campground and asked me if it was for sale.
 21 Well, Anthony -- Red, whoever -- had just
 22 quit his job to come work there, so I kind of
 23 hesitated a little bit. I said, Well, yeah, I
 24 guess it is.
 25 Then he asked me if I would lease it. And I

71

1 said, No, I'm not interested in leasing it. I
 2 said, Because you got nothing into it, you know.
 3 And then at that time I told them -- you
 4 know, he said, Well, I've been camping all over
 5 the country, you know, in campgrounds all over,
 6 and I really thought it would be fun to own one.
 7 And I said, Well, it's a lot of work. They
 8 up all your summers. You know, you don't do
 9 anything else. You work long days. And you
 10 might want to come here with your camper and
 11 just see what it's about before you get into
 12 purchasing it.
 13 He said, No, we want to -- we like this.
 14 I've looked at it every a time, sat out here and
 15 looked about it, or whatever, you know, and we
 16 want to get it.
 17 Q Okay. Then you told him to contact --
 18 A And then one --
 19 Q I'm sorry. Go ahead.
 20 A And then one other -- one other time they came
 21 and ate. I believe it was Melody and I don't
 22 remember if Duane was there or not, but I
 23 believe it was Duane, the kids, and her
 24 husband. I'm not sure who all was there. But
 25 anyway, they came and ate before they purchased

72

1 It.

2 Q In that first visit, did you show them around

3 the campground?

4 A No.

5 Q ~~Did you ever show them around the campground?~~

6 A ~~I tried to, but I didn't want to. It was the way~~

7 ~~that it was, he was really into it. I didn't care to~~

8 ~~look at anything.~~

9 Q ~~What do you mean about that?~~

10 A ~~I asked him if he wanted to look at the cabins~~

11 ~~and look at things.~~

12 ~~Okay, I'm happy with that, I see.~~

13 Q Was Bryan Dawson around during —

14 A No.

15 Q — these discussions?

16 A Not those, no.

17 Q Did Bryan ever show the property to the

18 Peningtons?

19 A I don't believe so.

20 (Brief interruption in the proceeding.)

21 Q (BY MR. HENFOSLEY:) Before the sale, was the

22 campground listed as a contract for deed option?

23 A I don't know if it was listed that way or if it

24 was just — I had always wanted to just sell it,

25 you know.

73

1 Q Give me just a minute here. Okay?

2 A Okay.

3 Q (Pause.) After the purchase agreement was

4 signed, did you ever have a conversation with

5 Dana Penington and Bryan Dawson regarding any

6 financial statements?

7 A No.

8 Q Do you know if your wife did?

9 A No, she did not. She was not there any of the

10 meetings.

11 Q So she wasn't involved in any way on the

12 transaction?

13 A No.

14 Q But she would have information regarding the

15 financial statements that have been provided to

16 us?

17 A To Bryan, yes.

18 Q Okay. And then subsequently to us?

19 A Yes.

20 Q Okay.

21 A She would have prepared those.

22 MR. HENFOSLEY: I don't have anything

23 further.

24 MR. BLANDON: I have a few questions.

25 (Discussion was held off the record.)

75

1 And then the problem being is, people that

2 have the money, don't want to work that hard.

3 And the people that don't have the money, want

4 it, but they can't get a loan, you know.

5 So I decided, Well, I'll try contract for

6 deed, you know. I can, you know, get some money

7 down and — which, I want to see anybody succeed

8 in it. I mean, I did everything I could to put

9 things together for him to succeed.

10 Q Since you took the property back, have you

11 relisted it?

12 A No.

13 Q What do you intend on doing with the campground

14 now?

15 A It's in limbo right now. I don't know. I've

16 never been in this kind of a situation. I don't

17 want to contribute with sure things. I've had a

18 lot of people looking at it, asking about it,

19 and I've just been pushing them off.

20 Q Is Bryan still showing it?

21 A No.

22 Q Is he involved —

23 A No.

24 Q — at all?

25 A It is not actively listed now.

74

1 EXAMINATION BY MR. BLANDON:

2 Q Good morning, sir. My name is Greg Blandon.

3 I represent Bryan Dawson.

4 A Yes.

5 Q We've not met here until today. I have a few

6 questions, and I'm kind of going to go through

7 some of the claims that were made in the

8 complaint against yourself, the campground, and

9 my client, Bryan Dawson. Okay?

10 A Okay.

11 Q In the complaint it is alleged that there was

12 prior flooding of the basement; right?

13 A Yes.

14 Q Did you ever have any discussions or talk

15 Mr. Dawson at any time before the plaintiffs in

16 this case made an offer that there were any

17 water problems or issues in the basement?

18 A No.

19 Q Did you ever tell Mr. Dawson at any time that

20 you believed that there was mold in the

21 basement?

22 A No.

23 Q Did you ever tell Mr. Dawson that the dock at

24 one point, or anytime, was located on a

25 right-of-way?

76

1 A No.
 2 Q And as I understand it, you fixed that issue?
 3 A Yes.
 4 Q And you fixed that issue even before the
 5 property — the Resingtons made an offer on the
 6 property?
 7 A No.
 8 Q Or after?
 9 A It was afterwards.
 10 Q Okay.
 11 A When I got it back.
 12 Q Okay. It's okay, how much did that cost to have
 13 that fixed?
 14 A Nothing. Sen. Road on road, now and a half
 15 My son did it, basically.
 16 Q Okay. Basically cut off the corner?
 17 A Cut off the corner, used the materials that were
 18 there. Actually had to get rid of some because
 19 there was extra material, and it never affected
 20 — that's the reason I did it.
 21 Originally, I really wanted to segue with
 22 them. What difference does this check that far
 23 from the road make any difference? But I
 24 decided to take care of it, be done with it.
 25 If Dore would have said, Hey, you know,

77

1 this thing is in the middle of the right-of-way,
 2 what do you think about that? I would have come
 3 up and fixed it.
 4 Q Right. Did you ever tell Mr. Iverson that you
 5 believed the parking lot in the compound was
 6 located on a right-of-way?
 7 A No. I didn't know that.
 8 Q Did you ever tell Mr. Iverson that you believed
 9 that any of the dump clips in the compound
 10 were not up to code at the time the Resingtons
 11 made the offer?
 12 A No.
 13 Q Or anytime thereafter?
 14 A No.
 15 Q Did you ever tell Mr. Iverson that the financial
 16 statements or information that were provided
 17 either by you or by your wife to the Resingtons
 18 were not accurate?
 19 A No.
 20 Q Did you believe the financial information that
 21 you were providing to Mr. Iverson to be
 22 accurate?
 23 A Yes.
 24 Q Did you ever tell Mr. Iverson that any of the
 25 bridges on the property were defective?

78

1 A No.
 2 Q Did you believe that any of the property — any
 3 of the bridges on the property were defective —
 4 A No.
 5 Q Or a substandard —
 6 A No.
 7 Q At any time prior to —
 8 A No.
 9 Q — the sale here?
 10 A No.
 11 Q Okay. I think you testified a couple different
 12 times in response to questions by Mr. Beardsley
 13 about the existence of mold being on the
 14 property, and —
 15 A Yes.
 16 Q I wasn't quite sure, were you actually aware
 17 that there was mold on the property? I don't
 18 want you to guess.
 19 A I didn't look for mold. I mean, logic tells me
 20 that, you know, in the walls there could be
 21 mold. I mean, it had been damp, yes. But I
 22 didn't go looking for mold. I don't think
 23 anybody did.
 24 Q I think when Mr. Beardsley was talking to you
 25 about the living quarters that were contained in

79

1 the listing information, that you defined living
 2 quarters as basically a place to sleep?
 3 A Yes.
 4 Q The cabins that you have on the property are
 5 places to sleep as well, aren't they?
 6 A Yes. I actually stayed in one of the sleeping
 7 cabins for a season when I was working the
 8 restaurant and bar.
 9 Q Right. Were you a — people sleep in their RVs
 10 on the property as well, correct?
 11 A Yes.
 12 Q Did you ever rent out the living quarters in the
 13 main office building —
 14 A No.
 15 Q — as a residential structure?
 16 A No.
 17 Q As I understand it, people would occasionally
 18 sleep there incidental to the operation of the
 19 business?
 20 A Yes.
 21 Q Nobody ever used that property as their
 22 permanent residence?
 23 A The former owners did.
 24 Q Okay.
 25 A But we never did.

80

1 Q All right. Did you ever tell Mr. Iverson that
2 that anyone had ever used that property as an
3 actual residence?

4 A No, I don't believe so.

5 Q Okay. And you indicated that in the winter of
6 2016, you did some construction, I believe,
7 maybe with your father?

8 A Yes.

9 Q Removing the bottom four feet of some walls in
10 the basement?

11 A Yes.

12 Q And your testimony was you didn't think you told
13 Bryan Iverson about that construction; correct?

14 A I don't believe so, no.

15 Q Okay. Any of the information that Bryan Iverson
16 got concerning the finances or operation of the
17 business, he would have received that from you
18 or your wife; correct?

19 A Yes.

20 Q He didn't make up any of the documents
21 independently?

22 A Those financial statements were given to him and
23 the tax returns were done by Paul Thompson
24 and were given to Bryan.

25 MR. BRANSON: Okay. Thank you for your

81

1 Q Were you trying to remove everything to conceal
2 the presence of mold?

3 A No. No. To get rid of it. You know, the
4 object was to improve things. And the reason we
5 were improving it, it probably is irrelevant,
6 but Brandon Presley trashed the whole building
7 from top to bottom.

8 And we had to do a ton of wrecking and
9 refixing and redoing and haul multiple, multiple
10 trailer loads of garbage out, things he wrecked,
11 and.

12 Q So you did all this work and Bryan Iverson
13 didn't know about any of it?

14 A I don't know if he knew that — he probably knew
15 that Brandon trashed it. But actually it was
16 the locals that came around and helped us clean
17 up the mess.

18 Q But your testimony, sir, was that if Dene would
19 have just gone to the basement, he would have
20 seen these conditions of these walls — wait,
21 wait. Let me finish.

22 A Okay.

23 Q That was your testimony. And your testimony has
24 also been that Mr. Iverson, when he showed the
25 property for the past ten years, had been in the

83

1 time. I don't have any other questions.

2 MR. BRANSON: I just have a few follow-up.

3 FURTHER EXAMINATION BY MR. BRANSON:

4 Q We've established that Mr. Iverson showed the
5 property roughly 30 times; right? Correct?

6 A Yes.

7 Q And you've testified that the photographs that I
8 showed you, Exhibit — can you look for me?

9 A 17, was it?

10 MR. BRANSON: 19?

11 A 18.

12 Q (BY MR. BRANSON:) Exhibit 18 depicts the way
13 the basement and the walls looked when my client
14 purchased the property. That was your
15 testimony; right?

16 A Yes.

17 Q So in the 30 times that Mr. Iverson showed the
18 property, did he ever go to the basement?

19 A Yes. I...

20 Q So he would have seen the mold and the water
21 damage in the basement; correct?

22 A I don't believe so. I think this is actually in
23 the closet. This was a part of the stuff that
24 we didn't get to. We were trying to remove
25 everything and you know, and.

82

1 basement; that's correct?

2 A Yes.

3 Q Okay.

4 A But I'm not saying he would have seen mold. You
5 had to look for mold. It wasn't just jumping
6 out at you.

7 Q Sure. And Mr. Iverson created the listing.
8 We've established that; right?

9 A Yes.

10 Q So he was aware that the bridges were not new
11 but were, in fact, rebuilt or built seven to
12 nine years ago?

13 A Yes. Because he would have made the listing
14 whenever it was done.

15 Q Also would have been aware that the new John
16 Dene power was not new but it was a 2008;
17 correct?

18 A Well, he knew it wasn't new that year or
19 anything. I mean, he wouldn't have known it was
20 '08, I don't think. I don't know.

21 Q But he would have known it wasn't new?

22 A Right.

23 MR. BRANSON: Objections form.

24 Q (BY MR. BRANSON:) You received a notice from
25 the Department of Transportation on November 9,

84

1 2016 that your structure was in the
 2 right-of-way, right?
 3 A Yes.
 4 Q And you did nothing to fix it or correspond with
 5 the Department of Transportation until after you
 6 received the property back from my client;
 7 correct?
 8 A I did not do anything to fix it.
 9 Q You didn't contact the Department of
 10 Transportation to say, This is out of line, I'm
 11 contesting this?
 12 A Well, that was my plan, but then Gene came in
 13 and got in the middle of things and we were go,
 14 go, go.
 15 It's my fault for not talking him about it.
 16 I never even thought about it. It was not that
 17 big of a deal, I didn't think.
 18 Q So the parking lot that was in the right-of-way,
 19 you didn't do anything to fix the parking lot?
 20 A I didn't know anything about the parking lot
 21 being in the right-of-way. There was no nothing
 22 ever told to me that the parking lot was in the
 23 right-of-way.
 24 Q After you fixed the dock, did the Department of
 25 Transportation come back to you to say you're

85

1 good to go?
 2 A No. No.
 3 MR. BECKWITH: I don't have anything
 4 further.
 5 MR. BOONE: Anything else?
 6 MR. BECKWITH: I don't have anything.
 7 Thank you.
 8 MR. BOONE: Judge, I'm going to have him
 9 read and sign. Okay? Thank you.
 10 (the proceeding concluded at 11:11 a.m.)

86

ERRATA PAGE

1 I, the undersigned, KEITH GRIMM, have read the
 2 foregoing transcript and, to the best of my knowledge,
 3 said transcript is true and accurate (with the
 4 exception of the following corrections listed below):

5 PAGE/LINE CORRECTION NO. REASON FOR CORRECTION

6 _____
 7 _____
 8 _____
 9 _____
 10 _____
 11 _____
 12 _____
 13 _____
 14 _____
 15 _____
 16 _____
 17 _____
 18 _____
 19 _____
 20 _____
 21 _____

22 SIGNATURE _____ DATE _____

23 See attached sheet(s) for additional information:
 24 Yes No

25 _____

87

CERTIFICATE

1 I, Jacqueline K. Miller, Registered Professional
 2 Reporter, a notary public in and for the State of
 3 South Dakota, Remington County, do hereby attest that
 4 the witness was duly sworn by me prior to the taking
 5 of testimony; that said proceedings were taken by me
 6 stenographically and thereafter reduced to typewriting
 7 under my supervision; that the foregoing transcript is
 8 a true and accurate record of the testimony given to
 9 the best of my understanding and ability.

10 I further attest that I am neither counsel for,
 11 related to, nor employed by any of the parties to this
 12 case and have no interest, financial or otherwise, in
 13 its outcome; that I have no contract with the parties,
 14 attorneys, or persons with an interest in the action
 15 that affects or has a substantial tendency to affect
 16 impartiality, that requires me to relinquish control
 17 of an original deposition transcription or copies of
 18 the transcript, or that requires me to provide any
 19 service not made available to all parties to the
 20 action.

21 Dated this 1st day of December, 2018.

22 /s/ Jacqueline K. Miller
 23 Registered Professional Reporter
 24 Notary Public
 25 My commission expires: May 9, 2019

88

1	< Detoo >	1	4 30:2, 34:25.
2	April 27, 2017 20:14.	2	4 37:6.
3	December, 2018. 00:22.	3	425, 721.2600 1:45.
4	Mar 25th 16:25, 17:2.	4	47 2:41.
5	Mar 5, 2019 88:26.	5	.
6	November 7, 2019 1:20.	6	< 7 >.
7	November 9, 2019 40:8.	7	7 40:4.
8	October 1, 2017 40:10.	8	76 2:28.
9	41,000 38:1.	9	.
10	420,000 05:6.	10	< 8 >.
11	420,000 05:3.	11	8 64:15, 65:16, 67:21, 68:5, 68:22.
12	46,700 67:1, 67:16.	12	8 64:22.
13	46,700 67:16.	13	87 2:25.
14	46,500 66:25, 67:21.	14	84 2:13.
15	401 8:4.	15	453 3:13.
16	405. 0:12.	16	889 17:15.
17	408 04:20.	17	8 68 1:20.
18	409. 15:5.	18	.
19	412 78:5.	19	< 9 >.
20	415 38:23, 38:24.	20	9 23:10.
21	416 50:18.	21	yes no 67:25.
22	416. 78:6.	22	.
23	417 59:24, 68:19.	23	< A >.
24	418 41:17.	24	a.m. 1:20, 66:10.
25	419 61:12.	25	ability 68:10.
26	420 5:7.	26	about 64:2.
27	421 88:23.	27	accompanied 10:3.
28	.	28	accuse 37:12, 43:24, 46:10, 56:9, 68:14, 76:18,
29	< 0 >.	29	38:22, 67:4, 88:9.
30	0000 66:23.	30	acknowledge 30:22, 30:23, 46:14.
31	.	31	across 23:4, 23:6.
32	< 1 >.	32	action 88:15, 88:21.
33	1 13:11, 14:13, 31:2.	33	actively 74:25.
34	1 28:9.	34	activities 16:6.
35	10 7:24, 30:7, 59:22, 64:12, 67:25, 68:5, 68:22.	35	actual 81:3.
36	100 23:7.	36	Actually 61:6, 61:9, 62:25, 65:1, 77:16, 79:16, 80:6.
37	101 35:11.	37	82:22, 83:15.
38	11 31:24.	38	add 14:23.
39	11:11 66:10.	39	added 13:14, 13:15, 13:16.
40	12 7:24.	40	adding 14:21.
41	13 13:4, 13:12, 22:5, 23:6, 36:6, 36:10, 63:22.	41	addition 6:23, 18:23, 21:5, 25:21, 45:25, 69:15.
42	14. 70:16.	42	Additional 19:4, 81:24.
43	15 58:22.	43	address 7:10.
44	1601 1:44.	44	address 51:2.
45	17 2:13, 20:17, 28:23, 28:24, 46:13, 80:9.	45	addressed 37:6, 54:4.
46	18 2:16, 28:22, 51:12, 51:15, 52:11, 82:12.	46	addressing 55:16.
47	18-000128 1:8.		
48	19 2:10, 30:15, 57:4, 82:10.		
49	.		
50	.		
51	19 30:19.	1	address 20:18.
52	1978. 5:2.	2	address 25:23, 36:12, 41:25, 48:24, 89:16.
53	1980. 20:12.	3	addressed 77:19.
54	198 88:22.	4	address 68:16.
55	.	5	addressed 77:9.
56	< 2 >.	6	agency 12:11.
57	2 13:31, 14:13, 58:1.	7	agent 12:15, 18:23, 20:14, 20:16, 20:25, 21:4, 39:14.
58	2. 75:1.	8	agents 15:11.
59	20 2:41, 67:9, 67:12.	9	ago 14:24, 47:5, 47:8, 66:10, 84:12.
60	2001 8:4, 9:4.	10	agony 32:8, 32:14, 47:10, 48:14, 54:8, 59:4, 59:6.
61	2005 9:12, 13:9.	11	66:7.
62	2005. 11:18.	12	agreement 8:12, 78:9, 37:22, 38:2, 75:3.
63	2007 68:18.	13	ahead 14:24, 12:19.
64	2008 15:5, 16:3, 17:7, 17:17, 68:13, 84:16.	14	Alinta 26:11, 26:15.
65	2012 71:5.	15	alive 6:20.
66	2014 71:8.	16	alleged 76:11.
67	2015 69:2, 69:3, 71:6.	17	almost 9:6.
68	2015. 68:23.	18	already 34:11, 36:5, 37:2, 56:20.
69	2016 38:8, 71:5, 71:6, 81:6.	19	among 8:14, 58:20.
70	2017 40:11, 54:1, 54:18, 68:12.	20	anxiety 71:8.
71	2017. 68:20.	21	another 56:16, 60:1, 60:6.
72	2018 64:14.	22	another 63:15, 64:4.
73	25 15:14.	23	answer 3:17, 4:30, 4:17, 4:38, 9:22, 19:25, 26:2.
74	26 2:10.	24	37:21, 42:12, 43:15.
75	.	25	answer 3:38.
76	.	26	Anthony 36:16, 36:17, 71:21.
77	< 3 >.	27	arguing 6:17, 10:24, 34:7, 19:23.
78	3 2:6, 3:27.	28	arguing 30:23, 45:16, 46:6, 76:29, 78:10.
79	30 10:14, 21:24, 22:6, 82:5, 82:17.	29	arguing 8:15, 17:2, 17:13, 17:22, 72:25.
80	30 42:7.	30	argue 58:16.
81	308 1:22, 2:14.	31	arguing 51:25.
82	3080 1:44.	32	argued 19:10.
83	319 2:21.	33	argues 67:21.
84	.	34	arguing 68:2.
85	.	35	arguing 65:9.
86	< 4 >.	36	arguing 53:25.
87	4200 2:6.	37	arguing 47:6.
88	.	38	April 60:15.
89	.	39	argue 77:23.
90	< 5 >.	40	argued 14:17, 22:21, 22:25, 53:26, 58:2, 59:14, 59:16.
91	51 2:36.	41	59:20, 59:24, 60:20, 67:14, 63:4, 63:23, 73:2, 73:5.
92	57 2:39.	42	73:13, 83:16.
93	578 12:24.	43	arguing 17:7, 38:12, 39:1.
94	57802 1:45, 2:22.	44	arguing 89:11.
95	57802 1:23, 2:7, 2:15.	45	arguing 50:11.
96	57802 3:12.	46	arguing 4:11, 17:5, 18:4, 38:23, 26:3, 29:21, 50:23.
97	.	47	64:22.
98	.	48	arguing 72:21, 72:25.
99	< 6 >.	49	arguing 47:23.
100	.	50	attached 87:24.

1 attempt 38:25.
 attempt 38:4.
 2 attempt 10:23.
 attempt 2:13, 2:13, 2:20, 38:15.
 3 attempt 17:5, 35:12.
 available 38:20.
 4 Avenue 66:21.
 aware 33:15, 34:5, 41:21, 44:5, 61:16, 79:16, 89:16,
 94:15.
 away 45:6, 59:13.
 6
 < B >.
 back 8:24, 9:5, 9:6, 11:21, 17:10, 41:7, 52:23, 56:19,
 57:18, 58:10, 61:7, 61:11, 62:3, 67:5, 74:10, 77:11,
 85:6, 85:26.
 9 before 65:17, 65:23, 68:4.
 balance 70:13, 70:22.
 10 Range 2:19.
 bar 23:18, 23:20, 27:25, 30:19, 30:1, 39:8, 70:4,
 71:29, 80:8.
 11 based 71:2, 16:9.
 basement 2:37, 23:21, 31:4, 35:8, 43:23, 44:9, 44:16,
 44:23, 46:5, 46:20, 49:7, 50:22, 51:17, 51:22,
 56:12, 76:17, 76:21, 81:10, 82:13, 82:16, 82:21,
 81:20, 84:3.
 14 basically 9:21, 20:7, 11:6, 72:15, 77:16, 80:2.
 basis 46:15.
 15 before 68:12, 68:17.
 both 77:10.
 16 both 2:6.
 17 BOUTHER 2:1, 2:4, 2:27, 2:29, 3:4, 3:7, 10:12,
 10:17, 10:19, 38:11, 19:24, 24:4, 24:15, 28:1, 28:5,
 29:7, 29:19, 29:21, 29:23, 29:25, 32:14, 33:1, 33:8,
 33:25, 34:11, 42:5, 42:15, 42:24, 43:7, 43:17,
 46:16, 48:17, 48:5, 51:1, 51:16, 52:10, 54:4, 54:13,
 54:24, 55:7, 55:10, 56:5, 57:8, 57:11, 58:4, 59:6,
 59:11, 60:18, 64:17, 67:11, 68:6, 68:7, 68:25, 69:7,
 69:15, 73:21, 75:27, 79:12, 79:24, 82:2, 82:3,
 82:12, 84:24, 86:3.
 20 because 24:16.
 begin 2:17.
 22 believe 8:4, 12:14, 12:21, 15:23, 17:14, 20:1, 20:7,
 25:2, 29:2, 39:3, 39:10, 39:23, 40:1, 46:2, 50:5,
 50:24, 51:4, 51:24, 51:29, 52:3, 56:14, 57:24, 58:4,
 61:1, 61:21, 63:12, 64:11, 69:25, 72:22, 72:23,
 73:15, 78:20, 78:2, 81:4, 81:6, 81:14, 82:22.
 24 believed 76:20, 78:5, 79:8.
 25 background 47:23.
 below 87:5.

5

1 71:17, 80:19, 81:17.
 busy 16:16.
 2 better 2:19.
 big 24:12, 29:24, 55:11, 55:13, 66:9.
 3 big 12:13, 22:22, 22:26, 24:11, 25:23, 29:24, 42:19,
 48:25, 54:17, 68:11.
 4 bigger 19:14, 21:20.
 biting 9:10.
 5
 < C >.
 6 chain 13:13, 13:21, 14:13, 14:14.
 7 chain 13:16, 13:17, 19:6, 23:10, 73:20, 80:4, 80:7,
 call 4:20, 10:4, 13:20, 31:7, 49:16, 55:11, 60:24.
 8 called 7:2, 11:18, 54:12.
 9 calls 25:11, 25:13, 32:19, 42:10, 48:15, 56:1, 60:10.
 10 camera 72:10.
 11 camera 60:25, 63:1, 64:3.
 12 Camper 1:13, 8:21, 9:7, 9:10, 9:11, 11:14, 11:22,
 11:23, 11:24, 12:4, 12:23, 14:9, 16:17, 16:24,
 22:22, 24:25, 25:22, 27:13, 29:22, 32:16, 33:3,
 35:20, 34:4, 36:11, 50:19, 56:16, 58:10, 58:20,
 60:7, 62:10, 70:4, 71:20, 73:3, 73:5, 73:22, 74:13,
 76:4, 78:5, 78:9.
 13 Camper 2:10.
 Camper 72:5.
 14 carrying 72:4.
 15 Carpool 11:12, 13:13, 13:14, 13:15, 23:6.
 16 car 50:11, 55:12, 55:13, 55:14.
 17 case 33:23, 73:7, 77:24.
 18 cause 27:15.
 19 Carpet 6:5, 6:10, 6:12.
 20 case 5:24, 10:24, 54:17, 54:24, 55:2, 76:16, 81:13.
 21 Cash 67:14, 67:16.
 22 catch 4:3.
 23 catch-all 33:25.
 24 catch 4:16.
 25 Central 5:2.
 26 certain 9:23, 18:24, 27:14, 27:18, 59:21.
 27 chain 64:8.
 28 change 11:22, 12:1, 15:1.
 29 changed 5:5, 14:17, 16:8, 16:17, 52:13, 54:14, 54:20.
 30 changes 30:11.
 31 changing 18:7.
 32 Check 13:17.
 33 CHECK 4:1, 1:3.
 34 City 1:24, 1:45, 2:7, 2:15, 2:22, 3:13, 4:23, 5:2,
 7:13, 7:22, 67:13.
 35 City 1:8.
 claim 67:3, 67:21.

7

1 believe 26:20.
 2 believe 57:24, 58:9.
 3 believe 20:2, 14:21, 27:23, 30:14, 36:17,
 40:27, 13:5, 47:13, 89:10.
 4 better 13:6, 20:19.
 5 big 44:19, 85:17.
 6 biggest 27:5.
 7 Bill 2:9, 11:10, 11:22, 11:23, 11:25, 30:20, 39:30.
 8 BILLY 5:13.
 9 bit 4:2, 71:23.
 10 Black 14:3, 18:3.
 11 block 49:11, 49:21.
 12 block 47:29, 48:2, 48:4.
 13 Brown 5:8, 5:13.
 14 Brown 12:17.
 15 book 34:25.
 16 bookkeeper 7:12.
 17 bookkeeping 27:20, 27:23.
 18 bottom 40:10, 50:3, 61:9, 81:7.
 19 bought 8:7, 8:20, 47:2.
 20 Boulevard 2:23.
 21 Boulevard 30:4, 32:11.
 22 Boulevard 50:22, 54:15, 59:3.
 23 Bowden 55:17, 36:14, 36:18, 37:17, 43:18, 43:19,
 44:15, 47:25, 48:3, 49:7, 49:8, 49:15.
 24 break 4:14, 4:15, 4:18, 28:5, 50:8.
 25 broken 43:18.
 26 bridge 53:14, 53:15, 53:18, 53:21, 56:9, 56:10, 56:12,
 56:13, 56:16, 56:19, 56:24, 57:1, 57:3, 58:8, 65:2,
 65:7, 65:9, 65:22.
 27 bridge 2:36, 53:7, 53:14, 53:7, 54:5, 54:19, 57:12,
 70:25, 79:3, 84:10.
 28 break 28:6, 29:10, 73:20.
 29 break 34:7, 14:3.
 30 break 52:9, 15:15, 18:19.
 31 Brown 1:15, 5:25, 10:4, 11:3, 11:8, 15:6, 15:9, 15:13,
 15:18, 18:7, 22:10, 24:1, 38:8, 39:18, 45:9, 47:15,
 70:8, 71:7, 73:13, 73:17, 74:20, 75:3, 75:17, 76:3,
 76:4, 81:13, 81:15, 81:24, 83:22.
 32 built 37:1.
 33 building 8:7, 13:10, 14:16, 20:4, 30:8, 32:19, 44:8,
 48:19, 48:4, 48:4, 48:5, 48:16, 80:13, 83:6.
 34 building 14:9, 14:12.
 35 built 25:17, 52:22, 52:24, 54:19, 58:5, 63:22, 84:11.
 36 built 35:3.
 37 built 63:24.
 38 busy 5:18.
 39 built 77:5.
 40 business 6:5, 6:12, 6:16, 6:18, 6:21, 7:13, 7:13,
 7:21, 8:5, 8:8, 26:7, 26:5, 27:9, 65:18, 71:15.

6

1 claiming 58:7, 65:6.
 claim 78:7.
 2 clarification 69:24.
 3 claim 3:26, 83:16.
 4 clearing 6:5, 6:10, 6:11, 6:12, 6:13.
 5 clear 63:8, 63:22.
 6 clear 32:5, 33:18, 48:7, 52:16, 52:19, 60:7, 60:22,
 61:16, 61:24, 76:9, 82:13, 82:6.
 7 clearly 28:13, 40:18, 60:22, 62:11, 56:15.
 8 close 17:22.
 9 closed 60:23.
 10 code 10:8, 32:15, 32:17, 63:9, 74:20.
 11 collapse 5:3, 5:5.
 12 come 68:8.
 13 coming 10:12, 63:5.
 14 commercial 7:12, 84:5, 66:14, 66:24.
 15 consultation 88:26.
 16 communicate 25:10.
 17 company 5:12, 5:23, 6:24, 7:2, 7:14, 10:21, 28:13,
 65:15, 65:29.
 18 suspicion 71:4.
 19 complaint 76:8, 76:11.
 20 complaints 12:7.
 21 complete 51:7.
 22 completed 32:5, 39:23, 39:25, 50:12, 50:15, 50:16,
 50:17, 51:13.
 23 complete 61:5, 62:14.
 24 complied 41:15.
 25 complied 70:19.
 26 correct 63:1.
 27 concerning 29:13, 63:10, 61:16.
 28 conclude 54:18.
 29 concluded 86:10.
 30 conclusion 32:20, 42:11, 48:15, 56:2, 60:11.
 31 concrete 49:11, 60:23, 65:1, 65:18, 65:19.
 32 condition 2:35, 29:4, 48:13, 48:15, 61:19.
 33 conditions 31:19, 63:20.
 34 consider 54:2.
 35 construction 45:6, 50:15, 81:6, 81:13.
 36 contact 22:4, 22:10, 41:16, 48:13, 72:17, 85:5.
 37 contacted 11:41, 22:9, 41:11, 65:17.
 38 contained 68:16, 79:25.
 39 containing 45:11.
 40 contract 15:22, 78:5, 88:14.
 41 contribute 14:17.
 42 Control 7:15, 8:9, 88:17.
 43 controlled 58:20.
 44 convenient 57:6.
 45 conversation 75:4.
 46 convey 29:13.

8

1 correction 24:11.
 2 cook 5:14, 5:23.
 3 copies 88:18.
 4 copies 14:10.
 5 copy 78:1.
 6 course 30:5, 30:25, 60:1, 61:7, 44:2, 45:14, 66:18,
 67:14, 77:16, 77:17.
 7 course 44:4.
 8 Courses 3:23, 17:10, 17:24, 18:25, 20:14, 20:21,
 20:25, 21:18, 21:19, 22:17, 23:20, 24:18, 25:10,
 26:14, 29:16, 29:25, 30:5, 31:21, 32:6, 33:5, 34:7,
 35:5, 35:14, 42:23, 48:6, 49:10, 49:11, 53:19,
 58:23, 60:8, 66:25, 67:19, 73:5, 60:10, 81:13,
 81:18, 82:5, 82:21, 84:1, 84:17, 85:7.
 9 ~~corrections~~ 87:6.
 10 corrections 87:6.
 11 correspond 85:4.
 12 correspondence 25:17.
 13 cost 55:5, 77:12.
 14 costly 41:2.
 15 costs 41:6, 89:5.
 16 costs 48:2.
 17 covered 85:11.
 18 count 20:17.
 19 country 72:5.
 20 County 1:3, 44:7, 86:4.
 21 couple 5:20, 5:25, 7:3, 10:14, 58:2, 69:14, 79:11,
 course 38:2.
 22 could 1:1.
 23 counsel 30:9, 30:17.
 24 counsel 9:1.
 25 counsel 33:4, 34:2.
 26 counsel 31:4.
 27 counsel 88:7.
 28 creating 17:23.
 29 search 10:17.
 30 case 1:19.
 31 comment 20:10, 32:16.
 32 Commonly 8:25, 9:1, 13:1.
 33 costumes 2:41, 67:12.
 34 Cost 41:7, 77:16, 77:17.
 35 :
 36 < D >
 37 deal 65:20.
 38 Dakota 1:1, 3:13, 42:6, 89:4.
 39 changes 21:14, 35:7, 31:11, 92:26.
 40 chap 44:1, 44:4, 75:21.
 41 chapters 46:14.
 42 ~~chaps~~ 1:20, 14:24, 67:15, 68:23.

9

1 ~~documentation~~ 41:14, 41:16.
 2 documents 9:24, 10:13, 10:6, 21:10, 69:17, 81:20.
 3 doing 7:1, 16:18, 17:12, 50:21, 71:13, 79:13.
 4 ~~do~~ 66:7.
 5 done 9:16, 10:18, 21:2, 49:9, 57:14, 60:16, 60:21,
 68:12, 71:2, 77:24, 81:23, 84:18.
 6 door 48:7.
 7 doors 31:4.
 8 DOT 39:18, 40:15, 40:19, 41:18.
 9 ~~draw~~ 39:4, 39:22.
 10 draw 30:2, 30:4, 44:10, 59:16, 40:2, 40:4, 40:20,
 62:18, 63:15, 68:15, 69:15, 74:7.
 11 ~~drawn~~ 72:15.
 12 Drive 1:22, 2:6, 2:14, 3:11, 53:7, 53:18, 53:21,
 54:18, 57:21, 65:2.
 13 ~~draw~~ 12:13.
 14 Drive 1:6, 3:7, 9:25, 16:19, 34:4, 42:23, 61:24,
 71:16, 71:19, 72:22, 75:5, 77:25, 83:18, 85:22.
 15 ~~city~~ 5:4, 89:5.
 16 ~~city~~ 13:13, 13:20, 14:15.
 17 Doing 17:18, 17:9, 84:4, 19:21, 22:5, 26:9, 26:6,
 30:15, 41:23, 46:1, 59:16, 71:16, 79:13.
 18 Dist 7:15, 8:9.
 19 distance 6:8, 8:23, 9:3.
 20 ~~city~~ 27:17.
 21 :
 22 < E >
 23 email 25:16.
 24 ~~Entity~~ 25:14.
 25 ~~entity~~ 17:1.
 26 ~~entity~~ 5:1.
 27 ~~Eight~~ 14:24, 53:9.
 28 either 38:13, 57:12, 71:10, 78:17.
 29 ~~electric~~ 14:7.
 30 ~~enrichments~~ 45:8.
 31 ~~employed~~ 88:12.
 32 ~~enriching~~ 39:11.
 33 ~~ent~~ 14:18, 17:4, 17:13, 70:7.
 34 ~~entire~~ 8:17.
 35 ~~entire~~ 16:13.
 36 ~~Entity~~ 14:1.
 37 ~~Entire~~ 3:11.
 38 ~~enough~~ 7:10.
 39 ~~entire~~ 20:2.
 40 ~~Enrichment~~ 2:42, 67:13, 67:17.
 41 ~~enrichment~~ 7:18, 2:28, 18:10, 19:23, 23:25, 24:17,
 36:20, 38:12, 38:22, 39:8, 33:21, 34:10, 82:2,
 42:13, 42:23, 43:5, 43:12, 46:11, 48:14, 49:7,
 50:23, 52:8, 54:7, 54:22, 55:4, 56:3, 57:6, 57:20.

11

1 ~~Entire~~ 40:8, 88:22.
 2 ~~enrichment~~ 76:11, 36:21, 61:8.
 3 ~~Entire~~ 71:3, 77:5, 27:6, 27:7.
 4 ~~ent~~ 4:25, 68:22.
 5 ~~entire~~ 12:8.
 6 ~~entire~~ 66:21.
 7 ~~entire~~ 16:20, 57:7, 62:8, 66:5, 65:17.
 8 ~~entire~~ 5:19, 15:16.
 9 ~~entire~~ 14:5, 77:24.
 10 ~~entire~~ 29:24, 42:1, 48:25.
 11 ~~entire~~ 14:21, 14:23, 30:5, 39:15, 40:1, 40:9, 40:13,
 40:23, 41:2, 42:7, 76:23, 77:22, 83:24.
 12 ~~entire~~ 11:22, 74:8.
 13 ~~Entire~~ 2:42, 66:6, 66:10, 66:24, 67:13, 68:13, 84:16.
 14 ~~entire~~ 76:25, 79:3.
 15 ~~entire~~ 2:8, 2:17.
 16 ~~entire~~ 1:17.
 17 ~~entire~~ 80:1.
 18 ~~entire~~ 9:1.
 19 ~~entire~~ 41:11, 42:10, 42:25, 64:25, 85:5, 85:5,
 85:24.
 20 ~~entire~~ 17:2.
 21 ~~entire~~ 24:7, 60:24.
 22 ~~entire~~ 52:6.
 23 ~~entire~~ 52:12.
 24 ~~entire~~ 28:2.
 25 ~~entire~~ 5:25.
 26 ~~entire~~ 1:10, 3:13, 9:16, 29:17, 31:22, 57:4, 67:9,
 88:18.
 27 ~~entire~~ 10:1.
 28 ~~entire~~ 21:20, 30:2, 64:23.
 29 ~~entire~~ 13:13, 77:22, 77:23.
 30 ~~entire~~ 14:22, 67:8, 79:11.
 31 ~~entire~~ 43:22.
 32 ~~entire~~ 21:25, 52:23, 52:22.
 33 ~~entire~~ 30:16.
 34 ~~entire~~ 31:7, 42:8, 42:19, 48:7, 52:24.
 35 ~~entire~~ 1:24, 24:8, 25:10, 25:20, 30:3, 30:7, 31:3,
 31:7, 33:4, 33:12, 33:18, 34:3, 42:7, 42:17, 42:22,
 43:8.
 36 ~~entire~~ 31:20.
 37 ~~entire~~ 47:2, 47:4.
 38 ~~entire~~ 12:18.
 39 ~~entire~~ 12:2, 52:20.
 40 ~~entire~~ 29:8, 33:11, 75:25.
 41 ~~entire~~ 11:5, 71:15, 73:15, 76:16.
 42 ~~entire~~ 5:18.
 43 ~~entire~~ 61:23.
 44 ~~entire~~ 59:21.
 45 ~~entire~~ 29:1, 68:23, 68:4, 71:20.

10

1 58:8, 69:12, 75:24, 76:1, 76:2, 81:25, 84:23, 86:6.
 2 ~~entire~~ 18:1.
 3 ~~entire~~ 62:4, 64:6.
 4 ~~entire~~ 30:4.
 5 ~~entire~~ 11:10, 12:5, 15:11, 30:2, 20:4, 20:13, 20:16,
 20:20, 21:6, 29:16.
 6 ~~entire~~ 52:24.
 7 ~~entire~~ 62:4.
 8 ~~entire~~ 7:7.
 9 ~~entire~~ 7:20, 14:5, 14:7, 23:23, 24:8, 41:8, 70:5,
 74:8, 82:25, 83:1.
 10 ~~entire~~ 8:14, 14:25.
 11 ~~entire~~ 2:27, 2:28, 2:28, 3:4, 36:1, 82:3.
 12 ~~entire~~ 3:3.
 13 ~~entire~~ 28:2.
 14 ~~entire~~ 87:5.
 15 ~~entire~~ 2:32.
 16 ~~entire~~ 26:9, 28:17, 34:23, 37:6, 42:4, 48:13, 53:12,
 51:15, 57:4, 64:12, 67:8, 67:12, 67:25, 68:5, 68:22,
 70:18, 82:8, 82:12.
 17 ~~entire~~ 28:7, 28:7.
 18 ~~entire~~ 7:2, 31:21, 79:13.
 19 ~~entire~~ 49:12, 53:14, 53:15, 53:23.
 20 ~~entire~~ 5:11.
 21 ~~entire~~ 5:19.
 22 ~~entire~~ 56:7.
 23 ~~entire~~ 58:22, 70:15.
 24 ~~entire~~ 70:4, 71:10.
 25 ~~entire~~ 88:26.
 26 ~~entire~~ 22:6, 71:7.
 27 ~~entire~~ 24:17.
 28 ~~entire~~ 28:23, 77:19.
 29 :
 30 < F >
 31 ~~entire~~ 20:23.
 32 ~~entire~~ 10:20, 30:14, 57:19, 68:13, 68:17, 68:4, 69:10,
 84:11.
 33 ~~entire~~ 38:20.
 34 ~~entire~~ 3:20, 4:11, 18:11, 20:16, 24:5, 24:12, 48:22.
 35 ~~entire~~ 38:23.
 36 ~~entire~~ 21:14, 23:23, 24:6, 24:7, 29:9, 24:16, 25:5,
 29:18, 39:3, 39:6.
 37 ~~entire~~ 11:5, 16:7, 26:8, 27:1, 27:9, 36:21.
 38 ~~entire~~ 27:1, 39:3, 44:4, 44:25, 63:25, 77:22.
 39 ~~entire~~ 8:13.
 40 ~~entire~~ 50:11, 51:10, 51:11, 57:18, 65:6, 82:7.
 41 ~~entire~~ 65:15.
 42 ~~entire~~ 41:21.
 43 ~~entire~~ 49:10, 50:3, 59:23, 59:24, 81:9.

12

1 ball 56:16, 56:24.
 2 for 3:25, 45:21, 75:24, 76:5, 82:2.
 3 *Alpaca* 67:5.
 4 *Alpaca* 71:13.
 5 *Alpaca* 7:24, 10:3.
 6 *Alpaca* 33:9, 53:15, 34:3, 61:5.
 7 *Alpaca* 33:18.
 8 *Alpaca* 67:6.
 9 *Alpaca* 61:26.
 10 *Alpaca* 65:17, 69:19, 75:6, 75:15, 78:18, 78:20.
 11 *Alpaca* 81:22, 81:23.
 12 *Alpaca* 55:13, 61:20, 69:19.
 13 *Alpaca* 68:18, 61:10, 63:23.
 14 *Alpaca* 41:22.
 15 *Alpaca* 3:26, 4:17, 22:18, 43:21.
 16 *Alpaca* 52:14.
 17 *Alpaca* 32:15, 32:23, 59:12, 59:13, 60:16, 61:3, 61:11.
 18 *Alpaca* 61:13, 61:19, 67:6, 62:22, 62:23, 63:10, 63:22,
 19 78:9.
 20 *Alpaca* 3:17, 1:25, 5:8, 9:4, 13:19, 13:25, 13:3, 16:1.
 21 *Alpaca* 43:25, 47:5, 52:4, 57:13, 73:2.
 22 *Alpaca* 36:3, 46:10.
 23 *Alpaca* 77:20, 36:15.
 24 *Alpaca* 62:5, 62:15, 65:14, 65:18, 65:19.
 25 *Alpaca* 40:10, 40:11, 41:19, 47:19, 57:21, 58:16, 62:6,
 75:2, 77:4, 77:13, 78:3, 85:28.
 26 *Alpaca* 13:4.
 27 *Alpaca* 31:15, 42:5, 51:19.
 28 *Alpaca* 30:25, 46:15.
 29 *Alpaca* 43:23, 44:1.
 30 *Alpaca* 45:13, 46:5, 78:12.
 31 *Alpaca* 30:17, 30:18, 30:24, 33:3.
 32 *Alpaca* 31:12, 45:18.
 33 *Alpaca* 5:10, 5:21.
 34 *Alpaca* 82:2.
 35 *Alpaca* 87:5.
 36 *Alpaca* 3:3.
 37 *Alpaca* 46:1.
 38 *Alpaca* 33:8.
 39 *Alpaca* 87:3, 88:8.
 40 *Alpaca* 63:2.
 41 *Alpaca* 61:1.
 42 *Alpaca* 78:10, 78:23, 79:25, 24:13, 30:3, 32:2, 32:4,
 32:12, 33:4, 33:21, 42:2, 43:18, 46:11, 68:18,
 43 50:23, 52:7, 52:4, 55:5, 56:4, 69:12, 84:23.
 44 *Alpaca* 63:9, 63:22.
 45 *Alpaca* 46:24, 69:23.
 46 *Alpaca* 7:6, 56:18.
 47 *Alpaca* 42:1, 43:4, 43:11, 48:16, 49:2, 52:7,
 54:21, 60:11.

13

1 *Alpaca* 46:11.
 2 *Alpaca* 7:7.
 3 *Alpaca* 27:18.
 4 *Alpaca* 8:14.
 5 *Alpaca* 46:1, 46:7, 46:8, 46:9, 46:13, 64:6.
 6 *Alpaca* 25:7, 46:7, 46:12, 57:1, 57:3.
 7 *Alpaca* 78:12.
 8 *Alpaca* 3:19, 45:19, 54:21, 61:20, 74:2.
 9 *Alpaca* 16:5.
 10 *Alpaca* 83:5.
 11 *Alpaca* 30:19, 40:12, 40:19.
 12 *Alpaca* 56:17.
 13 *Alpaca* 4:3.
 14 *Alpaca* 46:1, 46:7.
 15 *Alpaca* 15:25.
 16 *Alpaca* 22:23, 27:3.
 17 *Alpaca* 83:16.
 18 *Alpaca* 88:4.
 19 *Alpaca* 3:2.
 20 *Alpaca* 71:23.
 21 *Alpaca* 15:23, 15:24, 15:25.
 22 *Alpaca* 33:19.
 23 *Alpaca* 61:9.
 24 *Alpaca* 1:45, 7:19, 14:3.
 25 *Alpaca* 12:15, 20:16, 29:15, 51:7, 60:10,
 61:23.
 26 *Alpaca* 88:22, 57:13, 57:16, 57:19, 57:23, 58:5, 58:7,
 59:13, 58:29, 58:29.
 27 *Alpaca* 60:17.
 28 *Alpaca* 61:18.
 29 *Alpaca* 47:11, 47:12, 60:8.
 30 *Alpaca* 77:14.
 31 *Alpaca* 29:8, 29:13, 29:4.
 32 *Alpaca* 7:8.
 33 *Alpaca* 13:24.
 34 *Alpaca* 12:26.
 35 *Alpaca* 12:26.
 36 *Alpaca* 12:26.
 37 *Alpaca* 12:26.
 38 *Alpaca* 12:26.
 39 *Alpaca* 12:26.
 40 *Alpaca* 12:26.
 41 *Alpaca* 12:26.
 42 *Alpaca* 12:26.
 43 *Alpaca* 12:26.
 44 *Alpaca* 12:26.
 45 *Alpaca* 12:26.

15

1 *Alpaca* 1:22, 2:14.
 2 *Alpaca* 61:20, 5:9, 61:10, 50:3, 61:9.
 3 *Alpaca* 15:20, 38:13.
 4 *Alpaca* 16:13.
 5 *Alpaca* 21:19.
 6 *Alpaca* 22:5.
 7 *Alpaca* 15:9.
 8 *Alpaca* 14:18.
 9 *Alpaca* 14:22, 20:8.
 10 *Alpaca* 3:18, 14:13, 37:10.
 11 *Alpaca* 16:5.
 12 *Alpaca* 78:6.
 13 *Alpaca* 27:15.
 14 *Alpaca* 14:11.
 15 *Alpaca* 81:10.
 16 *Alpaca* 30:15, 41:4, 62:12.
 17 *Alpaca* 39:6.
 18 *Alpaca* 29:3, 29:19.
 19 *Alpaca* 58:22.
 20 *Alpaca* 9:21, 9:22, 10:20, 47:6, 62:10, 75:1.
 21 *Alpaca* 81:22, 81:24, 88:9.
 22 *Alpaca* 27:13, 27:18, 27:19.
 23 *Alpaca* 40:6.
 24 *Alpaca* 5:12.
 25 *Alpaca* 5:6.
 26 *Alpaca* 63:22.
 27 *Alpaca* 58:16, 58:19, 59:20, 59:23, 60:6, 60:19,
 62:16.
 28 *Alpaca* 61:16.
 29 *Alpaca* 15:2.
 30 *Alpaca* 5:18.
 31 *Alpaca* 15:21.
 32 *Alpaca* 1:11, 1:15, 2:26, 3:1, 3:11, 7:15, 8:4, 18:20,
 25:16, 26:13, 26:22, 26:24, 27:4, 87:7.
 33 *Alpaca* 84:2.
 34 *Alpaca* 4:22.
 35 *Alpaca* 11:6, 11:24, 14:18, 18:12, 19:1, 24:3, 24:7,
 25:2, 48:20, 56:6, 60:24, 68:8, 71:24, 79:18.
 36 *Alpaca* 9:9, 14:24, 50:11, 68:3, 71:9.
 37 *Alpaca* 14:13.
 38 *Alpaca* 4:3.
 39 *Alpaca* 31:23, 62:23, 62:24.
 40 *Alpaca* 46:20, 56:5.
 41 *Alpaca* 77:14.
 42 *Alpaca* 77:14.
 43 *Alpaca* 77:14.
 44 *Alpaca* 77:14.
 45 *Alpaca* 77:14.

14

1 *Alpaca* 13:22, 14:12, 18:12, 19:2, 27:14, 65:1.
 2 *Alpaca* 83:5.
 3 *Alpaca* 43:5.
 4 *Alpaca* 60:18.
 5 *Alpaca* 68:1, 70:13.
 6 *Alpaca* 74:15.
 7 *Alpaca* 33:12, 31:17, 51:16.
 8 *Alpaca* 31:21.
 9 *Alpaca* 60:20, 70:15, 70:23, 71:4.
 10 *Alpaca* 69:28.
 11 *Alpaca* 67:4, 68:7.
 12 *Alpaca* 61:21.
 13 *Alpaca* 13:2, 43:25, 53:3, 69:3, 81:9.
 14 *Alpaca* 61:2.
 15 *Alpaca* 14:6, 48:17.
 16 *Alpaca* 68:12.
 17 *Alpaca* 20:5.
 18 *Alpaca* 24:24, 42:24, 45:9.
 19 *Alpaca* 18:6, 19:18, 20:24, 21:6, 25:2, 27:13,
 20:16, 31:24, 34:19, 46:11, 57:24, 62:1, 69:16,
 75:14, 78:16, 78:20, 80:1, 81:15, 87:24.
 20 *Alpaca* 30:9, 40:15, 56:17, 58:14.
 21 *Alpaca* 34:14.
 22 *Alpaca* 24:10.
 23 *Alpaca* 58:14.
 24 *Alpaca* 37:15, 41:5, 61:7.
 25 *Alpaca* 16:9.
 26 *Alpaca* 21:2, 56:24.
 27 *Alpaca* 7:8.
 28 *Alpaca* 5:12, 5:23.
 29 *Alpaca* 5:21, 5:21.
 30 *Alpaca* 10:21.
 31 *Alpaca* 74:13.
 32 *Alpaca* 24:23.
 33 *Alpaca* 68:13, 69:13.
 34 *Alpaca* 28:14, 22:11, 20:1.
 35 *Alpaca* 10:10.
 36 *Alpaca* 10:15, 49:13.
 37 *Alpaca* 73:20.
 38 *Alpaca* 11:12, 20:3, 20:13, 26:8, 26:22, 27:12,
 74:22, 74:11.
 39 *Alpaca* 83:5.
 40 *Alpaca* 42:7, 42:15, 44:19, 66:20, 69:14, 45:25, 61:3,
 77:2, 77:4.
 41 *Alpaca* 19:6, 20:16, 29:21, 29:23, 39:25, 34:6, 40:17,
 48:7, 52:2, 52:25, 59:12, 70:13.
 42 *Alpaca* 68:18.
 43 *Alpaca* 62:2.
 44 *Alpaca* 1:15, 2:17, 10:4, 11:3, 11:9, 15:6, 17:7,
 17:23, 18:4, 18:19, 19:17, 21:7, 21:18, 21:23.

16

1 23:22, 24:16, 24:24, 25:10, 25:22, 25:24, 29:10,
31:8, 31:15, 34:22, 42:20, 42:27, 45:9, 45:20, 50:20,
2 55:20, 60:1, 60:17, 70:2, 73:15, 75:5, 76:3, 76:9,
76:15, 76:18, 76:25, 78:4, 78:6, 78:15, 78:21,
3 78:24, 81:1, 81:13, 81:15, 82:4, 82:17, 83:12,
83:24, 84:7.
4
5 < J >.
6 J. 2:18
7 Jacques 3:19, 85:8.
8 Jaquezine 1:41, 88:2, 88:23.
9 Jansen 2:4.
10 Job 5:13, 6:14, 8:13, 10:13, 16:16, 20:23, 36:6,
11 71:22.
12 John 2:11, 2:42, 9:15, 9:30, 10:23, 25:24, 28:1, 66:6,
13 66:14, 66:24, 67:15, 68:13, 68:15.
14 John 24:1, 32:22, 36:10, 52:13, 62:21, 43:12, 48:3,
15 52:8, 54:10, 54:22, 55:10, 56:1, 69:13.
16 John 78:9, 38:13.
17 Judgment 10:7.
18 Judgments 30:10.
19 JUDGE 1:3.
20 Jumping 84:5.
21 Justice 15:23.
22
23 < K >.
24 K. 1:41, 2:11, 88:2, 88:23.
25 Karp 8:2.
26 KATIE 1:11, 1:14, 2:20, 3:1, 3:11, 4:6, 4:20, 4:22,
27 9:13, 11:12, 24:2, 28:8, 29:18, 31:23, 34:1, 35:3,
28 49:9, 51:15, 57:11, 57:25, 58:11, 87:2.
29 Karp 8:7.
30 Kicks 26:12, 72:23.
31 Kild 9:16, 10:17, 16:25, 26:22, 26:23, 27:9, 31:24,
32 34:11, 37:18, 38:11, 66:2, 68:5, 71:22, 74:15,
33 76:5.
34 King 12:17.
35 Kings 12:17.
36 Kitchin 37:8.
37 Kitching 27:14, 87:3.
38 Kissen 25:13, 64:15, 84:21.
39
40 < L >.
41 Laker 6:2, 65:5.
42 Lack 41:16.
43 Lacey 6:19.
44 Last 26:15, 31:23, 36:15, 37:5, 38:14, 46:3, 47:2.

17

1 Long-bean 8:17.
2 Long 5:11, 6:20.
3 Look 12:15, 28:19, 39:23, 39:23, 46:19, 47:17, 56:21,
4 58:3, 68:22, 73:8, 73:20, 73:11, 79:18, 82:8, 84:5,
5 84:13, 84:13, 84:13, 84:13, 84:13, 84:13, 84:13, 84:13,
6 84:13.
7 Looking 22:17, 70:18, 78:22.
8 Loose 12:18.
9 Lot 7:6, 15:1, 16:4, 30:4, 32:9, 32:11, 40:10, 41:9,
10 47:7, 70:18, 79:5, 85:18, 85:18, 85:20, 85:22.
11
12 < M >.
13 Machine 12:21.
14 Main 7:5, 13:10, 14:16, 80:13.
15 Making 9:1.
16 Map 32:23.
17 Marquis 9:5, 9:8.
18 Matched 28:18, 51:13, 57:5, 67:10.
19 Match 18:7.
20 Matched 30:13, 61:3, 61:17, 62:22, 63:1.
21 Matched 42:13.
22 Matched 31:25, 85:6, 65:21, 71:19.
23 Matched 41:8, 69:12, 49:14, 58:1, 59:5, 65:11,
24 72:17.
25 Meddian 21:15.
26 Men 7:17, 13:24, 14:2, 14:19, 16:16, 21:9, 21:22,
27 24:4, 24:8, 27:24, 34:18, 34:21, 35:10, 35:11,
28 36:24, 43:25, 48:25, 49:15, 53:26, 54:3, 55:11,
29 56:10, 60:16, 62:10, 66:5, 69:19, 70:13, 73:9, 74:8,
30 75:15, 78:23, 84:10.
31 Meeting 23:25, 37:24.
32 Meets 38:1, 65:24.
33 Mechanic 30:18.
34 Meetings 75:10.
35 Melian 28:18.
36 Melody 1:7, 3:9, 34:4, 71:19, 72:21,
37 84:4.
38 Melton 11:2.
39 Mel 83:11.
40 Melton 25:19, 25:20.
41 Mel 16:1, 76:5.
42 Mel 21:3.
43 Mel 4:17, 15:24, 17:13, 78:1, 85:13.
44 Mel 3:7, 10:14, 57:6, 68:5, 68:21.
45 Mel 56:5.
46 Mel 9:1.
47 Mel 47:4, 78:1.
48 Mel 31:24, 71:7.
49 Mel 55:5, 56:7, 55:16, 56:11, 67:22, 68:11.

19

1 Mearby 7:12, 7:13, 20:4, 37:9.
2 May 2:5, 2:13, 2:20, 42:6.
3 May 23:14, 68:7, 68:25,
4 Mearby 10:18.
5 May 59:2.
6 May 14:11.
7 May 24:17, 25:6, 25:29.
8 May 37:16, 37:28, 37:22, 37:24, 37:25.
9 May 36:17, 37:19, 38:7, 41:20.
10 May 72:1, 80:7.
11 May 17:13, 52:5.
12 May 29:12.
13 May 2:4.
14 May 32:15, 40:10, 48:15, 56:1, 80:10.
15 May 11:7.
16 May 15:20.
17 May 38:14, 39:17, 40:6, 40:20, 41:15.
18 May 30:10.
19 May 4:24.
20 May 45:8.
21 May 14:15.
22 May 68:16, 85:10.
23 May 7:15, 8:9.
24 May 30:4, 30:11.
25 May 13:24, 31:15.
26 May 12:18, 12:20, 15:3, 15:6, 16:2, 48:13, 54:11,
27 66:7, 68:24, 73:22, 73:23, 74:25, 87:5.
28 May 17:8, 17:16, 17:28, 18:4, 18:23, 34:13, 34:15,
29 34:20, 34:21, 34:23, 37:8, 52:2, 54:13, 54:25,
30 55:20, 55:26, 56:8, 64:11, 64:22, 66:23, 67:4, 68:2,
31 80:1, 84:7, 84:13.
32 May 19:10.
33 May 65:1.
34 May 30:7.
35 May 4:2, 12:21, 17:3, 23:5, 47:1, 71:23.
36 May 30:14, 36:1.
37 May 4:24, 50:10, 35:21, 36:8, 36:11, 36:18, 36:24,
38 36:25, 42:21.
39 May 23:15, 23:18, 35:4, 41:7, 25:11, 35:21, 36:1,
40 36:5, 36:12, 36:15, 36:23, 37:1, 37:7, 43:21, 70:25,
41 80:1, 80:12.
42 May 1:14, 11:20.
43 May 6:3, 6:6, 6:8, 6:12.
44 May 85:10.
45 May 74:4.
46 May 62:18.
47 May 36:16, 33:3, 35:7, 40:23, 74:24, 76:4.
48 May 78:10.
49 May 5:18, 5:28, 6:4, 7:2, 7:23, 8:18, 9:7, 9:8,
50 15:13, 20:28, 30:17, 63:16, 72:9.

18

1 Mearby 54:7.
2 May 65:12.
3 May 41:8.
4 May 11:21, 44:20, 44:24, 45:5, 45:7, 46:17, 46:19,
5 48:12, 48:18, 48:21, 48:28, 50:13, 52:6, 52:25,
6 70:20, 70:13, 70:17, 70:19, 72:21, 75:22, 82:20,
7 83:2, 84:4, 84:5.
8 May 27:7.
9 May 41:4, 50:1, 71:11, 74:2, 74:3, 74:6,
10 74:13, 74:13.
11 May 45:21.
12 May 3:5, 3:6, 76:2.
13 May 10:2.
14 May 56:14, 56:22.
15 May 7:4, 25:25, 60:2, 64:3, 64:5.
16 May 7:5, 35:20, 36:1.
17 May 66:7, 66:13, 66:13, 66:25, 67:2, 67:21, 68:13,
18 84:16.
19 May 20:14.
20 May 1:44.
21 Multiple 21:22, 39:23, 81:9.
22
23 < N >.
24 N. 69:18, 49:21, 50:6.
25 N. 3:7, 3:9, 6:21, 7:14, 12:1, 12:8, 13:19, 26:15,
26 27:7, 36:15, 38:14, 42:24, 42:2.
27 N. 52:23.
28 N. 30:16, 30:17, 30:24.
29 N. 70:8.
30 N. 7:16, 2:18, 4:14, 20:24, 31:20, 62:8, 62:15,
31 62:18.
32 N. 19:15.
33 N. 60:21.
34 N. 60:11.
35 N. 14:6, 14:5, 14:8, 20:12, 24:20, 24:2, 50:6, 50:14,
36 51:22, 51:2, 54:12, 54:15, 55:11, 55:12, 55:13,
37 55:14, 56:9, 56:10, 56:12, 56:15, 56:16, 56:17, 56:1,
38 60:24, 60:8, 60:11, 60:13, 60:17, 61:3, 61:4, 61:4,
39 61:8, 61:9, 61:10, 61:10, 61:10, 61:10, 61:10, 61:10,
40 61:10.
41 N. 6:14, 7:11, 10:13, 30:15.
42 N. 13:18, 53:20, 53:22, 53:24, 54:1, 54:12.
43 N. 1:8, 2:10, 2:7, 2:15, 2:15, 26:20, 43:8, 44:8,
44 46:22, 47:25, 49:15, 49:18, 49:25, 67:23, 67:20,
45 64:2, 64:10, 65:22, 65:3, 66:7.
46 N. 56:18, 80:21.
47 N. 3:29.
48 N. 15:20.
49 N. 3:19.

20

1 **NOTES** 1:21, 2:11, 3:12, 10:14, 24:1, 28:4, 28:22,
28:24, 30:19, 34:4, 42:3, 42:10, 42:20, 43:4, 43:11,
2 43:14, 48:13, 48:2, 52:7, 54:10, 54:21, 55:5, 55:6,
56:1, 56:4, 57:25, 60:10, 64:15, 69:5, 69:21, 69:1,
3 69:13, 72:10, 86:5, 86:8.
4 **Repe** 73:12, 78:7.
5 **not** 69:12.
6 **Monthly** 22:8, 22:19.
7 **Northwest** 7:10.
8 **Notary** 69:1, 69:25.
9 **Nothing** 40:11, 42:22, 60:15, 72:2, 77:14, 85:4,
10 85:21.
11 **notice** 39:20, 39:21, 39:22, 40:4, 42:16, 42:25, 50:12,
61:2, 62:3, 62:6, 62:19, 94:23.
12 **notice** 35:9, 39:20.
13 **notice** 42:11.
14 **notice** 62:13.
15 **noticed** 39:8, 40:19, 60:22, 63:9, 50:30.
16 **Number** 30:2, 30:7, 30:19, 31:2, 31:11, 31:20, 35:24,
35:19, 34:4, 35:2, 60:8, 65:1, 66:12.
17 **numbered** 35:1.
18 **numbers** 19:13, 21:10.
19 -
20 < O >.
21 **object** 63:4.
22 **object** 18:30, 19:21, 23:25, 24:13, 26:12, 32:16,
33:4, 33:21, 34:9, 42:2, 42:13, 42:10, 42:20, 43:4,
43:11, 46:11, 48:14, 49:2, 50:23, 52:7, 54:1, 54:22,
55:4, 56:8, 56:1, 60:10, 69:12, 84:23.
23 **obligation** 56:24.
24 **obligation** 56:6.
25 **obscene** 39:20.
26 **obtain** 52:4.
27 **obtained** 52:1.
28 **occasion** 56:15.
29 **occasionally** 60:17.
30 **once** 19:17, 44:14, 49:11.
31 **occurred** 44:12, 56:6, 62:1.
32 **October** 39:24.
33 **off** 61:25.
34 **offensive** 16:14, 16:23, 17:9.
35 **office** 76:16, 79:1, 79:11.
36 **office** 60:13.
37 **office** 39:18.
38 **official** 37:18.
39 **Offy** 3:15, 3:21, 4:5, 4:10, 4:20, 5:6, 5:13, 5:17,
6:14, 8:16, 10:12, 11:18, 13:1, 23:1, 25:19, 26:17,
26:25, 28:16, 34:22, 36:17, 37:5, 40:9, 47:13,
51:14, 51:18, 51:20, 53:17, 59:10, 67:13, 69:13.

21

1 63:6, 63:8, 63:15, 64:21, 66:6, 69:1, 70:10, 71:4,
71:13, 72:17, 75:1, 75:2, 75:18, 75:20, 76:9, 76:10,
2 77:10, 77:12, 79:16, 79:11, 80:24, 81:5, 81:15,
81:25, 83:22, 84:3, 86:9.
3 **old** 5:14, 53:15, 55:14, 63:18.
4 **operation** 16:23.
5 **One** 3:16, 4:7, 12:12, 12:14, 13:19, 13:20, 13:25,
21:8, 28:20, 29:13, 30:16, 33:9, 33:16, 36:1, 39:20,
55:21, 43:21, 44:16, 44:17, 49:10, 52:9, 63:10,
63:14, 63:17, 63:23, 66:15, 67:12, 68:19, 69:7,
6 69:22, 71:2, 72:18, 72:20, 76:20, 89:6.
7 **one-by-one** 60:11.
8 **one** 12:6.
9 **open** 60:13.
10 **opened** 58:19.
11 **opening** 18:9.
12 **opened** 38:10, 37:24, 44:23, 56:15.
13 **operation** 60:18, 91:16.
14 **operational** 60:22, 60:25.
15 **operation** 8:21, 57:5.
16 **opinion** 73:22.
17 **orally** 67:15.
18 **order** 2:41, 20:23, 24:10, 29:15, 29:25, 25:22, 67:2,
67:12, 67:15.
19 **original** 14:14, 68:18.
20 **originally** 24:11, 71:18, 77:21.
21 **others** 28:8.
22 **otherwise** 68:13.
23 **ought** 24:6.
24 **outstanding** 73:17.
25 **outside** 89:14.
26 **own** 34:10.
27 **outside** 14:21.
28 **own** 6:15, 7:12, 25:5, 77:30, 72:6.
29 **owned** 25:6.
30 **owner** 7:16, 23:6, 41:22, 46:24.
31 **owns** 30:14, 90:23.
32 -
33 < P >.
34 **pages** 51:16.
35 **Page** 2:29, 2:32, 28:12, 30:15, 71:7, 71:23, 34:25,
37:5, 57:25, 58:1, 59:2, 64:13, 64:16, 67:25, 68:5,
68:13.
36 **page** 87:6.
37 **pages** 25:1.
38 **paid** 58:25, 63:13.
39 **paying** 49:17, 50:7, 50:16.
40 **paper** 36:5, 61:5.
41 **paperwork** 71:19.

22

1 **parents** 27:3.
2 **Part** 1:22, 2:14.
3 **padding** 35:1, 32:5, 40:16, 41:9, 76:5, 85:18, 85:19,
85:20, 85:29.
4 **part** 61:12, 29:18, 40:16, 40:22, 56:22, 67:23.
5 **particular** 22:21.
6 **particular** 11:13, 27:17, 34:13, 68:25.
7 **particularly** 70:1.
8 **parties** 88:12, 88:14, 88:20.
9 **part** 31:11, 83:29.
10 **patch** 67:15, 67:16, 58:9, 59:11, 59:25.
11 **patched** 57:19.
12 **patching** 58:23.
13 **Paul** 81:23.
14 **Paul** 30:20, 51:23, 68:8.
15 **Paul** 55:17, 75:13.
16 **pebble** 14:15.
17 **padding** 35:7, 32:17.
18 **padding** 31:3, 45:11, 47:22.
19 **padding** 1:3, 89:4.
20 **People** 22:4, 60:2, 60:3, 74:1, 74:3, 74:18, 80:9,
80:17.
21 **Per** 11:9.
22 **person** 36:3.
23 **person** 36:19, 37:16, 37:21, 39:19.
24 **person** 60:20.
25 **person** 61:6, 62:4, 62:9, 62:21, 83:7.
26 **person** 30:23, 32:24, 33:17, 50:18, 61:10.
27 **person** 75:18, 49:19.
28 **person** 71:10.
29 **personally** 21:5, 50:10.
30 **person** 88:15.
31 **phone** 25:10, 25:12.
32 **photo** 57:13.
33 **Photographer** 2:36, 2:39, 14:9, 50:17, 52:22, 51:25,
52:5, 57:12, 62:7.
34 **pick** 3:19.
35 **pickup** 64:8.
36 **picture** 28:11, 24:24, 37:4, 41:14, 51:15, 56:3,
60:23.
37 **place** 67:17.
38 **place** 44:7.
39 **playing** 14:11.
40 **pl** 59:25, 61:3, 62:16, 43:17.
41 **pl** 32:15, 32:23, 59:13, 59:16, 60:4, 60:16, 61:25,
62:4, 63:10, 63:15, 63:22.
42 **PLATE** 1:21, 33:24, 35:12, 51:3, 80:7.
43 **plates** 2:36, 51:17, 80:5.
44 **Plastic** 1:3, 2:2, 74:15.
45 **plan** 30:25.

23

1 **plans** 66:9.
2 **plans** 66:12.
3 **plant** 9:5, 9:8.
4 **plantings** 9:23.
5 **plasma** 3:9, 4:8, 34:25, 58:1.
6 **plow** 9:8.
7 **plowed** 44:18.
8 **plugged** 47:10.
9 **plugged** 50:5, 50:6.
10 **point** 43:21, 60:17, 74:24.
11 **points** 37:3.
12 **position** 12:6, 38:10, 41:2, 41:24.
13 **positions** 52:10.
14 **position** 6:2.
15 **positive** 66:18.
16 **possession** 63:17.
17 **possession** 48:4.
18 **possible** 25:18.
19 **possibly** 25:20, 53:11, 56:11.
20 **potential** 23:20, 24:11, 29:24, 42:10, 48:24, 68:11.
21 **pear** 65:19.
22 **person** 68:8.
23 **power** 14:1, 47:13.
24 **prepare** 9:13, 9:18.
25 **prepared** 75:21.
26 **premise** 44:7, 44:4, 45:5, 48:21, 48:24, 83:2.
27 **present** 15:23, 22:7, 31:13.
28 **presented** 45:18.
29 **presence** 28:13.
30 **presence** 35:17, 36:14, 74:10, 43:10, 44:15, 47:25,
48:6, 83:6.
31 **probably** 14:7, 25:12, 26:12.
32 **provide** 36:24.
33 **price** 12:23, 17:16, 17:21, 67:17.
34 **probably** 11:16, 11:17.
35 **Price** 39:13, 39:7, 39:25, 39:8, 45:6, 49:5, 50:18,
52:16, 53:18, 53:24, 54:1, 58:17, 59:13, 60:5,
63:10, 71:16, 76:12, 79:7, 88:5.
36 **probably** 4:6, 5:25, 10:14, 12:3, 13:25, 27:1, 27:2,
27:20, 38:20, 41:17, 45:4, 46:10, 47:7, 66:10,
66:17, 69:6, 73:20, 83:5, 83:14.
37 **position** 32:10, 45:7, 60:1, 60:3, 74:1.
38 **positions** 18:7, 23:16, 30:3, 31:3, 32:1, 76:17.
39 **possibility** 86:10.
40 **possibility** 73:20.
41 **possibilities** 88:6.
42 **possess** 14:4, 20:23, 22:1, 75:6.
43 **possess** 1:42, 68:2, 89:24.
44 **possess** 2:13, 8:6, 19:4, 19:6, 16:2, 16:3, 18:1,
18:5, 18:17, 18:24, 18:28, 19:7, 19:15, 19:18,

24

1 20:20, 21:7, 21:10, 21:14, 21:17, 21:21, 21:25,
22:6, 22:11, 23:4, 23:23, 23:24, 24:10, 24:17, 25:4,
2 25:25, 26:7, 26:14, 26:20, 26:22, 26:12, 26:16,
26:21, 26:22, 26:12, 26:2, 26:6, 26:1, 26:6, 26:8,
3 26:22, 26:14, 26:21, 26:1, 26:11, 26:17, 26:4,
26:19, 26:18, 26:17, 26:14, 26:24, 26:17, 26:10, 26:1,
4 26:6, 26:25, 26:2, 26:3, 26:16, 26:21, 26:14, 26:10,
26:21, 26:2, 26:18, 26:14, 26:18, 26:25, 26:6,
5 prospective 22:22, 22:24, 24:17,
possible 18:18, 20:24, 21:24, 21:25, 26:17, 26:1,
6 26:19,
possible 20:15, 20:16,
7 possible 21:15, 21:21, 26:21,
public 26:1, 26:25,
8 pass 21:17, 21:18, 26:20, 26:23, 26:24, 27:12, 27:19,
9 27:20,
purchase 2:41, 3:12, 9:31, 12:2, 12:06, 12:23, 28:8,
42:1, 46:25, 67:2, 67:12, 75:3,
10 purchased 11:18, 12:14, 12:25, 13:9, 13:19, 36:3,
36:20, 36:22, 60:7, 60:23, 66:18, 67:3, 70:25,
11 82:14,
purchasing 72:12,
12 progress 29:13, 35:9,
purchase 42:5, 42:17,
13 pushing 74:19,
put 14:4, 14:5, 17:9, 34:23, 41:7, 44:25, 45:3, 46:24,
14 47:23, 48:2, 48:4, 50:5, 50:6, 52:23, 54:14, 59:15,
60:19, 62:8, 62:14, 62:1, 70:21, 70:24, 71:11,
15 74:8,
putting 13:4, 14:22, 18:1, 49:16,
16 .
17 < Q >,
question 20:15, 23:10, 35:4, 35:7, 35:17, 35:21, 36:1,
18 36:8, 36:12, 36:19, 36:23, 37:2, 37:1, 43:21, 79:28,
80:2, 80:12,
19 question 3:17, 6:10, 33:25, 42:14, 43:25, 46:4, 57:2,
62:1,
20 Questions 4:7, 11:8, 11:9, 13:25, 5:24, 76:6, 79:12,
82:1,
21 quick 28:5, 57:9,
quick 30:6, 71:22,
22 quite 18:16,
23 .
24 < R >,
racks 66:14,
25 reached 66:2,
rain 65:13, 46:1, 46:3, 46:7,
see 66:15,

25

1 liquid 1:23, 1:45, 2:3, 2:15, 2:22, 3:11, 4:23, 6:24,
5:2, 7:18, 7:22, 67:13,
2 lit 1:44,
RED 2:41, 66:13, 66:19, 67:12,
3 air 53:19,
REDACT 64:23, 66:23, 67:25,
4 road 66:9, 87:2,
roaching 30:20, 51:20, 68:8,
5 road 73:7,
Road 11:10, 12:5, 15:11, 20:2, 20:4, 20:13, 20:16,
6 20:25, 21:6, 29:15,
road 13:15, 15:25, 27:12, 65:16, 57:13, 72:6,
7 77:21,
Road 12:8, 12:12, 12:14, 12:15, 20:4, 52:2,
8 road 60:20,
road 62:17,
9 road 7:3, 16:3, 21:25, 29:15, 61:25, 77:20, 83:4,
71:6,
10 road 63:16, 64:4,
road 53:4, 53:6, 53:12, 53:18, 54:5, 54:14, 56:12,
11 65:1, 66:11,
road 12:2, 12:20, 15:3,
12 road 65:11,
road 61:2,
13 road 39:14, 40:17, 84:24, 85:6,
road 54:6, 54:19,
14 road 51:6, 52:10,
road 70:20,
15 road 19:22,
road 3:10, 3:24, 40:4, 44:8, 65:14, 68:21, 88:9,
16 road 75:25,
Road 35:23, 36:1, 36:5, 36:14, 36:15, 71:21,
17 road 13:9,
road 52:14,
18 road 88:7,
road 68:23,
19 road 60:6,
road 83:9,
20 road 11:8,
road 29:10, 32:15, 33:12, 75:5, 75:14,
21 Registered 1:40, 81:2, 89:24,
registration 41:22,
22 related 32:4, 31:8, 32:11, 32:16, 89:12,
related 12:12, 15:8,
23 relationship 89:17,
relief 70:13,
24 related 74:11,
related 14:27, 17:21,
25 road 44:24,
road 6:1, 8:13, 10:8, 11:28, 12:3, 12:9, 12:11,

26

1 17:16, 26:4, 33:19, 59:15, 59:22, 67:6, 72:22,
Relegation 1:16, 1:7, 3:6, 34:4, 62:12, 62:20, 58:21,
2 61:24, 71:16, 75:5,
Relegation 13:18, 77:5, 78:16, 78:17,
3 road 77:1,
road 14:14,
4 road 14:12, 49:6,
road 41:1, 42:6, 82:24, 83:3,
5 Road 41:1, 49:12, 50:3, 52:1, 52:3,
Road 52:20, 81:9,
6 road 80:12,
road 1:13,
7 Registered 56:20, 58:14,
registering 16:17,
8 register 5:8,
registered 50:4,
9 Registered 1:41,
Register 1:42, 88:1, 88:24,
10 Registering 1:43,
register 3:7, 76:1,
11 represented 12:12,
Representing 2:2, 2:8, 2:17,
12 registered 29:13, 30:15, 34:3, 42:8, 59:19,
registers 30:3, 31:2, 31:7, 54:17, 88:19,
13 registering 47:25, 48:3,
reservations 16:14, 17:3, 27:28,
14 residence 20:11, 21:17, 80:23, 81:3,
residential 80:15,
15 Resort 1:14, 11:23, 1:41,
respond 41:28,
16 response 39:22, 79:12,
responsibility 18:18,
17 responsible 17:23, 18:7,
rest 7:5,
18 restaurant 5:15, 16:17, 13:8, 13:18, 13:19, 27:24,
35:8, 35:17, 35:19, 37:16, 37:24, 37:25, 38:7,
19 43:20, 70:3, 80:8,
restaurant 30:8, 32:17,
20 rest 11:23,
rest 69:23, 70:1, 70:12,
21 rest 9:23, 9:23, 10:2, 30:5,
rest 9:15, 10:6, 10:7, 34:17, 34:18,
22 resting 83:8,
and 77:14, 83:3,
23 right-of-way 30:10, 39:3, 39:31, 39:16, 40:17, 40:21,
41:25, 42:8, 42:16, 70:25, 71:1, 78:6, 85:2, 85:10,
24 86:20, 87:23,
road 64:1,
25 road 62:25,
ring 59:24,

27

1 ring 61:11, 62:3, 78:9,
rip 60:2,
2 River 6:22,
road 39:15, 77:25,
3 roofing 6:15, 6:16, 6:18, 6:22, 6:23, 7:1,
room 37:5, 49:10,
4 room 37:3, 37:4, 37:14,
roughly 21:24, 22:6, 68:5,
5 rule 3:25,
rule 3:15,
6 rule 14:2, 14:8, 30:10, 30:18, 45:3,
Refuse 1:14,
7 rule 14:11,
Run 80:9,
8 .
9 < Q >,
S 2:3,
10 Sale 9:3, 11:23, 15:4, 17:14, 26:13, 36:1, 39:10,
5:8, 49:5, 53:13, 53:19, 53:24, 58:11, 67:14,
67:16, 71:17, 71:20, 73:20, 73:2, 73:9,
11 sales 39:4, 67:10,
sat 72:14,
12 sat 52:17,
sat 11:6,
13 saying 4:4, 62:7, 62:15, 84:4,
says 30:4, 67:14, 67:20, 68:9, 69:9,
14 schedule 22:12, 22:17,
school 5:8, 5:16, 15:10, 15:23, 15:24, 15:28,
15 schooling 5:3, 5:5,
Scott 20:5,
16 SP 1:23, 1:45, 2:7, 2:15, 2:22,
search 43:7,
17 search 14:18, 17:1, 17:8, 60:13, 70:7, 80:7,
second 28:12, 30:15, 56:2,
18 Section 71:7,
19 seen 16:12, 28:25, 37:4, 82:20, 83:20, 84:4,
sell 7:25, 8:3, 16:3, 20:21, 24:5, 25:1, 25:4, 25:23,
20 26:1, 48:22, 51:3, 73:24,
Seller 2:15, 12:13, 20:17, 26:24, 29:3, 30:15, 42:6,
21 selling 50:18,
sell 70:7,
22 sell 69:13,
September 62:12,
23 September 1:3, 17:4, 69:23,
Shaw 6:1, 8:11, 8:22, 8:23,
24 Shaw 7:15, 8:10, 83:2, 88:20,
seen 53:9, 53:12, 53:18, 54:3, 55:14, 84:11,
25 SHAW 1:3,
saw 14:7,

28

1 ahead 23:11.
 2 ahead 49:16, 70:14.
 3 ahead/s 47:24.
 4 aheadback 49:14, 49:15, 49:19, 50:13.
 5 aheads 69:24, 70:18, 70:22.
 6 aheady 26:22.
 7 aholler 23:13.
 8 ahooling 7:8.
 9 ahoo 19:18, 22:13, 22:18, 22:25, 23:22, 24:11, 34:22,
 40:4, 45:22, 51:14, 67:11, 73:2, 79:5, 79:17.
 10 ahooed 21:30, 21:24, 62:4, 82:8, 82:17, 83:24.
 11 ahooing 22:19, 22:22, 74:20.
 12 ahooings 19:21.
 13 ahooes 22:5.
 14 ahoo 61:18.
 15 ahoo 6:9, 7:20.
 16 ahoo 13:21.
 17 ahooing 14:22.
 18 ahoo 61:14, 66:9.
 19 ahooing 87:22.
 20 ahooed 20:12, 25:4.
 21 ahoo 20:15.
 22 aholler 13:1, 38:16, 39:1, 66:4.
 23 ahooes 2:19.
 24 ahoo 76:2, 83:14.
 25 ahooies 44:24, 74:14.
 26 ahoo 35:22, 82:2, 80:3, 80:9, 80:18.
 27 ahooing 80:8.
 28 ahoo 36:16, 36:18.
 29 ahoo 44:5, 44:11.
 30 ahoo 112:1, 212:2.
 31 ahoo 11:1, 8:4, 9:8, 20:4, 20:8, 20:6, 36:20, 40:2,
 47:16, 47:18, 60:13.
 32 ahoo 1:16.
 33 ahooing 22:9, 22:10, 24:1, 24:18, 36:11, 41:25,
 47:23, 58:25, 59:1, 62:19.
 34 ahooes 39:14.
 35 ahooies 50:16.
 36 ahooies 17:1.
 37 ahoo 77:15.
 38 ahoo 58:18.
 39 ahoo 5:4, 22:16, 22:17, 28:24, 30:17, 36:17, 45:13,
 68:25, 72:19, 72:12.
 40 ahooes 66:18.
 41 ahoo 1:1, 3:12, 42:6, 68:4.
 42 ahoo 13:22, 19:12, 71:2, 71:21, 28:9.
 43 ahoo 30:10.
 44 ahooies 58:4.
 45 ahoo 13:4.
 46 ahooing 45:12, 45:18, 45:19, 45:21, 45:25, 66:9.

29

1 car 67:18, 81:23.
 2 calls 79:19.
 3 car 14:24, 77:21, 19:12, 21:21, 53:10, 54:20, 83:25.
 4 car-jack 22:5.
 5 car-year 25:9.
 6 carney 88:16.
 7 carer 38:16.
 8 carter 3:3, 61:24, 70:11, 82:7.
 9 carterly 52:18.
 10 carterly 48:16.
 11 carterly 19:20, 21:23, 34:12, 36:7, 46:4, 47:21,
 52:15, 61:12, 62:15, 83:18, 83:23, 88:4, 88:9.
 12 cart 25:19, 25:20.
 13 carts 55:9.
 14 carter 76:13, 88:7.
 15 carter 81:23.
 16 caught 44:19.
 17 caught 61:18, 61:21, 61:22, 80:23.
 18 cause 6:1, 9:9, 53:7, 58:3, 58:4, 62:4.
 19 cause 16:13.
 20 cause-month 14:20.
 21 cause-quarter 35:3.
 22 cause-quarter 36:10, 56:22.
 23 cause 66:2, 72:7.
 24 cause 65:17, 68:23, 68:4.
 25 cause 58:16.
 26 cause 9:14, 10:4, 76:5.
 27 cause 13:5, 15:10, 15:21, 15:22, 70:25, 41:7, 68:8,
 70:21, 70:24, 74:9.
 28 car 81:8.
 29 car 18:5, 19:11, 49:10, 56:10, 57:18, 58:16, 61:16,
 74:10.
 30 car 14:8, 65:17, 63:29, 67:14, 83:7.
 31 cause 62:18.
 32 total 69:17.
 33 cause 17:12, 17:13.
 34 track 8:2.
 35 trailer 83:10.
 36 transportation 11:10, 11:13, 34:14, 69:11, 75:12.
 37 transportation 29:2.
 38 transportation 87:3, 87:4, 88:8, 88:19.
 39 transportation 88:10.
 40 transportation 14:4.
 41 transportation 6:13.
 42 transportation 41:12, 42:17, 43:1, 64:25, 65:5, 65:10,
 65:25.
 43 transport 80:6, 83:15.
 44 transport 59:22, 59:23.
 45 pulled 38:18, 45:3, 68:13, 73:6, 73:9.
 46 track 63:4.

31

1 58:18.
 2 58:1:2.
 3 stage 64:17.
 4 staged 48:12.
 5 staging 48:2, 44:9, 44:10, 47:22, 48:3.
 6 start 5:23, 16:25, 17:15.
 7 started 1:12, 9:4, 10:20, 17:11, 50:15,
 16:10.
 8 starts 3:1, 9:9, 7:21, 39:18, 68:3.
 9 statement 2:34, 10:20, 29:4, 29:10, 29:20, 31:5,
 33:17, 33:18, 34:4, 34:7, 42:7, 42:18, 43:9.
 10 statements 75:6, 75:15, 76:14, 81:24.
 11 stating 39:14.
 12 staged 60:6.
 13 ste 1:44.
 14 steel 65:9.
 15 steampunked 88:7.
 16 steps 44:30.
 17 stick-balls 49:24.
 18 stopping 44:25.
 19 stoppage 37:9.
 20 structural 16:4.
 21 structure 14:20, 41:24, 80:15, 80:1.
 22 stuck 16:8.
 23 stuck 45:24, 48:25.
 24 study 30:25.
 25 stuff 7:1, 68:3, 68:9, 69:5, 82:21.
 26 subject 22:21, 41:22, 42:12, 43:14.
 27 subsequently 65:14.
 28 substance 11:5.
 29 substituted 95:5.
 30 substantial 88:16.
 31 success 14:7, 74:9.
 32 suggestions 25:26, 70:3.
 33 suite 2:6.
 34 summary 5:3.
 35 summary 10:2.
 36 summary 16:5, 16:6, 39:9, 45:1, 46:9.
 37 summary 72:19.
 38 Sup 31:17, 31:18, 48:24, 48:25, 48:24, 47:19, 47:20.
 39 supervision 88:8.
 40 suppose 7:24, 29:6, 62:4.
 41 supposed 8:13, 8:14, 10:8, 39:23, 39:25, 64:5.
 42 sure 3:3, 88:5.
 43 systems 21:16.
 44 < >
 45 takes 28:6, 59:10.
 46 talked 9:15, 9:20, 10:23, 34:13, 43:17, 53:2.

30

1 time 27:2, 40:15, 87:4, 88:9.
 2 truth 47:15.
 3 truthful 9:22.
 4 try 3:16, 24:15, 38:10, 51:2, 53:11, 74:5.
 5 trying 3:24, 16:3, 24:5, 25:2, 25:4, 82:24, 83:1.
 6 time 15:3.
 7 turn 28:8, 34:25, 64:12, 70:18.
 8 twice 9:2.
 9 two 10:13, 13:21, 13:12, 53:6, 54:4, 54:4, 54:18,
 57:12, 60:3, 68:4, 68:4, 68:4.
 10 two-by-two 50:2.
 11 two-shot 63:16.
 12 two-minute 57:7.
 13 two 13:20.
 14 type 26:24.
 15 type 62:8, 64:13.
 16 typically 88:7.
 17 typically 16:25.
 18 < >
 19 < >
 20 < >
 21 < >
 22 < >
 23 < >
 24 < >
 25 < >
 26 < >
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 99 < >
 100 < >

32

1 visit 18:5, 19:14, 62:14, 73:2.
 2 visiting 18:24.
 3 we 1:11.
 4 < N >.
 5 visit 83:20, 83:21.
 6 visitor 5:16.
 7 visit 53:7.
 8 visiting 22:21.
 9 visit 49:24, 49:25, 61:14.
 10 visit 31:4, 49:7, 49:11, 49:12, 50:3, 52:3, 52:3.
 11 52:12, 52:15, 52:21, 79:20, 81:9, 82:13, 83:20.
 12 visited 22:25, 30:10, 70:11, 82:15, 73:10, 73:24,
 13 77:23.
 14 visitor 34:6, 31:3, 31:7, 44:1, 44:3, 44:5, 44:6, 44:9,
 15 44:10, 44:16, 44:25, 45:4, 45:11, 47:22, 47:22,
 16 48:3, 52:24, 76:17, 82:20.
 17 visitation 6:25.
 18 visitation 14:8.
 19 visit 9:2, 10:13.
 20 visit 20:13, 10:14.
 21 visitor 1:41, 88:2, 88:23.
 22 visit 2:21, 6:22.
 23 visitation 7:20.
 24 visit 48:1.
 25 visitation 25:26, 16:7, 60:20, 70:22, 72:13.
 26 visitation 33:11.
 27 visitor 65:22, 65:25.
 28 visitor 62:19, 63:20.
 29 visitation 7:6, 45:13, 45:14, 84:14.
 30 visitor 14:6, 29:12, 30:16, 41:24.
 31 visitation 65:25.
 32 visitor 71:21.
 33 visit 4:24, 7:18, 14:9, 80:6.
 34 visited 54:5, 65:13.
 35 wife 7:17, 11:12, 26:22, 27:13, 31:2, 71:9, 75:8,
 36 79:17, 81:18.
 37 visit 1:13, 2:9, 11:18, 11:22, 11:25, 11:25, 30:24,
 38 30:10.
 39 visit 4:7.
 40 visitor 31:4.
 41 visitor 31:10, 38:18, 38:24, 50:16, 81:5.
 42 within 32:10, 33:4, 34:7, 40:16, 40:23, 41:23.
 43 witness 2:25, 3:2, 37:20, 51:20, 64:16, 68:4, 70:19,
 44 88:5.
 45 West 50:8.
 46 witness 6:22.
 47 west 56:6.
 48 week 6:5, 7:6, 7:7, 8:11, 16:5, 36:6, 38:11, 48:6.

33

1 50:10, 50:12, 50:21, 50:8, 57:14, 65:12, 70:10,
 2 71:22, 72:7, 72:9, 74:7, 83:12.
 3 witness 5:8, 8:10, 22:7, 24:25, 25:4, 26:7, 27:24,
 4 38:8, 47:1, 47:8, 50:11, 65:7.
 5 witness 63:2.
 6 watching 6:17, 8:21, 9:4, 16:5, 22:20, 36:5, 47:8.
 7 watched 63:10.
 8 night 9:2.
 9 visiting 30:5.
 10 visited 37:22, 61:2, 62:3, 62:6, 62:19, 63:3.
 11 visiting 9:2.
 12 < X >.
 13 X 67:16.
 14 as 31:2, 31:16.
 15 < Y >.
 16 yielded 64:5.
 17 year 7:9, 8:2, 8:3, 9:6, 18:7, 32:24, 38:5, 38:22,
 18 43:24, 46:3, 60:18, 61:6, 66:7, 70:12, 71:4, 84:18.
 19 year-around 16:13, 16:15.
 20 yearly 44:12, 70:22.
 21 years 50:20, 50:20, 6:7, 7:3, 7:24, 8:20, 9:7, 9:9,
 22 13:6, 17:23, 14:24, 15:14, 17:21, 17:12, 21:3,
 23 21:21, 25:6, 26:10, 48:14, 48:4, 47:3, 47:5, 47:8,
 24 48:8, 53:11, 53:12, 53:18, 53:28, 54:1, 54:20,
 25 55:13, 55:22, 61:22, 66:10, 63:25, 84:12.
 26 Day 5:15, 28:21, 71:19, 35:25, 64:21, 68:6.
 27 Newark 72:23.
 28 young 26:12.
 29 younger 15:8, 62:24.
 30 yourself 12:13, 24:24, 70:8.
 31 < Z >.
 32 Z 2:42, 66:16, 67:13.
 33 zero-th 66:14.
 34 zero 77:14.
 35 zoning 30:8, 30:11, 32:17.

34

STATE OF SOUTH DAKOTA)
)
COUNTY OF PENNINGTON)
)

IN CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT

DUANE REMINGTON and
MELODY REMINGTON,

 Plaintiffs,

vs.

WILD BILL'S CAMPGROUND
AND RESORT, LLC; KEITH
GRIMM; and BRYAN IVERSON,

 Defendants.

51CIV18-000118

Deposition of:

BRYAN IVERSON

BEFORE: Jeanne Speck Quinn
 Court Reporter and Notary Public
 Rapid City, South Dakota

DATE: August 20, 2018 at 10:00 a.m.

PLACE: Bangs, McCullen, Butler,
 Foye & Simmons, LLP
 333 West Boulevard, Suite 400
 Rapid City, South Dakota

APPEARANCES:

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Representing the Defendant:
[Wild Bill's & Keith Grimm] **MR. JOHN K. NOONEY**
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APPEARANCES CONTINUED:

Also Present:

Mr. Duane Remington
Mrs. Melody Remington
Plaintiffs

I N D E X

WITNESS:

PAGE

BRYAN IVERSON

Examination by MR. BEARDSLEY	3
Examination by MR. NOCNEY	83
Further Examination by MR. BEARDSLEY	138
Examination by MR. ERLANDSON	142

EXHIBITS:

MARKED ON PAGE

1 - Real Estate Purchase Agreement (2 pages)	28
2 - Agency Agreement Addendum (1 page)	30
3 - Buyers Agency Agreement (1 page)	42
4 - Addendum/Amendment to Purchase Agreement (1 page)	43
5 - Addenda #1 (1 page)	44
6 - Listing for Wild Bill's (7 pages)	49
7 - Nov. 9, 2016 letter from DOT (2 pages)	64
8 - Meetings with Duane Remington (1 page)	84
9 - Real Estate Purchase Agreement, Commercial/ Agricultural, REMAX 0019 - 0025	88
10 - Listing for Wild Bill's, REMAX 0001 - 0013	95
11 - Contract for Deed, REMAX 0026 - 0034	115
12 - Exclusive Listing Agreement, REMAX 0045 - 0049	119
13 - MLS listing, REMAX 0050 - 0052	120
14 - Spreadsheets, REMAX 0053 - 0056	123
15 - ALTA Settlement Statement, GRIMM 0027 - 0028	126
16 - Certificate of Real Estate Value, GRIMM 0020 & 0024	137

* * *

<p style="text-align: center;">3</p> <p>1 (The deposition began at 10:18 a.m.)</p> <p>2 BRYAN IVERSON.</p> <p>3 called as a witness, being first duly sworn, testified as</p> <p>4 follows:</p> <p>5 EXAMINATION BY MR. BEARDSLEY:</p> <p>6 Q Good morning. My name is Mike Beardsley. I represent</p> <p>7 Duane and Melody Remington. Can you please state your</p> <p>8 full name and address for the record.</p> <p>9 A Bryan Iverson. My office address is 1246 Jackson</p> <p>10 Boulevard, Rapid City, South Dakota 57702.</p> <p>11 Q Have you ever had your deposition taken?</p> <p>12 A Have not.</p> <p>13 Q Say that again?</p> <p>14 A No.</p> <p>15 Q I'm going to go over a few ground rules then. It's</p> <p>16 important that you let me finish my question before you</p> <p>17 start to answer, okay? It's also important that you use</p> <p>18 verbal responses. If you shake your head or say</p> <p>19 "uh-huh," "hub-uh," it's very difficult for her to pick</p> <p>20 up. Is that fair?</p> <p>21 A Yes.</p> <p>22 Q And, Bryan, if you start talking over me before I finish</p> <p>23 my question, I'm going to correct you. I don't mean to</p> <p>24 be rude, but we need a good record; okay?</p> <p>25 A Understand.</p>	<p style="text-align: center;">5</p> <p>1 A Yes.</p> <p>2 Q How long did you do that?</p> <p>3 A While I attended college.</p> <p>4 Q The entire time?</p> <p>5 A In the summers.</p> <p>6 Q Then what did you do?</p> <p>7 A I started my accounting career at Antelope Coal Company</p> <p>8 in Wyoming.</p> <p>9 Q So I assume you majored in accounting?</p> <p>10 A Yes.</p> <p>11 Q Any other majors?</p> <p>12 A Business administration.</p> <p>13 Q What did you minor in?</p> <p>14 A Did not.</p> <p>15 Q Okay. Your accounting career started when?</p> <p>16 A December '89.</p> <p>17 Q And where was that?</p> <p>18 A Antelope Coal Company.</p> <p>19 Q And where was that located?</p> <p>20 A In Wyoming.</p> <p>21 Q Where, in Wyoming?</p> <p>22 A 65 miles north of Douglas.</p> <p>23 Q Okay. How long did you stay with that company?</p> <p>24 A 10 months.</p> <p>25 Q What was your official position while working with</p>
<p style="text-align: center;">4</p> <p>1 Q And if you do not understand a question that I ask, I'd</p> <p>2 just please ask you to ask me to clarify. And if you</p> <p>3 answer one of my questions, I'm going to assume that you</p> <p>4 understood it. Is that fair?</p> <p>5 A Yes.</p> <p>6 Q Where did you grow up?</p> <p>7 A Rapid City.</p> <p>8 Q Can you summarize your education for me?</p> <p>9 A Went to -- graduated from Rapid City Central.</p> <p>10 Q What year?</p> <p>11 A 1984, and graduated from Black Hills State in 1989.</p> <p>12 Q Any education after Black Hills State?</p> <p>13 A No.</p> <p>14 Q And your job history, please.</p> <p>15 A How far back would you like me to go?</p> <p>16 Q After high school.</p> <p>17 A I worked construction while I was going to college.</p> <p>18 Q What type of construction?</p> <p>19 A I did road construction and building.</p> <p>20 Q Residential or commercial?</p> <p>21 A Residential.</p> <p>22 Q Who did you work for?</p> <p>23 A Scull Construction, Sweetman Construction, and -- what</p> <p>24 was the last one I worked for? Stanley Johnson.</p> <p>25 Q Are those all in Rapid City?</p>	<p style="text-align: center;">6</p> <p>1 Antelope Coal Company?</p> <p>2 A Accountant.</p> <p>3 Q Did it remain that the entire 10 months?</p> <p>4 A Yes.</p> <p>5 Q Why did you leave after 10 months?</p> <p>6 A Didn't like it.</p> <p>7 Q Didn't like Wyoming?</p> <p>8 A Didn't like it.</p> <p>9 Q Were you terminated?</p> <p>10 A No.</p> <p>11 Q Then what did you do?</p> <p>12 A Went back for one semester at Black Hills State.</p> <p>13 Q For what?</p> <p>14 A To get my business degree.</p> <p>15 Q Okay. Then?</p> <p>16 A I went to work for Moyle Petroleum Company in Rapid.</p> <p>17 Q That was in '91?</p> <p>18 A Yes.</p> <p>19 Q And what did you do for Moyle?</p> <p>20 A Started out in construction and maintenance, and then</p> <p>21 went into the office for accounting and environmental.</p> <p>22 Q Construction and maintenance, what did that entail?</p> <p>23 A Maintaining the stores and construction of new stores or</p> <p>24 remodels.</p> <p>25 Q So construction, gas stations?</p>

<p>7</p> <p>1 A Yes. Convenience stores, yes.</p> <p>2 Q How long did you do that?</p> <p>3 A How long did I do the construction, or how long was I with Moyle Petroleum?</p> <p>4 Q The construction.</p> <p>6 A I don't know the exact years.</p> <p>7 Q Give me your best shot.</p> <p>8 A Four.</p> <p>9 Q Were you a laborer while doing construction or more of like a management role?</p> <p>11 A Laborer.</p> <p>12 Q Okay. Four years, so '95, roughly, you started doing accounting work for Moyle?</p> <p>13 A Yes. Yes.</p> <p>15 Q Okay. And who was your supervisor or boss at the time; do you remember?</p> <p>17 A Dave Larson.</p> <p>18 Q How long did you do accounting work for Moyle?</p> <p>19 A Until 2001.</p> <p>20 Q Then what did you do?</p> <p>21 A I want to work for Pioneer Credit Counseling.</p> <p>22 Q What was the nature of your position at Pioneer?</p> <p>23 A Controller.</p> <p>24 Q What does that mean?</p> <p>25 A Accountant.</p>	<p>9</p> <p>1 Q Who did you work under at Coldwell Banker?</p> <p>2 A I don't know what you mean.</p> <p>3 Q Did you have a boss or a supervisor at Coldwell Banker?</p> <p>4 A The designated broker sales manager was Dave Mortimer.</p> <p>5 Q Did you pass the test the first time?</p> <p>6 A Yes.</p> <p>7 Q How long were you at Coldwell Banker?</p> <p>8 A Year and a half.</p> <p>9 Q Did you get any other certifications while at Coldwell Banker?</p> <p>10 A No.</p> <p>12 Q So your title was a licensed broker associate?</p> <p>13 A Yes.</p> <p>14 Q And is that currently your title?</p> <p>15 A Yes.</p> <p>16 Q What is the difference between a licensed broker associate and a broker's license?</p> <p>17 A I believe the broker is the one who is in charge of the broker associates.</p> <p>19 Q Reviews the work of the broker associates?</p> <p>20 A I'm not sure.</p> <p>22 Q After Coldwell Banker, 2008-ish, what did you do?</p> <p>23 A Moved to RE/MAX.</p> <p>24 Q Who hired you at RE/MAX?</p> <p>25 A Gene Hensley.</p>
<p>8</p> <p>1 Q Any other positions at Pioneer Credit Counseling?</p> <p>2 A No.</p> <p>3 Q And how long were you there?</p> <p>4 A Until 2005.</p> <p>5 Q Then what?</p> <p>6 A Real estate.</p> <p>7 Q Why did you leave Pioneer Credit Counseling?</p> <p>8 A Wanted to do something other than accounting.</p> <p>9 Q And why did you leave Moyle Petroleum in 2001?</p> <p>10 A It was an advancement.</p> <p>11 Q So 2005 you started real estate?</p> <p>12 A 2006.</p> <p>13 Q 2006.</p> <p>14 A February of 2006.</p> <p>15 Q And how did you start that process?</p> <p>16 A Took a real estate class. Then I had to take a test.</p> <p>17 Q Where was the class?</p> <p>18 A Coldwell Banker.</p> <p>19 Q And what does that consist of? How long is it?</p> <p>20 A Two weeks, if I remember right.</p> <p>21 Q Then you took a test?</p> <p>22 A Yes.</p> <p>23 Q And after the test, you were certified as a broker associate; is that right?</p> <p>24 A Licensed.</p>	<p>10</p> <p>1 Q And would Gene still be considered your supervisor or your boss?</p> <p>2 A No.</p> <p>3 Q Who is?</p> <p>4 A Tony Hensley.</p> <p>5 Q And, Bryan, can you tell me what the responsibilities of an associate broker are?</p> <p>6 A I need more detail.</p> <p>7 Q Well, I assume you do your job five days a week or more. What are your responsibilities as an associate broker to RE/MAX realty?</p> <p>8 A To help my clients buy and sell property.</p> <p>9 Q Do you know what the responsibilities of a broker at RE/MAX are?</p> <p>10 A The broker, no, I don't because I have not been a broker.</p> <p>11 Q Well, would the broker be responsible for his or her associate brokers?</p> <p>12 A Yes.</p> <p>13 Q And the broker in your office is Tony Hensley, correct?</p> <p>14 A Yes.</p> <p>15 Q Any other brokers?</p> <p>16 A Yanni Georgas is the other one. Tony is the -- I believe, the designated.</p> <p>17 Q How many associate brokers are in your office?</p>

<p>11</p> <p>1 A 33.</p> <p>2 Q When you have a real estate transaction, is it common to</p> <p>3 discuss your deals with the other associate brokers in</p> <p>4 the office?</p> <p>5 A No.</p> <p>6 Q Do you ever?</p> <p>7 A It's privileged.</p> <p>8 Q Do you ever discuss your deals with Tony Henley or</p> <p>9 Yasini Georgas or any other broker that you've worked</p> <p>10 under?</p> <p>11 A If I have questions that I cannot answer.</p> <p>12 Q Such as?</p> <p>13 A Last time I asked them a question was about a person</p> <p>14 wanting to sell their house as is.</p> <p>15 Q And what was your question?</p> <p>16 A If they could do it as is.</p> <p>17 Q And what did you end up doing?</p> <p>18 A I did not take the listing.</p> <p>19 Q Why not?</p> <p>20 A I lost it.</p> <p>21 Q What was the advice given to you?</p> <p>22 MR. ERLANDSON: Objection, form; relevance. You</p> <p>23 can answer.</p> <p>24 A No.</p> <p>25 Q (By Mr. Beardsley:) Excuse me?</p>	<p>13</p> <p>1 Q Who?</p> <p>2 A Our office manager, Lana Hudson.</p> <p>3 Q You say Lana?</p> <p>4 A Yes.</p> <p>5 Q And what does she do?</p> <p>6 A She is our office manager.</p> <p>7 Q Sure. What are her duties?</p> <p>8 A She checks our files. She makes sure that we have</p> <p>9 everything in correct order and does our billing,</p> <p>10 invoicing, and does our commission checks when we have a</p> <p>11 close.</p> <p>12 Q Does she work for all of the associate brokers in the</p> <p>13 office?</p> <p>14 A Yes.</p> <p>15 Q Does she put together listings for properties?</p> <p>16 A Not for me.</p> <p>17 Q And for this particular sale did she complete any of the</p> <p>18 forms required for the transaction?</p> <p>19 A No.</p> <p>20 Q Who did that?</p> <p>21 A I did.</p> <p>22 Q So I take it you also put together the listing for the</p> <p>23 property?</p> <p>24 A Yes.</p> <p>25 Q At the conclusion of a sale, what's the process to turn</p>
<p>12</p> <p>1 A I don't want to answer.</p> <p>2 MR. ERLANDSON: No, I said you can answer it. Go</p> <p>3 ahead.</p> <p>4 A Okay. Say again.</p> <p>5 Q (By Mr. Beardsley:) What was the advice given to you on</p> <p>6 whether or not you could take the listing and sell the</p> <p>7 house as is?</p> <p>8 A They said that I still -- I could sell it, but someone</p> <p>9 else had beat me to it, so that's how I lost it.</p> <p>10 Q Did this conversation include discussions about a</p> <p>11 Property Disclosure Statement?</p> <p>12 A No.</p> <p>13 Q You understand we're here today because of the sale of</p> <p>14 Wild Bill's Campground and KV Park, correct?</p> <p>15 A Correct.</p> <p>16 Q Did you discuss that particular transaction with anyone</p> <p>17 in your office at RE/MAX?</p> <p>18 A Not to my recollection.</p> <p>19 Q And if I understand you correctly, if you did discuss</p> <p>20 it, it would have been with your broker and not an</p> <p>21 associate broker, correct?</p> <p>22 A Yes.</p> <p>23 Q Is there anyone at your office that helps you with the</p> <p>24 forms and paperwork involved in the sale of a property?</p> <p>25 A Yes.</p>	<p>14</p> <p>1 the file in to get your commission check?</p> <p>2 A The forms we receive from the title company, and you</p> <p>3 give that with the file to Lana.</p> <p>4 Q Your entire file is turned over?</p> <p>5 A Yes.</p> <p>6 Q And does Lana then review the file prior to issuing you</p> <p>7 a check?</p> <p>8 A Yes.</p> <p>9 Q What is the document retention policy at your office?</p> <p>10 A How long do they keep the files?</p> <p>11 Q Yeah.</p> <p>12 A Seven years.</p> <p>13 Q So your entire file would still be kept with Lana, is</p> <p>14 that correct?</p> <p>15 A It's at our office, yes.</p> <p>16 Q Is there a handbook or any written responsibilities at</p> <p>17 RE/MAX describing your responsibilities and duties as an</p> <p>18 associate broker?</p> <p>19 A Under the new owners, I don't know if there has been.</p> <p>20 Q In May of 2017?</p> <p>21 A No.</p> <p>22 Q The prior owners, was there something?</p> <p>23 A I believe so, yes.</p> <p>24 Q What was it called?</p> <p>25 A I don't know.</p>

<p>15</p> <p>1 Q Did you ever read it?</p> <p>2 A Yes.</p> <p>3 Q Have you ever been involved in a lawsuit?</p> <p>4 A No.</p> <p>5 Q What did you do today to prepare for this deposition?</p> <p>6 A Read through the information I received from Greg.</p> <p>7 Q Okay. And what information was that?</p> <p>8 A Questions -- I don't know the right terminology.</p> <p>9 Q Interrogatories?</p> <p>10 A Yes.</p> <p>11 Q Anything else?</p> <p>12 A That -- just have the stuff that I received from that, yeah.</p> <p>13 Q And I don't want you to tell me about any of the conversations you had with your attorney, but I do want to know what you were provided; okay? So you read through the interrogatory answers by my clients, I assume?</p> <p>14 A Yes.</p> <p>15 Q Did you review your file?</p> <p>16 A My file on Wild Bill's?</p> <p>17 Q Uh-huh.</p> <p>18 A No.</p> <p>19 Q Did you read or review anything else?</p> <p>20 A No.</p>	<p>17</p> <p>1 A The Remingtons.</p> <p>2 Q Did you also provide notes on meetings with Keith Grimm?</p> <p>3 A No.</p> <p>4 Q Did you speak with anybody else regarding this lawsuit?</p> <p>5 A No.</p> <p>6 Q Were you contacted by any insurance company?</p> <p>7 A Oh, yes. I'm sorry, Rice.</p> <p>8 Q Say that again?</p> <p>9 A Rice is our insurance company.</p> <p>10 Q Okay. Did you provide a statement to the insurance company?</p> <p>11 A No. They asked for the information.</p> <p>12 MR. ERLANDSON: No, you didn't provide a statement.</p> <p>13 A No, I didn't provide a statement.</p> <p>14 Q (By Mr. Beardsley:) Did they ask for your file?</p> <p>15 A Nope. They just asked for certain information.</p> <p>16 Q What information is that?</p> <p>17 A Basically, the same that I gave to Mr. Nooney.</p> <p>18 Q So the listing notes on meetings and financial information on the property, correct?</p> <p>19 A Yes.</p> <p>20 Q Anything else?</p> <p>21 A That's all I can remember.</p> <p>22 Q How do you know Keith Grimm?</p>
<p>16</p> <p>1 Q Did you speak with anyone else besides your attorney?</p> <p>2 A No.</p> <p>3 Q Since this lawsuit was initiated, have you talked about it with anybody besides your attorney?</p> <p>4 A I told my brokers that it was happening, yes.</p> <p>5 Q Did you discuss in detail the substance of the Wild Bill's sale and this lawsuit?</p> <p>6 A I told them what was going on. I didn't go into detail.</p> <p>7 Q What did you tell them?</p> <p>8 A Just that I was in a lawsuit, and that I had talked to Mr. Nooney.</p> <p>9 Q You talked to Mr. Nooney about what?</p> <p>10 A It was before I was named. Excuse me.</p> <p>11 Q Did Nooney contact you?</p> <p>12 A Yes.</p> <p>13 Q And what was the substance of that conversation?</p> <p>14 A Asked me for some information, which I provided, and that was about it. It wasn't a very long conversation.</p> <p>15 Q What information?</p> <p>16 A I gave him the pamphlet, some notes I had on the meetings, and the financial information.</p> <p>17 Q When you say "pamphlet," are you referring to the listing?</p> <p>18 A Yes.</p> <p>19 Q And notes on meetings. Meetings with who?</p>	<p>18</p> <p>1 A I've known Keith Grimm for a long time. He's a friend of mine.</p> <p>2 Q How many years?</p> <p>3 A 30.</p> <p>4 Q And how did you meet Keith?</p> <p>5 A I was friends with his brother, Les.</p> <p>6 Q What does Les do?</p> <p>7 A Les is passed away.</p> <p>8 Q Have you ever been in business with Keith Grimm?</p> <p>9 A No.</p> <p>10 Q How many properties have you sold for Keith?</p> <p>11 A One.</p> <p>12 Q And on this property, Wild Bill's, how long were you the agent prior to the sale in May of 2017?</p> <p>13 A Off and on for 10 years.</p> <p>14 Q So it was first listed in 2007?</p> <p>15 A I believe so.</p> <p>16 Q And you say "off and on". Can you tell me when it was taken off the market after it was listed in 2007?</p> <p>17 A I cannot.</p> <p>18 Q The best of your recollection.</p> <p>19 A About a year and a half.</p> <p>20 Q During that first listing, were there any offers to purchase?</p> <p>21 A One.</p>

<p style="text-align: right;">19</p> <p>1 Q Do you recall who did that?</p> <p>2 A I do not.</p> <p>3 Q That's fair.</p> <p>4 Was there any inspection done on the property?</p> <p>5 A Meyer came to terms.</p> <p>6 Q What was it listed for?</p> <p>7 A At that time it was listed at \$50.</p> <p>8 Q How long was it off the market?</p> <p>9 A To the best of my knowledge, I think six months.</p> <p>10 Q And when it was relisted, talking in 2009, what was the price?</p> <p>11 A I believe it was still \$50.</p> <p>12 Q How long on the second go-around was it listed for?</p> <p>13 A If my memory serves me, that's when we went to taking it off before the season started. So six months.</p> <p>14 Q And after the season, did you put it back on?</p> <p>15 A I would have to look in my notes. I know there was a time that we kept it off for a year. I just -- I don't remember the actual year for that.</p> <p>16 Q Okay. So let's say you took it off for a year and then relisted it again in 2010, correct?</p> <p>17 A Possibly.</p> <p>18 Q And do you remember the listing price?</p> <p>19 A It was either \$50 or \$99.</p> <p>20 Q I want to go back to the 2009 listing. Any offers to</p>	<p style="text-align: right;">21</p> <p>1 A Yes. There was another lady out of Belle Fourche.</p> <p>2 That's all I can think of right now.</p> <p>3 Q And during this process with these numerous realtors involved, any inspection ever completed?</p> <p>4 A No.</p> <p>5 Q Now on these walk-throughs with the property, I assume you would be present, as well?</p> <p>6 A Yes.</p> <p>7 Q On all of them?</p> <p>8 A Yes.</p> <p>9 Q Okay. 2010 the property was taken off the market again during the season, and just so we're clear, the season runs June through August?</p> <p>10 A Yes.</p> <p>11 Q And then it's put back on, correct?</p> <p>12 A After they've closed up, yes.</p> <p>13 Q So in 2010 off-season, meaning September, back on the market at what price?</p> <p>14 A At that time I believe it would probably be the \$99.</p> <p>15 Q And how long was it on the market?</p> <p>16 A Until April.</p> <p>17 Q Bryan, you originally listed this in 2007. I assume that you were part of any financials that were completed on the property and the business?</p> <p>18 MR. ERLANDSON: Objection, form.</p>
<p style="text-align: right;">20</p> <p>1 purchase?</p> <p>2 A I don't recall.</p> <p>3 Q 2010, how long was it listed?</p> <p>4 A Probably that same period of -- if that was the year that we had it on or off, but it would be the off-season is when it was listed.</p> <p>5 Q And you think during this listing it was priced at \$99?</p> <p>6 A If I remember correctly.</p> <p>7 Q Any offers or interests in the property?</p> <p>8 A I had plenty of interest in the property. I just can't recall when the offers were, as far as the year is.</p> <p>9 Q So prospective buyers viewed the property?</p> <p>10 A Yes.</p> <p>11 Q Walked through the property?</p> <p>12 A Yes.</p> <p>13 Q Did they have the property inspected?</p> <p>14 A No.</p> <p>15 Q Were there any other real estate agents involved during this process?</p> <p>16 A Yes.</p> <p>17 Q Who?</p> <p>18 A I believe her last name was Groves, was one person. Kim Benning. I don't know her last name; her name was Christy, I believe.</p> <p>19 Q Christy?</p>	<p style="text-align: right;">22</p> <p>1 A I was given the financials by Mr. Grimm.</p> <p>2 Q (By Mr. Beardsley:) So the financials were provided to you each time it was listed, correct?</p> <p>3 MR. ERLANDSON: Objection, form.</p> <p>4 A They were not given to me immediately upon listing, because they weren't completed at that time.</p> <p>5 Q (By Mr. Beardsley:) So since 2007, at least, financials have been recorded and kept by either Grimm or you?</p> <p>6 MR. ERLANDSON: Objection, form. And just for the purpose of your deposition, I'll object to the term "financials". If I can have a standing objection to that --</p> <p>7 MR. BEARDSLEY: Sure.</p> <p>8 MR. ERLANDSON: -- then I won't interrupt you.</p> <p>9 A Say again.</p> <p>10 MR. BEARDSLEY: Read it back for him.</p> <p>11 (The previous question was read back by the court reporter.)</p> <p>12 A By Mr. Grimm.</p> <p>13 Q (By Mr. Beardsley:) And I suppose we could be more specific. The income and expense reports that were provided, is that what we're talking about here?</p> <p>14 A Yes.</p> <p>15 Q Did Keith and you have separate income and expense documents for each year?</p>

<p style="text-align: right;">23</p> <p>1 A No.</p> <p>2 Q How would that work?</p> <p>3 A How would what work?</p> <p>4 Q Why didn't you have expense reports for each year?</p> <p>5 Wouldn't each year be different?</p> <p>6 A He provided me with the -- yeah, with the year. I'm not -- I don't understand what you're saying.</p> <p>8 Q Sure. So each season Keith would compile the income and expense documents and provide them to you in an effort to sell the property; is that accurate?</p> <p>10 A Yes.</p> <p>12 Q Okay. Where are we at here?</p> <p>13 After the 2010 season it's back on the market.</p> <p>14 How long was it on the market?</p> <p>15 A Again, if my memory serves me, it went until April.</p> <p>16 Q During this time, any interest in the property?</p> <p>17 A Yeah, I showed it every year.</p> <p>18 Q How many times did you show it?</p> <p>19 A I don't know.</p> <p>20 Q Ten? More than ten?</p> <p>21 A I couldn't even give you a good guesstimate.</p> <p>22 Q How many realtors were involved in showing it to their clients?</p> <p>23 A The list that I give you was from people during the time that I remember. I'm sorry. I should have clarified</p>	<p style="text-align: right;">25</p> <p>1 A If I remember correctly, yes.</p> <p>2 Q And did you show the property during this time?</p> <p>3 A Yes.</p> <p>4 Q Any inspections?</p> <p>5 A No.</p> <p>6 Q Any offers to purchase?</p> <p>7 A There could have been. I just can't remember the years.</p> <p>8 Q At this particular time was it listed or acceptable to purchase on a contract for deed?</p> <p>9 A I know that Mr. Grimm changed his mind about doing the contract for deed. I just don't know what year that was.</p> <p>11 Q But your notes would reflect that, correct?</p> <p>12 A Yes, sir.</p> <p>13 Q Okay. So roughly May of '11 it's taken off the market again through August of '11, and then put back on the market?</p> <p>14 A I know there was a couple years in there we didn't list it again until later. I just -- I don't remember the exact --</p> <p>16 Q Sure. But, generally speaking, from 2007 to 2017 it was put on the market and taken off pursuant to the season?</p> <p>17 A Yes.</p> <p>18 Q And I take it there was a listing each time for the property?</p>
<p style="text-align: right;">24</p> <p>1 that. That wasn't just 2010. That would be people that I have shown that I remember during the period of when I listed until when it was sold.</p> <p>3 Q During the ten-year period --</p> <p>4 A Correct.</p> <p>5 Q Got to let me finish. The ten-year period it's been on and off the market?</p> <p>6 A Yes.</p> <p>7 Q And the most recent time that it was on the market that we're discussing right now, any offers to purchase?</p> <p>8 A From the Remingtons?</p> <p>9 Q No. From any protective buyer that may have had interest in the property.</p> <p>10 A I don't recall during the exact year, no.</p> <p>11 Q Any inspections?</p> <p>12 A No.</p> <p>13 Q It was off the market in 2011 during the season, and then back on again; correct?</p> <p>14 A Yes.</p> <p>15 Q Still at \$997?</p> <p>16 A Yes.</p> <p>17 Q Just for clarification, \$899,000?</p> <p>18 A Yes.</p> <p>19 Q And during this time period, it's on the market for six months; is that right?</p>	<p style="text-align: right;">26</p> <p>1 A Either a listing or an addendum.</p> <p>2 Q And you created the listing addendum each time?</p> <p>3 A Yes.</p> <p>4 Q And how do you go about doing that?</p> <p>5 A We use an Exclusive Listing Agreement.</p> <p>6 Q And when you create the listing, and we'll get to it later, you have to be familiar with the property?</p> <p>7 MR. ERLANDSON: Objection, form.</p> <p>8 A Familiar, as in what?</p> <p>9 Q (By Mr. Beardsley:) What the property entails, the condition of the property? I mean, how do you create a listing if you're not familiar with the property?</p> <p>10 A I know the acres, description of the business.</p> <p>11 Q Prior to the sale of the property in May of '17, given the fact that it was listed by you for the prior 10 years, how many times would you say you've walked through the property?</p> <p>12 A I do not know.</p> <p>13 Q 50?</p> <p>14 A I don't know.</p> <p>15 Q Well, I mean, you show the property five times for 10 years, and it's on and off the market each year. Is 50 a fair estimate of how many times you've walked that property?</p> <p>16 A I just couldn't tell you.</p>

<p style="text-align: right;">27</p> <p>1 Q More than 30?</p> <p>2 A I'll go with 30.</p> <p>3 Q Okay. I think your prior testimony was that when you</p> <p>4 show the property, you're present at the time?</p> <p>5 A Yes.</p> <p>6 Q So if we have documentation of how many times you showed</p> <p>7 the property, that would indicate how many times you</p> <p>8 walked through the property, as well?</p> <p>9 A Say again.</p> <p>10 Q If your file indicates how many times the property has</p> <p>11 been shown in the last 10 years, that would be</p> <p>12 reflective of how many times you actually walked the</p> <p>13 property when you showed it; correct?</p> <p>14 A I did not keep track of when I showed the property.</p> <p>15 Q You have no notation of when it was shown?</p> <p>16 A No.</p> <p>17 Q Do you keep a calendar?</p> <p>18 A Yeah.</p> <p>19 Q Would it be on your calendar?</p> <p>20 A I can't tell you for sure if it is or not, no.</p> <p>21 Q Is it your practice to put a showing down on your</p> <p>22 calendar?</p> <p>23 A It's either on a note, like a sticky note --</p> <p>24 Q Or a calendar? Do you keep a calendar at all?</p> <p>25 A Yes.</p>	<p style="text-align: right;">28</p> <p>1 Q And this Purchase Agreement indicates that the purchase</p> <p>2 price was \$899,000?</p> <p>3 A Yes.</p> <p>4 Q And the finance and the purchase is by means of contract</p> <p>5 for deed with the seller, correct?</p> <p>6 A Yes.</p> <p>7 Q This agreement was signed on April 27, 2017?</p> <p>8 A Yes, by Mr. Remington. Yes.</p> <p>9 Q And closing on or before May 15, 2017; correct?</p> <p>10 A Yes.</p> <p>11 Q What was the specific date of closing?</p> <p>12 A I believe it was the 12th.</p> <p>13 Q I've seen the 12th and I've seen the 13th. That's why I</p> <p>14 asked it.</p> <p>15 A (Viewing cell phone.)</p> <p>16 MR. ERLANDSON: If you don't remember, you don't</p> <p>17 remember. That's fine. Tell him.</p> <p>18 Q (By Mr. Beardsley:) Can you tell me what you were</p> <p>19 looking at?</p> <p>20 A I was looking at my phone.</p> <p>21 Q What, on your phone? To tell you when the date of</p> <p>22 closing was?</p> <p>23 A I was on my calendar.</p> <p>24 Q It was either the 12th or the 13th, right?</p> <p>25 A The 12th.</p>
<p style="text-align: right;">28</p> <p>1 Q In 2012 what was the price on the property?</p> <p>2 A \$99.</p> <p>3 Q 2013 what was the price?</p> <p>4 A \$99.</p> <p>5 Q Did it stay at \$99 from 2014, 2015, 2016, and 2017?</p> <p>6 A Yes.</p> <p>7 Q And did the listing change over those years?</p> <p>8 A Change as how?</p> <p>9 Q The content of the listing. How it was put together.</p> <p>10 A If Keith added anything, cabins, or if he did any</p> <p>11 updates, that was probably put on there.</p> <p>12 Q But you have access to every listing that was posted</p> <p>13 from the time you started trying to sell the property;</p> <p>14 is that right?</p> <p>15 A My listing -- my Exclusive Listing Agreement?</p> <p>16 Q No, the listing of the property that somebody would look</p> <p>17 at that would describe the buildings and the campsite</p> <p>18 and pictures, things of that nature.</p> <p>19 A Yes.</p> <p>20 (Exhibit 1 marked for identification.)</p> <p>21 Q Could you take a look at that, Bryan?</p> <p>22 A (Complied.)</p> <p>23 Q And is that the Purchase Agreement for the property that</p> <p>24 we're talking about today?</p> <p>25 A Yes.</p>	<p style="text-align: right;">30</p> <p>1 Q 12th.</p> <p>2 And you drafted this document?</p> <p>3 A Yes.</p> <p>4 Q Did anyone review this document prior to the execution?</p> <p>5 A No.</p> <p>6 Q During the negotiations prior to closing, were there any</p> <p>7 changes made to the Purchase Agreement?</p> <p>8 A No.</p> <p>9 (Exhibit 2 marked for identification.)</p> <p>10 Q This is an Agency Agreement Addendum, correct?</p> <p>11 A Yes.</p> <p>12 Q And the date of this document is April 27, 2017;</p> <p>13 correct?</p> <p>14 A Yes.</p> <p>15 Q And is that your signature at the bottom of the page?</p> <p>16 A Yes.</p> <p>17 Q Indicating that you signed this document on April 27,</p> <p>18 2017, at 10 a.m.; right?</p> <p>19 A Yes.</p> <p>20 Q What's the purpose of this document?</p> <p>21 A It is to explain the agency that I was representing, and</p> <p>22 since I represented the seller and the buyer, I needed</p> <p>23 to explain what I could do.</p> <p>24 Q In addition to explaining to your clients, you</p> <p>25 understand by signing this you are also bound by the</p>

<p style="text-align: right;">31</p> <p>1 terms set forth in this document?</p> <p>2 A Yes.</p> <p>3 Q And you understand that you owe the Remingtons duties of</p> <p>4 loyalty?</p> <p>5 MR. ERLANDSON: Objection, form.</p> <p>6 Q (By Mr. Beardsley:) You can answer-</p> <p>7 A Yes.</p> <p>8 Q That you owe the Remingtons duties of obedience?</p> <p>9 MR. ERLANDSON: Objection, form.</p> <p>10 A Yes.</p> <p>11 Q (By Mr. Beardsley:) Disclosure?</p> <p>12 A Yes.</p> <p>13 Q Confidentiality?</p> <p>14 A Yes.</p> <p>15 Q Reasonable care and diligence?</p> <p>16 A Yes.</p> <p>17 Q And full accounting?</p> <p>18 A Yes.</p> <p>19 Q In fact, by signing this you agreed to those duties,</p> <p>20 didn't you?</p> <p>21 MR. ERLANDSON: Objection, form.</p> <p>22 A Yes.</p> <p>23 Q (By Mr. Beardsley:) What do those mean to you?</p> <p>24 A As representing them, that means that I am to do what</p> <p>25 they have asked me to do.</p>	<p style="text-align: right;">33</p> <p>1 second sentence of Subsection C into the record, please.</p> <p>2 A The broker is obligated to inform each party of all</p> <p>3 facts the broker knows which would affect the party's</p> <p>4 decision to permit the broker to represent both the</p> <p>5 owner and the buyer.</p> <p>6 Q So you would agree with me that as the real estate agent</p> <p>7 for the Remingtons you have an obligation to disclose</p> <p>8 all known material facts about the property which could</p> <p>9 affect the buyer's use or enjoyment of the property?</p> <p>10 A No.</p> <p>11 Q I want you to go down to Agent Obligations on that</p> <p>12 Exhibit 2 and please read the first sentence.</p> <p>13 A Regardless of representation, the broker shall disclose</p> <p>14 all known material facts about the property which could</p> <p>15 affect the buyer's/tenant's use or enjoyment of the</p> <p>16 property, disclose information which could have material</p> <p>17 impact on either party's ability to fulfill their</p> <p>18 obligations under the purchase/lease agreement, respond</p> <p>19 honestly and accurately to questions concerning the</p> <p>20 property and to deal honestly and fairly with all</p> <p>21 parties.</p> <p>22 Q And you were the agent on this document, correct?</p> <p>23 A Yes.</p> <p>24 Q And it says, Agent Obligations; that's what you just</p> <p>25 read from?</p>
<p style="text-align: right;">32</p> <p>1 Q That's it?</p> <p>2 A Yes.</p> <p>3 Q Well, doesn't it also mean that you may not knowingly</p> <p>4 say anything or do anything which might place one party</p> <p>5 at a disadvantage?</p> <p>6 A Yes.</p> <p>7 Q And that you may not represent the interests of either</p> <p>8 the seller, Keith Griem; or my clients, the Remingtons,</p> <p>9 to the detriment of the other party?</p> <p>10 A Yes.</p> <p>11 Q So it's more than just doing what they asked you to do,</p> <p>12 isn't it?</p> <p>13 A No.</p> <p>14 Q It's not.</p> <p>15 So according to your understanding of your duty to</p> <p>16 loyalty, you don't think that includes the duty to</p> <p>17 advise your clients?</p> <p>18 A No.</p> <p>19 Q You agree that you're bound to inform each party of all</p> <p>20 facts which would affect the parties' decision to</p> <p>21 purchase the property?</p> <p>22 MR. ERLANDSON: Objection, form.</p> <p>23 A No.</p> <p>24 Q (By Mr. Beardsley:) I'd like you to take a look at</p> <p>25 Section 3 on Exhibit 2, and I want you to read the</p>	<p style="text-align: right;">34</p> <p>1 A Yes.</p> <p>2 Q Are you testifying here today that those are not your</p> <p>3 obligations?</p> <p>4 A I did what the Remingtons asked me to do.</p> <p>5 Q So just so I'm clear, it's your testimony here today</p> <p>6 that your obligations were only to do what the</p> <p>7 Remingtons asked you to and have nothing to do with</p> <p>8 what's stated in this document?</p> <p>9 MR. ERLANDSON: Objection, form.</p> <p>10 A This is what they asked me to do. I did as they</p> <p>11 requested.</p> <p>12 Q (By Mr. Beardsley:) And, Bryan, you understand that by</p> <p>13 signing this you agreed to follow the terms of</p> <p>14 Exhibit 2; correct?</p> <p>15 MR. ERLANDSON: Objection, form; asked and</p> <p>16 answered.</p> <p>17 A I did what they asked me to do.</p> <p>18 Q (By Mr. Beardsley:) So you're testifying here today</p> <p>19 that you did not agree to follow the duties set forth on</p> <p>20 Exhibit 2, correct?</p> <p>21 A I did what they asked me to do.</p> <p>22 Q And, Bryan, if you did not disclose all known material</p> <p>23 facts to your clients, that would be a breach of your</p> <p>24 obligation as a real estate agent; correct?</p> <p>25 MR. ERLANDSON: Objection, form.</p>

<p style="text-align: right;">35</p> <p>1 A I did what the Remingtons asked me to do.</p> <p>2 Q (By Mr. Beardsley:) I know you've said that about four</p> <p>3 times. I'm asking you if you don't disclose known</p> <p>4 material facts to your clients, that is a breach of your</p> <p>5 professional obligations, "yes" or "no"?</p> <p>6 A No.</p> <p>7 Q No?</p> <p>8 A No.</p> <p>9 Q How long have you been a real estate agent?</p> <p>10 A Since 2006, February.</p> <p>11 Q How many transactions have you been a part of?</p> <p>12 A Off the top of my head, I don't know.</p> <p>13 Q Thousands?</p> <p>14 A No.</p> <p>15 Q Hundreds?</p> <p>16 A 2 to 300.</p> <p>17 Q Would you consider yourself an experienced real estate</p> <p>18 agent?</p> <p>19 A Yes.</p> <p>20 Q Give me some examples of what could affect a buyer's use</p> <p>21 or enjoyment of a property?</p> <p>22 MR. ERLANDSON: Objection, form. When it's</p> <p>23 convenient for you, could we take a little break?</p> <p>24 MR. BEARDSLEY: Sure, after he answers this.</p> <p>25 A I don't know what you're asking.</p>	<p style="text-align: right;">37</p> <p>1 A I do not know that.</p> <p>2 Q And would you agree with me that the presence of mold</p> <p>3 could affect a purchaser's use or enjoyment of a</p> <p>4 particular property?</p> <p>5 A I do not know that.</p> <p>6 Q How about having part of a building or a structure in</p> <p>7 the right-of-way? Could that affect a buyer's use and</p> <p>8 enjoyment of the property?</p> <p>9 A I don't know that.</p> <p>10 Q Well, you understand that having a structure in the</p> <p>11 right-of-way is a violation of the federal regulation?</p> <p>12 You understand that, right?</p> <p>13 A I'm unaware of that.</p> <p>14 Q Are you aware that if you have a structure in the</p> <p>15 right-of-way that it needs to be removed?</p> <p>16 A I'm unaware of that.</p> <p>17 Q Okay. And if you're required by law to remove a portion</p> <p>18 of a structure, that would be costly, wouldn't it?</p> <p>19 A I am also unaware of that.</p> <p>20 Q You worked construction before you were a Realtor,</p> <p>21 right?</p> <p>22 A As a laborer, yes.</p> <p>23 Q And you were an accountant?</p> <p>24 A Yes.</p> <p>25 Q And you're a college-educated man?</p>
<p style="text-align: right;">36</p> <p>1 Q (By Mr. Beardsley:) Well, at times you represent buyers</p> <p>2 exclusively; correct?</p> <p>3 A Yes.</p> <p>4 Q And at times you represent sellers exclusively?</p> <p>5 A Yes.</p> <p>6 Q So when you represent a buyer, you're telling me you</p> <p>7 can't explain what examples could affect their use or</p> <p>8 enjoyment of the property that they've purchased?</p> <p>9 A I'm not sure I can answer that, no.</p> <p>10 Q Well, would mold affect a buyer's use and enjoyment of a</p> <p>11 property?</p> <p>12 A I don't know that.</p> <p>13 Q Would you purchase a house that had mold in it?</p> <p>14 A That's what you have inspections for.</p> <p>15 Q That's not my question. Would you purchase a house that</p> <p>16 had mold in it?</p> <p>17 A Possibly.</p> <p>18 Q You understand that mold can be hazardous, correct?</p> <p>19 A Mold can also be remedied.</p> <p>20 Q You understand that mold can be hazardous, correct?</p> <p>21 A I also know it can be remedied.</p> <p>22 Q Please answer my question. Do you understand, "yes" or</p> <p>23 "no", that mold can be hazardous?</p> <p>24 A Could it be? Yes.</p> <p>25 Q And it can be costly to remedy?</p>	<p style="text-align: right;">38</p> <p>1 A Yes.</p> <p>2 Q And your testimony is that you're unaware that removing</p> <p>3 a portion of a structure is costly or not?</p> <p>4 A I'm unaware of it.</p> <p>5 Q And could having a building or structure in the</p> <p>6 right-of-way affect a buyer's use or enjoyment of the</p> <p>7 property?</p> <p>8 A I am unaware of that.</p> <p>9 Q If you purchased a property, Bryan, and the State</p> <p>10 required you to take a portion of that property and tear</p> <p>11 it down, would that affect your use of your property?</p> <p>12 A I have not experienced that, no.</p> <p>13 Q Sure. Hypothetically, if the State required you to</p> <p>14 remove a portion of your structure, let's just say it's</p> <p>15 a deck, you can't use your deck anymore, would that</p> <p>16 affect the use and enjoyment of your property?</p> <p>17 A I am unaware of that.</p> <p>18 MR. ERLANDSON: Good time?</p> <p>19 MR. BEARDSLEY: Yeah.</p> <p>20 (A recess was taken at this time, 11:25 a.m.</p> <p>21 The deposition resumed at 11:37 a.m.</p> <p>22 Mrs. Remington was not present at this time.)</p> <p>23 Q (By Mr. Beardsley:) Okay. Bryan, we're talking about</p> <p>24 Exhibit 2 and I was asking you questions about a buyer's</p> <p>25 use or enjoyment of the property and an agent's</p>

<p style="text-align: right;">39</p> <p>1 obligation to disclose known material facts. And we</p> <p>2 were going through some examples, and I believe we left</p> <p>3 off with having a structure in the right-of-way. Do you</p> <p>4 recall those questions?</p> <p>5 A Yes.</p> <p>6 Q Have you ever previously dealt with a transaction where</p> <p>7 your client is the seller or the seller's property or</p> <p>8 structure was in the right-of-way?</p> <p>9 A I have not.</p> <p>10 Q And it's your testimony today that you don't know if</p> <p>11 that would affect a buyer's use and enjoyment of the</p> <p>12 property?</p> <p>13 A Yes, I did.</p> <p>14 Q If the property contains bridges and one of the bridges</p> <p>15 is faulty and a vehicle falls through, would that affect</p> <p>16 the use and enjoyment of the property by a buyer?</p> <p>17 A Yes.</p> <p>18 Q And if structures on the property are not in compliance</p> <p>19 with code, would that affect the use and enjoyment of</p> <p>20 the property?</p> <p>21 A Yes.</p> <p>22 Q If a seller provides misleading or inaccurate financial</p> <p>23 statements, would that affect the use and enjoyment of</p> <p>24 the property?</p> <p>25 A Yes.</p>	<p style="text-align: right;">41</p> <p>1 please?</p> <p>2 Q Sure.</p> <p>3 A The whole sentence there?</p> <p>4 Q Yeah, that you must, as an agent, disclose information</p> <p>5 which could have a material impact on a party's ability</p> <p>6 to fulfill obligations under the Purchase Agreement.</p> <p>7 A Yes.</p> <p>8 Q Okay. Can you explain to me what that means?</p> <p>9 A If there were items that needed to be disclosed, they</p> <p>10 would need to be disclosed.</p> <p>11 Q Such as?</p> <p>12 A I don't know.</p> <p>13 Q Well, I mean, you know this business better than all of</p> <p>14 us sitting here. What are some items that need to be</p> <p>15 disclosed by a seller?</p> <p>16 A If the water heater was leaking, that would need to be</p> <p>17 disclosed.</p> <p>18 Q Okay. Structural defects?</p> <p>19 A Yes.</p> <p>20 Q Water damage?</p> <p>21 A Yes.</p> <p>22 Q Code violations?</p> <p>23 A Yes.</p> <p>24 Q Whether or not a property floods on a yearly basis?</p> <p>25 A Yes.</p>
<p style="text-align: right;">40</p> <p>1 Q Do you want to change your testimony with regard to</p> <p>2 whether mold would affect the use and enjoyment of</p> <p>3 property?</p> <p>4 A Yes.</p> <p>5 Q Yes, you do?</p> <p>6 A (Nodded.)</p> <p>7 Q And your testimony is that it would?</p> <p>8 A Yes.</p> <p>9 Q Similarly, would you like to change your testimony in</p> <p>10 regards to whether having a structure in the</p> <p>11 right-of-way would affect the use and enjoyment of the</p> <p>12 property?</p> <p>13 A Yes.</p> <p>14 Q And what's your testimony to that?</p> <p>15 A It would.</p> <p>16 Q Exhibit 2 that we've been talking about indicates that</p> <p>17 you must disclose information which could have a</p> <p>18 material impact on either party's ability to fulfill</p> <p>19 obligations under the Purchase Agreement; do you see</p> <p>20 that?</p> <p>21 A Yes.</p> <p>22 Q Can you tell me what that means to you?</p> <p>23 A Say again, please?</p> <p>24 Q Could you just tell me what that means to you.</p> <p>25 A What's the whole thing? Can you repeat that again,</p>	<p style="text-align: right;">42</p> <p>1 (Exhibit 3 marked for identification.)</p> <p>2 Q Okay. Exhibit 3 is Buyers Agency Agreement; do you see</p> <p>3 that?</p> <p>4 A Yes.</p> <p>5 Q That Buyers Agency Agreement pertains to this lawsuit</p> <p>6 and sale of Wild Bill's, correct?</p> <p>7 A Yes.</p> <p>8 Q And what is the purpose of this form?</p> <p>9 A This is to give to the client that says that they are</p> <p>10 going to work with me on this transaction.</p> <p>11 Q And it incorporates your work from the Purchase</p> <p>12 Agreement through the end of the transaction, correct?</p> <p>13 A Yes.</p> <p>14 (Mrs. Remington entered the deposition room at</p> <p>15 this time.)</p> <p>16 Q And on this there's a handwritten note that says, To be</p> <p>17 paid by seller. I assume that's your handwriting?</p> <p>18 A Yes.</p> <p>19 Q And it was just the agreement that Grimm was going to</p> <p>20 pay you?</p> <p>21 A Yes.</p> <p>22 Q And then at the bottom there, you signed this? That's</p> <p>23 your signature?</p> <p>24 A Yes.</p> <p>25 Q And there's not a date. Can we assume it was signed by</p>

<p>43</p> <p>1 you on April 27, 2017?</p> <p>2 A Yes.</p> <p>3 Q All right. Now, up at the top, Bryan, in that first</p> <p>4 paragraph, the last sentence indicates the broker and</p> <p>5 buyer, as parties to this agreement, agree that a party</p> <p>6 in breach of any of the covenants, promises, or</p> <p>7 obligations arising under this contract shall be liable</p> <p>8 and responsible for attorney's fee and costs that may</p> <p>9 result from enforcement thereof as against the party in</p> <p>10 breach. Do you see that?</p> <p>11 A Yes.</p> <p>12 Q And by executing this document, you agreed to that</p> <p>13 provision?</p> <p>14 A Yes.</p> <p>15 MR. ERLANDSON: Just for the record, Mike, all the</p> <p>16 highlighting that's been done in Exhibits 2 and 3, that</p> <p>17 was your office; correct?</p> <p>18 MR. BEARDSLEY: Yeah.</p> <p>19 MR. ERLANDSON: Okay.</p> <p>20 MR. BEARDSLEY: I just wanted to make it clearer</p> <p>21 for the witness.</p> <p>22 MR. ERLANDSON: Sure.</p> <p>23 Q (By Mr. Beardsley:) Okay.</p> <p>24 (Exhibit 4 marked for identification.)</p> <p>25 Q Bryan, we've marked as Exhibit 4 Addendum/Amendment to</p>	<p>45</p> <p>1 had Mr. Grimm's signature on here.</p> <p>2 Q Okay. So Brian Hagg drafted the Contract for Deed?</p> <p>3 A Yes.</p> <p>4 Q And represented Grimm?</p> <p>5 A Yes.</p> <p>6 Q Okay. So when you listed the property the last time</p> <p>7 that you listed Wild Bill's, did the listing indicate</p> <p>8 that it would be sold as a Contract for Deed?</p> <p>9 A It was one of the options.</p> <p>10 Q And then apparently Grimm changed his mind and then</p> <p>11 changed it back. If Mr. Hagg requested that it be</p> <p>12 changed to a mortgage, I don't understand why he would</p> <p>13 do that if Grimm didn't indicate he didn't want to do it</p> <p>14 on a Contract for Deed anymore.</p> <p>15 A No, that's -- Mr. Hagg called me up and asked me to</p> <p>16 change it to a mortgage, but then he called me back and</p> <p>17 said it would be fine being left as a Contract for Deed.</p> <p>18 Q Okay.</p> <p>19 A That was Mr. Hagg.</p> <p>20 Q What other involvement did Mr. Hagg have in this</p> <p>21 transaction, if you know?</p> <p>22 A I do not.</p> <p>23 Q So this document marked as Exhibit 4, this doesn't mean</p> <p>24 anything? This was not part of the transaction?</p> <p>25 A It was never executed because I never had Keith Grimm</p>
<p>44</p> <p>1 Purchase Agreement, and I assume this is an addendum</p> <p>2 that pertains to the Wild Bill's transaction; correct?</p> <p>3 A Yes.</p> <p>4 Q And the only modification, it seems, is to change the</p> <p>5 wording of "Contract for Deed" to "Mortgage" in Purchase</p> <p>6 Agreement and Addenda #1?</p> <p>7 A Yes.</p> <p>8 Q Was that ever done?</p> <p>9 A No.</p> <p>10 Q And I just -- I need to clarify this.</p> <p>11 (Exhibit 5 marked for identification.)</p> <p>12 Q And in Exhibit 5 there it says, Addenda #1. I presume</p> <p>13 that that's what was referenced in Exhibit 4?</p> <p>14 A Yes.</p> <p>15 Q Okay. And you testified that the wording was not</p> <p>16 changed, and under Number 8 it says Contract for Deed</p> <p>17 instead of Mortgage?</p> <p>18 A Right. This -- it was not changed.</p> <p>19 Q Okay. Can you just clear this up for the record and</p> <p>20 explain why there was this addendum indicating a change</p> <p>21 and then there was not a change?</p> <p>22 A This was a request by Brian Hagg, who prepared the</p> <p>23 contract for deed, when he called up and said he wanted</p> <p>24 it to be a mortgage, but then changed his mind and said</p> <p>25 leave it as contract for deed. So that's why I never</p>	<p>46</p> <p>1 sign it.</p> <p>2 Q Okay.</p> <p>3 A Because Hagg called me back and asked me to keep it as</p> <p>4 Contract for Deed.</p> <p>5 Q Sure. And through your business as a Realtor you're</p> <p>6 familiar with a Seller's Property Condition Disclosure</p> <p>7 Statement?</p> <p>8 A Yes.</p> <p>9 Q What is the purpose of a Property Condition Disclosure</p> <p>10 Statement?</p> <p>11 A In selling a residence, the seller is required to</p> <p>12 complete the seller disclosure.</p> <p>13 Q Sure. I understand that. What's the purpose of doing</p> <p>14 that?</p> <p>15 A For them to answer truthful and honestly if there are</p> <p>16 any problems or no problems with the property.</p> <p>17 Q And why would the seller be obligated to do such a</p> <p>18 thing?</p> <p>19 MR. ERLANDSON: Objection, form.</p> <p>20 A Why would the seller be -- when it's a residence? A</p> <p>21 residence they are required to do a seller disclosure.</p> <p>22 Q (By Mr. Beardsley:) And that's to inform any</p> <p>23 prospective buyers of issues with the residence?</p> <p>24 A Correct.</p> <p>25 Q And this disclosure statement requires disclosure of any</p>

<p style="text-align: right;">47</p> <p>1 problems with lot lines or boundaries, correct?</p> <p>2 A Yes.</p> <p>3 Q And you'd agree with me that having a portion of a</p> <p>4 structure in the right-of-way would be a problem with</p> <p>5 lot lines or boundaries?</p> <p>6 A Yes.</p> <p>7 Q It also requires disclosure of pending zoning/building</p> <p>8 code restrictive covenant violation notices that could</p> <p>9 affect the property?</p> <p>10 A Yes.</p> <p>11 Q And that would include violations for fire pit</p> <p>12 regulations?</p> <p>13 A I don't recall that being on the seller disclosure, but</p> <p>14 if it is, yes.</p> <p>15 Q Well, I'm just -- I'm wondering, in your opinion, if</p> <p>16 zoning or building code or restrictive covenants, a fire</p> <p>17 pit regulation could fall within that?</p> <p>18 A Yes.</p> <p>19 Q The location of a property near a floodplain?</p> <p>20 A Yes.</p> <p>21 Q Water penetration?</p> <p>22 A Yes.</p> <p>23 Q Water damage - related repairs?</p> <p>24 A Yes.</p> <p>25 Q Past or present damage to the property?</p>	<p style="text-align: right;">48</p> <p>1 A I'm not sure if that is on here, but sump pump, if it's</p> <p>2 operational, yes.</p> <p>3 Q And, in fact, there's a catchall section that requires</p> <p>4 disclosure of any other material fact or problem that</p> <p>5 may not appear specifically on that form; you understand</p> <p>6 that?</p> <p>7 A Yes.</p> <p>8 Q And as you are aware, these disclosures are required by</p> <p>9 South Dakota law, but they're also important in the real</p> <p>10 estate industry; aren't they?</p> <p>11 MR. ERLANDSON: Objection, form.</p> <p>12 A Yes.</p> <p>13 Q (By Mr. Beardsley:) And they need to be taken</p> <p>14 seriously?</p> <p>15 A Yes.</p> <p>16 Q And if a seller fails to disclose specific issues or</p> <p>17 problems with a property, that can adversely affect a</p> <p>18 prospective buyer's decision to purchase the property?</p> <p>19 A When purchasing a residential property, yes.</p> <p>20 (Exhibit 6 marked for identification.)</p> <p>21 Q Okay. Marked as Exhibit 6 is the listing for Wild</p> <p>22 Bill's Campground, Saloon & Grill; correct?</p> <p>23 A Yes.</p> <p>24 Q And this is the listing that was operative during the</p> <p>25 transaction sale to the Remingtons; is that right?</p>
<p style="text-align: right;">48</p> <p>1 MR. ERLANDSON: Objection, form. Just for the</p> <p>2 record, you're reciting basically a statute for him. If</p> <p>3 you want to show him the statute, the disclosure form is</p> <p>4 a statute and it would probably be helpful for him to</p> <p>5 look at it.</p> <p>6 Q (By Mr. Beardsley:) Would you like to see it?</p> <p>7 A Sure.</p> <p>8 Q Okay.</p> <p>9 MR. ERLANDSON: Just because you're asking him</p> <p>10 what's in the statute, I don't expect him to know that</p> <p>11 by heart, so --</p> <p>12 MR. BEARDSLEY: Sure. I thought he'd be familiar</p> <p>13 with it, but he can look at it.</p> <p>14 A This is not the one we use in our association.</p> <p>15 Q (By Mr. Beardsley:) It has a similar content, I</p> <p>16 believe. Well, you can tell me then, if you don't use</p> <p>17 it and say it's not included. Would past or present</p> <p>18 damage to the property, in your experience in</p> <p>19 representing a buyer or a seller, be disclosed in a</p> <p>20 proper disclosure form?</p> <p>21 A Yes.</p> <p>22 Q So even if mold can be remedied in a property, you still</p> <p>23 have to disclose that?</p> <p>24 A Yes.</p> <p>25 Q Use of a sump pump?</p>	<p style="text-align: right;">50</p> <p>1 A Yes.</p> <p>2 Q And I'd like you just to look through it quickly to make</p> <p>3 sure that it's complete and accurate.</p> <p>4 A (Complied.) Yes.</p> <p>5 Q So the listings used in the previous 10 years, would</p> <p>6 they have looked similar to this Exhibit Number 6?</p> <p>7 A Yes.</p> <p>8 Q And do you know of any material changes to the listing</p> <p>9 over that time?</p> <p>10 A The representation of the sleeping cabins, they were</p> <p>11 added on during the course of the time that he owned it</p> <p>12 so that could have changed. This building for</p> <p>13 gatherings, that was added. The drive bridge was</p> <p>14 changed during his time of ownership.</p> <p>15 Q And I think we've established this, but I just want to</p> <p>16 confirm. You, yourself, Bryan, drafted or put together</p> <p>17 this particular listing?</p> <p>18 A Yes.</p> <p>19 Q I want you to take a look at Page 2.</p> <p>20 A (Complied.)</p> <p>21 Q Under Description of Property.</p> <p>22 A Okay.</p> <p>23 Q There are a number of things listed under this section</p> <p>24 of the page, and around in the middle it says, Living</p> <p>25 quarters; doesn't it?</p>

<p style="text-align: right;">51</p> <p>1 A Yes.</p> <p>2 Q What does "living quarters" mean to you?</p> <p>3 A An area in the building that you can go to sleep in.</p> <p>4 Q So you're advertising it as a place for a human being to</p> <p>5 live, right?</p> <p>6 A Yes.</p> <p>7 Q And, in fact, prior to the sale to the Remingtons</p> <p>8 someone did live there, didn't they?</p> <p>9 A I believe so, yes.</p> <p>10 Q And his name is Red; is that correct?</p> <p>11 A I don't know that.</p> <p>12 Q Do you know who lived there?</p> <p>13 A I believe the gentleman who was leasing the restaurant</p> <p>14 was staying there.</p> <p>15 Q Okay. And I think that was Brandon Presley, wasn't it?</p> <p>16 A I believe so.</p> <p>17 Q And didn't Keith have a handyman that also lived in the</p> <p>18 building?</p> <p>19 A I don't know.</p> <p>20 Q But you're aware that prior to sale, at least one person</p> <p>21 did live there?</p> <p>22 A Yes.</p> <p>23 Q In the living quarters that is advertised under</p> <p>24 Description of Property --</p> <p>25 A He was leasing the restaurant. I don't -- I didn't</p>	<p style="text-align: right;">53</p> <p>1 property, so I would not describe this as a residence.</p> <p>2 Q That wasn't my question, but I'll go there. Do you own</p> <p>3 any rental properties?</p> <p>4 A I do not.</p> <p>5 Q Do you understand that rental properties are income</p> <p>6 producing?</p> <p>7 A Yes.</p> <p>8 Q And rental properties are also residences?</p> <p>9 A Yes.</p> <p>10 Q Okay. So would you define a residence as a dwelling for</p> <p>11 somebody to live in?</p> <p>12 A Yes.</p> <p>13 Q I want you to flip to the last page of the listing,</p> <p>14 please.</p> <p>15 A (Complied.)</p> <p>16 Q And, Brian, this looks like a description of the living</p> <p>17 quarters; correct?</p> <p>18 A Yes.</p> <p>19 Q And there's a kitchen?</p> <p>20 A Yes.</p> <p>21 Q And the picture indicates there's a dishwasher, a</p> <p>22 kitchen sink, a refrigerator, and a stove in this</p> <p>23 particular photo; is that accurate?</p> <p>24 A That's a refrigerator there. This is a different room.</p> <p>25 (Indicating.)</p>
<p style="text-align: right;">52</p> <p>1 honestly --</p> <p>2 Q I'm sorry. You've got to let me finish, okay?</p> <p>3 A Yeah.</p> <p>4 Q So you were aware that prior to the sale that there was</p> <p>5 a person living in the living quarters, as described</p> <p>6 under the Description of Property of Exhibit 6; correct?</p> <p>7 A I know he was leasing the restaurant and bar. Do I know</p> <p>8 that he stayed there? I do not. I never seen it.</p> <p>9 Q But I thought you just testified you were aware somebody</p> <p>10 was actually living there.</p> <p>11 A Well, that's what I heard. I don't know personally.</p> <p>12 Q But you heard somebody was living there?</p> <p>13 A (Nodded.)</p> <p>14 Q And if there is testimony that somebody was, in fact,</p> <p>15 living in the living quarters, you'd have no reason to</p> <p>16 dispute that?</p> <p>17 A No.</p> <p>18 Q Okay. And another term for living quarters would be a</p> <p>19 "residence," wouldn't it?</p> <p>20 A That is not how I described it, no.</p> <p>21 Q Well, did the person living in the living quarters</p> <p>22 describe it as their residence?</p> <p>23 A I don't know.</p> <p>24 Q Well, how would you define what a residence is?</p> <p>25 A The building that this was in is an income-producing</p>	<p style="text-align: right;">54</p> <p>1 Q Oh, I -- yeah, I'm talking about the photo above the</p> <p>2 title "kitchen in living quarters". Do you see that</p> <p>3 photo?</p> <p>4 A Yep.</p> <p>5 Q And that includes a stove, freezer/refrigerator,</p> <p>6 dishwasher, and a kitchen sink and cabinets --</p> <p>7 A Yes.</p> <p>8 Q -- in that photo?</p> <p>9 A Yes.</p> <p>10 Q And that's located in the main building on the property?</p> <p>11 A Yes.</p> <p>12 Q And then the next picture over says, Storage & Laundry</p> <p>13 Room in Living Quarters; do you see that?</p> <p>14 A Yes.</p> <p>15 Q And I think that's what you were referring to. There's</p> <p>16 a deep freeze and then a washer and dryer, looks like?</p> <p>17 A Yes.</p> <p>18 Q Okay. Then the third picture says, Office/Bedroom and</p> <p>19 Full Bath; do you see that?</p> <p>20 A Yes.</p> <p>21 Q And all of these photos are taken from the main building</p> <p>22 to describe the living quarters on this property?</p> <p>23 A Yes.</p> <p>24 Q In addition, this indicates that the basement has three</p> <p>25 bedrooms, half a bath and a workshop area; is that</p>

55

1 right?

2 A Yes.

3 Q And those are not depicted in photographs on this page,

4 correct?

5 A Yes.

6 Q So on the main building you have a bedroom and full bath

7 upstairs, correct?

8 A Yes.

9 Q A kitchen upstairs?

10 A Yes.

11 Q A laundry room upstairs?

12 A Yes.

13 Q And three bedrooms and a half bath in the basement,

14 right?

15 A Yes.

16 Q And do you know if Keith periodically stayed in the

17 living quarters?

18 A Yes.

19 Q He did?

20 A Yes.

21 Q We've already established that you know Gene Hensley,

22 correct?

23 A Yes.

24 Q How long have you known Gene?

25 A 10 years.

56

1 Q Have you worked for him that entire time?

2 A No. He sold the RE/MAX shortly after I was moved over

3 there by him. Asked to come over there by him.

4 Q Okay. And just refresh my memory. You went to RE/MAX

5 in what year?

6 A 2007.

7 Q And when did Gene sell it over to Tony?

8 A He sold it to Kelly Howie.

9 Q What year was that?

10 A I believe it was 2008.

11 Q Okay. But it's my understanding Gene is still selling

12 real estate --

13 A Yes.

14 Q -- for RE/MAX?

15 A Yes.

16 Q So you work with Gene?

17 A Work with, yes.

18 Q Okay. And Gene is old, like this guy sitting next to

19 me, so it's safe to say he's been in the real estate

20 business for many years?

21 A Yes.

22 Q And you'd agree that he's a very respected real estate

23 agent in this state?

24 A Yes.

25 Q Very knowledgeable?

57

1 A Yes.

2 Q Are you aware that Gene Hensley has testified as an

3 expert in numerous lawsuits?

4 A I am not aware.

5 Q Would you agree that Gene Hensley is qualified to

6 provide expert opinions regarding Realtor obligations

7 and real estate transactions?

8 MR. ERLANDSON: Hold on. Objection. You're

9 calling for him to make a legal conclusion, and it's

10 well beyond the scope of this witness.

11 Q (By Mr. Beardsley:) You can answer.

12 MR. ERLANDSON: No, you can't. It's not an

13 appropriate question.

14 MR. BEARDSLEY: Then I'll certify the question.

15 MR. ERLANDSON: Go ahead.

16 Q (By Mr. Beardsley:) So just so I'm clear, I asked you

17 if you have an opinion regarding whether Gene is

18 qualified to give an expert opinion regarding real

19 estate transactions and Realtor obligations, and you're

20 going to follow the advice of counsel and not answer the

21 question; is that correct?

22 A Correct.

23 Q Have you ever assisted Gene with providing expert

24 opinions?

25 A No.

58

1 Q Have you ever been retained to provide expert opinions?

2 A Once.

3 Q Okay. Tell me about that.

4 A It was -- well, I'm not sure if I can discuss it, to be

5 honest with you.

6 Q Well, you don't have to tell me the names of the parties

7 just yet; but, in general, why were you retained?

8 A To give my opinion on a value of a property.

9 Q Did the lawsuit involve a real estate agent being sued?

10 A No.

11 Q I'm sorry?

12 A No.

13 Q What did the lawsuit involve?

14 A I don't want to -- I don't know if I'm at liberty to

15 say.

16 Q I think you are.

17 A No.

18 Q You can answer.

19 A No thank you.

20 MR. BEARDSLEY: Counsel?

21 MR. ERLANDSON: Let me have a moment to discuss

22 that with him, if you don't mind.

23 MR. BEARDSLEY: Sure. No problem.

24 (Off the record briefly.)

25 MR. ERLANDSON: In the case that there may be a

<p>59</p> <p>1 confidentiality provision to prevent his disclosure, I'd 2 be happy, if we could get a copy, to take a look at it, 3 and if there isn't any such prohibition, then we can 4 supplement the answer. But if there is, I just -- he's 5 not comfortable answering the question.</p> <p>6 MR. BEARDSLEY: I just want to know the nature of 7 the lawsuit. I don't want to know the parties. I don't 8 need to know the outcome. But in terms of any further 9 questions, I'd like to know the nature of the lawsuit 10 and what his opinion included.</p> <p>11 MR. ERLANDSON: And I haven't seen the 12 confidentiality provision so I can't tell you whether 13 even discussing the nature of the suit would be a breach 14 for him. So --</p> <p>15 MR. BEARDSLEY: Sure. Then I'd just request that 16 we keep this deposition open for those purposes.</p> <p>17 MR. ERLANDSON: Sure.</p> <p>18 Q (By Mr. Beardsley:) And I understand you don't feel 19 comfortable answering that, and Greg and I will review 20 any confidentiality document and go from there; okay?</p> <p>21 A Yes.</p> <p>22 Q But you have been retained to provide an expert opinion 23 in at least one case?</p> <p>24 A Yes.</p> <p>25 Q Did you provide a report?</p>	<p>61</p> <p>1 Campground?</p> <p>2 A I am not.</p> <p>3 Q Do you know where the Horse Thief Campground is?</p> <p>4 A I do.</p> <p>5 Q And Horse Thief Campground is pretty similar to Wild 6 Bill's, isn't it?</p> <p>7 A They're both campgrounds.</p> <p>8 Q How many campgrounds have you sold as an agent?</p> <p>9 A Five.</p> <p>10 Q Can you please list them for me?</p> <p>11 A Most recent was Wild Bill's. And then I sold Whispering 12 Pines. I helped someone buy that, and then I sold it. 13 So there's two more. Fort Wellkit, and Spokane Creek.</p> <p>14 Q Fort Wellkit?</p> <p>15 A Yes.</p> <p>16 MR. NOONEY: And you say Spokane Creek?</p> <p>17 THE WITNESS: Yes.</p> <p>18 Q (By Mr. Beardsley:) Where are the last two located?</p> <p>19 A Fort Wellkit is in Custer, and Spokane Creek is 20 Keystone.</p> <p>21 Q Do these campgrounds include cabins and RV sites?</p> <p>22 A Yes.</p> <p>23 Q Any restaurants or bars on the property?</p> <p>24 A Whispering Pines had a little food and beer area.</p> <p>25 Q Okay. Any of these properties have living quarters?</p>
<p>60</p> <p>1 A Yes.</p> <p>2 Q Was the case tried to a jury or a court or was it 3 settled out of court?</p> <p>4 A I don't feel comfortable answering.</p> <p>5 MR. BEARDSLEY: Greg, just as long as we have an 6 understanding, we'll keep it open for this purpose, I'm 7 fine.</p> <p>8 MR. ERLANDSON: Sure.</p> <p>9 MR. NOONEY: Just for clarification, Mike and 10 Greg, you said it involved, Bryan, the evaluation of a 11 piece of property?</p> <p>12 THE WITNESS: Yes.</p> <p>13 MR. NOONEY: That was the sole purpose of your 14 retention?</p> <p>15 THE WITNESS: Yes.</p> <p>16 MR. NOONEY: Okay. I just want to make sure I 17 understood that.</p> <p>18 Q (By Mr. Beardsley:) Are you specifically familiar with 19 any of the cases Mr. Gene Hensley has provided expert 20 opinions in?</p> <p>21 A No.</p> <p>22 Q Are you familiar with the case of Paha Sapa Adventure, 23 LLC, versus Havasu Oasis Properties, LLC?</p> <p>24 A Not completely, no.</p> <p>25 Q Are you familiar with the sale of the Horse Thief</p>	<p>62</p> <p>1 A Yes.</p> <p>2 Q Which ones?</p> <p>3 A I believe all of them.</p> <p>4 Q Are you aware that Gene Hensley testified that because 5 the Horse Thief Campground contained living quarters and 6 a residential structure, that a Property Disclosure 7 Statement was required? Are you aware of that?</p> <p>8 A No.</p> <p>9 Q Do you disagree with Mr. Hensley's expert opinion?</p> <p>10 MR. ERLANDSON: Hold on. We're not going to 11 answer questions about what he believes or doesn't 12 believe about Mr. Hensley's potential testimony or 13 expert opinions in other cases. You're here to find out 14 facts about what he knows about this particular case. 15 And so I'm just going to object to that line of 16 questioning. It's irrelevant. It's bordering on 17 harassment and it's outside of the scope of this 18 witness.</p> <p>19 MR. BEARDSLEY: This witness has been an expert 20 himself. He's been in the real estate business for 21 years. I think I can ask him if he agrees with that.</p> <p>22 MR. ERLANDSON: There's a lot of real estate 23 experts out there. You can ask him about if he's going 24 to adopt other expert opinions. I'm just -- it seems 25 like we're going a little bit far off course here.</p>

<p style="text-align: center;">63</p> <p>1 MR. NOONEY: Can I ask a dumb question? Has Gene 2 offered an opinion in this case?</p> <p>3 MR. ERLANDSON: No. Have you hired Gene?</p> <p>4 MR. BEARDSLEY: No.</p> <p>5 MR. ERLANDSON: Is he your expert?</p> <p>6 MR. BEARDSLEY: No.</p> <p>7 MR. ERLANDSON: So you're asking about an expert 8 you've not even hired, so --</p> <p>9 MR. NOONEY: Just want to make sure I understood.</p> <p>10 MR. ERLANDSON: Okay. All right. So --</p> <p>11 Q (By Mr. Beardsley:) Well, you've known Gene for years. 12 You've worked with him. I'm just asking if you agree 13 with his opinion.</p> <p>14 MR. ERLANDSON: And you're vouching that's what he 15 testified to or gave an opinion on a different case 16 that's unrelated to this one?</p> <p>17 MR. BEARDSLEY: Yes.</p> <p>18 MR. ERLANDSON: Just so I understand for the 19 purposes of your questioning.</p> <p>20 MR. BEARDSLEY: Yes.</p> <p>21 MR. ERLANDSON: And he's --</p> <p>22 A Not going to answer.</p> <p>23 Q (By Mr. Beardsley:) Is it your opinion that a Property 24 Disclosure Statement is required when there is a 25 residential structure on the property?</p>	<p style="text-align: center;">65</p> <p>1 A Yes.</p> <p>2 Q And this letter by the Department of Transportation is 3 informing Mr. Grimm that a portion of the deck is 4 encroaching the right-of-way by 3.5 feet on the north 5 side of U.S. Highway 385; do you see that?</p> <p>6 A I do.</p> <p>7 Q And the federal regulations require that that portion of 8 the deck be removed from the right-of-way, right?</p> <p>9 A Yes.</p> <p>10 Q And it says, Please remove this portion of deck out of 11 the right-of-way by October 1, 2017; correct?</p> <p>12 A Yes.</p> <p>13 Q And Mr. Grimm never informed you of this?</p> <p>14 A No.</p> <p>15 Q As the agent trying to sell this property, would you 16 have liked to know about this?</p> <p>17 A I did not know.</p> <p>18 Q Sure. I understand that.</p> <p>19 Would you have liked to know that a portion of the 20 structure was in the right-of-way and had to be removed?</p> <p>21 A I didn't know.</p> <p>22 Q Mr. Grimm should have told you about this, shouldn't he 23 have?</p> <p>24 A I don't know.</p> <p>25 Q You would agree that if the Remingtons didn't know about</p>
<p style="text-align: center;">64</p> <p>1 A No.</p> <p>2 Q On the four other campgrounds that you have sold, or 3 purchased and sold as an agent, all of which had living 4 quarters on the property, did any of them include a 5 Property Disclosure Statement?</p> <p>6 A No.</p> <p>7 Q Does RE/MAX have any specific policies or guidelines to 8 help a broker associate determine when a Property 9 Disclosure Statement is required?</p> <p>10 A No.</p> <p>11 Q Okay. We've talked a little bit about one of the 12 structures being in the right-of-way. Are you familiar 13 with that?</p> <p>14 A No.</p> <p>15 Q Were you aware that Mr. Grimm was contacted numerous 16 times by the South Dakota Department of Transportation 17 that part of his structure was, in fact, in the 18 right-of-way?</p> <p>19 A No.</p> <p>20 (Exhibit 7 marked for identification.)</p> <p>21 Q Before you is Exhibit 7. It's a letter from the 22 Department of Transportation to Keith Grimm dated 23 November 9, 2016; correct?</p> <p>24 A Yes.</p> <p>25 Q And this was before the sale to the Remingtons?</p>	<p style="text-align: center;">66</p> <p>1 this and after the purchase of the property received 2 notice from the Department of Transportation that they 3 had to remove a portion of their deck, that that would 4 affect the use and enjoyment of their property?</p> <p>5 A Yes.</p> <p>6 Q And, additionally, if a portion of the parking lot was 7 in the right-of-way that had to be surrendered to the 8 State, that would affect the use and enjoyment of the 9 property?</p> <p>10 A Yes.</p> <p>11 Q And these additional costs could affect the decision of 12 a potential buyer to actually even purchase the 13 property?</p> <p>14 A I don't know.</p> <p>15 Q Well, you have a piece of property listed and a purchase 16 price, and the prospective buyers are unaware of 17 thousands of dollars of incurred costs after the 18 purchase. That could affect their decision to actually 19 make the purchase, couldn't it?</p> <p>20 A I don't know.</p> <p>21 Q Would it affect your decision to make a purchase?</p> <p>22 A I don't know.</p> <p>23 Q Would it upset you if a seller didn't disclose this to 24 you, as the buyer of a piece of property?</p> <p>25 A I wasn't the buyer. I don't know.</p>

<p style="text-align: right;">67</p> <p>1 Q I understand that. If you were buying a piece of 2 property, seller was receiving notices from the 3 Department of Transportation saying a portion of your 4 building has to be removed and he sold it without 5 telling you, would that upset you?</p> <p>6 A I was not the buyer. I don't know.</p> <p>7 Q Keith Grimm was well aware that his property was in 8 violation of federal regulations when he sold it to the 9 Remingtons, wasn't he?</p> <p>10 MR. MOONEY: Objection, foundation. 11 MR. ERLANDSON: Join.</p> <p>12 A I do not know.</p> <p>13 Q (By Mr. Beardsley:) Well, he received a notice from the 14 Department of Transportation --</p> <p>15 A I see that.</p> <p>16 Q -- and that was prior to the sale, wasn't it?</p> <p>17 A Yes.</p> <p>18 Q I understand it's your position that a Property 19 Disclosure Statement is not required in this case, but 20 if you were selling a residential home and your client 21 received a notice similar to that, the seller received a 22 notice similar to that, that would have to be disclosed 23 to the buyer, wouldn't it?</p> <p>24 A If it was a residential home, yes.</p> <p>25 Q Do you know if Keith Grimm contacted Mike Carlson or</p>	<p style="text-align: right;">69</p> <p>1 A No.</p> <p>2 Q Why don't you ask these questions?</p> <p>3 A Because they're working. I --</p> <p>4 Q I'm sorry, I didn't hear that.</p> <p>5 A They're working.</p> <p>6 Q They're working; what does that mean?</p> <p>7 A I -- the bridges are fine when I listed the property.</p> <p>8 Q Well, sir, in a situation like this where you represent 9 both the seller and the buyer, wouldn't it be prudent 10 for you to ask these simple questions to make sure that 11 they're buying a sound piece of property, being the 12 Remingtons?</p> <p>13 A No.</p> <p>14 Q Because, according to you, the only obligation you have 15 is to do what they ask you to do; right?</p> <p>16 A Yes.</p> <p>17 Q In your line of work, your clients hire an agent for a 18 reason; right?</p> <p>19 A Yes.</p> <p>20 Q And they depend on you for advice, correct?</p> <p>21 A Yes.</p> <p>22 Q Most people that make large purchases don't do it all 23 the time, do they?</p> <p>24 A I don't know that.</p> <p>25 Q And your clients entrust you to make sure they don't get</p>
<p style="text-align: right;">68</p> <p>1 Steve -- I'm going to spell it -- W-I-L-D-E-R that's 2 listed on that document?</p> <p>3 A No.</p> <p>4 Q You don't know or, no, he did not?</p> <p>5 A I do not know.</p> <p>6 Q And you're not aware of anything that Mr. Grimm did to 7 warn my clients of this issue, are you?</p> <p>8 A I am not aware.</p> <p>9 Q But at this time this particular piece of property was 10 listed by you, right?</p> <p>11 A Yes.</p> <p>12 Q And you didn't do anything to inform the Remingtons of 13 this potential issue, did you?</p> <p>14 A I didn't know of it.</p> <p>15 Q When you list a property for a seller, what type of 16 questions do you generally ask?</p> <p>17 A What they want to sell it for. What the property 18 contains.</p> <p>19 Q Do you ever ask if a structure is in the right-of-way?</p> <p>20 A No.</p> <p>21 Q Do you ever ask about material defects?</p> <p>22 A No.</p> <p>23 Q Do you ever ask about mold?</p> <p>24 A No.</p> <p>25 Q Do you ever ask if the bridges are faulty?</p>	<p style="text-align: right;">70</p> <p>1 a bad deal, don't they?</p> <p>2 MR. ERLANDSON: Objection, form.</p> <p>3 A I don't know that.</p> <p>4 Q (By Mr. Beardsley:) When somebody retains you for your 5 services as a real estate agent, you expect that they 6 would trust you; correct?</p> <p>7 A Yes.</p> <p>8 Q And when you represented Duane and Melody Remington, you 9 didn't ask one question to Keith Grimm about any 10 problems or issues with the property?</p> <p>11 A No.</p> <p>12 Q You were familiar with this property for 10 years, 13 personally showed it over 30 times, and never once 14 inquired about any issues or problems with the property?</p> <p>15 A No.</p> <p>16 Q Do you think that's appropriate?</p> <p>17 A Yeah.</p> <p>18 Q We talked about Brandon Presley, I believe his name is, 19 that leased the restaurant from Keith Grimm. You're 20 familiar with Brandon Presley?</p> <p>21 A I never met him, no.</p> <p>22 Q And Mr. Presley has indicated that the basement of the 23 living quarters that we talked about flooded each year. 24 Are you aware of that?</p> <p>25 A No.</p>

<p style="text-align: right;">71</p> <p>1 Q Subsequent to this lawsuit are you aware that there was</p> <p>2 a mold problem in the basement of the living quarters?</p> <p>3 A No.</p> <p>4 Q Have you seen any photos of the mold?</p> <p>5 A Only from what I was given by your --</p> <p>6 Q At anytime during the 10 years of listing this property</p> <p>7 on and off, did you ever recommend to Mr. Grimm to make</p> <p>8 modifications to the living quarters or the basement?</p> <p>9 A No.</p> <p>10 Q But if Keith Grimm ever did make any modifications, he</p> <p>11 would tell you, correct?</p> <p>12 MR. ERLANDSON: Objection, form.</p> <p>13 A Yes.</p> <p>14 Q (By Mr. Beardsley:) For the purpose of updating the</p> <p>15 listing?</p> <p>16 A Yes.</p> <p>17 Q Prior to selling Wild Bill's to my clients, I assume you</p> <p>18 walked through the living quarters?</p> <p>19 A Yes.</p> <p>20 Q And the basement?</p> <p>21 A Yes.</p> <p>22 Q You would agree that yearly flooding and the existence</p> <p>23 of mold is something that should be disclosed to a</p> <p>24 prospective buyer?</p> <p>25 MR. ERLANDSON: Objection, form.</p>	<p style="text-align: right;">73</p> <p>1 Q In fact, didn't you show it to the Remingtons in the</p> <p>2 spring?</p> <p>3 A I did not.</p> <p>4 Q Who showed it to the Remingtons?</p> <p>5 A I believe Mr. Grimm did.</p> <p>6 Q Would you agree that mold can be one of the worst</p> <p>7 structural defects in a building?</p> <p>8 MR. ERLANDSON: Objection, form.</p> <p>9 A I don't know that.</p> <p>10 Q (By Mr. Beardsley:) Mold can make a structure hard to</p> <p>11 sell, fair?</p> <p>12 A I don't know that.</p> <p>13 Q You don't know that.</p> <p>14 Do you know whether or not the existence of black</p> <p>15 mold can diminish the value of a property?</p> <p>16 MR. ERLANDSON: Objection, form.</p> <p>17 A I don't know that.</p> <p>18 Q (By Mr. Beardsley:) But you've given expert testimony</p> <p>19 on property valuations before, correct?</p> <p>20 A Once.</p> <p>21 Q And if there's presence of a hazardous material in the</p> <p>22 house, that could affect the value of a property?</p> <p>23 A I don't know that.</p> <p>24 Q If you're trying to sell a house, sir, and the house</p> <p>25 contains a hazardous condition, what would your</p>
<p style="text-align: right;">72</p> <p>1 A If that were the case, yes.</p> <p>2 Q (By Mr. Beardsley:) And, Bryan, you would agree with me</p> <p>3 that concealing the presence of mold or any sort of</p> <p>4 water damage to a buyer is not appropriate?</p> <p>5 A I'm unaware of anyone concealing anything.</p> <p>6 Q That's not my question.</p> <p>7 Concealing the presence of mold or water damage to</p> <p>8 a prospective buyer by a seller is not an appropriate</p> <p>9 thing to do --</p> <p>10 A Yes.</p> <p>11 Q -- correct?</p> <p>12 A Yes.</p> <p>13 Q And due to this flooding, are you aware that Mr. Grimm</p> <p>14 used a sump pump in the basement?</p> <p>15 A I am not.</p> <p>16 Q And Grimm removed it prior to the sale to the Remingtons</p> <p>17 in an effort to conceal the water issues; are you aware</p> <p>18 of that?</p> <p>19 A No.</p> <p>20 Q During the 10 years that you had this property listed</p> <p>21 and you'd show it in excess of 30 times, what times of</p> <p>22 the year would you generally show the property?</p> <p>23 A Winter.</p> <p>24 Q Did you ever show it in the spring?</p> <p>25 A Yes.</p>	<p style="text-align: right;">74</p> <p>1 recommendation to the seller be?</p> <p>2 A To remedy the problem.</p> <p>3 Q Because otherwise it's harder to sell, isn't it?</p> <p>4 A I don't know that for sure.</p> <p>5 Q Would your recommendation be to also disclose the</p> <p>6 problem?</p> <p>7 A Yes.</p> <p>8 Q Okay. Why don't you go back to exhibit -- the listing.</p> <p>9 A (Complied.)</p> <p>10 Q Got it? And Page 5.</p> <p>11 A Yes.</p> <p>12 Q It indicates here there's a new drive bridge?</p> <p>13 A Yes.</p> <p>14 Q How many bridges were on the property, do you know?</p> <p>15 A To drive on, two.</p> <p>16 Q And the listing indicates that these bridges, or just</p> <p>17 this one bridge, was rebuilt?</p> <p>18 A This one bridge was rebuilt since he purchased the</p> <p>19 property.</p> <p>20 Q And do you know if Mr. Grimm made any other</p> <p>21 representations to the Remingtons that the other bridge</p> <p>22 was rebuilt and widened?</p> <p>23 A I have that on a list, yes, that it was -- I believe new</p> <p>24 timbers.</p> <p>25 Q Okay. Did you advise Keith Grimm to do that?</p>

<p style="text-align: right;">75</p> <p>1 A To rebuild?</p> <p>2 Q Yeah.</p> <p>3 A No.</p> <p>4 Q Did you ever inspect or go look at both of the bridges?</p> <p>5 A When I showed the property, I seen them.</p> <p>6 Q And are you aware since the purchase by my clients, two different motor homes have went through the bridge?</p> <p>7 A No.</p> <p>8 Q And you'd agree with me that if the seller maintains that the bridge was rebuilt and widened when, in fact, it was not, that that would be improper?</p> <p>9 A Yes. Yes.</p> <p>10 Q The financial condition of the property, how did you obtain that information?</p> <p>11 A Mr. Grimm give me the financial information.</p> <p>12 Q What did that consist of?</p> <p>13 A Profit and loss statement.</p> <p>14 Q Anything else?</p> <p>15 A When the tax returns were completed, I would get a copy of that.</p> <p>16 Q Anything else?</p> <p>17 A No.</p> <p>18 Q What did you do with this information?</p> <p>19 A Kept it in my file.</p> <p>20 Q And how would you use this information when trying to</p>	<p style="text-align: right;">77</p> <p>1 and honest in the value of the improvements, that would be inappropriate?</p> <p>2 A Yes.</p> <p>3 Q So, in other words, if you overstate the value of the improvements, that would deceive a potential buyer; correct?</p> <p>4 A Yes.</p> <p>5 Q Tell me about your meetings with the Remingtons. When did you first meet them?</p> <p>6 A The day Mr. Remington came to my office to write the offer.</p> <p>7 Q Do you remember that day?</p> <p>8 A Pretty good.</p> <p>9 Q What day was it?</p> <p>10 A I believe it was the 27th of April.</p> <p>11 Q What was the content of that meeting?</p> <p>12 A He came to make an offer on Wild Bill's.</p> <p>13 Q And that was the day that the both of you, including Melody, executed a number of these exhibits we've talked about today; correct?</p> <p>14 A Melody actually came in on the 1st of May. She was not feeling well on the 27th, if my memory serves me.</p> <p>15 Q Was Duane with Melody on May 1st?</p> <p>16 A Yes.</p> <p>17 Q So tell me how the meeting went. Was there -- did you</p>
<p style="text-align: right;">76</p> <p>1 sell the property?</p> <p>2 A When someone would prove that they had the means to do a purchase, I would give them the information.</p> <p>3 Q For what purpose?</p> <p>4 A For the buyer.</p> <p>5 Q You provide the financial condition of the business to the buyer to try to sell the place?</p> <p>6 A Yes.</p> <p>7 Q And that was your goal was to sell it?</p> <p>8 A Yes.</p> <p>9 Q Were you ever provided an improvement list?</p> <p>10 A I did the improvement list.</p> <p>11 Q You did the improvement list?</p> <p>12 A Yes.</p> <p>13 Q How did you do that?</p> <p>14 A By talking to Keith, asking him the improvements that he did on the property.</p> <p>15 Q And it would be inappropriate to inflate the values on the improvement list, wouldn't it?</p> <p>16 A No.</p> <p>17 Q So according to you, if you claim an improvement was worth \$15,000 when, in fact, it was worth \$8, there would be nothing wrong with that?</p> <p>18 A I was not aware of that.</p> <p>19 Q I'm just saying hypothetically, if you are not accurate</p>	<p style="text-align: right;">78</p> <p>1 set up a showing? Did you address financial issues?</p> <p>2 Did you address their questions? What happened?</p> <p>3 A We did the Purchase Agreement. (Indicating.)</p> <p>4 Q Did you discuss the cap rate?</p> <p>5 A No.</p> <p>6 Q What is the cap rate?</p> <p>7 A I would have to look back in my notes. I don't know what --</p> <p>8 Q Just generally speaking, describe what that means, "cap rate".</p> <p>9 A How I understand the cap rate is the expenses to the income and you end up with a cap rate.</p> <p>10 Q So it's a way to place a value on the property?</p> <p>11 A Could be.</p> <p>12 Q How else would you use it? I mean, I'm sorry, educate me on this. I'm not really sure how it works.</p> <p>13 A I never talked cap rate with Mr. Remington.</p> <p>14 Q Never?</p> <p>15 A After the fact we had talked a little bit about one, yes.</p> <p>16 Q Okay. So you had a meeting with Duane on the 27th of April 2017, and then another meeting on May 1st with Duane and Melody --</p> <p>17 A Yes.</p> <p>18 Q -- correct? Where did this meeting take place?</p>

<p style="text-align: right;">79</p> <p>1 A My office.</p> <p>2 Q And after the fact, when was the next meeting that you had?</p> <p>3 A I don't know the date off the top of my head.</p> <p>4 Q Prior to the sale did you inform Duane and Melody that the business makes \$240,000 in three and a half months?</p> <p>5 A Prior to sale, no.</p> <p>6 Q At anytime?</p> <p>7 A Afterward. When I give them the financial statement, they can see that.</p> <p>8 Q And then did you inform them that the cap rate was \$1,009,000?</p> <p>9 A No.</p> <p>10 Q What was your discussion then with regard to the cap rate?</p> <p>11 A I don't recall having a discussion about cap rate.</p> <p>12 Q Did you take notes of this? These meetings?</p> <p>13 A No.</p> <p>14 Q After the purchase, how many other times did you meet with Duane and Melody?</p> <p>15 A Off the top of my head, I don't remember. But I do have a note of that, yes.</p> <p>16 Q Three or four?</p> <p>17 A I'd say it was either four or five.</p> <p>18 Q And why were these meetings taking place?</p>	<p style="text-align: right;">81</p> <p>1 A Yes.</p> <p>2 Q Did you do anything to verify the financial information that Mr. Grimm provided to you?</p> <p>3 A I had the tax return.</p> <p>4 Q Do you know -- and if you don't, that's fair -- who prepared the financial information that was provided to you?</p> <p>5 A Do not, I don't recall.</p> <p>6 Q Have you ever sold any other properties for Mr. Grimm?</p> <p>7 A No.</p> <p>8 Q Have you talked with Keith Grimm about this lawsuit?</p> <p>9 A Before I was added to it, yes.</p> <p>10 Q What was your conversation?</p> <p>11 A He told me what was going on.</p> <p>12 Q Anything else?</p> <p>13 A That's it.</p> <p>14 Q What was your response?</p> <p>15 A I couldn't understand why.</p> <p>16 Q During your representing of Duane and Melody, is it your opinion that they just wanted a fair deal?</p> <p>17 MR. ERLANDSON: Objection, form.</p> <p>18 A I don't know that.</p> <p>19 Q (By Mr. Beardsley:) During the ten-plus years of listing this property, was there ever an inspection done?</p>
<p style="text-align: right;">80</p> <p>1 A Duane had some questions.</p> <p>2 Q Did he have some concerns?</p> <p>3 A Yes.</p> <p>4 Q And what were the concerns that he voiced to you?</p> <p>5 A About the income that he was making.</p> <p>6 Q Was there a meeting scheduled at your office where Duane and Melody showed up and you weren't there?</p> <p>7 A How it was set up was Mr. Remington was supposed to be there at 9 a.m. I had another appointment at 10. He had not showed up by 10. I left. After that time, not sure what time that was, Mrs. Remington showed up. My office called me to tell me that she was there and I was not able to come back at that time.</p> <p>8 Q Isn't it true when your office called you that they couldn't get ahold of you?</p> <p>9 A That is false. I took the call from Lana.</p> <p>10 Q Bryan, is a transaction similar to Wild Bill's Campground, or any other campground, overvaluing the business or the property would be improper, wouldn't it?</p> <p>11 A No.</p> <p>12 Q Explain that.</p> <p>13 A People think that their property is worth X amount. If there's a buyer out there willing to pay X amount --</p> <p>14 Q Misleading a prospective buyer with income and expense figures would be improper, wouldn't it?</p>	<p style="text-align: right;">82</p> <p>1 A Not that I'm aware of.</p> <p>2 Q But there could have been?</p> <p>3 A I don't believe so.</p> <p>4 Q And if an inspection was completed, that would be in your file; correct?</p> <p>5 A Not necessarily, no.</p> <p>6 MR. BEARDSLEY: Can we just take a couple-minute break, Greg?</p> <p>7 MR. ERLANDSON: Sure.</p> <p>8 (A recess taken at this time, 12:49 p.m. A lunch recess was taken. The deposition resumed at 1:41 p.m.)</p> <p>9 Q (By Mr. Beardsley:) Bryan, you said you were previously retained as an expert and gave a property valuation opinion; correct?</p> <p>10 A Yes.</p> <p>11 Q Now that you've consulted with your attorney, can you tell me what the case was about?</p> <p>12 A It was a divorce.</p> <p>13 Q And Liz Frederick retained you?</p> <p>14 A Yes.</p> <p>15 Q And I assume from your previous answers you were never deposed in that lawsuit?</p> <p>16 A No.</p> <p>17 Q And the property valuation, would it include like a</p>

<p style="text-align: right;">63</p> <p>1 market analysis or something?</p> <p>2 A Correct.</p> <p>3 Q And your opinion was provided, I assume, because there</p> <p>4 was a dispute between husband and the wife of the value</p> <p>5 of the home?</p> <p>6 A Correct.</p> <p>7 Q And it did not involve conduct by another real estate</p> <p>8 agent, correct?</p> <p>9 A Would I -- conduct by another agent? Was it listed you</p> <p>10 mean or -- I guess I don't understand.</p> <p>11 Q I'm just trying to confirm that your expert opinion had</p> <p>12 nothing to do with conduct by another real estate agent.</p> <p>13 A No.</p> <p>14 Q And have you ever provided an expert opinion regarding</p> <p>15 conduct of another real estate agent?</p> <p>16 A No.</p> <p>17 Q Have you ever provided expert opinion regarding conduct</p> <p>18 of a seller of a piece of property?</p> <p>19 A No.</p> <p>20 Q That's fair. I appreciate you looking into that for me</p> <p>21 and providing that information.</p> <p>22 MR. BEARDSLEY: And I don't have any further</p> <p>23 questions at this time.</p> <p>24 EXAMINATION BY MR. NOONEY:</p> <p>25 Q Bryan, my name is John Nooney and I represent Wild</p>	<p style="text-align: right;">65</p> <p>1 spreadsheet.</p> <p>2 Q And when you said you went back through your notes, do</p> <p>3 you keep a daily note diary, timekeeper-type function</p> <p>4 where you can identify what you did on particular days?</p> <p>5 A No.</p> <p>6 Q You don't?</p> <p>7 A Do not.</p> <p>8 Q So for purposes of this, sir, you went back through your</p> <p>9 notes. You actually had your handwritten notes relative</p> <p>10 to this transaction?</p> <p>11 A Yes.</p> <p>12 Q Okay. Had you, at any time prior to April 27th, 2017,</p> <p>13 had you met Duane Remington?</p> <p>14 A No.</p> <p>15 Q Okay. You obviously, prior to that date, had met</p> <p>16 Keith Grimm, though; right?</p> <p>17 A Yes.</p> <p>18 Q If you had to give me your best estimate, sir, do you</p> <p>19 know about what time of day Mr. Remington would have</p> <p>20 come to your office?</p> <p>21 A I believe the appointment was around 9 a.m.,</p> <p>22 MR. BEARDSLEY: Just to clarify, what date are you</p> <p>23 talking about, John?</p> <p>24 MR. NOONEY: April 27th of 2017, Mike.</p> <p>25 Q (By Mr. Nooney:) Do you still have in front of you,</p>
<p style="text-align: right;">64</p> <p>1 Bill's Campground, LLC, and Keith Grimm personally. I'm</p> <p>2 going to use some of the documents that Mr. Beardsley</p> <p>3 has shown to you. I'm also going to use some similar</p> <p>4 documents I have just to make sure I can understand</p> <p>5 exactly the depth of the documents you had in your file;</p> <p>6 okay?</p> <p>7 A Okay.</p> <p>8 Q I'm going to show you, Mr. Iverson, what I've marked as</p> <p>9 Exhibit 8.</p> <p>10 (Exhibit 8 marked for identification.)</p> <p>11 MR. NOONEY: And so the record is clear, some of</p> <p>12 the documents I'm going to use today, Counsel, are</p> <p>13 documents that I have received from Mr. Iverson's office</p> <p>14 prior to the initiation of litigation, and my office</p> <p>15 would, in the regular course of business or practice,</p> <p>16 they would Bates stamp those so they are identifiable as</p> <p>17 to the source. These have been Bates stamped RE/MAX.</p> <p>18 Q (By Mr. Nooney:) Is this a note that was in your file,</p> <p>19 sir, that identify certain dates relative to the</p> <p>20 transaction involving the Remingtons?</p> <p>21 A Yes.</p> <p>22 Q And when you provided this, I'm just going to say,</p> <p>23 chronicle or summary, how do you go back and re-create</p> <p>24 the dates which are identified on Exhibit 8?</p> <p>25 A I went back through my notes to put this on this</p>	<p style="text-align: right;">66</p> <p>1 sir, the documents that Mr. Beardsley showed you during</p> <p>2 his deposition of you today?</p> <p>3 A Uh-huh. Yes.</p> <p>4 Q I think the first thing that Mike showed you was</p> <p>5 Exhibit 1, a commercial -- it was a residential Purchase</p> <p>6 Agreement that was marked as Exhibit 1, right?</p> <p>7 A Yes.</p> <p>8 MR. ERLANDSON: Did you say "residential"?</p> <p>9 MR. NOONEY: No.</p> <p>10 MR. ERLANDSON: Oh.</p> <p>11 MR. NOONEY: Real Estate Purchase Agreement,</p> <p>12 Commercial/Agricultural. I'm sorry.</p> <p>13 MR. ERLANDSON: All right.</p> <p>14 Q (By Mr. Nooney:) That document on Page 2 would suggest</p> <p>15 that it was signed on or about 10 a.m.; is that -- do</p> <p>16 you see that? Page 2.</p> <p>17 A Yes.</p> <p>18 Q Would that be your practice, Bryan, to have parties not</p> <p>19 only date something, but also put a time to it?</p> <p>20 A Yes.</p> <p>21 Q Now prior to the Purchase Agreement being signed, which</p> <p>22 is marked as Exhibit 1, would you have had Remingtons</p> <p>23 sign any agency documents?</p> <p>24 A Prior to this?</p> <p>25 Q Yes.</p>

<p style="text-align: right;">87</p> <p>1 A No. It all happened the same time.</p> <p>2 Q Okay. So the question is when I look at -- I look at</p> <p>3 Exhibit 2 that Mr. Beardsley showed you, that would be</p> <p>4 an agency addendum between RE/MAX and Duane and Melody</p> <p>5 Remington. Would that have been signed before Exhibit 1</p> <p>6 was signed?</p> <p>7 A Yes.</p> <p>8 Q Okay. Something had to come first, right?</p> <p>9 A Yes.</p> <p>10 Q And at the time that Duane Remington signed the Real</p> <p>11 Estate Purchase Agreement marked as Exhibit 1, had he</p> <p>12 asked you to review any documents as concerned his</p> <p>13 prospective purchase of what I'm going to call the Wild</p> <p>14 Bill's Campground?</p> <p>15 A No. We went over the agency and then to the Purchase</p> <p>16 Agreement.</p> <p>17 Q Okay. Now when Mr. Beardsley presented these documents</p> <p>18 to you, the first document that Mike showed you was</p> <p>19 marked as Exhibit 1, and then he showed you later on</p> <p>20 this morning a document he marked as Exhibit 5, which</p> <p>21 was called the Addenda #1 of the provisions. Do you</p> <p>22 remember that?</p> <p>23 A Yes.</p> <p>24 Q Were those documents all, in fact, signed at the same</p> <p>25 time?</p>	<p style="text-align: right;">89</p> <p>1 your recollection of the conversations that occurred</p> <p>2 between the time he first arrived and the time the</p> <p>3 agreement was signed, meaning the Real Estate Purchase</p> <p>4 Agreement?</p> <p>5 A We got there, went into the conference room. We went</p> <p>6 over the Relationship Disclosure, the Agency Agreement</p> <p>7 Addendum, the Buyer Agency Agreement, and then we</p> <p>8 started to go through the Purchase Agreement in which I</p> <p>9 explained the items on the Purchase Agreement. All</p> <p>10 going -- when we were going through these items, I had</p> <p>11 them sign as they were going along.</p> <p>12 Q When you say they signed, that would be Duane Remington,</p> <p>13 who is sitting to your left?</p> <p>14 A Yes.</p> <p>15 Q And also Keith Grimm, who is not here today, right?</p> <p>16 A Correct.</p> <p>17 Q When Mr. Remington first presented at your office on</p> <p>18 April 27, 2017, was he accompanied by anyone when he</p> <p>19 came that day?</p> <p>20 A No.</p> <p>21 Q Was Mr. Grimm already present at your office?</p> <p>22 A Yes.</p> <p>23 Q When you met in the conference room, as you have</p> <p>24 described for us, other than yourself, Mr. Grimm,</p> <p>25 Mr. Remington, was anyone else present?</p>
<p style="text-align: right;">88</p> <p>1 A Yes.</p> <p>2 Q Okay. I'm going to show you what I'm going to mark as</p> <p>3 Exhibit 9.</p> <p>4 (Exhibit 9 marked for identification.)</p> <p>5 Q I'm going to show you this, Bryan. Let's kind of walk</p> <p>6 through Exhibit 9 if we can, okay?</p> <p>7 Exhibit 9, at least Page 1 of it, Page 1 and</p> <p>8 Page 2 would be the same as Mr. Beardsley marked as</p> <p>9 Exhibit 1; is that correct?</p> <p>10 A Yes.</p> <p>11 Q Okay. If you look at Page 2 of Exhibit 9 under</p> <p>12 Paragraph 8 where it says Other Provisions, it says, See</p> <p>13 Addenda #1. Do you see that?</p> <p>14 A Yes.</p> <p>15 Q Who, in fact, prepared that Addenda #1?</p> <p>16 A I did.</p> <p>17 Q Would that have been -- if the Purchase Agreement was</p> <p>18 signed at 10 o'clock, would the Addenda #1 had been</p> <p>19 prepared before the Purchase Agreement -- the first two</p> <p>20 pages were signed?</p> <p>21 A Yes.</p> <p>22 Q Okay. If Mr. Remington showed up at your office at</p> <p>23 about 9 o'clock on April 27th, 2017 and the Purchase</p> <p>24 Agreement, either Exhibit 1 or Exhibit 9, was signed at</p> <p>25 10 o'clock on that same morning, what was the -- what's</p>	<p style="text-align: right;">90</p> <p>1 A No.</p> <p>2 Q Prior to April 27th of 2017 had you had any</p> <p>3 conversations with Keith Grimm about Mr. Remington's</p> <p>4 interest in the campground?</p> <p>5 A Yes.</p> <p>6 Q Okay. Do you have any recollection, sir, as to when</p> <p>7 Mr. Grimm might have first mentioned Duane Remington's</p> <p>8 name to you?</p> <p>9 A I don't remember the exact date.</p> <p>10 Q Okay.</p> <p>11 A But he did call and let me know that he had somebody</p> <p>12 that showed up and looked at the campground.</p> <p>13 Q Okay. Other than that, do you have any more specific</p> <p>14 recollection, Bryan, as to what Keith might have shared</p> <p>15 with you?</p> <p>16 A He called me. If I remember correctly, Mr. Remington</p> <p>17 looked at it again. They had talked, and Keith gave me</p> <p>18 the information for the Purchase Agreement and the time</p> <p>19 which they agreed to meet at my office to do the</p> <p>20 Purchase Agreement, to sign the --</p> <p>21 Q Do you have any recollection, as you sit here today, or</p> <p>22 do you have any documents that might refresh your</p> <p>23 recollection if you could look at them, as to the time</p> <p>24 that elapsed from when Mr. Grimm would have first</p> <p>25 contacted you about this and the date of April 27th?</p>

<p style="text-align: right;">91</p> <p>1 Was it a week, more or less than that?</p> <p>2 A More.</p> <p>3 Q Okay. At any time when Mr. Remington was on site, were</p> <p>4 you with him prior to the Purchase Agreement being</p> <p>5 signed?</p> <p>6 A No. My first meeting with Mr. Remington was the 27th.</p> <p>7 Q Okay. Had you, at any time prior to April 27th of 2017,</p> <p>8 ever prepared a similar document that would have been</p> <p>9 identified as a Real Estate Purchase Agreement? Had you</p> <p>10 ever done that for this campground before?</p> <p>11 A Yes.</p> <p>12 Q Do you have a recollection as to how many times that had</p> <p>13 happened before?</p> <p>14 A Over the course of the listing, I would say four times.</p> <p>15 Q If you were to give me kind of an overview, Bryan, of</p> <p>16 your experience as a Realtor, which I think my notes say</p> <p>17 go back to some time to about 2006, 2007, so a little</p> <p>18 bit more than 10 years; right? If you had to give me</p> <p>19 your best estimate, I want to talk about transactions,</p> <p>20 not sales value or sales volume, okay. From a</p> <p>21 transactional perspective, what percentage of your</p> <p>22 transactions are real estate transaction -- I mean,</p> <p>23 residential transactions versus other transactions?</p> <p>24 A Residential would probably be, rough guess, 95 percent.</p> <p>25 Q And I, of course, prefaced that by the phrase just a</p>	<p style="text-align: right;">93</p> <p>1 versus other transactions.</p> <p>2 A Yes.</p> <p>3 Q Okay. When you had written Purchase Agreements before</p> <p>4 for the sale of the Wild Bill's Campground, had you ever</p> <p>5 had anyone present a full price --</p> <p>6 A No.</p> <p>7 Q -- full-price offer before?</p> <p>8 A No.</p> <p>9 Q Of the five transactions that you identified, other</p> <p>10 campgrounds that you've been involved in before, I think</p> <p>11 one of them you said you had sold and you had also</p> <p>12 bought it, so that's a little bit -- it's the same</p> <p>13 transaction -- any of the five transactions that you'd</p> <p>14 ever worked on before on campgrounds, had you ever had a</p> <p>15 prospective buyer present a full-price offer before?</p> <p>16 A No.</p> <p>17 Q When Mr. Remington presented at your office, was there</p> <p>18 ever any discussion with Mr. Remington as to information</p> <p>19 he wanted to review before signing the Real Estate</p> <p>20 Purchase Agreement marked as Exhibit 1?</p> <p>21 A He had not, no.</p> <p>22 Q Did he ask for any that morning before he signed?</p> <p>23 A No.</p> <p>24 Q Had you provided Mr. Remington any information prior to</p> <p>25 him signing the Purchase Agreement?</p>
<p style="text-align: right;">92</p> <p>1 transactional basis, not looking at the dollar number,</p> <p>2 but if you were to break it out from a dollar or fee or</p> <p>3 commission perspective, okay, would it still be similar</p> <p>4 to that or would it be skewed somewhat higher towards</p> <p>5 less residential then, if you know?</p> <p>6 A I'm not following you.</p> <p>7 Q Here's where I'm going. Let's say that you had ten</p> <p>8 transactions, okay? Let's say that one of those was</p> <p>9 something other than residential, okay? But let's say</p> <p>10 of the one transaction you did that wasn't residential,</p> <p>11 let's say it was a -- commission of that was a hundred</p> <p>12 times what every other commission you would have. You</p> <p>13 understand then if you look at it from a sales volume</p> <p>14 perspective that the results might be different than if</p> <p>15 you looked at it transactionally. So I was looking at</p> <p>16 personal transactional base. So what I understood you</p> <p>17 to say is hypothetically, if you had done 200</p> <p>18 transactions in the last 12 years, that 95 percent of</p> <p>19 those 200 would have been residential, approximately;</p> <p>20 right?</p> <p>21 A Correct.</p> <p>22 Q Okay. But if you were to look at it from a fee</p> <p>23 perspective or a commission perspective, would your</p> <p>24 answer be the same, that still about 95 percent of your</p> <p>25 commissions have come from residential transactions?</p>	<p style="text-align: right;">94</p> <p>1 A No.</p> <p>2 Q Mr. Beardsley had identified as a document in this case</p> <p>3 as Exhibit 5. This document I have right here.</p> <p>4 A Yes.</p> <p>5 Q I think it's -- you called it a sales brochure. Would</p> <p>6 that be a fair term?</p> <p>7 A Yes.</p> <p>8 Q Do you remember, as you sit here today, Bryan, is this</p> <p>9 the document as it existed in 2016?</p> <p>10 A Yes.</p> <p>11 Q The reason I ask that -- and I'm not trying to trick</p> <p>12 you, okay? I want you to look at the last page of</p> <p>13 Exhibit 5, if you would, please.</p> <p>14 A (Complied.)</p> <p>15 Q The last page I have, Bryan, depicts -- it says, main</p> <p>16 building. It has three photos and it has some text</p> <p>17 about in the middle of the page, right?</p> <p>18 A Yes.</p> <p>19 Q I'm going to show you another iteration of that same</p> <p>20 document. Before I mark it, I'm going to see if you can</p> <p>21 identify it; okay?</p> <p>22 A (Viewing document.)</p> <p>23 Q After that reference to the main building as it appears</p> <p>24 in Exhibit 5, there are a number of pages thereafter</p> <p>25 that identify improvements completed at the campground,</p>

<p style="text-align: right;">85</p> <p>1 a general sketch of the area, and then kind of an aerial</p> <p>2 photo of it, okay? Would those have been part of your</p> <p>3 brochure that you would have provided to either</p> <p>4 Mr. Grimm or to Mr. Remington as it exists in the</p> <p>5 document you have in front of you here?</p> <p>6 A Yes.</p> <p>7 Q Okay. I'm going to mark it as Exhibit 10.</p> <p>8 (Exhibit 10 marked for identification.)</p> <p>9 Q Prior to Mr. Remington signing the Purchase Agreement,</p> <p>10 which has been marked as Exhibit 1, and as well as</p> <p>11 Exhibit 9, did you provide to Mr. Remington a copy of</p> <p>12 the sales brochure which I have now marked as</p> <p>13 Exhibit 9 -- Exhibit 10? I'm sorry.</p> <p>14 A Prior to, no.</p> <p>15 Q Do you know whether, when Mr. Remington presented at</p> <p>16 your office on April 27th, did Mr. Remington bring with</p> <p>17 him a copy of this? Did he have a copy of this sales</p> <p>18 brochure with him, if you know?</p> <p>19 A I do not know.</p> <p>20 Q Would Mr. Grimm have had copies of this to provide to</p> <p>21 prospective buyers, if you know?</p> <p>22 A I do not know.</p> <p>23 Q I'd like you to take a look at Exhibit 10, if we could</p> <p>24 for a minute, Bryan. And we'll kind of walk you through</p> <p>25 front to back, if I can, okay? The photos that were</p>	<p style="text-align: right;">87</p> <p>1 Q Like, for instance, if you look at Page 2 of Exhibit 10,</p> <p>2 we know that this agreement -- if we look at the tax</p> <p>3 information, that would suggest to us that this would</p> <p>4 have been the agreement in effect at the time</p> <p>5 Mr. Remington signed the document, the Purchase</p> <p>6 Agreement, right? It listed the 2016 taxes.</p> <p>7 A Yes.</p> <p>8 Q You used the term on Page 2, as well as other places in</p> <p>9 here, you reference under Description of Property, you</p> <p>10 reference, quote, living quarters, close quote.</p> <p>11 What did that mean to you when you used that term,</p> <p>12 living quarters?</p> <p>13 A That there was a place for whoever was running the</p> <p>14 income-producing property to stay.</p> <p>15 Q Okay. And then if you go to, again, Exhibit 10, Page 7,</p> <p>16 which is REMAX 0007 at the bottom, 7 of 13, there was a</p> <p>17 basement in this property. And all of the living</p> <p>18 quarters would have been in the building, which is</p> <p>19 displayed on the first page of this exhibit, right?</p> <p>20 A Correct.</p> <p>21 Q The basement has three bedrooms, it says, a half bath</p> <p>22 and a workshop area. Were those bedrooms down in the</p> <p>23 lower level, would they have been up to code? What I</p> <p>24 mean by "code," meaning would there have been proper</p> <p>25 egress and ingress windows for those bedrooms?</p>
<p style="text-align: right;">86</p> <p>1 taken in this brochure, were they taken by you?</p> <p>2 A Yes.</p> <p>3 Q And these would be photos that you had taken over the</p> <p>4 years that you had had this property listed; is that</p> <p>5 accurate?</p> <p>6 A Yes.</p> <p>7 Q Okay. I note on Page 3 of Exhibit 10 right next to your</p> <p>8 picture it says, REMAX. And below it, it says,</p> <p>9 Commercial. Why is that insignia on there?</p> <p>10 A Because it's a commercial property.</p> <p>11 Q Okay. If, for instance, I asked you to list my home,</p> <p>12 how would that insignia be different, if at all?</p> <p>13 A There would not be "commercial" on there. It would have</p> <p>14 just been the RE/MAX.</p> <p>15 Q Do you have any idea when this Exhibit Number 10 would</p> <p>16 have been prepared in relation to the listing agreement,</p> <p>17 the one that was in effect at the time the property</p> <p>18 sold? Was it done contemporaneous with the listing</p> <p>19 agreement being signed, if you know?</p> <p>20 A No. It would have been put together, and then if</p> <p>21 anything changed, then I would make the change. Like I</p> <p>22 told Mike, the pictures of the cabins --</p> <p>23 Q Yep.</p> <p>24 A -- If Keith had done anything to the property, then I</p> <p>25 would add that.</p>	<p style="text-align: right;">88</p> <p>1 A No.</p> <p>2 Q So to the best of your knowledge, prior to Mr. Remington</p> <p>3 signing the Purchase Agreement, which I have marked as</p> <p>4 Exhibit 9, you had not provided to him a copy of the</p> <p>5 sales brochure, which I've marked as Exhibit 10, is that</p> <p>6 correct?</p> <p>7 A Correct.</p> <p>8 Q When you prepared Exhibit 9, Bryan, I want to go through</p> <p>9 this and I want to identify who provided the information</p> <p>10 for the respective lines that are filled in; okay?</p> <p>11 A Okay.</p> <p>12 Q Because Exhibit 9, as it exists, is a form that you</p> <p>13 have; then someone has to type in or fill in the blanks,</p> <p>14 so to speak; is that right?</p> <p>15 A (Nodded.)</p> <p>16 Q Is that correct?</p> <p>17 A Yes.</p> <p>18 Q Thank you. I notice at the top of this document it's</p> <p>19 denominated as a Real Estate Purchase Agreement,</p> <p>20 Commercial/Agricultural. Now would you have used a</p> <p>21 similar agreement like this if you were to sell</p> <p>22 Mr. Erlandson's house for him?</p> <p>23 A No.</p> <p>24 Q Why is that?</p> <p>25 A There's a different Purchase Agreement for residential.</p>

<p style="text-align: right;">99</p> <p>1 Q So let's go through the first -- I'm just going to go 2 through it by category as it's denominated here: 1, 2, 3 3; you see where I'm at there? 4 A Uh-huh. 5 Q You got the name of the purchasers from who? 6 A Keith. 7 Q Okay. You got the earnest money information from whom? 8 A Keith, and then I asked Mr. Remington at the time of the 9 meeting if 10,000 was okay. 10 Q Okay. And it says, after the reference to purchasers, 11 in handwriting it says, "and/or assigns". Who gave you 12 that information? 13 A Mr. Remington. 14 Q Was there some discussion when you first met with him on 15 April 27th that there might be another prospective 16 investor in this transaction? 17 A Yes. 18 Q Okay. Was there some discussion that the purchaser 19 might ultimately be an entity of some sort other than an 20 individual? 21 A Yes. That's why he asked me to put that in there. 22 Q So you had actually discussed identifying the purchaser 23 with Mr. Remington as you filed this out then, right? 24 A Yes. 25 Q The next thing that's identified here is it references</p>	<p style="text-align: right;">101</p> <p>1 A Correct. 2 Q And she, I think you said, she came in like on May 1st; 3 is that right? 4 A Correct. 5 Q Okay. Did you have any conversation with Duane 6 Remington from the time he signed this document on 7 April 27, 2017 until the time that his wife came in on 8 May 1st, 2017? 9 A I -- if my memory serves me, it was to set up the 10 appointment to come in. 11 Q Did he have any other inquiry of you as it concerned the 12 terms of the agreement, though? 13 A No. 14 Q Okay. Under the Purchase Price, where did you get that 15 information from? 16 A Keith Grimm. 17 Q Did you have any conversation with Duane Remington at 18 your office on April 27th, or anytime thereafter, about 19 what the purchase price was going to be? 20 A At the time we were going through this, I asked him if 21 that was the price he wanted to offer. 22 Q Did Mr. Remington, at any time prior to signing the 23 Purchase Agreement marked as Exhibit 9, ever ask you 24 whether \$899,000 was the price he should be paying for 25 this campground?</p>
<p style="text-align: right;">100</p> <p>1 -- the reference of Wild 681's Campground Bar & Grill, 2 where did you get that information from? 3 A The County. 4 Q Okay. 5 A The legal description. 6 Q Okay. Yep. 7 A Yeah. 8 Q And the sellers, how do you know who owned the property? 9 A Mr. Grimm. 10 Q Okay. But you knew it was held in an entity, right? 11 A Correct. 12 Q Then there's some references. You see where it says 13 right at the bottom of the first paragraph area there's 14 a check in the box "yes," who put that in there? Did 15 you do that? 16 A Yes. 17 Q And why do you do that, sir? 18 A So they both acknowledged that I was the person 19 representing both the buyer and the seller. 20 Q And those initials, as they're displayed there, would 21 those be the initials for Duane Remington, Melody 22 Remington, and Keith Grimm? 23 A Yes. 24 Q Now I think you mentioned earlier that Melody Remington 25 wasn't there on April 27th; is that correct?</p>	<p style="text-align: right;">102</p> <p>1 A No. 2 Q Did Mr. Remington, at any time prior to signing the 3 Purchase Agreement marked as Exhibit 9, ever make any 4 inquiry of you as to what you believed the fair value 5 for this business would be? 6 A No. 7 Q Go down to Paragraph 3, the one that says Financing. 8 And I'm particularly -- the words that have been typed 9 in at the end of the standard text where it says, Buyer 10 is going with a Contract for Deed with seller -- See 11 Addenda #1. 12 Who put that information in the Purchase 13 Agreement? 14 A I did. 15 Q Okay. And did you have some conversation with 16 Mr. Remington about the terms in Addenda #1? 17 A We went over that when he was in to sign. 18 Q Okay. Would you have gone through the terms of 19 Addenda #1 prior to Mr. Remington signing it? 20 A (No verbal answer.) 21 Q Let me rephrase it, Bryan. I'm sorry. 22 Prior to Duane Remington signing Exhibit Number 9, 23 the Purchase Agreement, did you have an opportunity to 24 walk through the ten terms identified in the Addenda #1 25 with him?</p>

103

1 A Yeah. We went through it at that time.

2 Q So as we kind of chronologically go through the process

3 here, when you got down to Paragraph Number 3 in

4 reference to Addenda #1, would you have gone through the

5 terms of that addenda with Mr. Remington at that time?

6 A Yes.

7 Q And was Mr. Grimm present, as well?

8 A Yes.

9 Q Okay. I want to walk through those terms, if you would,

10 please. I think that's on the third page of Exhibit

11 Number 9, if you can.

12 And you would have typed up this Addenda, correct?

13 A Correct.

14 Q Tell me what discussions there was, if any, about the

15 fact that the campground would be sold, quote, as is

16 with no warranty, close quote. What discussion did you

17 have with Mr. Remington about that?

18 A I did not have a discussion with Mr. Remington about --

19 I mean, other than when we were going through this.

20 Q Did you understand when Mr. Grimm first contacted you

21 about Mr. Remington being interested in buying the

22 campground that it was your understanding from the

23 beginning of this transaction that it was going to be sold

24 as is with no warranty sale? Did you understand that?

25 A Yes.

104

1 Q Okay. So that would have been understood before

2 Mr. Remington came to your office or was it discussed at

3 your office that day?

4 A No, that was -- that was before.

5 Q Okay. When Mr. Grimm, on behalf of the entity, had

6 previously been involved in discussions about the sale

7 of the campground, were each of those prior sales always

8 under the auspices of as is, no warranty?

9 A To my recollection, yes.

10 Q Okay. Now you said you've been involved in five

11 transactions involving the sale of a campground before,

12 right?

13 A Yes.

14 Q What has your general experience been in the sale of

15 campgrounds? Are they generally sold as is or are they

16 typically not sold that way, if you know?

17 A Typically, I've -- as is.

18 Q When you were with Mr. Remington on April 27th, did he,

19 at any time, express any concerns to you that he had

20 some reservations about buying the campground as is and

21 without any warranties?

22 A Not that I remember.

23 Q Is that something that, if it had been discussed, you'd

24 most likely have a recollection of, though?

25 A Yes.

105

1 Q Okay. Tell me what conversations, if any, you remember

2 as it concerns Item Number 2 as the Addenda about

3 licensing and certificates. Was there any discussion

4 about that?

5 A No. This is something that I put into the offer to

6 protect the buyer. That everything is current prior to

7 closing.

8 Q So that was something you thought was appropriate to put

9 in there? That had not been discussed between Remington

10 and Grimm; is that right?

11 A Correct.

12 Q Item Number 3, did that already come from your

13 suggestion that it needed to be included in the Purchase

14 Agreement?

15 A Yes.

16 Q Where did -- who came up with the sold for Item

17 Number 4?

18 A That is actually something that has been in other

19 transactions; that the inventory is a cost to the buyer.

20 Q Did Mr. Remington have any -- do you recall him having

21 any discussion with you as it concerned Item Number 4?

22 A I don't think so.

23 Q Item Number 5 deals with training. Was that something

24 that had been suggested by you, Mr. Grimm, or

25 Mr. Remington, or a combination of all three of you?

106

1 A That is something I talked over with Mr. Grimm back when

2 we listed the property.

3 Q Similarly, where did Number 6 come from?

4 A That, I just put in there as a courtesy to the new

5 buyer.

6 Q Item Number 7, that came from whom?

7 A That also is something I've learned to put in there.

8 Q Okay. Item Number 8, where did the terms of the

9 Contract for Deed come from?

10 A Mr. Grimm.

11 Q Did you understand before Mr. Grimm came to your office

12 on April 27th that he, meaning Mr. Grimm, and

13 Mr. Remington had already come to some concurrence on

14 the terms of the Contract for Deed?

15 A Yes. Because when we went through this, everybody was

16 in agreement.

17 Q The Old West Escrow, where did that idea come from?

18 A Previous experience.

19 Q Okay. And Item Number 10, real estate taxes, insurance,

20 the date of closing; is that just a standard provision?

21 A Yes.

22 Q At any time from the time Mr. Remington came to your

23 office until the time he signed the Purchase Agreement

24 marked as Exhibit 9, did he ever express any concern to

25 you as it relates to any of the terms in the Purchase

<p style="text-align: right;">107</p> <p>1 Agreement, including the addenda?</p> <p>2 A No.</p> <p>3 Q The next item, Number 4 on Page 1 of Exhibit 9, it</p> <p>4 doesn't look like there was any changes to that other</p> <p>5 than the allocation of the title insurance cost, and was</p> <p>6 that discussed between the parties?</p> <p>7 A No.</p> <p>8 Q Okay. Who came up with a 50/50 on that?</p> <p>9 A Just, I did.</p> <p>10 Q Is that your, kind of, understanding of the standard in</p> <p>11 the industry?</p> <p>12 A Yes.</p> <p>13 Q I'm going to talk to you about the language under the</p> <p>14 Paragraph 5, Inspections; okay? First of all, there are</p> <p>15 three -- pardon me, four different items identified in</p> <p>16 that Paragraph 5, Inspections; okay?</p> <p>17 A Uh-huh.</p> <p>18 Q Who is proffer -- or who made the suggestion for Item</p> <p>19 Number 1 as it concerns septic tanks?</p> <p>20 A I did.</p> <p>21 Q And why was that put in there?</p> <p>22 A Septic tanks in different counties have to be pumped,</p> <p>23 inspected before time of sale.</p> <p>24 Q Okay.</p> <p>25 A So I do that for all counties, I guess.</p>	<p style="text-align: right;">109</p> <p>1 questions of you about that?</p> <p>2 A No.</p> <p>3 Q To the best of your knowledge, at any time between the</p> <p>4 date the Purchase Agreement was signed, April 27, 2017,</p> <p>5 and the date the transaction closed on May 12th of 2017,</p> <p>6 do you know whether Mr. Remington ever followed up with</p> <p>7 you and made any further inquiry as to whom he might</p> <p>8 look at for real or personal property inspection? Did</p> <p>9 he ever ask you about that?</p> <p>10 A Did not.</p> <p>11 Q To the best of your knowledge, did Mr. Remington ever</p> <p>12 have anyone look at the property from a real or personal</p> <p>13 property inspection perspective?</p> <p>14 A Not that I know of.</p> <p>15 Q In the campground that you've been involved in the sale</p> <p>16 of before, either on behalf of the buyer or the seller,</p> <p>17 do you know whether there's any standard practice in the</p> <p>18 industry whether a person has the property inspected for</p> <p>19 the structures, heating, ventilation, things like that?</p> <p>20 Is that standard?</p> <p>21 A No.</p> <p>22 Q It's not standard?</p> <p>23 A (Shook head.)</p> <p>24 Q Now when people buy and sell houses, is it your</p> <p>25 experience that typically somebody has a home inspector</p>
<p style="text-align: right;">108</p> <p>1 Q Would that be a standard of practice in Lawrence County,</p> <p>2 if you know?</p> <p>3 A I don't know that.</p> <p>4 Q Okay. So Item Number 1 was proffered by you. Was there</p> <p>5 any discussion -- did Mr. Remington raise any concerns</p> <p>6 about that prior to signing the Purchase Agreement?</p> <p>7 A Not that I remember.</p> <p>8 Q Item Number 2 as it concerns the DNR testing of the</p> <p>9 well, whose idea was that?</p> <p>10 A That also is something I put in there.</p> <p>11 Q Is that something you put in all transactions involving</p> <p>12 private well systems?</p> <p>13 A Yes.</p> <p>14 Q Okay. Item Number 3, Buyer to inspect the property and</p> <p>15 the equipment that stays with the property; whose idea</p> <p>16 was that?</p> <p>17 A That also was mine.</p> <p>18 Q And why did you put that into the transaction?</p> <p>19 A Just so the buyer can go up and check what stays and to</p> <p>20 make sure everything is operational.</p> <p>21 Q Prior to the time that the Purchase Agreement marked as</p> <p>22 Exhibit 9 was signed, did Mr. Remington ever make any</p> <p>23 inquiry of you, Mr. Iverson, as to whom he might talk to</p> <p>24 for the purpose of having an inspection done at the</p> <p>25 campground, real or personal property? Did he make any</p>	<p style="text-align: right;">110</p> <p>1 come in?</p> <p>2 A Yes.</p> <p>3 Q But these transactions are different; is that right?</p> <p>4 A Correct.</p> <p>5 Q The last item under Paragraph 5, Category 4, Buyer may</p> <p>6 conduct any other inspection deemed appropriate at</p> <p>7 buyer's expense. At any time prior to -- any time</p> <p>8 after -- strike that, please.</p> <p>9 At any time prior to Mr. Remington signing this</p> <p>10 document, did he make any inquiry of you as it concerns,</p> <p>11 quote, other inspections he might want to have done?</p> <p>12 A No.</p> <p>13 Q To the best of your knowledge, did he ever have anyone</p> <p>14 do any other inspections?</p> <p>15 A Not that I know of.</p> <p>16 Q Then if we go down into Paragraph 5, the latter verbiage</p> <p>17 within that, I assume because you were not aware of any</p> <p>18 inspections at no time prior -- subsequent to signing</p> <p>19 the Purchase Agreement or prior to closing were you ever</p> <p>20 apprised of any concerns that Mr. Remington had?</p> <p>21 A No.</p> <p>22 Q Now if we go to Paragraph 6 on Page 2 of Exhibit 9, the</p> <p>23 prorations, where did that decision come from about</p> <p>24 seller being responsible for 100 percent of the things</p> <p>25 before closing, buyer thereafter; where did that come</p>

<p style="text-align: right;">111</p> <p>1 from? You?</p> <p>2 A That is from me, because he owns the property up until</p> <p>3 the date of closing.</p> <p>4 Q Where did the decision come -- under the other</p> <p>5 provisions where it talks about deposits and prepaids</p> <p>6 and things such as that, where did that idea come from?</p> <p>7 A That was something that was told to me by Mr. Grimm that</p> <p>8 him and Mr. Remington had agreed to.</p> <p>9 Q Okay. The language under the category of Survey, where</p> <p>10 did that come from?</p> <p>11 A That's -- we went over the boundary survey -- or not the</p> <p>12 boundary, but the GIS boundary off of Lawrence County.</p> <p>13 Q Okay.</p> <p>14 A And Mr. Remington said he was okay with that.</p> <p>15 Q Okay. The only other language that's included in the</p> <p>16 balance of this, there's a provision of the closing</p> <p>17 where it says on or before May 15th. Was that something</p> <p>18 that was discussed when you met with Mr. Remington and</p> <p>19 Mr. Grimm?</p> <p>20 A Yes. Mr. Remington asked me to close it as quickly as</p> <p>21 possible.</p> <p>22 Q Then the language about the addenda, you said that was</p> <p>23 included because that addenda was prepared simultaneous</p> <p>24 with the Purchase Agreement?</p> <p>25 A Yes.</p>	<p style="text-align: right;">113</p> <p>1 was signed by Duane and Melody Remington. Were these</p> <p>2 all signed on April 27th, the next three pages, by</p> <p>3 Melody or signed sometime thereafter?</p> <p>4 A Thereafter, on the 1st.</p> <p>5 Q When you met Duane on April 27th, did he seem at all</p> <p>6 concerned about what he was ready to buy?</p> <p>7 A No.</p> <p>8 Q Did you have any understanding as to his background as</p> <p>9 to whether he had any experience in the campground</p> <p>10 industry?</p> <p>11 A I do not know.</p> <p>12 Q Okay. Did you have any discussions with him or did he</p> <p>13 share anything as to why he wanted to get this done as</p> <p>14 quickly as possible?</p> <p>15 A I don't know.</p> <p>16 Q Okay. When you were present in your conference room</p> <p>17 with he and Mr. Grimm, do you recall any of the</p> <p>18 substance of the conversation that transpired between</p> <p>19 Mr. Remington and Mr. Grimm that morning?</p> <p>20 A Other than what we did for the Purchase Agreement, I</p> <p>21 don't recall anything.</p> <p>22 Q To the best of your knowledge, Bryan, after the</p> <p>23 agreement was signed on April 27th up until the time it</p> <p>24 closed, do you have any recollection of your interaction</p> <p>25 with Mr. or Mrs. Remington between April 27th and</p>
<p style="text-align: right;">112</p> <p>1 Q I note that the agreement is dated at 10 o'clock on</p> <p>2 April 27th and it's signed -- it says, This agreement is</p> <p>3 void if not accepted by seller by the 27th day of April.</p> <p>4 The seller, of course, would be Mr. Grimm. But</p> <p>5 the purchasers then signed it. When did they sign it?</p> <p>6 A At the same time.</p> <p>7 Q So this was signed by both Mr. Remington and</p> <p>8 Mrs. Remington on April 27th?</p> <p>9 A No. Mrs. Remington came in on May 1st to sign it.</p> <p>10 Q Did you have any concerns when the agreement was signed</p> <p>11 just by Mr. Remington when it was presented to</p> <p>12 Mr. Grimm? Do you understand that to be a binding</p> <p>13 agreement, from your understanding? I'm not asking for</p> <p>14 a legal opinion, but did you think you needed her</p> <p>15 signature for that?</p> <p>16 A Yes.</p> <p>17 Q Okay. On Page 46, Exhibit Number 9, there's a copy of</p> <p>18 the earnest money check. And that check is dated the</p> <p>19 27th day of April, and it's signed by M. Remington, who</p> <p>20 I assume to be Melody. Did that check come with Duane</p> <p>21 when he came to this -- at the time the Purchase</p> <p>22 Agreement was signed, or did he get that later on?</p> <p>23 A That, I can't remember.</p> <p>24 Q Okay. Go to Page 4 of Exhibit 9. Oh. No, Page 5. I'm</p> <p>25 sorry. Page 5 of Exhibit 9. This is an agreement that</p>	<p style="text-align: right;">114</p> <p>1 May 12th?</p> <p>2 A Again, when Melody came in to sign on the 1st and then</p> <p>3 when Mr. Hagg completed the Contract for Deed, I called</p> <p>4 up Mr. Remington to give him a copy of that.</p> <p>5 Q Who provided the information to Brian Hagg to complete</p> <p>6 the Contract for Deed?</p> <p>7 A I did. I give him that. (Indicating.)</p> <p>8 Q So you would have sent to Brian what I have marked as</p> <p>9 Exhibit 9, the Purchase Agreement?</p> <p>10 A The first three pages.</p> <p>11 Q Just the first three pages?</p> <p>12 A Yes.</p> <p>13 Q Just the signature page and then the Addenda?</p> <p>14 A (Nodded.)</p> <p>15 Q If we look at Exhibit Number 9, which is a copy of your</p> <p>16 notes as to when you met with certain people, okay, it</p> <p>17 says on April -- pardon me, on May 8th of 2017 you would</p> <p>18 have met with Duane to review information provided by</p> <p>19 Brian Hagg, parents, Contract for Deed and other</p> <p>20 supporting documents.</p> <p>21 A Yes.</p> <p>22 Q That would have been in your office?</p> <p>23 A Yes.</p> <p>24 Q I'm going to show you what we'll mark as Exhibit</p> <p>25 Number 11.</p>

115

1 (Exhibit 11 marked for identification.)

2 Q I'm showing you what I have marked as Exhibit Number 12

3 (sic), and it appears to be maybe nine pages of a

4 document denominated Contract for Deed. This would have

5 been prepared at your request by Brian Hagg or someone

6 in his office; is that right?

7 A The Exhibit 11?

8 Q Yeah.

9 A Okay. Yes, this is what was prepared by Mr. Hagg.

10 Q And then on May 8th you would have sat down with

11 Duane Remington and would have gone through the terms of

12 the Contract for Deed with him; is that right?

13 A Yes.

14 Q First, just globally, between April 27th and May 8th did

15 you have -- other than Mr. Remington calling to make an

16 appointment for his wife to come sign the documents, had

17 Mr. Remington at any time between April 27th and May 8th

18 contacted you and made any inquiry or raise any concerns

19 as it relates to his purchase of the campground?

20 A No.

21 Q Had he asked for any financial information relative to

22 the operation of the campground?

23 A No.

24 Q At any time prior to May 8th of 2012 had Mr. Remington

25 asked for any tax return information for the campground?

116

1 A No.

2 Q Had Mr. Remington asked for any profit and loss

3 information for the campground from you?

4 A No.

5 Q Had he asked for any balance sheet information for the

6 campground?

7 A No.

8 Q Asked for any sales tax reports for the campground?

9 A No.

10 Q Did that seem odd to you?

11 A Yes.

12 Q You have been a party to five other transactions that

13 you mentioned to us earlier today. Had you ever seen

14 someone purchase a campground before without making

15 inquiry relative to the financial information like I

16 identified? What I mean by that, tax returns, sales tax

17 reports, income statements, profit and loss statements,

18 balance sheets. Had you ever seen that happen before?

19 A Not that I know of.

20 Q And other than selling campground, Bryan, have you been

21 involved, without naming parties, of course, had you

22 been involved in the sale of other business

23 opportunities before?

24 A And what I mean by "business opportunities

25 before," some business where someone is going to go in

117

1 and make money, okay? Be it a car lot or be it a car

2 wash or grocery store, anything like that.

3 A Yes.

4 Q Had you ever seen any other transaction involving the

5 sale or the purchase of a business where a prospective

6 buyer had not asked for some sort of financial

7 information prior to signing the purchase agreement?

8 A That I have assisted, no.

9 Q As you sat with Mr. Remington on May 1st and went over

10 the terms of the Contract for Deed marked as

11 Exhibit 11 -- May 8th, pardon me. It was May 8th. I'm

12 sorry. Just globally, did Mr. Remington raise any

13 concerns to you about the terms of the Contract for Deed

14 when you sat down and went over it with him?

15 A Not that I recall.

16 Q If something had been brought to your attention, would

17 that have been something you would have gone back to

18 Mr. Grimm with or Mr. Hagg with?

19 A Yes.

20 Q At any time after you met with Duane Remington on

21 May 8th, did you ever go back to Brian Hagg and raise

22 any concerns that had been asserted to you by

23 Duane Remington?

24 A No.

25 Q At any time after you met with Duane Remington on

118

1 May 8th, did you go back to Keith Grimm and suggest that

2 Mr. Remington had any concerns with the Contract for

3 Deed?

4 A No.

5 Q I want to take you to Page 3 of Exhibit 11, if I could,

6 please.

7 A (Complied.)

8 Q And, in particular, I want to take you to the last

9 sentence of Paragraph 5 on Page 3 where it says, Buyers

10 acknowledge that they have examined the real property

11 and any equipment or fixtures and furniture, patents,

12 collectively property, close patents, related to the

13 operation of the same and acknowledge that the property

14 is acceptable.

15 Do you recall having any conversation with

16 Mr. Remington about his right to go in and inspect the

17 property, real or personal?

18 A I'm sorry. What page were you on again? I don't --

19 Q I'm on Page 3 of Exhibit 11.

20 A Okay. I'm sorry. Okay.

21 Q I was referencing the last sentence of that Paragraph 5,

22 Bryan. Do you recall having any conversation with

23 Mr. Remington as to whether he intended to avail himself

24 the opportunity to inspect the property?

25 A The only time I remember anything about the inspections

<p style="text-align: right;">119</p> <p>1 was when Duane and Melody Remington came to my office to</p> <p>2 have her sign, he said that he had seen the property a</p> <p>3 couple times now and he was comfortable.</p> <p>4 Q That would be prior to her signing the Purchase</p> <p>5 Agreement then on May 1st?</p> <p>6 A That was at the same time.</p> <p>7 Q Okay. Again, on Page 5 of Exhibit 11, Paragraph 14,</p> <p>8 other than what you just shared with me about Duane</p> <p>9 saying he had been to the property a couple times and he</p> <p>10 was fine with it, did he, at any time, raise any</p> <p>11 concerns with you that the property was being sold as</p> <p>12 is? Did he ever raise any concern about that?</p> <p>13 A No.</p> <p>14 Q Did Mr. Remington ever ask you whether he needed to have</p> <p>15 some concern and whether or not he needed some</p> <p>16 warranties or representations about the property? Did</p> <p>17 he ever ask you about that?</p> <p>18 A Not that I remember.</p> <p>19 Q I'm going to show you what I'm going to mark as</p> <p>20 Exhibit 12.</p> <p>21 (Exhibit 12 marked for identification.)</p> <p>22 Q Bryan, I'm showing you what I've marked as Exhibit 12,</p> <p>23 and it appears to be the Exclusive Listing Agreement</p> <p>24 that you would have signed with Mr. Grimm in July of</p> <p>25 2015. And just take a moment to familiarize yourself</p>	<p style="text-align: right;">121</p> <p>1 five different categories that these agreements could be</p> <p>2 applicable to. And this one the box is checked for</p> <p>3 Business/Industry. You would have done that, right?</p> <p>4 A Yes.</p> <p>5 Q Like, for instance, if this would have been a single</p> <p>6 family residence, you would have checked the box for RE,</p> <p>7 residential; right?</p> <p>8 A Correct.</p> <p>9 Q If it had just been a land transaction, you would have</p> <p>10 checked that box?</p> <p>11 A Yes.</p> <p>12 Q Been a multi-family, like an apartment, you would have</p> <p>13 checked that box; right?</p> <p>14 A Yes.</p> <p>15 Q What's the distinction between a commercial and a</p> <p>16 business/industry? What's the difference between those</p> <p>17 two?</p> <p>18 A Commercial would be -- to my understanding, is more of a</p> <p>19 land, commercial land.</p> <p>20 Q Okay. Take a look at exhibit -- the last three pages</p> <p>21 that you separately marked as Exhibit 13 then. The</p> <p>22 information identified on Exhibit 13, would that have</p> <p>23 come from you?</p> <p>24 A Yes.</p> <p>25 Q At the top of it, it says -- it lists a date and</p>
<p style="text-align: right;">120</p> <p>1 with it.</p> <p>2 Does this appear to be that Listing Agreement and</p> <p>3 related agency addendums and things such as that?</p> <p>4 A Yes.</p> <p>5 Q Okay. I want to draw your attention, Bryan, to the last</p> <p>6 three pages of that. They're dates stamped RE/MAX GOSO</p> <p>7 through 52, I think they are. Now, I have attached</p> <p>8 those to Exhibit 12, but would they have, in fact, been</p> <p>9 a part of the Listing Agreement? Would they have been</p> <p>10 incorporated in the Listing Agreement or not?</p> <p>11 A No.</p> <p>12 Q Would it be more appropriate for those to be a separate</p> <p>13 exhibit then?</p> <p>14 A This is what is on the MLS. This is the MLS sheet</p> <p>15 printout.</p> <p>16 Q Well, let's do this then. I'm going to have you take</p> <p>17 those last three pages off.</p> <p>18 MR. NOONEY: And, Greg, I'm going to have you take</p> <p>19 this and have him mark those as Exhibit 13; okay? Thank</p> <p>20 you.</p> <p>21 A (Complied.)</p> <p>22 (Exhibit 13 marked for identification.)</p> <p>23 Q Thank you. Let's look at Exhibit 12 if we can for a</p> <p>24 moment. I note, Bryan, on the top of this document</p> <p>25 under the caption Exclusive Listing Agreement there are</p>	<p style="text-align: right;">122</p> <p>1 business industry. Then underneath it says Status. It</p> <p>2 says, Sold Inner Office. What does that mean?</p> <p>3 A That means that I listed and sold the property.</p> <p>4 Q So what I see, and what I've marked as Exhibit 13 then,</p> <p>5 this would be the MLS document, and that document</p> <p>6 continues to change over time from the time it's listed</p> <p>7 to the time it's sold then?</p> <p>8 A Correct.</p> <p>9 Q So this would be the iteration after the property sold</p> <p>10 then?</p> <p>11 A Correct.</p> <p>12 Q Okay. If you go down to where it says Features about --</p> <p>13 right below the midpoint; do you see that?</p> <p>14 A Yes.</p> <p>15 Q Okay. Where it says, Documents on File, it lists</p> <p>16 financial statements, equipment lists, profit and loss</p> <p>17 statements. Would you have had that information in your</p> <p>18 file from the time you listed it or not? Or would</p> <p>19 you --</p> <p>20 A Yes.</p> <p>21 Q Okay. Bryan, I'm going to show you -- I'll show it to</p> <p>22 you and see if you can identify it, if you can. If you</p> <p>23 can't, otherwise I won't mark it. Have you seen this</p> <p>24 document before?</p> <p>25 A Yes.</p>

<p style="text-align: right;">123</p> <p>1 Q Would that have been part of your file?</p> <p>2 A Yes.</p> <p>3 (Exhibit 14 marked for identification.)</p> <p>4 Q Bryan, showing you what I've marked as Exhibit 14, and</p> <p>5 these documents are Bates stamped RE/MAX 0053 through</p> <p>6 0056. Would this information have been information that</p> <p>7 had been provided to you by Keith Grimm?</p> <p>8 A Yes.</p> <p>9 Q And from the time you had the Listing Agreement signed,</p> <p>10 would you have had this information available in your</p> <p>11 file?</p> <p>12 A Yes.</p> <p>13 Q And as a Realtor -- or as a broker, I should say, pardon</p> <p>14 me, you don't do anything to authenticate or validate</p> <p>15 information that's presented to you by clients, do you?</p> <p>16 A No.</p> <p>17 Q Okay. And the summary sheet that's prepared here, would</p> <p>18 that have been a summary sheet that you prepared? Page</p> <p>19 1 of Exhibit 14.</p> <p>20 A Yes.</p> <p>21 Q And at any time after you first met Duane Remington on</p> <p>22 April 27th up until the transaction closed on May 12th,</p> <p>23 did he ever ask to see the information that I've</p> <p>24 generally marked as Exhibit 14?</p> <p>25 A Did Duane? No.</p>	<p style="text-align: right;">125</p> <p>1 A Yes.</p> <p>2 Q Would that have been the first time?</p> <p>3 A Yes.</p> <p>4 Q Did he tell you why, on June 19th, he wanted to see the</p> <p>5 financial information for the last three years?</p> <p>6 A He said that things were not adding up.</p> <p>7 Q Well, did he give you -- at this point in time he had</p> <p>8 been in possession for about five weeks, right?</p> <p>9 A Yes.</p> <p>10 Q Did he give you any more detail as to what he meant,</p> <p>11 things weren't adding up?</p> <p>12 A That the sales were not what he thought they should be.</p> <p>13 Q Well, had he, at any time prior to June 19th, given you</p> <p>14 any -- like a business case or a business plan that he</p> <p>15 had put together for his operation of this campground?</p> <p>16 A I'm sorry. Say that again.</p> <p>17 Q At any time prior to June 19th -- let me phrase my</p> <p>18 question this way, Bryan.</p> <p>19 You mentioned that Remington said to you things</p> <p>20 aren't adding up; is that right?</p> <p>21 A Yes.</p> <p>22 Q Did he give you any point of reference as to what he</p> <p>23 expected the sales to be?</p> <p>24 A No.</p> <p>25 Q Did he give you any methodology or anything he had</p>
<p style="text-align: right;">124</p> <p>1 Q Yeah. Did Duane ever ask to see it?</p> <p>2 A No.</p> <p>3 Q Did Melody?</p> <p>4 A No.</p> <p>5 Q Did you -- when you met with Mr. Remington on</p> <p>6 April 27th, did you have any -- did you come to any</p> <p>7 understanding or appreciation as to what Mr. Remington's</p> <p>8 background would be?</p> <p>9 A No.</p> <p>10 Q Did he share with you whether he had any background in</p> <p>11 running a small business?</p> <p>12 A No.</p> <p>13 Q Mr. Beardsley used the term earlier today "cap rate".</p> <p>14 Did he ever use the term "cap rate" and ask you about</p> <p>15 the cap rate for this property?</p> <p>16 A No.</p> <p>17 Q And if you had been asked by Mr. or Mrs. Remington for a</p> <p>18 copy of financial information, would you have provided</p> <p>19 it to them?</p> <p>20 A Absolutely.</p> <p>21 Q When is the first time Mr. or Mrs. Remington asked to</p> <p>22 review any of the financial information for the Wild</p> <p>23 Bats Campground?</p> <p>24 Now to be fair, there's -- on Exhibit 8, Bryan,</p> <p>25 there's a note on June 19th.</p>	<p style="text-align: right;">126</p> <p>1 prepared where he would have forecasted what the sales</p> <p>2 were going to be?</p> <p>3 A No.</p> <p>4 Q Did you make any inquiry of him what he meant by the</p> <p>5 term "things aren't adding up"?</p> <p>6 A I believe what he said is that they were -- they were</p> <p>7 not getting as much sales as he thought they should be.</p> <p>8 Q Did he mention whether he meant sales meaning campground</p> <p>9 or cabins versus food sales, beer sales? Did he tell</p> <p>10 you what type of sales they were?</p> <p>11 A No.</p> <p>12 Q At any time prior to June 19th of 2017 had Mr. Remington</p> <p>13 ever made any inquiry of you as to what he might expect</p> <p>14 for sales to be on a weekly or monthly basis?</p> <p>15 A No.</p> <p>16 (Mr. Remington left the deposition room at this</p> <p>17 time.)</p> <p>18 Q A question Mr. Beardsley asked earlier today about when</p> <p>19 the transaction closed.</p> <p>20 (Exhibit 15 marked for identification.)</p> <p>21 Q I show you Exhibit 15. Is this a copy of the Settlement</p> <p>22 Statement evidencing the closing of this transaction?</p> <p>23 A Yes.</p> <p>24 Q And it says the settlement date of May 12th of 2017.</p> <p>25 Would that have been the closing date then?</p>

<p style="text-align: right;">127</p> <p>1 A Yes.</p> <p>2 Q And after that date, May 12th of 2017, did you have any</p> <p>3 further conversations with Mr. Remington prior to</p> <p>4 June 19th of 2017 when he came to your office and asked</p> <p>5 about financial information?</p> <p>6 (Mr. Remington re-entered the deposition room at</p> <p>7 this time.)</p> <p>8 A No.</p> <p>9 Q Then on your notes on July -- on Exhibit B suggest that</p> <p>10 on July 6th of 2017 you had another meeting with</p> <p>11 Mr. Remington; is that right?</p> <p>12 A Yes.</p> <p>13 Q At any time from June 19th up until July 6th do you have</p> <p>14 any recollection of meeting with Mr. Remington?</p> <p>15 A I do not.</p> <p>16 Q Okay. And your notes just generally reference meeting</p> <p>17 with Duane to go over questions he had on the financial</p> <p>18 statements. What kind of questions did he give to you,</p> <p>19 have for you?</p> <p>20 A We talked about the -- what I remember of it is we</p> <p>21 talked about the beer sales and the food sales.</p> <p>22 Q Now prior to the time of closing, had you ever been</p> <p>23 privy to any conversations with Duane Remington when</p> <p>24 he -- where he'd asked about sales volumes for beer or</p> <p>25 food?</p>	<p style="text-align: right;">129</p> <p>1 Q Did you come to any understanding between May 12th of</p> <p>2 2017 and the time that Duane came to see you on July 6th</p> <p>3 of 2017 how much time Mr. or Mrs. Remington were putting</p> <p>4 in to the campground on a daily basis?</p> <p>5 A No.</p> <p>6 Q Did Mr. Remington, at any time prior to purchasing the</p> <p>7 campground, ever inquire of Keith in your presence as to</p> <p>8 how much time he should expect to have to work on a</p> <p>9 daily basis at the campground?</p> <p>10 A No.</p> <p>11 Q After July 6th, the next reference you have to a meeting</p> <p>12 with Duane was on April 4th of 2017. Tell me about that</p> <p>13 meeting.</p> <p>14 A On August 8th -- or August 4th?</p> <p>15 Q August 4th, yeah.</p> <p>16 A Okay. Mr. Remington showed up at my office and just</p> <p>17 what I said there, threatened to do an audit, get a</p> <p>18 lawyer. He asked for the 2016 tax return, which I then</p> <p>19 requested from Mr. Grimm.</p> <p>20 Q Okay. And at the time that the original Purchase</p> <p>21 Agreement was signed, would you even -- would you have</p> <p>22 had a copy of Mr. -- of the tax return for Wild Bill's</p> <p>23 for 2016?</p> <p>24 A No.</p> <p>25 Q Did you provide these, this information, to</p>
<p style="text-align: right;">128</p> <p>1 A No.</p> <p>2 Q Had you ever had any conversation prior to the time of</p> <p>3 closing with Duane Remington as to who operated the food</p> <p>4 and beverage side of that business historically?</p> <p>5 A I believe we talked about a little bit during the</p> <p>6 Purchase Agreement, because Keith had used a third</p> <p>7 party.</p> <p>8 Q Do you recall historically when Keith had used a third</p> <p>9 party to do the food and beverage side of the business?</p> <p>10 A It was the previous year.</p> <p>11 Q So 2016 then?</p> <p>12 A Yes.</p> <p>13 Q Did Mr. Remington -- at any time you were present in the</p> <p>14 company of both yourself, Duane, and Keith Grimm, was</p> <p>15 there ever any conversation that you overheard where</p> <p>16 Mr. Remington made any inquiry of Keith Grimm as to how</p> <p>17 that third-party food and beverage had worked out?</p> <p>18 A I don't recall.</p> <p>19 Q Now when Mr. Remington began running the business after</p> <p>20 the time of closing in May of 2017, did you come to have</p> <p>21 any understanding as to who was operating the food and</p> <p>22 beverage for him, or he and his wife, I should say?</p> <p>23 A I just assumed they were.</p> <p>24 Q Okay. But did he ever tell you that?</p> <p>25 A No.</p>	<p style="text-align: right;">130</p> <p>1 Mr. Remington when he asked for it?</p> <p>2 A I had to call up Keith to get it. Then, yes, I provided</p> <p>3 it.</p> <p>4 Q When Mr. Remington threatened to do an audit, get a</p> <p>5 lawyer, did he tell you why?</p> <p>6 A Yes.</p> <p>7 Q What did he tell you?</p> <p>8 A He said that the -- it just wasn't making as much money</p> <p>9 as he thought it was going to.</p> <p>10 Q Did he ever quantify for you what he thought it was</p> <p>11 going to make?</p> <p>12 A Not that I remember.</p> <p>13 Q Okay. Did you ever inquire of Mr. Remington how he was</p> <p>14 operating the business from the time he had taken</p> <p>15 possession in May of 2017 up until now we're into early</p> <p>16 August of 2017? Did he talk to you about what he was</p> <p>17 doing up there?</p> <p>18 A No.</p> <p>19 Q Okay. Did you know he wasn't even staying up there at</p> <p>20 night? Did you understand that?</p> <p>21 A I did not know that.</p> <p>22 Q Then on August 24th you must have had your last meeting</p> <p>23 with Mr. Remington then?</p> <p>24 A Yes.</p> <p>25 Q He came in, picked up the tax return. Did you have any</p>

<p style="text-align: right;">131</p> <p>1 discussion about what was in the tax return?</p> <p>2 A No.</p> <p>3 Q Did he have any more additional questions for you about</p> <p>4 his concerns about the business?</p> <p>5 A Just, again, that it wasn't making enough.</p> <p>6 Q Okay. Again, did he ever quantify for you what he</p> <p>7 thought it should be making?</p> <p>8 A Not that I recall.</p> <p>9 Q Did he ever tell you how much he was making during the</p> <p>10 2015 calendar -- 2015 summer season?</p> <p>11 A No.</p> <p>12 Q Did you have any ability to judge how Remingtons were</p> <p>13 doing in relation to how Grimm had done in the past?</p> <p>14 A No.</p> <p>15 Q After August 24th of '17, did you meet with</p> <p>16 Mr. Remington any additional times?</p> <p>17 A No.</p> <p>18 Q I want to talk to you for a moment, if I can, Bryan,</p> <p>19 about Exhibit 2 that Mr. Beardsley showed you earlier</p> <p>20 today. And in particular I want to focus on the last</p> <p>21 bolded paragraph towards the bottom of the page where it</p> <p>22 says, Agent Obligations.</p> <p>23 Did Mr. or Mrs. Remington, at any time prior to</p> <p>24 the time of closing, ever make any inquiry of you as to</p> <p>25 what your understanding of that business opportunity</p>	<p style="text-align: right;">133</p> <p>1 in time from the time that Keith bought it to the time</p> <p>2 it was sold, there was some, like, little stand-alone</p> <p>3 sleeping units, put it; right?</p> <p>4 A (Nodded.)</p> <p>5 Q That was an idea that you gave to Keith?</p> <p>6 A I think he had it, as well, because he had already built</p> <p>7 two.</p> <p>8 Q Okay. Other than that, did you ever make any other</p> <p>9 suggestions to Keith as to things he might want to do up</p> <p>10 at the campground?</p> <p>11 A No.</p> <p>12 Q For instance, when Mr. Grimm outsourced the food and</p> <p>13 beverage side of the business, was that a suggestion you</p> <p>14 had made to him?</p> <p>15 A No.</p> <p>16 Q Did you ever make a suggestion to Duane or Melody</p> <p>17 Remington as to whether or not they'd want to be their</p> <p>18 food and beverage -- responsible for their food and</p> <p>19 beverage? Did you ever have that conversation with</p> <p>20 them?</p> <p>21 A No.</p> <p>22 Q On the third line under this Agent's obligation towards</p> <p>23 the latter part of that phrase it says, kind of, three</p> <p>24 ellipses, and it's respond honestly and accurately to</p> <p>25 questions concerning the property.</p>
<p style="text-align: right;">132</p> <p>1 was?</p> <p>2 A No.</p> <p>3 Q Did they ever ask at any time what you knew about the</p> <p>4 operation of the Wild Bills Campground?</p> <p>5 A Not that I know of, no.</p> <p>6 Q Did they ever ask you what your assessment of the</p> <p>7 financial information was for the Wild Bills</p> <p>8 Campground?</p> <p>9 A No.</p> <p>10 Q Other than having walked through the property any number</p> <p>11 of times over a ten-year period, had you ever done</p> <p>12 anything, Bryan, to make some personal assessment as to</p> <p>13 the business opportunity available at the Wild Bills</p> <p>14 Campground?</p> <p>15 A How do you mean?</p> <p>16 Q Well, had you ever sat down and looked at it and said if</p> <p>17 I owned this, this is what I would do different? Did</p> <p>18 you ever do that?</p> <p>19 A Yes.</p> <p>20 Q You did?</p> <p>21 A (Nodded.)</p> <p>22 Q Did you ever give any suggestions to Keith about what he</p> <p>23 should do differently at the campground?</p> <p>24 A Adding cabins.</p> <p>25 Q Okay. I was going to go down that path. At some point</p>	<p style="text-align: right;">134</p> <p>1 Did Duane Remington, at any time from the time you</p> <p>2 met him on April 27th up until you closed on May 12th of</p> <p>3 2017, did he ever ask you any questions as it concerned</p> <p>4 the campground at all?</p> <p>5 A No.</p> <p>6 Q Did you ever provide any information -- ever provide</p> <p>7 information to Mr. Remington that wasn't truthful and</p> <p>8 accurate to the best of your knowledge?</p> <p>9 A No.</p> <p>10 Q Can you think of a single question that Duane Remington</p> <p>11 asked you from the time you met him on April 27th up</p> <p>12 until May 12th, 2017 about the campground?</p> <p>13 A I can't think of anything.</p> <p>14 Q Did you communicate with Mr. Remington at all by e-mail</p> <p>15 or any other written form?</p> <p>16 A No.</p> <p>17 Q Mr. Beardsley asked you some questions today about</p> <p>18 Seller's Property Disclosure Statement. Do you remember</p> <p>19 those questions?</p> <p>20 A Yes.</p> <p>21 Q Yes?</p> <p>22 A (Nodded.)</p> <p>23 Q And the Seller's Property Disclosure Statement is</p> <p>24 something that's required under South Dakota law, right?</p> <p>25 A Yes, for a residence.</p>

<p>135</p> <p>1 Q In certain applications, correct? For instance, if you</p> <p>2 have a residence that has more than X number of units,</p> <p>3 you don't have to use one, right?</p> <p>4 A Correct.</p> <p>5 Q Now on this property, I mean, there were cabins and</p> <p>6 stuff, right?</p> <p>7 A (Nodded.)</p> <p>8 Q But would those, under your understanding of the law,</p> <p>9 would those have required a property seller's disclosure</p> <p>10 statement, those cabins?</p> <p>11 A No.</p> <p>12 Q And why not, Bryan?</p> <p>13 A Again, they were overnight cabins and they were income.</p> <p>14 Q Have you ever, in a sale of a campground, ever used a</p> <p>15 seller's property disclosure statement before?</p> <p>16 A I have not.</p> <p>17 Q Have all of the other campgrounds you have sold, have</p> <p>18 they had some sort of a living quarters before?</p> <p>19 A Yes.</p> <p>20 Q Have you sold any other business, Bryan, over the years</p> <p>21 other than a campground that might have had a living</p> <p>22 quarters attached to it? Like a motel, for instance?</p> <p>23 A No.</p> <p>24 Q Okay. Mr. Beardsley asked you some questions about, I</p> <p>25 think it was the -- was it the Horse Thief Campground or</p>	<p>137</p> <p>1 quarters?</p> <p>2 A I'm sorry. No. I apologize. No, there's living</p> <p>3 quarters above the store.</p> <p>4 Q Above the store?</p> <p>5 A Uh-huh.</p> <p>6 Q Okay. At any time prior to this litigation being</p> <p>7 commenced, I think, in January of this year, in the</p> <p>8 conversations you had with Duane Remington, had he ever</p> <p>9 raised an issue as it concerned the South Dakota</p> <p>10 Department of Transportation right-of-way issue?</p> <p>11 A I haven't, no.</p> <p>12 MR. NOONEY: Take about five minutes. I think I'm</p> <p>13 done with, Bryan. I just want to run through a couple</p> <p>14 things. Make sure I didn't miss anything. Can we just</p> <p>15 take about five?</p> <p>16 MR. BEARDSLEY: Yeah.</p> <p>17 (A recess was taken at this time, 3:05 p.m.</p> <p>18 The deposition resumed at 3:17 p.m.)</p> <p>19 Q (By Mr. Nooney:) Mr. Iverson, I am showing you what</p> <p>20 I've marked as Exhibit 16.</p> <p>21 (Exhibit 16 marked for identification.)</p> <p>22 Q And, generally, what are these two pages?</p> <p>23 A A Certificate of Real Estate Value that is done at the</p> <p>24 closing.</p> <p>25 Q Would this have been a document that would have been</p>
<p>138</p> <p>1 Horse Creek Campground? Is that what Mike was talking</p> <p>2 to you about?</p> <p>3 A Yes.</p> <p>4 Q Was that Horse Creek?</p> <p>5 A Horse Thief.</p> <p>6 Q And that's the one up next to the restaurant -- or off</p> <p>7 -- by Sheridan, right?</p> <p>8 A No.</p> <p>9 Q Oh. Where is Horse Thief at -- or Horse Creek at?</p> <p>10 A It is on the road to Sylvan Lake.</p> <p>11 Q Is that a campground similar to Wild Bill's or is it</p> <p>12 dissimilar?</p> <p>13 A It's bigger. It's similar but bigger.</p> <p>14 Q Bigger, okay. And prior to Mike asking you about that</p> <p>15 today, had you any familiarity with that sale?</p> <p>16 A No.</p> <p>17 Q You hadn't seen Mr. Gene Hensley's expert witness report</p> <p>18 he had done before?</p> <p>19 A No.</p> <p>20 Q Do you know whether or not there's a separate living</p> <p>21 quarters or separate house on that property?</p> <p>22 A Yes.</p> <p>23 Q There is?</p> <p>24 A Yes.</p> <p>25 Q So there's a house on there other than just a living</p>	<p>139</p> <p>1 executed at the time of closing by the Remingtons and</p> <p>2 Mr. Gilman?</p> <p>3 A Yes.</p> <p>4 Q Now if this had been a residential property, how would</p> <p>5 it have been different?</p> <p>6 A The owner-occupied boxes would have been different.</p> <p>7 MR. NOONEY: That's all I have. Thank you</p> <p>8 Mr. Iverson.</p> <p>9 MR. BEARDSLEY: Just a couple questions.</p> <p>10 FURTHER EXAMINATION BY MR. BEARDSLEY:</p> <p>11 Q Bryan, you indicated that prior to the transaction with</p> <p>12 Remingtons you had drawn up a Purchase Agreement four</p> <p>13 separate times for the sale of Wild Bill's; do you</p> <p>14 remember that?</p> <p>15 A Yes.</p> <p>16 Q And can you tell me why these prior negotiations failed?</p> <p>17 A Price.</p> <p>18 Q And on each of these were they offered to be sold on a</p> <p>19 Contract for Deed?</p> <p>20 A No.</p> <p>21 Q And on each of these four prior occasions were the</p> <p>22 buyers represented by an agent?</p> <p>23 A On two of them.</p> <p>24 Q Do you remember the agents?</p> <p>25 A I do not.</p>

<p style="text-align: right;">139</p> <p>1 Q You answered a bunch of questions from Mr. Nooney about 2 conversations with Duane Remington prior to the 3 execution of the Purchase Agreement, and I just want to 4 confirm that your testimony here today is that he didn't 5 ever ask you about the fair value of this property?</p> <p>6 A Before the execution of the contract?</p> <p>7 Q Yes.</p> <p>8 A No.</p> <p>9 Q And you did not tell him that Keith Grimm was making 10 between 240 and \$245,000 a year in three and a half 11 months?</p> <p>12 A Not that I recall.</p> <p>13 Q On Exhibit 9, Number 5, there's reference to a well 14 test, SD-DENR? Do you know what -- explain that to me, 15 will you?</p> <p>16 A The campground is required to send in a water test. I 17 believe it's once a month.</p> <p>18 Q And, sir, if Mr. Grimm was altering the water before 19 sending it in for approval, that would be improper, 20 wouldn't it?</p> <p>21 A Yes.</p> <p>22 Q Were you ever aware that Mr. Grimm was doing that?</p> <p>23 A No.</p> <p>24 Q So when Melody came to your office on May 1st to sign 25 the documents that we've been going over today, did you</p>	<p style="text-align: right;">141</p> <p>1 Q Okay. Sir, then in a subsequent meeting with 2 Mr. Remington when he requested that information, why 3 didn't you provide it at that meeting?</p> <p>4 A He did not ask for it.</p> <p>5 Q Subsequent to closing, when he had a meeting at your 6 office in June, I believe, he requested the financial 7 information; correct?</p> <p>8 A Yes.</p> <p>9 Q And you told him that you didn't have it. You had to 10 get it from Keith; isn't that right?</p> <p>11 A No, that was in August.</p> <p>12 Q So you didn't have access to the financial information 13 the entire time?</p> <p>14 A For 2016 I did not, when he asked me for 2016 in August.</p> <p>15 Q And you don't know how many hours Duane and Melody 16 worked that campground, do you?</p> <p>17 A I do not.</p> <p>18 Q You testified that you made suggestions to Keith on how 19 to run that business. Approximately when did you do 20 that?</p> <p>21 A I don't know.</p> <p>22 Q Do you have just a guess on a year?</p> <p>23 A I can't.</p> <p>24 Q So you took the time to evaluate the business and came 25 up with a couple ideas to help Keith Grimm make it more</p>
<p style="text-align: right;">140</p> <p>1 tell her to backdate them?</p> <p>2 A We already had them dated the 27th, yes.</p> <p>3 Q So you backdated them and she signed them?</p> <p>4 A Yes.</p> <p>5 Q Bryan, if a prospective buyer used financial information 6 that is not accurate, whether or not he reviewed that, 7 that's irrelevant, isn't it?</p> <p>8 MR. ERLANDSON: Objection, form.</p> <p>9 A Please repeat it.</p> <p>10 Q (By Mr. Beardsley:) Sure. If a prospective buyer 11 requests financial information through income and 12 expense reports and those reports are not accurate, it 13 would not have any bearing on his decision anyway, would 14 it?</p> <p>15 MR. ERLANDSON: Objection, form.</p> <p>16 A I'm not sure what you want me to answer. I apologize.</p> <p>17 Q (By Mr. Beardsley:) The financial information provided 18 by Mr. Grimm, if it was not accurate it would be 19 worthless to anybody, wouldn't it?</p> <p>20 A Yes.</p> <p>21 Q And you testified that at the time the Purchase 22 Agreement was signed, April 27, 2017, you had access to 23 all of these financial documents; do you remember that 24 testimony?</p> <p>25 A Yes.</p>	<p style="text-align: right;">142</p> <p>1 profitable; is that fair?</p> <p>2 A Yes.</p> <p>3 Q And Grimm didn't rent out the living quarters as a part 4 of his business to make a profit, did he?</p> <p>5 A I don't know.</p> <p>6 Q That's fair.</p> <p>7 MR. BEARDSLEY: Thank you for your time. I don't 8 have anything further.</p> <p>9 THE WITNESS: Okay.</p> <p>10 MR. ERLANDSON: Mr. Iverson, I'm just going to ask 11 a couple questions here. I want to clear a few things 12 up.</p> <p>13 EXAMINATION BY MR. ERLANDSON:</p> <p>14 Q Turn to Exhibit 3.</p> <p>15 A (Complied.)</p> <p>16 Q First of all, correct me if I'm wrong, are there -- 17 basically in your representation of clients in the real 18 estate industry they fall into three categories. You 19 represent exclusively the buyers, exclusively the 20 sellers, or you can enter into a limited or dual agency 21 transaction; is that correct?</p> <p>22 A Correct.</p> <p>23 Q And Exhibit 3, what's that exhibit titled?</p> <p>24 A Buyer Agency Agreement.</p> <p>25 Q Okay. And does this apply exclusively to one of these</p>

<p>143</p> <p>1 three types of transactions or representations?</p> <p>2 A Yes.</p> <p>3 Q Which one?</p> <p>4 A The dual limited -- I'm sorry. This right here?</p> <p>5 Q Yes, Exhibit 3.</p> <p>6 A This is more of a Buyer Agency Agreement that would be</p> <p>7 for if I was showing someone multiple properties. An</p> <p>8 exclusive agreement to represent buyers.</p> <p>9 Q Okay. This is where you only represent the buyers; is</p> <p>10 that correct?</p> <p>11 A Correct.</p> <p>12 Q And under Number 6 it indicates the terms of this</p> <p>13 agreement, in any event; correct?</p> <p>14 A Correct.</p> <p>15 Q And when would it have expired?</p> <p>16 A May 31st.</p> <p>17 Q Or the completion -- let's see, where are you at here --</p> <p>18 or the completion of the acquisition of the property;</p> <p>19 correct?</p> <p>20 A Correct.</p> <p>21 Q When was that?</p> <p>22 A May 12th.</p> <p>23 Q Or 2017?</p> <p>24 A Yes.</p> <p>25 Q And was this transaction with the campground we've been</p>	<p>145</p> <p>1 Agency Agreement Addendum; is that correct?</p> <p>2 A Yes.</p> <p>3 Q And the first one looks as if it applies where the</p> <p>4 broker represents either the seller and -- or landlord</p> <p>5 or the buyer/tenant?</p> <p>6 A Correct.</p> <p>7 Q And the second section: If the broker appoints an</p> <p>8 associate licensee to represent the seller/landlord or</p> <p>9 buyer/tenant; is that correct?</p> <p>10 A Correct.</p> <p>11 Q Then the third category: If the buyer/tenant is</p> <p>12 represented by a broker wants to sell or see a property</p> <p>13 of a seller/landlord being represented by the same</p> <p>14 broker, correct?</p> <p>15 A Correct.</p> <p>16 Q So is Section 3 applicable to dual or limited agency?</p> <p>17 A Yes.</p> <p>18 Q And what about Section 1? Would that apply in this</p> <p>19 instance?</p> <p>20 A If I was the sole representative of the buyer or seller,</p> <p>21 Q That wasn't the case, though, in this particular</p> <p>22 instance?</p> <p>23 A No.</p> <p>24 MR. ERLANDSON: I don't have anything further.</p> <p>25 Thank you. Do you have anything?</p>
<p>144</p> <p>1 talking about, was that a limited or dual agency</p> <p>2 transaction?</p> <p>3 A Yes.</p> <p>4 Q Do you know if the living quarters that were described</p> <p>5 with the campground, were they ever used as a family</p> <p>6 dwelling?</p> <p>7 A No.</p> <p>8 Q Are you sure that they were or not?</p> <p>9 A They were not.</p> <p>10 Q How many living cabins are located on that property?</p> <p>11 A At the time of the sale there was seven.</p> <p>12 Q Okay. There was also -- was it a duplex?</p> <p>13 A Yes. That's two of the seven.</p> <p>14 Q Okay. Do you know if any of those cabins were ever used</p> <p>15 as family dwellings or a residence?</p> <p>16 A No, they were not.</p> <p>17 Q Take a look at Exhibit 2. Mr. Beardsley talked to you</p> <p>18 about that for some time.</p> <p>19 A (Complied.)</p> <p>20 Q And this is a form that's basically drafted by the South</p> <p>21 Dakota Board of Realtors that is used and adopted by the</p> <p>22 Black Hills Board of Realtors and all the agents that</p> <p>23 fall underneath that group; is that fair?</p> <p>24 A Yes.</p> <p>25 Q And it appears to be three different sections to this</p>	<p>146</p> <p>1 MR. BEARDSLEY: I don't.</p> <p>2 MR. ERLANDSON: He'll read and sign.</p> <p>3 (The deposition concluded at 3:32 p.m.)</p> <p>4 * * * *</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

DEPONENT'S SIGNATURE PAGE

I, Bryan Iverson, the undersigned deponent, have this ____ day of _____, 2018 read the foregoing pages 1 through 146, inclusive, have made the following change(s) (if any) to said testimony, have stated my reason(s) for each change or correction, and have signed below.

Bryan Iverson

Changes/Corrections

Page Line Desired change and reason therefor:

13 _____
14 _____
15 _____
16 _____
17 _____
18 _____
19 _____
20 _____
21 _____
22 _____
23 _____
24 _____

(Use a separate sheet similarly designated for additional changes, with signature of deponent on each sheet.)

1 STATE OF SOUTH DAKOTA }
2 } SS. CERTIFICATE
3 COUNTY OF PENNINGTON }

I, JEANNE S. QUINN, Court Reporter and Notary Public, South Dakota, duly commissioned to administer oaths, certify that I placed the witness under oath before the witness testified; that the foregoing testimony of said witness was taken by me in shorthand, and that the same has been reduced to typewritten form under my supervision; that the foregoing transcript is a true and correct transcript of the questions asked, of the testimony given, and of the proceedings had.

I further certify that I am not related to, employed by, or in any way associated with any of the parties to this action, or their counsel, and have no interest in its event.

Witness my hand and seal at Rapid City, South Dakota, this 30th day of August 2018.

JEANNE S. QUINN

My Commission Expires: 08/24/24

# #1 [v] - 44:12, 88:13, 102:11	102:24, 103:4, 107:3, 107:19, 108:4, 123:19, 145:18, 147:5 1,5 [v] - 65:4 10 [v] - 2:16, 5:24, 6:3, 6:5, 18:16, 26:16, 26:22, 27:11, 30:18, 50:5, 55:25, 70:12, 71:6, 72:20, 80:9, 80:10, 86:15, 88:18, 88:26, 91:18, 96:7, 95:8, 95:13, 96:23, 96:7, 96:15, 97:1, 97:15, 98:5, 100:19, 112:1	19th [v] - 124:25, 125:4, 125:13, 125:17, 128:12, 127:4, 127:13 1st [v] - 82:12 1st [v] - 77:21, 77:23, 78:22, 101:2, 101:8, 112:9, 113:4, 114:2, 117:9, 119:5, 139:24	126:24, 127:2, 127:4, 127:10, 128:20, 129:2, 129:3, 129:12, 130:15, 130:16, 134:3, 134:12, 140:22, 143:23 20th [v] - 1:13, 147:4, 148:19 240 [v] - 139:10 24th [v] - 130:22, 131:15	42 [v] - 2:11 42nd [v] - 1:19 43 [v] - 2:12 44 [v] - 2:13 46 [v] - 112:17 49 [v] - 2:13 4th [v] - 129:12, 129:14, 129:15
\$ \$1,000,000 [v] - 79:12 \$10,000 [v] - 79:22 \$240,000 [v] - 79:6 \$245,000 [v] - 138:10 \$999,000 [v] - 24:22, 29:2, 101:24	26:22, 27:11, 30:18, 50:5, 55:25, 70:12, 71:6, 72:20, 80:9, 80:10, 86:15, 88:18, 88:26, 91:18, 96:7, 95:8, 95:13, 96:23, 96:7, 96:15, 97:1, 97:15, 98:5, 100:19, 112:1 10,000 [v] - 99:9 100 [v] - 110:24 10:00 [v] - 1:13 10:18 [v] - 3:1 11 [v] - 2:16, 114:25, 115:1, 115:7, 117:11, 118:5, 118:19, 119:7 115 [v] - 2:16 119 [v] - 2:17 11:25 [v] - 38:20 11:37 [v] - 38:21 12 [v] - 2:17, 92:18, 115:2, 119:20, 119:21, 119:22, 120:8, 120:23	2 2 [v] - 2:10, 2:11, 2:14, 30:9, 32:25, 33:12, 34:14, 34:20, 35:16, 38:24, 40:16, 43:16, 50:19, 86:14, 86:16, 87:3, 88:8, 88:11, 97:1, 97:8, 99:2, 105:2, 108:8, 110:22, 131:19, 144:17 20 [v] - 1:13 200 [v] - 92:17, 92:19 2001 [v] - 7:19, 8:9 2005 [v] - 8:4, 8:11 2006 [v] - 8:12, 8:13, 8:14, 35:10, 81:17 2007 [v] - 18:16, 18:19, 21:22, 22:7, 25:21, 56:6, 91:17 2008 [v] - 56:10 2008-ish [v] - 9:22 2009 [v] - 19:10, 19:25 2010 [v] - 19:21, 20:3, 21:11, 21:17, 23:13, 24:1 2011 [v] - 24:17 2012 [v] - 28:1 2013 [v] - 28:3 2014 [v] - 28:6 2015 [v] - 28:5, 131:10 2016 [v] - 2:14, 28:5, 64:23, 94:9, 97:6, 119:25, 128:11, 129:18, 129:23, 141:14 2017 [v] - 14:20, 18:14, 25:21, 28:5, 28:7, 29:9, 30:12, 30:18, 43:1, 65:11, 78:22, 85:12, 85:24, 88:23, 89:18, 90:2, 91:7, 101:7, 101:8, 109:4, 109:5, 114:17, 115:24, 126:12,	27 [v] - 29:7, 30:12, 30:17, 43:1, 89:18, 101:7, 109:4, 140:22 27th [v] - 77:15, 77:22, 78:21, 85:12, 85:24, 88:23, 90:2, 90:25, 91:6, 91:7, 95:18, 99:15, 100:25, 101:18, 104:18, 106:12, 112:2, 112:3, 112:8, 112:19, 113:2, 113:5, 113:23, 113:25, 118:14, 115:17, 123:22, 124:8, 134:2, 134:11, 140:2 28 [v] - 2:10	5 5 [v] - 2:13, 44:11, 44:12, 74:10, 87:20, 105:23, 107:14, 107:16, 110:5, 110:16, 112:24, 112:25, 118:9, 118:21, 119:7, 139:13 50 [v] - 26:19, 26:23 50/50 [v] - 107:8 51 CIV 18-000118 [v] - 1:4 52 [v] - 120:7 57702 [v] - 3:10
0 0001 [v] - 2:16 0007 [v] - 97:16 0013 [v] - 2:16 0019 [v] - 2:15 0020 [v] - 2:20 0024 [v] - 2:20 0025 [v] - 2:15 0026 [v] - 2:16 0027 [v] - 2:19 0028 [v] - 2:19 0034 [v] - 2:16 0045 [v] - 2:17 0049 [v] - 2:17 0050 [v] - 2:18, 120:6 0052 [v] - 2:18 0053 [v] - 2:18, 123:5 0056 [v] - 2:18, 123:6 08/24/24 [v] - 148:22	115:2, 119:20, 119:21, 119:22, 120:8, 120:23 120 [v] - 2:18 123 [v] - 2:18 1240 [v] - 3:9 126 [v] - 2:19 12:49 [v] - 82:10 12th [v] - 29:12, 29:13, 29:24, 29:25, 30:1, 109:5, 114:1, 123:22, 126:24, 127:2, 129:1, 134:2, 134:12, 143:22 13 [v] - 2:18, 97:16, 120:19, 120:22, 121:21, 121:22, 122:4 137 [v] - 2:20 138 [v] - 2:8 13th [v] - 28:13, 29:24 14 [v] - 2:18, 119:7, 123:3, 123:4, 123:19, 123:24 142 [v] - 2:9 146 [v] - 147:5 15 [v] - 2:19, 28:9, 126:20, 126:21 16th [v] - 111:17 16 [v] - 2:20, 137:20, 137:21 1984 [v] - 4:11 1989 [v] - 4:11	2 2 [v] - 2:10, 2:11, 2:14, 30:9, 32:25, 33:12, 34:14, 34:20, 35:16, 38:24, 40:16, 43:16, 50:19, 86:14, 86:16, 87:3, 88:8, 88:11, 97:1, 97:8, 99:2, 105:2, 108:8, 110:22, 131:19, 144:17 20 [v] - 1:13 200 [v] - 92:17, 92:19 2001 [v] - 7:19, 8:9 2005 [v] - 8:4, 8:11 2006 [v] - 8:12, 8:13, 8:14, 35:10, 81:17 2007 [v] - 18:16, 18:19, 21:22, 22:7, 25:21, 56:6, 91:17 2008 [v] - 56:10 2008-ish [v] - 9:22 2009 [v] - 19:10, 19:25 2010 [v] - 19:21, 20:3, 21:11, 21:17, 23:13, 24:1 2011 [v] - 24:17 2012 [v] - 28:1 2013 [v] - 28:3 2014 [v] - 28:6 2015 [v] - 28:5, 131:10 2016 [v] - 2:14, 28:5, 64:23, 94:9, 97:6, 119:25, 128:11, 129:18, 129:23, 141:14 2017 [v] - 14:20, 18:14, 25:21, 28:5, 28:7, 29:9, 30:12, 30:18, 43:1, 65:11, 78:22, 85:12, 85:24, 88:23, 89:18, 90:2, 91:7, 101:7, 101:8, 109:4, 109:5, 114:17, 115:24, 126:12,	3 3 [v] - 1:19, 2:7, 2:11, 32:25, 42:1, 42:2, 43:16, 99:3, 102:7, 103:3, 105:12, 108:14, 118:5, 118:9, 118:19, 142:14, 142:23, 143:5, 145:16 30 [v] - 2:11, 18:4, 27:1, 27:2, 70:13, 72:21 300 [v] - 35:16 30th [v] - 148:19 31st [v] - 143:16 326 [v] - 1:25 33 [v] - 11:1 333 [v] - 1:15, 1:22 385 [v] - 65:5 3:05 [v] - 137:17 3:17 [v] - 137:18 3:32 [v] - 146:3	6 6 [v] - 2:13, 49:20, 49:21, 50:6, 52:6, 94:3, 94:13, 94:24, 106:3, 110:22 64 [v] - 2:14 65 [v] - 5:22 6th [v] - 127:10, 127:13, 129:2, 129:11
1 1 [v] - 2:10, 2:11, 2:11, 2:12, 2:13, 2:14, 28:20, 44:8, 65:11, 86:5, 88:8, 88:22, 87:5, 87:11, 87:19, 87:21, 88:7, 88:9, 88:15, 88:18, 88:24, 93:20, 95:10, 96:7, 99:2, 102:15, 102:19,	115:2, 119:20, 119:21, 119:22, 120:8, 120:23 120 [v] - 2:18 123 [v] - 2:18 1240 [v] - 3:9 126 [v] - 2:19 12:49 [v] - 82:10 12th [v] - 29:12, 29:13, 29:24, 29:25, 30:1, 109:5, 114:1, 123:22, 126:24, 127:2, 129:1, 134:2, 134:12, 143:22 13 [v] - 2:18, 97:16, 120:19, 120:22, 121:21, 121:22, 122:4 137 [v] - 2:20 138 [v] - 2:8 13th [v] - 28:13, 29:24 14 [v] - 2:18, 119:7, 123:3, 123:4, 123:19, 123:24 142 [v] - 2:9 146 [v] - 147:5 15 [v] - 2:19, 28:9, 126:20, 126:21 16th [v] - 111:17 16 [v] - 2:20, 137:20, 137:21 1984 [v] - 4:11 1989 [v] - 4:11	2 2 [v] - 2:10, 2:11, 2:14, 30:9, 32:25, 33:12, 34:14, 34:20, 35:16, 38:24, 40:16, 43:16, 50:19, 86:14, 86:16, 87:3, 88:8, 88:11, 97:1, 97:8, 99:2, 105:2, 108:8, 110:22, 131:19, 144:17 20 [v] - 1:13 200 [v] - 92:17, 92:19 2001 [v] - 7:19, 8:9 2005 [v] - 8:4, 8:11 2006 [v] - 8:12, 8:13, 8:14, 35:10, 81:17 2007 [v] - 18:16, 18:19, 21:22, 22:7, 25:21, 56:6, 91:17 2008 [v] - 56:10 2008-ish [v] - 9:22 2009 [v] - 19:10, 19:25 2010 [v] - 19:21, 20:3, 21:11, 21:17, 23:13, 24:1 2011 [v] - 24:17 2012 [v] - 28:1 2013 [v] - 28:3 2014 [v] - 28:6 2015 [v] - 28:5, 131:10 2016 [v] - 2:14, 28:5, 64:23, 94:9, 97:6, 119:25, 128:11, 129:18, 129:23, 141:14 2017 [v] - 14:20, 18:14, 25:21, 28:5, 28:7, 29:9, 30:12, 30:18, 43:1, 65:11, 78:22, 85:12, 85:24, 88:23, 89:18, 90:2, 91:7, 101:7, 101:8, 109:4, 109:5, 114:17, 115:24, 126:12,	3 3 [v] - 1:19, 2:7, 2:11, 32:25, 42:1, 42:2, 43:16, 99:3, 102:7, 103:3, 105:12, 108:14, 118:5, 118:9, 118:19, 142:14, 142:23, 143:5, 145:16 30 [v] - 2:11, 18:4, 27:1, 27:2, 70:13, 72:21 300 [v] - 35:16 30th [v] - 148:19 31st [v] - 143:16 326 [v] - 1:25 33 [v] - 11:1 333 [v] - 1:15, 1:22 385 [v] - 65:5 3:05 [v] - 137:17 3:17 [v] - 137:18 3:32 [v] - 146:3	7 7 [v] - 2:13, 2:14, 64:20, 64:21, 97:15, 97:16, 106:6
1 1 [v] - 2:10, 2:11, 2:11, 2:12, 2:13, 2:14, 28:20, 44:8, 65:11, 86:5, 88:8, 88:22, 87:5, 87:11, 87:19, 87:21, 88:7, 88:9, 88:15, 88:18, 88:24, 93:20, 95:10, 96:7, 99:2, 102:15, 102:19,	115:2, 119:20, 119:21, 119:22, 120:8, 120:23 120 [v] - 2:18 123 [v] - 2:18 1240 [v] - 3:9 126 [v] - 2:19 12:49 [v] - 82:10 12th [v] - 29:12, 29:13, 29:24, 29:25, 30:1, 109:5, 114:1, 123:22, 126:24, 127:2, 129:1, 134:2, 134:12, 143:22 13 [v] - 2:18, 97:16, 120:19, 120:22, 121:21, 121:22, 122:4 137 [v] - 2:20 138 [v] - 2:8 13th [v] - 28:13, 29:24 14 [v] - 2:18, 119:7, 123:3, 123:4, 123:19, 123:24 142 [v] - 2:9 146 [v] - 147:5 15 [v] - 2:19, 28:9, 126:20, 126:21 16th [v] - 111:17 16 [v] - 2:20, 137:20, 137:21 1984 [v] - 4:11 1989 [v] - 4:11	2 2 [v] - 2:10, 2:11, 2:14, 30:9, 32:25, 33:12, 34:14, 34:20, 35:16, 38:24, 40:16, 43:16, 50:19, 86:14, 86:16, 87:3, 88:8, 88:11, 97:1, 97:8, 99:2, 105:2, 108:8, 110:22, 131:19, 144:17 20 [v] - 1:13 200 [v] - 92:17, 92:19 2001 [v] - 7:19, 8:9 2005 [v] - 8:4, 8:11 2006 [v] - 8:12, 8:13, 8:14, 35:10, 81:17 2007 [v] - 18:16, 18:19, 21:22, 22:7, 25:21, 56:6, 91:17 2008 [v] - 56:10 2008-ish [v] - 9:22 2009 [v] - 19:10, 19:25 2010 [v] - 19:21, 20:3, 21:11, 21:17, 23:13, 24:1 2011 [v] - 24:17 2012 [v] - 28:1 2013 [v] - 28:3 2014 [v] - 28:6 2015 [v] - 28:5, 131:10 2016 [v] - 2:14, 28:5, 64:23, 94:9, 97:6, 119:25, 128:11, 129:18, 129:23, 141:14 2017 [v] - 14:20, 18:14, 25:21, 28:5, 28:7, 29:9, 30:12, 30:18, 43:1, 65:11, 78:22, 85:12, 85:24, 88:23, 89:18, 90:2, 91:7, 101:7, 101:8, 109:4, 109:5, 114:17, 115:24, 126:12,	4 4 [v] - 2:12, 43:24, 43:25, 44:13, 45:23, 105:17, 105:21, 107:3, 110:5, 112:24 400 [v] - 1:15, 1:22	8 8 [v] - 2:14, 44:16, 76:22, 84:9, 84:10, 84:24, 88:12, 106:6, 114:15, 124:24, 127:9, 143:12 83 [v] - 2:8 84 [v] - 2:14 88 [v] - 2:15 899 [v] - 19:24, 20:7, 21:19, 24:20, 28:2, 28:4, 28:5 8th [v] - 114:17, 115:10, 115:14,

115:17, 115:24, 117:11, 117:21, 118:1, 129:14	acres [n] - 26:13 action [n] - 146:16 actual [n] - 19:19 add [v] - 96:25 added [v] - 28:10, 50:11, 50:13, 81:12 Addenda [n] - 2:13, 44:6, 44:12, 87:21, 88:13, 88:15, 88:18, 102:11, 102:16, 102:19, 102:24, 103:4 addenda [n] - 103:5, 103:12, 105:2, 107:1, 111:22, 111:23, 114:13 addendum [n] - 28:1, 26:2, 44:1, 44:20, 87:4, 89:7, 145:1 Addendum [n] - 2:11, 30:10 addendum/ Amendment [n] - 43:25 Addendum/ Amendment [n] - 2:12 addendums [n] - 120:3 adding [n] - 125:6, 125:11, 125:20, 126:5, 132:24 addition [n] - 30:24, 54:24 additional [n] - 66:11, 131:3, 131:16, 147:25 additionally [n] - 66:6 address [n] - 3:8, 3:9, 78:1, 78:2 administer [v] - 148:6 administration [n] - 5:12 adopt [v] - 52:24 adopted [v] - 144:21 advancement [n] - 8:10 adventure [n] - 60:22 adversely [n] - 49:17 advertised [n] - 51:23 advertising [n] - 51:4 advice [n] - 11:21, 12:5, 57:20, 69:20 advise [v] - 32:17, 74:25 aerial [n] - 95:1 affect [v] - 32:20, 33:3, 33:9, 33:15, 35:20, 36:7, 36:10, 37:3, 37:7, 38:6, 38:11, 38:16, 39:11, 39:15, 39:19, 39:23, 40:2, 40:11, 47:9, 49:17, 66:4, 66:8, 66:11, 66:18, 66:21, 73:22 agency [n] - 30:21, 66:23, 87:4, 87:15, 89:6, 89:7, 120:3, 142:20, 142:24, 143:6, 144:1, 145:1, 145:16 Agency [n] - 2:11, 2:11, 30:10, 42:2, 42:5 agent [n] - 18:14, 33:6, 33:11, 33:22, 33:24, 34:24, 35:9, 36:18, 41:4, 56:23, 58:9, 61:5, 64:3, 65:15, 69:17, 70:5, 83:8, 83:9, 83:12, 83:15, 131:22, 136:22 Agent's [n] - 133:22 agent's [n] - 38:25 agents [n] - 20:18, 136:24, 144:22 agree [v] - 32:19, 33:6, 34:19, 37:2, 43:5, 47:3, 56:22, 67:5, 63:12, 65:25, 71:22, 72:2, 73:6, 75:9 agreed [v] - 31:19, 34:13, 43:12, 90:19, 111:8 Agreement [n] - 2:10, 2:11, 2:11, 2:12, 2:15, 2:17, 26:5, 28:15, 28:23, 29:1, 30:7, 30:10, 40:19, 41:6, 42:2, 42:5, 42:12, 44:1, 44:6, 78:3, 86:8, 86:21, 87:11, 87:16, 88:17, 88:19, 88:24, 89:4, 89:8, 89:9, 90:18, 90:20, 91:4, 91:9, 93:20, 93:25, 95:9, 97:6, 98:3, 98:19, 98:25, 101:23, 102:3, 102:13, 102:23, 105:14, 106:23, 107:1, 108:6, 108:21, 109:4, 110:19, 111:24, 112:22, 113:20, 114:9, 117:7, 119:5, 119:23, 120:2, 128:6, 129:21, 139:3, 140:22 agreement [n] - 29:7, 33:18, 42:19, 43:5, 86:11, 89:3, 89:6, 89:7, 96:16, 96:19, 97:2, 97:4, 98:21, 101:12, 106:16, 112:1, 112:2, 112:10, 112:13, 112:26, 113:23, 120:9, 120:10, 120:25, 123:9, 138:12, 142:24, 143:5, 143:8, 143:13, 145:1 agreements [n] - 93:3, 121:1 agrees [v] - 62:21 Agricultural [n] - 2:15 ahead [n] - 12:3, 57:15 ahold [n] - 80:16 allocation [n] - 107:5 alone [n] - 133:2 ALTA [n] - 2:19 altering [n] - 139:16 amount [n] - 80:22, 80:23 analysis [n] - 83:1 AND [n] - 1:8 answer [n] - 3:17, 4:3, 11:11, 11:23, 12:1, 12:2, 31:5, 36:9, 36:22, 46:15, 57:11, 57:20, 58:18, 59:4, 62:11, 63:22, 92:24, 102:20, 140:16 answered [n] - 34:16, 139:1 answering [n] - 59:5, 69:19, 69:4 answers [n] - 16:17, 35:24, 82:22 Antelope [n] - 5:7, 5:18 antelope [n] - 6:1 anytime [n] - 71:6, 79:8, 101:16 anyway [n] - 140:13 apartment [n] - 121:12 apologize [v] - 137:2, 140:16 appear [v] - 49:5, 120:2 APPEARANCES [n] - 1:17, 2:1 applicable [n] - 121:2, 140:16 applications [n] - 135:1 applies [n] - 145:3 apply [v] - 142:25, 146:18 appointment [n] - 60:9, 85:21, 101:10, 115:16 appoints [n] - 145:7 appreciate [n] - 83:20 appreciation [n] - 124:7 apprised [n] - 110:20 appropriate [n] - 57:13, 70:16, 72:4, 72:8, 105:8, 110:6, 120:12 approval [n] - 139:19 April [n] - 21:21, 23:15, 29:7, 30:12, 30:17, 43:1, 77:15, 78:22, 85:12, 85:24, 88:23, 89:18, 90:2, 90:25, 91:7, 95:16, 99:15, 100:25, 101:7, 101:18, 104:18, 106:12, 109:4, 112:2, 112:3, 112:8, 112:19, 113:2, 113:5, 113:23, 113:25, 114:17, 116:14, 116:17, 123:22, 124:6, 129:12, 134:2, 134:11, 140:22 area [n] - 51:3, 54:25, 61:24, 96:1, 97:22, 100:13 arising [n] - 43:7 arrived [n] - 89:2 asserted [n] - 117:22 assessment [n] - 132:6, 132:12 assigns [n] - 99:11 assisted [n] - 57:23, 117:8 associate [n] - 8:24, 9:12, 9:17, 10:7, 10:10, 10:18, 10:25, 11:3, 12:21, 13:12, 14:18, 64:8, 145:8 associated [n] - 148:15 associates [n] - 9:19, 9:20 association [n] - 45:14 assume [v] - 4:3, 5:9, 10:9, 15:18, 21:6, 21:22, 42:17, 42:25,
---	--

<p>44:1, 71:17, 82:22, 83:3, 110:17, 112:20 assumed [i] - 128:23 attached [q] - 120:7, 135:22 attended [i] - 5:3 attention [q] - 117:16, 120:5 attorney [i] - 16:15, 16:1, 16:4, 82:17 attorney's [i] - 43:8 audit [i] - 129:17, 130:4 August [q] - 1:13, 21:13, 25:16, 129:14, 129:15, 130:16, 130:22, 131:15, 141:11, 141:14, 148:19 auspices [i] - 104:8 authenticate [i] - 123:14 avail [i] - 118:23 available [i] - 123:10, 132:13 aware [q] - 37:14, 49:8, 51:20, 62:4, 52:9, 57:2, 57:4, 62:4, 62:7, 64:16, 67:7, 68:6, 68:8, 70:24, 71:1, 72:13, 72:17, 75:6, 76:24, 82:1, 110:17, 139:22, 144:8</p>	<p>129:8 Bates [q] - 84:16, 84:17, 120:6, 123:6 bath [i] - 54:19, 54:25, 56:6, 56:13, 97:21 Beach [i] - 1:19 BEARDSLEY [q] - 1:18, 2:7, 2:8, 3:5, 22:13, 22:16, 35:24, 38:19, 43:18, 43:20, 48:12, 57:14, 58:20, 58:23, 58:6, 59:15, 60:5, 62:19, 63:4, 63:6, 63:17, 63:20, 82:7, 83:22, 85:22, 137:16, 138:9, 138:10, 142:7, 146:1 Beardsley [q] - 1:18, 3:6, 11:25, 12:5, 17:16, 22:2, 22:7, 22:20, 26:10, 29:18, 31:8, 31:11, 31:23, 32:24, 34:12, 34:18, 35:2, 36:1, 36:23, 43:23, 46:22, 48:6, 48:15, 49:13, 57:11, 57:16, 59:18, 60:18, 61:18, 63:11, 63:23, 67:13, 70:4, 71:14, 72:2, 73:10, 73:18, 81:23, 82:13, 84:2, 86:1, 87:3, 87:17, 88:8, 94:2, 124:13, 126:18, 131:19, 134:17, 135:24, 140:10, 140:17, 144:17 bearing [i] - 140:13 best [i] - 12:9 bedroom [i] - 55:6 bedrooms [i] - 54:25, 55:13, 97:21, 97:22, 97:26 beer [q] - 61:24, 126:9, 127:21, 127:24 BEFORE [i] - 1:11 began [i] - 3:1, 128:19 beginning [i] - 103:23 behalf [i] - 104:6, 109:16 believes [i] - 82:11 Belie [i] - 21:1 below [i] - 86:8, 122:13, 147:6 Benning [i] - 20:23 best [i] - 7:7, 18:21, 19:9, 85:18, 91:19,</p>	<p>98:2, 109:3, 109:11, 110:13, 113:22, 134:8 better [i] - 41:13 between [i] - 9:16, 83:4, 87:4, 89:2, 106:9, 107:8, 109:3, 113:18, 113:25, 115:14, 115:17, 121:15, 121:16, 129:1, 139:10 beverage [i] - 128:4, 128:9, 128:17, 128:22, 133:13, 133:18, 133:19 beyond [i] - 57:10 bigger [i] - 136:13, 136:14 Bill's [q] - 1:24, 2:13, 2:16, 12:14, 15:21, 16:7, 18:13, 42:6, 44:2, 45:7, 49:22, 61:6, 61:11, 71:17, 77:17, 80:17, 84:1, 87:14, 93:4, 100:1, 124:23, 129:22, 132:4, 132:7, 132:13, 136:11, 138:13 BILL'S [i] - 1:8 billing [i] - 13:9 binding [i] - 112:12 bit [i] - 62:25, 64:11, 78:19, 91:18, 93:12, 128:5 Black [q] - 4:11, 4:12, 6:12, 144:22 black [i] - 73:14 blanks [i] - 96:13 board [i] - 144:21, 144:22 bolded [i] - 131:21 bordering [i] - 62:16 boss [i] - 7:15, 9:3, 10:2 bottom [i] - 30:16, 42:22, 97:16, 100:13, 131:21 bought [i] - 93:12, 133:1 Boulevard [i] - 1:15, 1:22, 3:10 bound [i] - 30:25, 32:19 boundaries [i] - 47:1, 47:5 boundary [i] - 111:11, 111:12 box [i] - 100:14, 121:2, 121:8, 121:10, 121:13</p>	<p>boxes [i] - 138:8 Brandon [i] - 51:15, 70:18, 70:20 breach [i] - 34:23, 36:4, 43:6, 43:10, 59:13 break [i] - 35:23, 82:8, 92:2 Brian [i] - 44:22, 45:2, 114:6, 114:8, 114:19, 115:5, 117:21 bridge [i] - 50:13, 74:12, 74:17, 74:18, 74:21, 75:7, 75:10 bridges [i] - 39:14, 68:25, 69:7, 74:14, 74:16, 76:4 briefly [i] - 58:24 bring [i] - 95:16 brochure [i] - 94:5, 95:3, 95:12, 95:18, 96:1, 98:5 broker [i] - 6:23, 9:4, 9:12, 9:16, 9:18, 9:19, 9:20, 10:7, 10:10, 10:13, 10:15, 10:16, 10:17, 10:20, 11:9, 12:20, 12:21, 14:18, 33:2, 33:3, 33:4, 33:13, 43:4, 64:8, 123:13, 145:4, 145:7, 145:12, 146:14 broker's [i] - 9:17 brokers [i] - 10:16, 10:22, 10:25, 11:3, 13:12, 16:5 brother [i] - 18:6 brought [i] - 117:16 BRYAN [i] - 1:6, 1:9, 2:6, 3:2 Bryan [i] - 1:21, 3:9, 3:22, 10:6, 21:22, 28:21, 34:12, 34:22, 38:9, 38:23, 43:3, 43:25, 50:16, 53:16, 60:10, 72:2, 80:17, 82:13, 83:25, 85:18, 88:5, 90:14, 91:15, 94:8, 94:16, 95:24, 98:8, 102:21, 113:22, 116:20, 116:22, 119:22, 120:5, 120:24, 122:21, 123:4, 124:24, 125:18, 131:18, 132:12, 136:12, 135:20, 137:13, 138:11, 140:5, 147:3, 147:9 building [i] - 4:19,</p>	<p>37:6, 38:5, 47:16, 50:12, 51:3, 51:18, 52:25, 54:10, 54:21, 55:6, 67:4, 73:7, 94:16, 94:23, 97:18 buildings [i] - 28:17 built [i] - 133:6 bunch [i] - 139:1 business [i] - 6:12, 6:14, 18:9, 21:24, 26:13, 41:13, 46:5, 58:20, 62:20, 78:6, 79:6, 80:19, 84:15, 102:5, 116:22, 116:24, 116:25, 117:5, 122:1, 124:11, 125:14, 128:4, 128:8, 128:19, 130:14, 131:4, 131:25, 132:13, 133:13, 135:20, 141:19, 141:24, 142:4 business/industry [i] - 121:3, 121:16 Butler [i] - 1:14, 1:21 buy [i] - 10:12, 61:12, 109:24, 113:6 buyer [i] - 24:12, 30:22, 33:6, 36:6, 39:16, 43:5, 48:19, 68:12, 66:24, 65:25, 67:6, 67:23, 69:9, 71:24, 72:4, 72:8, 76:6, 76:7, 77:5, 80:23, 80:24, 89:7, 93:15, 100:19, 102:9, 105:8, 105:19, 106:5, 108:14, 108:19, 109:16, 110:5, 110:26, 117:6, 140:5, 140:10, 142:24, 143:6, 145:20 buyer's [i] - 33:9, 35:20, 36:10, 37:7, 38:6, 38:24, 39:11, 49:18, 110:7 buyer's/tenant's [i] - 33:15 buyer/tenant [i] - 145:5, 145:9, 145:11 Buyers [i] - 2:11, 42:2, 42:5 buyers [i] - 20:12, 36:1, 46:23, 66:16, 96:21, 118:9, 138:22, 142:19, 143:8, 143:9 buying [i] - 67:1, 69:11, 103:21, 104:20 BY [i] - 3:5, 83:24,</p>
B				
<p>backdate [i] - 140:1 backdated [i] - 140:3 background [i] - 113:8, 124:8, 124:10 bad [i] - 70:1 balance [i] - 111:16, 116:5, 116:16 Bangs [i] - 1:14, 1:21 Banker [i] - 8:18, 9:1, 9:3, 9:7, 9:10, 9:22 bar [i] - 52:7, 100:1 bars [i] - 61:23 base [i] - 92:16 basement [i] - 54:24, 55:13, 70:22, 71:2, 71:8, 71:20, 72:14, 97:17, 97:21 basis [i] - 41:24, 92:1, 126:14, 129:4,</p>	<p>129:8 Bates [q] - 84:16, 84:17, 120:6, 123:6 bath [i] - 54:19, 54:25, 56:6, 56:13, 97:21 Beach [i] - 1:19 BEARDSLEY [q] - 1:18, 2:7, 2:8, 3:5, 22:13, 22:16, 35:24, 38:19, 43:18, 43:20, 48:12, 57:14, 58:20, 58:23, 58:6, 59:15, 60:5, 62:19, 63:4, 63:6, 63:17, 63:20, 82:7, 83:22, 85:22, 137:16, 138:9, 138:10, 142:7, 146:1 Beardsley [q] - 1:18, 3:6, 11:25, 12:5, 17:16, 22:2, 22:7, 22:20, 26:10, 29:18, 31:8, 31:11, 31:23, 32:24, 34:12, 34:18, 35:2, 36:1, 36:23, 43:23, 46:22, 48:6, 48:15, 49:13, 57:11, 57:16, 59:18, 60:18, 61:18, 63:11, 63:23, 67:13, 70:4, 71:14, 72:2, 73:10, 73:18, 81:23, 82:13, 84:2, 86:1, 87:3, 87:17, 88:8, 94:2, 124:13, 126:18, 131:19, 134:17, 135:24, 140:10, 140:17, 144:17 bearing [i] - 140:13 best [i] - 12:9 bedroom [i] - 55:6 bedrooms [i] - 54:25, 55:13, 97:21, 97:22, 97:26 beer [q] - 61:24, 126:9, 127:21, 127:24 BEFORE [i] - 1:11 began [i] - 3:1, 128:19 beginning [i] - 103:23 behalf [i] - 104:6, 109:16 believes [i] - 82:11 Belie [i] - 21:1 below [i] - 86:8, 122:13, 147:6 Benning [i] - 20:23 best [i] - 7:7, 18:21, 19:9, 85:18, 91:19,</p>	<p>98:2, 109:3, 109:11, 110:13, 113:22, 134:8 better [i] - 41:13 between [i] - 9:16, 83:4, 87:4, 89:2, 106:9, 107:8, 109:3, 113:18, 113:25, 115:14, 115:17, 121:15, 121:16, 129:1, 139:10 beverage [i] - 128:4, 128:9, 128:17, 128:22, 133:13, 133:18, 133:19 beyond [i] - 57:10 bigger [i] - 136:13, 136:14 Bill's [q] - 1:24, 2:13, 2:16, 12:14, 15:21, 16:7, 18:13, 42:6, 44:2, 45:7, 49:22, 61:6, 61:11, 71:17, 77:17, 80:17, 84:1, 87:14, 93:4, 100:1, 124:23, 129:22, 132:4, 132:7, 132:13, 136:11, 138:13 BILL'S [i] - 1:8 billing [i] - 13:9 binding [i] - 112:12 bit [i] - 62:25, 64:11, 78:19, 91:18, 93:12, 128:5 Black [q] - 4:11, 4:12, 6:12, 144:22 black [i] - 73:14 blanks [i] - 96:13 board [i] - 144:21, 144:22 bolded [i] - 131:21 bordering [i] - 62:16 boss [i] - 7:15, 9:3, 10:2 bottom [i] - 30:16, 42:22, 97:16, 100:13, 131:21 bought [i] - 93:12, 133:1 Boulevard [i] - 1:15, 1:22, 3:10 bound [i] - 30:25, 32:19 boundaries [i] - 47:1, 47:5 boundary [i] - 111:11, 111:12 box [i] - 100:14, 121:2, 121:8, 121:10, 121:13</p>	<p>boxes [i] - 138:8 Brandon [i] - 51:15, 70:18, 70:20 breach [i] - 34:23, 36:4, 43:6, 43:10, 59:13 break [i] - 35:23, 82:8, 92:2 Brian [i] - 44:22, 45:2, 114:6, 114:8, 114:19, 115:5, 117:21 bridge [i] - 50:13, 74:12, 74:17, 74:18, 74:21, 75:7, 75:10 bridges [i] - 39:14, 68:25, 69:7, 74:14, 74:16, 76:4 briefly [i] - 58:24 bring [i] - 95:16 brochure [i] - 94:5, 95:3, 95:12, 95:18, 96:1, 98:5 broker [i] - 6:23, 9:4, 9:12, 9:16, 9:18, 9:19, 9:20, 10:7, 10:10, 10:13, 10:15, 10:16, 10:17, 10:20, 11:9, 12:20, 12:21, 14:18, 33:2, 33:3, 33:4, 33:13, 43:4, 64:8, 123:13, 145:4, 145:7, 145:12, 146:14 broker's [i] - 9:17 brokers [i] - 10:16, 10:22, 10:25, 11:3, 13:12, 16:5 brother [i] - 18:6 brought [i] - 117:16 BRYAN [i] - 1:6, 1:9, 2:6, 3:2 Bryan [i] - 1:21, 3:9, 3:22, 10:6, 21:22, 28:21, 34:12, 34:22, 38:9, 38:23, 43:3, 43:25, 50:16, 53:16, 60:10, 72:2, 80:17, 82:13, 83:25, 85:18, 88:5, 90:14, 91:15, 94:8, 94:16, 95:24, 98:8, 102:21, 113:22, 116:20, 116:22, 119:22, 120:5, 120:24, 122:21, 123:4, 124:24, 125:18, 131:18, 132:12, 136:12, 135:20, 137:13, 138:11, 140:5, 147:3, 147:9 building [i] - 4:19,</p>	<p>37:6, 38:5, 47:16, 50:12, 51:3, 51:18, 52:25, 54:10, 54:21, 55:6, 67:4, 73:7, 94:16, 94:23, 97:18 buildings [i] - 28:17 built [i] - 133:6 bunch [i] - 139:1 business [i] - 6:12, 6:14, 18:9, 21:24, 26:13, 41:13, 46:5, 58:20, 62:20, 78:6, 79:6, 80:19, 84:15, 102:5, 116:22, 116:24, 116:25, 117:5, 122:1, 124:11, 125:14, 128:4, 128:8, 128:19, 130:14, 131:4, 131:25, 132:13, 133:13, 135:20, 141:19, 141:24, 142:4 business/industry [i] - 121:3, 121:16 Butler [i] - 1:14, 1:21 buy [i] - 10:12, 61:12, 109:24, 113:6 buyer [i] - 24:12, 30:22, 33:6, 36:6, 39:16, 43:5, 48:19, 68:12, 66:24, 65:25, 67:6, 67:23, 69:9, 71:24, 72:4, 72:8, 76:6, 76:7, 77:5, 80:23, 80:24, 89:7, 93:15, 100:19, 102:9, 105:8, 105:19, 106:5, 108:14, 108:19, 109:16, 110:5, 110:26, 117:6, 140:5, 140:10, 142:24, 143:6, 145:20 buyer's [i] - 33:9, 35:20, 36:10, 37:7, 38:6, 38:24, 39:11, 49:18, 110:7 buyer's/tenant's [i] - 33:15 buyer/tenant [i] - 145:5, 145:9, 145:11 Buyers [i] - 2:11, 42:2, 42:5 buyers [i] - 20:12, 36:1, 46:23, 66:16, 96:21, 118:9, 138:22, 142:19, 143:8, 143:9 buying [i] - 67:1, 69:11, 103:21, 104:20 BY [i] - 3:5, 83:24,</p>

138:10, 142:13	67:19, 72:1, 82:18, 94:2, 125:14, 145:21	clarification (n) - 24:22, 60:9	commercial/	concurrence (n) - 106:13
C	cases (n) - 60:19, 62:13	clarified (v) - 23:25	agricultural (n) - 86:12, 98:20	condition (n) - 26:11, 46:5, 48:9, 73:25, 75:13, 76:8
cabinets (n) - 54:6	catchall (n) - 49:3	clarify (v) - 4:2, 44:10, 85:22	Commission (n) - 148:22	conduct (n) - 83:7, 83:9, 83:12, 83:15, 83:17, 110:5
cabins (n) - 28:10, 50:16, 61:21, 86:22, 126:9, 132:24, 135:5, 135:10, 135:13, 144:10, 144:14	categories (n) - 121:1, 142:18	class (n) - 8:16, 8:17, 121:25	commission (n) - 13:10, 14:1, 92:3, 92:11, 92:12, 92:23	conference (n) - 89:5, 89:23, 113:16
calendar (n) - 27:17, 27:19, 27:22, 27:24, 28:23, 131:10	Category (n) - 110:5	clear (v) - 21:12, 34:5, 44:19, 57:16, 64:11, 142:11	commissioned (n) - 148:6	confidentiality (n) - 31:13, 59:1, 59:12, 59:20
Campground (n) - 12:14, 61:1, 61:3, 61:5, 62:5, 84:1, 87:14, 135:25	category (n) - 99:2, 111:9, 145:11	clearer (n) - 43:20	commissions (n) - 92:25	confirm (n) - 50:16, 83:11, 139:4
campground (n) - 49:22, 80:18, 90:4, 90:12, 91:10, 93:4, 94:25, 100:1, 101:25, 103:15, 103:22, 104:7, 104:11, 104:15, 104:20, 108:25, 109:15, 113:9, 115:19, 115:22, 115:25, 116:3, 116:8, 116:8, 116:14, 116:20, 124:23, 125:15, 126:8, 129:4, 129:7, 129:9, 132:4, 132:8, 132:14, 132:23, 133:10, 134:4, 134:12, 135:14, 135:21, 136:1, 138:11, 139:16, 141:16, 143:25, 144:5	cell (n) - 25:15	client (n) - 39:7, 42:9, 67:20	common (n) - 11:2	consider (n) - 35:17
CAMPGROUND (n) - 1:8	Central (n) - 4:9	clients (n) - 10:12, 15:17, 23:23, 30:24, 32:8, 32:17, 34:23, 35:4, 68:7, 69:17, 69:25, 71:17, 75:6, 123:15, 142:17	communicate (n) - 134:14	considered (n) - 10:1
campgrounds (n) - 61:7, 61:8, 61:21, 64:2, 93:10, 93:14, 135:17	CERTIFICATE (n) - 149:2	close (n) - 13:11, 97:10, 103:16, 111:20, 118:12	Company (n) - 5:7, 5:18, 6:16	consist (n) - 8:19, 75:16
campsite (n) - 28:17	Certificate (n) - 2:20, 137:23	closed (n) - 21:16, 109:5, 113:24, 123:22, 126:19, 134:2	company (n) - 5:23, 6:1, 14:2, 17:6, 17:9, 17:11, 128:14	construction (n) - 4:17, 4:18, 4:19, 6:20, 6:22, 6:23, 6:25, 7:3, 7:5, 7:9, 37:20
cannot (n) - 11:11, 18:20	certificates (n) - 105:3	closing (n) - 29:9, 29:11, 29:22, 30:6, 105:7, 106:20, 110:19, 110:25, 111:3, 111:16, 126:22, 128:25, 127:22, 128:3, 128:20, 131:24, 137:24, 138:1, 141:5	compile (n) - 23:8	Construction (n) - 4:23
cap (n) - 78:4, 78:6, 78:9, 78:11, 78:12, 78:17, 79:11, 79:14, 79:16, 124:13, 124:14, 124:15	certification (n) - 9:9	Coal (n) - 5:7, 5:18	complete (n) - 13:17, 48:12, 50:3, 114:5	consulted (n) - 82:17
caption (n) - 120:25	certified (n) - 8:23	coal (n) - 6:1	completed (n) - 21:4, 21:23, 22:6, 75:19, 82:4, 94:25, 114:3	contact (n) - 16:14
car (n) - 117:1	certify (n) - 57:14, 146:7, 148:14	code (n) - 39:18, 41:22, 47:8, 47:16, 67:23, 97:24	completely (n) - 60:24	contacted (n) - 17:5, 64:15, 67:25, 80:25, 103:20, 116:18
care (n) - 31:15	change (n) - 28:7, 28:8, 40:1, 40:9, 44:4, 44:20, 44:21, 45:16, 96:21, 122:6, 147:7, 147:12	code (n) - 39:18, 41:22, 47:8, 47:16, 67:23, 97:24	completion (n) - 143:17, 143:18	contained (n) - 62:5
career (n) - 5:7, 5:15	change(s) (n) - 147:6	Coldwell (n) - 8:18, 9:1, 9:3, 9:7, 9:9, 9:22	compliance (n) - 38:18	contains (n) - 39:14, 68:16, 73:25
Carlson (n) - 67:25	changed (n) - 25:10, 44:16, 44:18, 44:24, 45:10, 45:11, 45:12, 50:12, 50:14, 66:21	collectively (n) - 118:12	compiled (n) - 120:21	contemporaneous (n) - 96:18
case (n) - 58:25, 59:23, 60:2, 60:22, 62:14, 63:2, 63:16,	Changes/	college (n) - 4:17, 6:3, 37:25	Complied (n) - 28:22, 50:4, 50:20, 63:16, 74:9, 94:14, 118:7, 142:16, 144:16	content (n) - 26:9, 48:15, 77:16
	Connections (n) - 147:10	collectively (n) - 118:12	conceal (n) - 72:17	CONTINUED (n) - 2:1
	charge (n) - 9:18	college (n) - 4:17, 6:3, 37:25	concealing (n) - 72:3, 72:5, 72:7	continues (n) - 122:6
	check (n) - 14:1, 14:7, 100:14, 108:19, 112:18, 112:20	college-educated (n) - 37:25	concern (n) - 106:24, 118:12, 119:15	Contract (n) - 2:16, 46:4, 106:9, 106:14, 114:3, 114:5, 114:19, 115:4, 117:10, 117:13, 118:2
	checked (n) - 121:2, 121:6, 121:10, 121:13	combination (n) - 106:25	concerned (n) - 67:12, 101:11, 105:21, 113:6, 134:3, 137:9	contract (n) - 25:9, 25:11, 29:4, 43:7, 44:5, 44:16, 44:23, 44:25, 45:2, 45:8, 45:14, 45:17, 102:10, 116:12, 138:19, 139:6
	checks (n) - 13:8, 13:10	comfortable (n) - 59:5, 59:19, 60:4, 119:3	concerning (n) - 33:18, 133:25	controller (n) - 7:23
	Christy (n) - 20:24, 20:25	commenced (n) - 137:7	concerns (n) - 80:2, 80:4, 104:19, 105:2, 107:19, 108:6, 108:8, 110:10, 110:20, 112:10, 115:18, 117:13, 117:22, 118:2, 119:11, 131:4	convenience (n) - 7:1
	CIRCUIT (n) - 1:1, 1:2	commercial (n) - 4:20, 65:5, 96:9, 96:10, 96:13, 121:15, 121:18, 121:19	concluded (n) - 146:3	convenient (n) - 35:23
	City (n) - 1:12, 1:16, 1:19, 1:23, 1:25, 3:10, 4:7, 4:9, 4:25, 148:18	Commercial (n) - 2:15	conclusion (n) - 13:25, 57:9	conversation (n) - 12:10, 16:16, 16:18, 81:13, 101:5, 101:17, 102:15, 113:18,
	claim (n) - 76:21			

<p>118:15, 118:22, 128:2, 128:15, 139:19 conversations [v] - 15:15, 88:1, 90:3, 105:1, 127:3, 127:23, 137:8, 139:2 copies [v] - 95:20 copy [v] - 59:2, 75:18, 95:11, 95:17, 98:4, 112:17, 114:4, 114:15, 124:18, 128:21, 129:22 correct [v] - 3:23, 10:20, 12:14, 12:15, 12:21, 13:9, 14:14, 17:21, 19:21, 21:15, 22:3, 24:5, 24:18, 25:13, 27:13, 29:5, 29:9, 30:10, 30:13, 33:22, 34:14, 34:20, 34:24, 35:2, 35:18, 36:20, 42:6, 42:12, 43:17, 44:2, 46:24, 47:1, 49:22, 51:10, 52:6, 53:17, 55:4, 55:7, 55:22, 57:21, 57:22, 64:23, 65:11, 69:20, 70:6, 71:11, 72:11, 73:19, 77:6, 77:20, 78:25, 82:5, 82:15, 83:2, 83:6, 83:8, 88:9, 89:16, 92:21, 97:20, 98:6, 98:7, 98:16, 100:11, 100:25, 101:1, 101:4, 103:12, 103:13, 105:11, 110:4, 121:8, 122:8, 122:11, 135:1, 139:4, 141:7, 142:16, 142:21, 142:22, 143:10, 143:11, 143:13, 143:14, 143:19, 143:20, 145:1, 145:6, 145:9, 145:10, 145:14, 145:15, 148:11 correction [v] - 147:7 correctly [v] - 12:19, 20:8, 25:1, 90:16 cost [v] - 105:19, 107:5 costly [v] - 36:25, 37:18, 38:3 costs [v] - 43:8, 65:11, 66:17 counsel [v] - 57:20, 58:20, 84:12, 148:16 Counseling [v] - 7:21, 8:1, 8:7</p>	<p>counties [v] - 107:22, 107:25 County [v] - 100:3, 108:1, 111:12 COUNTY [v] - 1:2, 148:3 couple [v] - 25:18, 82:7, 119:3, 119:9, 137:13, 138:9, 141:25, 142:11 couple-minute [v] - 82:7 course [v] - 50:11, 62:25, 84:15, 91:14, 91:25, 112:4, 116:21 COURT [v] - 1:1 court [v] - 22:17, 60:2, 60:3 Court [v] - 1:12, 148:5 courtesy [v] - 106:4 covenant [v] - 47:8 covenants [v] - 43:6, 47:16 create [v] - 26:5, 26:11, 84:23 created [v] - 26:2 CredR [v] - 7:21, 8:1, 8:7 Creek [v] - 61:13, 61:16, 61:19, 136:4, 138:9 creek [v] - 138:1 current [v] - 105:6 Custer [v] - 61:19</p>	<p>112:1, 112:16, 140:2 dates [v] - 84:19, 84:24 Dave [v] - 7:17, 9:4 days [v] - 10:9, 85:4 deal [v] - 33:20, 70:1, 81:20 deals [v] - 11:3, 11:8, 105:23 dealt [v] - 38:5 deceive [v] - 77:5 December [v] - 5:16 decision [v] - 32:20, 33:4, 49:18, 66:11, 66:18, 66:21, 110:23, 111:4, 140:13 deck [v] - 38:15, 65:3, 65:8, 65:10, 68:3 deed [v] - 25:9, 25:11, 29:5, 44:5, 44:15, 44:23, 44:25, 45:2, 45:8, 45:14, 45:17, 102:10, 115:12, 138:19 Deed [v] - 2:16, 46:4, 106:9, 108:14, 114:3, 114:6, 114:19, 118:4, 117:10, 117:13, 118:3 deemed [v] - 110:6 deep [v] - 54:16 defects [v] - 41:18, 68:21, 73:7 Defendant [v] - 120, 1:24 Defendants [v] - 1:10 define [v] - 52:24, 53:10 degree [v] - 6:14 denominated [v] - 98:19, 99:2, 115:4 DENR [v] - 108:8, 138:14 Department [v] - 64:16, 64:22, 65:2, 66:2, 67:3, 67:14, 137:10 depicted [v] - 55:3 depicts [v] - 94:15 deponent [v] - 147:3, 147:25 DEPONENT'S [v] - 147:1 deposed [v] - 82:23 deposition [v] - 3:1, 3:11, 15:5, 22:10, 38:21, 42:14, 59:16, 82:11, 86:2, 126:10,</p>	<p>127:6, 137:18, 146:3 Deposition [v] - 1:5 deposits [v] - 111:5 depth [v] - 84:5 describe [v] - 28:17, 52:22, 53:1, 54:22, 78:9 described [v] - 52:5, 52:20, 89:24, 144:4 describing [v] - 14:17 Description [v] - 62:6 description [v] - 26:13, 50:21, 51:24, 53:16, 97:9, 100:5 designated [v] - 9:4, 10:24, 147:25 Desired [v] - 147:12 detail [v] - 10:8, 16:6, 18:8, 125:10 determine [v] - 64:8 deirmine [v] - 32:9 diary [v] - 85:3 difference [v] - 9:16, 121:16 different [v] - 23:5, 53:24, 63:15, 75:7, 92:14, 96:12, 98:25, 107:15, 107:22, 110:3, 121:1, 132:17, 138:5, 138:8, 144:25 differently [v] - 132:23 difficult [v] - 3:19 diligence [v] - 31:15 diminish [v] - 73:15 disadvantage [v] - 32:5 disagree [v] - 62:9 disclose [v] - 33:7, 33:13, 33:18, 34:22, 35:3, 39:1, 40:17, 41:4, 48:23, 49:16, 66:23, 74:5 disclosed [v] - 41:9, 41:10, 41:15, 41:17, 48:19, 67:22, 71:23 Disclosure [v] - 12:11, 62:6, 63:24, 64:5, 64:9, 67:19 disclosure [v] - 31:11, 46:6, 46:9, 46:12, 46:21, 46:25, 47:7, 47:13, 48:3, 48:20, 49:4, 59:1, 89:6, 134:16, 134:23, 135:9, 135:15 disclosures [v] - 48:6</p>	<p>discuss [v] - 11:3, 11:8, 12:16, 12:19, 16:6, 58:4, 58:21, 78:4 discussed [v] - 99:22, 104:2, 104:23, 105:9, 107:6, 111:18 discussing [v] - 24:10, 59:13 discussion [v] - 79:14, 79:16, 93:18, 99:14, 99:18, 103:16, 103:18, 105:3, 105:21, 108:5, 131:1 discussions [v] - 12:10, 103:14, 104:6, 113:12 dishwasher [v] - 53:21, 54:6 displayed [v] - 97:18, 100:20 dispute [v] - 52:16, 83:4 dissimilar [v] - 138:12 distinction [v] - 121:15 divorce [v] - 82:19 document [v] - 14:9, 30:2, 30:4, 30:12, 30:17, 30:20, 31:1, 33:22, 34:8, 43:12, 45:23, 59:20, 68:2, 66:14, 67:16, 67:20, 91:8, 94:2, 94:3, 94:9, 94:20, 94:22, 95:5, 97:5, 98:18, 101:6, 110:10, 115:4, 120:24, 122:5, 122:24, 137:25 documentation [v] - 27:6 documents [v] - 22:25, 23:9, 94:2, 84:4, 84:5, 84:12, 84:13, 86:1, 86:23, 87:12, 87:17, 87:24, 90:22, 114:20, 115:16, 122:15, 123:5, 139:25, 140:23 dollar [v] - 92:1, 92:2 dollars [v] - 66:17 done [v] - 19:4, 43:16, 44:8, 81:25, 91:10, 92:17, 96:18, 96:24, 108:24, 110:11, 113:13, 121:3, 131:13, 132:11, 136:18, 137:13, 137:23</p>
---	--	--	---	---

<p>DOT [v] - 2:14 Douglas [v] - 5:22 down [v] - 27:21, 33:11, 38:11, 97:22, 102:7, 103:3, 110:16, 115:10, 117:14, 122:12, 132:16, 132:25 drafted [v] - 30:2, 45:2, 50:16, 144:20 draw [v] - 120:5 drawn [v] - 138:12 Drive [v] - 1:19, 1:25 drive [v] - 50:13, 74:12, 74:15 dryer [v] - 54:16 dual [v] - 142:20, 143:4, 144:1, 145:16 DUANE [v] - 1:4 Duane [v] - 2:2, 2:14, 3:7, 70:8, 77:23, 78:21, 78:23, 79:5, 79:20, 80:1, 80:6, 81:19, 85:13, 87:4, 87:10, 89:12, 90:7, 100:21, 101:5, 101:17, 102:22, 112:20, 113:1, 113:5, 114:16, 115:11, 117:20, 117:23, 117:25, 119:1, 119:8, 123:21, 123:25, 124:1, 127:17, 127:23, 128:3, 128:14, 129:2, 129:12, 133:16, 134:1, 134:10, 137:8, 139:2, 141:15 due [v] - 72:13 duty [v] - 3:3, 148:6 dumb [v] - 63:1 duplex [v] - 144:12 during [v] - 18:23, 20:7, 20:18, 21:3, 21:12, 23:16, 23:24, 24:2, 24:4, 24:14, 24:17, 24:24, 25:2, 30:6, 49:24, 50:11, 50:14, 71:6, 72:20, 81:19, 81:23, 86:1, 128:5, 131:9 duties [v] - 13:7, 14:17, 31:3, 31:8, 31:19, 34:19 duty [v] - 32:15, 32:16 dwelling [v] - 53:10, 144:6 dwellings [v] - 144:15</p>	<p>E</p> <p>e-mail [v] - 134:14 early [v] - 130:15 earnest [v] - 99:7, 112:18 educate [v] - 78:15 educated [v] - 37:25 education [v] - 4:8, 4:12 effect [v] - 88:17, 97:4 effort [v] - 23:9, 72:17 egress [v] - 97:25 either [v] - 19:24, 22:8, 26:1, 27:23, 29:24, 32:7, 33:17, 40:16, 79:24, 85:24, 85:3, 109:16, 145:4 elapsed [v] - 90:24 ellipses [v] - 133:24 employed [v] - 148:15 encroaching [v] - 65:4 end [v] - 11:17, 42:12, 76:12, 102:9 enforcement [v] - 43:9 enjoyment [v] - 33:9, 33:15, 35:21, 36:8, 36:10, 37:3, 37:8, 38:6, 38:16, 38:25, 39:11, 39:16, 39:19, 39:23, 40:2, 40:11, 68:4, 68:8 entail [v] - 6:22 entails [v] - 26:10 enter [v] - 142:20 entered [v] - 42:14, 127:6 entire [v] - 5:4, 6:3, 14:4, 14:13, 56:1, 141:13 entity [v] - 99:19, 100:10, 104:5 entrust [v] - 69:25 environmental [v] - 6:21 equipment [v] - 108:15, 118:11, 122:16 ERLANDSON [v] - 1:20, 2:9, 11:22, 12:2, 17:13, 21:25, 22:4, 22:9, 22:14, 28:8, 29:16, 31:5, 31:8, 31:21, 32:22, 34:9, 34:15, 34:25, 35:22, 38:18, 43:15, 43:19, 43:22, 46:19, 46:1, 48:9, 49:11, 57:8, 57:12, 57:15, 58:21, 58:25, 59:11, 59:17, 60:8, 62:10, 62:22, 63:3, 63:5, 63:7, 63:10, 63:14, 63:18, 63:21, 67:11, 70:2, 71:12, 71:25, 73:8, 73:16, 81:21, 82:9, 86:8, 86:10, 88:13, 140:8, 140:15, 142:10, 142:13, 145:24, 146:2 Erlandson's [v] - 98:22 escrow [v] - 108:17 established [v] - 50:15, 55:21 estate [v] - 8:5, 8:11, 8:16, 11:2, 20:18, 33:6, 34:24, 35:9, 35:17, 49:10, 56:12, 56:19, 56:22, 57:7, 57:19, 58:9, 62:20, 62:22, 70:5, 83:7, 83:12, 83:15, 86:11, 87:11, 89:3, 91:9, 91:22, 93:19, 98:19, 106:19, 142:18 Estate [v] - 2:10, 2:15, 2:20, 137:23 estimate [v] - 26:23, 85:18, 91:19 evaluate [v] - 141:24 evaluation [v] - 60:10 event [v] - 143:13, 148:17 evidencing [v] - 128:22 exact [v] - 7:6, 24:14, 25:20, 80:9 exactly [v] - 84:5 EXAMINATION [v] - 3:5, 83:24, 138:10, 142:13 Examination [v] - 2:7, 2:8, 2:8, 2:9 examined [v] - 118:10 examples [v] - 35:20, 36:7, 39:2 excess [v] - 72:21 exclusive [v] - 120:25, 143:8 Exclusive [v] - 2:17, 26:5, 28:15, 119:23</p>	<p>exclusively [v] - 36:2, 36:4, 142:19, 142:25 excuse [v] - 11:25, 16:13 executed [v] - 45:25, 77:19, 138:1 executing [v] - 43:12 execution [v] - 30:4, 139:3, 139:8 exhibit [v] - 74:8, 97:19, 120:13, 121:20, 142:23 Exhibit [v] - 26:20, 30:9, 32:25, 33:12, 34:14, 34:20, 38:24, 40:16, 42:1, 42:2, 43:24, 43:25, 44:11, 44:12, 44:13, 45:23, 49:20, 49:21, 50:6, 52:6, 64:20, 64:21, 84:9, 84:10, 84:24, 86:5, 86:8, 86:22, 87:3, 87:5, 87:11, 87:19, 87:20, 88:3, 88:4, 88:6, 88:7, 88:9, 88:11, 88:24, 83:20, 94:3, 94:13, 94:24, 95:7, 95:8, 95:10, 95:11, 95:13, 95:23, 96:7, 96:15, 97:1, 97:15, 98:4, 98:5, 98:8, 98:12, 101:23, 102:3, 102:22, 103:10, 106:24, 107:3, 108:22, 110:22, 112:17, 112:24, 112:25, 114:9, 114:15, 114:24, 115:1, 115:2, 115:7, 117:11, 118:5, 118:19, 119:7, 119:20, 119:21, 119:22, 120:8, 120:19, 120:22, 120:23, 121:21, 121:22, 122:4, 123:3, 123:4, 123:19, 123:24, 124:24, 126:20, 126:21, 127:9, 131:19, 137:20, 137:21, 139:13, 142:14, 142:23, 143:5, 144:17 EXHIBITS [v] - 2:10 exhibits [v] - 43:16, 77:19 existed [v] - 94:9 existence [v] - 71:22, 73:14</p>	<p>exists [v] - 95:4, 98:12 expect [v] - 48:10, 70:5, 126:13, 129:8 expected [v] - 125:23 expense [v] - 22:21, 22:24, 23:4, 23:9, 80:24, 110:7, 140:12 expenses [v] - 78:11 experience [v] - 48:18, 91:16, 104:14, 106:18, 109:25, 113:9 experienced [v] - 35:17, 38:12 export [v] - 57:3, 57:8, 57:18, 57:23, 58:1, 59:22, 60:19, 62:9, 62:13, 62:19, 62:24, 63:5, 63:7, 73:18, 82:14, 83:11, 83:14, 83:17, 136:17 experts [v] - 62:23 expired [v] - 143:15 Expires [v] - 148:22 explain [v] - 30:21, 30:23, 36:7, 41:8, 44:20, 80:21, 139:14 explained [v] - 88:9 explaining [v] - 30:24 express [v] - 104:19, 106:24</p>	<p>F</p> <p>fact [v] - 26:15, 31:19, 49:3, 49:4, 51:7, 52:14, 64:17, 73:1, 75:10, 76:22, 78:19, 79:2, 87:24, 88:15, 103:15, 120:8 facts [v] - 32:20, 33:3, 33:8, 33:14, 34:23, 35:4, 39:1, 62:14 failed [v] - 138:16 fails [v] - 49:16 fair [v] - 3:20, 4:4, 19:3, 26:23, 73:11, 81:5, 81:20, 83:20, 94:5, 102:4, 124:24, 139:5, 142:1, 142:6, 144:23 fairly [v] - 33:20 fall [v] - 47:17, 142:16, 144:23 falls [v] - 39:15 false [v] - 80:16</p>
---	---	---	--	---

<p>familiar [f] - 26:7, 26:9, 26:12, 46:6, 48:12, 60:18, 60:22, 60:25, 64:12, 70:12, 70:20</p> <p>familiarity [f] - 136:15</p> <p>familiarize [f] - 119:25</p> <p>family [f] - 121:6, 121:12, 144:5, 144:15</p> <p>far [f] - 4:15, 20:11, 62:25</p> <p>faulty [f] - 39:15, 68:25</p> <p>features [f] - 122:12</p> <p>February [f] - 8:14, 35:10</p> <p>federal [f] - 37:11, 65:7, 67:8</p> <p>fee [f] - 43:8, 92:2, 92:22</p> <p>feet [f] - 65:4</p> <p>few [f] - 3:15, 142:11</p> <p>figures [f] - 80:25</p> <p>file [f] - 14:1, 14:3, 14:4, 14:6, 14:13, 15:20, 15:21, 17:16, 27:10, 75:24, 82:5, 84:5, 84:18, 122:15, 122:18, 123:1, 123:11</p> <p>files [f] - 13:8, 14:10</p> <p>fill [f] - 98:13</p> <p>filled [f] - 98:10, 99:23</p> <p>finance [f] - 29:4</p> <p>financial [f] - 16:21, 17:20, 39:22, 75:13, 75:15, 76:6, 78:1, 79:9, 81:2, 81:6, 115:21, 116:15, 117:6, 122:16, 124:18, 124:22, 125:5, 127:5, 127:17, 132:7, 140:5, 140:11, 140:17, 140:23, 141:6, 141:12</p> <p>financials [f] - 21:23, 22:1, 22:2, 22:7</p> <p>financials" [f] - 22:11</p> <p>financing [f] - 102:7</p> <p>fine [f] - 29:17, 45:17, 60:7, 69:7, 119:10</p> <p>finish [f] - 3:16, 3:22, 24:6, 52:2</p> <p>fire [f] - 47:11, 47:16</p> <p>first [f] - 3:3, 9:5, 18:16, 18:23, 33:12, 43:3, 77:9, 86:4, 87:8, 87:18, 88:19, 89:2, 89:17, 90:7, 90:24, 91:6, 97:19, 99:1, 99:14, 100:13, 103:20, 107:14, 114:10, 114:11, 115:14, 123:21, 124:21, 125:2, 142:16, 145:3</p> <p>five [f] - 10:9, 26:21, 61:9, 79:24, 93:9, 93:13, 104:10, 116:12, 121:1, 125:8, 137:12, 137:16</p> <p>fixtures [f] - 118:11</p> <p>flip [f] - 53:13</p> <p>flooded [f] - 70:23</p> <p>flooding [f] - 71:22, 72:13</p> <p>floodplain [f] - 47:19</p> <p>floods [f] - 41:24</p> <p>focus [f] - 131:20</p> <p>follow [f] - 34:13, 34:19, 57:20</p> <p>followed [f] - 109:6</p> <p>following [f] - 92:8, 147:6</p> <p>follows [f] - 3:4</p> <p>food [f] - 61:24, 126:9, 127:21, 127:25, 128:3, 128:9, 128:17, 128:21, 133:12, 133:18</p> <p>forecasted [f] - 126:1</p> <p>foregoing [f] - 147:5, 148:8, 148:11</p> <p>form [f] - 11:22, 21:25, 22:4, 22:9, 26:8, 31:5, 31:9, 31:21, 32:22, 34:9, 34:15, 34:25, 35:22, 42:8, 46:19, 48:1, 48:3, 48:20, 49:5, 49:11, 70:2, 71:12, 71:25, 73:8, 73:16, 81:21, 88:12, 134:15, 140:8, 140:15, 144:20, 148:10</p> <p>forms [f] - 12:24, 13:18, 14:2</p> <p>Fort [f] - 61:13, 61:14, 61:19</p> <p>forth [f] - 31:1, 34:19</p> <p>foundation [f] - 67:10</p> <p>Founders [f] - 1:25</p> <p>four [f] - 7:8, 7:12, 35:2, 64:2, 79:23, 79:24, 91:14, 107:15, 138:12, 138:21</p> <p>Fourche [f] - 21:1</p> <p>Foye [f] - 1:15, 1:21</p> <p>Frederick [f] - 82:20</p> <p>freeze [f] - 54:16</p> <p>freezer/refrigerator [f] - 54:5</p> <p>friend [f] - 18:1</p> <p>friends [f] - 18:6</p> <p>front [f] - 85:25, 95:5, 95:25</p> <p>fulfill [f] - 33:17, 40:18, 41:6</p> <p>full [f] - 3:8, 31:17, 54:19, 55:6, 93:5, 93:7, 93:15</p> <p>full-price [f] - 93:7, 93:15</p> <p>function [f] - 85:3</p> <p>furniture [f] - 116:11</p> <p>FURTHER [f] - 138:10</p> <p>G</p> <p>gas [f] - 5:25</p> <p>gatherings [f] - 50:13</p> <p>Gene [f] - 9:25, 55:21, 56:7, 56:16, 57:2, 57:5, 60:19, 62:4, 136:17</p> <p>gene [f] - 10:1, 55:24, 56:11, 56:16, 57:17, 57:23, 63:1, 63:3, 63:11</p> <p>general [f] - 58:7, 95:1, 104:14</p> <p>generally [f] - 25:21, 68:16, 72:22, 78:9, 104:15, 123:24, 127:16, 137:22</p> <p>gentleman [f] - 51:13</p> <p>Georgas [f] - 10:23, 11:9</p> <p>GIS [f] - 111:12</p> <p>given [f] - 11:21, 12:5, 22:1, 22:5, 26:14, 71:5, 73:18, 125:13, 148:12</p> <p>globally [f] - 115:14, 117:12</p> <p>go-around [f] - 19:13</p> <p>goal [f] - 76:9</p> <p>graduated [f] - 4:9, 4:11</p> <p>Greg [f] - 15:5, 59:19, 60:5, 60:10, 82:8, 120:18</p> <p>GREGORY [f] - 1:20</p> <p>grill [f] - 49:22, 100:1</p> <p>GRIMM [f] - 1:9, 2:19, 2:20</p> <p>Grimm [f] - 1:24, 17:2, 17:25, 18:1, 18:9, 22:1, 22:8, 22:19, 25:10, 32:8, 42:19, 45:4, 45:10, 45:13, 45:25, 64:15, 64:22, 65:3, 65:13, 65:22, 67:7, 67:25, 68:8, 70:9, 70:19, 71:7, 71:10, 72:13, 72:16, 73:5, 74:20, 74:25, 75:15, 81:3, 81:9, 81:11, 84:1, 85:16, 89:15, 89:21, 89:24, 90:3, 90:7, 90:24, 95:4, 96:20, 100:9, 100:22, 101:16, 103:7, 103:20, 104:5, 105:10, 105:24, 106:1, 106:10, 106:11, 106:12, 111:7, 111:19, 112:4, 112:12, 113:17, 113:19, 117:18, 118:1, 119:24, 123:7, 128:14, 128:16, 129:19, 131:13, 133:12, 138:2, 139:9, 139:18, 139:22, 140:18, 141:25, 142:3</p> <p>Grimm's [f] - 45:1</p> <p>grocery [f] - 117:2</p> <p>ground [f] - 3:15</p> <p>group [f] - 144:23</p> <p>Groves [f] - 20:22</p> <p>grow [f] - 4:6</p> <p>guess [f] - 83:10, 91:24, 107:25, 141:22</p> <p>guesstimate [f] - 23:21</p> <p>guidelines [f] - 64:7</p> <p>guy [f] - 56:18</p> <p>H</p> <p>Hagg [f] - 44:22, 45:2, 45:11, 45:15, 45:19, 45:20, 46:3, 114:3, 114:5, 114:19, 115:5, 115:9, 117:18, 117:21</p> <p>half [f] - 9:8, 18:22, 54:25, 55:13, 79:6, 97:21, 139:10</p> <p>hand [f] - 148:18</p> <p>handbook [f] - 14:16</p> <p>handwriting [f] - 42:17, 99:11</p> <p>handwritten [f] - 42:16, 85:9</p> <p>handyman [f] - 51:17</p> <p>happy [f] - 59:2</p> <p>harassment [f] - 62:17</p> <p>hard [f] - 73:10</p> <p>harder [f] - 74:3</p> <p>Havasu [f] - 60:23</p> <p>hazardous [f] - 36:18, 36:20, 36:23, 73:21, 73:25</p> <p>head [f] - 3:18, 36:12, 79:4, 79:21, 109:23</p> <p>hear [f] - 69:4</p> <p>heard [f] - 52:11, 52:12</p> <p>heart [f] - 48:11</p> <p>heater [f] - 41:16</p> <p>heating [f] - 109:19</p> <p>held [f] - 100:10</p> <p>help [f] - 10:12, 64:9, 141:25</p> <p>helped [f] - 61:12</p> <p>helpful [f] - 48:4</p> <p>helps [f] - 12:23</p> <p>Hensley [f] - 9:25, 10:5, 10:20, 11:8, 55:21, 57:2, 57:5, 60:19, 62:4</p> <p>Hensley's [f] - 62:9, 62:12, 136:17</p> <p>high [f] - 4:16</p> <p>higher [f] - 92:4</p> <p>highlighting [f] - 43:16</p> <p>highway [f] - 65:5</p> <p>Hills [f] - 4:11, 4:12, 6:12, 144:22</p> <p>himself [f] - 62:20, 118:23</p> <p>hire [f] - 69:17</p> <p>hired [f] - 9:24, 63:3, 63:8</p> <p>historically [f] - 128:4, 128:8</p> <p>history [f] - 4:14</p> <p>hold [f] - 57:8, 62:10</p> <p>home [f] - 67:20, 67:24, 83:5, 96:11,</p>	<p>18:16, 18:23, 33:12, 43:3, 77:9, 86:4, 87:8, 87:18, 88:19, 89:2, 89:17, 90:7, 90:24, 91:6, 97:19, 99:1, 99:14, 100:13, 103:20, 107:14, 114:10, 114:11, 115:14, 123:21, 124:21, 125:2, 142:16, 145:3</p> <p>five [f] - 10:9, 26:21, 61:9, 79:24, 93:9, 93:13, 104:10, 116:12, 121:1, 125:8, 137:12, 137:16</p> <p>fixtures [f] - 118:11</p> <p>flip [f] - 53:13</p> <p>flooded [f] - 70:23</p> <p>flooding [f] - 71:22, 72:13</p> <p>floodplain [f] - 47:19</p> <p>floods [f] - 41:24</p> <p>focus [f] - 131:20</p> <p>follow [f] - 34:13, 34:19, 57:20</p> <p>followed [f] - 109:6</p> <p>following [f] - 92:8, 147:6</p> <p>follows [f] - 3:4</p> <p>food [f] - 61:24, 126:9, 127:21, 127:25, 128:3, 128:9, 128:17, 128:21, 133:12, 133:18</p> <p>forecasted [f] - 126:1</p> <p>foregoing [f] - 147:5, 148:8, 148:11</p> <p>form [f] - 11:22, 21:25, 22:4, 22:9, 26:8, 31:5, 31:9, 31:21, 32:22, 34:9, 34:15, 34:25, 35:22, 42:8, 46:19, 48:1, 48:3, 48:20, 49:5, 49:11, 70:2, 71:12, 71:25, 73:8, 73:16, 81:21, 88:12, 134:15, 140:8, 140:15, 144:20, 148:10</p> <p>forms [f] - 12:24, 13:18, 14:2</p> <p>Fort [f] - 61:13, 61:14, 61:19</p> <p>forth [f] - 31:1, 34:19</p> <p>foundation [f] - 67:10</p> <p>Founders [f] - 1:25</p> <p>four [f] - 7:8, 7:12,</p>	<p>35:2, 64:2, 79:23, 79:24, 91:14, 107:15, 138:12, 138:21</p> <p>Fourche [f] - 21:1</p> <p>Foye [f] - 1:15, 1:21</p> <p>Frederick [f] - 82:20</p> <p>freeze [f] - 54:16</p> <p>freezer/refrigerator [f] - 54:5</p> <p>friend [f] - 18:1</p> <p>friends [f] - 18:6</p> <p>front [f] - 85:25, 95:5, 95:25</p> <p>fulfill [f] - 33:17, 40:18, 41:6</p> <p>full [f] - 3:8, 31:17, 54:19, 55:6, 93:5, 93:7, 93:15</p> <p>full-price [f] - 93:7, 93:15</p> <p>function [f] - 85:3</p> <p>furniture [f] - 116:11</p> <p>FURTHER [f] - 138:10</p> <p>G</p> <p>gas [f] - 5:25</p> <p>gatherings [f] - 50:13</p> <p>Gene [f] - 9:25, 55:21, 56:7, 56:16, 57:2, 57:5, 60:19, 62:4, 136:17</p> <p>gene [f] - 10:1, 55:24, 56:11, 56:16, 57:17, 57:23, 63:1, 63:3, 63:11</p> <p>general [f] - 58:7, 95:1, 104:14</p> <p>generally [f] - 25:21, 68:16, 72:22, 78:9, 104:15, 123:24, 127:16, 137:22</p> <p>gentleman [f] - 51:13</p> <p>Georgas [f] - 10:23, 11:9</p> <p>GIS [f] - 111:12</p> <p>given [f] - 11:21, 12:5, 22:1, 22:5, 26:14, 71:5, 73:18, 125:13, 148:12</p> <p>globally [f] - 115:14, 117:12</p> <p>go-around [f] - 19:13</p> <p>goal [f] - 76:9</p> <p>graduated [f] - 4:9,</p>	<p>4:11</p> <p>Greg [f] - 15:5, 59:19, 60:5, 60:10, 82:8, 120:18</p> <p>GREGORY [f] - 1:20</p> <p>grill [f] - 49:22, 100:1</p> <p>GRIMM [f] - 1:9, 2:19, 2:20</p> <p>Grimm [f] - 1:24, 17:2, 17:25, 18:1, 18:9, 22:1, 22:8, 22:19, 25:10, 32:8, 42:19, 45:4, 45:10, 45:13, 45:25, 64:15, 64:22, 65:3, 65:13, 65:22, 67:7, 67:25, 68:8, 70:9, 70:19, 71:7, 71:10, 72:13, 72:16, 73:5, 74:20, 74:25, 75:15, 81:3, 81:9, 81:11, 84:1, 85:16, 89:15, 89:21, 89:24, 90:3, 90:7, 90:24, 95:4, 96:20, 100:9, 100:22, 101:16, 103:7, 103:20, 104:5, 105:10, 105:24, 106:1, 106:10, 106:11, 106:12, 111:7, 111:19, 112:4, 112:12, 113:17, 113:19, 117:18, 118:1, 119:24, 123:7, 128:14, 128:16, 129:19, 131:13, 133:12, 138:2, 139:9, 139:18, 139:22, 140:18, 141:25, 142:3</p> <p>Grimm's [f] - 45:1</p> <p>grocery [f] - 117:2</p> <p>ground [f] - 3:15</p> <p>group [f] - 144:23</p> <p>Groves [f] - 20:22</p> <p>grow [f] - 4:6</p> <p>guess [f] - 83:10, 91:24, 107:25, 141:22</p> <p>guesstimate [f] - 23:21</p> <p>guidelines [f] - 64:7</p> <p>guy [f] - 56:18</p> <p>H</p> <p>Hagg [f] - 44:22, 45:2, 45:11, 45:15, 45:19, 45:20, 46:3, 114:3, 114:5, 114:19, 115:5, 115:9, 117:18,</p>	<p>117:21</p> <p>half [f] - 9:8, 18:22, 54:25, 55:13, 79:6, 97:21, 139:10</p> <p>hand [f] - 148:18</p> <p>handbook [f] - 14:16</p> <p>handwriting [f] - 42:17, 99:11</p> <p>handwritten [f] - 42:16, 85:9</p> <p>handyman [f] - 51:17</p> <p>happy [f] - 59:2</p> <p>harassment [f] - 62:17</p> <p>hard [f] - 73:10</p> <p>harder [f] - 74:3</p> <p>Havasu [f] - 60:23</p> <p>hazardous [f] - 36:18, 36:20, 36:23, 73:21, 73:25</p> <p>head [f] - 3:18, 36:12, 79:4, 79:21, 109:23</p> <p>hear [f] - 69:4</p> <p>heard [f] - 52:11, 52:12</p> <p>heart [f] - 48:11</p> <p>heater [f] - 41:16</p> <p>heating [f] - 109:19</p> <p>held [f] - 100:10</p> <p>help [f] - 10:12, 64:9, 141:25</p> <p>helped [f] - 61:12</p> <p>helpful [f] - 48:4</p> <p>helps [f] - 12:23</p> <p>Hensley [f] - 9:25, 10:5, 10:20, 11:8, 55:21, 57:2, 57:5, 60:19, 62:4</p> <p>Hensley's [f] - 62:9, 62:12, 136:17</p> <p>high [f] - 4:16</p> <p>higher [f] - 92:4</p> <p>highlighting [f] - 43:16</p> <p>highway [f] - 65:5</p> <p>Hills [f] - 4:11, 4:12, 6:12, 144:22</p> <p>himself [f] - 62:20, 118:23</p> <p>hire [f] - 69:17</p> <p>hired [f] - 9:24, 63:3, 63:8</p> <p>historically [f] - 128:4, 128:8</p> <p>history [f] - 4:14</p> <p>hold [f] - 57:8, 62:10</p> <p>home [f] - 67:20, 67:24, 83:5, 96:11,</p>
---	--	--	--	--

100:25 homes [i] - 75:7 honest [z] - 58:5, 77:1 honestly [z] - 33:19, 33:20, 46:15, 52:1, 133:24 Horse [i] - 60:25, 61:3, 61:5, 62:5, 135:25, 136:4, 136:9 horse [z] - 136:1, 136:5, 136:9 hours [i] - 141:15 house [i] - 11:14, 12:7, 36:13, 36:15, 73:22, 73:24, 98:22, 138:21, 138:25 houses [i] - 109:24 Howie [i] - 56:8 Hudson [i] - 13:2 human [i] - 51:4 hundred [i] - 92:11 hundreds [i] - 35:15 husband [i] - 83:4 hypothetically [z] - 38:13, 76:25, 92:17	Improper [z] - 75:11, 80:19, 80:25, 139:19 improvement [z] - 76:11, 76:12, 76:13, 76:19, 76:21 improvements [z] - 76:16, 77:1, 77:5, 94:25 IN [i] - 1:1 inaccurate [i] - 39:22 inappropriate [z] - 76:18, 77:2 include [z] - 12:10, 47:11, 61:21, 64:4, 82:25 Included [z] - 46:17, 58:10, 105:13, 111:15, 111:23 includes [z] - 32:16, 54:5 including [z] - 77:18, 107:1 Inclusive [i] - 147:5 income [i] - 22:23, 22:24, 23:8, 52:25, 53:5, 78:12, 80:5, 80:24, 97:14, 116:17, 135:13, 140:11 Income-producing [z] - 62:25, 97:14 Incorporated [i] - 120:10 incorporates [i] - 42:11 Incurred [i] - 66:17 indicate [z] - 27:7, 45:7, 45:13 Indicated [z] - 70:22, 138:11 indicates [z] - 27:10, 29:1, 40:16, 43:4, 53:21, 54:24, 74:12, 74:16, 143:12 indicating [z] - 53:25, 78:3, 114:7 indicating [z] - 30:17, 44:20 individual [i] - 99:20 industry [z] - 49:10, 107:11, 108:18, 113:10, 122:1, 142:18 inflate [i] - 76:18 inform [z] - 32:19, 33:2, 45:22, 68:12, 79:5, 79:11 Information [z] - 15:6, 15:7, 16:17, 16:19, 16:21, 17:12, 17:17, 17:18, 17:21,	33:16, 40:17, 41:4, 75:14, 75:15, 75:23, 75:25, 76:3, 81:2, 81:6, 83:21, 90:16, 93:18, 93:24, 97:3, 98:9, 99:7, 99:12, 100:2, 101:15, 102:12, 114:5, 114:18, 115:21, 115:25, 116:3, 116:5, 116:15, 117:7, 121:22, 122:17, 123:8, 123:10, 123:15, 123:23, 124:18, 124:22, 125:5, 127:5, 128:25, 132:7, 134:8, 134:7, 140:5, 146:11, 140:17, 141:2, 141:7, 141:12 Informed [i] - 65:13 informing [i] - 65:3 Ingress [i] - 97:25 Initials [i] - 100:20, 100:21 initiated [i] - 16:3 Initiation [i] - 84:14 Inner [i] - 122:2 Inquire [z] - 129:7, 130:13 Inquired [i] - 70:14 Inquiry [i] - 101:11, 102:4, 108:23, 108:7, 110:10, 115:18, 116:15, 126:4, 126:13, 128:16, 131:24 Insights [z] - 98:9, 98:12 inspect [z] - 75:4, 108:14, 118:16, 118:24 inspected [z] - 20:16, 107:23, 109:18 inspection [z] - 19:4, 21:4, 81:24, 82:4, 108:24, 109:8, 109:13, 110:6 inspections [z] - 24:15, 26:4, 36:14, 107:14, 107:16, 110:11, 110:14, 110:18, 118:25 inspector [i] - 109:25 instance [z] - 96:11, 97:1, 121:5, 133:12, 135:1, 136:22, 145:19, 145:22 instead [z] - 44:17	insurance [z] - 17:6, 17:9, 17:10, 108:19, 107:5 intended [i] - 118:23 interaction [i] - 113:24 interest [z] - 20:10, 23:16, 24:13, 90:4, 148:17 interested [i] - 103:21 interests [z] - 20:9, 32:7 interrogatories [i] - 15:9 interrogatory [i] - 15:17 interrupt [i] - 22:14 inventory [i] - 105:19 investor [i] - 99:16 invoicing [i] - 13:10 involve [z] - 58:9, 58:13, 83:7 Involved [i] - 12:24, 15:3, 20:18, 21:4, 23:22, 60:10, 93:10, 104:5, 104:10, 109:15, 116:21, 116:22 involvement [i] - 45:20 involving [z] - 64:20, 104:11, 108:11, 117:4 Irrelevant [z] - 62:16, 140:7 issue [z] - 68:7, 68:13, 137:9, 137:10 issues [z] - 48:23, 49:16, 70:10, 70:14, 72:17, 78:1 issuing [i] - 14:5 item [i] - 105:2, 105:12, 105:16, 105:21, 105:23, 106:6, 106:8, 106:19, 107:16, 108:4, 108:8, 108:14, 110:5 items [z] - 41:9, 41:14, 89:9, 89:10, 107:3, 107:15 iteration [z] - 94:19, 122:9 IVERSON [z] - 1:6, 1:9, 2:6, 3:2 Iverson [z] - 1:21, 3:9, 84:8, 108:23, 137:19, 138:8, 142:10, 147:3, 147:9 Iverson's [i] - 84:13	J Jackson [i] - 3:9 January [i] - 137:7 Jeanne [i] - 1:11 JEANNE [z] - 148:5, 148:21 Jester [i] - 1:18 Job [z] - 4:14, 10:9 JOHN [i] - 1:24 John [z] - 83:25, 85:23 Johnsen [i] - 4:24 join [i] - 87:11 Judge [i] - 131:12 JUDICIAL [i] - 1:2 July [z] - 119:24, 127:9, 127:10, 127:13, 128:2, 129:11 June [z] - 21:13, 124:25, 125:4, 126:13, 125:17, 126:12, 127:4, 127:13, 141:5 Jury [i] - 60:2
I idea [i] - 66:15, 105:16, 108:17, 108:9, 108:15, 111:6, 133:5 ideas [i] - 141:25 identifiable [i] - 84:16 identification [i] - 28:20, 30:9, 42:1, 43:24, 44:11, 49:20, 64:20, 84:10, 88:4, 95:8, 115:1, 119:21, 120:22, 123:3, 126:20, 137:21 identified [z] - 84:24, 91:9, 93:9, 94:2, 99:25, 102:24, 107:15, 116:16, 121:22 Identify [z] - 84:16, 85:4, 94:21, 94:25, 98:9, 122:22 identifying [i] - 99:22 immediately [z] - 22:5 impact [z] - 33:17, 40:18, 41:5 important [z] - 3:15, 3:17, 49:9	improper [z] - 75:11, 80:19, 80:25, 139:19 improvement [z] - 76:11, 76:12, 76:13, 76:19, 76:21 improvements [z] - 76:16, 77:1, 77:5, 94:25 IN [i] - 1:1 inaccurate [i] - 39:22 inappropriate [z] - 76:18, 77:2 include [z] - 12:10, 47:11, 61:21, 64:4, 82:25 Included [z] - 46:17, 58:10, 105:13, 111:15, 111:23 includes [z] - 32:16, 54:5 including [z] - 77:18, 107:1 Inclusive [i] - 147:5 income [i] - 22:23, 22:24, 23:8, 52:25, 53:5, 78:12, 80:5, 80:24, 97:14, 116:17, 135:13, 140:11 Income-producing [z] - 62:25, 97:14 Incorporated [i] - 120:10 incorporates [i] - 42:11 Incurred [i] - 66:17 indicate [z] - 27:7, 45:7, 45:13 Indicated [z] - 70:22, 138:11 indicates [z] - 27:10, 29:1, 40:16, 43:4, 53:21, 54:24, 74:12, 74:16, 143:12 indicating [z] - 53:25, 78:3, 114:7 indicating [z] - 30:17, 44:20 individual [i] - 99:20 industry [z] - 49:10, 107:11, 108:18, 113:10, 122:1, 142:18 inflate [i] - 76:18 inform [z] - 32:19, 33:2, 45:22, 68:12, 79:5, 79:11 Information [z] - 15:6, 15:7, 16:17, 16:19, 16:21, 17:12, 17:17, 17:18, 17:21,	33:16, 40:17, 41:4, 75:14, 75:15, 75:23, 75:25, 76:3, 81:2, 81:6, 83:21, 90:16, 93:18, 93:24, 97:3, 98:9, 99:7, 99:12, 100:2, 101:15, 102:12, 114:5, 114:18, 115:21, 115:25, 116:3, 116:5, 116:15, 117:7, 121:22, 122:17, 123:8, 123:10, 123:15, 123:23, 124:18, 124:22, 125:5, 127:5, 128:25, 132:7, 134:8, 134:7, 140:5, 146:11, 140:17, 141:2, 141:7, 141:12 Informed [i] - 65:13 informing [i] - 65:3 Ingress [i] - 97:25 Initials [i] - 100:20, 100:21 initiated [i] - 16:3 Initiation [i] - 84:14 Inner [i] - 122:2 Inquire [z] - 129:7, 130:13 Inquired [i] - 70:14 Inquiry [i] - 101:11, 102:4, 108:23, 108:7, 110:10, 115:18, 116:15, 126:4, 126:13, 128:16, 131:24 Insights [z] - 98:9, 98:12 inspect [z] - 75:4, 108:14, 118:16, 118:24 inspected [z] - 20:16, 107:23, 109:18 inspection [z] - 19:4, 21:4, 81:24, 82:4, 108:24, 109:8, 109:13, 110:6 inspections [z] - 24:15, 26:4, 36:14, 107:14, 107:16, 110:11, 110:14, 110:18, 118:25 inspector [i] - 109:25 instance [z] - 96:11, 97:1, 121:5, 133:12, 135:1, 136:22, 145:19, 145:22 instead [z] - 44:17	insurance [z] - 17:6, 17:9, 17:10, 108:19, 107:5 intended [i] - 118:23 interaction [i] - 113:24 interest [z] - 20:10, 23:16, 24:13, 90:4, 148:17 interested [i] - 103:21 interests [z] - 20:9, 32:7 interrogatories [i] - 15:9 interrogatory [i] - 15:17 interrupt [i] - 22:14 inventory [i] - 105:19 investor [i] - 99:16 invoicing [i] - 13:10 involve [z] - 58:9, 58:13, 83:7 Involved [i] - 12:24, 15:3, 20:18, 21:4, 23:22, 60:10, 93:10, 104:5, 104:10, 109:15, 116:21, 116:22 involvement [i] - 45:20 involving [z] - 64:20, 104:11, 108:11, 117:4 Irrelevant [z] - 62:16, 140:7 issue [z] - 68:7, 68:13, 137:9, 137:10 issues [z] - 48:23, 49:16, 70:10, 70:14, 72:17, 78:1 issuing [i] - 14:5 item [i] - 105:2, 105:12, 105:16, 105:21, 105:23, 106:6, 106:8, 106:19, 107:16, 108:4, 108:8, 108:14, 110:5 items [z] - 41:9, 41:14, 89:9, 89:10, 107:3, 107:15 iteration [z] - 94:19, 122:9 IVERSON [z] - 1:6, 1:9, 2:6, 3:2 Iverson [z] - 1:21, 3:9, 84:8, 108:23, 137:19, 138:8, 142:10, 147:3, 147:9 Iverson's [i] - 84:13	K keep [z] - 14:10, 27:14, 27:17, 27:24, 46:3, 59:18, 60:6, 65:3 KEITH [i] - 1:8 Keith [z] - 1:24, 17:2, 17:25, 18:1, 18:5, 18:9, 18:11, 22:24, 23:8, 28:10, 32:8, 45:25, 51:17, 55:16, 64:22, 67:7, 67:25, 70:9, 70:19, 71:10, 74:25, 78:16, 81:11, 84:1, 85:16, 89:15, 90:3, 90:14, 90:17, 98:24, 99:6, 99:8, 100:22, 101:16, 118:1, 123:7, 128:6, 128:8, 128:14, 128:16, 129:7, 130:2, 132:22, 133:1, 133:5, 133:9, 139:9, 141:10, 141:16, 141:25 Kelly [i] - 56:8 kept [z] - 14:13, 19:18, 22:8, 75:24 Keystone [i] - 61:20 Kim [i] - 20:23 kind [z] - 85:5, 91:15, 95:1, 95:24,

103:2, 107:10, 127:18, 133:23 kitchen [k] - 63:19, 53:22, 54:2, 54:8, 55:8 knowingly [i] - 32:3 knowledge [i] - 19:9, 98:2, 109:3, 109:11, 110:13, 113:22, 134:8 knowledgeable [i] - 56:25 known [g] - 18:1, 33:8, 33:14, 34:22, 35:3, 39:1, 55:24, 63:11 knows [z] - 33:3, 52:14	130:5 laaking [i] - 43:16 learned [i] - 106:7 leased [i] - 70:19 leasing [z] - 51:13, 51:25, 52:7 least [z] - 22:7, 51:20, 59:23, 88:7 leave [z] - 6:5, 8:7, 8:9, 44:25 Lee [i] - 1:18 left [z] - 39:2, 45:17, 80:10, 89:13, 126:16 legal [z] - 57:9, 100:5, 112:14 Lee [z] - 18:6, 18:7 les [i] - 18:8 less [z] - 91:1, 92:5 letter [z] - 2:14, 84:21, 85:2 level [i] - 97:23 libble [i] - 43:7 liberty [i] - 58:14 license [i] - 9:17 licensed [z] - 8:25, 9:12, 9:16 licensee [i] - 145:8 licensing [i] - 105:3 likely [i] - 104:24 limited [z] - 142:20, 143:4, 144:1, 145:16 line [z] - 62:15, 68:17, 133:22 Line [i] - 147:12 lines [z] - 47:1, 47:5, 98:10 list [i] - 23:24, 25:18, 61:10, 68:16, 74:23, 76:11, 76:12, 76:13, 76:19, 96:11 listed [z] - 18:16, 18:19, 19:6, 19:7, 19:13, 20:3, 20:6, 21:22, 22:3, 24:3, 25:6, 26:15, 45:6, 45:7, 50:23, 66:16, 68:2, 68:10, 68:7, 72:20, 83:9, 96:4, 97:6, 106:2, 122:3, 122:6, 122:18 listing [z] - 2:18, 11:18, 12:6, 13:22, 16:23, 17:20, 18:23, 19:23, 19:25, 20:7, 22:5, 25:24, 26:1, 26:2, 26:6, 28:12, 28:7, 28:9, 28:12, 28:15, 28:16, 45:7, 49:21, 49:24, 50:8, 50:17, 53:13, 71:6,	71:15, 74:8, 74:16, 81:24, 91:14, 96:16, 96:18, 120:9, 120:10, 120:25, 123:9 Listing [i] - 2:13, 2:16, 2:17, 26:5, 28:15, 119:23, 120:2 listings [i] - 13:16, 50:5 lists [z] - 121:25, 122:16, 122:16 litigation [z] - 84:14, 137:6 live [z] - 51:5, 51:8, 51:21, 53:11 lived [z] - 51:12, 51:17 living [z] - 50:24, 51:2, 51:23, 52:5, 52:10, 52:12, 52:15, 54:2, 54:13, 54:22, 55:17, 61:25, 62:5, 64:3, 70:23, 71:2, 71:8, 71:18, 97:10, 97:12, 97:17, 135:18, 135:21, 136:20, 136:25, 137:2, 142:3, 144:4, 144:10 Liz [i] - 82:20 LLC [z] - 1:8, 60:23, 84:1 LLP [z] - 1:15, 1:21 located [i] - 5:19, 54:10, 61:18, 144:10 location [i] - 47:19 look [z] - 19:17, 28:16, 28:21, 32:24, 48:6, 48:13, 50:2, 50:19, 58:2, 75:4, 78:7, 87:2, 88:11, 90:23, 92:13, 92:22, 94:12, 95:23, 97:1, 97:2, 107:4, 109:8, 109:12, 114:15, 120:23, 121:20, 144:17 looked [z] - 50:6, 90:12, 90:17, 92:15, 132:16 looking [z] - 20:19, 29:20, 83:20, 92:1, 92:15 looks [z] - 53:16, 64:16, 145:3 loss [z] - 75:17, 116:2, 116:17, 122:16 lost [z] - 11:20, 12:9 lower [i] - 97:23 loyalty [z] - 31:4,	32:16 lunch [i] - 82:10 M mail [i] - 134:14 main [z] - 54:10, 54:21, 55:6, 94:15, 94:23 maintaining [i] - 6:23 maintains [i] - 78:9 maintenance [z] - 6:20, 6:22 majorod [i] - 5:9 majors [i] - 5:11 man [i] - 37:25 management [i] - 7:10 manager [z] - 9:4, 13:2, 13:6 mark [i] - 88:2, 94:20, 95:7, 114:24, 119:19, 120:19, 122:23 MARKED [i] - 2:10 marked [z] - 28:20, 30:9, 42:1, 43:24, 43:25, 44:11, 45:23, 49:20, 49:21, 54:20, 84:8, 84:10, 85:6, 86:22, 87:11, 87:19, 87:20, 88:4, 88:8, 93:20, 95:8, 95:10, 95:12, 98:3, 98:5, 101:23, 102:3, 106:24, 108:21, 114:8, 115:1, 115:2, 117:10, 119:21, 119:22, 120:22, 121:21, 122:4, 123:3, 123:4, 123:24, 126:20, 137:20, 137:21 market [z] - 18:18, 19:8, 21:11, 21:18, 21:20, 23:13, 23:14, 24:7, 24:9, 24:17, 24:24, 25:15, 25:17, 25:22, 25:22, 83:1 material [z] - 33:8, 33:14, 33:16, 34:22, 35:4, 39:1, 40:18, 41:5, 49:4, 50:8, 68:21, 73:21 McCullen [z] - 1:14, 1:21 mean [z] - 3:23, 7:24, 9:2, 28:11,	26:21, 31:23, 32:3, 41:13, 45:23, 51:2, 69:6, 78:15, 83:10, 91:22, 97:11, 97:24, 103:19, 118:16, 116:24, 122:2, 132:15, 135:5 meaning [z] - 21:17, 89:3, 97:24, 106:12, 126:8 means [z] - 29:4, 31:24, 40:22, 40:24, 41:8, 76:2, 78:9, 122:3 meant [z] - 125:10, 126:4, 126:8 meet [z] - 18:5, 77:9, 79:19, 90:19, 131:16 meeting [z] - 77:16, 77:25, 78:21, 78:22, 78:25, 79:2, 80:6, 81:6, 99:9, 127:10, 127:14, 127:16, 129:11, 129:13, 130:22, 141:1, 141:3, 141:5 meetings [z] - 18:21, 16:25, 17:2, 17:20, 77:8, 79:17, 79:25 Meetings [i] - 2:14 MELODY [i] - 1:5 Melody [z] - 2:2, 3:7, 70:8, 77:19, 77:21, 77:23, 78:23, 79:5, 79:20, 80:7, 81:19, 87:4, 100:21, 100:24, 112:20, 113:1, 113:3, 114:2, 119:1, 124:3, 133:16, 139:24, 141:15 memory [z] - 19:14, 23:15, 58:4, 77:22, 101:9 mention [i] - 126:8 mentioned [z] - 90:7, 100:24, 116:13, 125:19 met [z] - 70:21, 85:13, 85:15, 89:23, 99:14, 111:18, 113:5, 114:16, 114:18, 117:20, 117:25, 123:21, 124:5, 134:2, 134:11 methodology [i] - 125:25 MICHAEL [i] - 1:18 middle [z] - 50:24, 94:17 midpoint [i] - 122:13
--	--	--	--	---

<p>might [m] - 32:4, 90:7, 90:14, 90:22, 92:14, 99:15, 99:19, 108:23, 109:7, 110:11, 126:13, 133:9, 135:21</p> <p>Mike [m] - 3:6, 43:15, 60:9, 67:25, 85:24, 86:4, 87:18, 95:22, 136:1, 136:14</p> <p>miles [m] - 5:22</p> <p>mind [m] - 25:10, 44:24, 45:10, 58:22</p> <p>mine [m] - 16:2, 105:17</p> <p>minor [m] - 5:13</p> <p>minute [m] - 82:7, 95:24</p> <p>minutes [m] - 137:12</p> <p>misleading [m] - 39:22, 80:24</p> <p>miss [m] - 137:14</p> <p>MLS [m] - 2:18, 120:14, 122:5</p> <p>modification [m] - 44:4</p> <p>modifications [m] - 71:8, 71:10</p> <p>mold [m] - 35:10, 36:13, 36:16, 38:18, 38:19, 39:20, 39:23, 37:2, 40:2, 48:22, 68:23, 71:2, 71:4, 71:23, 72:3, 72:7, 73:5, 73:10, 73:15</p> <p>moment [m] - 58:21, 119:25, 120:24, 131:18</p> <p>money [m] - 89:7, 112:18, 117:1, 130:6</p> <p>month [m] - 139:17</p> <p>monthly [m] - 126:14</p> <p>months [m] - 5:24, 6:3, 8:5, 19:9, 19:15, 24:25, 78:6, 139:11</p> <p>morning [m] - 3:5, 87:20, 88:25, 93:22, 113:19</p> <p>mortgage [m] - 44:5, 44:17, 44:24, 45:12, 45:16</p> <p>Mortimer [m] - 8:4</p> <p>most [m] - 24:9, 61:11, 69:22, 104:24</p> <p>motel [m] - 135:22</p> <p>motor [m] - 75:7</p> <p>moved [m] - 9:23, 58:2</p> <p>Moyle [m] - 6:16, 6:19, 7:4, 7:13, 7:16,</p>	<p>8:9</p> <p>MR [m] - 1:20, 1:24, 2:7, 2:8, 2:8, 2:9, 3:5, 11:22, 12:2, 17:13, 21:25, 22:4, 22:9, 22:13, 22:14, 22:16, 26:8, 29:16, 31:5, 31:9, 31:21, 32:22, 34:9, 34:15, 34:25, 35:22, 35:24, 36:18, 36:19, 43:15, 43:18, 43:19, 43:20, 43:22, 46:19, 48:1, 48:9, 48:12, 49:11, 57:8, 57:12, 57:14, 57:15, 58:20, 58:21, 58:23, 58:25, 59:6, 59:11, 59:15, 59:17, 60:5, 60:8, 60:9, 60:13, 60:16, 61:16, 62:10, 62:16, 62:22, 63:1, 63:3, 63:4, 63:5, 63:6, 63:7, 63:9, 63:10, 63:14, 63:17, 63:18, 63:20, 63:21, 67:10, 67:11, 70:2, 71:12, 71:25, 73:8, 73:16, 81:21, 82:7, 82:9, 83:22, 83:24, 84:11, 85:22, 85:24, 86:8, 86:9, 86:10, 86:11, 86:13, 120:18, 137:12, 137:16, 139:7, 139:9, 139:10, 140:8, 140:15, 142:7, 142:10, 142:13, 145:24, 146:1, 146:2</p> <p>mult [m] - 121:12</p> <p>mult-family [m] - 121:12</p> <p>multiple [m] - 143:7</p> <p>must [m] - 40:17, 41:4, 130:22</p>	<p>41:10, 41:14, 41:16, 44:10, 49:13, 59:8</p> <p>needed [m] - 30:22, 41:9, 105:13, 112:14, 118:14, 119:15</p> <p>needs [m] - 37:15</p> <p>negotiations [m] - 30:6, 138:16</p> <p>never [m] - 19:5, 44:25, 45:25, 52:8, 65:13, 70:13, 70:21, 78:17, 78:18, 82:22</p> <p>new [m] - 6:23, 14:19, 74:12, 74:23, 106:4</p> <p>next [m] - 54:12, 56:18, 79:2, 96:7, 99:25, 107:3, 113:2, 129:11, 136:6</p> <p>night [m] - 130:20</p> <p>nine [m] - 115:3</p> <p>NOONEY [m] - 1:24, 2:8, 60:9, 60:13, 60:16, 61:16, 63:1, 63:9, 67:10, 83:24, 84:11, 85:24, 86:9, 86:11, 120:18, 137:12, 138:7</p> <p>Nooney [m] - 1:24, 16:11, 16:12, 16:14, 17:19, 83:25, 84:18, 85:25, 86:14, 137:16, 139:1</p> <p>north [m] - 5:22, 85:4</p> <p>Notary [m] - 1:12, 149:5</p> <p>notation [m] - 27:15</p> <p>note [m] - 27:23, 42:16, 79:22, 84:18, 85:3, 96:7, 112:1, 120:24, 124:25</p> <p>notes [m] - 16:20, 16:25, 17:2, 17:20, 19:17, 25:13, 78:7, 79:17, 84:25, 85:2, 85:9, 91:16, 114:16, 127:9, 127:16</p> <p>nothing [m] - 34:7, 76:23, 83:12</p> <p>notice [m] - 68:2, 67:13, 67:21, 67:22, 68:18</p> <p>notice [m] - 47:8, 67:2</p> <p>Nov [m] - 2:14</p> <p>November [m] - 64:23</p> <p>Number [m] - 44:16, 50:6, 56:15, 102:22, 103:11, 108:6, 108:8, 108:8, 108:14,</p>	<p>112:17, 114:15, 114:25, 115:2, 143:12</p> <p>number [m] - 50:23, 77:19, 92:1, 94:24, 103:3, 105:2, 106:12, 105:17, 105:21, 105:23, 106:3, 106:19, 107:3, 107:19, 108:4, 132:10, 135:2, 139:13</p> <p>numerous [m] - 21:3, 57:3, 64:15</p>	<p>138:18</p> <p>offers [m] - 18:23, 19:25, 20:9, 20:11, 24:10, 25:5</p> <p>office [m] - 3:9, 6:21, 10:20, 10:25, 11:4, 12:17, 12:23, 13:2, 13:8, 13:13, 14:9, 14:15, 43:17, 77:10, 79:1, 80:6, 80:12, 80:14, 84:13, 84:14, 85:20, 86:22, 89:17, 89:21, 90:19, 93:17, 95:16, 101:18, 104:2, 104:3, 106:11, 106:23, 114:22, 115:6, 119:1, 122:2, 127:4, 129:16, 139:24, 141:6</p> <p>office/bedroom [m] - 64:18</p> <p>official [m] - 5:25</p> <p>old [m] - 58:18, 106:17</p> <p>ON [m] - 2:10</p> <p>on [m] - 18:18</p> <p>once [m] - 58:2, 70:13, 73:20, 136:17</p> <p>one [m] - 4:3, 4:24, 6:12, 9:16, 10:23, 18:12, 18:25, 20:22, 32:4, 39:14, 45:9, 45:14, 51:20, 59:23, 63:16, 64:11, 70:9, 73:8, 74:17, 74:18, 75:19, 92:8, 92:10, 93:11, 96:17, 102:7, 121:2, 135:3, 136:6, 142:25, 143:3, 145:3</p> <p>ones [m] - 62:2</p> <p>open [m] - 59:16, 60:6</p> <p>operated [m] - 128:3</p> <p>operating [m] - 128:21, 130:14</p> <p>operation [m] - 115:22, 116:13, 125:15, 132:4</p> <p>operational [m] - 49:2, 108:20</p> <p>operative [m] - 49:24</p> <p>opinion [m] - 47:15, 57:17, 57:18, 58:8, 58:10, 59:22, 62:9, 63:2, 63:13, 63:15, 63:23, 81:20, 82:15, 83:3, 83:11, 83:14, 83:17, 112:14</p> <p>opinions [m] - 57:8, 57:24, 58:1, 60:20,</p>
--	---	---	--	---

<p>62:13, 62:24 opportunities [z] - 116:23, 116:24 opportunity [n] - 102:23, 118:24, 131:25, 132:13 options [i] - 45:9 order [i] - 13:9 original [i] - 129:20 originality [i] - 21:22 otherwise [z] - 74:3, 122:23 outcome [i] - 58:8 outside [s] - 62:17 outsourced [i] - 133:12 overheard [i] - 128:15 overinflate [i] - 77:4 overnight [i] - 135:13 overvaluing [i] - 80:18 overview [i] - 91:15 owe [z] - 31:3, 31:8 own [i] - 53:2 owned [z] - 50:11, 100:8, 132:17 owner [z] - 33:5, 138:6 owner-occupied [i] - 138:6 owners [z] - 14:19, 14:22 ownership [i] - 50:14 owns [i] - 111:2</p>	<p>112:24, 114:13, 118:18, 131:21 pages [i] - 2:10, 2:13, 2:14, 88:20, 94:24, 113:2, 114:10, 114:11, 115:3, 120:6, 120:17, 121:20, 137:22, 147:5 Paha [i] - 60:22 paid [i] - 42:17 pamphlet [z] - 16:20, 16:22 paperwork [i] - 12:24 Paragraph [i] - 118:21 paragraph [i] - 43:4, 88:12, 100:13, 102:7, 103:3, 107:14, 107:16, 110:5, 110:16, 110:22, 118:9, 119:7, 131:21 pardon [z] - 107:15, 114:17, 117:11, 123:13 parents [z] - 114:19, 118:11, 118:12 Park [z] - 1:25, 12:14 parking [i] - 66:6 part [i] - 21:23, 35:11, 37:6, 45:24, 64:17, 95:2, 120:9, 123:1, 133:23, 142:3 particular [i] - 12:16, 13:17, 25:8, 37:4, 50:17, 53:23, 62:14, 68:9, 85:4, 118:8, 131:20, 146:21 particularly [i] - 102:8 parties [z] - 33:21, 43:5, 58:6, 59:7, 86:18, 107:6, 118:21, 148:16 parties' [i] - 32:20 party [i] - 32:4, 32:9, 32:19, 33:2, 43:5, 43:9, 116:12, 128:7, 128:9, 128:17 party's [i] - 33:3, 33:17, 40:16, 41:5 pass [i] - 9:5 passed [i] - 18:8 past [i] - 47:25, 48:17, 131:13 path [i] - 132:25 pay [z] - 42:20, 80:23 paying [i] - 101:24 pending [i] - 47:7 penetration [i] -</p>	<p>47:21 PENNINGTON [z] - 1:2, 148:3 people [z] - 23:24, 24:1, 69:22, 80:22, 109:24, 114:16 percent [z] - 91:24, 92:18, 92:24, 110:24 percentage [i] - 91:21 period [z] - 20:4, 24:2, 24:4, 24:8, 24:24, 132:11 periodically [i] - 55:16 permit [i] - 33:4 person [z] - 11:13, 20:22, 51:20, 52:5, 52:21, 100:18, 108:18 personal [z] - 92:16, 108:25, 109:8, 109:12, 118:17, 132:12 personally [z] - 52:11, 70:13, 84:1 perspective [z] - 81:21, 92:3, 92:14, 92:23, 109:13 pertains [z] - 42:5, 44:2 Petroleum [z] - 6:16, 7:4, 8:9 phone [z] - 29:15, 29:20, 29:21 photo [z] - 53:23, 54:1, 54:3, 54:8, 95:2 photographs [i] - 56:3 photos [z] - 54:21, 71:4, 94:16, 95:25, 96:3 phrase [z] - 91:25, 125:17, 133:23 pick [i] - 3:19 picked [i] - 130:25 picture [z] - 53:21, 54:12, 54:18, 96:8 pictures [z] - 28:18, 56:22 piece [i] - 60:11, 66:15, 66:24, 67:1, 68:9, 69:11, 83:18 Pines [z] - 61:12, 61:24 Pioneer [z] - 7:21, 8:1, 8:7 pioneer [i] - 7:22 pik [z] - 47:11, 47:17 place [z] - 32:4, 51:4, 76:7, 78:13, 78:25,</p>	<p>79:25, 97:13 PLACE [i] - 1:14 placed [i] - 148:7 places [i] - 97:8 Plaintiffs [z] - 1:6, 1:18, 2:3 plan [i] - 125:14 plenty [i] - 20:10 plus [i] - 81:23 point [z] - 125:7, 126:22, 132:25 policies [z] - 64:7 policy [i] - 14:9 portion [z] - 37:17, 38:3, 38:10, 38:14, 47:3, 65:3, 65:7, 65:10, 65:19, 66:3, 66:6, 67:3 position [z] - 5:25, 7:22, 67:18 positions [i] - 8:1 possession [z] - 125:8, 130:15 possible [z] - 111:21, 113:14 possibly [z] - 19:22, 36:17 posted [i] - 28:12 potential [z] - 62:12, 66:12, 68:13, 77:5 practice [z] - 27:21, 84:15, 86:18, 108:1, 109:17 prefaced [i] - 91:25 prepaid [i] - 111:5 prepare [i] - 15:5 prepared [i] - 44:22, 81:8, 88:15, 88:19, 91:8, 96:16, 98:8, 111:23, 115:5, 115:9, 123:17, 123:18, 126:1 presence [z] - 37:2, 72:3, 72:7, 73:21, 129:7 Present [i] - 2:2 present [z] - 21:7, 27:4, 38:22, 47:25, 48:17, 89:21, 89:25, 93:5, 93:15, 103:7, 113:19, 128:13 presented [z] - 57:17, 89:17, 93:17, 95:15, 112:11, 123:15 Presley [i] - 51:15, 70:19, 70:20, 70:22 presume [i] - 44:12 pretty [z] - 61:5, 77:13 prevent [z] - 50:1</p>	<p>previous [z] - 22:17, 50:5, 82:22, 105:18, 128:10 previously [z] - 39:6, 82:13, 104:6 price [i] - 19:11, 19:23, 21:18, 28:1, 28:3, 29:2, 66:16, 93:5, 93:7, 93:15, 101:14, 101:19, 101:21, 101:24, 138:17 priced [i] - 20:7 printout [i] - 120:15 private [i] - 108:12 privileged [i] - 11:7 privy [i] - 127:23 problem [z] - 47:4, 49:4, 58:23, 71:2, 74:2, 74:6 problems [z] - 46:16, 47:1, 49:17, 70:10, 70:14 proceedings [i] - 148:13 process [z] - 8:15, 13:25, 20:19, 21:3, 103:2 producing [z] - 52:25, 53:6, 97:14 professional [i] - 35:5 profiter [i] - 107:18 proffered [i] - 108:4 profit [z] - 75:17, 116:2, 116:17, 122:16, 142:4 profitable [i] - 142:1 prohibition [i] - 59:3 promises [i] - 43:6 proper [z] - 48:20, 97:24 properties [z] - 13:15, 18:11, 53:3, 53:5, 53:8, 60:23, 61:25, 81:9, 143:7 property [i] - 10:12, 12:24, 13:23, 17:21, 18:13, 19:4, 20:9, 20:10, 20:12, 20:14, 20:16, 21:6, 21:11, 21:24, 23:10, 23:16, 24:13, 25:2, 25:25, 26:7, 26:10, 26:11, 26:12, 26:14, 26:17, 26:21, 26:24, 27:4, 27:7, 27:8, 27:10, 27:13, 27:14, 28:1, 28:13, 28:16, 28:23, 32:21, 33:8</p>
---	---	---	---	---

<p>33:9, 33:14, 33:16, 33:20, 35:21, 36:6, 36:11, 37:4, 37:6, 38:7, 38:9, 38:10, 38:11, 38:16, 38:25, 39:7, 39:12, 39:14, 39:16, 39:18, 39:20, 39:24, 40:3, 40:12, 41:24, 45:6, 46:6, 46:9, 46:16, 47:9, 47:19, 47:25, 48:18, 48:22, 48:17, 49:18, 49:19, 50:21, 51:24, 52:6, 53:1, 54:10, 54:22, 56:8, 60:11, 61:23, 63:25, 64:4, 65:15, 66:1, 66:4, 66:9, 68:13, 66:15, 66:24, 67:2, 67:7, 68:9, 68:15, 68:17, 69:7, 69:11, 70:10, 70:12, 70:14, 71:6, 72:20, 72:22, 73:15, 73:19, 73:22, 74:14, 74:19, 75:5, 75:13, 76:1, 76:17, 78:13, 80:19, 80:22, 81:24, 82:14, 82:25, 83:18, 95:4, 98:10, 98:17, 98:24, 97:9, 97:14, 97:17, 100:8, 106:2, 108:14, 108:15, 108:25, 108:8, 109:12, 109:13, 109:18, 111:2, 118:10, 118:12, 118:13, 118:17, 118:24, 119:2, 119:9, 119:11, 119:16, 122:3, 122:9, 124:15, 132:10, 133:25, 134:18, 134:23, 135:5, 135:9, 138:15, 136:21, 138:4, 139:5, 143:18, 144:10, 145:12</p> <p>Property [p] - 12:11, 62:6, 63:23, 64:5, 64:8, 67:18</p> <p>provisions [p] - 110:23, 111:5</p> <p>prospective [p] - 20:12, 46:23, 49:18, 66:16, 71:24, 72:6, 80:24, 87:13, 93:15, 95:21, 99:15, 117:5, 140:5, 140:10</p> <p>protect [p] - 105:6</p> <p>protective [p] - 24:12</p> <p>prove [p] - 78:2</p>	<p>provide [p] - 17:2, 17:10, 17:13, 17:15, 23:9, 57:6, 58:1, 59:22, 59:25, 76:6, 95:11, 95:20, 129:25, 134:6, 141:3</p> <p>provided [p] - 15:16, 16:17, 22:2, 22:22, 23:6, 60:19, 76:11, 81:3, 81:6, 83:3, 83:14, 83:17, 84:22, 93:24, 95:3, 98:4, 98:9, 114:5, 114:18, 123:7, 124:18, 130:2, 140:17</p> <p>provides [p] - 39:22</p> <p>providing [p] - 57:23, 83:21</p> <p>provision [p] - 43:13, 58:1, 58:12, 106:20, 111:16</p> <p>provisions [p] - 87:21, 88:12</p> <p>prudent [p] - 69:9</p> <p>Public [p] - 1:12, 148:6</p> <p>pump [p] - 48:25, 49:1, 72:14</p> <p>pumped [p] - 107:22</p> <p>purchase [p] - 18:24, 20:1, 24:10, 25:6, 25:9, 29:1, 29:4, 32:21, 36:13, 36:15, 48:18, 66:1, 66:12, 66:15, 66:18, 66:19, 66:21, 75:6, 76:3, 79:19, 87:13, 93:3, 101:14, 101:19, 115:19, 116:14, 117:5, 138:12</p> <p>Purchase [p] - 2:10, 2:12, 2:15, 28:23, 29:1, 30:7, 40:19, 41:6, 42:11, 44:1, 44:5, 78:3, 86:5, 88:11, 88:21, 87:11, 87:15, 88:17, 88:19, 88:23, 89:3, 89:8, 89:9, 90:16, 90:20, 91:4, 91:9, 93:20, 93:25, 95:9, 97:5, 98:3, 98:19, 98:25, 101:23, 102:3, 102:12, 102:23, 105:13, 105:23, 106:25, 108:6, 108:21, 109:4, 110:19, 111:24, 112:21, 113:20, 114:9, 117:7, 119:4,</p>	<p>128:6, 129:20, 139:3, 140:21</p> <p>purchase/lease [p] - 33:18</p> <p>purchased [p] - 36:8, 38:9, 64:3, 74:18</p> <p>purchaser [p] - 99:18, 99:22</p> <p>purchaser's [p] - 37:3</p> <p>purchasers [p] - 99:5, 99:10, 112:5</p> <p>purchases [p] - 68:22</p> <p>purchasing [p] - 49:19, 129:6</p> <p>purpose [p] - 22:10, 30:20, 42:8, 46:9, 46:13, 60:6, 60:13, 71:14, 76:4, 108:24</p> <p>purposes [p] - 59:15, 63:19, 85:8</p> <p>pursuant [p] - 26:22</p> <p>put [p] - 13:15, 13:22, 19:16, 21:15, 25:16, 25:22, 27:21, 28:9, 28:11, 50:16, 64:25, 86:19, 96:20, 99:21, 100:14, 102:12, 105:5, 105:8, 108:4, 106:7, 107:21, 108:10, 108:11, 108:18, 125:15, 133:3</p> <p>putting [p] - 129:3</p>	<p>qualified [p] - 57:5, 57:18</p> <p>quantify [p] - 130:10, 131:6</p> <p>quarters [p] - 60:25, 51:2, 51:23, 52:5, 52:15, 52:18, 52:21, 53:17, 54:13, 64:22, 56:17, 61:25, 62:5, 64:4, 70:23, 71:2, 71:8, 71:18, 97:10, 97:12, 97:18, 136:18, 136:22, 136:21, 137:1, 137:3, 142:3, 144:4</p> <p>quarters" [p] - 54:2</p> <p>questioning [p] - 62:16, 63:19</p> <p>questions [p] - 4:3, 11:11, 15:8, 33:19, 38:24, 39:4, 59:9, 62:11, 68:16, 69:2,</p>	<p>69:10, 78:2, 80:1, 83:23, 109:1, 127:17, 127:18, 131:3, 133:25, 134:3, 134:17, 134:19, 135:24, 138:9, 139:1, 142:11, 148:12</p> <p>quickly [p] - 50:2, 111:20, 113:14</p> <p>QUINN [p] - 148:5, 148:21</p> <p>Quinn [p] - 1:11</p> <p>quote [p] - 97:10, 103:15, 103:16, 110:11</p>	<p>R</p> <p>raise [p] - 106:6, 115:18, 117:12, 117:21, 119:10, 119:12</p> <p>raised [p] - 137:9</p> <p>Rapid [p] - 1:12, 1:16, 1:18, 1:23, 1:25, 3:10, 4:7, 4:9, 4:25, 148:18</p> <p>rapid [p] - 6:16</p> <p>rate [p] - 78:4, 78:6, 78:11, 78:12, 78:17, 78:11, 79:15, 79:16, 124:14, 124:15</p> <p>rate" [p] - 78:10, 124:13</p> <p>re [p] - 84:23, 127:6</p> <p>RE [p] - 121:6</p> <p>re-create [p] - 84:23</p> <p>re-entered [p] - 127:6</p> <p>REMAX [p] - 9:23, 9:24, 10:11, 10:14, 12:17, 14:17, 88:2, 56:4, 56:14, 64:7, 84:17, 87:4, 96:8, 96:14, 97:16, 120:6, 123:5</p> <p>read [p] - 15:1, 15:6, 15:16, 15:24, 22:16, 22:17, 32:25, 33:12, 33:25, 146:2, 147:4</p> <p>ready [p] - 113:6</p> <p>Real [p] - 2:10, 2:15, 2:20, 98:19, 137:23</p> <p>real [p] - 8:6, 8:11, 8:16, 11:2, 20:18, 33:8, 34:24, 35:9, 35:17, 49:9, 56:12, 56:19, 56:22, 57:7, 57:18, 58:9, 62:20,</p>	<p>62:22, 70:5, 83:7, 83:12, 83:15, 86:11, 87:10, 88:3, 91:9, 91:22, 93:19, 106:19, 106:25, 109:8, 109:12, 116:10, 116:17, 142:17</p> <p>reality [p] - 78:16</p> <p>realtor [p] - 46:5, 57:6, 57:19</p> <p>Realtor [p] - 37:20, 91:16, 123:13</p> <p>realtors [p] - 21:3, 23:22, 144:21, 144:22</p> <p>reality [p] - 10:11</p> <p>reason [p] - 52:15, 69:18, 94:11, 147:12</p> <p>reason(s) [p] - 147:7</p> <p>reasonable [p] - 31:15</p> <p>rebuild [p] - 75:1</p> <p>rebuilt [p] - 74:17, 74:18, 74:22, 75:10</p> <p>receive [p] - 14:2</p> <p>received [p] - 15:6, 15:12, 66:1, 67:13, 67:21, 84:13</p> <p>receiving [p] - 67:2</p> <p>recent [p] - 24:9, 61:11</p> <p>recess [p] - 38:20, 82:10, 82:11, 137:17</p> <p>recting [p] - 48:2</p> <p>recollection [p] - 12:18, 18:21, 89:1, 90:6, 90:14, 90:21, 90:23, 91:12, 104:9, 104:24, 113:24, 127:14</p> <p>recommend [p] - 71:7</p> <p>recommendation [p] - 74:1, 74:5</p> <p>record [p] - 3:8, 3:24, 33:1, 43:15, 44:19, 48:2, 58:24, 84:11</p> <p>recorded [p] - 22:6</p> <p>red [p] - 51:10</p> <p>reduced [p] - 148:10</p> <p>reference [p] - 94:23, 97:9, 97:10, 99:10, 100:1, 103:4, 125:22, 127:16, 129:11, 139:13</p> <p>referenced [p] - 44:13</p> <p>references [p] - 89:25, 100:12</p> <p>referencing [p] - 118:21</p>
---	---	--	---	--	---	---

<p>referring [z] - 16:22, 54:15</p> <p>reflect [y] - 25:13</p> <p>reflective [y] - 27:12</p> <p>refresh [z] - 56:4, 80:22</p> <p>refrigerator [z] - 63:22, 53:24</p> <p>regard [z] - 40:1, 79:14</p> <p>regarding [z] - 17:4, 57:6, 57:17, 57:18, 83:14, 83:17</p> <p>regardless [y] - 33:13</p> <p>regards [y] - 40:10</p> <p>regular [y] - 84:15</p> <p>regulation [z] - 37:11, 47:17</p> <p>regulations [z] - 47:12, 65:7, 67:8</p> <p>related [y] - 47:23, 118:12, 120:3, 148:14</p> <p>relates [z] - 108:25, 115:19</p> <p>relation [z] - 96:16, 131:13</p> <p>relationships [y] - 88:6</p> <p>relative [z] - 84:19, 85:9, 115:21, 116:19</p> <p>relevance [y] - 112:22</p> <p>relisted [z] - 19:10, 19:21</p> <p>remain [y] - 6:3</p> <p>REMAX [z] - 2:15, 2:16, 2:16, 2:17, 2:18, 2:18</p> <p>remedied [z] - 36:19, 36:21, 48:22</p> <p>remedy [z] - 36:25, 74:2</p> <p>remember [y] - 7:16, 8:20, 17:24, 19:19, 19:23, 20:8, 23:25, 24:2, 25:1, 25:7, 25:19, 29:16, 29:17, 77:12, 79:21, 87:22, 90:9, 90:16, 94:8, 104:22, 108:1, 108:7, 112:23, 118:25, 119:18, 127:20, 130:12, 134:18, 138:14, 138:24, 140:23</p> <p>REMINGTON [z] - 1:4, 1:5</p> <p>Remington [z] - 2:2, 2:2, 2:14, 3:7, 29:9, 38:22, 42:14, 70:8, 77:10, 78:17, 80:8, 80:11, 85:13, 85:19, 87:5, 87:10, 88:22, 89:12, 89:17, 89:25, 90:16, 91:3, 91:6, 93:17, 93:18, 93:24, 95:4, 95:9, 95:11, 95:15, 95:16, 97:5, 98:2, 99:8, 99:13, 99:23, 100:21, 100:22, 100:24, 101:8, 101:17, 101:22, 102:2, 102:16, 102:19, 102:22, 103:5, 103:17, 103:18, 103:21, 104:2, 104:16, 105:9, 105:20, 105:25, 108:13, 108:22, 108:6, 108:5, 108:22, 108:6, 109:11, 110:9, 110:20, 111:8, 111:14, 111:18, 111:20, 112:7, 112:8, 112:9, 112:11, 112:19, 113:1, 113:18, 113:25, 114:4, 115:11, 115:15, 115:17, 115:24, 116:2, 117:9, 117:12, 117:20, 117:23, 117:25, 118:2, 118:16, 118:23, 119:1, 119:14, 123:21, 124:5, 124:17, 124:21, 125:18, 126:12, 126:16, 127:3, 127:6, 127:11, 127:14, 127:23, 128:3, 128:13, 128:16, 128:19, 129:3, 129:6, 129:16, 130:1, 130:4, 130:13, 130:23, 131:16, 131:23, 133:17, 134:1, 134:7, 134:10, 134:14, 137:8, 139:2, 141:2</p> <p>Remington's [z] - 90:3, 90:7, 124:7</p> <p>Remingtons [z] - 17:1, 24:11, 31:3, 31:8, 32:8, 33:7, 34:4, 34:7, 35:1, 49:25, 51:7, 64:25, 65:25, 67:9, 68:12, 69:12, 72:16, 73:1, 73:4, 74:21, 77:8, 84:20, 86:22, 131:12, 138:1, 138:12</p> <p>remodels [y] - 6:24</p> <p>remove [z] - 37:17, 38:14, 65:10, 68:3</p> <p>removed [z] - 37:15, 65:8, 66:20, 67:4, 72:16</p> <p>removing [y] - 38:2</p> <p>rent [y] - 142:3</p> <p>rental [z] - 53:3, 53:5, 53:8</p> <p>repairs [y] - 47:23</p> <p>repeat [z] - 40:25, 140:9</p> <p>rephrase [y] - 102:21</p> <p>report [z] - 59:25, 136:17</p> <p>reporter [y] - 22:18</p> <p>Reporter [z] - 1:12, 148:6</p> <p>reports [z] - 22:21, 23:4, 116:8, 116:17, 140:12</p> <p>represent [z] - 3:8, 32:7, 33:4, 36:1, 36:4, 39:6, 69:8, 83:25, 142:19, 143:8, 143:9, 145:8</p> <p>representation [z] - 33:13, 50:10, 142:17</p> <p>representations [z] - 74:21, 119:16, 143:1</p> <p>representative [y] - 145:20</p> <p>represented [z] - 30:22, 45:4, 70:8, 138:22, 145:12, 145:13</p> <p>Representing [z] - 1:16, 1:29, 1:24</p> <p>representing [z] - 30:21, 31:24, 46:19, 61:19, 100:19</p> <p>represents [y] - 145:4</p> <p>request [z] - 44:22, 58:15, 115:5</p> <p>requested [z] - 34:11, 45:11, 129:19, 141:2, 141:6</p> <p>requests [y] - 140:11</p> <p>require [z] - 65:7</p> <p>required [z] - 13:18, 37:17, 38:10, 38:13, 46:11, 48:21, 49:8, 62:7, 63:24, 64:9, 67:19, 134:24, 135:9, 138:16</p> <p>requires [z] - 45:25, 47:7, 49:3</p> <p>reservations [y] - 104:20</p> <p>residence [y] - 46:11, 48:20, 48:21, 48:23, 52:19, 62:22, 52:24, 53:1, 53:10, 121:6, 134:25, 135:2, 144:15</p> <p>residences [y] - 53:8</p> <p>residential [y] - 4:20, 4:21, 49:19, 62:6, 63:25, 67:20, 67:24, 86:5, 86:8, 91:23, 91:24, 92:5, 92:9, 92:10, 92:19, 92:25, 98:25, 121:7, 138:4</p> <p>RESORT [y] - 1:8</p> <p>respected [y] - 56:22</p> <p>respective [y] - 98:10</p> <p>respond [z] - 33:18, 133:24</p> <p>response [y] - 61:17</p> <p>responses [y] - 3:18</p> <p>responsibilities [z] - 10:5, 10:10, 10:13, 14:16, 14:17</p> <p>responsible [z] - 10:17, 43:8, 110:24, 133:18</p> <p>restaurant [z] - 51:13, 61:25, 62:7, 70:19, 136:6</p> <p>restaurants [y] - 61:23</p> <p>restrictive [z] - 47:8, 47:16</p> <p>result [z] - 43:9</p> <p>results [y] - 82:14</p> <p>resumed [z] - 38:21, 82:11, 137:18</p> <p>retained [z] - 58:1, 58:7, 59:22, 82:14, 82:20</p> <p>retains [y] - 70:4</p> <p>retention [z] - 14:9, 60:14</p> <p>return [z] - 61:4, 115:25, 128:16, 129:22, 130:25, 131:1</p> <p>returns [z] - 75:19, 116:16</p> <p>review [z] - 14:8, 15:20, 15:24, 30:4, 58:19, 67:12, 93:19, 114:18, 124:22</p> <p>reviewed [y] - 140:6</p> <p>reviews [y] - 9:20</p> <p>Rice [z] - 17:7, 17:9</p> <p>right-of-way [y] - 37:7, 37:11, 37:15, 38:6, 39:3, 39:8, 40:11, 47:4, 64:12, 64:18, 65:4, 65:8, 66:11, 65:20, 66:7, 68:19, 137:10</p> <p>road [z] - 4:19, 136:10</p> <p>role [y] - 7:10</p> <p>room [z] - 42:14, 53:24, 54:13, 56:11, 89:5, 89:23, 113:16, 126:18, 127:6</p> <p>rough [y] - 91:24</p> <p>roughly [z] - 7:12, 25:15</p> <p>rude [y] - 3:24</p> <p>rules [y] - 3:15</p> <p>run [z] - 137:13, 141:19</p> <p>running [z] - 97:13, 124:11, 128:19</p> <p>runs [y] - 21:13</p> <p>RV [z] - 12:14, 61:21</p>	<p>S</p> <p>safe [y] - 56:19</p> <p>sale [y] - 12:13, 12:24, 13:17, 13:25, 16:7, 18:14, 26:14, 42:6, 49:25, 51:7, 51:20, 52:4, 60:25, 64:25, 67:16, 72:16, 79:5, 79:7, 93:4, 100:24, 104:8, 104:11, 104:14, 107:23, 109:15, 116:22, 117:5, 135:14, 136:15, 138:13, 144:11</p> <p>sales [z] - 9:4, 91:20, 92:13, 94:5, 95:12, 95:17, 98:5, 104:7, 116:8, 116:15, 125:12, 125:23, 126:1, 126:7, 126:8, 126:9, 126:10, 126:14, 127:21, 127:24</p> <p>Saloon [z] - 49:22</p> <p>Sapa [y] - 80:22</p> <p>sat [y] - 132:16</p> <p>scheduled [y] - 80:6</p> <p>school [y] - 4:16</p> <p>scope [z] - 57:10, 62:17</p> <p>Scull [y] - 4:23</p>
--	--

<p>SD [i] - 139:14</p> <p>seal [i] - 148:18</p> <p>season [i] - 18:15, 19:16, 20:5, 21:12, 21:17, 23:8, 23:13, 24:17, 25:22, 131:10</p> <p>second [i] - 19:13, 33:1, 145:7</p> <p>section [i] - 32:25, 49:3, 50:23, 145:7, 145:16, 145:18</p> <p>sections [i] - 144:25</p> <p>see [i] - 40:19, 42:2, 43:10, 48:6, 54:2, 54:13, 54:19, 66:6, 67:16, 79:10, 86:16, 88:12, 88:13, 94:20, 99:3, 100:12, 102:10, 122:4, 122:13, 122:22, 123:23, 124:1, 125:4, 129:2, 143:17, 145:12</p> <p>seem [i] - 113:5, 116:10</p> <p>sell [i] - 10:12, 11:14, 12:6, 12:6, 23:10, 28:13, 56:7, 65:15, 68:17, 73:11, 73:24, 74:3, 76:1, 76:7, 76:9, 98:21, 108:24, 145:12</p> <p>seller [i] - 29:5, 30:22, 32:8, 39:7, 39:22, 41:16, 42:17, 46:11, 48:12, 46:17, 48:20, 48:21, 47:13, 48:19, 49:16, 66:23, 67:2, 67:21, 68:15, 68:9, 72:8, 74:1, 75:9, 83:18, 100:19, 102:10, 109:16, 110:24, 112:3, 112:4, 145:4, 145:20</p> <p>seller's [i] - 39:7, 46:6, 134:18, 134:23, 135:9, 135:15</p> <p>seller/landlord [i] - 145:8, 145:13</p> <p>sellers [i] - 36:4, 100:8, 142:20</p> <p>selling [i] - 46:11, 56:11, 67:20, 71:17, 116:20</p> <p>semester [i] - 6:12</p> <p>send [i] - 139:16</p> <p>sending [i] - 139:19</p> <p>sent [i] - 114:8</p> <p>sentence [i] - 33:1, 33:12, 41:3, 43:4, 118:9, 118:21</p>	<p>separate [i] - 22:24, 120:12, 136:20, 136:21, 138:13, 147:25</p> <p>separately [i] - 121:21</p> <p>September [i] - 21:17</p> <p>septic [i] - 107:19, 107:22</p> <p>seriously [i] - 49:14</p> <p>serves [i] - 18:14, 23:15, 77:22, 101:9</p> <p>services [i] - 70:5</p> <p>set [i] - 31:1, 34:19, 78:1, 80:8, 101:9, 115:10, 117:9, 117:14</p> <p>settled [i] - 60:3</p> <p>Settlement [i] - 2:19, 126:21</p> <p>settlement [i] - 126:24</p> <p>seven [i] - 14:12, 144:11, 144:13</p> <p>SEVENTH [i] - 1:2</p> <p>shake [i] - 3:18</p> <p>shall [i] - 33:13, 43:7</p> <p>share [i] - 113:13, 124:10</p> <p>shared [i] - 90:14, 119:8</p> <p>sheet [i] - 116:5, 120:14, 123:17, 123:18, 147:25, 147:25</p> <p>shoots [i] - 116:18</p> <p>Shoridan [i] - 138:7</p> <p>shook [i] - 109:23</p> <p>shorthand [i] - 148:9</p> <p>shortly [i] - 56:2</p> <p>shot [i] - 7:7</p> <p>show [i] - 23:15, 25:2, 26:21, 27:4, 48:3, 72:21, 72:22, 72:24, 73:1, 84:8, 88:2, 88:5, 94:19, 114:24, 119:19, 122:21, 126:21</p> <p>showed [i] - 23:17, 27:6, 27:13, 27:14, 70:13, 73:4, 75:6, 80:7, 80:10, 80:11, 85:1, 86:4, 87:3, 87:18, 87:19, 88:22, 90:12, 129:16, 131:19</p> <p>showing [i] - 23:22, 27:21, 78:1, 119:2, 119:22, 123:4, 137:19, 143:7</p>	<p>shown [i] - 24:2, 27:11, 27:15, 84:3</p> <p>sic [i] - 115:3</p> <p>side [i] - 65:5, 128:4, 129:9, 133:13</p> <p>sign [i] - 46:1, 88:23, 89:11, 90:20, 102:17, 112:5, 112:9, 114:2, 115:16, 119:2, 139:24, 146:2</p> <p>signature [i] - 30:15, 42:23, 45:1, 112:16, 114:13, 147:25</p> <p>SIGNATURE [i] - 147:1</p> <p>signed [i] - 29:7, 30:17, 42:22, 42:26, 86:15, 86:21, 87:5, 87:6, 87:10, 87:24, 88:18, 88:20, 88:24, 89:3, 89:12, 91:5, 93:22, 98:19, 97:5, 101:6, 106:23, 108:22, 109:4, 112:2, 112:5, 112:7, 112:10, 112:19, 112:22, 113:1, 113:2, 113:3, 113:23, 119:24, 123:9, 129:21, 140:3, 140:22, 147:7</p> <p>signing [i] - 30:25, 31:19, 34:13, 93:19, 93:25, 95:9, 98:3, 101:22, 102:2, 102:19, 102:22, 108:6, 110:9, 110:18, 117:7, 119:4</p> <p>similar [i] - 48:15, 50:6, 61:5, 67:21, 67:22, 80:17, 84:3, 91:8, 92:3, 98:21, 136:11, 138:13</p> <p>similarly [i] - 40:9, 105:12, 106:9, 147:25</p> <p>Simmons [i] - 1:15, 1:21</p> <p>simple [i] - 69:10</p> <p>simultaneous [i] - 111:23</p> <p>single [i] - 121:5, 134:10</p> <p>sink [i] - 53:22, 54:6</p> <p>sit [i] - 90:21, 94:8</p> <p>site [i] - 91:3</p> <p>sites [i] - 61:21</p> <p>sitting [i] - 41:14, 56:18, 89:13</p> <p>situation [i] - 69:8</p> <p>six [i] - 19:9, 19:15, 24:25</p>	<p>sketch [i] - 95:1</p> <p>skewed [i] - 92:4</p> <p>sleep [i] - 51:3</p> <p>sleeping [i] - 50:10, 133:3</p> <p>small [i] - 124:11</p> <p>Solay [i] - 1:24</p> <p>sold [i] - 18:11, 24:3, 45:8, 56:2, 56:8, 61:8, 61:11, 61:12, 64:2, 64:3, 67:4, 67:8, 81:9, 93:11, 96:18, 103:15, 104:15, 104:16, 119:11, 122:3, 122:7, 122:9, 133:2, 135:17, 135:20, 138:18</p> <p>Sold [i] - 122:2</p> <p>sole [i] - 60:13, 145:20</p> <p>someone [i] - 12:8, 51:8, 61:12, 76:2, 98:13, 115:5, 116:14, 116:25, 143:7</p> <p>sometime [i] - 113:3</p> <p>somewhat [i] - 92:4</p> <p>sorry [i] - 17:7, 23:25, 52:2, 58:11, 68:4, 78:15, 86:12, 95:13, 102:21, 112:25, 117:12, 118:16, 118:20, 126:16, 137:2, 143:4</p> <p>sort [i] - 72:3, 99:19, 117:6, 135:18</p> <p>sound [i] - 69:11</p> <p>source [i] - 84:17</p> <p>SOUTH [i] - 1:1, 148:1</p> <p>South [i] - 1:12, 1:16, 1:19, 1:23, 1:25, 3:10, 49:9, 84:16, 134:24, 137:9, 144:20, 148:6, 148:18</p> <p>speaking [i] - 25:21, 78:9</p> <p>specific [i] - 22:21, 28:11, 48:16, 64:7, 90:13</p> <p>specifically [i] - 48:5, 60:18</p> <p>Speck [i] - 1:11</p> <p>spell [i] - 68:1</p> <p>Spokane [i] - 91:13, 61:16, 61:19</p> <p>spreadsheet [i] - 85:1</p> <p>Spreadsheets [i] - 2:18</p> <p>spring [i] - 72:24,</p>	<p>73:2</p> <p>SS [i] - 148:2</p> <p>stamp [i] - 84:16</p> <p>stamped [i] - 84:17, 120:6, 123:6</p> <p>stand [i] - 133:2</p> <p>stand-alone [i] - 133:2</p> <p>standard [i] - 102:9, 106:20, 167:10, 108:1, 109:17, 109:20, 109:22</p> <p>standing [i] - 22:11</p> <p>Stanley [i] - 4:24</p> <p>start [i] - 3:17, 3:22, 8:15</p> <p>started [i] - 5:7, 5:15, 6:20, 7:12, 8:11, 19:15, 29:13, 89:8</p> <p>STATE [i] - 1:1, 148:1</p> <p>state [i] - 3:7, 38:9, 38:13, 56:23, 66:8</p> <p>State [i] - 4:11, 4:12, 6:12</p> <p>statement [i] - 17:10, 17:14, 17:15, 46:7, 46:10, 46:25, 75:17, 79:9, 134:16, 134:23, 135:10, 135:15</p> <p>Statement [i] - 2:19, 12:11, 62:7, 63:24, 64:5, 64:9, 67:19, 126:22</p> <p>statements [i] - 39:23, 116:17, 122:16, 122:17, 127:18</p> <p>stations [i] - 6:25</p> <p>status [i] - 122:1</p> <p>statute [i] - 48:2, 48:3, 48:4, 48:10</p> <p>stay [i] - 5:23, 28:5, 97:14</p> <p>stayed [i] - 52:8, 55:16</p> <p>staying [i] - 51:14, 130:19</p> <p>stays [i] - 108:15, 108:19</p> <p>Steve [i] - 68:1</p> <p>sticky [i] - 27:23</p> <p>still [i] - 10:1, 12:8, 14:13, 19:12, 24:20, 48:22, 56:11, 85:25, 92:3, 92:24</p> <p>storage [i] - 54:12</p> <p>store [i] - 117:2, 137:3, 137:4</p>
--	---	--	--	---

<p>stores [s] - 6:23, 7:1</p> <p>stove [s] - 53:22, 54:5</p> <p>strike [s] - 110:8</p> <p>structural [s] - 41:18, 73:7</p> <p>structure [s] - 37:6, 37:10, 37:14, 37:18, 38:3, 38:5, 38:14, 39:3, 39:8, 40:10, 47:4, 62:6, 63:25, 64:17, 65:20, 68:19, 73:10</p> <p>structures [s] - 39:18, 64:12, 109:19</p> <p>stuff [s] - 15:12, 138:6</p> <p>subsection [s] - 33:1</p> <p>subsequent [s] - 71:1, 110:18, 141:1, 141:5</p> <p>substance [s] - 16:6, 16:16, 113:18</p> <p>sued [s] - 58:9</p> <p>suggest [s] - 86:14, 97:3, 118:1, 127:9</p> <p>suggested [s] - 105:24</p> <p>suggestion [s] - 105:13, 107:18, 133:13, 133:16</p> <p>suggestions [s] - 132:22, 133:9, 141:18</p> <p>suit [s] - 58:13</p> <p>Suite [s] - 1:15, 1:22</p> <p>summarize [s] - 4:8</p> <p>summary [s] - 54:23, 123:17, 123:18</p> <p>summer [s] - 131:10</p> <p>summers [s] - 5:5</p> <p>sump [s] - 48:25, 49:1, 72:14</p> <p>supervision [s] - 148:10</p> <p>supervisor [s] - 7:15, 9:3, 10:1</p> <p>supplement [s] - 59:4</p> <p>supporting [s] - 114:20</p> <p>suppose [s] - 22:20</p> <p>supposed [s] - 80:8</p> <p>surrendered [s] - 68:7</p> <p>survey [s] - 111:9, 111:11</p> <p>Sweetman [s] - 4:23</p> <p>sworn [s] - 3:3</p> <p>Sylvan [s] - 136:10</p> <p>systems [s] - 108:12</p>	<p>T</p> <p>talks [s] - 111:5</p> <p>tanks [s] - 107:19, 107:22</p> <p>tax [s] - 75:19, 81:4, 97:2, 115:25, 116:8, 116:16, 129:18, 129:22, 130:25, 131:1</p> <p>taxes [s] - 97:6, 108:19</p> <p>tear [s] - 38:10</p> <p>ten [s] - 23:20, 24:4, 24:8, 81:23, 92:7, 102:24, 132:11</p> <p>ten-plus [s] - 81:23</p> <p>ten-year [s] - 24:4, 24:6, 132:11</p> <p>term [s] - 22:10, 62:18, 94:6, 97:8, 97:11, 124:13, 124:14, 126:5</p> <p>terminated [s] - 6:9</p> <p>terminology [s] - 15:8</p> <p>terms [s] - 19:5, 31:1, 34:13, 59:8, 101:12, 102:16, 102:18, 102:24, 103:5, 103:9, 106:8, 108:14, 108:25, 115:11, 117:10, 117:13, 143:12</p> <p>test [s] - 8:16, 8:21, 8:23, 8:5, 139:14, 139:16</p> <p>testified [s] - 3:3, 44:15, 52:9, 57:2, 62:4, 63:16, 140:21, 141:18, 148:8</p> <p>testifying [s] - 34:2, 34:18</p> <p>testimony [s] - 27:3, 34:5, 38:2, 39:10, 40:1, 40:7, 40:8, 40:14, 52:14, 62:12, 73:18, 139:4, 140:24, 147:6, 148:8, 148:12</p> <p>testing [s] - 108:8</p> <p>text [s] - 94:16, 102:9</p> <p>THE [s] - 60:12, 60:15, 61:17, 142:9</p> <p>thereafter [s] - 94:24, 101:18, 110:25, 113:3, 113:4</p> <p>therefor [s] - 147:12</p> <p>thereof [s] - 43:9</p>	<p>they've [s] - 36:8</p> <p>thief [s] - 136:5, 136:9</p> <p>Thief [s] - 60:25, 61:3, 61:5, 62:5, 136:25</p> <p>third [s] - 54:18, 103:10, 128:6, 128:8, 128:17, 133:22, 145:11</p> <p>third-party [s] - 128:17</p> <p>thousands [s] - 36:13, 66:17</p> <p>threatened [s] - 129:17, 130:4</p> <p>three [s] - 54:24, 55:13, 79:6, 79:23, 64:16, 97:21, 105:25, 107:16, 113:2, 114:10, 114:11, 120:6, 120:17, 121:20, 125:5, 133:23, 139:10, 142:18, 143:1, 144:25</p> <p>thoughts [s] - 21:6</p> <p>timbers [s] - 74:24</p> <p>timekeeper [s] - 85:3</p> <p>timekeeper-type [s] - 85:3</p> <p>title [s] - 9:12, 9:14, 14:2, 54:2, 107:5</p> <p>titled [s] - 142:23</p> <p>today [s] - 12:13, 15:5, 28:24, 34:2, 34:5, 34:18, 39:10, 77:20, 84:12, 88:2, 89:16, 90:21, 94:8, 116:13, 124:13, 126:18, 131:20, 134:17, 138:15, 139:4, 139:25</p> <p>together [s] - 13:15, 13:22, 28:9, 50:16, 56:20, 125:15</p> <p>Tony [s] - 10:5, 10:20, 10:23, 11:8, 56:7</p> <p>took [s] - 8:16, 8:21, 19:20, 80:16, 141:24</p> <p>top [s] - 35:12, 43:3, 79:4, 79:21, 88:18, 120:24, 121:25</p> <p>towards [s] - 92:4, 131:21, 133:22</p> <p>track [s] - 27:14</p> <p>training [s] - 106:23</p> <p>transaction [s] - 11:2, 12:18, 13:18, 38:6, 42:10, 42:12, 44:2, 45:21, 45:24, 49:25, 80:17, 84:20, 85:10, 91:22, 92:10, 93:13, 99:16, 103:23, 108:18, 109:5, 117:4, 121:9, 123:22, 126:19, 126:22, 138:11, 142:21, 143:25, 144:2</p> <p>transactional [s] - 91:21, 92:1, 92:18</p> <p>transactionally [s] - 92:15</p> <p>transactions [s] - 35:11, 57:7, 57:19, 91:19, 91:22, 91:23, 92:8, 92:18, 92:25, 93:1, 93:9, 93:13, 104:11, 105:19, 108:11, 110:3, 116:12, 143:1</p> <p>transcript [s] - 148:11</p> <p>transpired [s] - 113:18</p> <p>Transportation [s] - 64:16, 64:22, 65:2, 66:2, 67:3, 67:14, 137:10</p> <p>trick [s] - 94:11</p> <p>tried [s] - 60:2</p> <p>true [s] - 80:14, 148:11</p> <p>trust [s] - 70:6</p> <p>truthful [s] - 46:15, 134:7</p> <p>try [s] - 76:7</p> <p>trying [s] - 28:13, 65:16, 73:24, 75:25, 83:11, 94:11</p> <p>turn [s] - 13:25, 142:14</p> <p>turned [s] - 14:4</p> <p>two [s] - 8:20, 61:13, 61:18, 74:15, 75:6, 88:19, 121:17, 133:7, 137:22, 138:23, 144:13</p> <p>type [s] - 4:18, 68:15, 85:3, 88:13, 126:10</p> <p>typed [s] - 102:6, 103:12</p> <p>types [s] - 143:1</p> <p>typewritten [s] - 148:10</p> <p>typically [s] - 104:16, 104:17, 109:25</p>	<p>U</p> <p>U.S. [s] - 65:6</p> <p>ultimately [s] - 99:19</p> <p>unaware [s] - 37:13, 37:16, 37:19, 38:2, 38:4, 38:8, 38:17, 66:18, 72:5</p> <p>under [s] - 9:1, 11:10, 14:19, 33:18, 40:19, 41:5, 43:7, 44:16, 50:21, 50:23, 51:23, 52:6, 88:11, 97:9, 101:14, 104:8, 107:13, 110:5, 111:4, 111:9, 120:25, 133:22, 134:24, 135:8, 143:12, 148:7, 148:10</p> <p>underneath [s] - 122:1, 144:23</p> <p>undersigned [s] - 147:3</p> <p>understood [s] - 4:4, 60:17, 63:9, 92:16, 104:1</p> <p>units [s] - 133:3, 135:2</p> <p>unrelated [s] - 63:16</p> <p>up [s] - 3:20, 4:6, 11:17, 21:16, 49:3, 44:19, 44:23, 45:15, 78:1, 78:12, 80:7, 80:8, 80:10, 80:11, 88:22, 90:12, 97:23, 101:9, 103:12, 105:16, 107:8, 108:19, 109:6, 111:2, 113:23, 114:4, 123:22, 125:6, 125:11, 125:20, 126:5, 127:13, 129:16, 130:2, 130:15, 130:17, 130:19, 130:25, 133:9, 134:2, 134:11, 136:8, 138:12, 141:25, 142:12</p> <p>updates [s] - 28:11</p> <p>updating [s] - 71:14</p> <p>upset [s] - 66:23, 67:6</p> <p>upstairs [s] - 55:7, 55:9, 55:11</p> <p>V</p> <p>validate [s] - 123:14</p> <p>valuation [s] - 82:14,</p>
--	--	--	---

<p>82:25 valuations [v] - 73:19 value [v] - 58:8, 73:16, 73:22, 77:1, 77:4, 78:13, 83:4, 91:20, 102:4, 138:6 Value [v] - 2:20, 137:23 values [v] - 76:18 vehicle [v] - 39:15 ventilation [v] - 109:19 verbal [v] - 3:18, 102:20 verbiage [v] - 110:16 verify [v] - 81:2 versus [v] - 60:23, 91:23, 93:1, 126:9 viewed [v] - 20:12 viewing [v] - 29:15, 94:22 violation [v] - 37:11, 47:8, 67:8 violations [v] - 41:22, 47:11 voiced [v] - 80:4 void [v] - 112:3 volume [v] - 91:20, 92:13 volumes [v] - 127:24 vouching [v] - 63:14 vs [v] - 1:7</p>	<p>Wellik [v] - 61:13, 61:14, 61:19 west [v] - 105:17 West [v] - 1:15, 1:22 wether [v] - 136:20 Whispering [v] - 61:11, 61:24 whole [v] - 40:26, 41:3 widened [v] - 74:22, 75:10 WIEGE [v] - 68:1 wife [v] - 83:4, 101:7, 115:16, 128:22 WILD [v] - 1:8 Wild [v] - 1:24, 2:13, 2:16, 12:14, 15:21, 18:8, 18:13, 42:6, 44:2, 45:7, 49:21, 81:5, 81:11, 71:17, 77:17, 80:17, 93:25, 87:13, 93:4, 100:1, 124:22, 129:22, 132:4, 132:7, 132:13, 138:11, 138:13 willing [v] - 80:23 windows [v] - 97:26 winter [v] - 72:23 witness [v] - 3:3, 43:21, 57:10, 62:18, 62:19, 136:17, 148:7, 148:8, 148:9 WITNESS [v] - 2:5, 69:12, 69:15, 61:17, 142:9 Witness [v] - 148:18 wondering [v] - 47:15 wording [v] - 44:5, 44:15 words [v] - 77:4, 102:8 works [v] - 78:18 workshop [v] - 54:25, 97:22 worst [v] - 73:8 worth [v] - 76:22, 80:22 worthless [v] - 140:19 write [v] - 77:10 written [v] - 14:16, 93:3, 134:15 Wyoming [v] - 5:8, 5:20, 5:21, 6:7</p>	<p>11:9 year [v] - 4:10, 9:8, 18:22, 19:18, 19:18, 19:20, 20:4, 20:11, 22:25, 23:4, 23:5, 23:6, 23:17, 24:4, 24:6, 24:14, 25:11, 26:22, 56:5, 56:8, 70:23, 72:22, 128:10, 132:11, 137:7, 139:10, 141:22 yearly [v] - 41:24, 71:22 years [v] - 7:6, 7:12, 14:12, 18:3, 18:15, 25:7, 25:18, 26:16, 26:22, 27:11, 28:7, 50:5, 55:25, 58:20, 62:21, 63:11, 70:12, 71:6, 72:20, 81:23, 91:18, 92:18, 96:4, 125:5, 135:20 yourself [v] - 36:17, 50:16, 89:24, 119:25, 128:14</p>
<p>W</p>	<p>Y</p>	<p>Z</p>
<p>walk [v] - 21:6, 88:5, 95:24, 102:24, 103:9 walk-throughs [v] - 21:6 walked [v] - 20:14, 26:16, 26:23, 27:8, 27:12, 71:18, 132:10 wants [v] - 145:12 warn [v] - 68:7 warranties [v] - 104:21, 119:16 warranty [v] - 103:18, 103:24, 104:8 wash [v] - 117:2 washer [v] - 54:16 water [v] - 41:16, 41:20, 47:21, 47:23, 72:4, 72:7, 72:17, 139:16, 139:18 week [v] - 10:9, 91:1 weekly [v] - 126:14 weeks [v] - 8:20, 125:8</p>	<p>Yanni [v] - 10:23</p>	<p>zoning [v] - 47:16 zoning/building [v] - 47:7</p>

IN THE SUPREME COURT
OF THE STATE OF SOUTH DAKOTA

Appeal No. 30480

DUANE REMINGTON AND MELODY REMINGTON

Plaintiffs/Appellants

vs.

**WILD BILL'S CAMPGROUND AND RESORT, LLC.; KEITH GRIMM, AND
BRYAN IVERSON**

Defendants/Appellees.

APPEAL FROM THE CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT
PENNINGTON COUNTY, SOUTH DAKOTA

THE HONORABLE JEFFREY CONNOLLY
Circuit Court Judge

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	3
I. DISCUSSION	4
a. Notice of Review	4
b. The Circuit Court's Order Granting Summary Judgment in favor of Bryan Iverson should be reversed.	4
c. The property included a residence and therefore a property disclosure statement was required.	5
d. The "as is" clause does not waive the right to a disclose statement.....	10
e. Whether Iverson had knowledge of material defects presents questions of fact rendering Summary Judgment inappropriate.	11
II. CONCLUSION	14
CERTIFICATE OF COMPLIANCE.....	15
CERTIFICATE OF SERVICE	16

TABLE OF AUTHORITIES

Cases

<i>American Tel. & Tel. Co. v. Delta Commc'n Corp.</i> , 590 F.2d 100 (5th Cir. 1979).....	5, 13
<i>Garrido v. Team Auto Sales, Inc.</i> , 2018 S.D. 41, 913 N.W.2d 95	5, 13
<i>Lake Hendricks Improvement Ass'n v. Brookings Cnty. Plan. & Zoning Comm'n</i> , 2016 SD 17, 877 N.W.2d 99.....	4
<i>Lucero v. Van Wie</i> , 1999 SD 109, N.W. 2d 893	11
<i>McKie Ford Lincoln, Inc., v. Hanna</i> , 2018 S.D. 14, 907 N.W.2d 795	5
<i>Miller v. Harrington</i> , 618 N.W.2d 460 (Neb. 2000).....	8, 9, 10
<i>Norwest Bank South Dakota, N.A. v. Venners</i> , 440 N.W.2d 774 (SD 1989).....	10
<i>Oxton v. Rudland</i> , 2017 S.D. 35, 897 N.W.2d 356	10
<i>Saiz v. Horn</i> , 2003 SD 94, 668 N.W.2d 332.....	6
<i>St. Onge Livestock Co., Ltd. v. Curtis</i> , 2002 S.D. 102, 650 N.W.2d 537	4
<i>Tibke v. McDougall</i> , 479 N.W.2d 898 (S.D. 1992)	4

Statutes

Neb.Rev.Stat. § 76-2,120(1)(c)	8
SDCL § 43-4-38.....	5, 6, 11
SDCL 15-26A-22	4

Other Authorities

Black's Law Dictionary, 231 (8th ed 2004).....	7
Daniel P. Collins, <i>Summary Judgment and Circumstantial Evidence</i> , 40 Stan. L. Rev. 491 (1988)	5, 13

I. DISCUSSION
a. Notice of Review

Appellee filed an untimely Notice of Review, which prompted this Court to issue an Order to Show Cause. Subsequently, the parties filed a stipulation, with supporting affidavit, agreeing that good cause exists to authorize the filing of Appellee's notice of review outside the time limits provided by SDCL 15-26A-22. In response, this Court filed an Order on January 23, 2024, indicating that it will consider the impact of the untimeliness of the notice of review along with the other issues raised by both parties in the appeal. The Order also indicated it will reconsider its determination in *Lake Hendricks Improvement Ass'n v. Brookings Cnty. Plan. & Zoning Comm'n*, 2016 SD 17, 877 N.W.2d 99, upon Appellee briefing the additional issue concerning the impact of the untimeliness of the notice of review in their brief and also allowed Appellants to brief this issue in their reply.

Appellee filed his brief on February 15, 2024, and failed to include any arguments concerning the issues raised in the Notice of Review or the prior holding of the *Lake Hendricks* case. Therefore, this issue has been waived and does not warrant any response from Appellants.

b. The Circuit Court's Order Granting Summary Judgment in favor of Bryan Iverson should be reversed.

It is important to note that "[s]ummary judgment is not a substitute for trial; a belief that the non-moving party will not prevail at trial is not an appropriate basis for granting the motion on issues not shown to be a sham, frivolous or unsubstantiated; summary judgment is an extreme remedy and should be awarded only when the truth is

clear.” *St. Onge Livestock Co., Ltd. v. Curtis*, 2002 S.D. 102, ¶ 25, 650 N.W.2d 537, 544 (quoting *Tibke v. McDougall*, 479 N.W.2d 898, 904 (S.D. 1992)). As such, this Court should “make all *reasonable inferences* drawn from the facts in the light most favorable to the non-moving party.” *Garrido v. Team Auto Sales, Inc.*, 2018 S.D. 41, ¶ 15, 913 N.W.2d 95, 100 (emphasis added) (quoting *McKie Ford Lincoln, Inc., v. Hanna*, 2018 S.D. 14, ¶ 8, 907 N.W.2d 795, 798).

The non-moving party is not required to produce evidence of personal knowledge regarding the alleged tortious actions. Because a court needs to draw all reasonable inferences from the facts presented by the non-moving party, circumstantial evidence may be used to establish such reasonable inference. Once a court makes the determination of reasonableness, it may not choose among competing inferences, regardless of whether one is more plausible than the others. *See American Tel. & Tel. Co. v. Delta Comm’n Corp.*, 590 F.2d 100, 102 (5th Cir. 1979); *see also* Daniel P. Collins, *Summary Judgment and Circumstantial Evidence*, 40 Stan. L. Rev. 491, 494 (1988). In this regard, this Court has allowed circumstantial evidence presented by the non-moving party to defeat a motion for summary judgment. *See Garrido*, 2018 S.D. 41, 913 N.W.2d 95.

c. The property included a residence and therefore a property disclosure statement was required.

The crux of this appeal centers around whether South Dakota statutes require a property disclosure statement when the transaction involves residential property. There is no dispute that the listing in question included living quarters. There is no dispute that

Appellee Iverson failed to advise either the seller or buyer that a disclosure statement was required pursuant to SDCL § 43-4-38.

Iverson argues that he is not liable for any failure to disclose defects with the property because he was not the seller. (Appellee's Brief p. 20). However, Iverson completely ignores the requirements of real estate agents as set forth in *Saiz v. Horn*, 2003 SD 94, 668 N.W.2d 332. This Court in *Saiz* unequivocally addressed whether a real estate agent is required to inform a buyer of a seller's requirement to provide a disclosure statement. 2003 SD 94, 668 N.W.2d 332 at ¶ 11. The court held that a real estate agent owes a fiduciary duty to their clients, which obligate them to advise their clients of the rules and procedures involved in a real estate transaction. The court stated:

Not unlike the requirement of other professionals to inform their clients, real estate agents are expected to advise their principals on the rules and procedures involved in a real estate transaction. Why have realty agents for buyers, if agents, supposedly knowledgeable in real estate transactions, have no obligation to tell clients that sellers are required by law to give a disclosure statement? Such disclosure is legally mandated for the protection of buyers. It can reveal matters that may materially influence a decision whether to purchase a home.

Id. at ¶12. If Iverson would have followed the law and advised the seller to furnish a disclosure statement, the numerous defects with the property would have been disclosed, which would have materially influenced Appellants' decision to purchase the property.

Next, Appellee argues that the disclosure requirements set forth by SDCL § 43-4-38 do not apply because "[t]he 'living quarters' at the Business were never represented to be suitable as a 'family dwelling unit.' " (See Appellee's Brief p. 21.) First, the listing created by Iverson itself represented the living quarters was

suitable to live in and was in fact lived by numerous people at different times.

Iverson testified that he was aware of this critical fact prior to the sale:

Q: And, Bryan, this looks like a description of the living quarters; correct?

A: Yes.

Q: And there's a kitchen?

A: Yes.

Q: And the picture indicates there's a dishwasher, a kitchen sink, a refrigerator, and a stove in this particular photo; is that accurate?

A: That's a refrigerator there. This is a different room. (Indicating.)

Q: Oh, I -- yeah, I'm talking about the photo above the title "kitchen in living quarters". Do you see that photo?

A: Yep.

Q: And that includes a stove, freezer/refrigerator, dishwasher, and a kitchen sink and cabinets --

A: Yes.

Q: -- in that photo?

A: Yes.

Q: And that's located in the main building on the property?

A: Yes.

(APP.054-APP.055.) Further, it was known by all parties involved that the living quarters had been occupied prior to the sale by the seller and the previous owner.

(APP.054; APP.109.) Black's Law Dictionary defines "dwell" as "to reside in a place permanently or for some period." Black's Law Dictionary, 231 (8th ed 2004). "Dwelling house" is defined as "the house or other structure in which a person lives; a residence or abode." (Id.) There is no question that the "living

quarters” was a “family dwelling unit” and advertised as such. The Circuit Court erred in holding that a disclosure statement was not required.

Iverson’s attempt to distinguish the Nebraska case of *Miller v. Harrington* also must fail. In *Miller v. Harrington*, Plaintiffs purchased a tavern business and building. 618 N.W.2d 460, 472 (Neb. 2000). The building was located in a business district and zoned primarily for commercial use. *Id.* The building also had an apartment on the second floor. *Id.* The purchasers discovered defects with the building and brought suit against the seller and real estate agent alleging, in part, that the defendants failed to provide a disclosure statement. Similar to the case at bar, Defendants argued that the primary purpose of the purchase was commercial, and therefore a disclosure statement was not required. The court disregarded that argument and held:

In this case, § 76-2,120 contains no ambiguity in its terms. Under its plain language, the sale of any property consisting of at least one dwelling unit, but not more than four units, will trigger the disclosure requirements. *The statute makes no mention of the buyer’s primary purpose for the purchase.* The Millers contracted to purchase property with both commercial and residential components. The first floor was a tavern known as C.J.’s Saloon and constituted the Millers’ primary purpose for purchasing the property. The Harringtons, however, also informed the Millers at the time of the inspection that the second floor was occupied by a tenant who paid rent. The tenant continued to live there and pay rent to the Millers for 4 to 5 months after closing. Because the property contained at least one dwelling unit, a disclosure statement was required under § 76-2,120(2).

Id. at 475. (Emphasis added).

Iverson claims that the South Dakota and Nebraska definitions of residential property are “vastly” different and therefore the case is distinguishable (Appellee Brief p. 21). A simple reading of the two statutes indicates otherwise. Nebraska defines residential property as “real property which is being used primarily for residential

purposes on which no fewer than one or more than four dwelling units are located.” Neb.Rev.Stat. § 76-2,120(1)(c). South Dakota defines residential property as “all residential real property consisting of not more than four family dwelling units, all of which are contained in one structure[.]” SDCL 43-4-37.

Iverson has an issue with the phrase “primarily for residential purposes” and argues that the Nebraska statute requires disclosure statements in a mixed-use transaction when the primary purpose is residential (*Id.* at 21). This argument flies in the face of the facts of *Miller*. Namely, the primary purpose of the transaction was for the sale of a tavern, which is not residential, and the building was located in a business district and zoned for commercial use. *Miller*, 618 N.W.2d 460, 472 (Neb. 2000). More importantly, as the court in *Miller* clearly pointed out, the primary purpose of the transaction is irrelevant because “the statute makes no mention of the buyer’s primary purchase for the purchase.” *Id.* at 475. Similarly, the South Dakota statute makes no mention of the primary purpose of the purchase. The Nebraska Supreme Court held that because the property contained one dwelling unit, a property disclosure statement was required. *Id.* Because the sale between Grim and Remington contained one dwelling unit, this Court should hold that a property disclosure statement was required.

Iverson further argues that the living quarters was merely incidental to the operation of the business and therefore a disclosure statement was not required. Again, our statutory scheme does not provide for any exception regarding whether or not a residence is incidental to any business activity. Further, there is no evidence in the record that the residence in question was incidental to the business. However, the evidentiary record does contain testimony that the seller

and his family had lived there and the prior owner of the campground used the living quarters as his residence:

Q: Okay. I'm sorry. Anyone else besides Anthony Smith, Brandon Pressley that had lived in the living quarters during that time period from when you purchased it to when you sold it?

A: My family, my daughter.

Q: Before you purchased it, was there always a living quarters?

A: The previous owners lived there. I mean, they lived there.

(APP.027.) The seller and previous owner “lived there.” The property was unquestionably used as a primary residence.

Appellees attempts to distinguish the *Miller* case should fail and this Court should adopt the Nebraska Supreme Court’s interpretation and rationale behind its holding requiring a disclosure statement when a residence is involved in a real estate transaction.

d. The “as is” clause does not waive the right to a disclose statement.

Anticipating this very argument, Appellants covered the issue in their initial brief. Iverson’s attempt to distinguish the *Oxton* case must fail. In *Oxton v. Rudland*, 2017 S.D. 35, 897 N.W.2d 356, the issue was whether an “as is” clause in a contract for deed waived the property disclosure statement. This Court relied on long standing precedent and held “[b]ecause no clear, unequivocal, or decisive act or acts exist on this record, we reverse the circuit court’s summary disposition of the Oxton’s claim that the Rudlands violated SDCL 43-4-38.” *Id.* at ¶ 22 (citing *Norwest Bank South Dakota, N.A. v. Venners*, 440 N.W.2d 774, 775 (SD 1989) (to support the defense of waiver, there must be

a showing of a clear, unequivocal and decisive act or acts showing an intention to relinquish the existing right.)). This Court clarified that *Lucero v. Van Wie*, 1999 SD 109, N.W. 2d 893, does not hold that the use of “as is” language or general disclaimers against warranties or representations constitute waiver of the disclosure requirements under SDCL 43-4-38 as a matter of law, but must be determined by the facts of each case. *Id.* at ¶ 21.

The facts of the case at bar do not include a clear, unequivocal and decisive act or acts showing an intention to waive the disclosure requirements. The facts of the case at bar demonstrate dual representation by a real estate agent who misinformed both parties regarding the requirements of a disclosure statement. The facts also demonstrate fraudulent misrepresentations that induced the Remingtons into purchasing the property. “A provision in a contract that the buyer takes the property “as is” does not confer upon the seller a general a general immunity from liability for fraud.” *Id.* at ¶ 18 (citations omitted). This principal applies to fraudulent actions by the seller’s agent as well. More importantly, “reliance in a fraudulent inducement case is a question of fact,” which precludes summary judgment. *Id.* Further, it is for a jury to determine if Iverson had knowledge of material facts and withheld them.

e. Whether Iverson had knowledge of material defects presents questions of fact rendering Summary Judgment inappropriate.

Iverson would like this Court to believe that he was hired to sell this property in July of 2016. (See Appellee’s Brief p. 8). This assertion is contrary to his very own testimony. Iverson testified that the property had been listed through him for nearly ten years. (APP.046.) During this time period the property was

placed on the market each year during the “camping” offseason. (APP.047.)

Importantly, Iverson testified that he had shown the property roughly 30 times:

Q: Prior to the sale of the property in May of '17, given the fact that it was listed by you for the prior 10 years, how many times would you say you've walked through the property?

A: I do not know.

Q: 50?

A: I don't know.

Q: Well, I mean, you show the property five times for 10 years, and it's on and off the market each year. Is 50 a fair estimate of how many times you've walked that property?

A: I just couldn't tell you.

Q: More than 30?

A: I'll go with 30.

(APP.048.) The reason Iverson would like to avoid this important fact is because it provides evidence of his intimate knowledge of the property. This is just one of many facts that should be heard by a jury to determine if Iverson withheld material facts from the buyer and whether he did so fraudulently.

In *Saiz*, the issue was whether a real estate agent is required to inform a buyer of a seller's requirement to provide a disclosure statement. 2003 SD 94, 668 N.W.2d 332 at ¶ 11. The court held that a real estate agent owes a fiduciary duty to their clients, which obligate them to advise their clients of the rules and procedures involved in a real estate transaction. Further, real estate agents “owe their principals ... a duty to use reasonable efforts to fully, fairly and timely disclose information to their principals within their

knowledge, which is or may be material to the subject matter of their agency. Material information depends on the facts and circumstances of each case.” *Id.* at ¶13.

The non-moving party is not required to produce evidence of personal knowledge regarding the alleged tortious actions. Because a court needs to draw all reasonable inferences from the facts presented by the non-moving party, circumstantial evidence may be used to establish such reasonable inference. Once a court makes the determination of reasonableness, it may not choose among competing inferences, regardless of whether one is more plausible than the others. *See American Tel. & Tel. Co. v. Delta Comm’n Corp.*, 590 F.2d 100, 102 (5th Cir. 1979); *see also* Daniel P. Collins, *Summary Judgment and Circumstantial Evidence*, 40 Stan. L. Rev. 491, 494 (1988). In this regard, the South Dakota Supreme Court has allowed circumstantial evidence presented by the non-moving party to defeat a motion for summary judgment. *See Garrido*, 2018 S.D. 41, 913 N.W.2d 95.

In *Garrido*, the plaintiffs purchased a car from Team Auto Sales, Inc., for \$1,500. *Id.* at ¶¶ 3-4. Plaintiffs noticed the car smelled like gasoline when running and had to be jump started before the test drive; however, they purchased the vehicle “as is.” *Id.* After purchasing the car and after an incident that caused plaintiffs to be admitted to the hospital as a result of carbon monoxide poisoning, plaintiffs filed a complaint against Team Auto Sales, Inc. seeking damages as a result of the poisoning from the muffler on the car. *Id.* at ¶¶ 7-10. Team Auto Sales moved for summary judgement because the evidence could not establish causation, and the circuit court granted their motion. *Id.* at ¶¶ 10, 14. On appeal, the South Dakota Supreme Court reasoned:

[A]n exact measure of the carbon monoxide levels in the vehicle at the time of the exposure are not essential to create a jury question. The medical evidence that

Appellants were suffering from carbon monoxide exposure, the condition of the vehicle exhaust system, and the timing and circumstances of Appellants' reporting to the hospital with these injuries allow a fact finder to conclude that the defective exhaust system was probably the instrument that caused the exposure. In a context such as this, TAS has not presented any case suggesting that causation can only be established by presenting expert testimony that the levels of carbon monoxide in the passenger compartment were toxic while Appellants were sitting in the vehicle.

Id. at ¶ 24. Thus, the Court reversed the grant of summary judgment based on circumstantial evidence showing causation. *See Id.* at ¶ 27.

Therefore, it is not required that Plaintiffs have personal knowledge that Iverson was aware of material defects. There is no "smoking gun" evidentiary requirement to defeat a motion for summary judgment. Plaintiffs have demonstrated sufficient evidence that could lead a jury to find that Iverson had knowledge of material facts and failed to disclose them to Plaintiffs in violation of South Dakota law.

II. CONCLUSION

If Appellee would have followed the law and advised his clients that a property disclosure statement was required, presumably, the Seller would have disclosed all of the defects with the property and Appellant could have made an informed decision on whether or not to proceed with the transaction. It is undisputed that Appellee failed to properly advise his clients in breach of his fiduciary duty.

Dated this 18th day of March, 2024.

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CERTIFICATE OF COMPLIANCE

Pursuant to S.D.C.L. § 15-26A-66(b)(4), I certify that Appellants' Reply Brief complies with the type volume limitations provided for in the South Dakota Codified Laws. This Reply Brief contains 3,761 words and 23,247 characters. I have relied on the word and character count of Word processing system used to prepare this Reply Brief. The original Appellants' Reply Brief and all copies are in compliance with this rule.

Dated this 18th day of March, 2024.

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CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of March, 2024, I electronically filed the foregoing Appellants' Reply Brief and sent one copy, upon acceptance of the Court, via U.S. Mail, first-class postage prepaid to:

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I further certify that on the 18th day of March, 2024, I electronically filed the foregoing Appellants' Reply Brief and sent the original of it, upon acceptance of the Court, via U.S. Mail, first-class prepaid to:

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