

EXHIBIT M

Scott Dugan - March 16, 2015
The Fredric and Barbara Rosenberg Living Trust vs. Bank of America, N.A., et al

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<p>1 DISTRICT COURT</p> <p>2 CLARK COUNTY, NEVADA</p> <p>3</p> <p>4 THE FREDRIC AND BARBARA) ROSENBERG LIVING TRUST,) 5) 6 Plaintiff,) 7 vs.) CASE NO. 8) A-13-689113-C 9 BANK OF AMERICA, N.A.; BAC HOME) LOANS SERVICING, LP, a foreign) 10 limited partnership; MACDONALD) HIGHLANDS REALTY, LLC, a Nevada) limited liability company;) 11 MICHAEL DOIRON, an individual;) SAHAHIN SHANE MALEK, an) individual; PAUL BYKOWSKI, an) 12 individual; THE FOOTHILLS AT) MACDONALD RANCH MASTER) 13 ASSOCIATION, a Nevada limited) liability company; THE FOOTHILLS) 14 PARTNERS, a Limited Partnerships;) DOES I through X; and ROE) 15 CORPORATIONS I through X,) inclusive) 16) 17 Defendants.)</p> <p>18 DEPOSITION OF SCOTT DUGAN</p> <p>19</p> <p>20 Taken at the Law Offices of 21 Howard Kim & Associates 1055 Whitney Ranch Drive Suite 110 22 Henderson, Nevada 89014</p> <p>23</p> <p>24 Monday, March 16, 2015 9:52 a.m.</p> <p>25 Reported by: Angela Campagna, CCR #495</p>	<p>1 INDEX</p> <p>2 EXAMINATION</p> <p>3 By Ms. Hanks: 4, 233, 236 By Mr. Gunnerson: 224, 235</p> <p>4 EXHIBITS MARKED</p> <p>5 Exhibit 1 - Appraisal Review Report 15</p> <p>6 Exhibit 2 - survey questions 158</p> <p>7 Exhibit A - Real Estate Damages Analysis 226</p> <p>8 CERTIFIED QUESTIONS</p> <p>9 (NONE)</p> <p>10 INFORMATION TO BE SUPPLIED</p> <p>11 (NONE)</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>
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<p>1 APPEARANCES:</p> <p>2 For the Plaintiff:</p> <p>3 KAREN L. HANKS, ESQ. Howard Kim & Associates 1055 Whitney Ranch Drive Suite 110 Henderson, Nevada 89014 Karen@hkimlaw.com</p> <p>6 For Sahahin Shane Malek:</p> <p>7 JAY DEVOY, ESQ. The Firm, P.C. 200 East Charleston Blvd. Las Vegas, Nevada 89104 Jay@thefirm-lv.com</p> <p>10 For Bank of America:</p> <p>11 STEVEN G. SHEVORSKI, ESQ. Akerman LLP 1160 Town Center Drive Suite 330 Las Vegas, Nevada 89144 Steven.shevorski@akerman.com</p> <p>14 For MacDonald Highlands Realty, LLC and Michael Doiron:</p> <p>15 SPENCER H. GUNNERSON, ESQ. Kemp, Jones & Coulthard 3800 Howard Hughes Pkwy. 17th Floor Las Vegas, Nevada 89169 Sgunnerson@kempjones.com</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>1 Whereupon--</p> <p>2 SCOTT DUGAN,</p> <p>3 was called as a witness, and having been first duly</p> <p>4 sworn, was examined and testified as follows:</p> <p>5 EXAMINATION</p> <p>6 BY MS. HANKS:</p> <p>7 Q. Please state your name for the record.</p> <p>8 A. Richard Scott Dugan.</p> <p>9 Q. Mr. Dugan, have you ever had your</p> <p>10 deposition taken before?</p> <p>11 A. Yes.</p> <p>12 Q. On how many occasions?</p> <p>13 A. Fifty at least.</p> <p>14 Q. Do you feel comfortable then doing away</p> <p>15 with the typical admonishments that come with the</p> <p>16 deposition, meaning the ground rules that are</p> <p>17 associated with the deposition?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. I do like to remind everyone,</p> <p>20 though, even if they have had their deposition</p> <p>21 multiple times, the oath that you just took is the</p> <p>22 same oath you would take in a court of law.</p> <p>23 Do you understand that?</p> <p>24 A. Yes.</p> <p>25 Q. What's your current occupation?</p>

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1 **A. I'm a certified general real estate**
2 **appraiser.**
3 Q. How long have you worked in that field?
4 **A. I've been appraising in Las Vegas since**
5 **1969.**
6 Q. I'm sorry. Did you say certified
7 residential appraiser?
8 **A. Certified general.**
9 Q. What year did you say you've been doing
10 that since?
11 **A. 1969.**
12 Q. Have you worked the entire time in
13 Nevada in that field?
14 **A. Yes.**
15 Q. And what is your educational background
16 that allowed you to become a certified general
17 appraiser?
18 **A. I took the exam in order to be**
19 **certified. I'm a college graduate. Major in**
20 **finance. I've taken the required courses in order**
21 **to be state licensed.**
22 Q. Does the state require that you take
23 either continuing education classes in order to
24 maintain your good standing in having that
25 appraiser, I guess, exam stay good?

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1 **A. Well, in order to keep my license I do,**
2 **yes.**
3 Q. Okay. And what licenses do you have?
4 **A. I'm a certified general appraiser.**
5 Q. And that's the license you get after
6 passing the exam that you just referenced a little
7 while back?
8 **A. Well, prior to 1991, you didn't have to**
9 **have a license to be an appraiser in the State of**
10 **Nevada or anywhere in the United States. People**
11 **just used to hang their shingles and call themselves**
12 **appraisers.**
13 **And then federal law evolved and**
14 **mandated that states govern, take responsibility for**
15 **appraisers and, therefore, exams were created and**
16 **continuing ed every two years. You have to have 30**
17 **hours in order to be a licensed appraiser and be**
18 **able to practice in a given state.**
19 Q. Do you carry licenses in any other
20 state besides Nevada?
21 **A. No.**
22 Q. Have you kept your license in good
23 standing since it was required in 1991?
24 **A. Yes.**
25 Q. Has it ever been revoked?

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1 **A. No.**
2 Q. Has it ever been suspended?
3 **A. No.**
4 Q. Are you a member of any professional
5 organizations?
6 **A. I'm a member of the Appraisal**
7 **Institute. And I hold the S.A.R. designation.**
8 Q. And the S.A.R. designation, does that
9 come from the Appraisal Institute?
10 **A. Yes. There's multiple designations.**
11 **You could be an M.I.A., an S.R.A., S.R.P.A.**
12 Q. What does S.R.A. stand for?
13 **A. Senior Residential Appraiser.**
14 Q. What is the requirement of the
15 Appraisal Institute before they would give you the
16 S.R.A. standing?
17 **A. Certain courses. And you have to pass**
18 **those, and then you have to write like a thesis, a**
19 **property valuation, and demonstrate physical**
20 **functional external obsolescence.**
21 Q. Is it a paid professional organization,
22 like do you have to pay a fee to be a part of it?
23 **A. Yes.**
24 Q. And how long have you been a part of
25 that, the Appraisal Institute?

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1 **A. I became designated in 1989, but I**
2 **believe I've been -- I was an associate probably**
3 **since the mid 70's.**
4 Q. And the thesis that you had to write in
5 order to get that designation, would that have been
6 written back in 1989?
7 **A. Probably over three or four years.**
8 Q. Okay. And when was it completed?
9 **A. Prior to 1989 when I became designated.**
10 Q. Is it a thesis that only gets submitted
11 to the institute?
12 **A. Yes.**
13 Q. So it's not published anywhere after
14 that unless you give permission?
15 **A. Well, I've never given permission, and**
16 **it's just what's given to the institute in order to**
17 **obtain my designation.**
18 Q. With the exception of drafting the
19 thesis, have you drafted any other articles or books
20 that have been published?
21 **A. I mean, I might have had several**
22 **articles in the greater Las Vegas Board of Realtors**
23 **over the past 30 years, but I don't recall, but no**
24 **books.**
25 Q. And how many cases or -- well, what

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1 would you call an assignment when you get it? Do
2 you call it a case or assignment when you have to do
3 appraisal work whether it -- regardless of who has
4 hired you? What do you classify that as, an
5 assignment or...?
6 **A. Well, I mean, are you talking the**
7 **normal course of business or litigation or...?**
8 Q. Is there differences? If there are
9 differences, let me know. But if not, I'm just
10 going to use the same terminology you use. That way
11 when we go forward with my questions, we're talking
12 about the same thing so...
13 **A. Well, we do multiple appraisals for**
14 **various lenders, private individuals, estate tax, as**
15 **well as some litigation work.**
16 Q. Okay. So let's talk about just your
17 litigation work.
18 **A. Okay.**
19 Q. Just to start with. Have you had any
20 assignments where you had to determine whether a
21 particular property or condition caused a diminution
22 of value?
23 **A. Yes.**
24 Q. How many of those would you say you've
25 had throughout your career?

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1 **A. Twenty to thirty.**
2 Q. And of the twenty to thirty, which side
3 were you on? In other words, were you representing
4 the plaintiff or the defendant in that context?
5 **A. I would say both sides.**
6 Q. Equally?
7 **A. Well, I can't -- I don't pick a side,**
8 **because I'm supposed to be an unbiased expert. So**
9 **whether I'm on the plaintiff or the defendant, it's**
10 **really irrelevant.**
11 Q. Do you keep records of how many cases
12 -- I know you produced your testimony list, but do
13 you keep records of the cases or assignments that
14 you received over the years in litigation and then
15 keep track of whether it was plaintiff or defendant?
16 **A. No.**
17 Q. Now, of the twenty to thirty cases
18 where you did have to assess whether there was a
19 diminution of value, did any of those cases involve
20 golf course properties?
21 **A. Yes.**
22 Q. How many?
23 **A. Several.**
24 Q. Can you talk about some of them of what
25 the issue that was presented and what opinion that

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1 you gave in those particular cases?
2 **A. One was on Orient Express, and it was a**
3 **view, corridor view where one of the adjoining**
4 **neighbors felt that they had a guaranteed view**
5 **across the side property line of a property to the**
6 **east. The second one --**
7 Q. Before we move onto the second one, who
8 did you represent? Who were you hired on behalf of,
9 in that context, the one who thought their view was
10 affected?
11 **A. No. Defendant.**
12 Q. Okay. So the one who was saying your
13 view was not affected or you had no guarantee of a
14 view?
15 **A. Yes.**
16 Q. Okay. You said it was Orient Express?
17 **A. Correct.**
18 Q. Was that the property? What is that
19 referring to?
20 **A. The street name.**
21 Q. And do you remember who -- is that on
22 your list of testimony by any chance?
23 **A. No. It won't be within the last four**
24 **years.**
25 Q. So this case did not occur in the last

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1 four years?
2 **A. Correct.**
3 Q. Okay. And do you remember if that case
4 actually went to trial or arbitration or whatever
5 the case may be?
6 **A. I don't think it went that far.**
7 Q. You were going to go onto the next
8 case. What was the next case?
9 **A. There was a property in Seven Hills on**
10 **Imperia Drive.**
11 Q. Okay. And what was the problems
12 associated with that case?
13 **A. Same thing. Two neighbors fighting**
14 **over the view corridor.**
15 Q. And the view corridor was to the side?
16 **A. Borrowed view.**
17 Q. What do you mean by "borrowed view"?
18 **A. That it's not guaranteed. Sight line**
19 **is across another property line.**
20 Q. Okay. So a sight line that's going
21 across another property line?
22 **A. Yes.**
23 Q. And how long ago was this case?
24 **A. I would say 15 years.**
25 Q. And which side were you hired by?

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1 **A. I don't recall.**
2 Q. What's the next case you can remember?
3 **A. Property in Echo -- I think it's Echo**
4 **Ridge or it's Echo Bay, in Mount Charleston.**
5 Q. And what was the problem presented by
6 that case?
7 **A. We had two homes, one below and one**
8 **above. The house above was existing. The house**
9 **below was built. And they built into the restricted**
10 **easement line and blocked the view of the house**
11 **above.**
12 Q. And which side of the argument were you
13 on?
14 **A. I think I represented the house above**
15 **who sued the house below.**
16 Q. Do you remember how long ago that one
17 was?
18 **A. In the last ten or twelve years.**
19 Q. What were the results of that one? Did
20 it actually go to trial or arbitration?
21 **A. No. Not that I'm aware of.**
22 Q. How about the Seven Hills one? I
23 didn't ask that question. Did that actually go to a
24 trial or arbitration where it was determined?
25 **A. No. You know, a lot of times we do the**

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1 **reports and plaintiffs and defendants negotiate it**
2 **out, and we never get the results.**
3 Q. Okay. So of these three that you do
4 remember, you don't remember the results, you
5 certainly don't remember testifying at trial in any
6 of them?
7 **A. No.**
8 Q. Any other ones that you can remember
9 that involved the litigation that we're talking
10 about here today where the sight view lines were
11 affected?
12 **A. There may be several others, but I**
13 **don't recall at this time.**
14 Q. Do you recall who hired you in each of
15 those cases, in other words, the actual firm?
16 **A. No.**
17 Q. Do you keep records of all the reports
18 that you draft in any of your cases?
19 **A. Do I keep records? I believe so.**
20 Q. Do you keep them in, I guess, forever,
21 or do you at a certain time do you delete certain
22 ones after a certain amount of time has passed?
23 **A. Well, the reporting requirements from**
24 **the state are five years.**
25 Q. Do you have any reports that go back

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1 past five years?
2 **A. All my multimillion dollar assignments**
3 **in the value over the past 25 years.**
4 Q. And the three that we just discussed,
5 the Seven Hills the Echo Bay slash Bridge, Orient
6 Express, were those multimillion dollar cases?
7 **A. Two were.**
8 Q. Which two?
9 **A. Orient Express and Seven Hills.**
10 Q. Now if you could take -- I think it's
11 on the last page of your report that you produced,
12 is the testimony the last four years. Let's take a
13 look at that page. I think it's the last page.
14 Maybe I'm wrong.
15 **A. Yes.**
16 **(Exhibit 1 marked.)**
17 Q. So is this the last page of it? So
18 Exhibit 1, just for the record, we've marked this,
19 is your Appraisal Review Report that you prepared
20 for Kemp Jones and Coulthard, LLP; is that correct?
21 **A. Yes.**
22 Q. And the last page of that report
23 because by law or by Nevada law we have produced
24 your testimony history. That's why I believe it's
25 attached to it. It looks like it lists your

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1 attorney workload report. So there's quite a bit of
2 cases listed here. What are they? Is this your
3 testimony for the last four years?
4 **A. Well, actually, it goes back to**
5 **December of 2010, so it's actually five years.**
6 Q. Okay.
7 **A. Or four and a half years, I guess.**
8 Q. Okay. Now, do you recall whether any
9 of the cases listed on this sheet involved kind of
10 the similar issues we have presented by this case
11 kind of a sight view corridor being affected?
12 **A. I don't believe so.**
13 Q. In any of -- whether it be these cases
14 that are listed here or any of the cases you've been
15 hired before, were you ever disqualified as an
16 expert?
17 **A. No.**
18 Q. Have your opinions ever been partially
19 limited in any litigation where you were hired?
20 **A. No.**
21 Q. And this might be the same. I want to
22 make sure we're clear. Are any of the other cases
23 listed on this case, the last page of your report,
24 did it involve an issue of diminution of value
25 regardless of whether it had to do with sight view

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1 corridors?

2 A. Yes.

3 Q. Which of those cases on this list had

4 to do with diminution of value? We'll just go by

5 the address, if you want to. If you'd go through

6 the list and then we could go back and ask specific

7 questions.

8 A. Well, when you mean "diminution in

9 value", what do you want to clarify that as?

10 Q. I guess I want to clarify it by a case

11 that dealt with some condition regardless of what

12 the condition was, some condition where someone was

13 saying this has diminished the value of my property?

14 A. Okay. So, in other words, for

15 instance, not represented what they obtained for

16 square footage?

17 Q. Well, we'll go to that next, because

18 I'll ask you that what that clarification is?

19 A. Okay. Well that's why I'm asking

20 because...

21 Q. Let's start there. What do you mean by

22 that?

23 A. Well, the Platinum case.

24 Q. Okay. Let's talk about the Platinum

25 case. Maybe you tell me about that, and I can tell

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1 if that's what I'm thinking about. What is the

2 Platinum case be about?

3 A. The Platinum case is about the buyers

4 believing they received something that they did not

5 as far as the size of the units.

6 Q. Okay. So what in that case -- who were

7 you hired by?

8 A. I was hired by the defendants.

9 Q. So the people who sold the condos?

10 A. That owned, that developed it, yes.

11 Q. Developed it. Okay. So in this case

12 if I'm understanding correctly, the buyers believed

13 they were going to be getting a certain square foot

14 type of condo and alleging they did not?

15 A. Yes.

16 Q. Okay. And because of that, I guess

17 they were arguing what they paid was the wrong

18 amount so to speak?

19 A. Correct.

20 Q. So tell me a little bit more how you

21 determined on behalf of your client that what was

22 sold is what they got?

23 A. Well, the brochures showed a square

24 footage that included the balconies, total area.

25 And what ultimately happened is we had a specialist

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1 out of California come in and measure the units,

2 number one. And what the buyers don't understand is

3 that in order to have the unit livable square

4 footage, you have to include a portion of the walls

5 which changed the square footage in a plus direction

6 from what their expert said to a closer percentage

7 or a margin of error from what was reported.

8 Q. It looks like you were deposed in this

9 case. Do you know if it went to trial?

10 A. It settled.

11 Q. Do they have an expert you said from

12 California?

13 A. No. Our expert was from California.

14 Q. Oh, okay.

15 A. That analyzed the different types of

16 measuring components to measure a building.

17 Q. Okay.

18 A. Whether it be by square footage, by the

19 assessor, ANSI, measuring concepts.

20 Q. And what was your role in that case?

21 A. Our role was to get the right experts

22 to figure out whether there was a case or not a

23 case. And the problem with the whole case was is

24 this was during 2004 to 2006 when the market was

25 exploding. People had bought and put deposits on

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1 these units probably in 2000 -- I think Platinum

2 started closing in 2006. So they probably started

3 deposits in 2002 or '03, or '03 and '04 when the

4 market was on fire. And then the market changed.

5 So, obviously, we had a large number of very unhappy

6 buyers citywide.

7 Q. What was your role though? I'm just

8 trying to figure out -- I know you said that your

9 side. Was it your side the law firm that had hired

10 you hired a person from California to actually do

11 the measurement or I guess discuss the different

12 varying ways you can measure square footage for a

13 particular unit. What was your role? What opinion

14 did they ask you to give in that case?

15 A. Well, we came up with the market value

16 to substantiate the values as of the date of

17 purchases.

18 Q. Okay. Any other cases that involve --

19 I think you talked about the square footage issue?

20 A. Maybe not on this list, but I've done

21 many cases where the Greater Las Vegas Board of

22 Realtors populates the certain fields into the

23 listing. And there are certain fields that are not

24 able to be changed. And some of those fields are

25 lot size, gross living area.

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1 So, therefore, if the assessor
2 were to have said we have a plan three on this given
3 lot and it's really a plan two, and the only
4 variance is, say, a bedroom or a larger footprint,
5 the square footage could be inaccurate. So, in
6 other words, the buyer thinking they are getting
7 2,300 feet, may have only got 2,100 feet.
8 Q. Okay. How about -- now, since we kind
9 of carved out that exception where you were trying
10 to clarify my question of this list, what other
11 cases deal with diminution of the value where it was
12 caused by some type of condition not dealing with
13 square footage since we already carved that out
14 already?
15 A. **14480 Roundabout Circle, 23 Mallard**
16 **Creek; 49 Hawk Ridge; 1157 Via Casa Palermo; 53 Hawk**
17 **Ridge; 8 Rue Mediterra Drive. I believe that's it.**
18 Q. Okay. Let's go through each of them.
19 14480 Roundabout Circle. What did that case
20 involve?
21 A. **That's a construction defect case.**
22 Q. What side of the fence were you on that
23 one?
24 A. **Plaintiff.**
25 Q. Okay. And what was the specific

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1 argument being alleged by the plaintiff in terms of
2 how a construction defect diminished the value of
3 their home?
4 A. **It was a house built in Calico Basin,**
5 **and the structure fabrication of the exterior walls**
6 **was a pre-fabbed finish. And the framework on the**
7 **interior that held the exterior was of insufficient**
8 **strength to support the structure. Therefore, the**
9 **structure was moving.**
10 Q. You said you represented the
11 plaintiff's side of that case; is that correct?
12 A. **Yes.**
13 Q. So what was your opinion in that case
14 in terms of -- I don't mean like every specific part
15 of your opinion, but in general, did you have in
16 general that because of this defect, the value of
17 their home was diminished?
18 A. **Yes.**
19 Q. How about 23 Mallard Creek Trail, what
20 was the issue presented by that case?
21 A. **That's a moving house. Soil**
22 **compaction.**
23 Q. So kind of similar to the construction
24 defect issue?
25 A. **Yes.**

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1 Q. And then how about 49 Hawk Ridge Drive?
2 Before we go there, what side of the fence were on
3 that one, the construction defect issue for 2300
4 Mallard Creek?
5 A. **Plaintiff. And that's still an ongoing**
6 **case.**
7 Q. How about 49 Hawk Ridge Drive?
8 A. **That's a deficiency hearing. So that**
9 **was for Bank of Nevada, so that's not construction.**
10 Q. Okay. And when you say deficiency
11 hearing, does that mean that you were hired to
12 determine the value of the property after the bank
13 foreclosed on it to figure out the difference
14 between the loan and what the actual house sold for
15 at auction?
16 A. **No. Actually, you do it before.**
17 Q. You do it before?
18 A. **So the bank knows what to bid in.**
19 Q. And were you representing the bank on
20 that side?
21 A. **Yes.**
22 Q. Okay. So you would include that in a
23 diminution of value when you're doing a deficiency
24 hearing, or was that just a mistake?
25 A. **That was just a mistake. Sorry.**

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1 Q. How about 1157 Via Casa Palermo?
2 A. **That's a -- that was an FDIC case, and**
3 **that was -- that actually is just a retrospect.**
4 **That's not a litigation. Excuse me.**
5 Q. Oh, it's not in litigation?
6 A. **No. No.**
7 Q. Oh, okay. So who were you hired by in
8 that case?
9 A. **The FDIC.**
10 Q. And what were you hired to determine in
11 that case even though it's not litigation?
12 A. **Well, actually, I did about 40 cases**
13 **for the FDIC retrospective valuations over the past**
14 **four years, maybe five years. And it was in regards**
15 **to Core Logic and LSI which are appraisal managing**
16 **companies nationwide. And the FDIC sued both of**
17 **those companies for inappropriate appraisals,**
18 **misleading reports and so forth.**
19 Q. So just so I can understand, your job
20 then in that case was to go back and, I guess,
21 review those particular reports and do a
22 retrospective appraisal to see whether they did
23 anything wrong?
24 A. **Were accurate or not, yes.**
25 Q. And then how about 53 Hawk Ridge?

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1 **A. Fifty-three Hawk Ridge is an ongoing**
2 **case. I've done a deposition and it's -- I'm on the**
3 **plaintiff's side where they are suing multiple**
4 **subcontractors. The stone on the exterior of the**
5 **house was improperly attached to the house, and it's**
6 **falling off on the inside and outside.**
7 Q. So another construction defect so to
8 speak that might be affecting the value of the
9 house?
10 **A. Yes.**
11 Q. How about 8 Rue Mediterra Drive?
12 **A. That's a property in Lake Las Vegas.**
13 **It's about 18,000 square feet, and it's a soil**
14 **compaction issue. The house is moving.**
15 Q. So, again, another type of construction
16 defect that's causing the value of the house to
17 change or be altered in some way; is that correct?
18 **A. Well, it's changing -- the bids were**
19 **somewhere between 300,000 to \$1.5 million to correct**
20 **it.**
21 Q. Who do you represent on that side, the
22 8 Rue Mediterra Drive?
23 **A. The owner of the property.**
24 Q. Have you ever been hired by anyone out
25 of state?

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1 **A. Yes.**
2 Q. Are you able to give testimony even
3 though you only have licenses in Nevada?
4 **A. Oh, I mean, I've been hired by**
5 **attorneys out of state that are doing work in the**
6 **State of Nevada.**
7 Q. Okay. So you've never been hired by
8 someone like that California guy was hired by
9 someone here, you've never been hired by a case
10 being outside of the State of Nevada as an expert?
11 **A. No.**
12 Q. Did you review any documents in
13 preparation for today's deposition?
14 **A. I reread Mr. Jiu's reports as well as**
15 **mine.**
16 Q. So other than those documents, those
17 are the only things that you reviewed in preparation
18 for today?
19 **A. Yes. And the real estate damages book.**
20 Q. Did you have any conversations with
21 counsel prior to today's deposition?
22 **A. Yes.**
23 Q. How many times did you speak with
24 counsel prior to today's deposition not counting
25 your additional retention conversation that might

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1 have happened?
2 **A. Over the past six months?**
3 Q. Yes. Let's go past six months.
4 **A. I may have spoke to him 30 times.**
5 Q. Okay. That's a lot. How often --
6 well, what was the substance of those conversations?
7 I'm sure you don't remember every conversation, but
8 generally speaking what have you been talking about
9 over that period of time?
10 **A. Issues and concerns regarding the**
11 **subject property.**
12 Q. Okay. And about what issues and
13 concerns did counsel have that he wanted to talk to
14 you about?
15 **A. Just bullet points and issues. I mean,**
16 **I can't remember everything I've talked to him**
17 **about.**
18 Q. Is there anything like a larger topic
19 area that's kind of permeated each conversation?
20 **A. No.**
21 Q. Then when you were retained in this
22 matter, what was your understanding of what you were
23 being retained to do?
24 **A. To review the report and prepare an**
25 **unbiased analysis on whether or not the Rosenberg**

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1 **property has any diminish in value.**
2 Q. Now, when you were hired to do that
3 assignment, did you review all the materials, draw
4 an opinion, and then call counsel before you drafted
5 a report?
6 **A. No.**
7 Q. Okay. So the first time I guess Kemp
8 Jones would have found out your opinions would have
9 been when you produced the report to them?
10 **A. Yes.**
11 Q. Did you provide them with a draft of
12 the report before giving them the final report?
13 **A. I may have.**
14 Q. Let's assume that you did, because I
15 know you're not certain. Let's assume you did. Did
16 they make any comments on the report?
17 **A. Typographical errors maybe but that's**
18 **it.**
19 Q. No substantive changes?
20 **A. No substantive change whatsoever.**
21 Q. Prior to today's deposition I think you
22 just referred to your report that you reviewed and
23 Mr. Jiu's report. Did you review Mr. Jiu's
24 deposition testimony?
25 **A. They did give that to me, but I didn't**

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1 feel it was necessary.
2 Q. Did you have any discussions with
3 counsel about Mr. Jiu's deposition testimony?
4 A. No.
5 Q. So let's go through what you actually
6 did. I understand how you were retained. What did
7 you do once you were retained? What did you do then
8 to be able to draft your report that we have here?
9 A. Well, first of all, we did an on-site
10 inspection August 27, 2014. We were made aware of
11 all the circumstances and what's going on. And at
12 that time we did not have a report from opposing
13 counsel. So we did a physical inspection of the
14 property, took photographs, looked at the quality
15 design layout, how the home is situated on the site
16 with the view of the golf course and so forth.
17 Q. Anything else besides the site
18 inspection?
19 A. At that point in time not as of August,
20 that's all we did on August 27.
21 Q. What is the next step you took after
22 you did the second inspection?
23 A. I think that opposing counsel furnished
24 Mr. Jiu's report sometime later, November, and then
25 we completed our report over the next 45 days.

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1 Q. We're going to go through your report
2 almost every page today, but before we get there,
3 how much do you charge per hour for your services?
4 A. Four hundred dollars an hour.
5 Q. And is that fee different if you're
6 giving deposition testimony or trial testimony?
7 A. Same fee.
8 Q. Same fee. And how much have you billed
9 to date for your services?
10 A. We billed the initial report which was
11 \$10,000.
12 Q. I understand you did a site inspection.
13 I understand you had to review Mr. Jiu's report and
14 then to formulate a response to it. Did you review
15 any other materials or documents in order to draft
16 prepare your report?
17 A. Building, Henderson Planning
18 Department.
19 Q. So you reviewed documents from the
20 Henderson Planning Department?
21 A. Not the planning department but the
22 building department that sets setbacks criterion and
23 so forth.
24 Q. Any other materials or documents that
25 you had to reference in order to prepare your

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1 report?
2 A. We referenced some articles as well as
3 the articles in the case studies that were in the
4 opposing counsel or opposing report.
5 Q. Did you review the CC&R's that govern
6 MacDonald Highlands?
7 A. Briefly.
8 Q. Did you review the Design Guidelines
9 that govern knew construction for MacDonald
10 Highland?
11 A. No.
12 Q. At any time in the review the,
13 preparation of your report, did there ever come a
14 time where you asked counsel, "I need X, do you have
15 this"?
16 A. Oh, yes.
17 Q. And can you give me an example of any
18 document or material you might have asked for?
19 A. I believe the CC&R's, the blueprints on
20 both properties.
21 Q. Did you get the blueprints for both
22 properties?
23 A. If I did they're in my work file, and I
24 believe so, at least for the Malek's property.
25 Q. Okay. So I just want to be clear. As

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1 you sit here today, you have a recollection that you
2 received some type of blueprint for Mr. Malek's
3 property when you were preparing your report?
4 A. Yes.
5 Q. So that means you had an understanding
6 of what he intended to build on his vacant lot?
7 A. Well, what he intends to build and
8 builds are two different things.
9 Q. I understand he hasn't built yet.
10 A. I have no idea what he's going to
11 build. Who knows if and where and whether he will
12 ever build.
13 Q. I want to be clear. When you say
14 blueprints, did you mean you just had documents
15 showing the lot lines or you actually had documents
16 showing what might be built from a structural
17 standpoint on Mr. Malek's lot?
18 A. What might be built.
19 Q. When you did an inspection of the
20 Rosenberg property, did you actually go into the
21 home?
22 A. Yes.
23 Q. Let's talk about -- let's go to page
24 two of your report. Now, I know you're doing simple
25 points here. Looks like I'll address you to the

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1 bullet point at the top part of the page. Kind of
2 summarizes what you took away from Mr. Jiu's report.
3 Is that a fair statement?
4 **A. Yes.**
5 Q. Okay. Let's go through point number
6 one. It states, "Uses a controversial survey method
7 to develop its findings and conclusions without the
8 findings being validated by a recognized method."
9 Can you explain that bullet point?
10 **A. It's where they use the method and send**
11 **it out to 7,000 plus agents to have respondents of**
12 **several hundred and didn't use any transactional**
13 **market data to verify and support their findings.**
14 Q. And why do you use the term
15 "controversial survey method", what do you mean by
16 that?
17 **A. Questionable.**
18 Q. And why was it questionable to you?
19 **A. Because I don't believe that the**
20 **questions in the survey were accurately depicting**
21 **the situation.**
22 Q. Is there a section in your report where
23 you actually talk about each of the questions?
24 **A. I don't believe so.**
25 Q. Okay. What particular question did you

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1 believe were misrepresenting the situation?
2 **A. If you would like to give me the**
3 **survey, I'll be more than happy to go through each**
4 **one of them.**
5 Q. So you don't have anything --
6 **A. I don't have the survey in front of me.**
7 Q. But do you have any documents when you
8 made this conclusion note within your work file that
9 would direct you to which questions you had problems
10 with?
11 **A. I had problems with all the questions.**
12 Q. So every question you had a problem
13 with?
14 **A. Yes.**
15 Q. What exactly did you believe -- and I'm
16 talking about more of a general sense. What exactly
17 did you believe the questions weren't depicting
18 correctly?
19 **A. It showed a two dimensional aerial view**
20 **instead of three dimensional. It said the property**
21 **value was \$5 million, when in actuality it was \$2.5**
22 **million:**
23 Q. Okay. Anything else?
24 **A. It was sent out to respondents that**
25 **except for maybe one or two in the list that**

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1 **responded have never sold a multimillion dollar**
2 **house.**
3 Q. Anything else?
4 **A. It didn't lay out the circumstances**
5 **explicitly that the property has a borrowed view and**
6 **that it's view of the golf course still was in tact.**
7 Q. Again, just so I understand, the
8 definition of the borrowed view is the sight line
9 going across another property line?
10 **A. Correct.**
11 Q. And for this particular situation what
12 would that include?
13 **A. What do you mean by "what would that**
14 **include"?**
15 Q. What is your understanding of what the
16 borrowed view is for the Rosenberg property?
17 **A. The borrowed view is something that can**
18 **be obscured by planting of mature trees. It can**
19 **changed and is not guaranteed.**
20 Q. And to your understanding, you're aware
21 that this case is not about the borrowed view across
22 594 Lairmont Place, the original lot, but the view
23 on the golf parcel that was added to the 594
24 Lairmont Place? Is that your understanding of how
25 the problem presented in this case?

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1 **A. I believe it's that portion as well as**
2 **the borrowed view across the side property line.**
3 Q. And I guess I'm just making
4 clarification that when you're criticizing the
5 questions that Mr. Jiu and Mr. Brunson crafted for
6 the survey, when you say they didn't lay out the
7 circumstances regarding borrowed views, you mean
8 that in your opinion Mr. Brunson and Mr. Jiu should
9 have included the fact that the golf course parcel
10 that was added to 594 Lairmont now has become a
11 borrowed view area. Am I correct in understanding
12 that?
13 **A. They are assuming that that is the**
14 **primary view of the golf course which is not.**
15 Q. Okay. So just so I'm clear, you're not
16 saying that the survey was faulty in that it did not
17 recognize that the golf course portion that was
18 added to 594 Lairmont is included in the borrowed
19 view area, correct?
20 **A. One more time.**
21 Q. I'm just trying to clarify that it's
22 not that you're -- the fault that you're finding in
23 Mr. Jiu's report is not that the golf course parcel
24 was not included as part of the borrowed view
25 corridor?

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1 MR. GUNNERSON: Objection. Form.
2 BY MS. HANKS:
3 Q. It is a bad form. I'll give you that.
4 I'm trying to make sure I understand when you say
5 they were one of your faults that you found with
6 Mr. Jiu's report is that they were using the view
7 corridor to the side towards Mr. Malek's property
8 considering that a primary view, that's one opinion
9 you have with respect to that report, right, or the
10 survey?
11 MR. GUNNERSON: Objection. Misstates prior
12 testimony.
13 THE WITNESS: Correct.
14 BY MS. HANKS:
15 Q. Is another fault that you found with
16 the report is that Mr. Jiu in his survey questions
17 did not include the golf course parcel as a borrowed
18 view corridor?
19 A. I don't believe that he explained the
20 circumstances that were twelve feet approximately
21 below Stephanie Street and that that portion of the
22 golf course was just rock landscaping, and any
23 improvement on that would actually be a plus versus
24 a negative.
25 Q. I understand that's your opinion. But

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1 how could Mr. Jiu make those types of questions
2 within a survey? I'm trying to connect -- we're
3 only talking about the first bullet point. I know
4 you have a lot of opinions. We're going to go
5 through them.
6 I'm trying to just clarify your
7 particular opinions why you think the survey
8 questions had misrepresented kind of the condition
9 that was going on. And one of the things that you
10 had said, you said it didn't lay out the
11 circumstances because it did not lay out that the
12 golf course or that the area of Mr. Malek's property
13 was a borrowed view.
14 And what I'm trying to clarify is
15 one of the faults you're finding with Mr. Jiu's
16 report is that he did not include the golf course
17 parcel as part of the borrowed view corridor? Is
18 that one of the critiques you have?
19 A. I have many critiques, but the issue
20 really is what the reasonableness of a buyer would
21 anticipate their view corridor to be.
22 Q. And I want to make sure though with
23 respect to the survey questions, you believe Mr. Jiu
24 misrepresented what the view corridors are with
25 respect to 590 Lairmont?

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1 A. Yes. Because the survey acts as if
2 we're losing the view.
3 Q. The primary view?
4 A. Correct.
5 Q. That's how you read the survey
6 question?
7 A. Yes.
8 Q. Now let's back up to just generally
9 speaking about these types of surveys. My
10 understanding is these surveys are called Contingent
11 Valuation Surveys. Is that your understanding?
12 A. Yes.
13 Q. Okay. And have you ever performed a
14 Contingent Valuation Survey?
15 A. No.
16 Q. Have you ever assisted anyone in
17 crafting questions for a Contingent Valuation
18 Survey?
19 A. No.
20 Q. Have you ever assisted anyone who
21 actually performed a Contingent Valuation Survey?
22 A. No.
23 Q. And so that we're clear, I looked up
24 the definition for it. I want to see if you agree
25 with it. My understanding of the definition of the

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1 a Contingent Valuation Survey, it's an economic
2 technique for the valuation of non-market researches
3 such as environmental preservation or the impact of
4 contamination. While these resources do give people
5 utility, certain aspects do not have a marketplace
6 as they are not directly sold. For example, people
7 receive benefits from a view of a mountain, but it
8 would be tough to value price based models.
9 Contingent Valuation Surveys are one technique which
10 is used to measure these aspects.
11 Do you agree with that in general?
12 A. And crosschecked with additional data.
13 Q. So it's your understanding that
14 Contingent Valuation Surveys are also crosschecked
15 with -- what did you say, market value data?
16 A. In the real estate damages book, it
17 states that the least reliable approaches are
18 surveys unless they are crosschecked with additional
19 market data to support their findings.
20 Q. But just to back up, that is your
21 understanding of what the general idea of what the
22 purpose and definition of a Contingent Valuation
23 Survey is?
24 A. Yes.
25 Q. Okay. In your schooling or any of the

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1 classes you took in order to take the exam to become
2 a certified appraiser, did you have to learn about
3 Contingent Valuation Surveys?
4 A. No.
5 Q. Did you learn about them during your
6 course studies or any of the tests that you took?
7 A. No.
8 Q. Are Contingent Valuation Surveys
9 recognized in the appraisal industry?
10 A. **Based on the real estate damages book,**
11 **they are. But they do state that they are the least**
12 **reliable approach surveys.**
13 Q. But they are recognized by the
14 appraisal industry, correct?
15 A. Yes.
16 Q. And they are actually used within the
17 appraisal industry; is that correct?
18 A. Yes.
19 Q. Have you done any studies about
20 Contingent Valuation Surveys and their use within
21 the appraisal industry?
22 A. No.
23 Q. Have you read any books by Bill Muncy
24 or Dave MacClean? (Phonetic)
25 A. **I don't recall.**

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1 Q. If I were to tell you that they have
2 authored books explaining how Contingent Valuation
3 Surveys are widely accepted in real estate
4 appraisal, would you have any reason to disagree
5 with that?
6 A. No.
7 Q. Now, this might be the same thing you
8 were saying in the first one. Your second bullet
9 point says, "It includes statements of fact that are
10 in error and not factual."
11 What statements of fact did
12 Mr. Jiu's report contain that were actually not
13 factual?
14 A. **That they state that the rear property**
15 **line abuts the golf course and it actually abuts**
16 **Stephanie.**
17 Q. Any other statements?
18 A. **Not that I can recall at this second.**
19 Q. I'm going to represent to you or
20 actually let me back up. Why in your opinion did it
21 matter that the property line that abuts the golf
22 course is considered rear or side? In other words,
23 why was this a fact that mattered to you -- to you
24 that was true or not true in terms of Mr. Jiu's
25 report?

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1 A. **It changes the setback requirements.**
2 Q. And what is your understanding of what
3 the setback requirements are if that boundary line
4 is considered a side boundary line, side yard
5 boundary line?
6 A. **That it's by the City of Henderson,**
7 **it's six to ten feet.**
8 Q. Do you know if MacDonald Highlands has
9 a different setback requirement for side property
10 lines?
11 A. **The building department has recommended**
12 **guidelines, and I believe that the Design Review**
13 **Guidelines can modify those to some degree.**
14 Q. Do you know what those setbacks are?
15 A. No.
16 Q. So just so I'm clear, in criticizing
17 Mr. Jiu's report, you were basing it on the setbacks
18 asset by the City of Henderson for a side yard line,
19 correct?
20 A. **Well, Mr. Jiu infers that the rear**
21 **property line abuts the golf course.**
22 Q. No. I understand that.
23 A. **And it doesn't.**
24 Q. I just wanted to make sure I understand
25 that. I understand what you're saying there. I

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1 want to make sure though that I understand. In
2 terms of the information you had before you and what
3 you were using to criticize Mr. Jiu's report, the
4 setbacks that you were using were the setbacks set
5 by the City of Henderson for side yard lines,
6 correct?
7 A. **The City of Henderson sets a minimum**
8 **and the Design Review Committee for MacDonald Ranch**
9 **trump that to some degree.**
10 Q. They can make it more restrictive,
11 correct?
12 A. **Yes. Or less restrictive.**
13 Q. Oh, my understanding they can't make it
14 less restrictive, you say they can?
15 A. **Well, they can make it more**
16 **restrictive, correct, but they can't impede on what**
17 **the City of Henderson minimum is.**
18 Q. Correct. So just so I'm clear though,
19 I thought you testified earlier that you're not
20 aware of MacDonald Highlands setbacks, if any, that
21 they have for side yard lines if they --
22 A. **Well, the side, minimum side setback**
23 **has to conform to the City of Henderson.**
24 Q. Right.
25 A. **You can't trump that in regard to**

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1 encroachment on what the building department minimum
2 requirement is.
3 Q. Right. But do you know if MacDonald
4 Highland setbacks are the same as the City of
5 Henderson for a side yard?
6 A. I don't recall.
7 Q. Okay. And so that's what I want to
8 make sure then when you're criticizing Mr. Jiu's
9 report, your criticisms are based on the application
10 of the setbacks set by the City of Henderson?
11 A. Well, the side setback is six, six to
12 ten feet minimum.
13 Q. Right.
14 A. Okay. And Mr. Jiu says that the rear
15 property line is abutting the golf course and it's
16 not.
17 Q. Okay. We're going to get to that in
18 just a minute. What I'm trying to clarify is that
19 you're in criticizing Mr. Jiu's report. I know
20 there's two reasons why you're criticizing him.
21 One, you're saying that he's using the property line
22 abutting the golf course as a rear. You're saying
23 it's a side. I get that. We'll talk about that in
24 a minute.
25 But he also has a higher setback

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1 based on that, based on his classification of what
2 that property line is, right?
3 A. He has.
4 Q. Thirty-five foot?
5 A. Thirty-five foot for the rear.
6 Q. And so I want to be clear though. Part
7 of the criticism of that -- we're talking about your
8 second bullet point statements of fact in there that
9 are false, part of the criticism is that he marks
10 what you say is the side property line for 594
11 Lairmont Place as the rear. That's one criticism.
12 And then the other one is that he
13 has the wrong setbacks. But when you say he has the
14 wrong setbacks, you're basing that on the City of
15 Henderson setbacks, correct?
16 A. No. I'm basing that on the fact that
17 he's misappropriating what the rear is.
18 Q. Right. But if we accepted that the
19 property line abutting the golf course is the side
20 property line, you're applying the setbacks as set
21 by the City of Henderson, right, when you're
22 criticizing what he's putting as part of your
23 reason, that's part of the reason you're
24 criticizing?
25 A. Yes.

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1 Q. Now, is that the only fact that is
2 dated falsely according to you?
3 A. The questions in the survey are
4 nonfactual.
5 Q. How are the questions in the survey
6 nonfactual?
7 A. I would have to have the survey in
8 front of me.
9 Q. Okay.
10 A. And I'll be more than happy to go
11 through each one of them.
12 Q. Is it your testimony that the only way
13 for you to make those opinions or explain what the
14 questions and survey are nonfactual is you have to
15 actually look at the survey questions?
16 A. I think it would assist me in and
17 expedite it. Now, if you don't want to do that,
18 I'll muddle my way through it.
19 Q. And let's do it because I don't have it
20 in front of me, and we can always come back to it.
21 But let's go back to -- we got the rear property
22 line versus side property line. You have, say, some
23 of the questions are nonfactual. Anything else as
24 included in that bullet point that there were
25 erroneous factual statements made in Mr. Jiu's

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1 report?
2 A. Regarding the view?
3 Q. Anything. I want to know what you were
4 including in that bullet point. This is a summary
5 of your -- is what I'm understanding, it's a summary
6 of what you're saying is wrong with Mr. Jiu's
7 report. I want to know every single one.
8 A. Well, then I'll have to go through this
9 page by page.
10 Q. Okay. Well, let's do that. Let's
11 point to me where each part of your page. We can
12 talk about each page, but talk to me where in your
13 report you have the specific instances or erroneous
14 factual statements?
15 A. Sixteen, seventeen, and eighteen.
16 Q. So let's turn to page 16. This looks
17 you said 16, 17, and 18 you have a chart two boxes,
18 and you have the premises of the report under
19 review. And then you have a column that's marked
20 fact. Is that correct?
21 A. Yes.
22 Q. So you have the first one. Explain the
23 first one to me. You can either read it if you want
24 to, or you can summarize it to me. What is your
25 understanding Mr. Jiu is stating in the report and

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1 what the real fact is?

2 **A. Well, it tells you right over here on**

3 **the right. The subject: Fronts the golf course and**

4 **faces northeasterly. The view of the clubhouse is**

5 **from the second level of home and is a borrowed**

6 **view. Borrowed views can be obscured partially or**

7 **completely by building or landscaping on the**

8 **adjacent lots.**

9 Q. Okay. So his fact in his report says,

10 "The subject property has a golf course view to the

11 northeast."

12 Is that true or false?

13 **A. Correct. Yes.**

14 Q. That's true?

15 **A. Uh-huh.**

16 Q. I'm sorry. Is that a yes?

17 **A. Yes.**

18 Q. The statement says, "A golf course and

19 limited city view to the north."

20 Is that true?

21 **A. Yes.**

22 Q. "And a view of the clubhouse and

23 distant mountains to the east."

24 Is that true as to the southeast?

25 **A. Yes.**

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1 Q. So all those statements are true,

2 correct?

3 **A. Correct.**

4 Q. The next statement is, "Views are

5 permanent and guaranteed."

6 Did Mr. Jiu say that in his

7 report?

8 **A. Yes.**

9 Q. He did say that? Do you know what page

10 he said that on?

11 **A. No.**

12 Q. Do you know if he was limiting that to

13 certain views from the 590 Lairmont Place?

14 **A. I don't recall.**

15 Q. And you have, "As a fact views are not

16 permanent or guaranteed unless a view easement is

17 agreed upon."

18 Correct?

19 **A. Yes.**

20 Q. Are you aware that my client is arguing

21 that a restrictive covenant exists over the golf

22 course parcel that was added to Mr. Malek's lot?

23 **A. I believe so.**

24 Q. Okay. If it were to be determined that

25 a restrictive covenant does exist on that portion of

Page 51

1 the property, the golf course portion that was added

2 to Mr. Malek's lot, would then the view over that

3 area be permanent and guaranteed?

4 **A. I believe the golf course at any given**

5 **time can change what they have, landscaped areas or**

6 **whatever, planting additional trees to make it more**

7 **pleasing to the homeowners or to the golfers. So**

8 **they have the right to change the lay out of the**

9 **golf course.**

10 Q. And where did you determine that fact?

11 **A. Well, I believe it's common sense.**

12 Q. So you haven't reviewed any documents

13 that indicate that?

14 **A. No.**

15 Q. And then let me represent to you that

16 -- let's assume that's not true. Let's assume the

17 golf course cannot change the golf course to

18 whatever it likes or plant whatever it likes and a

19 restrictive covenant exists over the golf course

20 portion that was added to Mr. Malek's lot.

21 Would the statement then be true

22 that the views across that area are permanent and

23 guaranteed?

24 **A. I guess the way I would have to answer**

25 **that, would a reasonable buyer anticipate that to be**

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1 **part of their view.**

2 Q. And I just want to make sure I

3 understand. When you use the term "view easement",

4 that's what we mean by that, right, some type of an

5 agreement or restriction that the parties are aware

6 were entered into that will preserve that area as a

7 view corridor area, correct? Is that what you mean

8 by "view easement"?

9 **A. Well, no. You're the one that said the**

10 **easement. I call it a borrowed view.**

11 Q. Well, no you have a fact here. You

12 say, "The fact is views are not permanent or

13 guaranteed unless the view easement is agreed upon."

14 **A. Yes. That's true.**

15 Q. You're using the term generally, "view

16 easement", you mean some type of agreement or

17 understanding between the parties that there's a

18 restriction to a particular area, that's what you

19 mean by that?

20 **A. If it's recorded.**

21 Q. Right. The next statement you have

22 that Mr. Jiu states in his report, "The addition of

23 the vacant desert land to the lot at 594 Lairmont

24 Place creates a loss of value to the subject

25 property as development on that site will block the

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1 borrowed view of the clubhouse and mountains from
2 the second level of 594 Lairmont Place."
3 And so just so we're clear,
4 because I think we started this exercise as if these
5 are some of the questions that were stated in the
6 survey. That statement was not presented in the
7 survey, correct?
8 **A. Yes. Correct.**
9 Q. This is just a statement that Mr. Jiu
10 is making after he's analyzed the survey and it's an
11 opinion that he has, correct?
12 **A. I believe so.**
13 Q. Okay. So this is not necessarily a
14 false fact, it's just an opinion that you disagree
15 with. Would that be a fair way to state that?
16 **A. Yes. As would any potential logical**
17 **buyer.**
18 Q. Now, you have the fact. You list fact
19 next to that as "Borrowed views are not guaranteed."
20 That's one of the questions that we have presented
21 by this case, correct, whether the golf course
22 portion that was added to Mr. Malek's did have a
23 guaranteed view corridor, right?
24 **MR. GUNNERSON:** Objection. Foundation.
25 ////

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1 **BY MS. HANKS:**
2 Q. I mean, is that your understanding of
3 what this -- I mean, this is the dispute that it
4 boils down to, right?
5 **A. Again --**
6 **MR. GUNNERSON:** Same objection.
7 **BY MS. HANKS:**
8 Q. That the question is whether the golf
9 course portion that was added to Mr. Malek's lot did
10 have a guaranteed borrowed view so to speak?
11 **A. I'm not sure.**
12 Q. You had 30 some conversations with
13 counsel in the last six months. He retained you to
14 rebut Mr. Jiu's report. Is that your understanding
15 of what this case is really boiling down to whether
16 the golf course portion --
17 **MR. GUNNERSON:** Sorry. I'll let you finish
18 your question. Just want to make sure I get an
19 objection before you --
20 **BY MS. HANKS:**
21 Q. -- had a restrictive covenant and was a
22 permanent view corridor for 590 Lairmont Place?
23 **MR. GUNNERSON:** Objection. Foundation. May
24 also call for legal conclusion, but go ahead. If
25 you can answer it, answer it.

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1 **THE WITNESS:** Again, I don't believe any
2 logical knowledgeable buyer would assume that that
3 borrowed view of that portion of the golf course is
4 a significant contribution to their view.
5 **BY MS. HANKS:**
6 Q. I understand that's your opinion. I
7 get that. I'm very aware of that. I'm just trying
8 to make sure that we're understanding that when we
9 say if it's really a fact that borrowed views are
10 not guaranteed, this case is about answering that
11 question, correct?
12 **MR. GUNNERSON:** Same objections.
13 **THE WITNESS:** It's a legal issue.
14 **BY MS. HANKS:**
15 Q. I understand it's a legal issue. But
16 it looks like you're at least including it here when
17 you're criticizing Mr. Jiu, is that he's not
18 considering the golf course portion as a borrowed
19 view corridor.
20 So are you making that opinion?
21 Are you making that determination? Is that a fact
22 that you're determining that the golf course portion
23 is a borrowed view corridor automatically?
24 **A. That the primary view is a borrowed**
25 **view?**

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1 Q. No. That the golf course portion.
2 Maybe I should have defined that before we started.
3 We've been talking about it incessantly. But the
4 golf course refers to the one-third acre that
5 Mr. Malek bought and added to his lot at 594
6 Lairmont Place.
7 So I want to make sure what you're
8 considering that area. Are you considering that
9 area an area of borrowed view corridor?
10 **A. Correct.**
11 Q. And what's the basis for that? What's
12 the basis for that? What makes that a borrowed view
13 corridor?
14 **A. Logically it's over the property line**
15 **to the right-hand side when the view corridor is to**
16 **the northeast.**
17 Q. So because it's diagonally to the
18 Rosenberg property, it's considered a borrowed view
19 corridor?
20 **A. If Mr. Malek wanted to, he could plant**
21 **30-foot trees along the side property line there and**
22 **block the entire area in the original lots.**
23 Q. But you're aware that the crux of this
24 case is that the Rosenbergs didn't know that
25 Mr. Malek owned any portion of the golf course

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1 parcel, right?

2 **MR. GUNNERSON:** Objection. Misstates facts in

3 evidence. Go ahead.

4 **THE WITNESS:** I believe so.

5 **BY MS. HANKS:**

6 Q. So I just want to be clear regardless

7 of what now Mr. Malek may be able to build on that

8 area or plant, regardless of who owns it, it's your

9 testimony that the golf course portion is a borrowed

10 view corridor with respect to 590 Lairmont Place?

11 A. I believe it's -- let's put it this

12 way. The way it exists now, the golf course could

13 have left it like that and kept it. They could have

14 put his and her restrooms out there.

15 Q. You don't know that, right? I know

16 you're saying that, but you never read any documents

17 to confirm that?

18 A. Hypothetically it could happen. They

19 could have done anything they wanted to that area.

20 They could have put a little maintenance shop.

21 Q. Do you know that though?

22 A. They own it.

23 Q. But do you know if the golf course

24 entered into any restrictive covenants with any

25 property owners in MacDonald Highlands restricting

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1 that?

2 A. No. But they own the golf course, and

3 they are allowed to do certain things.

4 Q. Unless they have entered into

5 restrictive covenants, right?

6 A. Correct.

7 Q. You're not aware of any restrictive

8 covenants, you didn't review any restrictive

9 covenants, correct?

10 A. No.

11 **MR. GUNNERSON:** Counsel, it's been a little

12 over an hour. Do you mind if we take a quick break?

13 **MS. HANKS:** Yea. We can take a quick break.

14 (Short break.)

15 **BY MS. HANKS:**

16 Q. So we're talking about that third box

17 column, your fact there, the borrowed view are not

18 guaranteed. Your next sentence says, "Planting

19 mature trees which is common to increase privacy of

20 the original lot would obscure the borrowed view of

21 the clubhouse and mountains on the second level of

22 590 Lairmont Place."

23 Now, when you use your original

24 lot, what do you mean?

25 A. The original property line.

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1 Q. Okay. So without the addition of the

2 golf course portion?

3 A. Yes.

4 Q. Is it your understanding -- are there

5 any restrictions on what an owner can plant if they

6 live in MacDonald Highlands?

7 A. There may be certain. Depends on

8 what's in the design review criteria regarding

9 planting materials.

10 Q. So you at least have -- even though you

11 didn't review the Design Guidelines, you have a

12 cursory understanding that the Design Guidelines

13 have limitations on what can be planted, correct?

14 A. Well, I happen to be on the A.R.C. for

15 Spanish Trails, A.R.C. for Spanish Trails. So I'm

16 very aware of what is allowable and not allowable

17 but not necessarily for each project.

18 Q. So you're aware generally that

19 Architectural Review Companies like the one you

20 serve on or the Design Review Committee will set

21 restrictions about what people can plant on their

22 property?

23 A. Well, when anybody wants to modify

24 something, it has to be submitted to the A.R.C. and

25 be approved.

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1 Q. Okay.

2 A. By that board.

3 Q. That was going to be my next question.

4 So we'll back up there, because it's my

5 understanding that MacDonald Highland -- I'll

6 determine has almost two levels of approval for

7 anything. The first level is the Design Review

8 Committee when you're building on a vacant lot. Are

9 you aware of that?

10 A. Well, I didn't read the Design Review.

11 Q. I know. But are you aware at all of

12 MacDonald Highlands' operation in terms of reviewing

13 new construction for vacant lots?

14 A. No.

15 Q. Okay. So I'll represent to you that

16 that's one level of review when you're building a

17 new home on a vacant lot, there's Design Review

18 Committee that needs to approve everything. Once

19 your house is built, you have board approval. I

20 think that's what you're talking about, you serve on

21 an H.O.A. board for a particular --

22 A. Well, actually, I serve on the

23 Architectural Review Committee and then I'm the

24 president of The Lakes.

25 Q. Okay.

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1 **A. Which is a sub-association.**
2 Q. So when you say the A.R.C., that is the
3 Review Committee within the H.O.A.?
4 **A. For the entire complex.**
5 Q. Got that. And so you have a general
6 understanding at least from that community that if
7 someone wants to change something with respect to
8 their property has it go through an approval
9 process, correct?
10 **A. Yes.**
11 Q. And I'll represent to you that
12 MacDonald Highlands also has a similar process and
13 as they call it the --
14 **A. Design Review Committee.**
15 Q. No. Sorry. Modification Committee is
16 what MacDonald Highlands refers to it and that
17 refers to anything after?
18 **A. The original blueprints are approved**
19 **and house built.**
20 Q. Correct.
21 **A. Okay.**
22 Q. So when you're stating this fact in
23 terms of planting mature trees is common, you
24 understand that it's within certain restrictions of
25 what that board might have for that particular

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1 community, and in here it's MacDonald Highland,
2 right?
3 **A. Yes.**
4 Q. And in the board that you're familiar
5 with operating on, do you guys have a mechanism
6 whereby adjacent neighbors can voice concerns about
7 whether they agree or disagree with the
8 modifications being proposed?
9 **A. I guess it would depend on what kind of**
10 **modification you're talking about.**
11 Q. Okay. Do you know if McDonald Highland
12 requires any information from adjacent land owners
13 before modifications can be approved?
14 **A. No.**
15 Q. If you go to page seventeen, the
16 statement I guess you're saying Mr. Jiu made, you're
17 saying what you think the true statement is the
18 statement he made, "Views and sight lines are
19 permanent as is frontage on the golf course."
20 Now, again, that is not a
21 statement that was made with any of the survey
22 questions, correct?
23 **A. Correct.**
24 Q. And your comment to that is, "Views are
25 not guaranteed. This includes the golf course and

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1 frontage on the golf course and any view derived
2 from that frontage, portion of the Stallion mountain
3 golf course and The Falls Golf Course were sold to
4 developers and housing replaced parts of the course
5 changing and/or eliminating golf course and other
6 views and eliminating golf course frontage."
7 Are you aware if that can happen
8 at MacDonald Highlands?
9 **A. I don't believe so.**
10 Q. And when you say "you don't believe
11 so", you mean you do not believe that the golf
12 course that's contained in MacDonald Highlands can
13 be changed like Stallion Mountain Golf Course was
14 and The Falls Golf Course was?
15 **A. I don't know the answer.**
16 Q. If it were the case that the golf
17 course which I believe is referred to as Dragon
18 Ridge within MacDonald Highlands cannot be developed
19 into housing or eliminated as a golf course, would
20 that affect your consideration of the Stallion
21 Mountain Golf Course and The Falls Golf Course
22 situation?
23 **MR. GUNNERSON:** Objection. Form.
24 **THE WITNESS:** Our statements states that views
25 are not guaranteed. We gave you a couple examples.

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1 I can give you hundreds of examples in mature
2 developments where property owners have put up
3 hedges along the rear property line and blocked the
4 golf course view, because they want more privacy
5 when they're outside in their backyards.
6 **BY MS. HANKS:**
7 Q. Right. I know. And we'll get to that
8 as well. I'm only talking about with particular
9 mention of the Stallion Mountain Golf Course and The
10 Falls Golf Course. You mention them as a means to
11 criticize Mr. Jiu's opinion that the sight line
12 across the golf course was permanent. And I'm just
13 I'm asking you, if I were to represent to you that
14 Dragon Ridge, which is the golf course in MacDonald
15 Highlands, cannot be changed into a housing
16 development or even eliminated as a golf course,
17 does that affect your criticism of Mr. Jiu's
18 statement?
19 **A. No. Because the golf course can still**
20 **close and not be a functional operation and**
21 **therefore, it would be turned into a dried desert**
22 **lawn. So, in other words, it doesn't have to**
23 **stay -- it may have to stay as a golf course, but**
24 **that doesn't mean it's going to be operational.**
25 **They could close it because it's not making**

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1 sufficient amount of money and say we're done.
2 Q. And do you know if there's any
3 parameters as to when and how that golf course could
4 close with respect to the other owners of MacDonald
5 Highlands?
6 A. No. But it's a scenario that has
7 happened as demonstrated by the two in here. Both
8 of those closed, because they weren't profitable.
9 Q. Right. But I'm just asking with
10 respect to MacDonald Highlands, do you no if there's
11 any restrictions on whether that can happen? In
12 other words, are you aware of a process by which
13 that may be prevented or has to be prevented, any
14 type of --
15 A. No.
16 Q. Now, the second box, your statement,
17 I'm concerned about the last sentence in that box.
18 And these are your statements. The appraisal report
19 by Valbridge Property Advisors concluded no loss of
20 value to 590 Lairmont Place if the proposed
21 improvements are constructed on 594 Lairmont Place.
22 Did the Valbridge Property
23 Advisors report assume that the golf parcel could be
24 developed?
25 A. I don't recall. If you want to give me

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1 that report, I'll be happy to look at it.
2 Q. It was my understanding or my
3 recollection that the Valbridge Property Advisors'
4 report assumed that the golf course portion could
5 not be developed. Let's just assume that is true
6 that my recollection is correct, would that change
7 your opinion here.
8 MR. GUNNERSON: Objection. Form.
9 THE WITNESS: Question again.
10 BY MS. HANKS:
11 Q. That the fact of the appraisal report
12 by Valbridge Property Advisors' included no loss of
13 value? So, in other words, if I were to represent
14 to you that the Valbridge Advisors' report assumed
15 that no construction could happen on the golf course
16 portion, would the fact that they concluded no loss
17 of value essentially lose any meaning from you in
18 terms of your criticism here?
19 A. I'm sorry. I don't understand.
20 Q. Sure. It looks like you're taking some
21 criticism with Mr. Jiu's report because of the
22 Valbridge Property Advisors' appraisal report that
23 you concluded that there was no loss of value to 590
24 Lairmont.
25 So essentially they appraised the

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1 property, and it's your understanding they saw no
2 loss of value. It's my understanding that the
3 Valbridge Property Advisors' report did not take
4 into consideration that the golf course portion
5 would be developed. In other words, they were just
6 doing the appraisal based on 594 Lairmont being
7 developed in its original lot lines.
8 So if that were the case, because
9 I know you don't remember what the Valbridge
10 Property report did, if that were the case, they did
11 not factor in the fact that the golf course parcel
12 could be developed, would that change your
13 assessment?
14 A. I think in his supplemental report he's
15 saying the golf course being developed had no effect
16 on market value for 590.
17 Q. Do you didn't you analyze the
18 supplemental report and see if whether you agreed
19 with his methodology and his opinions?
20 A. I just looked at the -- I did not read
21 the entire report. I looked at some of his case or
22 some of his conclusions.
23 Q. Your second, the next box down, it
24 looks like you're -- this is where we get to we were
25 talking about earlier, we finally get to it.

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1 Mr. Jiu is indicating a 30-foot
2 rear yard setback for 594 Lairmont. And you
3 indicate that the site setback is not 30 feet. It
4 is 15 feet along the golf course and only six feet
5 for accessory buildings up to two stories.
6 Do you see that?
7 A. Yes.
8 Q. Now, I want to make sure I understand
9 this, and forgive me because I was having a hard
10 time thinking about this, so you can help me out.
11 In a survey question Mr. Jiu is telling the
12 respondents to assume a 30-foot setback, correct,
13 from the property line abutting the golf course,
14 right?
15 A. You know, you need to give me the
16 survey questions if you want me to answer that.
17 Q. Well --
18 A. I need to see it.
19 Q. Well you state here -- and I can pull
20 that on a break, but I'm asking you here. You're
21 criticizing one of the points in his report. And so
22 to the best of your recollection, when Mr. Jiu was
23 presenting the problem to the respondents, he was
24 representing it as a 30-foot encroachment from the
25 property line abutting the golf course, right?

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1 **A. He was inferring that that was the rear**
2 **property line.**
3 Q. Right.
4 **A. Which is mistaken.**
5 Q. Right. And I understand that. But I'm
6 just making sure. When he was telling the
7 respondents, "hey, I want you take a look at this
8 picture and tell me if it affects your opinion", he
9 was setting the property back 30 feet from the new
10 property line, right, 30 feet from the line that's
11 abutting the golf course, he was setting it back 30
12 feet, right?
13 **A. I believe so.**
14 Q. Okay. And what you're saying is what
15 the setback really should have been 15 feet,
16 correct?
17 **A. Yes.**
18 Q. Okay. That's more of an encroachment
19 than 30 feet, correct?
20 **A. Yes.**
21 Q. Okay. So doesn't that mean it really
22 doesn't matter, because if the respondents thought
23 that 30 feet encroachment was significant, they
24 would certainly think 15 feet encroachment would be
25 significant?

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1 **A. If they understood the premise between**
2 **the borrowed view and a primary view and that we're**
3 **keeping the primary view, and I'm not losing that**
4 **view.**
5 Q. But didn't they have that based on the
6 pictures that were presented to them in the survey?
7 They can still see where the property was looking at
8 the ninth hole, right?
9 **A. Yes. But I don't think it was**
10 **explained properly.**
11 Q. Let's talk about accessory buildings.
12 You indicate that they could also have only six feet
13 for accessory buildings up to two stories. Where do
14 you get that information?
15 **A. City of Henderson. But that might be**
16 **the one that should have been ten feet.**
17 Q. When you say ten feet, instead of six
18 feet?
19 **A. Yes.**
20 Q. Are you aware that the Design
21 Guidelines prohibit accessory buildings for all
22 properties that abut the golf course?
23 **A. I didn't review the guidelines, because**
24 **Mr. Jiu based everything on the City of Henderson.**
25 Q. If the Design Guidelines prohibit

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1 accessory buildings for properties that abut the
2 golf course, would that affect your assessment?
3 **A. That would enhance the view for the**
4 **Rosenbergs.**
5 Q. Your next point of contention is that
6 the report under review did not include paired sales
7 or any sales data analysis to support a 30 percent
8 to 40 percent value lost due to blocking the
9 borrowed view of the clubhouse and mountains.
10 Now, this is where I'm kind of
11 going back to my other point. I just want to make
12 sure. When you were criticizing Mr. Jiu's report,
13 is it your understanding that the only borrowed view
14 he had the respondents analyze was the view toward
15 the clubhouse and mountains?
16 **A. You would have to ask him that**
17 **question, because it was somewhat vague.**
18 Q. So you believe that was somewhat vague
19 in his report?
20 **A. Yes.**
21 Q. And let's take that out of the
22 equation. Let's take the borrowed view across the
23 vacant lot of 594 Lairmont. We all know a house is
24 going to be built there at some point or should be,
25 right? What about the view going across the golf

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1 course portion?
2 **A. What about it?**
3 **MR. GUNNERSON:** Go ahead, if you understand
4 the question.
5 **BY MS. HANKS:**
6 Q. Well, I'm asking do you believe that
7 requires -- I think you say that required a paired
8 sales or sales data analysis?
9 **A. Let's put it this way. If you're going**
10 **to use a survey, the books suggest that you back it**
11 **up with some type of market data to secondarily**
12 **support what the surveyors, the respondents stated**
13 **to tell you whether you're in line or not with your**
14 **valuation.**
15 Q. And how would someone obtain market
16 data in the context of what's happened here? What
17 would you pull -- what would constitute market data?
18 **A. Market data would be vacant lot sales**
19 **on and off the golf course to get a relationship of**
20 **what a property on the course sells for, similar**
21 **size versus one off the course. The difference in**
22 **the sale prices would be what the contributory value**
23 **of the view corridor would be.**
24 Q. But aren't you still left with the
25 problem that you don't know how much to apportion to

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1 right-hand view toward the golf course, the center
2 view towards the golf course, or the left-hand side
3 of the view to the golf course, I believe that was
4 the point of what these contingent surveys are, to
5 value something that really can't be in a typical
6 market analysis?
7 **A. That in theory would be correct if**
8 **there was no market data, but there's plenty of**
9 **market data. It's in abundance. If you look at**
10 **page 27...**
11 **MR. SHEVORSKI:** I don't have 27.
12 **MR. GUNNERSON:** I don't have 27.
13 **MS. HANKS:** That's weird. That is what was
14 produced.
15 **MR. SHEVORSKI:** Mine goes from 18 to 37.
16 **MS. HANKS:** That's the same one. It should
17 be.
18 **MR. GUNNERSON:** This has them all.
19 **MR. DEVOY:** I actually brought my own copy
20 that was produced, and it does have page 27.
21 **MR. GUNNERSON:** This one has them all. That
22 one doesn't.
23 **MS. HANKS:** What pages are you guys missing?
24 This is the one that I fed into the copier so...
25 **MR. GUNNERSON:** Eighteen through thirty-six on

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1 mine.
2 **MS. HANKS:** Let me get these.
3 **THE WITNESS:** Should we go off record?
4 **MS. HANKS:** Yes.
5 (Off the record.)
6 **BY MS. HANKS:**
7 **Q.** Okay. So page 27, you indicated this
8 is what gave you the market data that you're
9 referring to, right?
10 **A. No. But this is a crosscheck.**
11 **Q.** And it looks like you looked up what
12 the original lots sizes were when all these lots
13 were vacant, what they sold for; is that right?
14 **A. Yes.**
15 **Q.** And it looks like on page 27, your top
16 sentence there, very first sentence, "The only
17 logical answer, it was the least desirable lot on
18 Lairmont Place. And I believe you're referring to
19 the fact that lot three which is 590 Lairmont Place
20 sold for the least amount of money", correct?
21 **A. Yes.**
22 **Q.** Is that really the only logical answer?
23 **A. Yes.**
24 **Q.** So in your opinion, there can be no
25 other explanation as to why this lot sold for the

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1 least amount of money compared to the other 15 lots
2 on this street?
3 **A. Well, let's put it this way. Rich**
4 **MacDonald, I would presume, is an educated developer**
5 **and wants to maximize profit on each and every lot**
6 **he sells and therefore prices them accordingly to**
7 **make the most profit.**
8 **Q.** But do you know if he purchased lot
9 three back in June 2004?
10 **A. I think it's in our work file.**
11 **Q.** Do you know if there was any
12 circumstances regarding that sale that might have
13 dictated a lower price compared to the other lots?
14 **A. Well, let's put it this way. It's not**
15 **the lowest lot on a price per square foot basis,**
16 **okay. So logically on a price per square foot**
17 **basis, it sold for twenty-six dollars. But the**
18 **there were several lots, lot one and lot two**
19 **significantly larger than, sold lower.**
20 **And if you look at the**
21 **relationship of all the lot sizes and the price per**
22 **square foot, it makes sense for the difference**
23 **depending upon the view whether it be just golf**
24 **course or somewhat of a distant city view to the**
25 **northwest.**

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1 **Q.** Okay. And that was going to be my next
2 question. With respect to -- I see you're comparing
3 sales prices, but we're really not comparing apples
4 to apples, are we, because lot three is
5 significantly different square footage than some of
6 the other lots, correct, which let's go to lot one
7 and lot two.
8 **A. Well, let's do it this way. These lots**
9 **sold prior to this case.**
10 **Q.** Correct.
11 **A. So let's make an assumption that Rich**
12 **MacDonald is educated and maximized his profit on**
13 **these parcels. So the relationship of the lot to**
14 **these doesn't show anything out of the ordinary.**
15 **Q.** I'm sorry. What do you mean
16 "relationship to the lot"? What do you mean?
17 **A. If you look at lot four which is next**
18 **door, it's within 700 square feet, and it sold for**
19 **100,000 more. And the logic is it's turned a little**
20 **bit more, and it has a little better view than lot**
21 **three. So, you know, I mean, at least I put some**
22 **market data in our report that helps us to**
23 **understand where we're at and what the value of the**
24 **lot was prior to this property even being built.**
25 **Q.** I understand that. What I'm trying to

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1 understand is that you make a very bold statement
2 that the only logical answer was the least desirable
3 lot on Lairmont Place. And you're only basing that
4 on being the lowest sale price for that lot,
5 correct, for this street?
6 **A. No.**
7 **Q. Okay. What is the basis for that**
8 **statement?**
9 **A. I have appraised five of the properties**
10 **on this street. I've appraised approximately 150**
11 **homes in MacDonald Ranch over the past 16 years,**
12 **many vacant sites. And I'm very educated and have a**
13 **very well understanding of what view premiums**
14 **contribute versus on and off the golf course.**
15 **Q. And would you agree that there are view**
16 **premiums when you're on a golf course, correct?**
17 **A. Number one and number two, as you can**
18 **see, had significant premiums but not just for the**
19 **golf course. Actually, one is not on it, but it's**
20 **for the size because they are so much larger.**
21 **But if you look at sales 14, 15,**
22 **16 which I believe are at the end of the cul-de-sac**
23 **and have more head-on, straight-on views and they**
24 **are 25, 30 and 33,000, they sold for \$36 to \$47 a**
25 **square foot and therefore they have superior views**

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1 **in comparison to comparables three through thirteen.**
2 **Q. Right. And, so I have a couple**
3 **questions regarding that chart. So that leads me to**
4 **this question. This chart at least tells us that**
5 **people do put a premium on views, correct?**
6 **A. A percentage of premium on a view.**
7 **Q. Percentage of premium on a view. And I**
8 **just want to make sure though, when you come to that**
9 **statement that the only logical answer is that lot**
10 **three was the least desirable, it's just based on**
11 **the original price, correct?**
12 **MR. GUNNERSON: Objection. Misstates prior**
13 **testimony.**
14 **THE WITNESS: I believe I answered that and**
15 **stated on my experience and looking at the lots, it**
16 **is the least desirable lot. And I think any person**
17 **knowledgeable of selling vacant lot sales in golf**
18 **course communities could look at this and, say,**
19 **probably put these in some kind of chronological**
20 **order of what would be the most valuable to the**
21 **least.**
22 **BY MS. HANKS:**
23 **Q. And you think three is worse than one**
24 **that has no golf view?**
25 **A. It's hard to know. Number one is twice**

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1 **the size.**
2 **Q. Right. But that's my point. That's**
3 **what I'm saying. So we're really not comparing**
4 **apples to apples here, are we, when we say that it's**
5 **the least desirable lot, because three might be more**
6 **desirable in terms of golf frontage view, but least**
7 **desirable in terms of square footage, right? Is**
8 **that correct?**
9 **A. That's a principal of substitution**
10 **which was created way before I ever started**
11 **appraising.**
12 **Q. But that's correct, right? It's a**
13 **correct statement that number three in terms of the**
14 **purchase price, it might be more desirable for the**
15 **golf frontage but least desirable in terms of square**
16 **footage in comparison to these other lots?**
17 **A. Not if I want to build a 20,000 square**
18 **foot house.**
19 **Q. So the value placed on this property**
20 **has different factors besides what it just -- square**
21 **footage and just view, right? I mean, is that what**
22 **you're saying?**
23 **A. They all have different building**
24 **envelopes and so forth. But the analogy is at least**
25 **something that correlates and gives some factual**

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1 **data that would crosscheck whether a survey is**
2 **correct or wrong.**
3 **Q. But I'm just dealing with your**
4 **statement that lot three is the least desirable lot.**
5 **A. And it is. That's my opinion.**
6 **Q. So it's less desirable than lot one**
7 **that has no golf frontage?**
8 **A. It is less desirable than lot one,**
9 **because lot one is 18,000 square feet larger. We**
10 **put this in as a crosscheck. This is unbiased data**
11 **that was brought about when these lots were sold.**
12 **Q. Now, when the person bought lot three,**
13 **do you know whether they bought it knowing that**
14 **someone could build on the golf course?**
15 **A. I have no idea.**
16 **Q. Would it be fair to state that -- well,**
17 **actually, I want to make sure I understand where**
18 **you're coming from when you come to trial in this**
19 **matter. Are you going to tell the jury that you**
20 **could just look at these original lot sales prices**
21 **and determine there is no loss of value to the**
22 **Rosenbergs when Mr. Malek's builds on the golf**
23 **course portion?**
24 **A. This is an analysis that was used as a**
25 **crosscheck to substantiate whether I can have a 30**

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1 or 40 percent loss in value.
2 Q. I understand what you used it for.
3 What I'm asking are though, is are you going to come
4 to the jury and say, look guys, you can look at this
5 chart right here and because of what was paid for
6 the lot on June '04 or June 2004, there's no loss of
7 value to the Rosenbergs as a result of Mr. Malek's
8 building on the golf parcel?
9 A. That's your statement.
10 Q. I'm asking whether you're going to say
11 that.
12 A. Well, first of all, I would have to
13 clarify that, because June of 2004, if you know the
14 market crashed in 2008. So let's just assume that
15 lot value like most lots in the valley dropped 50
16 percent. So that went to 375, and Mr. Jiu's report
17 they estimated the land value on that lot today at
18 594.
19 Q. And that was based on the accepting the
20 appraisal by Valbridge, correct?
21 A. No. That was based on Mr. Brunson
22 doing a land appraisal and the report on Malek and
23 Rosenberg. So he said the land is worth a \$574,000.
24 Q. Did you do an appraisal on the land?
25 A. No. I'm accepting Mr. Brunson's value

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1 at 576,000, 564,000. Therefore, if I take the
2 564,000 and take the 30 to 40 percent loss, it
3 equates somewhere between \$1.3 and \$1.5 million for
4 the land value.
5 Q. Do you disagree with the 30 percent to
6 40 percent or any loss of value?
7 A. I disagree with any loss of value.
8 Q. And what I want to make sure though,
9 are you going to tell the jury that you can look in
10 this chart here and just go based off of the
11 original lot sales and make that determination?
12 A. I can look at this original lot sales
13 and say, okay, all things being equal in 2004, the
14 lot was worth \$748,000. I still have the view down
15 the golf course. So how can I lose \$750 to a
16 million dollars? That would assume that I have no
17 lot and no view of anything.
18 Q. That's how you understand the survey of
19 what the respondents were pretty much saying?
20 A. They are saying there is a loss between
21 \$750 and \$1 million.
22 MR. GUNNERSON: I'm getting confused because
23 we're using "they" back and forth. I'm just not
24 sure...
25 ////

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1 BY MS. HANKS:
2 Q. I think we're talking about the
3 respondents who...
4 A. Jiu Brunson.
5 Q. Right. But they're taking the
6 percentage from the respondents' answers, right?
7 They're not saying -- they didn't come into this
8 case, look at it, slap a percentage of a loss. They
9 took the survey. They're taking the percentage from
10 the survey respondents --
11 A. Well, I'm not sure, because one portion
12 of the survey says 1 to 20 percent. And the other
13 one says 1 to 50 percent. So I'm not sure how they
14 got to the 30 to 40. I think they say that the book
15 states that you take the highest number possible as
16 a loss in value, and the book doesn't state that.
17 Q. And just so I'm clear though, I
18 understand you disagree with the 30 to 40 percent
19 loss which is 750,000 to one million, but you also,
20 you would attribute zero dollars in terms of loss if
21 Mr. Malek is allowed to build on the golf course
22 portion, correct?
23 A. Correct.
24 Q. And that is based on the fact of what
25 the lot originally sold for in June 2004; is that --

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1 A. No. This is just a crosscheck.
2 Q. Then what do you base your opinion that
3 there is no loss of value if Mr. Malek can build on
4 the golf course portion?
5 A. I base that on appraising 50 to 65
6 percent of all multimillion dollar properties and in
7 all guard gated communities in the Las Vegas Valley
8 over the past 25 years, thousands of homes I've
9 appraised, thousands.
10 Q. Were you asked to appraise 590 Lairmont
11 with the assumption that Mr. Malek could build into
12 the golf course parcel?
13 A. No.
14 Q. Let's go back to page two of your
15 report. Your third point, your third bullet point
16 says, "Exhibited bias in the survey." What's bias
17 was exhibited in the survey?
18 A. You need to give me the survey. The
19 questions are loaded in one direction in my opinion
20 as if there is a loss.
21 Q. Jumping to that second paragraph on
22 that page two you say, "While a use of survey is
23 acceptable in rare cases."
24 What is a rare case in which it
25 would be acceptable to use a survey?

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1 **A. Contamination possibly, economic**
2 **issues. It's listed -- actually, it's part of the**
3 **definition.**
4 Q. Are you aware of anything within the
5 industry that prohibits the use of survey in the
6 context of this type of case?
7 **A. No. But I think as a real estate**
8 **appraiser if you have the competency level to do a**
9 **survey, you would still most likely hire an**
10 **independent person to create the questions to make**
11 **sure they're not biased.**
12 Q. Your next clause in that sentence,
13 "report under review fails to crosscheck the survey
14 with accepted methods to guard against no pit
15 falls", what do you mean by "no pit falls"?
16 **A. What page are you on?**
17 Q. The same sentence. I just stopped at
18 the comma where I asked you a question, and I went
19 to the rest of the clause. It says, "while the use
20 of the survey is acceptable in rare cases." I'm
21 asking about the second part of that sentence, "the
22 report under review fails to crosscheck the survey
23 with accepted methods to guard against no pit
24 falls."
25 My question is what do you mean by

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1 "no pit falls"?
2 **A. The book states that you should**
3 **crosscheck any type of survey with transactional**
4 **market data to determine whether or not the findings**
5 **of the survey which are basically completed by**
6 **people that have no skin in the game, can't lease**
7 **anything whether their logic is reasonable or not.**
8 Q. Do the respondents have to be
9 reasonable in their opinion as to whether something
10 has a loss of value?
11 **A. I would have to state that the**
12 **respondents have to be knowledgeable in order to**
13 **answer the questions in the survey.**
14 Q. But their opinions don't need to be
15 reasonable necessarily, right?
16 **A. If the survey is to be accurate, you**
17 **would hope they would be.**
18 Q. Is that your understanding of what
19 makes contingent surveys accurate is that the
20 answers are reasonable?
21 **MR. GUNNERSON: Objection. Misstates prior**
22 **testimony. Go ahead.**
23 **BY MS. HANKS:**
24 Q. I mean, is that your understanding is a
25 requirement for a contingent survey that you then

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1 have to assess whether the actual answers that came
2 from the survey are reasonable, whatever that term
3 might mean?
4 **MR. GUNNERSON: Objection. Misstates prior**
5 **testimony.**
6 **THE WITNESS: The survey itself states 1 to 50**
7 **percent or 1 to 20 percent. So it's pretty logical**
8 **that there are some issues with the survey that**
9 **possibly may not be factual because of the wide**
10 **variance in the detrimental loss.**
11 **BY MS. HANKS:**
12 Q. Can't there be a range of a detrimental
13 loss? In other words, can't one person say the loss
14 is 20,000 and the other person say, no, I think that
15 loss is \$500,000, it's just a range, right?
16 **A. In order to be credible, no. It cannot**
17 **be -- it should have some more basis that would make**
18 **it more reliable.**
19 Q. And forgive me, but where are you
20 understanding this to be required for Contingent
21 Valuation, if I understood your prior testimony, you
22 have no experience with these surveys?
23 **A. Now. But I do have excessive knowledge**
24 **with real estate agents, and in the survey by**
25 **Mr. Jiu, I went through the respondents, and it**

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1 **didn't have the top 15 agents in the city in it that**
2 **have sold approximately 604 homes between 2002 to**
3 **2014. Of all the multimillion dollar homes in the**
4 **Las Vegas valley, there was only one person in that**
5 **survey that responded.**
6 Q. Do you have any basis to say that
7 Contingent Valuation Surveys require a certain pool
8 of people be asked the questions?
9 **A. I think that if they had hired a**
10 **specialist that knows that, they would have come to**
11 **that conclusion that we need to find the most**
12 **appropriate people to ask these survey questions to.**
13 **Because you can't just ask the survey question. We**
14 **might as well have gone out to Albertson's and asked**
15 **50 people walking out the door. Because if they're**
16 **not active in the multimillion dollar market, then**
17 **they're not knowledgeable what buyers and sellers**
18 **presume in their mind what they want.**
19 Q. So you believe that only real agents
20 that sell multimillion dollar homes and lots or
21 property could have answered the contingent value
22 survey that Brunson and Jiu issued?
23 **A. I'm not going to say that, but I'm**
24 **going to say that it leads me to be highly**
25 **subjective to it especially when they could have**

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1 crafted the survey to the top 15 brokers in the city
2 and sent it to them and got their opinion which
3 would be highly supportable data that would tell
4 them what's right and what's wrong.
5 Q. Are you aware that they did send it to
6 every licensed real estate agent within Nevada?
7 A. I understand that, but that doesn't
8 necessarily mean it's the appropriate methodology to
9 do it.
10 Q. But they did send it to all real estate
11 agents within Nevada, right?
12 A. Doesn't matter if the top agents that
13 are very busy didn't answer the questions, you don't
14 have the right answers. You don't have the valid,
15 you don't have a valid survey in my opinion.
16 Q. So only the 15 top agents in Nevada
17 should have answered this survey, that's what your
18 telling me?
19 MR. GUNNERSON: Objection. Argumentative.
20 THE WITNESS: I think as an appraiser I would
21 have interviewed those people.
22 BY MS. HANKS:
23 Q. Doesn't that negate the un-bias that
24 you want from a Contingent Value Survey.
25 A. First of all, if you don't ask the

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1 right questions it's bias in the first place.
2 If you ask the right questions and
3 leave it open for Buyer A and Buyer B and whether
4 this affects it, and ask them does it affect it or
5 not affect it, you would probably get the right
6 answer.
7 Q. You don't believe that happened in this
8 case?
9 A. No.
10 Q. You would agree, however, that you
11 don't want to do a Contingent Valuation Survey with
12 just 15 people, right, that would be a small pool of
13 people to do a survey?
14 A. Well, let's put it this way. The 15
15 people sold all the multimillion dollar properties
16 in the Las Vegas valley over the past 12 years. So
17 the question becomes are they most knowledgeable
18 than the broader market of 7,300, and I would say
19 yes.
20 Q. So if this was only presented to 15 of
21 the top sellers in the Nevada, you would have found
22 that more accurate then the, I guess, 200 some odd
23 recipients that responded?
24 A. Absolutely.
25 Q. Again, though, do you know whether that

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1 is an accepted principal under the contingent value
2 survey technique?
3 A. I don't believe anybody said they have
4 to do that specific type of technique. They could
5 have done a survey and interviewed these 15 top
6 agents and got their findings and got their ideas
7 and what they thought.
8 Q. Did you interview the top 15 people who
9 sold property in Nevada?
10 A. I interviewed the people that sold 200
11 of the 600 homes, the top six agents.
12 Q. And you talked to them in this case?
13 A. Yes.
14 Q. And what did you present to them?
15 A. I presented the scenario being in a
16 fishbowl, and I asked them if they felt that a
17 borrowed view across a property line has any
18 contributory value.
19 Q. You were already using terms like
20 borrowed view and fishbowl effect when you were
21 talking to these individuals?
22 A. Well, I think if you're going to
23 present it in an unbiased way, you have to tell them
24 what we have.
25 Q. Right. But isn't that the question

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1 whether there is a borrowed view?
2 A. Well, I told them that the permanent
3 view, the golf course view is there, but do they
4 have a right to any type of view over a side
5 property line. I kept it pretty simple, pretty
6 clean.
7 Q. How did you do this? Did you do it in
8 person or via e-mail or letter?
9 A. Three of them I did in person, and
10 three I did over the phone.
11 Q. Okay. Can you tell me their names?
12 A. It's in my work file.
13 Q. Where in your work file? It was a
14 large work file. I admit to you I didn't review all
15 of it.
16 A. Well, you're the one that asked for it
17 last Thursday.
18 Q. It's in your work file?
19 A. Yes.
20 Q. That you talked to these six real
21 estate agents?
22 A. Yes.
23 Q. Three of them by e-mail?
24 A. No. None by e-mail. Three over the
25 phone, and three in person.

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1 Q. So three over the phone and three in
2 person. Did you take any notes from these
3 conversations?
4 A. Notes are in the work file.
5 Q. And what -- is your general
6 understanding is that you represented to them, hey,
7 does the person have a right to a borrowed view? I
8 mean, how did you really explain it to them so I can
9 understand?
10 A. I asked them, I said I have a house in
11 a fishbowl below. And I actually said 12 feet below
12 Stephanie ground level. Am I entitled to any view
13 over a side property line whether it be this
14 property or any other given property. And they all
15 pretty much concluded that they'd stay away from any
16 type of borrowed view. The view that you have is
17 out the back of your property, and that can even
18 change.
19 Q. And when you were saying "side view", I
20 assume you were thinking of Mr. Malek's lot as
21 including the golf course portion?
22 A. In general, I said do you ever -- does
23 a buyer ever ask you if you get a view over
24 adjoining property's site.
25 Q. Right. But what I understand is you

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1 kept it pretty general. But what I want to know is
2 when you were asking that question, what in your
3 head did you picture Mr. Malek's lot to look like,
4 just the original lot lines of 594 Lairmont Place or
5 inclusion of the golf course?
6 A. Actually, two part. One was original
7 and one including.
8 Q. So how did you broach upon that subject
9 with them?
10 A. I said if they added this portion here
11 to the golf course, taken from the golf course and
12 add it to the adjacent site which then still has a
13 side view which is not -- which has been eliminated
14 except that now it would be landscaped and look very
15 attractive versus just rock desert, they said they
16 didn't think it would have any effect on value.
17 Q. And that's what you said to them, "it
18 would look very attractive"? That's what you
19 represented to them that it would look like if the
20 golf course portion was added to Mr. Malek's lot?
21 A. I said it would be landscaped and
22 approved with some on-site improvements unknown
23 exactly what they would be at this point in time.
24 Q. But you said it would be very
25 attractive?

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1 MR. GUNNERSON: Objection. Asked and
2 answered.
3 THE WITNESS: I don't think I said very
4 attractive, but in a \$3 or \$4 million home, I would
5 anticipate that it would be very pleasing.
6 BY MS. HANKS:
7 Q. Well, I'm trying to understand kind of
8 the premise that you placed with these individuals,
9 because you criticized Brunson and Jiu for their
10 survey. And so I want to know kind of your informal
11 survey, how you presented it to these six
12 individuals before I asked you what they said. So I
13 want to make sure I understand when you called them
14 up or spoke to them in person, what was the problem
15 presented? What I understand you first said was you
16 first presented the problem as --
17 A. One appraiser thinks there's a loss in
18 view and another one doesn't. And then I laid it
19 out, told them it's in a fishbowl. The golf course
20 sold a portion of this that was non-disclosed and
21 what effect that would have on the value.
22 BY MS. HANKS:
23 Q. Okay. Now, you said one thought that
24 there was a loss in value?
25 A. One appraiser did and one didn't.

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1 Q. How about the other four?
2 A. What other four?
3 Q. You said you talked to six?
4 A. I did the exact same scenario to all
5 six. I wouldn't change the scenario.
6 Q. No. I understand that. You said one
7 thought there was and one there wasn't?
8 A. No. None of them thought there was.
9 None of them thought there's any loss in value, and
10 these six individuals sold 200 of the 600 homes.
11 Q. Okay. So when you said one of the
12 appraisers found there was a loss in the value, what
13 did you mean?
14 A. Your side thinks there's a loss in
15 value. Opposing doesn't think there's a loss in
16 value. So I said there's an appraiser that thinks
17 there's a loss and there's an appraiser that doesn't
18 think there's a loss. What do you think.
19 Q. Oh, I see. I'm going to breakdown what
20 you talked to these six persons about. But when you
21 presented the problem to them, all six said, "I
22 don't think there's any loss in value?"
23 A. Yes.
24 Q. Okay. So now that begs the question.
25 What was presented to them specifically? Because if

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<p>1 you're going to come -- I need to clarify. If 2 you're going to come to court and say I'm 3 criticizing Brunson and Jiu for their survey, it's 4 only fair that I know kind of -- what your informal 5 survey was premised on? 6 A. Well, mine were interviews. So in 7 other words, I could lay them out a little better, 8 more objectively than putting it out to the mass 9 market. 10 Q. Okay. So you believe that talking to 11 them individually was more objective than the 12 Brunson Jiu survey? 13 A. Well, the examples of that is Jean 14 Northrop in Mr. Jiu's survey sold 12 of the homes 15 between 2002 and 2014. Mr. Northrop I actually took 16 out to the site. First thing he said to me is his 17 son filled out the survey. He didn't even fill it 18 out. He said agents that work in the field don't 19 have time for this, and typically these things are 20 completed by their assistants, which I found very 21 unusual but believable. 22 Q. You mean surveys were traditionally 23 filled out by their assistants? 24 A. Yeah. Because they're sent to them in 25 an e-mail.</p>	<p>1 A. In the last several weeks. 2 Q. So when did you contact these people? 3 A. In the last ten days. 4 Q. Oh, okay. So you didn't contact these 5 people after you looked at Mr. Jiu's report to 6 confirm whether they agreed or disagreed? 7 A. No. 8 Q. Okay. And you contact them in the past 9 ten days because you heard that Mr. Jiu had been 10 contacting people? 11 A. No. It was interesting. I decided 12 that maybe I should have contacted them to 13 crosscheck. So I contacted a couple, and several of 14 them said that Mr. Jiu had contacted them, and they 15 had not returned their call yet. 16 Q. And do you know if Mr. Jiu contact them 17 on this case or some other case? 18 A. I have no idea. 19 Q. But why did you decide to contact them? 20 That's what I was confused about. I thought you 21 said you decided to contact because you heard 22 Mr. Jiu was contacting -- 23 A. No. I didn't say that. 24 Q. Okay. So why did you decide to contact 25 them now that's it's been -- gosh, you drafted this</p>
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<p>1 Q. How often did Mr. Northrop say surveys 2 get sent out? 3 A. Well, he had said his son filled his 4 out. So he didn't fill his out. I can't answer 5 that question. But I can answer what my peers would 6 believe that I should do on something like this. 7 And if I went to 10 appraisers and said, do you 8 think interviews with the top agents in the city 9 would be more appropriate than a blanket survey to 10 7,000 agents, and I would believe that all 10 11 appraisers would say the interviews with the 12 individual agents that handle and sell the 13 multimillion dollar properties in the valley are 14 much more knowledgeable than 230 people on a 15 hypothetical basis. 16 Q. And why didn't you include the 17 interviews with these six individuals in your report 18 when you were criticizing Mr. Jiu's report? 19 A. Because I didn't think about doing it 20 prior to. 21 Q. What do you mean? Prior to what? 22 A. I didn't think about it until prior to, 23 until I found out that Mr. Jiu has gone out and 24 contacted some of these people. 25 Q. When?</p>	<p>1 report January 13, 2015? 2 A. Because I felt that I needed to double 3 check, and I thought it would be a good idea. And 4 it's something that should have been in the original 5 report for additional support. Because Mr. Jiu did 6 a survey, so I felt that I should do an interview 7 with these people that sold the majority of the 8 homes in the multimillion price range. I think my 9 personal interviews -- let's put it this way. I 10 think if Mr. Jiu and Mr. Brunson would have ran this 11 by some of his peers, that they might have concluded 12 to a different opinion. 13 In other words, if I've got such a 14 range of 1 to 50 percent or 1 to 20 percent, it's 15 like how I do get to 30 to 40, number one? And, 16 number two, I would pick up the phone and call four 17 or five of my top appraisers in the valley and say, 18 hey, Mark or John, what am I missing here? What's 19 going on? Am I looking at this the right way, to 20 get some additional input. 21 Q. And I'm sorry. Do you have copious 22 notes on exactly how you presented the problems to 23 these six individuals? 24 MR. GUNNERSON: Objection. Form as to 25 "copious".</p>

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1 **THE WITNESS:** I have their respondent
2 information in the report, what they said.
3 **BY MS. HANKS:**
4 Q. What they said. I understand that.
5 A. In the file.
6 Q. What I mean by copious, I mean exactly
7 what you said to them?
8 A. No.
9 Q. You only had your recollection of how
10 you presented the problem to them?
11 A. Correct.
12 Q. So there would be no way for my experts
13 or any experts to review your technique to see if it
14 was proper, correct?
15 A. Well, I think as an expert witness and
16 ethical, I would not be biased in my questions to
17 the agents.
18 Q. I understand you might not think you'll
19 be biased, but my question to you is there is
20 nothing in my work file that I can have my experts
21 or any other expert to make sure how you presented
22 the problem to these six individuals for the
23 appropriate or test that technique, correct?
24 A. No.
25 **MS. HANKS:** Can we take a lunch break? We are

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1 going to be here all day. I'm sorry.
2 **MR. GUNNERSON:** I got that feeling when you
3 said you were going over every page.
4 (Lunch break)
5 **BY MS. HANKS:**
6 Q. Mr. Dugan, we left off talking about
7 some interviews you conducted in the last 10 days of
8 six real estate agents in Nevada. Did you present
9 the survey questions that were -- when I say the
10 survey questions, Mr. Jiu survey, did you present
11 them with those questions?
12 A. No.
13 Q. Do you need to answer that?
14 A. No. I'm going to turn that off.
15 Q. If you could go to page eight of your
16 report, it's the sixth paragraph that begins with,
17 "How can it be concluded." Are you there?
18 A. Yes, ma'am.
19 Q. Okay. So it starts with -- this is
20 your report. "How could it be concluded that the
21 subject would suffer a value loss of 1 percent to 50
22 percent and an extend marketing time of up to 365
23 days per the agents and a 30 to 40 percent value
24 loss per the report under review. If it sold in 13
25 days, had multiple offers and sold for 142,000 over

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1 the listed price."
2 Did I read that correctly?
3 A. Yes.
4 Q. Now, when you discussed the fact that
5 it sold in 13 days and had multiple offers and it
6 sold for 142,000 over listed price, that sale
7 happened without knowledge that the golf course
8 parcel was a part of Malek's lot, correct?
9 **MR. GUNNERSON:** Objection. Foundation.
10 **THE WITNESS:** Yes.
11 **BY MS. HANKS:**
12 Q. I'm sorry. Your answer was yes?
13 A. Yes.
14 Q. And the survey, however, that alluded
15 these results of 1 to 15 percent of extended market
16 time and then 30 to 40 percent value loss per the
17 report, that was based on the hypothetical that now
18 the golf course portion was added to Mr. Malek's
19 lot, correct?
20 A. Yes. Except it was 1 to 50 percent.
21 Q. One to 50 percent of the respondents?
22 A. Correct.
23 Q. Okay. So the just so we're clear, the
24 respondents were not comparing the sale as it took
25 place, the one that you're talking about, selling

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1 for 13 days and had multiple offers and sold for
2 142,000 over listed price, right?
3 **MR. GUNNERSON:** Objection. Form.
4 **THE WITNESS:** Well, technically Mr. Jiu at the
5 time and date of his valuation, it wasn't owned by
6 the Malek's parcel either. So this should have been
7 a hypothetical report clearly stated that he's
8 making a false statement that was assumed to be as
9 of the retrospective date of valuation.
10 **BY MS. HANKS:**
11 Q. Right. I think that was the
12 hypothetical, right, the respondents when they're
13 assessing a 1 to 50 percent loss of value, they're
14 doing the hypothetical as if the golf parcel lot is
15 added to Mr. Malek's lot, correct?
16 A. No. Because on the subject when it
17 closed in I think May or June or, I'm sorry, in
18 April or May, the land wasn't deeded to Malek. It
19 didn't get deeded until June. So his whole premises
20 in his report is not based on the hypothetical
21 basis. He assumes that it was like this prior to
22 doing at the time of the date of valuation which it
23 was not.
24 Q. No. I understand technically the deed
25 didn't get recorded transferring the property to him

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1 until June. But the survey was asking the
2 respondents to assume the hypothetical that the golf
3 course portion would be added to Mr. Malek's lot,
4 right?
5 A. Yes.
6 Q. Okay. And that's not what actually --
7 strike that.
8 Second paragraph below that you
9 say, The subject sold for \$2.302 or 7.92 percent
10 discount for what everyone had agreed to as
11 unimpaired market value of 2.5 million.
12 Do you see that?
13 A. Yes.
14 Q. And I didn't read that verbatim. I'm
15 just summarizing it. I just want to be clear. Our
16 expert didn't necessarily say that they agreed with
17 the market value of 2.5 million, they just assumed
18 that for purposes of the report, correct?
19 A. No. I believe they agreed to it and
20 took that as a fact.
21 Q. Did you take that as a fact as well?
22 A. Yes.
23 Q. Now, your last sentence in that
24 paragraph says, "Multiple people made offers over
25 the listed price and the property sold in less than

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1 two weeks."
2 How did you obtain that
3 information that multiple people made offers over
4 listed price?
5 A. From the listing agent, Michael Doiron.
6 Q. When did you talk to Michael Doiron?
7 A. During the time when we were doing the
8 valuation.
9 Q. Okay. So I think I asked you at the
10 beginning of the deposition what you did in order to
11 prepare your report, and I don't recall that you
12 said you talked to Michael Doiron. So am I missing
13 anything else that you might have done in terms of
14 preparing your rebuttal report?
15 A. I don't know. I mean, just it's -- if
16 I talked to her, it's probably in my work file if
17 you would like to go through it.
18 Q. Okay.
19 A. I'm not sure where you're going with
20 this, but I may not remember every person that I
21 talked to.
22 Q. Okay. Because I'm entitled -- this is
23 my only time to talk to you other than the time that
24 I will likely be cross-examining you at trial. So
25 that's why I'm asking you what you did to prepare

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1 your report. While I understand, I appreciate it
2 might be in your file, I kind of have to ask you and
3 I'm asking for your best recollection. So that
4 obviously that was a reminder to yourself that we
5 read this, that you talked to Michael Doiron.
6 So was there anything else that
7 you did that you haven't said that you did to
8 prepare your report? I know you looked at
9 Mr. Jiu's, and I know that you looked at the
10 Valbridge Property Report.
11 Did you do anything else, talk to
12 people, interview anyone, do anything else in order
13 to prepare your report? Oh, I'm sorry. And you
14 inspected the property as well. I think you
15 mentioned that.
16 A. I think I spoke to Paul.
17 Q. Paul Bykowski?
18 A. Yes.
19 Q. When did you talk to Paul Bykowski?
20 A. I think we talked to him when we were
21 getting the CC&R's and blueprints and everything.
22 And then we told Spencer we needed them, and Spencer
23 said let him do it. So then Spencer retrieved them
24 and then sent them to us.
25 Q. Did you have a conversation with Paul

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1 Bykowski other than requesting documents?
2 A. No.
3 Q. Now, you indicate in the next sentence
4 that it seems like you're following that thought
5 process, "After multiple people made offers over the
6 listed price and the property sold in less than two
7 weeks, that the only logical conclusion is the agent
8 opinions in the survey and the conclusion in the
9 report under review are not reliable."
10 I just want to be clear about
11 something. Why do you draw that conclusion if what
12 those multiple people made offers on and what the
13 Rosenbergs purchased they believed that the golf
14 course parcel did not become a part of Malek's lot?
15 A. Multiple people made offers on it, and
16 the question would be, does a reasonable person
17 expect a portion of the golf course, if it was
18 deeded to another parcel and a view of a distant
19 have an effect on the value.
20 I believe that any of these people
21 that made offers including the Rosenberg if they
22 were told about this, probably wouldn't have given
23 it a second thought.
24 Q. But what are you basing that opinion
25 on?

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1 **A. Appraising thousands of homes in the**
2 **Las Vegas Valley, multimillion dollar properties and**
3 **dealing with buyers and sellers on a daily basis.**
4 Q. Okay.
5 **A. And my understanding of what they want**
6 **in a property.**
7 Q. You would agree though that your
8 estimation would be wrong with the Rosenbergs,
9 right, because they are suing?
10 **A. Yes.**
11 Q. And did you interview the other people
12 who made the offers and ask them if that view over
13 the golf course parcel was something they would
14 consider?
15 **A. No.**
16 Q. Okay. So you don't know if they would
17 be like the Rosenbergs and done the same thing and
18 sued if this had happened to them? Fair?
19 **A. Yes.**
20 Q. Turning to page nine of your report,
21 the first bullet point, your last sentence states,
22 "As of that date, the additional land had not been
23 acquired. (Sale not closed and the plans did not
24 exist)."
25 Do you see that?

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1 **A. Yes.**
2 Q. Is that a distinction that makes a
3 difference in terms of your opinions in this case
4 when the actual sale to Mr. Malek closed for the
5 golf course portion?
6 **A. Mr. Jiu, he doesn't do a hypothetical**
7 **valuation and assume that this condition existed as**
8 **of this date, so his report is under a false**
9 **pretension.**
10 Q. But doesn't the point of Mr. Jiu's
11 report, regardless of when the condition actually
12 existed, doesn't the whole point of Mr. Jiu's survey
13 simply say if you bought the property and believed
14 condition X existed but now condition Y exists, does
15 that effect your value? Isn't that essentially what
16 the survey is asking?
17 **A. Mr. Jiu says as of May 15, 2013, that**
18 **the Rosenbergs were damaged which is not the case,**
19 **because it had not been deeded to Malek. And as of**
20 **that date, there was no damage.**
21 Q. Okay. So the date of damages, if there
22 is going to be any, would be the date that the
23 property was actually conveyed to Mr. Malek?
24 **MR. GUNNERSON: Objection. Calls for legal**
25 **conclusion.**

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1 **THE WITNESS:** Well, it can't be the date prior
2 to an act happening unless you do a hypothetical
3 analysis which is basically saying that it doesn't
4 exist, and it's wrong unless you state that in your
5 report. He did not do that. So his premise is
6 wrong, and that's what we're stating, period.
7 **BY MS. HANKS:**
8 Q. But I guess I'm wondering why that
9 distinction matters in terms of the survey. If the
10 survey was supposed to inquire as to whether this
11 condition, this new condition if it does now exist
12 does it affect the valuation of the property, why
13 does it matter if it was dated May or June?
14 **A. It matters because as of the date he**
15 **dated his report and date of valuation, there were**
16 **no damages. That's why that statement is true.**
17 Q. And that leads me to my question that I
18 already asked then. So if there are any damages,
19 the damages would start June 25, 2013, which I'll
20 represent to you that's the date that the property
21 was conveyed to Mr. Malek, the golf parcel.
22 **A. He should have included that in his**
23 **report, because he's misleading to a ten degree of**
24 **the report.**
25 Q. But that date doesn't affect how the

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1 survey was provided, correct?
2 **A. Yes.**
3 Q. How does that -- oh, sorry. Okay. And
4 then if you go to the third bullet point, I think
5 we've already discussed it, but I just want to make
6 sure. You have the third bullet point saying, "The
7 report under review assumes the wrong building
8 setbacks (and repeats the same errors of the agent
9 survey)."
10 I which think we've already talked
11 about this, but I want to make sure. The setbacks
12 that the survey provided was 30-foot setback,
13 correct?
14 **A. I believe so.**
15 Q. And in your opinion because the City of
16 Henderson has marked the lot line that abuts the
17 golf course as the side yard, it has a 15-foot
18 setback, correct, or requirement?
19 **A. Yes.**
20 Q. And I think we've already established
21 it though that a 15-foot setback would even cause
22 more encroachment, right?
23 **A. Yes.**
24 Q. And, so because of that, that would
25 lead you to believe that if the respondents in the

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1 survey believe that a 30-foot setback would affect
2 the value of 590 Lairmont, more likely than not,
3 they would agree that a 15-foot setback encroachment
4 that would have caused loss?
5 **MR. GUNNERSON:** Objection. Foundation. Calls
6 for speculation.
7 **THE WITNESS:** Right. And I believe Malek got
8 a variance and is changing the rear side property,
9 rear property line to go closer to Stephanie and
10 gave up 30 feet along that side. So your analysis
11 would be -- wouldn't change.
12 **BY MS. HANKS:**
13 Q. Well, let's back up, because I'm not
14 sure you answered my question. If the survey
15 proposed a 30-foot rear setback and in reality we go
16 with what you're saying, a 15-foot setback would
17 apply to that lot line and if then if those same
18 respondents found that a 30-foot setback would have
19 caused an encroachment, more likely than not, they
20 would have found that a 15-foot setback would have
21 also caused an encroachment and a loss of value 590
22 Lairmont Place?
23 **MR. GUNNERSON:** Same objection. Form as to
24 whether you're talking about original lot lines or
25 modified lot lines.

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1 **BY MS. HANKS:**
2 Q. I'll clarify that. I'm talking about
3 the modified lot lines.
4 **A. Right. And I believe I answered it.**
5 **Malek wanted to build the house closer to the rear**
6 **property line, and in turn, set the home back 30**
7 **feet on the side property line. So it's the same**
8 **scenario.**
9 Q. Same scenario as what?
10 **A. The survey at 30 feet.**
11 Q. Oh, what actually what Mr. Malek is
12 intending to do?
13 **A. He's hypothetically intending or**
14 **extraordinary assumption is what he's anticipating**
15 **to do.**
16 Q. Okay. So would that take away your
17 statement that the survey is now misleading if it
18 states to --
19 **A. No. Because in actuality, if he didn't**
20 **try to get a variance in the rear yard, he could**
21 **build within 15 feet.**
22 Q. Right. So if respondent found that if
23 he had to be bound by a 30-foot setback, that still
24 would have provided a loss to them, more likely than
25 not, they would say yes. If he was only bound by a

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1 15-foot setback there would be a loss?
2 **MR. GUNNERSON:** Foundation.
3 **THE WITNESS:** If the respondents actually knew
4 what they were talking about by the survey
5 questions.
6 **BY MS. HANKS:**
7 Q. What do you mean by that?
8 **A. Just what I said.**
9 Q. I don't understand it.
10 **A. I don't believe that the respondents**
11 **are knowledgeable sufficiently to deal with this**
12 **type of issue.**
13 Q. Okay. So real estate agents in Las
14 Vegas, Nevada who sell property on daily basis, in
15 your opinion, are not experienced to answer the
16 Contingent Value Survey that was proposed in this
17 case?
18 **A. No. I didn't say that. I said that**
19 **most agents don't understand the difference between**
20 **the side yard setback or a rear yard setback and**
21 **what can be done and what can't be done, because**
22 **it's out of their expertise of their field.**
23 Q. But what does it matter? That's my
24 point. If they thought -- hold on. Hold on.
25 If they thought a building that

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1 had to be setback 30 feet was an encroachment that
2 would cause a loss of value to 590, then wouldn't
3 they certainly agree that a 15-foot setback would
4 cause an encroachment that would could cause a loss
5 of value?
6 **A. I guess you would have the same**
7 **scenario, 1 to 50 percent.**
8 **MR. SHEVORSKI:** All right. I've got to roll.
9 Enjoy.
10 **BY MS. HANKS:**
11 Q. The fourth bullet point you remark,
12 "The report under review repeatedly takes a biased
13 posture client advocacy in its presentation of facts
14 and circumstances surrounding acquisition of the
15 subject property."
16 Am I safe to understand that you
17 need to see the survey questions to better talk
18 about that today?
19 **A. I think they have -- by the way the**
20 **report is written, they had a predetermined fact**
21 **that there was going to be a loss in value.**
22 Q. Okay. And I'm not really concerned
23 about how the report is written. I'm concerned with
24 the survey.
25 **A. Well, I'm concerned with the way the**

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1 report is written, because that's what I had to
2 read.
3 Q. Right. But their report is taking data
4 from the survey and making conclusions. That's why
5 I want to make sure I'm clear on what you're
6 criticizing. Are you just criticizing their
7 valuation of the data, or are you actually
8 criticizing the survey questions themselves when
9 you're saying that it takes a biased posture?
10 A. I believe that they are biased in their
11 findings.
12 Q. Okay. Is the survey itself -- did
13 anything in there pose a biased posture to you?
14 A. I don't think the survey was clear
15 enough, some of the questions.
16 Q. Okay. I apologize if I've asked this
17 already, but have you reviewed Richard MacDonald's
18 deposition?
19 A. No.
20 Q. Are you aware that he testified that
21 the Design Review Committee would have likely
22 enforced rear yard setbacks for the lot line on
23 Mr. Malek's lot that abuts the golf course portion?
24 A. I have no idea.
25 Q. Let's go to page ten of your report.

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1 It is the second bullet point. You have, "Failure
2 to present transactional market data in support
3 slash contradiction of the alleged defect and/or as
4 evidence of diminution in value."
5 What transactional market data are
6 you referring to?
7 A. Well, they relied solely on a survey.
8 They should have did paired sales analysis to
9 determine what the view is on and off the golf
10 course from various lot sales either in MacDonald
11 Ranch, Seven Hills, Southern Highlands, The Ridges,
12 to see what a view actually contributes to
13 crosscheck their survey method that might have led
14 them to a different result.
15 Q. I'm sorry. Where in the literature
16 does it say you should cross reference the
17 Contingent Value Surveys with market data?
18 A. In the real estate damages book.
19 Multiple places in the book.
20 Q. And just so I understand, in terms of
21 paired sales analysis, you just mean look at what
22 other properties sold with views of golf courses?
23 Is that what you mean by what would be included in
24 the paired sales approach?
25 A. If I have two lots, one on the golf

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1 course and one on the not golf course and they're
2 virtually the same size and, say, one sells for
3 500,000 and the other sells for 400,000, well, the
4 contribution of the view then is \$100,000.
5 Q. But don't we have a different scenario
6 here where we're not just trying to value 590
7 Lairmont Place, we're trying to value it in terms of
8 what they believed existed at the time they
9 purchased the property, the Rosenbergs, and now it
10 has changed, right?
11 A. It changed because the golf course made
12 a modification to the land by giving the 14,000
13 square feet to Malek.
14 Q. Right. So aren't we trying to value
15 what loss, if any, that modification has on 590
16 Lairmont?
17 A. Well, if the lot, for example, is worth
18 \$500,000 on the golf course and the lot off the golf
19 course is worth 400, then the view for the primary
20 borrowed view or any borrowed view anywhere from
21 that house is worth \$100,000.
22 Q. So that's all it could be worth,
23 there's no other value that could be placed on a
24 view like that?
25 A. Well, that's an example to try to keep

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1 it simple so you understand it.
2 Q. Well, I understand that. But what I'm
3 saying is, I just want to make sure I understand
4 what you're saying, is that that's how you would
5 value a loss of a view, you would say, "I'm going to
6 look at a property that sold off the golf course,
7 compare it to a property that's on a golf course and
8 because you technically lost a portion of your view,
9 it can only be the difference between those sales?
10 A. It can be percentage of the total
11 market value.
12 Q. And that's what you believe is the best
13 approach for determining a loss of diminution of
14 value for this type of situation?
15 A. Well, I think there's many properties
16 throughout the valley that you could look at to see.
17 Well, let's put it this way. Over the years there
18 has been high end developers, Blue Heron,
19 Christopher Homes to name two of them.
20 Christopher Homes has built
21 thousands of homes on and off the golf courses over
22 the years. They have a project out in The Ridges
23 right now called Boulder Ridge. They have homes on
24 the golf course and off the golf course and homes
25 that have views of the Red Rock conservation area.

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1 So they charge premiums for those views. And that's
2 going to be the difference of what they think they
3 can command from a base lot price to a premium view
4 lot.
5 Q. And I understand that. I understand
6 what you're saying. I'm just trying to make sure I
7 understand when you come to court what you're saying
8 is that you believe that's the better way to value
9 if you're going to figure out a loss of value is to
10 look at the complete pure sales?
11 A. No. You can do the survey if the
12 questions are appropriate and not misleading.
13 Q. And what would be the point of the
14 survey if you should just look at sales?
15 A. That's a good question. I personally
16 would have used paired sale analysis and looked at
17 the values of views on and off the golf course and
18 say if the maximum house with a view is, say, 10
19 percent, my loss in value can't be 30 to 40 percent
20 of the total market value.
21 Q. But it could be five percent?
22 A. Possibly.
23 Q. Could it be one percent?
24 A. Yes.
25 Q. Could it be two percent? I mean, it

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1 could be all the way up to, what, nine percent?
2 A. But it all depends. Are we talking
3 about the primary borrowed view or the borrowed
4 view?
5 Q. How can you do that in a paired sales?
6 Let's take the difference in your first example
7 where there was \$100,000 difference between the two
8 properties, how do you parse that out as to, well,
9 50 grand is for the primary view, 50 grand is for
10 the borrowed view?
11 A. You can't separate it out unless the
12 entire view is obscured and taken away.
13 Q. And so wouldn't this survey give you
14 some benefit to know how much people are putting on
15 that borrowed view or primary view? Doesn't that
16 help you with that extra element that you really
17 can't get in terms of pure numbers?
18 A. If it would have been something between
19 one and five percent instead to 50 percent of the
20 market value, then it might have made some common
21 sense, but it doesn't have any common sense in it,
22 because it's too wide of a range. It doesn't make
23 sense.
24 Q. Okay. So for you, the survey --
25 A. No, not for me. For my peers.

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1 Q. Who tell you that? Where in any of the
2 literature does it tell you that a Contingent Survey
3 Valuation cannot have a range of 1 to 50 percent?
4 A. It doesn't, but it has to be supported.
5 And in the real estate damages book, they didn't
6 just put the paragraphs in talking about that it
7 should be backed up by transactional market data.
8 In other words, you just can't take a survey and
9 assume it's right unless it seems reasonable. And
10 it just doesn't seem reasonable.
11 How can you have damages of a
12 million dollars when I still have the primary view?
13 It's illogical.
14 Q. Are you aware of cases where damages
15 for loss of diminution of value actually exceed the
16 value of the property?
17 A. All the time.
18 Q. Okay. Isn't that what's happening
19 here?
20 A. No.
21 Q. Why?
22 A. Because the primary view is still
23 there.
24 Q. But the respondents in the survey were
25 presented with that, right, they knew -- hold on.

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1 They knew the primary view was still maintained even
2 with this external condition changing, right?
3 A. Yes.
4 Q. Okay. And they still thought with this
5 condition changing even though they still kept the
6 primary view, the respondents gave between 1 percent
7 and 50 percent felt there was a loss, right?
8 A. Yes.
9 Q. Now, let's go to the fifth bullet
10 point. You state, "The failure to recognize that
11 planting of mature trees (common in golf course
12 communities) on the original adjacent lot (prior to
13 acquiring the extra land area) would have obscured
14 the borrowed view."
15 So I just want to be clear about
16 that bullet point. You're just talking about the
17 original lot lines for 594 Lairmont, correct?
18 A. No. The golf course could plant trees
19 anywhere they want on the golf course.
20 Q. Okay. And I thought we established
21 that you're not aware though if there was some
22 restrictive covenants that the golf course agreed
23 to, correct?
24 A. I don't recall.
25 Q. Okay. Is it your opinion that if a

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1 property maintains its primary view, it can never
2 have a diminution in value if other views are lost?
3 **A. I'm sorry. One more time.**
4 Q. Is it your opinion that a property that
5 always maintains its primary view can never have a
6 diminution in value if other views are lost?
7 **A. I'm sorry. I don't understand the**
8 **question.**
9 Q. Well, I guess I'm just trying to
10 understand, because I think you state throughout
11 your report that because the primary view is kept
12 for 590 Lairmont, regardless of the addition of the
13 golf parcel to Mr. Malek's lot, that that's why the
14 Rosenbergs don't have a loss of value in their
15 property.
16 And I'm just trying to understand
17 is it always your opinion if a property maintains
18 its primary view, that it can never have a
19 diminution in value if other views are lost?
20 However you define those views whether it be
21 secondary, borrowed, or whatever other definition
22 there might be.
23 **A. That's a pretty blanket statement.**
24 Q. Yeah.
25 **A. So hypothetically as long as you have**

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1 **the primary view which can change, because it is a**
2 **borrowed view as well by the maturing of trees in**
3 **and the desert landscaped area, they can grow and**
4 **become large which would obscure the view as well.**
5 Q. So would you say you would not be able
6 to have that opinion, it would depend on the
7 circumstances? In other words, you would never
8 blanketly [sic] say that a property who maintains
9 its primary view would never have a loss of value if
10 it lost other views?
11 **A. Well, you're mixing the two views**
12 **together. If it's a primary view and it does have a**
13 **nice view, then it should be okay. If it's a**
14 **primary view like Southern Highlands where they**
15 **planted pine trees all along the rear property**
16 **lines, ultimately within 10 years those pine trees**
17 **grew and obscured the entire view of the golf**
18 **course.**
19 Q. Okay. I know. I'm just trying to
20 understand though. It would depend on there are
21 situations, at least you're telling me, there are
22 situations where a property could lose some other
23 view besides the primary, whatever that might be,
24 and still have a diminution in value, or is that an
25 impossibility?

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1 **A. I'm not sure.**
2 Q. So you would have to know the specifics
3 of the hypothetical?
4 **A. Yes.**
5 Q. If you go to page fourteen in your
6 report -- I'm sorry -- is this you defining borrowed
7 views, or are you quoting from the report where it
8 says "borrowed views" and it's in italics?
9 **A. That's from the report.**
10 Q. Do you disagree with the definition of
11 borrowed views or what's stated there? And I'll
12 read it first.
13 It says, "Borrowed Views. The
14 subject property may enjoy a view or views either in
15 portion or it's entirety only because of the
16 existence of a vacant parcel between the subject and
17 the view amenity with the realistic expectation that
18 the view corridor might be obstructed in some manner
19 once that adjacent parcel is approved?"
20 Do you agree with that definition
21 of borrowed views?
22 **A. Yes.**
23 Q. And do you believe that the golf course
24 parcel that was eventually sold to Mr. Malek was a
25 borrowed view at the time the Rosenbergs purchased

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1 590 Lairmont place?
2 **A. Yes. Because the golf course could**
3 **have done anything to that sight. I mean, I think**
4 **the thing that you're missing here is the fact that**
5 **this -- I mean, I'm not sure what the view is of**
6 **when you're looking at this, because then it goes up**
7 **Stephanie Street from twelve feet above. So all I**
8 **have is a view of the desert landscaped area. I**
9 **don't really have a view if I'm looking to the**
10 **southeast.**
11 Q. And let's -- we'll get there. We'll
12 get talking about the view in a second. But let's
13 assume that the golf course could not do anything it
14 wanted with that particular area of land, then would
15 it be a borrowed view?
16 **A. What do you mean they can't do anything**
17 **with it?**
18 Q. Let's say they have to keep it as is,
19 exactly as it is today, there's a certain type of
20 landscaping pallet that's on there according to
21 MacDonald Highlands, if it had to stay that way,
22 would that area be considered a borrowed view
23 corridor?
24 **A. Yes.**
25 Q. Why?

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1 A. Because it's part of the golf course
2 and, well, I change my mind on that. I'm not sure
3 the golf course is under any restrictions as of the
4 date of this value, because it was owned by
5 Mr. MacDonald. That they could adjust and move
6 trees around, change the configuration, slope,
7 whatever they wanted to do with this area.
8 Q. Let's assume there were restrictions in
9 place hypothetically speaking. Let's assume there
10 were restrictions in place with what the golf course
11 could do. I'm only concerned with the area that was
12 recently sold to Mr. Malek. If there were
13 restrictions on that area, is that considered still
14 a borrowed view corridor?
15 A. Yes.
16 Q. Why?
17 A. Because the golf course could --
18 hypothetically I'm not sure what you're trying to
19 ask me.
20 Q. I'm trying to ask you because my
21 understanding of the definition here that you agreed
22 to it says, "That a borrowed view is an area of
23 vacant land where someone has a realistic
24 expectation of the view corridor might be obstructed
25 in some manner once the adjacent parcel is

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1 approved."
2 So to me, I read that and say,
3 okay, that means a piece of property that can't be
4 changed does not fit within that definition and
5 therefore is not a borrowed view?
6 A. No. It says the view corridor might be
7 obstructed in some manner once the adjacent parcel
8 is improved so it could go away.
9 Q. Right?
10 A. So it's a borrowed view.
11 Q. Right. So if there's a restrictions
12 which don't allow for any construction or change or
13 improvement on the parcel, that's not a borrowed
14 view, correct?
15 A. Hypothetically if they had a
16 restriction, sure.
17 Q. Okay. And so I understand, you further
18 talk about that you criticize that borrowed view
19 discussion where you talk about they can be affected
20 and how the report doesn't talk about that they
21 could be partially or totally obstructed, not just
22 by a new building but also landscaping. And you're
23 taking -- that's what you're criticizing in the
24 report.
25 But, again, that's based on the

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1 assumption that the golf parcel is a borrowed view
2 parcel, correct?
3 A. I think the Rosenbergs are considering
4 this their primary view. And if that's the case,
5 it's still a portion of their view and it could be a
6 borrowed view, and the courts could change that.
7 Q. I understand, but, again, when you're
8 criticizing the Brunson Jiu report for not taking
9 into consideration that the borrowed view areas to
10 be developed, whether it be a building or
11 landscaping, you're making that assumption that the
12 golf course portion is a borrowed view, right?
13 A. Yes.
14 Q. Okay. Now, let's talk about the next
15 paragraph where it discusses the borrowed view from
16 the subject property that looks east (towards the
17 Dragon Ridge clubhouse's parking lot and distant
18 mountains to the southeast), could be obscured by
19 planting a large tree or trees on the north side of
20 the original adjacent lot and planting large trees
21 along the east property line (Stephanie Street) to
22 provide privacy to the adjacent lot.
23 Do you see that?
24 A. Yes.
25 Q. Now, you're aware that all of the

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1 properties within MacDonald Highlands are subject to
2 either Design Guidelines or the CC&R's, correct?
3 A. Yes.
4 Q. And you're also aware that let's assume
5 Mr. Malek has built his home, if he wants to change
6 any of the landscaping, are you aware that he has to
7 go through a modification committee where he has to
8 get his proposed modifications approved or commented
9 by the adjacent property owners?
10 A. I don't recall.
11 Q. Would you agree that buying property
12 within a community that is governed by restrictions
13 of what other property owners can do provides value
14 to potential purchasers?
15 MR. GUNNERSON: Objection. Form.
16 THE WITNESS: Yes.
17 BY MS. HANKS:
18 Q. And then the next paragraph you talk
19 about there could be mature trees planted, but you
20 make a caveat, you say planted on the adjacent lot
21 parenthetical within the original lot boundaries,
22 closed parenthetical. Isn't that kind of the crux
23 of the problem we have in this case, is that we're
24 arguing that what the Rosenbergs believed to the
25 original lot turned into being something else?

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1 **A. I think that statement speaks for**
2 **itself in that if in the original lot if you planted**
3 **trees there, it would obscure the view toward**
4 **Stephanie, the Dragon Ridge clubhouse and employee**
5 **and visitor parking lot.**
6 Q. Okay. And I know that the report might
7 have been talking about a lot of different views.
8 Frankly, I don't care about the views across 594
9 Lairmont on the original lot line. So I just want
10 to make sure that when you put that parenthetical
11 statement there when you're referring to trees being
12 built, you were only referring to the original lot
13 lines of 594 Lairmont, correct?
14 **A. Yes.**
15 Q. But, now that Malek has a portion of
16 the golf parcel, that's the crux of what is
17 presented by this case, right, that now he has this
18 additional property that the Rosenbergs didn't know,
19 now he can build all of those or plant all of those
20 trees, right?
21 **A. Sure.**
22 Q. And that would obscure the view from
23 the Rosenbergs' property, correct?
24 **A. If they had a view and it was**
25 **considered a primary view, yes.**

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1 Q. Okay. So it only obscures the view if
2 they had a view?
3 **A. Again --**
4 **MR. GUNNERSON:** Objection. Form.
5 **THE WITNESS:** Again, I don't think a logical
6 buyer would anticipate a view in this direction when
7 you have the beautiful golf course to look to to the
8 northeast.
9 **BY MS. HANKS:**
10 Q. But it is still a view they had,
11 correct? I mean, you inspected the property.
12 Regardless of whether you classify it as a primary
13 or the best view towards the golf course parcel that
14 was eventually sold to Mr. Malek, there's a view for
15 594 Lairmont across that area, correct?
16 **MR. GUNNERSON:** Form as to time. Currently
17 are you saying?
18 **BY MS. HANKS:**
19 Q. I'll say at the time the Rosenbergs
20 purchased the property. At the time the Rosenbergs
21 purchased their property, 590 Lairmont, was there a
22 view regardless of how you classify it, primary, the
23 best? I don't care how you classify it. There was
24 a view across the golf course portion that was
25 eventually sold to Mr. Malek, correct?

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1 **A. Yes.**
2 Q. And then I think the next caveat to
3 your answer to my question was -- well, let me back
4 up.
5 "Because they had a view, if now
6 that Mr. Malek owns it and he's able to either put
7 his house on it or landscaping on that area, now the
8 Rosenberg view is obscured", correct?
9 **A. Not the primary view.**
10 Q. I don't care about the primary view.
11 I'm asking about the view across the golf parcel
12 that Mr. Malek has since purchased, now the view
13 would be obscured if he's allowed to put a building
14 there or landscaping there, correct?
15 **A. I don't believe they could put a**
16 **building there, because it wouldn't meet the**
17 **setbacks.**
18 Q. Okay. So it's your understanding he
19 cannot build any of his portion on the golf course?
20 **A. They could do on-site improvement,**
21 **pools and covered patios and so forth, but I don't**
22 **think the house can sit that much farther out. In**
23 **other words, it's still -- I think he gave up the 30**
24 **feet on the side setback to not be able to build in**
25 **that area to get the variance for the rear property**

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1 **line.**
2 Q. What's your understanding of the
3 variance? What do you mean by variance? Variance
4 from who?
5 **A. Well, that's the Design Review**
6 **Committee could give a variance depending upon what**
7 **it is and what they want and whether they think it's**
8 **reasonable or not.**
9 Q. Okay. And what you say he got a
10 variance, what is your understanding of what
11 Mr. Malek got a variance from the Design Review
12 Committee?
13 **A. From what I understand, they got a**
14 **variance to build closer to Stephanie Street and in**
15 **turn they moved the property to the south off the**
16 **golf course.**
17 Q. And so I understand you correctly, they
18 also asked for the boundary line that abuts the golf
19 course property to be considered a rear property
20 line?
21 **A. No.**
22 Q. No? Just a variance in terms of --
23 **A. The rear property line is Stephanie.**
24 **Don't confuse it. Okay. The golf course is the**
25 **side property line.**

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1 Q. But you said they got a variance to set
2 back. How much?
3 A. The house closer to Stephanie.
4 Q. How close?
5 A. I don't know. I just know that there's
6 talk about it. I'm not even sure it's set in stone.
7 Q. Okay. And how do you know there's talk
8 about it?
9 A. I think the plans show it. Either that
10 or Paul mentioned that to me at one time.
11 Q. Do you know if Brunson Jiu had this
12 information when they drafted their report or
13 submitted the survey?
14 MR. GUNNERSON: Objection. Foundation. Calls
15 for speculation.
16 THE WITNESS: I have no idea. The only thing
17 I can tell you is they had the wrong rear property
18 line. So the whole survey is flawed just by that
19 one item.
20 BY MS. HANKS:
21 Q. Let's go back to that, because it's not
22 flawed in the sense that it's still alluded to the
23 same results. We already talked about that, because
24 the respondents were understanding that the survey
25 is a 30-foot setback, but in reality, you're saying

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1 Mr. Malek can do a 15-foot setback, right?
2 A. Correct. But I believe he stayed with
3 the 30-foot setback.
4 Q. So he stayed with exactly what the
5 survey said was going to happen?
6 A. Okay.
7 Q. So how does that make the survey flawed
8 if what actually is happening is what the survey
9 presented --
10 MR. GUNNERSON: Counsel, object. Asked and
11 answered multiple times. I know he's stating
12 something and you don't like it, but you've asked
13 this question so many times. And, obviously,
14 there's -- you know, I'll bring that up when I have
15 a chance to ask him some questions to rehabilitate
16 this, but anyway, objection. Asked and answered.
17 BY MS. HANKS:
18 Q. That's his objection. You still have
19 to answer.
20 A. What is the question?
21 Q. So is the house -- how is the survey
22 flawed then if the 30-foot setback is actually
23 what's happening?
24 A. That's just one of the components
25 within the survey that are flawed.

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1 Q. But is it flawed if that's actually
2 happening now?
3 A. No.
4 Q. Okay. And we veered off originally
5 from what I was talking about. Based on some of
6 your answers, I want to get back to that if
7 regardless of what plans you may have reviewed, if
8 Mr. Malek can either build a home or build trees
9 within the golf parcel, that would obscure the view
10 from 594 Lairmont, correct?
11 A. Yes.
12 Q. Now, is it your opinion that there is
13 no loss of value to 590 Lairmont because of the
14 belief that Mr. Malek is not building any portion of
15 his home on the golf course parcel?
16 A. No.
17 Q. Okay. Because I want to make sure
18 we're clear on that, because I think you said you
19 had plans, as far as you know, the plans that you
20 reviewed did not show any building of a house on the
21 golf course portion; is that correct?
22 A. I don't recall.
23 Q. Let's go to page 15 of your report.
24 And you talk about on page 14 leading into 15 how
25 certain trees could be built on the properties,

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1 right?
2 A. Yes.
3 Q. And you indicate there you have four
4 circles on page 15. There's a picture there and you
5 have four circles. And let's just get some context
6 to some of these property lot lines. Do you see the
7 first set of circles that you have that go over a
8 property lot line? Do you see it? Kind of lot line
9 goes towards the middle of that circle. Do you see
10 that?
11 A. Yes.
12 Q. What lot line is that representing?
13 A. I think the originals.
14 Q. Okay. And then what is the second one?
15 And you have a second set of circles that look like
16 they also have a line going through them. What lot
17 line does that represent them?
18 A. Same.
19 Q. The original lot line?
20 A. Yes.
21 Q. Why are the two different -- how come
22 you have two different original lot lines?
23 A. Are you talking about the blue line or
24 the green line?
25 Q. I don't have a colored copy. So let me

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1 -- okay. So the very first property line that we
2 see where you have two circles, it's colored green
3 on your report, what does that represent?
4 **A. I believe that's the setback in and the**
5 **blue is the original property line.**
6 Q. Okay. So I see. And so is the green
7 setback assuming a 15-foot setback?
8 **A. I can't answer that without looking at**
9 **the plans, but I would say most likely.**
10 Q. Where did you get this picture from?
11 In other words, who drew the lines that you've
12 marked green and blue on here?
13 **A. Probably Pat that works with me.**
14 Q. Okay. And, so I just want to make sure
15 I'm clear. So you wouldn't be able to tell me what
16 setback you were doing to draw that blue line?
17 **A. The aerials are for demonstration**
18 **purposes. It may not be exactly to scale.**
19 Q. No. I understand that. I just want to
20 make sure I understand. What is the purpose of the
21 blue versus green lines? What are they
22 representing?
23 **A. One is the property line and one is the**
24 **setback line.**
25 Q. What is the setback that you were --

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1 that you were assuming in this scenario?
2 **A. I can't recall.**
3 Q. How would we determine that?
4 **A. By looking at the plat map.**
5 Q. What plat map?
6 **A. There is plat maps that show, that are**
7 **recorded that show the property line so the blue**
8 **would be the property line and the green if the**
9 **circles are supposed to be 30-foot circumference, it**
10 **looks like maybe -- I don't know what the difference**
11 **is.**
12 Q. You don't know the difference but your
13 report is saying that Mr. Malek based on these lines
14 in the setback of trees, so if we don't know what
15 we're talking about, how did you know he could build
16 trees there?
17 **A. Because it's a side property line, and**
18 **you can put trees on the side property lines.**
19 Q. Okay.
20 **A. The last paragraph on page 15, "There**
21 **are no provisions in the CC&R regarding trees on**
22 **private lots overhanging the golf course." So you**
23 **could put a mid size mature tree on the subject and**
24 **overhang the golf course slightly is common**
25 **throughout MacDonald Ranch."**

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1 **So on those are on the original**
2 **lot lines.**
3 Q. And those are based on the fact that
4 that would be a side yard lot line, correct?
5 **A. Yes.**
6 Q. And if Mr. MacDonald testified that he
7 would implement that as a rear property line, would
8 that change your opinion as to whether any of those
9 trees could be built?
10 **A. Mr. MacDonald is wrong on that being**
11 **the rear property line, period, because it's not.**
12 Q. Well, my understanding -- have you
13 reviewed -- there was a gentleman by the name -- I
14 think it was Michael Tazzy. (Phonetic) I might have
15 the first name wrong. Mr. Tazzy, he was deposed
16 from the City of Henderson. Did you read his
17 deposition?
18 **A. No.**
19 Q. Are you aware then -- if I were to
20 represent to you that Mr. Tazzy testified that the
21 City of Henderson marks property lines, particularly
22 the rear property line just based on whatever
23 property line is opposite to the ingress of the
24 property. Are you aware of that?
25 **A. It's usually, yes.**

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1 Q. That's the typical way you designate
2 lot lines?
3 **A. Right.**
4 Q. And Mr. Tazzy also testified that
5 despite how the City of Henderson designates them,
6 no one is bound by those lot lines, if MacDonald
7 Highlands wants to change that they could. Are you
8 aware of that?
9 **A. No.**
10 Q. Okay. Now, let's assume that
11 Mr. MacDonald testified that he would have
12 implemented rear lot lines setbacks and other
13 provisions to the lot line that abuts the golf
14 course. Would that change your opinion as to
15 whether the trees that you marked here could be
16 planted by Mr. Malek?
17 **A. No.**
18 Q. Why not?
19 **A. Because they're in the side property**
20 **lines on the left, and one's on the right is the**
21 **rear. Or if you're going to try to tell me the golf**
22 **course is the rear, then both of those are side**
23 **property lines, and an owner can plant trees in the**
24 **side property lines.**
25 Q. I'm asking you to assume that

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1 Mr. MacDonald testified he would make that side
2 property line the rear property line.
3 **MR. GUNNERSON:** I'm going to object to the
4 form. Mr. MacDonald did not testify as the 30(b)(6)
5 of the owner of the property in question.
6 **BY MS. HANKS:**
7 Q. You can go ahead and answer.
8 **A. I have no idea what Mr. MacDonald --**
9 Q. I know. I'm asking a hypothetical.
10 I'm asking you to assume. Mr. MacDonald testified
11 that he would enforce that lot line that you were
12 talking the sideline that abuts the golf course, he
13 would treat that as rear property line and enforce
14 the restriction that can go with rear property
15 lines, if that were the case, would Mr. Malek still
16 be able to build these four trees that you marked
17 here? Maybe you don't know.
18 **A. I don't know.**
19 Q. Okay. Are you aware of the term rear
20 cone of vision?
21 **A. I've heard it.**
22 Q. Have you heard it in a context of this
23 case?
24 **A. I think I heard it in the context of**
25 **the Orient Express.**

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1 Q. How did that issue come up in the
2 Orient Express case?
3 **A. I believe in the CC&R's and possibly**
4 **the A.R.C. guidelines they had a cone of vision of**
5 **25 feet along the side property lines leading to the**
6 **rear which they believed was the view corridor.**
7 Q. Are you aware that McDonald Highlands
8 has a similar provision in the Design Guidelines for
9 parcels that abut the golf course?
10 **A. Okay.**
11 Q. I'll represent to you that they require
12 a 15-foot setback for their rear cone of vision. If
13 that were the case, would any of the trees that you
14 marked here in this picture on 15 be allowed?
15 **A. You're saying the cone of vision is**
16 **along the rear property line?**
17 Q. Well, it's what you explained. It
18 follows the side yard line up to the rear, and it
19 requires a 15-foot setback from the rear property
20 line.
21 **A. Right. And if we're looking at his**
22 **lot, that would be the cone of vision along the rear**
23 **property lines here.**
24 Q. I know you're looking at Stephanie
25 Street. I'm asking you to assume that Mr. MacDonald

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1 said he would use the side yard as a rear line and
2 enforce the rear cone of vision in both those
3 corners where you have the trees?
4 **A. I would probably have to state that**
5 **Mr. MacDonald was confused and had it wrong**
6 **regarding what is the rear and what is the side**
7 **based on what I've read. It can happen.**
8 Q. But I'm not asking whether he was
9 confused. I'm asking -- I asked him if he would
10 enforce the rear cone of vision for that side
11 property line?
12 **A. I have no idea. I wasn't there, and I**
13 **haven't read his deposition.**
14 Q. I'm telling you he said he would
15 enforce the rear cone of vision. So if he did and
16 it requires a 15-foot setback, would any of the
17 trees you've marked in your picture be allowed?
18 **A. The ones to the north would not.**
19 Q. Which ones are the ones to the north?
20 **A. Up the page.**
21 Q. I want to have you mark it on the
22 original exhibit so that we have that clear on the
23 record. You can mark them with an "A". So the
24 mark, the ones with an "M" that you believe would
25 not be allowed assuming the rear cone of vision was

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1 not enforced?
2 **A. Hypothetically if that's the rear**
3 **property line which it is not.**
4 Q. Correct. Hypothetically if
5 Mr. MacDonald would have enforced that as a rear
6 property line.
7 **A. Okay. I'm ready for a break.**
8 **(Short break.)**
9 **BY MS. HANKS:**
10 Q. Let's go to page 19 of your report.
11 It's the second sentence of the first paragraph.
12 "Essentially analysis of potential detrimental
13 conditions that could affect property value has
14 nothing to do with allegations by either party to a
15 litigation or their opinions."
16 Can you explain that sentence to
17 me?
18 **A. Yeah. It's like the Mr. Jiu and**
19 **Brunson are pleading the case regarding the**
20 **property.**
21 Q. But you say, "The analysis of potential
22 detrimental conditions that could affect property
23 value has nothing do with allegations by either
24 party to a litigation." I guess I don't understand
25 what you mean by that.

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1 A. Well, throughout the report they say
2 that they have been damaged, and you don't get into
3 the damage unless you can prove it, and you can't
4 prove it until you're done with your analysis.
5 Q. Okay. So what analysis hasn't been
6 completed? Is it that you're saying that there's
7 some analysis that hasn't been completed?
8 A. Well, no. In the report he's pleading
9 their case for them.
10 Q. Okay. But I guess I don't understand
11 what you mean by the sentence that, "potential
12 detrimental conditions has nothing do with the
13 allegations by the parties in this case"?
14 A. Yeah. In other words, you shouldn't be
15 influenced by the parties, either side. Our job is
16 to be unbiased, ethical, and determine whether or
17 not there is a loss or no loss.
18 Q. Okay. That's what I wanted to make
19 sure of that sentence. So you just mean that those
20 considerations, what the parties are saying --
21 A. Has nothing to do with it.
22 Q. -- don't factor into the analysis or
23 shouldn't factor into the analysis?
24 MR. GUNNERSON: Let her finish her question
25 before you answer so that the court reporter can get

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1 it down.
2 THE WITNESS: Sorry.
3 BY MS. HANKS:
4 Q. So just so I understand that sentence,
5 you're saying those types of whatever the parties
6 are thinking or saying, that should not influence
7 the analysis that an appraiser does, right, that's
8 what you're getting at with that sentence?
9 A. Yes.
10 Q. Okay. Just wanted to make sure. Now,
11 if you go to page 20 of your report, it's kind of in
12 the middle paragraph, it starts with -- why does the
13 expert focus on this, that's the paragraph starts --
14 A. Okay.
15 Q. And I'm going to direct your attention
16 to the third sentence, "The lack of disclosure has
17 nothing to do with value loss, if any."
18 Do you see that sentence?
19 A. Correct.
20 Q. Okay. And I want to make sure I
21 understand this sentence, and I think I might now
22 that you've explained the other sentence.
23 Do you mean that whether the
24 disclosure of the golf parcel being sold or
25 potentially being sold to Mr. Malek, that has

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1 nothing do with analysis of whether it's a
2 diminution of value, correct? That's not a factor
3 you're concerned with?
4 A. If you read the whole paragraph, it
5 answers this. Why does the expert focus on this?
6 Real estate damage assessment is based on an
7 unbiased assessment of value loss due to some event
8 or occurrence. The lack of disclosure has nothing
9 to do with it. Whether it was disclosed or not
10 disclosed, does the addition of this property affect
11 the adjacent property?
12 Q. Right. And, so that leads me to my
13 next question. Let me make sure I understand what
14 you're saying there.
15 Is it your opinion that it doesn't
16 matter when a disclosure happens, you can still have
17 a loss of value to a property based on some
18 condition, correct?
19 MR. GUNNERSON: Objection. Misstates. Go
20 ahead.
21 THE WITNESS: You can have a loss or no loss.
22 BY MS. HANKS:
23 Q. Now, if you turn to page 22 of your
24 report, it's the second full paragraph on that page
25 where it starts "with use of that scenario."

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1 Do you see that?
2 A. Yes.
3 Q. You talk about the indicated range from
4 the respondents is anywhere from 1 percent to 50
5 percent, correct?
6 A. That's not my range. That's their
7 range.
8 Q. Right. That's what you're noting,
9 that's the range that was alluded from the survey,
10 right?
11 A. Yes.
12 Q. Okay. And when you say 1 percent to 50
13 percent, does that mean one percent of the
14 respondents thought there was a loss, or does it
15 mean that the value was one percent of the purchase
16 price? What are those percentages referring to?
17 A. Diminution of value of 1 to 50 percent.
18 Q. Do you know what those numbers are,
19 what would 1 percent mean to 50 percent? Do you
20 know what those numbers are?
21 MR. GUNNERSON: Objection. Form.
22 THE WITNESS: It's not clear.
23 BY MS. HANKS:
24 Q. From the report?
25 A. Correct.

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1 Q. What would make it clear for you? What
2 would you need to know to understand what the figure
3 that would be attributed to 1 to 50 percent?
4 **MR. GUNNERSON:** Objection. Foundation.
5 **THE WITNESS:** I think as an appraiser, if I
6 would have written that report, that would have
7 given me a good indication that there's something
8 wrong with the survey, because the range is too
9 wide, unreliable.
10 **BY MS. HANKS:**
11 Q. Okay. So is there anything that you
12 reviewed or you can cite to that says if you have a
13 wide range of response to a survey that that makes
14 the Contingent Value Survey unreliable?
15 A. It's an indication that if the range is
16 too wide that you should have some transactional
17 market data to substantiate your conclusion.
18 Q. What material says you should do that
19 for a Contingent Value Survey?
20 A. Real estate damages.
21 Q. And they say that specifically with
22 regard to using -- hold on. They say specifically
23 in that book that if you use a Contingent Value
24 Survey and you get too wide of a response, you are
25 then required to or you should cross reference it

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1 with market data?
2 A. It says any type of survey is
3 subjective and should be cross comped, cross
4 correlated with market transactions.
5 It doesn't specifically say that
6 that one should or should not be, but it does talk
7 about it right within the analysis part there, that
8 it should be crosschecked with transactional market
9 data.
10 Q. Okay. And that's where I want to make
11 sure I understand the distinction then. Do you have
12 any materials, whether it be that book or any other
13 materials that say that when you have a large range
14 in response from respondents to a Contingent Value
15 Survey that that automatically makes that survey
16 unreliable?
17 A. No.
18 Q. Go to page 23 of your report. It's the
19 first paragraph after that bullet point on that
20 page. It's the second sentence. You say here "The
21 consultant has pre-concluded damages."
22 How did Brunson and Jiu
23 pre-conclude damages in your opinion?
24 **MR. GUNNERSON:** Page 23?
25 **MS. HANKS:** Yes. Right after the bullet

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1 point. It's the second sentence in that paragraph.
2 **MR. GUNNERSON:** Okay. Here?
3 **BY MS. HANKS:**
4 Q. Yes. Here "The consultant has
5 pre-concluded damages."
6 How did Brunson Jiu pre-conclude
7 damages in your opinion?
8 A. You have to go up to two paragraphs
9 above it where they say, They have no explanation or
10 justification for stating they are impartial,
11 objective, and independent. And then assuming the
12 most injurious scenario referring to the damages of
13 50 percent of the improved value from the survey
14 without collaborating support from one or more
15 accepted methodologies to drive or reconcile the
16 final conclusion and value opinion. The conclusion
17 of 30 to 40 percent of the improved market value are
18 rationalized by stating -- assuming the most
19 injurious scenario is generally accepted practice.
20 Q. Okay. I just want to make sure. You
21 don't mean that Brunson Jiu pre-concluded damages in
22 their survey, right?
23 A. They're the ones that did the survey.
24 Q. Well, I understand. But you're
25 criticizing the survey. So I want to make sure that

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1 I understand, because the problem we have here, we
2 have a survey and then we have a report based on the
3 survey. And then you have the criticism of it. So
4 I want to make sure that I understand what each of
5 your statements is criticizing.
6 When you say Brunson Jiu
7 pre-concluded damages, you're not saying that they
8 pre-concluded damages within the context of the
9 questions in the survey, correct?
10 A. I can't answer that question.
11 Q. Why can't you answer that?
12 A. Because the survey questions are not
13 appropriate in my opinion, that would inform the
14 recipient of the actual situation.
15 Q. Why weren't they appropriate?
16 A. I just don't think they are sufficient
17 enough to analyze the situation.
18 Q. Why weren't they sufficient enough?
19 A. They didn't talk about the difference
20 in the views, the borrowed view, and that they would
21 retain the primary view.
22 Q. Didn't the survey show they would
23 retain the primary view based on the pictures?
24 A. No. Now I'm confused. I just think
25 the questions weren't -- the questions weren't

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1 sufficient to do the proper job.
2 Q. What made them insufficient?
3 A. Well, for example, number one, a
4 partial view of the golf course where the Malek
5 takings noting to the recipients, by the way this is
6 12 feet below Stephanie which is a secondary access
7 road into the community and then abuts the clubhouse
8 parking lot, has trees along Stephanie which will
9 continue to grow to 30 to 40 feet in height, which
10 will block any view to this side.
11 Q. So you felt the question should be more
12 detailed in terms of all of the area that surrounded
13 these lots?
14 A. I think it has to tell what the view
15 that they lost were going -- what the view was
16 potentially what they were going to lose, because I
17 don't think that what they stated is that they were
18 maybe the recipients felt they were going to lose
19 the entire view to this side which is not the case.
20 Q. What portion of the side view did they
21 not lose? In other words, based on the scenario
22 that was provided, you said they didn't lose the
23 entire side view. What did the Brunson Jiu survey
24 represent that they thought they did lose?
25 A. I would have to have the survey to look

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1 at the questions. I'm not going to try to answer
2 this without the survey questions in front of me,
3 period.
4 Q. I'm going to get the survey, because I
5 want to know what you're going to say at trial. So
6 I'll be back.
7 A. Perfect.
8 (Off the record.)
9 (Exhibit 2 marked.)
10 BY MS. HANKS:
11 Q. Okay. So we've marked Exhibit 2 which
12 is I believe the survey questions. And these were
13 pulled out from Mr. Jiu's report. So we'll go by
14 the page numbers at the bottom. It starts at 46.
15 Let's just go through each question so we have it
16 clear.
17 Are you concerned with these
18 questions and are you a currently licensed broker or
19 agent active in the Las Vegas market?
20 A. No.
21 Q. How about the next question, how long
22 have you worked professionally as a real estate
23 agent or broker?
24 A. No.
25 Q. So now here's where we get to page 48

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1 where you start to actually have pictures. And it
2 looks like they put two -- they gave two pictures to
3 the respondents. One, it says, before vacant and
4 after vacant. And the question in the survey was,
5 does the additional adjacent 14,000 square feet of
6 blue land have an impact on the value and/or the
7 marketability of the subject green property.
8 Do you see that? It's on page 48.
9 A. Okay.
10 Q. So the question is contained in the
11 little survey box. Do you see that?
12 A. Right but our answers to all these are
13 on page 69 in our report. Why we have issues with
14 what?
15 Q. Well, I was asking you before and you
16 said you needed to see the survey. So I printed out
17 the survey. So let's go through the survey, and you
18 can look at your report to refresh your
19 recollection. And we can follow along. So what is
20 your problem with this question that I just read
21 here?
22 A. Well, the plans aeriels are flat and do
23 not exhibit the topography issues.
24 Q. I'm going to hold you up every time you
25 tell me a fact, I'll ask you a follow-up question.

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1 What are the topography issues that you believe
2 exist that aren't really represented in these
3 diagrams of the respondents?
4 A. That the ninth hole is in a fishbowl
5 and that it's 10 to 12 feet, the subject site, below
6 Stephanie.
7 Q. Okay. What do you mean by "fishbowl"?
8 What is a fishbowl?
9 A. A fishbowl is where everybody can look
10 in or look out.
11 Q. Okay. Any other problems with this
12 particular question besides the two factors you just
13 mentioned?
14 A. It's misrepresenting the material fact
15 in that it shows lots one and two. The addition is
16 only to lot two, so lot one probably should not have
17 been included.
18 Q. Okay. Anything else?
19 A. Not right this second.
20 Q. Now go to the next page, page 49. It
21 says you answer yes, the additional adjacent blue
22 land does have an impact on the value and/or the
23 marketability of the subject green property. Which
24 of these options would you consider the most likely
25 impact on value. And it looks like the respondents

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1 could have marked no impact, beneficial, or adverse.
2 What problem do you have with that
3 question?
4 **A. What's that question, three or four?**
5 **Q.** You know what, I'm sorry. I don't know
6 what question it is in the sequence.
7 **A. I'm not sure I have a problem with**
8 **that.**
9 **Q.** The next question is on page 50. I
10 don't necessarily know if it's the exact next
11 question in the sequence. I think it is. You
12 answered yes. The additional adjacent blue land
13 does have an impact on the value and/or the
14 marketability of the subject green property. Which
15 of these options would you consider the most likely
16 impact on marketability. And it looks like the
17 respondents could have answered no impact,
18 beneficial, or adverse.
19 Do you have any problems with that
20 particular question?
21 **A. I think that asks for days on market;**
22 **is that correct? That the days on market.**
23 **Q.** Would affect it?
24 **A. Yeah. And I guess I have a problem**
25 **with that, because the question should have stated,**

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1 **number one, the entire survey is flawed, because**
2 **it's making an assumption that it's a \$5 million**
3 **house. So the question is are the recipients going**
4 **to answer the questions for a \$5 million house same**
5 **as the \$2.5 million house.**
6 **Q.** Did the survey people get told it was
7 valued at 5 million?
8 **A. Yes. I believe so.**
9 **Q.** Can you confirm that for me, because I
10 don't know that they did.
11 **A. Yes. The survey states the subject is**
12 **a listing of \$5 million in the survey when the value**
13 **as of date of value is \$2.5 million.**
14 **Q.** Do you know if they were referring
15 to --
16 **A. Malek's property. I mean, excuse me,**
17 **Rosenbergs' property.**
18 **Q.** Is that your understanding or is the
19 five million value on the Malek's lots? I'm not
20 sure. Do you have --
21 **A. I think it's Rosenberg. Yes. Because**
22 **it says the subject is a \$2.5 million property.**
23 **Q.** Who says that, the report, your report?
24 **A. Yes. Our report does. So we all**
25 **concurred it was a two and a half, all the**

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1 **appraisers. So the question is why would you start**
2 **out a survey that is flawed with a listing of a \$5**
3 **million property when the most you would list it at**
4 **is at that point in time two and a half million.**
5 **Q.** Do you have a reference as to where
6 they stated that in the survey or in your report?
7 What page are you on, what bullet point?
8 **A. Sixty-nine. Bullet point number five.**
9 **Q.** Okay. So do you have any problem with
10 this question other than you believe that the
11 hypothetical was starting at five million versus two
12 and a half million?
13 **A. Well, sure. Because it would change**
14 **the recipient answers on all the questions.**
15 **Q.** How do you know that?
16 **A. Because it just would. I mean, the how**
17 **do I know that?**
18 **Q.** Yes.
19 **A. I've been appraising in Las Vegas**
20 **multimillion dollar properties, and over the past**
21 **five years, over \$4 to \$6 million probably haven't**
22 **been 15 sales, maybe 20 in the entire valley in that**
23 **price range, whereas in the \$2 to \$3 million price**
24 **range, there's probably been maybe a hundred sales.**
25 **So the recipient would give a different answer to**

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1 **something that is priced at two and a half versus**
2 **something that is priced at five.**
3 **Q.** Did you ever consider issuing your own
4 survey with those changes?
5 **A. No.**
6 **Q.** Why?
7 **A. No reason to. I don't believe a survey**
8 **is the appropriate methodology to do this assignment**
9 **unless you have market transactional data to support**
10 **or back up the survey.**
11 **Q.** Okay. And did you actually implement
12 any independent methodology or was your assignment
13 strictly to critique Brunson and Jiu's report?
14 **A. No. We have market transactions in our**
15 **report to show how you could do that.**
16 **Q.** We'll get that to the side then. So
17 you did both. You actually criticized Brunson Jiu's
18 report, and then you believe you implemented a
19 different methodology in order to determine whether
20 590 Lairmont has a diminished in value?
21 **A. We showed some examples, yes.**
22 **Q.** Okay. Let's go to the next question on
23 page 51. In answering this question, please recall
24 the adjust sent blue land with and without the
25 additional 14,000 square feet.

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1 How would the additional 14,000
2 square feet of adjacent blue land affect the typical
3 buyer's decision in making an offer on the green
4 property.
5 The typical buyer would and they
6 had a choice, decide to look at other, decide to
7 look at other -- there's dot, dot, dot. So there
8 might be more to that question. Offer to buy the
9 green. Offer to buy the green. Offer to buy the
10 green.
11 Do you see any problems with that
12 question? I'm sorry. Let's back up. Their choices
13 in the typical buyer could and they have the full
14 question down here. The first one they could
15 choose, decide to look at other properties, still
16 considering the green property, or they could have
17 said decide to look at other properties, omitting
18 the green property from consideration, offer to buy
19 the green property at a discount, offer to buy the
20 green property at list price, offer to buy the green
21 property at a premium.
22 Do you have any criticism of that
23 question?
24 **A. Bullet point three. Failed to consider**
25 **the responses of 116 people that stated the subject**

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1 **could lose value and have marketability issues for**
2 **many reasons. Just being on the course. Being next**
3 **to vacant land, etc.**
4 Q. Okay. I'm sorry. I guess I didn't
5 understand then. What was the problem you had with
6 this specific question, that they didn't list other
7 factors that might affect the property?
8 **A. This is question six, correct?**
9 Q. I don't know what number the question
10 is. I have it on page 51 of Exhibit 2.
11 **A. They failed to consider the responses**
12 **of 116 people. Question six states the subject**
13 **could lose value and have marketability issues for**
14 **many reasons just being on the course, being next to**
15 **vacant land. I think that corresponds to that.**
16 Q. Okay. Let's back up.
17 **A. Maybe that is question seven.**
18 Q. Yeah.
19 **A. I'm just -- see, I think we've numbered**
20 **these by -- I don't think he has them numbered.**
21 Q. No. I don't think he does.
22 **A. So it's a little confusing here. Okay.**
23 **Let's see. I'm not sure.**
24 **MR. GUNNERSON: Does it appear that --**
25 **MS. HANKS: I will say if you just count, this**

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1 is the sixth question. So I don't know if that's
2 how you did it.
3 **MR. GUNNERSON: But can we go off the record**
4 **for a second?**
5 **MS. HANKS: Sure.**
6 (Off the record.)
7 **BY MS. HANKS:**
8 Q. So we left off on page 51. And I asked
9 did you have any problems with this question?
10 **A. No.**
11 Q. No? I'm sorry. Did I hear you right?
12 **A. No.**
13 Q. Next question is on page 52. And it
14 looks like they provided the survey respondents a
15 picture that's titled "Before Developed" and a
16 picture that's titled "After Developed." And they
17 asked the question, does the development of parcel
18 two with the additional 14,000 square feet of land
19 have an impact on the value and/or the marketability
20 of the subject parcel one.
21 And then you could have answered
22 yes or no. Do you have a problem with that
23 question?
24 **A. Yes. I don't think, again, it**
25 **addresses all the issues that when I'm looking at**

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1 **the borrowed view across the golf course or adjacent**
2 **to this lot, Malek's, lot two, that Stephanie Street**
3 **risers up 12 feet and, therefore, it's in a fishbowl,**
4 **and it really doesn't have a significant view beyond**
5 **the golf course primary view.**
6 **And if anything, the after**
7 **developed, the way they have it situated here, you**
8 **still have a portion of the borrowed view across**
9 **Malek's property on the very northwest corner.**
10 Q. So is the northwest corner, the corner
11 closest to 590 Lairmont?
12 **A. Closest to the golf course along that**
13 **side property line.**
14 Q. But the respondents could see that,
15 correct, I guess what you're terming is still a view
16 across the golf course portion of Malek's lot?
17 **A. A portion of it, yes.**
18 Q. Okay. Now, going to the next page, 53,
19 the question is, you answered yes. The development
20 of parcel two with the additional 14,000 square feet
21 of land has an impact on the value and/or the
22 marketability of the subject parcel one. Which of
23 these options would you consider the most likely
24 impact on value? No impact, beneficial, or adverse?
25 What problems would you have with

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1 that question?

2 **A. Actually, it looks like 10 percent said**

3 **no impact. Thirty-eight percent said it's**

4 **beneficial. So it's a split decision. Fifty**

5 **percent think it's beneficial, and fifty percent**

6 **think it's not beneficial.**

7 Q. I'm not concerned with the actual

8 response. We started this exercise to determine

9 what problems or criticisms you have with the actual

10 particular survey question. So with the particular

11 survey questions, do you have any criticism of that

12 question?

13 **A. I think this probably is the one. I**

14 **just -- I think the question doesn't ask all of the**

15 **information that needs to be displayed.**

16 Q. Okay. What would it need to ask in

17 your opinion? What does this question not ask that

18 you think it should have asked?

19 **A. That we're in a fishbowl and that we**

20 **really don't have any view across this area once you**

21 **get to the Stephanie Street. It increases in**

22 **elevation by 12 feet.**

23 Q. Okay. So you think -- just so I'm

24 understanding, the view stops once Stephanie Street

25 starts, is that what you're saying?

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1 **A. Beg your pardon?**

2 Q. You're saying the view stops once we

3 get to Stephanie Street because of the elevation?

4 Am I understanding that?

5 **A. That's one issue, and the next issue is**

6 **the trees along Stephanie that are going to grow**

7 **significantly higher than they are now. So they're**

8 **going to block whatever view that Rosenberg seems to**

9 **think is, I guess, a primary view toward the**

10 **clubhouse.**

11 Q. Okay. But in this survey at least how

12 I look at it, correct me if I'm wrong, it cuts it

13 off the boxes, the pictures don't even go past

14 Stephanie Street. So the respondents aren't really

15 concerned what's beyond Stephanie Street. They're

16 just looking at the golf course portion and Malek's

17 two lots he has and the Rosenberg lot, correct?

18 **A. Okay.**

19 Q. So why is it that the fact that we're

20 not paying attention to what happens beyond

21 Stephanie Street makes this survey to you unreliable

22 if the boxes don't seem to be concerned with that?

23 When I say the boxes, the pictures?

24 **A. Again, the competency level of the**

25 **recipients.**

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1 Q. So you believe that the real estate

2 agents who answered are not competent to answer the

3 survey?

4 **A. I looked through each one of them, and**

5 **there were only maybe two that sell multi -- well,**

6 **actually one that sells multimillion dollar homes**

7 **and had a sufficient number and that was Jean**

8 **Northrop.**

9 Q. According to page 69 of your report,

10 though you said, "Only 19 percent of the respondents

11 have no experience selling high-end properties."

12 So that would tell me the other

13 percentage did have experience?

14 **A. No. That's what they listed in their**

15 **report is 19 percent of the respondents had no**

16 **experience selling high-ends. The others said they**

17 **did. But the question is on 604 homes, there were**

18 **no names except for Jean Northrop included in the**

19 **survey as selling homes over \$2 million, so**

20 **therefore --**

21 Q. They didn't give any opinions regarding

22 whether a property is affected by a view corridor?

23 **A. They can give opinions, but they have**

24 **no skin in the game. They have nothing to lose.**

25 Q. Right. So they're the perfect people

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1 to ask these questions. They have nothing to lose,

2 no bias. They don't even know the specifics of the

3 case. They're just asked, hey, assume this parcel

4 sold. Does it affect the value? Or, hey, assume

5 the parcel is developed, does it affect the value,

6 right? And that's what the survey did?

7 **A. Right.**

8 **MR. GUNNERSON:** Objection. Argumentative.

9 **THE WITNESS:** But they don't have the

10 expertise by dealing with high-end buyers and

11 sellers to ask those types of questions or have

12 dealt with those types of questions. If they've

13 never sold per your survey a \$5 million home, how do

14 they know what these people want and don't want and

15 what they consider a borrowed view and a primary

16 view?

17 **BY MS. HANKS:**

18 Q. But you agree that these issues don't

19 always exist in high-end homes, right?

20 **A. What issues?**

21 Q. View corridors?

22 **A. Every house on a golf course has some**

23 **type of view corridor.**

24 Q. No, but I mean, in general, view

25 corridors in general is always some type of

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1 consideration for any real property, right, you
2 don't just limit it to high-end homes?
3 **A. No. There's other lower-end properties**
4 **on golf courses.**
5 Q. Don't even worry about the golf course.
6 I'm just talking views in general. Real estate
7 agents deal with buyers who take into consideration
8 a view of the home regardless of whether it's a
9 high-end home or a low-end home, whenever you use
10 that term to mean, right?
11 **A. In the multiple listing service, people**
12 **say a \$50,000 home has a mountain view.**
13 Q. Right. But I'm just saying that it --
14 I want to make sure I understand. You think the
15 respondents to the survey were incompetent because
16 you have to sell a high-end homes to understand the
17 hypothetical they're being posed by the survey,
18 right?
19 **A. I think it would have been a much**
20 **better approach than to go after the mass real**
21 **estate market agents to either interview or do the**
22 **survey to the top 20 agents in the city who deal**
23 **with these type of properties.**
24 Q. But that would significantly diminish
25 the pool of people, right, to 20 people?

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1 **A. It would have diminished the pool of**
2 **people to experts.**
3 Q. Experts?
4 **A. The best experts.**
5 Q. Just because they've sold multimillion
6 dollars homes, they're all of a sudden experts?
7 **A. Well, I would concur they have a much**
8 **better idea than someone that has sold one \$1**
9 **million home or never sold one.**
10 Q. So just so I'm clear, on page 53, you
11 have no problem with the question itself, you just
12 don't like the pool of people that were answering
13 the question in terms of you don't think they had
14 the ability to -- the knowledge to answer the
15 question appropriately?
16 **A. I think if the questions fundamentally**
17 **would have been more neutral or more to specifics,**
18 **the results would have been different.**
19 Q. Okay. How would Brunson and Jiu -- how
20 should they have made this question start with to
21 make it more neutral?
22 **A. They should have laid out the scenario,**
23 **told them about Stephanie Street, told them about**
24 **the house being in a fishbowl. If you look at this**
25 **aerial, it looks to me like these houses are all on**

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1 **the same height. And it doesn't say anything about**
2 **Stephanie and the fact that Stephanie is built up 12**
3 **feet above the pad for Rosenberg. And, therefore,**
4 **there really is no view to the east or to the**
5 **southeast. The view corridor is toward the golf**
6 **course to the north and a distant city view peekaboo**
7 **to the northwest.**
8 Q. My understanding is when you're talking
9 about view, is there a certain amount of feet that
10 you're entailing with that? In other words, does
11 view only mean in a distance?
12 **A. No. View can be right up against the**
13 **property line.**
14 Q. So they do have a view right up against
15 the property line if the golf parcel stays the way
16 it was when it was sold, when they bought the
17 property in May of 2013, right?
18 **A. Okay.**
19 Q. So is that correct, they do have a view
20 across the golf course parcel?
21 **A. Yes.**
22 Q. Okay.
23 **A. But a logical person really wouldn't**
24 **look to the right. They would look at the green.**
25 **That's the view.**

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1 Q. I understand that's your statement of
2 the primary view. But the view across the golf
3 parcel is still a view attributable to 590 Lairmont,
4 correct?
5 **MR. GUNNERSON: Objection. Form as to**
6 **"attributable."**
7 **THE WITNESS: It's a borrowed view.**
8 **BY MS. HANKS:**
9 Q. Now, let's go -- because the problem
10 I'm having is you're generalizing your conclusions
11 with respect to the survey. And, but your statement
12 is saying that the questions were wrong or you had
13 problems with the questions. So that's why we
14 started this exercise, so I want to back up to page
15 53.
16 What's wrong with this question?
17 You said it could have been stated more neutral.
18 How could it be stated more neutral? That was one
19 of your problems you said you had with the question.
20 **A. I have a problem with all the**
21 **questions. It's hard to just pick one out and say**
22 **if the -- I mean, they start out with the survey**
23 **stating it's a listing of a \$5 million house.**
24 Q. Okay. And then you also have a problem
25 because they don't tell people that Stephanie Street

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1 is 14 feet elevation above the property?
2 **A. Well, it's 10 to 12 feet.**
3 **Q. Any other problems generally? It's not**
4 **with the actual specific questions, you didn't have**
5 **a problem with the general premise that it didn't**
6 **state specific --**
7 **A. I'm not sure that it's a neutral**
8 **survey.**
9 **Q. Why would it be not neutral if it has**
10 **less facts as opposed to more facts?**
11 **A. Because it implies that there's a**
12 **difference in value before and after.**
13 **Q. How does it do that?**
14 **A. It says it right here on page 52.**
15 **Q. How does page 52 -- you earlier**
16 **testified you had no problem with this question.**
17 **How does page 52 imply it has a loss of value?**
18 **A. Because it states that there's an issue**
19 **before and there's an issue after.**
20 **Q. But isn't the issue -- isn't that the**
21 **point of the survey, the issue before is before**
22 **Mr. Malek purchased the golf parcel, correct, in**
23 **other words, let's back up.**
24 **In the before developed picture,**
25 **if Mr. Malek had never purchased a golf course**

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1 parcel, that would be the confines in which he had
2 to build his house, correct, the outline there that
3 we see in the property?
4 **A. Correct.**
5 **Q. And then the after developed shows that**
6 **now that Mr. Malek has purchased the golf parcel,**
7 **now his lot line has increased -- excuse me -- his**
8 **lot has increased in size, right?**
9 **A. Yes.**
10 **Q. And now it shows where he could**
11 **potentially build a home, that's base on plans**
12 **submitted at that time by Mr. Malek, right?**
13 **MR. GUNNERSON: Objection. Foundation. Go**
14 **ahead.**
15 **THE WITNESS: If you look at your two**
16 **drawings, there's no house inside that setback.**
17 **BY MS. HANKS:**
18 **Q. What setback?**
19 **A. That's a pool. That is a pool over**
20 **there.**
21 **Q. Right.**
22 **A. So, therefore, the house, if you look**
23 **at the house, it looks to me by the way that the**
24 **consultants did this, it's about the same. It**
25 **doesn't even look like it's moved back.**

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1 **Q. Hold on. I'm just trying to back up,**
2 **because you said that these pictures are presuming a**
3 **loss. And I'm asking how is that? And we're going**
4 **through. So the second picture just so we're clear**
5 **shows based on plans that Brunson and Jiu had at the**
6 **time for Mr. Malek that if he now has the purchase**
7 **of the golf parcel, this is the envelope in which he**
8 **could build his home, is that what that picture is**
9 **showing?**
10 **A. Not build the house but build on-site**
11 **improvements.**
12 **Q. Any improvements, let's include any**
13 **improvements. He now can include it within that**
14 **larger area, correct?**
15 **A. Right. But I don't think -- this**
16 **doesn't tell me that Malek's lot is three to four or**
17 **five feet higher than the Rosenberg lot. Okay?**
18 **Q. Okay.**
19 **A. And so the lot, if I'm standing in**
20 **Rosenbergs' backyard and I look to the north or the**
21 **southeast, the lot is terraced up three to five feet**
22 **higher. So what view do I have there? In other**
23 **words, some of the facts should have been a little**
24 **clearer in the survey. That's my opinion.**
25 **Q. Okay. But I -- I understand the**

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1 general opinion. I just want to go question by
2 question, because you had indicated that this
3 particular question, reason why we came back to this
4 page, is because this particular question presumed
5 the loss in the way it was presented. And I'm
6 trying to understand how did it do that?
7 **A. I think I answered it.**
8 **Q. Unfortunately I don't understand how it**
9 **did it. How did Brunson and Jiu in showing the**
10 **before and the after developed pictures and asking**
11 **questions, how do they presume damages? I**
12 **understand clearly you would have marked the box**
13 **"no". I get that. I totally get it.**
14 **If you were the respondent of the**
15 **survey looking at this, you would have likely**
16 **answered "no". I get that. You're probably saying**
17 **that.**
18 **I'm just trying to understand**
19 **what's wrong with this particular question in how**
20 **they presented it to the respondents that presumed a**
21 **loss? Where does it presume a loss?**
22 **A. I think all of the questions are worded**
23 **non-neutral in order to come up with a negative**
24 **viewpoint.**
25 **Q. Okay.**

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1 **A. Period.**
2 Q. Let's go back. Let's look at the
3 question. Does the development of parcel two with
4 the additional 14,000 square feet of land have an
5 impact on value and/or the marketability of the
6 subject parcel one?
7 How is that non-neutral?
8 **A. It's non-neutral because it's not**
9 **telling all the facts. It's not telling me that I'm**
10 **in a fishbowl, that I really don't have a view once**
11 **I hit Stephanie, because it proceeds up 12 feet and**
12 **it's just berm wall. So why would an educated buyer**
13 **assume that that would be even a contributory view**
14 **to the subject site?**
15 Q. But these pictures aren't concerned
16 with what's happening after Stephanie Street, right?
17 **A. No. But it's happening before**
18 **Stephanie Street. It's on the golf course.**
19 Q. No. I understand that. But the 12
20 feet berm, that starts you said at Stephanie Street?
21 **A. No. Starts down there where the trees**
22 **are planted along the golf course and traverses**
23 **upward.**
24 Q. Okay. Right. So we're only concerned
25 with what's happening before that according to this

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1 diagram, right?
2 **A. No.**
3 Q. How is that?
4 **A. Because you have to explain all the**
5 **circumstances surrounding the survey. You can't**
6 **just say -- I mean, if I'm looking at this as a two**
7 **dimensional picture, I don't see that I'm sitting in**
8 **a fishbowl and that my view is limited across the**
9 **golf course to the southeast.**
10 Q. Where is the southeast, toward
11 Stephanie?
12 **A. Yes.**
13 Q. And is it limited once you hit the
14 trees and Stephanie Street?
15 **A. It's 12 feet below it.**
16 Q. What's 12 feet below it?
17 **A. The house. So from the first level, I**
18 **have no view. I can't even see Stephanie Street.**
19 **Stephanie Street is higher than the --**
20 Q. Than the house?
21 **A. Than the house. The first floor of the**
22 **house.**
23 Q. First floor of the house, okay. And so
24 it's your belief that even though the picture, the
25 edge of the picture is Stephanie Street, they should

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1 have talked about what was happening after Stephanie
2 Street in this picture --
3 **A. No. They --**
4 Q. -- and explained the elevations?
5 **A. They should have explained the**
6 **elevation and what's happening on the west side of**
7 **Stephanie Street.**
8 Q. Now, how does not talking about the
9 elevation and the fishbowl presume anything in terms
10 of loss?
11 **MR. GUNNERSON: Objection. Form.**
12 **THE WITNESS: I don't understand the question.**
13 **BY MS. HANKS:**
14 Q. Well, you had said these questions, you
15 generally make the comment that these questions
16 drafted in the survey presume a loss, they're not
17 neutral. And yet you don't have any specific
18 criticism of the actual questions themselves, it
19 sounds like you have criticism with the fact that
20 the hypothetical given to the respondents should
21 have been more clear or more specific.
22 And so I'm asking how did the
23 questions posed to the respondents presume a loss or
24 damages as they were represented by not giving those
25 facts? How does that do that?

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1 **A. I think that in order to do the survey,**
2 **the area that Malek received, the 14,000 feet, they**
3 **should have stated that this was part of the golf**
4 **course. And at that area it's three to four to five**
5 **feet above the Rosenbergs' property. So, therefore,**
6 **what view is there? In other words, I can't even**
7 **see, standing in the Rosenberg property, the top of**
8 **that berm before it goes up. So, in other words,**
9 **it's just a hill. So what is it besides a hill?**
10 Q. You think that's a hill right there
11 that they are looking at?
12 **A. It's moving up. It's moving up.**
13 Q. Is that still though, a view? I mean,
14 it's a hill?
15 **A. Sure. It's something.**
16 Q. It's something, right?
17 **A. Yes.**
18 Q. Not a building?
19 **A. A borrowed view.**
20 Q. Not a building, right?
21 **A. No. But it could have a building.**
22 Q. Well, you're assuming that, right?
23 We've already established you haven't read any
24 documents showing --
25 **A. I haven't reviewed any documents, but**

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1 the golf course can add something to it if they felt
2 they had to add something if there's no restrictions
3 on the land.
4 Q. If there's no restrictions on the land.
5 Yes. Thank you. That was all the questions there.
6 If you turn to page 26 of your
7 report, it's the paragraph that starts after the
8 bullet point there.
9 **MR. GUNNERSON:** What page did you say?
10 **BY MS. HANKS:**
11 Q. Page 26. And the paragraph after the
12 bullet point, you have the developer MacDonald Ranch
13 has considerable experience. Is this your words, or
14 are you quoting from Mr. Brunson Jiu's report?
15 **A. No. That's ours.**
16 Q. Okay. Let's go to page 29 of your
17 report. It's the first full paragraph that appears
18 on that page. It says, "The three recognized
19 approaches to value." You have the cost approach,
20 the income approach, and sales comparison approach.
21 Now, just so I'm clear, are we --
22 did you do a cost approach evaluation of this, of
23 590 Lairmont if Mr. Malek has all three parcels?
24 **A. No.**
25 Q. What's a cost approach?

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1 **A. What something would cost to build.**
2 Q. Okay. How about income approach?
3 What's income approach?
4 **A. Based on what a property rents for.**
5 Q. And then what's sales comparison
6 approach?
7 **A. Transitional market data.**
8 Q. And maybe you've answered this, so I
9 just want to make sure. Page 31 of your report, you
10 state, the very first paragraph, "In our opinion the
11 methodologies, analysis, and conclusions presented
12 in the report of the review are based upon a
13 misapplication of the Contingent Valuation Survey
14 method."
15 And I just want to make sure I
16 understand what you mean by that sentence. Is it
17 everything you've already stated here today? In
18 other words, it's the -- you believe that there were
19 some more facts that they should have put in the
20 valuation or the survey and that they didn't carve
21 out the 15 top sellers in Nevada and ask them? I
22 just to make sure I understand.
23 **A. They just should have used transitional**
24 **market data to subsequently support their**
25 **conclusions in the survey.**

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1 Q. And then you say later on down the
2 page, it's the first paragraph after the indented
3 stuff that you're quoting from Brunson Jiu's report,
4 the second clause of that sentence, "it was apparent
5 the survey was impacted by hypothetical bias,
6 contained nonfactual elements, and was not properly
7 designed to solicit responses that reflect a fair
8 response."
9 Can you explain how was the survey
10 impacted by hypothetical bias?
11 **A. It assumed the \$5 million listing when**
12 **it's a \$2.5 million property. It didn't have all**
13 **the facts.**
14 Q. You mean about the elevation of
15 Stephanie Street?
16 **A. Yes.**
17 Q. Any other facts you think it didn't
18 include?
19 **A. That the property, they didn't talk**
20 **about being a borrowed view versus a primary view.**
21 Q. Okay. Well, hold on. The borrowed
22 view has not been established, right? We don't know
23 if this is a borrowed view or not, correct? When I
24 say this, I mean the area across the golf parcel?
25 **MR. GUNNERSON:** Objection. Misstates prior

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1 testimony.
2 **BY MS. HANKS:**
3 Q. Isn't that a question presented by this
4 case whether that was a borrowed view or not?
5 **A. I think that has to be decided in the**
6 **courts.**
7 Q. So if we don't know if it's a borrowed
8 view or not, how can Brunson and Jiu be criticized
9 for not classifying it as a borrowed view?
10 **A. I think that they should have disclosed**
11 **that it could have potentially been a borrowed view**
12 **and that it's not the primary view.**
13 Q. You don't think the respondents can see
14 that based on the pictures here?
15 **A. If they're not being asked the proper**
16 **question, why would they look at it or address it?**
17 Q. No. What I'm saying, can't they look
18 at this picture and see, well, we got a view still
19 of the golf course, I mean, they're being told to
20 make opinions or comments on the golf course parcel,
21 but they can still see from the pictures that are
22 basically addressing page 52 that the actual golf
23 course can still be seen, the ninth hole can still
24 be seen from the property, right? So they don't
25 need to be told anything, they can see it from the

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1 pictures, right?

2 **A. No. Because that's part of this case.**

3 **They should have been informed that the primary view**

4 **would stay in tact and this is a portion of what**

5 **would be considered a borrowed view sideways or**

6 **walking out to the rear property line of the subject**

7 **and looking to the right, same as the borrowed view**

8 **if you walked out to the property and looked to the**

9 **left.**

10 Q. You don't think people can tell that

11 from the picture?

12 **A. If you don't ask them the question and**

13 **tell them that borrowed views potentially can go**

14 **away or be obscured, they're not even taking it into**

15 **consideration in the questioning.**

16 Q. But we established that we don't know

17 if that is a considered a borrowed view across the

18 golf parcel, that issue hasn't been resolved yet,

19 right?

20 **A. Yes, right. But it's an assumption**

21 **they could have made, and they probably would have**

22 **got a different answer.**

23 Q. But why make an assumption on something

24 that doesn't exist yet? Why would that make the

25 survey more reliable as opposed to not saying

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1 anything at all and just allow surveyors to comment

2 upon, I put a pool here, do you think it affects the

3 value of the adjacent property?

4 **A. That's probably why you have a span of**

5 **1 to 50 percent.**

6 Q. Page 32 of your report, it's your third

7 paragraph. I want to make sure. This is your

8 words, right? You're not quoting from the Brunson

9 Jiu report?

10 **A. No.**

11 **MR. GUNNERSON:** Which part?

12 **BY MS. HANKS:**

13 Q. The third paragraph. You state

14 typically --

15 **MR. GUNNERSON:** Are you counting the heading

16 as a paragraph?

17 **MS. HANKS:** I am, yes.

18 **MR. GUNNERSON:** The bold: I don't know if

19 it's a heading or not.

20 **MS. HANKS:** Okay. Yeah. I didn't know if it

21 was a heading or not.

22 **MR. GUNNERSON:** You're counting one that

23 starts with "typical"?

24 **BY MS. HANKS:**

25 Q. Typically. So you've stated in your

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1 report, "Typically when the lots of these homes are

2 sold, the golf course is in place and buyers have

3 some perspective as to the quality and degree of

4 view the lot will provide based upon the design of

5 the home and most importantly the orientation of the

6 home on the lot that the buyer anticipates."

7 Isn't that exactly what we have

8 here? Isn't that what the Rosenbergs are saying,

9 that they anticipated that the golf course parcel

10 would stay a golf course parcel and not be sold to

11 an individual like Mr. Malek where he could build a

12 home on?

13 **MR. GUNNERSON:** Objection. Calls for

14 speculation.

15 **THE WITNESS:** If you look at the Rosenbergs'

16 property, the orientation is to the northeast. It's

17 not to the southeast or to the east. An educated,

18 sophisticated buyer of \$2.5 million dollar home

19 would walk on this lot and they would look at that

20 green and say that's my view.

21 **BY MS. HANKS:**

22 Q. Have you ever talked to the Rosenbergs?

23 **A. No.**

24 Q. Did you ask to interview them?

25 **A. No.**

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1 Q. Are people who only buy in the range of

2 two million educated buyers?

3 **A. Typically they're very educated.**

4 Q. What if they're not, what if they just

5 came into a pot of money and they want to buy?

6 **A. Well, there's is always -- there's two**

7 **type of buyers in the marketplace. The one that**

8 **earned it and knows what a dollar's worth, and the**

9 **next one is the kids that inherited it and don't**

10 **give a dam.**

11 Q. That's the only two potential buyers in

12 the market?

13 **A. No. But that's in the multi -- and**

14 **sometimes in the multimillion dollars. And**

15 **typically a person that can afford a \$2.5 million**

16 **home is typically very educated and sophisticated**

17 **and understands what the primary view is of a given**

18 **property.**

19 **The fact that the Rosenbergs**

20 **probably have a different opinion is theirs.**

21 Q. But here you don't make a

22 differentiation between primary versus secondary,

23 you just say, "when lots of these homes are sold,

24 the golf course is in place and buyers have some

25 perspective as to the quality and degree of view the

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1 lot will provide based upon the design of the home
2 and most importantly the orientation of the home on
3 the lot that the buyer anticipates?
4 **A. That's when the lot is bought and sold,**
5 **when it's vacant. Doesn't it start out there, "when**
6 **the lots of these homes are sold, the golf course is**
7 **in place, and buyers have some perspective."**
8 Q. Right. The Rosenbergs' had the best
9 perspective because their lot already had a home
10 built on it, correct?
11 **A. Yes.**
12 Q. Would you also agree they had some
13 perspective in terms of what Mr. Malek could build
14 based on their understanding that his lot lines
15 ended and did not include the golf parcel, right?
16 **A. I have no idea what Rosenberg, whether**
17 **he even did any research prior to closing on his**
18 **lot.**
19 Q. I think earlier you testified whether
20 that stuff was disclosed doesn't matter to you as an
21 expert in this case, because you're only concerned
22 with whether the property has a diminution in value
23 based on the fact that Malek does have a piece of
24 the golf parcel, right?
25 **THE WITNESS:** Yes.

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1 **MR. GUNNERSON:** Objection.
2 **BY MS. HANKS:**
3 Q. I'm sorry. You said yes?
4 **A. Yes.**
5 Q. Let's go to page 39 of your report.
6 The last paragraph. I'll start with the second
7 sentence. You have, "While CC&R's may influence
8 what is built, generally you do not address or
9 preclude the ability of adjacent lots slash land
10 owners from increasing privacy on their lot by
11 locating buildings or planting mature trees which
12 may alter view of the surrounding area of a lot of
13 another."
14 Now, would you agree that this
15 statement has even more impact if Mr. Malek is
16 allowed to build on the golf parcel?
17 **MR. GUNNERSON:** Objection. Form. Vague.
18 **THE WITNESS:** I'm sorry. Question again.
19 **BY MS. HANKS:**
20 Q. Yeah. I'm getting to the fact that if
21 Mr. Malek is able to build either his house or
22 landscaping or pool or whatever he wants to do on
23 the golf course portion that was added to his lot,
24 the fact that he can build these things in that area
25 affects the view from 590 Lairmont Place?

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1 **A. It affects the borrowed view.**
2 Q. And I know you've made the conclusion
3 that the golf course parcel is a borrowed view.
4 **A. Yes.**
5 Q. Is that because Mr. Malek owns it now
6 -- I'm sorry. You also thought because the golf
7 course can do whatever it wants, that's why you were
8 considering it a borrowed view?
9 **A. Correct.**
10 Q. Page 40 of your report, it's the third
11 paragraph. You state, "No such restrictions
12 regarding the planting of trees exist in the deeds
13 and/or in the CC&R's for the lots adjacent to 590
14 Lairmont Place and/or for the land owned by the golf
15 course."
16 What did you review to determine
17 there were no restrictions regarding the planting of
18 trees?
19 **A. I believe it was in the deeds or in the**
20 **CC&R's, it doesn't state that.**
21 Q. You didn't review the Design
22 Guidelines, correct?
23 **A. Correct.**
24 Q. And if I were to tell you that the
25 Design Guidelines do have restrictions, that would

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1 alter that statement in your report to some extent,
2 right?
3 **A. There's nothing that says that**
4 **Mr. Rosenberg along his rear property line can't go**
5 **in there and put a hedge six feet tall in order to**
6 **increase his privacy in his backyard as well.**
7 Q. Not along the back of it, but he does
8 have restrictions in the rear cone of vision?
9 **A. Yes. The cone of vision but -- and he**
10 **actually -- yes, he does.**
11 Q. Okay. So that's what I'm just making
12 sure. When you're saying there are no restrictions,
13 you're not including Design Guidelines in that
14 statement because those weren't reviewed, right?
15 **A. Correct.**
16 Q. Okay. Do you remember reading anything
17 about a perimeter strip in the CC&R's?
18 **A. No.**
19 Q. Can you turn to page 59 of your report?
20 You have here pictures of -- it looks like the top
21 picture, you say, "View from the subject master
22 bedroom looking east. By planting trees, the view
23 will be obscured as they grow. It is permissible
24 for the adjacent owner to plant these trees. The
25 same view is shown from first level patio below."

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1 Did you crosscheck this with the
2 Design Guidelines to determine whether these trees
3 could actually be planted there?
4 **A. They're not in the cone of vision on**
5 **the Malek lot, because it's a side property line.**
6 Q. If I were to represent to you that
7 Mr. MacDonald testified different, would that affect
8 your opinions?
9 **A. No.**
10 Q. Why not?
11 **A. Because I'm not sure Mr. MacDonald**
12 **probably is up on all the setbacks and what's rear**
13 **property line versus side and so forth.**
14 Q. Well, he actually testified with regard
15 to those trees after we already established that he
16 would enforce the rear cone of vision on that corner
17 of Mr. Malek's lot. So let's just assume that to be
18 the case. Would that change your opinions?
19 **MR. GUNNERSON:** Incomplete hypothetical.
20 What's the assumption?
21 **BY MS. HANKS:**
22 Q. That Mr. MacDonald testified that he
23 would enforce the rear cone of vision, whether these
24 trees would be allowed based on that?
25 **A. Okay. So we couldn't put them exactly**

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1 **there, but we could move them onto the side 15 feet**
2 **and do the exact same thing, it would obscure the**
3 **vision.**
4 Q. Let's talk about the first picture.
5 You couldn't put them. Where were you saying you
6 could put them?
7 **A. Move them 15 directly east.**
8 Q. Where's east?
9 **A. Towards Stephanie Street.**
10 Q. I see. So you mean you get to move
11 them down further to the property?
12 **A. Well, you would have to move them off**
13 **the cone of vision if that is what Mr. MacDonald**
14 **says he would enforce.**
15 Q. And those would have to be approved by
16 the Design Review Committee first, correct? Is that
17 your understanding, or if you don't know, you can
18 say you don't know.
19 **A. Typically it would be -- the planting,**
20 **the landscape plan is usually completed when they --**
21 **plans are submitted to the Design Review Committee**
22 **all at once.**
23 Q. Okay. So that's what my question is.
24 So it's not automatic that those trees could be
25 planted further down the line, they would have to be

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1 approved by the Design Review Committee, that's your
2 understanding?
3 **A. Yes.**
4 Q. And then if the Design Review Committee
5 doesn't approve them as part of the original plans,
6 is it your understanding that if Mr. Malek wanted to
7 plant trees like that along further down the line,
8 he would have to get approval from the H.O.A.?
9 **A. No. He wouldn't have to get approval**
10 **from the H.O.A., he would have to get approval from**
11 **the Design Review Committee. The H.O.A. has nothing**
12 **to do with this.**
13 Q. I'm saying after the design of the home
14 has already been approved.
15 **A. No. He still has to go back to the**
16 **Design Review Committee.**
17 Q. Oh, that's your understanding?
18 **A. I believe so. I don't think the H.O.A.**
19 **board is typically different than the Design Review**
20 **Committee.**
21 Q. Okay. Well, I'll represent to you that
22 both Mr. Bykowski and Mr. MacDonald testified that
23 the Design Review Committee once they have approved
24 construction for a house, including the landscaping
25 and they have signed off on the approval, so it's

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1 built, they do the walk of the property and say
2 you're good, now things are turned over to the
3 H.O.A., if any owner wants to change anything with
4 respect to that property?
5 **A. Oh, then it might even be easier to get**
6 **it approved.**
7 Q. Are you aware though that when you do
8 want to do a modification of your property after
9 it's been approved, that you have to do an Impacted
10 Neighbor Statement?
11 **A. No.**
12 Q. Now, we've been talking a lot about
13 view. Is there some value when buying particularly
14 high-end homes at not feeling like you have
15 buildings kind of coming in onto you?
16 **MR. GUNNERSON:** Objection. Foundation. Calls
17 for speculation.
18 **THE WITNESS:** Question again.
19 **BY MS. HANKS:**
20 Q. Yeah. I know we've been talking a lot
21 about views, and we're more thinking even further
22 out to the desert or right front of you views. But
23 is there also some value particularly with high-end
24 value homes not feeling like you have properties
25 right on top of you, other properties right on top

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1 of you regardless of views? Is there some value to
2 that that buyers put --
3 **A. Maybe.**
4 **Q.** And would you think that buyers put a
5 premium or at least some type of value when they're
6 buying on a golf course?
7 **A. I think that if you looked at the**
8 **Malek's versus Rosenberg property, if I were to be**
9 **looking at Rosenbergs' to purchase it, I would have**
10 **been more concerned about the fact that they were**
11 **elevated above me and had the potential to look into**
12 **my backyard which would detract some of my privacy.**
13 **Q.** And would that concern increase if you
14 also knew that Mr. Malek could build into the golf
15 parcel? Doesn't that view potential even increase
16 if he can build a two-story house on that part of it
17 and look down into your backyard if you had bought
18 the Rosenberg property?
19 **A. I think that the -- again, the Design**
20 **Review Committee would crosscheck that and make sure**
21 **that they kept that to a minimal.**
22 **Q.** Let's talk about the Stallion Mountain
23 and the golf course at Lake Las Vegas. You had them
24 as example of golf courses that changed in some
25 respect; is that right?

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1 **A. Yes.**
2 **Q.** Okay. And how did the Stallion
3 Mountain Golf Course change?
4 **A. How did it change? It went away.**
5 **Q.** Okay.
6 **A. They sold to a developer.**
7 **Q.** And then when it was sold to the
8 developer, what did it change or did they keep it in
9 the golf course?
10 **A. No. They sold the land and put houses**
11 **there.**
12 **Q.** Okay. Do you know if any lawsuits were
13 filed as a result of that from owners?
14 **A. Oh, I'm sure there were, but I don't**
15 **know.**
16 **Q.** I mean, when you say you're sure they
17 were, what do you think those people would have
18 filed suit for?
19 **MR. GUNNERSON:** Objection foundation. Calls
20 for speculation.
21 **THE WITNESS:** Yeah. Actually, I'm not sure
22 that they did sue. I don't know. I have no idea.
23 **BY MS. HANKS:**
24 **Q.** You want to retract the statement that
25 you're sure they did?

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1 **A. I thought there was some articles in**
2 **the newspaper that they were very upset about it.**
3 **Let's put it that way.**
4 **Q.** Property owners were upset about it?
5 **A. Yes.**
6 **Q.** And they were upset that they lost
7 their golf course view that they paid a premium for?
8 **MR. GUNNERSON:** Objection. Calls for
9 speculation.
10 **BY MS. HANKS:**
11 **Q.** Is that at least your understanding of
12 the article?
13 **A. I just remember some articles in the**
14 **newspaper.**
15 **Q.** Okay. Do you know anything about the
16 specifics of that sale? In other words, do you know
17 if there was an agreement to pay the property owners
18 a portion of money because they were losing their
19 golf course view?
20 **A. Again, I don't know any of the**
21 **particulars.**
22 **Q.** Okay. And how about the golf course at
23 Lake Las Vegas, how did that change?
24 **A. They sold it, but they have not**
25 **developed it yet.**

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1 **Q.** Okay. Is it still a golf course?
2 **A. It's a vacant land developed as a golf**
3 **course but just sitting there.**
4 **Q.** Do you know if any lawsuits have been
5 filed by property owners in this case?
6 **A. No.**
7 **Q.** And so do you know what the intent of
8 that land is at this point? Is it possible that it
9 might stay a golf course?
10 **A. I don't have any idea.**
11 **Q.** Would the fishbowl effect be increased
12 if Mr. Malek constructs any portion of his home on
13 the golf course parcel that he purchased?
14 **A. Will it what?**
15 **Q.** Will the fishbowl effect increase if
16 Mr. Malek builds any portion of his home on the golf
17 course portion that he subsequently purchased?
18 **A. It still is going to be a fishbowl.**
19 **And even in the original blueprint, footprint, it**
20 **would have an effect.**
21 **Q.** Right. But does the fishbowl effect
22 increase if Mr. Malek builds any portion of his home
23 on the golf course portion?
24 **A. The golfers would be closer to his**
25 **house versus Rosenberg which has a larger setback**

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1 area.
2 Q. Okay. So does that mean it increases
3 the fishbowl effect or not?
4 **MR. GUNNERSON:** Objection. Form as to which
5 property you're referring to.
6 **BY MS. HANKS:**
7 Q. Well, I'll ask the question again,
8 because I asked it, I didn't get an answer. So I'm
9 making sure.
10 Does Mr. Malek constructing any
11 part of his home on the golf course portion that he
12 subsequently purchased increase the fishbowl effect
13 that already exists?
14 **A. To which property?**
15 Q. 590 Lairmont Place.
16 **A. No. Because if you look at the plans,**
17 **the way that the property will be situated on the**
18 **side, I believe Mr. Malek has parking facilities**
19 **along the northwesterly side property line and**
20 **doesn't have actual living space on that side the**
21 **way the plans are drawn today.**
22 Q. Which plans are you referring to?
23 **A. Mr. Malek's.**
24 Q. No. I understand that. But it's my
25 understanding there has been several plans produced

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1 in this litigation. So which ones are you referring
2 to when you're making that conclusion?
3 **A. The plans that we furnished and what**
4 **was displayed in the Brunson survey.**
5 Q. Okay. So the plans that were displayed
6 in the Brunson survey are the same plans that you
7 were given in this litigation?
8 **A. I believe so.**
9 Q. And are you aware that these plans have
10 changed in anyway?
11 **A. I have no idea.**
12 Q. Okay. So I just want to be clear then,
13 your opinion that you just stated in regard to the
14 fishbowl effect is based on the plans as detailed or
15 as conveyed in the Brunson Jiu survey, correct?
16 **A. The photograph, I believe, shows the**
17 **garage on the left side and the right side, and it's**
18 **either a six car or eight car garage with two**
19 **entrances on either side.**
20 Q. I'll represent to you that new plans
21 have been produced and that were approved by
22 Mr. Malek, you have not reviewed those, correct?
23 **A. Yes.**
24 Q. Can you turn to page 47 of your report?
25 I want to refer to the second picture on that page.

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1 You have titled as the view from second level master
2 bedroom towards clubhouse parking lot.
3 **A. Yes.**
4 Q. Can you draw for me where the original
5 lot line was for Mr. Malek's property before he
6 purchased the golf parcel?
7 **A. Somewhere probably along the last**
8 **pilaster in the view.**
9 Q. Can you draw that for me on our exhibit
10 here?
11 **A. Well, I think that's beyond my scope of**
12 **work with the photograph.**
13 Q. That's okay. I want to make sure I
14 understand. I want to ask you another question so I
15 need to know your best -- I'm not going to pinpoint
16 you to exact measurement, but just to the best of
17 your knowledge, where the original lot line was, if
18 you could just draw it to the best of your ability
19 in that picture.
20 **MR. GUNNERSON:** What are you having him draw?
21 **BY MS. HANKS:**
22 Q. The second picture, what he was just
23 saying, he thinks it would start at the last
24 pilaster. So if he could reference to me what
25 you're talking about?

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1 **MR. GUNNERSON:** Do you want him to circle the
2 last pilaster?
3 **BY MS. HANKS:**
4 Q. No. I want him to draw a line.
5 **A. I'm not drawing a line, because I don't**
6 **know that.**
7 Q. You don't know where the --
8 **A. I can look at the aerial in**
9 **Mr. Brunson's report and show you where the property**
10 **line is. You already have that in the report.**
11 Q. I know, but this is your picture in
12 your report.
13 **A. This is a picture. This is not to show**
14 **side setbacks or to rear property line.**
15 Q. I understand.
16 **A. This is just a visual showing the trees**
17 **and how they're maturing along Stephanie and what**
18 **this area here which was part of the sale to Malek.**
19 Q. That's my point. That's why I want to
20 make sure we have it clear, because when do you
21 that, that's not clear on the record. That's what I
22 want you to do with this picture. So just so we're
23 clear, this second picture --
24 **A. Well, I'm not going to do in a picture.**
25 **I will do it in an aerial that's in the report.**

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1 Q. Well, hold on.
2 A. I'm not doing it on a picture, because
3 I can't be accurate, and I don't know if it goes
4 curvature like this or if it goes straight like this
5 and goes like that.
6 Q. That's okay.
7 A. So you're trying to have me do
8 something that I'm not an expert to when there's a
9 picture in the report that depicts the property
10 lines.
11 Q. Okay.
12 A. Explicitly.
13 Q. Well, let me back up before we get to
14 that then. This picture, the second picture that
15 appears in your report on page 47, you describe it
16 as the view from the second level master bedroom of
17 the Rosenberg property, right?
18 A. Toward the clubhouse parking lot.
19 Q. Okay. And if Mr. Malek -- with
20 Mr. Malek's acquisition of the golf parcel, can you
21 at least X the area of what would be included in
22 that? And I don't want you to do it from the
23 aerial, because --
24 A. I'm only going to do it if from the
25 aerial, because I can't be specific enough from the

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1 photograph. I'm not going to do it from a
2 photograph.
3 Q. Okay. So then how can you make
4 opinions regarding whether there's any diminution in
5 value if you can't even --
6 A. I know where it's at.
7 Q. Hold on. Let me get my question.
8 If you can't even determine from
9 this picture that shows the view from the second
10 level where the property lines are?
11 A. So now which portion do you want me to
12 do.
13 Q. I want to know from this picture, what
14 portion is, what portion --
15 A. Is the original lot line?
16 Q. Correct. Right.
17 A. So it's something like this.
18 Q. What portion did he purchase roughly,
19 and is it your understanding that his property line
20 now goes --
21 MR. GUNNERSON: Counsel, I'm sorry. Just for
22 the clarity of the record, the portion where he
23 marked as X --
24 MS. HANKS: Yes.
25 MR. GUNNERSON: I just want to make sure it's

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1 clear on the record.
2 BY MS. HANKS:
3 Q. Yes. So the portion he marked with an
4 X is the portion he believes that Mr. Malek
5 purchased from the golf course.
6 Do you know how far the property
7 line now extends? I won't ask you to draw it on
8 this picture, but do you know how far? Is there a
9 particular setback for the golf course, or does it
10 go all the way up to the golf course, his view lot
11 lines?
12 A. The lot on the north property line goes
13 out 65.6 feet.
14 Q. From the original lot lines?
15 A. Yes. If this is accurate, yes.
16 Q. Do you know whose pictures that is that
17 you're looking at, page 13 of your report?
18 A. This is in Brunson Jiu.
19 Q. How about this picture we see on page
20 47, the second picture, where does that picture come
21 from?
22 A. That's from us.
23 Q. Okay. So you took it when you did your
24 inspection of the property?
25 A. Yes.

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1 Q. Okay. Is any portion that we see in
2 this picture, was any portion --
3 A. What page are you on?
4 Q. Page 47. Is any portion of Mr. --
5 excuse me -- of the view from the second view --
6 from the second floor of the master bedroom of the
7 Rosenberg house, is any portion of that view going
8 to be obscured if Mr. Malek is allowed to build on
9 the golf parcel?
10 MR. GUNNERSON: Objection. Hypothetical --
11 excuse me. Objection. Incomplete hypothetical.
12 Foundation. Calls for speculation.
13 THE WITNESS: Yeah. I'm not sure exactly
14 where the house is going to sit and how far it's
15 going to protrude, if at all.
16 BY MS. HANKS:
17 Q. Okay. If it does protrude into at
18 least the area of the golf portion that he
19 purchased, wouldn't it obscure the Rosenbergs' from
20 their second level master bedroom to some extent?
21 A. Of a borrowed view, yes.
22 Q. How about the next page, page 48,
23 picture at the top, and you say, "This is the same
24 view from the lower level towards the clubhouse
25 parking lot. The adjacent lot is about four plus or

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1 minus feet higher and allows anyone to overlook the
2 fence and look down into the rear yard pool and spa
3 area of the subject property for the original lot."
4 Now, if Mr. Malek is able to build
5 on any portion of the golf parcel that he
6 subsequently purchased, will his view be obscured in
7 some way as we see it in the picture here?
8 **A. What view?**
9 Q. The view that we see here, what we're
10 looking out on, we have the --
11 **A. Have what?**
12 Q. We have mountains here. We have trees
13 here. We have some houses. I guess, there's a
14 clubhouse. Would that view be obscured in anyway?
15 **A. I don't know hypothetically. I haven't**
16 **seen the plans rendering sitting on the site yet.**
17 Q. Would you need to see, though, final
18 plans as to whether you can make an opinion as to
19 whether the Rosenbergs would have diminution of
20 value in their property?
21 **A. No. I don't believe they have a loss**
22 **of value, because a reasonable buyer wouldn't**
23 **anticipate having a view in this direction.**
24 Q. Why not?
25 **A. It's illogical.**

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1 Q. Why is it illogical?
2 **A. Because the primary view or the primary**
3 **borrowed view's of the golf course. The orientation**
4 **of the house faces northeast. The house doesn't**
5 **face to the southeast.**
6 Q. But you've taken pictures, at least one
7 from the master bedroom and one from the ground
8 level of the pool that show views diagonally from
9 the house going towards Stephanie Street, right?
10 **A. Yes.**
11 Q. Okay. So why would it be illogical or
12 unreasonable for people to believe that these views
13 would at least stay in place?
14 **A. Because anybody buying this house,**
15 **maybe except the Rosenbergs would walk out onto the**
16 **open patios and look at the golf course and**
17 **anticipate that that's their view. The clubhouse, I**
18 **mean, personally I don't know why anybody would even**
19 **look at the clubhouse. The view is the lush**
20 **landscaped greenbelt area, the fairway, as well as**
21 **the ninth hole.**
22 Q. So no one has peripheral views when
23 they're in their backyard, you just look straight
24 ahead?
25 **A. The peripheral view is typically what**

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1 **is the primary view. Anything on the sides would be**
2 **a borrowed view which is not guaranteed to be in**
3 **place.**
4 Q. Okay. But --
5 **A. Well --**
6 Q. Sorry. Go ahead.
7 **A. Let me answer this then. If the view**
8 **was so valuable to the southeast, why is the deck**
9 **built to the northeast? Both views, both decks are**
10 **built to the northeast, and there's no wrap-around**
11 **deck on the master to the southeast to take**
12 **advantage of the supposedly fabulous borrowed view.**
13 Q. Well, the Rosenbergs didn't build this
14 house, you're aware of that, right?
15 **A. I understand that.**
16 Q. Okay. And I'm just making sure though,
17 because you're making kind of some sweeping
18 statements about how it's illogical or unreasonable
19 for someone not to take into account these views
20 that are kind of going out towards the diagonal from
21 the property towards Stephanie Street. That's all
22 we're concerned about for this case. And I'm trying
23 to understand why is it illogical or unreasonable.
24 I understand there's a primary view, but there's
25 other views as well, right, for this property that

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1 you've evidenced in these pictures?
2 **A. Yes.**
3 Q. Okay. So why would it be illogical or
4 unreasonable for them to assume that, at least with
5 respect to the golf course parcel that would stay
6 what it is and that the minimal desert landscape
7 that has been approved by MacDonald Highlands? Why
8 is illogical or unreasonable for them to assume that
9 that would stay that way?
10 **MR. GUNNERSON: Objection. Asked and**
11 **answered.**
12 **THE WITNESS: It's a borrowed view. It can**
13 **change, and it's not a primary view. And it's very**
14 **difficult to abstract a portion of the borrowed view**
15 **from the primary view. If I've got the full primary**
16 **view, that is the one that people are going to buy.**
17 **You're looking out the patio. You're looking out**
18 **the decks. Everything face to the northeast. The**
19 **house is orientated that direction. A builder**
20 **didn't build this house not to take full advantage**
21 **of the views.**
22 **BY MS. HANKS:**
23 Q. And how about regardless, let's take
24 away the view from the equation and just talk about
25 someone being able to build a property that can now

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1 look much more easily into your backyard?
2 **A. The fishbowl effect. We're going to**
3 **have that no matter what. These houses are on top**
4 **of each other, the way they are built.**
5 **If you look at one of the other**
6 **photos in here, the Rosenbergs look right into the**
7 **backyard of the house to the north, lot four. At**
8 **the time there was a palm tree there that was dead,**
9 **and now it's gone. But that doesn't say that the**
10 **adjacent owner won't along that side property line**
11 **excluding the cone of cone of vision, put in some**
12 **20-foot tall pine trees to add privacy to their**
13 **backyard.**
14 **Q. Okay. And then just so I'm clear, if**
15 **we extend Mr. Malek's lot, we've also extended where**
16 **his cone of vision would be assuming we -- the**
17 **Design Review Committee enforces the rear property**
18 **line from the side property line, correct?**
19 **MR. GUNNERSON: Object to the form.**
20 **THE WITNESS: I'm assuming that's a side**
21 **property line. And if Mr. MacDonald says he would**
22 **enforce the cone of vision, if he's on the Design**
23 **Review Committee, then I guess it's true, but I**
24 **would defer that to Paul.**
25 **////**

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1 **BY MS. HANKS:**
2 **Q. Okay. And he is on the Design Review**
3 **Committee. And, so what I'm asking is if we assume**
4 **that to be true, meaning that the rear property line**
5 **would be enforced on the side property line abutting**
6 **the golf course and if Mr. Malek now has the golf**
7 **parcel, that rear cone of vision is actually in a**
8 **different place than it would be without his**
9 **purchase of the golf parcel, right?**
10 **MR. GUNNERSON: Objection. Incomplete**
11 **hypothetical. Foundation. Go ahead.**
12 **THE WITNESS: I believe so.**
13 **BY MS. HANKS:**
14 **Q. You keep saying to the fact that the**
15 **views over the golf course portion and Mr. Malek's**
16 **lot are borrowed views. You don't believe that the**
17 **respondents to the survey would have known that as**
18 **experienced real estate agents?**
19 **A. No.**
20 **Q. Why?**
21 **A. It's not a term they're familiar with.**
22 **That's why it needed to be explained to them.**
23 **Q. What is your basis for that? How do**
24 **you know that the respondents in the survey didn't**
25 **know about that term?**

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1 **A. Over the years I've talked to many**
2 **agents that sell high-end homes, and they don't know**
3 **the difference between a primary view and a borrowed**
4 **view. They don't even understand the terminology.**
5 **They just always say to buyers, the view is not**
6 **guaranteed, period.**
7 **Q. Okay. So if we've got the Rosenbergs**
8 **who are not appraisers, right?**
9 **A. I don't know.**
10 **Q. I'll represent they are not appraisers.**
11 **Wouldn't that make the survey to people that usually**
12 **don't know that term either more closely related to**
13 **the Rosenbergs? In other words, aren't they more**
14 **like the Rosenbergs in terms of how they respond to**
15 **this the situations?**
16 **A. Well, I thought she was a high-end real**
17 **estate agent. That's what I heard. So I would have**
18 **thought she would be very familiar with what you**
19 **perceive to get and what you don't.**
20 **Q. So only high-end real estate agents**
21 **know the term borrowed views?**
22 **A. I don't think high-end agents -- I**
23 **don't believe -- I just said I don't believe they**
24 **know what a borrowed view is. They just always say**
25 **they don't guarantee any type of view, even the golf**

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1 **course, because they don't want to have any**
2 **potential litigation issues.**
3 **Q. For failure to disclose something, is**
4 **that your understanding?**
5 **A. No, not necessarily for failure to**
6 **disclose, but just no views you're guaranteed in**
7 **perpetuity.**
8 **Q. Why would that create a lawsuit?**
9 **A. I'm not saying it would. They just**
10 **don't want to ever presume that any view will remain**
11 **the same forever, because the growth of landscaping**
12 **changes views.**
13 **Q. So if real estate agents know this, you**
14 **talked to them and in their experience they know**
15 **that, what's to suggest to you the real estate**
16 **agents who responded to this survey didn't then take**
17 **that into consideration when answering that survey?**
18 **A. I think I've answered the questions**
19 **regarding the survey. I think it's flawed. I think**
20 **it's biased. I think it's not neutral. I think it**
21 **is predetermined to come up with a diminish in**
22 **value. And if he had crosschecked it to sales**
23 **comparison, paired sales analysis or talked to his**
24 **peers, even talked to half a dozen appraisers, he**
25 **would have understood that there's no potential way**

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1 that this property can lose more than the entire
2 sight value as a loss in value.
3 Q. But getting back to my question, if
4 real estate agents know that views are never
5 guaranteed and things can change all the time and
6 the real estate agents were the pool of people that
7 were asked in this survey, that at least issue would
8 have already been assumed in their answering the
9 questions, they would have had that knowledge when
10 answering these questions, right?
11 MR. GUNNERSON: Objection. Misstates prior
12 testimony and foundation. Calls for speculation.
13 THE WITNESS: And the answer has already been
14 answered. There's a 1 to 50 percent. So how
15 reliable is the survey when even the recipients in
16 the survey can't come to some type of a more
17 rational decision?
18 BY MS. HANKS:
19 Q. Okay. And I'm not understanding your
20 definition of rational. Is everyone has to be in
21 the same boat, has to be more centered around the
22 majority being in the same boat, you can't have a
23 range of people having different opinions?
24 A. They can have a difference of opinion,
25 but how do we know that the 1 to 50 is right and the

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1 1 to 20 is not, or the zero percent is right?
2 So, in other words, why would we
3 correlate to the high number on a borrowed view? I
4 just think the survey is inadequate, and it wasn't
5 administrated and it should have been administrated
6 by a professional, not an appraiser that doesn't
7 have the experience to do that type of work.
8 Q. Do you know if Mr. Jiu or Mr. Brunson
9 have the experience with Contingent Value Surveys?
10 A. My gut feeling would be that they
11 probably don't, because I think it's beyond their
12 ability as it is beyond mine.
13 Q. But you don't have any factual basis
14 for that?
15 A. Not that -- no. No factual basis.
16 Okay. I'm taking a break.
17 Q. I only have a few more.
18 A. I'm still taking a break.
19 MR. GUNNERSON: Can you take just a few more
20 questions?
21 MS. HANKS: I'm trying to get finished here to
22 get you guys out.
23 MR. GUNNERSON: Well, I'm going to have some
24 follow-up questions so...
25 MS. HANKS: That's why I'm trying to get

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1 through each page.
2 MR. GUNNERSON: Do you want to take a break so
3 you can see exactly what you have left? Would that
4 be a good idea?
5 MS. HANKS: Yeah. You could do that.
6 (Short break.)
7 BY MS. HANKS:
8 Q. If you go to page 76 of your report,
9 it's the paragraph after that bullet point, it's the
10 second sentence it starts on. It says on page 34 of
11 the report under review, "The report under review
12 implies that the subject's building envelope has
13 changed due to the additional land acquired by the
14 adjacent lot. The subject's building envelope lot
15 boundaries have not changed."
16 When you say "subject building",
17 do you mean the Rosenberg property or...?
18 A. Correct.
19 Q. Okay. So you read that to mean that
20 they meant the Rosenberg property?
21 A. Yes.
22 Q. Okay. If I were to tell you that --
23 you don't have that opinion though with respect to
24 the Malek's properties, right?
25 A. Yes.

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1 Q. Okay. Right. So his building envelope
2 has changed by the acquisition of the golf course
3 parcel, correct?
4 A. Yes.
5 Q. Now, are you intending to express any
6 opinion as to whether an implied restrictive
7 covenant existed under the lot parcel?
8 A. No.
9 Q. Are you expressing any opinions or
10 intending to express any opinions as to whether
11 Michael Doiron had a duty to disclose any zoning
12 changes with respect to the golf parcel?
13 A. No.
14 Q. Are you intending to express any
15 opinions regarding whether Michael Doiron had a duty
16 to disclose the eminent purchase of the golf parcel
17 by Mr. Malek to the Rosenbergs?
18 A. No.
19 Q. Are you expressing any opinions
20 regarding MacDonald Highland Realty duty to disclose
21 anything regarding zoning changes or lot line
22 changes with respect to the golf parcel?
23 A. No.
24 MS. HANKS: I think I don't have anything
25 further at this point.

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1 **MR. DEVOY:** I do not have anything.
2 **EXAMINATION**
3 **BY MR. GUNNERSON:**
4 Q. Okay. I do have some follow-up
5 questions as a result of some of the responses you
6 made today. I would like to go through quickly,
7 because I know we're short on time. I might jump
8 around a little bit.
9 Is the report you provided, does
10 it pertain simply to the survey, or was it intended
11 to be a report as it pertains to Mr. Jiu's report as
12 a whole?
13 A. Well, it pertains to Mr. Jiu's report
14 as a whole as follows: We put some market data in
15 the report as examples of what happens to views.
16 Q. Previously you had been shown on page
17 13 -- can you go to that in your report?
18 A. Yes.
19 Q. There was a discussion about the
20 blue-green lines, and I believe at one point in your
21 discussion you had stated that perhaps someone else
22 had drawn those there. And then I think in the
23 latter part of your deposition you thought that map
24 came from Mr. Jiu's report.
25 Do you know sitting here now

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1 having looked at this whether or not these lines
2 were provided by Mr. Jiu in his report or by you or
3 someone from your office?
4 A. Mr. Jiu's report?
5 **MR. GUNNERSON:** I did not bring copies of
6 this, Counsel, so I apologize. Just for this sole
7 purpose, I'm going to attach Mr. Jiu's report as an
8 exhibit.
9 Let's mark it as A.
10 (Exhibit A marked.)
11 **BY MR. GUNNERSON:**
12 Q. Exhibit A, and I'll direct you to page
13 36. And compare page 36 to page 13 of your report.
14 Do you see any differences in those pictures?
15 A. No.
16 Q. Does that refresh your recollection as
17 to where you obtained the map for your report now
18 looking at Mr. Jiu's report?
19 A. From Mr. Jiu's report.
20 Q. Okay. So if there's any question about
21 how far setbacks are as it pertains to those lines,
22 those were setbacks put in by Mr. Jiu that you were
23 responding to in your report; is that correct?
24 A. Yes.
25 Q. And then as far as it pertains to some

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1 questions regarding encroachment and setbacks,
2 counsel asked you a number of questions about a
3 30-foot setback as it pertains to modified lot. I
4 believe she clarified that. She didn't ask you any
5 questions as it pertains to 30-foot setback, as it
6 pertains to the original lot.
7 Would identifying a 30-foot
8 setback on the original lot as indicated here in
9 green have an effect on somebody misunderstanding
10 perhaps how much view was being altered as a result
11 of any changes in the lot lines?
12 **MS. HANKS:** Objection. Form and calls for
13 speculation.
14 **THE WITNESS:** Yes.
15 **BY MR. GUNNERSON:**
16 Q. Okay. So previously when counsel said
17 over and over again that, you know, isn't it true
18 that if the 30-foot setbacks were actually 15-foot
19 setbacks, it had no difference, that may be true if
20 you're talking about the modifying lot lines, but
21 that is not true if you're talking about the
22 original lot lines, correct?
23 A. Yes.
24 Q. You were presented with a number of
25 hypotheticals by statements given by Rich MacDonald.

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1 Just to clarify, you have not read his deposition,
2 correct?
3 A. Yes.
4 Q. Have you worked with Mr. Rich Macdonald
5 on properties before? That's not a very good
6 question. Let me change it.
7 Are you aware of employees that
8 Rich MacDonald works with in his businesses?
9 A. Yes.
10 Q. Okay. Do you know one by the name of
11 Paul Bykowski?
12 A. Yes.
13 Q. Have you spoken to Paul Bykowski
14 before?
15 A. Yes.
16 Q. Did you know that Mr. Paul Bykowski was
17 identified as the representative of Mr. Rich
18 MacDonald's entities and provided testimony? Were
19 you aware of that?
20 A. Yes. I believe so.
21 Q. Okay. Did you read any of those
22 deposition transcript?
23 A. No.
24 Q. If I told you that Paul Bykowski stated
25 that Rich MacDonald was confused or incorrect in

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1 identifying the side property line as a rear
2 property line, would that seem to -- do you know
3 whether Rich MacDonald would actually acquiesce to
4 Paul Bykowski's point of view?
5 **MS. HANKS:** Objection. Calls for speculation
6 ever.
7 **THE WITNESS:** I would say yes.
8 **BY MR. GUNNERSON:**
9 Q. At one point you were talking about the
10 12 foot height difference in the topography, and
11 counsel mentioned that wouldn't that be a hill.
12 Do you recall her saying that?
13 A. Yes.
14 Q. And you agreed that was a hill?
15 A. **Well, it's a slope up, but I don't know**
16 **if I would call it a hill per se.**
17 Q. And on top of that hill, what can be
18 found or slope, however you want to term it?
19 A. **At the top is mature trees growing and**
20 **Stephanie Street which abuts the golf course.**
21 Q. And on Stephanie Street cars routinely
22 drive Stephanie Street?
23 A. **Stephanie Street is the main, secondary**
24 **main access road for all construction traffic in and**
25 **out of MacDonald Ranch from 6 a.m. to 6 p.m.**

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1 Q. Do you know if is there a sidewalk that
2 abuts Stephanie Street?
3 A. **Yes. There is a sidewalk.**
4 Q. And people have access to that
5 sidewalk; is that correct?
6 A. Yes.
7 Q. The fact that the public has access to
8 Stephanie Street and the sidewalk, does that in part
9 what creates the fishbowl effect?
10 A. Yes.
11 Q. So even if there's a property that's
12 built into what counsel has been referring to as the
13 golf course parcel, the fishbowl effect remains the
14 same because you still have the same views from any
15 position around the home by the public; is that
16 correct?
17 A. Yes.
18 Q. You had talked about the orientation of
19 the home. You mentioned that a couple of times, on
20 page 13 of your report, you notice it has a picture,
21 a view of the home, of the Rosenbergs' home on
22 there.
23 In looking that home, do you
24 notice how the right side of the home jets out more
25 than the left side of the home?

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1 A. Yes.
2 Q. Talking about the back part of the
3 house?
4 A. **The master, the family room, and then**
5 **above that is the master suite.**
6 Q. Does the shape of the home, of the
7 footprint of the home provide you with -- is that
8 what you were referring to when you referred in part
9 to the orientation of the home in creating the
10 primary view down the ninth hole?
11 A. **Yes. Because the masters sticks out**
12 **and has larger windows on that north side so that**
13 **they can take advantage of the views down the**
14 **fairway.**
15 Q. I believe at one point you stated you
16 talked about borrowed view. It's your opinion that
17 the golf course parcel is a borrowed view, correct?
18 A. Yes.
19 Q. And that's the opinion you're giving in
20 this case, correct?
21 A. Yes.
22 Q. And the courts may make a determination
23 one way or the other, but that will not -- but your
24 opinion remains that that was a borrowed view and
25 could have been altered, correct?

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1 A. Yes.
2 Q. Do you know if there's a right of
3 privacy for homes that abut golf courses?
4 A. **If a home is guaranteed privacy?**
5 Q. Yes.
6 A. **I would think not.**
7 Q. You had gone through the questions on
8 the survey at some length with counsel. And just to
9 be clear, your concern with the ways in which the
10 questions were created was that there needed to be
11 more information provided so that those answering
12 the questions understood exactly what they were
13 dealing with, correct?
14 A. Yes.
15 Q. And that the pictures that were used in
16 conjunction with those questions did not show
17 adequately the property and surround areas, correct?
18 A. Yes.
19 Q. If you turn to page 48 -- did we mark
20 this as an exhibit, Counsel?
21 **MS. HANKS:** Yes. It's 2.
22 **BY MR. GUNNERSON:**
23 Q. Of Exhibit 2. If you look at the
24 pictures, they appear to be identical pictures
25 except for the addition of some additional coloring

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1 on the after picture, correct?
2 A. Yes.
3 Q. Does this picture show elevation of
4 properties?
5 A. No.
6 Q. Does it show where the parking lot to
7 the golf club is?
8 A. No.
9 Q. Does it show the additional
10 neighborhood homes that surround this area?
11 A. No.
12 Q. It shows one or two homes, but it does
13 not show the vast number of homes that surround it,
14 correct?
15 A. Yes.
16 Q. Someone viewing this would have no idea
17 what is on the other side of Stephanie, correct?
18 A. Yes.
19 MS. HANKS: Objection. Calls for speculation.
20 BY MR. GUNNERSON:
21 Q. Okay.
22 A. Yes.
23 Q. Yeah. If only viewing these pictures,
24 it doesn't show what's on the other side of
25 Stephanie, correct?

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1 A. Yes.
2 MR. GUNNERSON: I have no further questions.
3 FURTHER EXAMINATION
4 BY MS. HANKS:
5 Q. Just a quick follow-up. With respect
6 to page 13, counsel was asking about the 15 versus
7 30-foot setback. I want to make sure I understood
8 correctly.
9 The Brunson Jiu report assumed a
10 30-foot setback for the original lot lines, and the
11 modified lot lines, correct?
12 A. Well, the Brunson Jiu report stated
13 that that's the rear property line.
14 Q. But they assume a 30-foot setback for
15 both the original lot lines for Malek's property and
16 also the additional lot lines, the modified lot
17 lines, I think is what counsel referred to them as?
18 A. I believe so.
19 Q. And your opinion and understanding is
20 that those lot lines, the original lot line would
21 have required a 15-foot setback, correct?
22 A. Correct.
23 Q. And even the modified lot line still
24 only requires a 15-foot setback?
25 A. Subject to the Design Review.

Page 235

1 Q. Right.
2 A. Which trumps anything that --
3 Q. The City of Henderson says?
4 A. The City of Henderson says.
5 Q. Okay. And, in fact, I think the
6 15-foot setback is actually the Design Review
7 setback as well. But assuming that the 15-foot
8 setback was provided to the surveyors, that's more,
9 meaning that's more restriction or more encroachment
10 than a 30-foot setback, right?
11 MR. GUNNERSON: Objection. Asked and
12 answered.
13 THE WITNESS: Which I think I've answered that
14 yes.
15 BY MS. HANKS:
16 Q. Yeah. I just want to make sure. I
17 didn't understand. I thought you might have said
18 differently when counsel was asking you about the
19 difference between the 15 and 30-foot setback.
20 So it is more of an encroachment
21 if it's only a 15-foot setback as applied to either
22 the original lot line or the modified lot line?
23 MR. GUNNERSON: Objection. Form of the
24 question.
25 THE WITNESS: The 15 foot would allow

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1 development closer versus the 30 foot.
2 MS. HANKS: Thank you. That's all I have.
3 FURTHER EXAMINATION
4 BY MR. GUNNERSON:
5 Q. I just have one follow-up on that
6 question just on this last issue, just to make sure
7 we're really clear. If Mr. Jiu had presented to
8 surveyors that what he has here as a 30-foot setback
9 on the original line was actually a 15-foot setback
10 on the original lot line, would it have been a --
11 would it have appeared that there was less of a view
12 being impacted or more of a view being impacted?
13 A. Less than a view being impacted.
14 MR. GUNNERSON: Thank you.
15 FURTHER EXAMINATION
16 BY MS. HANKS:
17 Q. And that's where I'm unclear then. Why
18 is it less of a view being impacted if it's a
19 15-foot setback from the original lot line?
20 A. Because it would be closer to the
21 property line, and it wouldn't be as much impacted
22 versus a 30-foot.
23 Q. I don't understand that. Can you
24 explain that to me? I don't understand what you're
25 saying.

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1 You just said it was more of an
2 encroachment. If you only had to go 15 foot back
3 from the lot line, that means you could build
4 further out to that lot line, right, only 15 feet
5 away from that lot line is the space where your
6 building needs to end and a lot line, right?
7 **MR. GUNNERSON:** Go ahead and answer the
8 question.
9 **THE WITNESS:** It's simple. If he'd presented
10 it as 15 feet, there would have been less of an
11 impact than if he represented it at 30.
12 **MR. GUNNERSON:** Can we go off the record for a
13 second?
14 **MS. HANKS:** Sure.
15 (Off the record.)
16 **BY MS. HANKS:**
17 Q. Okay. We're all good. You will have
18 an opportunity to review the transcript or you can
19 waive. It's up to you.
20 A. No. I want to review it.
21 Q. Okay. If you don't review then by 30
22 days, they will just accept that as true. So you do
23 want to do it within the timeframe they give you.
24 I will caution you, though, and
25 I'm sure you know this, but I want to do it again,

Page 238

1 it's okay if you make changes such as if you had
2 said Smith and you meant Jones.
3 But if I asked you -- any
4 substantive changes, if I asked you a yes or no
5 question and you said no and now want to change it
6 to yes, that may give me the opportunity to bring
7 you back and re-depose you or it may be brought
8 forward at trial.
9 A. Okay.
10 **MR. GUNNERSON:** Who should he send -- do you
11 have a card so he can send a bill?
12 **MS. HANKS:** Oh, yes. I don't have a card yet,
13 but you can send it here.
14 (Whereupon the deposition was
15 concluded at 5:01 p.m.)
16
17
18
19
20
21
22
23
24
25

Page 239

1 CERTIFICATE OF DEPONENT
2 PAGE LINE CHANGE
3
4
5
6
7
8
9
10
11
12
13
14
15
16 * * * * *
17 I, SCOTT DUGAN, deponent herein, do
18 hereby certify and declare under penalty of perjury
19 the within and foregoing transcription to be my
20 testimony in said action, that I have read,
21 corrected, and do hereby affix my signature to said
22 transcript this day of, 2015.
23
24 SCOTT DUGAN
25 Deponent

Page 240

1 REPORTER'S CERTIFICATE
2
3 STATE OF NEVADA)
4 COUNTY OF CLARK) ss.
5
6 I, Angela Campagna, a certified court
7 reporter in Clark County, State of Nevada, do hereby
8 certify:
9 That I reported the taking of the
10 deposition of the witness, SCOTT DUGAN, on Monday,
11 March 16, 2015, commencing at the hour of 9:52 a.m.
12 That prior to being examined, the
13 witness was by me first duly sworn to testify to the
14 truth, the whole truth, and nothing but the truth.
15 That I thereafter transcribed my said
16 shorthand notes into typewriting and that the
17 typewritten transcript of said deposition is a
18 complete, true, and accurate transcription of
19 shorthand notes taken down at said time.
20 I further certify that I am not a
21 relative or employee of an attorney or counsel of
22 any of the parties, nor a relative or employee of
23 any attorney or counsel involved in said action, nor
24 a person financially interested in said action.
25 IN WITNESS WHEREOF, I have
hereunto set my hand in my office in the County of
Clark, State of Nevada, this 23rd day of March 2015.

ANGELA CAMPAGNA, CCR #495

EXHIBIT N

Appraisal Review Report



590 Lairmont Place Henderson, NV 89012

Prepared For:

Kemp, Jones & Coulthard, LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, NV 89169

January 13, 2015

Kemp, Jones & Coulthard, LLP.
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, NV 89169



Re: Brunson-Jiu, LLC – Report - File #1410.1884

We have reviewed the above referenced report and related material and formed an opinion as to the conclusions stated within the report. It is our opinion that the report under review:

- Uses a controversial survey method to develop its findings and conclusions without the findings being validated by a recognized method
- Includes statements of fact that are in error and not factual
- Exhibits bias in the survey and throughout the report under review
- The conclusions ignore market data and other evidence to the contrary of the findings in the report under review

While the use of a survey is acceptable in rare cases, the report under review fails to crosscheck the survey with accepted methods to guard against known pitfalls. The survey findings should have been invalidated with market data and common sense. This would have led the consultants to conclude that no damages were present.

Enclosed are a summary of our findings and conclusions relative to the key areas of the report under review, our reasons for disagreement and additional analysis and comments to support our findings and conclusions.

If I can be of any further service, please contact R. Scott Dugan Appraisal Company, Inc. at (702) 876-2000. I am,

Sincerely Yours,

A handwritten signature of R. Scott Dugan is shown above a horizontal line. The signature is written in dark ink and is cursive.

R. Scott Dugan, Appraisal Company, Inc.
R. Scott Dugan, SRA
NV Certified General Appraiser # A.0000166-CG

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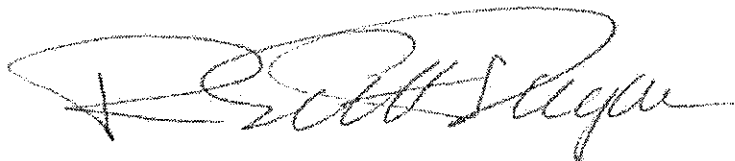
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Certification of the Review Report

We certify that, to the best of our knowledge and belief:

- The statements of fact reported and used in the review are true and correct.
- The reported analyses, opinions, and conclusions in this review report are limited only by the stated assumptions and limiting conditions in this review report and they are our personal, impartial, and unbiased professional analyses, opinions, conclusions, and recommendations.
- We have no present/prospective interest in the subject property of the work under review and no personal interest with respect to the parties involved.
- We have no bias with respect to any property that is the subject of work under review or to the parties involved with this assignment.
- Our engagement in this assignment was not contingent upon developing or reporting predetermined results and our compensation for completing this assignment is not contingent upon an action or event resulting from the analysis, opinion and conclusions in this review or from its use.
- The analyses, opinions, and conclusions were developed, and this review report has been prepared, in conformity with USPAP and in conformity with the Ethics and the Standards of Professional Appraisal Practice of the Appraisal Institute.
- We inspected the subject property of the work under review.
- Unless stated, no one provided significant real property appraisal or appraisal consulting assistance to the person(s) signing this certification.
- The use of this review report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
- As of the date of this review report, R. Scott Dugan, SRA, has completed the continuing education requirements of the Appraisal Institute.
- We had no prior assignments related to the subject property within the 3 years prior to the effective date of value of this review report.



R. Scott Dugan, SRA
Nevada Certified General Appraiser
A.0000166-CG



Patrick Egger
Nevada Certified General Appraiser
A.0000154-CG

Assumptions and Limiting Conditions of the Review Report

- This review report employs the same general assumptions and limiting conditions shown in the report under review.
- Unless stated elsewhere in this review report, this review report employs the same extraordinary assumptions with respect to the acceptance of the “unimpaired value” of \$2,500,000, as of the effective date of May 15, 2013, as reported by Valbridge Property Advisors, for 590 Lairmont Place, Henderson, NV 89012, Job No. NV01-14-0197-001

The appraiser(s) reserves the right to alter statements, analyses, conclusions, or any opinions of value in the review report if any new facts pertinent to the valuation process are discovered which were unknown when the review report was prepared.

THE ACCEPTANCE AND/OR USE OF THE REVIEW REPORT BY THE CLIENT OR ANY THIRD PARTY CONSTITUTES ACCEPTANCE OF THE ASSUMPTIONS AND LIMITING CONDITIONS SET FORTH IN THE PRECEDING PARAGRAPHS. THE APPRAISERS' LIABILITY EXTENDS ONLY TO THE SPECIFIED CLIENT, NOT TO SUBSEQUENT PARTIES OR USERS. THE APPRAISERS' LIABILITY IS LIMITED TO THE AMOUNT OF THE FEE RECEIVED FOR THE SERVICES RENDERED.

Relevant Dates

Effective Date:	May 15, 2013
Date Inspected:	August 27, 2014
Date of the Review Report:	January 13, 2015

PART ONE – Scope of Work for the Review Report

Scope of Work of the Review Report

Report under review:

Real Estate Damages Analysis

Frederic and Barbara Rosenberg Living Trust v Bank of America et al

Case No. A-13-689113-C

Effective Date of Analysis: May 15, 2013

Prepared By: Brunson-Jiu, LLC - File #1410.1884

Develop an opinion as to:

- The appropriateness of the findings and conclusions of the report under review based upon the methods employed and the supporting data and analysis incorporated within the report under review and/or as part of the report under review.

If necessary and or warranted:

- Provide reasons for agreement/disagreement with the statements, findings and conclusions in the report under review
- Research and present additional data and/or analysis of data and information within the report under review, that would affect the values and conclusions of the report being reviewed
- Development and reporting of different conclusions and opinions of value based on the review, data from the review and a limited scope of work that only incorporates analysis of relevant data available

Purpose of the Review Appraisal

To assess the validity of the conclusions and opinions cited within the identified Appraisal Report including the basis of those conclusions and opinions, with respect to generally accepted appraisal practice, USPAP, Appraisal Institute Standards and generally accepted real estate and development related practices.

Throughout this review, comments and or quotes taken from the report under review, will be displayed as Times New Roman Italics and indented from the main body of this review report. Portions of our comments and or key parts of the quotes from the report under review may be emboldened or underlined for emphasis.

R. Scott Dugan Appraisal Company, Inc. - 8930 West Tropicana Avenue, Suite 1, Las Vegas, NV 89147

Intended Use and User of the Review Appraisal

The intended use of this appraisal review report is for presentation for a possible action in the jurisdiction of the Nevada Court System. This appraisal was prepared for the sole and exclusive use of the client and intended user. The intended user of this appraisal review report is the client stated below:

Kemp, Jones & Coulthard, LLP.
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, NV 89169

No additional users are identified as intended users of this review report.

Property Rights Appraised

Fee Simple as stated on page 15 of the report under review.

Date of Value Opinion in the Report Under Review

May 15, 2013 – Retrospective Value Opinion as shown in the report under review. The date of the report (date the report under review was signed) is November 25, 2014.

Definition of Value

“Market Value” as defined on page 12 of the report under review. We do not believe this to be the correct definition for legal cases (this is the definition from Title XI of RIRREA). However, it is sufficiently similar to the principles and intent of most market value definitions, and therefore, acceptable under that context.

Identification of the Property

Lot Three (3) in Block One (1) of “MACDONALD HIGHLANDS, PLANNING AREA 10 A.K.A. THE FOOTHILLS AT MACDONALD RANCH, LOT 10, PLANNING AREA 10”, as shown by map thereof on file in Book 115 of Plats, Page 76, in the Office of the County. The subject is also known as: 590 Lairmont Place, Henderson, NV 89012 – APN 178-27-218-003

History of the Property

The report under review shows the sales history on page 15 as:

Acquired via an open market (GLVAR #1328416) nontraditional REO/bank owned sale for \$2,302,000 on May 15, 2013 following 13 days on market via “all cash” with no known credits/concessions. Prior transfer at \$1,601,600 on November 2, 2011 via a Trustee’s Deed due to a foreclosure proceeding. No other sales history was noted within the past three (3) years.

The sale history was not considered in contrast to the findings in the report under review. The report under review classifies the subject sales as “disposition value,” which is a discounted value due to the REO status and seller’s desire to liquidate the property.

The report under review also accepts the \$2,500,000 value by Valbridge Property Advisors as representative of “unimpaired market value.” The difference between the two prices is \$198,000, which is a 7.92% discount from the \$2,500,000.

According to the agent survey findings in the report under review, being next to vacant land with unknown building plans would require a discount of 1% to 50% with marketing times of 1 to 365 days. The report under review concluded a 30% to 40% loss in value.

The subject listed 3/8/2013 for \$2,160,000.

- **Within 13 days, there were multiple offers.**
- **The accepted offer was \$2,302,000 or \$142,000 (6.57%) over list price.**

The subject was next to a vacant site, with unknown development plans, yet it sold for more than list price and had multiple offers in less than two weeks. The agent survey was relied upon and the basis for the conclusion in the report under review.

How can it be concluded that the subject would suffer a value loss of 1% to 50% and an extend marketing time of up to 365 days, per the agents, and a 30% to 40% value loss, per the report under review, if it sold in 13 days, had multiple offers and sold for \$142,000 over the listed price?

The subject sold for \$2,302,000 or a 7.92% discount for what everyone has agreed to as to unimpaired market value of \$2,500,000. The discount would be normal for an REO property. Multiple people made offers over the listed price and the property sold in less than two weeks.

The only logical conclusion is the agent opinions in the survey and the conclusions in the report under review are not reliable. While the report under review presents a lot of opinion, opinions are not reliable evidence unless those opinions are supported by transactional market data.

The sale of the subject property for a price higher than it list price, having multiple offers within two weeks is direct evidence to the contrary of the opinions and findings in the report under review. These are facts that should have been considered. They are clearly in opposition to the findings and conclusions in the report under review.

PART TWO – Summary of Key Findings and Conclusions

Our review of the report identified a number of key issues related to observations of the physical and economic characteristics of the subject properties. Combined with errors we found in the report under review (stated as factual when they were not), along with mis-application of methodologies and other statements, it can be reasoned the conclusions within the report under review are inconsistent with the facts, and therefore invalid.

Key Findings & Reasons for Disagreement

- The premise of the report under review is that the value of subject property was damaged “as of May 15, 2013” due to the acquisition of additional land to the adjacent lot and plans to develop a large custom home. As of that date, the additional land had not been acquired (sale not closed) and the plans did not exist.
- The report under review relies upon a survey of real estate agents to develop a range of value based upon various assumptions. The assumptions are hypothetical, misleading and the survey was designed in a manner that creates “hypothetical bias.”
- The report under review assumes the wrong buildings setbacks (and repeats the same errors in the agent survey). The setbacks cited are applied, to what is actually the adjacent property’s side yard, not its rear yard boundary. This is misleading.
- The report under review repeatedly takes a biased posture (client advocacy) in its presentation of the facts and circumstances surrounding the acquisition of the subject property. The opinions and conclusions of appraisers (and the reports they develop), are required by Federal and State laws to be objective, impartial and independent. Appraisers are not permitted to be “advocates of their clients” while presenting themselves as “impartial.”
- The report under review employs a highly controversial methodology (contingent valuation survey,) known to produce very questionable results. There is no validation of the findings by accepted methodologies (appraisal approaches).
- The report under review repeatedly references the book “Real Estate Damages” by Bell, Anderson and Saunders, and presents various principles from that book as procedures followed. However, the report fails to recognize (or alert the reader) the various factors or steps that must be taken for these same procedures to be valid. In fact, the report ignores recommended steps.
- A failure to use recommended precautions, for the survey methodology (contingent valuation survey) used in the report under review. Not using direct or indirect transactional data (also recommended), lead to highly unreliable conclusions.

- The report under review cites case studies and then misquotes those studies or improperly attributes findings to the authors of those studies. Additionally, in one case the report under review cites a court case regarding views as being evidence or implying “views are protected,” when in fact, the courts in that case ruled against the view being protected.
- Failure to present transactional market data in support/contradiction of the alleged defect and or as evidence of diminution in value. In various sections of the report under review, it was stated or implied that directly comparable market data or sales of properties with similar conditions do not exist. To the contrary, numerous properties with “borrowed view impairments” exist throughout the valley. While perfect sales may not be available, there was other transactional data that would have invalidated the findings and therefore lead to other conclusions.
- An appraisal of the adjacent land (by the same appraisers) prior to the report under review, established a current value for the land at \$22+/-/SF. As of the effective date for the subject, the land value would have been around \$20/SF. The adjacent site has superior frontage and views. Application of the \$20/SF would have established the value for the subject lot at around \$574,000. This is the value for a site with golf frontage and a superior golf and city view. Despite the loss of the “borrowed view,” the site still has golf frontage and a city view. How can the damages be \$750,000 to \$1,000,000 when the site retains its’ primary views?
- From the report under review, the subject’s view is a borrowed view. Here, the report under review fails to recognize that borrowed views across adjacent properties are not guaranteed in perpetuity by laws or agreement in this case.
- Failure to recognize that planting of mature trees (common in golf course communities) on the original adjacent lot (prior to acquiring the extra land area), would have obscured the borrowed view.
- In addition, the report under review did not consider that maturing trees (along the golf course, Stephanie Street and on the clubhouse site), already partially obscure the views and will further affect the borrowed views as they mature.
- The report under review’s findings and conclusions are based upon “entitlement to a borrowed view” that does not exist by law or definition. A borrowed view (by definition) is not indefinite. It can be obscured, and therefore is not contributory to the value of the property.
- Failure to establish a baseline value for the views and baseline conditions for privacy, would have established that the survey findings were unreliable. Baseline values are a procedural requirement in the analysis of potential diminution in value cases.

COMMENTS ON IDENTIFIED ISSUES IN THE REPORT UNDER REVIEW

Improper premise

The premise of the report under review is misleading and contrary to the requirements of The Uniform Standards of Professional Appraisal Practice (USPAP). USPAP is the administrative rules adopted by the State of Nevada, governing appraisal practice and the development and reporting of valuations and valuation related consulting services.

Throughout the report under review, the consultant implies the subject property at 590 Lairmont Place has a value loss. Specifically, on page 5 of the report under review and in the transmittal letter:

Based on the analysis summarized above, I conclude that as of May 15, 2013, the Class V: External Detrimental Condition diminishes the value of the property by 30%-40%. When applied to the retrospective market value of the subject property expressed in the Valbridge report, this translates to monetary damages of:

\$750,000 - \$1,000,000

Seven Hundred and Fifty Thousand to One Million Dollars

The findings and conclusions are as of May 15, 2013 and based upon the addition of 14,858+/- square feet of land to 594 Lairmont Place and the proposed building plans for 594 Lairmont Place. This retrospective valuation assignment was completed November 25, 2014.

On page 35 of the report under review, there is a matrix, listing the sequence of events. As of May 15, 2013:

- The sale of the additional land had not closed.
- The owner's plans for 594 Lairmont Place did not exist

Effectively, as of the date of value, the additional land had not been acquired and the owner's plans had not been drawn or submitted for approval by the MacDonald Ranch Design Review Committee or the City of Henderson. In fact, as of mid-December 2014, the proposed improvement plans for 594 Lairmont Place had not been approved by the Design Review Committee as required by the applicable CC&R's.

This being the case, the report under review would be required under USPAP to prominently disclose the use of a hypothetical condition in the analysis and report and to disclose the potential implications to the findings, conclusions and any reported value are based upon a "hypothetical conditions".

As defined on page 12 of the report under review, a hypothetical condition is:

That which is contrary to what exists but is supposed for the purpose of analysis.

Comment: Hypothetical conditions assume conditions contrary to known facts about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis.

Uniform Standards of Professional Appraisal Practice, the Appraisal Foundation, 2014-2015 Edition

Per USPAP Standard 1: A hypothetical condition may be used in an assignment only if:

- Use of the hypothetical condition is clearly required for legal purposes, for purposes of reasonable analysis, or for purposes of comparison;
- Use of the hypothetical condition results in credible analysis; and
- The use complies with the disclosure requirements set forth in USPAP for hypothetical conditions.

While it is permissible to employ a hypothetical condition for purposes of analysis, the use of a hypothetical condition “must be prominently disclosed” within the report and an acknowledgement must be made that the use of a hypothetical condition could affect the reported conclusions.

However, the report under review did not disclose any use of a hypothetical condition, as required. Since the land sale had not closed and the new owner’s plans did not exist, any analysis or conclusions (at this time), are based upon hypothetical conditions, which must be disclosed as required by USPAP.

Use of the wrong setbacks in the analysis and the agent survey

Not only did the specified plans not exist, the appraiser’s analysis, data, agent surveys, preliminary conclusions, etc., as to a loss in value or damages as stated in the report under review, are based upon other conditions affecting the property (legal and physical) that are not factual and or are in fact, hypothetical.

The analysis by the appraiser and the aerial drawings developed by the appraiser and used in the agent survey to solicit the agent’s opinions as to detrimental conditions affecting the subject property are based upon setbacks and assumed conditions that are contrary to known facts.

The appraiser cites a required 30 foot rear yard setback (as shown in green), from the original rear lot line (as shown in blue) on the aerial photograph of the property at 594

EXHIBIT B

SEARCH	
EMAIL	W
TEXT	CHECK
REPLY	REPLY ALL
FORWARD	ACTION
DELETE	

590 lairmont

176 Results for "590 lairmont"

Today on AOL

New Mail 12:27

Old Mail

Drafts 43

Sent 2027

Spam 135

Recently D...

Contacts

Calendar

Bill Manager

My Folders

Saved Mail 2

Saved Ch... 1

220 s. helb...

590 Lairmont

abbas

advanced ... 1

Barbara C... 1

Barbara P... 2

Barbara R... 2

Letter of Intent for 590 Lairmont Place, Henderson, Nevada from David and Lahna Rosenberg

broseyb to asacobar show details

Feb 20 2013

590LAIRMT_501130230720400.pdf (4.1 KB)

Hi, Elena.

Here is the letter of intent on 590 Lairmont. Please send it asap to the sellers, and e-mail me a confirmation that you received this e-mail. Thanks for your help.

Barbara Rosenberg
310 378-1915
broseyb@aol.com

-----Original Message-----
From: palosverdesbeach <palosverdesbeach@coldwellbanker.com>
To: broseyb <broseyb@aol.com>
Sent: Wed, Feb 20, 2013 7:48 pm
Subject: Message from KM8T_501

Def't	EXHIBIT	C
WITNESS B. Rosenberg		
DATE: 12/8/14		
CINDY HUEBNER, CCR		

February 20, 2013

Elena Escobar
324 Elm Street, Ste.105-B
Monroe, CT 06468
203-929-1951

Re: Cover Letter 590 Lairmont Place, Henderson, NV 89012; APN # 178-27-218-003

Dear Elena,

I am writing to submit an offer on 590 Lairmont Place, Henderson, NV 89012.

Based on the current condition of the home, the view is NOT facing the Las Vegas Strip, the home next door is half way built (Bank Owned), the piece of land next door will be starting construction soon and construction noise will continue on both side of the property for years.

Finally, with the recent sold comparables we have come to the purchase price of \$1,750,000 ALL CASH without Broker Commissions. Please notice on the comps there is a direct comp with the same square footage on the same street that sold in November for \$1,575,000

Here is a list of the items that need to be done to the property.

- Kitchen, Master Bathroom and Master Closet have extensive water damage and not built out.
- Front and Back Landscaping need to be fully built out (Designed, approved and completed)
- Cracks in Exterior of Home on North side, South side, patio outside of backyard
- Missing Oven in Kitchen
- Rust on all balconies need to be sanded and re-painted

Attached are the Letter of Intent and Sold comparables.

Thank you,

David Rosenberg *Lahna Rosenberg*

David and Lahna Rosenberg
broseyb@aol.com
310-378-1915 phone

Deft	EXHIBIT	D
WITNESS <i>B. Rosenberg</i>		
DATE: <i>12/8/14</i>		
CINDY HUEBNER, CCR		

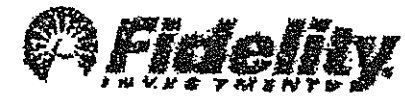
PLTF3285

APP00078

JA_0310

Fidelity Private Client Group

21701 Hawthorne Blvd Torrance, CA 90503-9909
Phone: 800-544-5704
www.fidelity.com



February 20, 2013

Fredric Rosenberg
Barbara Rosenberg
709 Via La Cuesta
Pls Vids Est, CA 90274-1472

Dear Mr. and Mrs. Rosenberg:

Thank you for contacting Fidelity Investments regarding your Trust account ending in 4221.

Please accept this letter as verification that as of market close on February 20, 2013, you hold in excess of \$1,750,000 in cash and money market securities in the aforementioned account.

If you have any questions, please do not hesitate to call me directly at 310-921-3528, ext 53394.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Kislig", written over a circular stamp or mark.

Chris Kislig
Private Client Specialist

Fidelity Brokerage Services LLC, Member NYSE, SIPC

PLTF3286

APP00079

JA_0311

February 20, 2013

Elena Escobar
324 Elm Street, Ste. 105-B
Monroe, CT, 06468
203-929-1951

Re: Letter of Intent to Purchase 590 Lairmont Place, Henderson, NV 89012; APN # 178-27-218-003

Dear Elena,

On behalf of David A. Rosenberg and Lahna Rosenberg ("Buyer"), I would like to submit this proposal (this "Letter of Intent") to purchase approximately 10,071 square feet of Single Family Residence at also known as Clark County, Nevada APN# 178-27-218-003 under the following terms and conditions:

1. PROPERTY LOCATION: 590 Lairmont Place Henderson, NV 89012 (the "Property")
2. TYPE OF TRANSACTION: Cash
3. PURCHASER: David A. Rosenberg and Lahna Rosenberg
4. SELLER: Bank of America, N.A. ("Seller")
5. PURCHASE PRICE: One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000)
6. PURCHASE AGREEMENT: Seller's standard form Purchase and Sale Agreement.
7. TITLE & ESCROW: Escrow to be opened with Seller's Choice within 1 business day of receipt of executed Purchase contract.
8. EARNEST MONEY DEPOSIT: Within 1 business day of opening Escrow, Buyer shall deposit into Escrow the sum of Fifty Thousand Dollars (\$50,000.00) (the "Deposit"). The Deposit will remain refundable to Buyer until the expiration of Inspection Period and contingent upon a mutual executed Purchase and Sale Agreement. Said deposit shall be applied to Purchase Price.

9. INSPECTION PERIOD: Ten (10) business days from the opening of escrow.
10. ESCROW CLOSE DATE: Escrow close Date shall be twenty (20) days or sooner after Inspection Period.
12. NON-BINDING: This Letter of Intent sets forth the basic terms for negotiation of a purchase and sale agreement and is not a contract, offer or option. This letter does not provide Buyer with rights in the Property or against Seller or its affiliates. Seller expressly reserves its rights to negotiate with other parties until a binding purchase and sale agreement is executed by Buyer and Seller. The foregoing is a nonbinding proposal only and no binding agreement shall exist with respect to the Property unless and until a formal purchase and sale agreement is executed by all parties. Without limiting the generality of the foregoing, and because this letter is intended solely as a proposal for the terms to be incorporated in such documents, by the receipt of this letter you hereby agree: (1) that this letter will remain non-binding on Seller, its affiliates, its and their officers, managers, employees and agents; (2) Seller and/or its affiliates may cease negotiations at any time for any reason or for no reason; (3) no one may rely upon this letter for any reason; (4) Buyer, its affiliates, and their partners, shareholders, members, officers, directors, employees and agents hereby waive claims for matters arising out of an allegation that this instrument is binding contract; and (5) Seller, its affiliates, and their shareholders, directors, employees, officers and agents are released and discharged from any claim of liability on the grounds that this is a binding contract.
13. EXPIRATION: If Seller does not return a signed copy of this Letter of Intent to Buyer by 5:00 P.M. P.S.T. on February 25th, 2013, this Letter of Intent shall expire and the Terms and Conditions shall become null and void.
15. CONDITON OF PROPERTY: It is Buyer's obligation to conduct all necessary studies, including but not limited to environmental, construction, market feasibility, title, zoning & CC&R's. Buyer shall purchase the property "As-Is" and "Where-Is" and "With All Faults."
17. LEGAL, TITLE, ESCROW FEES Each party to this transaction shall pay its own legal

AND COSTS:

fees. Seller and Buyer shall each pay one half (1/2) of real property transfer taxes, title fees, escrow fees and fees for recording the deed transferring the Property to Buyer. Except as provided herein, all other costs and expenses shall be allocated as are customary in Clark County, Nevada.

18. GOVERNING LAW:

The validity and interpretation of this Letter of Intent shall be governed by and construed in Accordance with the laws of the State of Nevada Without giving effect to its conflict of laws principles.

Please review this Letter of Intent and return a signed copy to me to signify your acceptance of these Terms and Conditions. If you have any questions please do not hesitate to call me.

Agreed and Accepted By:

Buyer: David A. Rosenberg and Lahna Rosenberg

By: David Rosenberg

By: Lahna Rosenberg

Name: David A. Rosenberg

Name: Lahna Rosenberg

Date: 2/20/13

Date: 2/20/13

Seller: Bank of America, N.A.

By: _____

Name: _____

Date: _____

570 Lairmont Pl, Henderson, NV 89012 - Zillow

Homes

Rentals

Mortgage Rates

Advice

Find a Pro

Local Info

~~Page~~
~~7-14000~~
Digs

Location:

Nevada Henderson MacDonald Ranch 570 Laimont Pl

570 Lairmont Pl, Henderson, NV 89012

Sold on 11/21/12: \$1,575,000

~~Zachman~~: \$426,856

Ex. Mortgage: \$5,551/mo ~

See current rates on Zibor

View your 2013 Credit Score instantly for \$0

Bedroom: # beds

Bathrooms: 7 baths

Single Family: 10,217 sq ft

Lot: 26,572 sq ft

Year Built: 2011

Last Sold: Nov 2012 for \$1,575,000

Heating Type: Forced air

(154 psf)

~~Classified~~ ~~Excluded~~

Save this page

Get Logistics

Enns

7505

Description

This 10217 square foot single family home has 4 bedrooms and 7.0 bathrooms. It is located at 570 Lakmont Pl Henderson, Nevada.

Coating
Control

Fireplace
Unknown

Parking
Garage - Attached

Floor Covering
Unknown

Basement Type
Unknown

Attle
Unknown

~ More

See data sources

PLTF3290

APP00083

JA_0315

GLVAR

Single Family Residential

Ownership SFR

02/20/13 5:43 PM


[Click here for map view](#)
1499 / MACDONALD RANCH DR
 Virtual Tour

ML# 1314417 Status S Area 606 L/Price \$1,750,000
 Offc LHLV PubID 227705 Listing Agent & Realtor? Y
 Bdr Model \$/SQFT \$163
 County Clark County Parcel# 178-28-513-010 City Henderson
 Prop Desc Condo Conversion
 Type DETACHED Unit Desc Studio
 Subdiv PALISADES UNIT 2 Subdiv# 3651
 Community MACDONLRC Short Sale N Foreclosure Commenced N Repo/REO Y
 Assoc/Comm CCRS/ COCLUB/ GRDGATO/ CLUBHSE/ TENNIS
 Zoning Single-Family YrBuilt 2003 / Resale
 Elem K-2 VAND Elem 3-5 VAND Junior MILL HighSch FOOT
 Unit Bldg # Zip 89012

GENERAL INFORMATION

Bldg Desc 2STORY #Bedrooms 6 #Baths 2 FB 3/4 HG Tot 1 8
 Garage 6 /Attached /Auto Door Opener(s) /Entry to House Converted N Carport 0
 AppxLivArea 10,723 AppxAdclivArea 0 AppxTotalLivArea 10,723 #Acres +/- 0.73 #Dey/Oth 1 #Loft 0
 Roof Tile Like Lot Sqft 31,799 DenDm 14X15 LoftDm
 Private Spa Y /Outdoor Lot Descr 1/4 to 1 Acre
 Private Pool Y /Disappearing Edge/Heated Pool /Inground-Private Pool Size +/-

D: From 215 and Valle Verde, South on Valle Verde, through Horizon Ridge to Guard Gate. Follow MacDonald Ranch Dr. to home on the right.

R: One of a kind Custom Luxury Estate. Features include open courtyard w/ pool, spa, built in BBQ & bar, custom iron door entry, stonework throughout, travertine & hardwood flooring, wine room, theater & game room. Large master bedroom w/ retreat, his & hers closets, & access to stunning City Views from huge observation deck. Priced at just \$163/sq. ft. Don't miss out on this one!

APPROXIMATE ROOM SIZES AND DESCRIPTIONS

Living 25X15 /Formal /Front /Sunken 2nd Bdrm 18X15 Downstairs /With
 Dining 15X13 /Formal Dining Room Bath /Walk-In Closet(s)
 GreatRm N
 Kitchen Breakfast Bar/Counter /Garden Window /Island /Marble/Stone Floor In 3rd Bdrm 15X13 Downstairs /With
 Family 22X18 /Downstairs /Separate Family Room /Wet Bar In Family Room Bath /Walk-In Closet(s)
 MBR 30X18 /Balcony /Mbr Separate From Other /Mbr Walk-In Closet /Master 4th Bdrm 22X15 Downstairs /With
 MB Bath Double Sink /Separate Shower /Separate Tub Bath /Walk-In Closet(s)
 Dryer/Util Both Location 1STFLR /ROOM Washer Inc N Dryer Inc N 5th Bdrm 16X14 Upstairs /With
 Refrig Y Disposal Y Dishwasher Y Bed Down Y Bath Down Y, 1/2 Bath /Walk-In Closet(s)
 Oth Appliances Built-In Microwave /Wine Refrigerator /Water Filtering System Oven Convection Oven /Double Built-In
 Interior Alarm System-Wired /Ceiling Fan(s) Construc Frame & Stucco
 Fireplace 7 /Gas Flooring Marble/Stone /Hardwood /Carpel
 Fence Partial /Wrought Iron Equest None

UTILITIES INFORMATION

Hse Faces North Miscel None
 Exterior Balcony /Built-In Barbecue /Back Yard Access /Courtyard /Deck /Private Yard /Secured Entry
 Landscape Drip Irrigation/Bubblers /Mature Landscaping /Rock/Gravel Landscaping /Shrubs /Synthetic Grass
 Heat Sys Central /Two or More Units Heat Fuel Gas Water Public
 Cool Sys Central /2 or More Central Units Cool Fuel Electric Ground Mounted Sewer Public
 Util Info Underground Utilities Energy Dual Pane Windows

FINANCIAL INFORMATION

Assoc Fee Y Assoc Name MacDonald, Highlands Assoc Ph 702-933-7754 MastPlanFee \$ 0
 Assoc Fee 1 \$ 330/Monthly Earnest Deposit \$50,000 Assessment N Assessmt Amt
 Assoc Fee 2 Ann Taxes \$21,455 SID/LID Total SID/LID Annual
 Financing Conslid Cash, Conventional Existing Rent
 Sale Price \$1,625,000 Sale Date 01/30/13 Seller Contribution \$0 Days on Market 3 Type of Loan CASH

[View Live Mortgage Payments](#)

Presented by: Realty ONE Group, Inc

Agent: Robert Meisner

GLVAR DEEMS INFORMATION RELIABLE BUT NOT GUARANTEED

PLTF3291

2/20/2013

APP00084

JA_0316

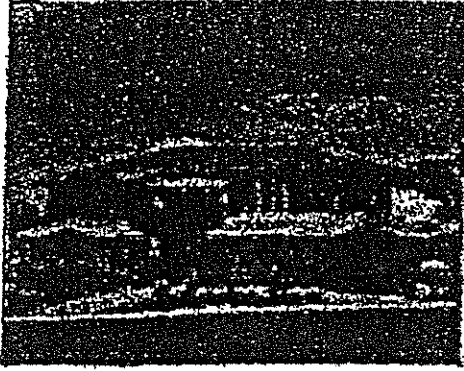
\$151
 sold PSE

GLVAR

Single Family Residential

Ownership SFR

02/20/13 5:43 PM


[Click here for map view](#)

1456 /MACDONALD RANCH DR

Virtual Tour

ML# 1269237 Status S Area 606 L/Price \$1,350,000
 Offc SYNS PubID 090958 Listing Agent a Realtor? Y
 Bldg Model \$/SQFT \$-197
 County Clark County Parcel# 178-28-613-005 City Henderson
 Prop Desc Condo Conversion
 Type DETACHED Unit Desc Studio
 Subdiv FOOTHILLS MACDONALD RANCH LOT Subdiv#
 Community MACDONLRC Short Sale N Foreclosure Commenced N Repo/RED N
 Assoc/Comm COCLUB/ COMGOLF/ CCRS/ POOL/ SECRTY
 Zoning Single-Family YrBuilt 2009 / Resale
 Elem K-2 VAND Elem 3-5 VAND Junior MILL HighSch #007
 Unit Bldg # Zip 89012

GENERAL INFORMATION

Bldg Desc 2STORY #Bedrooms 5 #Baths 4 FB 3/4 HS Tot 1 7
 Garage 6 /Auto Door Opener(s) /Attached /Garage Cooled /FinishConverted N Carport 0
 AppxLivArea 9,889 AppxAddLivArea AppxTotalLivArea #Acres +/- 0.48 #Den/Oth 0 #Loft 0
 Roof Tile Like Lot SqFt 20,909 DenDim LoftDim
 Private Spa Y /Waterfall /Inground Lot Descr 1/4 to 1 Acre
 Private Pool Y /Disappearing Edge/Pool/Spa Combo /Heated Pool Pool Size +/-
 D: From 215 exit South on Valle Verde to gate. Thru gate home is on the left

R: Beautiful home located on the golf course. House includes Elevator, Game Room, Theater Room, Sauna, Exercise Room, Ballroom Style Garage, Infinity Edge Pool with Swim up BBQ counter, 2700 sq. ft. Master Suite, 3 Wet Bars.

APPROXIMATE ROOM SIZES AND DESCRIPTIONS

Living 20x28 /Vaulted Ceiling /Sunken /Front /Entry Foyer 2nd Bdrm 16x16 Walk-In Closet(s) /With Bath /TV/Cable
 Dining 18x13 /Dining Area
 GreatRm N
 Kitchen Marble/Stone Countertops /Island /Granite Countertops /Custom Cabinetry 3rd Bdrm 15x14
 Family 18x24 /Wet Bar In Family Room
 MBR 22x36 /2 Mbr's /Balcony /Sitting Room /Mbr Walk-In Closet 4th Bdrm 16x18 With Bath /Walk-In Closet(s) /Upstairs
 MB Bath Double Sink /Make Up Table /Sauna /Steam Shower /Tub With Jets
 Dryer/Util Gas Location 1STFLR / 2NDFLRWasher Inc N Dryer Inc N 5th Bdrm 17x13
 Refrig Y Disposal Y Dishwasher Y Bed Down Y Bath Down Y, 1/2
 Oth Appliances Central Vacuum /Built-In Microwave /Water Conditioner-Owned /Oven Double Built-In Ovens (E)
 Interior Alarm System-Owned /Blinds Construc Frame & Stucco
 Fireplace 4 /Gas /Glass Doors /Two-Way
 Fence Backyard Full Fenced /Block Flooring Marble/Stone /Carpet
 Equest None

UTILITIES INFORMATION

Hse Faces South Miscel None
 Exterior Balcony /Built-In Barbecue /Circular Driveway /Covered Patio /Private Yard
 Landscape Drip Irrigation/Bubblers /Desert Landscaping /Rear Lawn /Sprinkler Timer
 Heat Sys Two or More Units Heat Fuel Gas Water Public
 Cool Sys 2 or More Central Units Cool Fuel Electric Ground Mounted Y Sewer Public
 Util Info Underground Utilities Energy Low E-Windows

FINANCIAL INFORMATION

Assoc Fee Y Assoc Name MacDonald Highlands Assoc Ph 702-933-7764 MasterPlanFee \$ 0/None
 Assoc Fee 1 \$ 330/Monthly Earnest Deposit \$50,000 Assessment N Assessmt Amt
 Assoc Fee 2 Ann Taxes \$16,492 SID/LIDTotal SID/LID Annual
 Financing Condo Cash, Conventional Exstng Rent
 Sale Price \$1,800,000 Sale Date 01/17/13 Seller Contribution \$0 Days on Market 159 Type of Loan CONV

Presented by: Realty ONE Group, Inc.

[View Live Mortgage Payments](#)

Agent: Robert Weissner

GLVAR DEEMS INFORMATION RELIABLE BUT NOT GUARANTEED

PLTF3292

00000013

APP00085

JA_0317

GLVAR

Single Family Residential

Ownership SFR

02/20/13 5:43 PM



ML# 1233047 Status S Area 606 1/Price \$1,025,000
 Offc REUGB2 PubID 220506 Listing Agent a Realtor? Y
 Bldr Model \$/SQFT \$ 125
 County Clark County Parcel# 178-28-115-003 City Henderson
 Prop Desc CUSTOM Condo Conversion
 Type DETACHED Unit Desc 2LEVEL Studio
 Subdiv FOOTHILLS AT MACDONALD RANCH L Subdiv#
 Community MACDONLRC Short Sale N Foreclosure Commenced N Repo/REO N
 Assoc/Comm CLUBHSE/ COCLUB/ CONSOUP/ GROUND/ PLAYGRD/ POOL/ TENNIS
 Zoning Single-Family YrBuilt 2006 / Resale
 Elem K-2 VAND Elem 3-5 VAND Junior MILL HighSch FOOT
 Unit Bldg # Zip 89012

[Click here for map view](#)

1505 /FOOTHILLS VILLAGE DR

Virtual Tour <http://www.PropertyPanorama.com/mls.asp?id=173520>

GENERAL INFORMATION

Bldg Desc	25STORY	#Bedrooms	5	#Baths	2	3/4	HB Tot	5
Garage	3 /Attached /Entry to House	Converted	N	Carport	0			
AppxLivArea	8,177	AppxAddLivArea		AppxTotalLivArea		#Acres +/-	0.39	#Den/Oth 3 #Loft 1
Roof	Tile Like	Lot Sqft	16,988	DenDim		LoftDim	29x32	
Private Spa	Y /Inground /Indoor	Lot Descr	1/4 to 1 Acre	Pool Size +/-				
Private Pool	Y /Indoor/Waterfall /Pool/Spa Combo							

D: 215 and Valley Verde, S on Valley Verde through Horizon Ridge to Macdonald Highlands entrance gate. After gate, 1st left on Toucan ridge, L on Foothills Village.

R: APPROVED AT LIST PRICE!! OVER 8,000 SF OF PURE ELEGANCE, LOCATED ON THE GOLF COURSE IN THE FOOTHILLS AT MACDONALD RANCH. AMAZING VIEWS OF THE GOLF COURSE, LAKE AND STRIP. TRAVERTINE FLOORING THROUGHOUT DOWNSTAIRS, HUGE LOFT UPSTAIRS, 2 MASTER BEDROOMS LOCATED DOWNSTAIRS, 2 OFFICES, SAUNA, HAIR SALON, INDOOR AND OUTDOOR POOL, BUILT-IN BBQ.

APPROXIMATE ROOM SIZES AND DESCRIPTIONS

Living	20x31 / Formal / Front	2nd Bdrm	21x19	Downstairs / With Bath / Walk-In Closet(s)
Dining	15x11 / Formal Dining Room			
GreatRm	Y / 22x30 / Upstairs / Wet Bar in Great Room			
Kitchen	Breakfast Bar / Counter / Custom Cabinets / Granite Countertops / Island	3rd Bdrm	12x10	Downstairs / Mirrored Door / With Bath
Family	22x30 / 2 or More Family Rooms / Both Up & Down / Wet Bar in Family Room			
MBR	25x20 / 2 Mbr's / Dressing Room / Master Bedroom Downstairs / Mbr Sag	4th Bdrm	15x16	Mirrored Door / Upstairs / Walk-In
MB Bath	Tub / Double Sink / Make Up Table / Steam Shower / Tub With Jets			
Dryer/Util	Electr Location 1STFLR / ROOM Washer Inc N Dryer Inc N	5th Bdrm	15x12	Mirrored Door / Upstairs / With Bath
Refrig	N Disposal N Dishwasher N Bed Down Y Bath Down Y, 3/4			
Oth Appliances	None	Oven	None	
Interior	Alarm System-Wired / Blinds / Ceiling Fan(s) / Skylight(s)	Construc	Frame & Stucco / Rock Front	
Fireplace	2 / Gas	Flooring	Tile / Carpet	
Fence	Backyard Full Fenced / Wrought Iron	Equest	None	

UTILITIES INFORMATION

Hse Faces	North	Miscel	None
Exterior	Balcony / Built-In Barbecue / Covered Patio / Deck		
Landscape	Mature Landscaping / Desert Landscaping		
Heat Sys	Two or More Units / Programmable Thermostat Heat Fuel Gas	Water	Public
Cool Sys	2 or More Central Units / Central	Cool Fuel	Electric Ground Mounted Y
Util Info	Underground Utilities / Cable TV Wired / Cable Wired	Energy	Dual Pane Windows / Insulated Wind

FINANCIAL INFORMATION

Assoc Fee	Y	Assoc Name	MACDONALD RANCH	Assoc Ph	702-933-7764	MasterPlan Fee	\$ 0
Assoc Fee 1	\$ 330 / Monthly	Earnest Deposit	\$50,000	Assessment	N	Assessmt Amt	
Assoc Fee 2		Ann Taxes	\$18,482	SID/LID Total		SID/LID Annual	
Financing Condt	Cash / Conventional					Existing Rent	
Sale Price	\$1,025,000	Sale Date	08/03/12	Seller Contribution	\$0	Days on Market	106
						Type of Loan	CONV

[View Live Mortgage Payments](#)

Presented by: Realty ONE Group, Inc.

Agent: Robert Meisner

GLVAR DEEMS INFORMATION RELIABLE BUT NOT GUARANTEED

Sold
PSF \$132

EXHIBIT C

From: Kelli Barrington <KBarrington@reoms1.com>
To: 'broseyb@aol.com' <broseyb@aol.com>
Subject: Offer - 590 Lairmont Place, Henderson
Date: Tue, Feb 28, 2013 10:24 am

Good Morning Mrs. Rosenberg ~

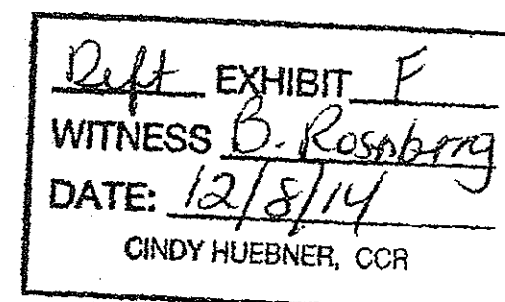
I apologize for the delayed response to your letter of intent for the 590 Lairmont Place property in Henderson, NV.

At this time, the seller is not ready to negotiate offers. We anticipate the completion of their due diligence and marketing preparations to be completed within the next few weeks at the latest.

I will be happy to contact you when they are ready to begin negotiations.

Thank you for your interest in this property.

Kelli Barrington
REO Management Services, Inc.
12443 San Jose Blvd., Suite 304
Jacksonville, FL 32223
904-292-9933
kbarrington@reoms1.com



PLTF3309
4/6/2014 APP00088

EXHIBIT D

From: broseyb <broseyb@aol.com>
To: kbarrington <kbarrington@reoms1.com>
Subject: 590 Lairmont from Barbara Rosenb erg
Date: Wed, Mar 6, 2013 7:25 pm

Hi, Kelly.

I left 3 messages at your office to call me as to the progress of Lairmont. I am worried that you are not getting the messages. Please get back to me at broseyb@aol.com or 310 378-1915. We would like to take the next step to acquire the property.

Thanks,
Barbara Rosenberg

<u>Deft</u>	EXHIBIT	<u>H</u>
WITNESS <u>B. Rosenberg</u>		
DATE: <u>12/8/14</u>		
CINDY HUEBNER, CCR		

EXHIBIT E

From: Kelli Barrington <KBarrington@reoms1.com>
To: 'broseyb@aol.com' <broseyb@aol.com>
Subject: RE: 590 Lairmont from Barbara Rosenb erg
Date: Thu, Mar 7, 2013 6:35 am

Hi Barbara ~

As we previously discussed, the seller needs to complete their due diligence and prepare to list the property. When we talked previously, I indicated that this process could take several weeks. The bank is finishing up and hopefully we can put you in touch with the realtor in order to get the negotiations moving. Due to the restrictions in this neighborhood, you will need to work with a realtor. I have received your messages. I apologize for not returning your calls immediately. But I do not have any new information for you yet. I will certainly get you in touch with the realtor as soon as possible.

Kelli Barrington

REO Management Services, Inc.

12443 San Jose Blvd., Suite 304

Jacksonville, FL 32223

904-292-9933

kbarrington@reoms1.com

From: broseyb@aol.com [mailto:broseyb@aol.com]
Sent: Wednesday, March 06, 2013 10:26 PM
To: Kelli Barrington
Subject: 590 Lairmont from Barbara Rosenb erg

Hi, Kelly.

I left 3 messages at your office to call me as to the progress of Lairmont. I am worried that you are not getting the messages. Please get back to me at broseyb@aol.com or 310 378-1915. We would like to take the next step to acquire the property.

Thanks,

Barbara Rosenberg

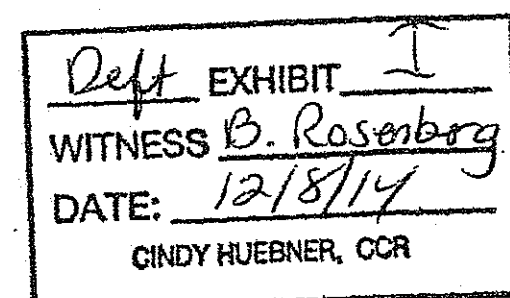


EXHIBIT F

From: Siobhan McGill <slobhanmcgill@gmail.com>
To: michael <michael@macdonaldhighlands.com>
Cc: broseyb <broseyb@aol.com>
Subject: Offer on 590 Lairmont
Date: Wed, Mar 13, 2013 12:24 pm
Attachments: 20130313121038357.pdf (1697K)

Dear Michael,
I spoke at length with Mr. Jim Venable about this property yesterday and today. Here is the offer as promised. PLEASE let us know if we end up in a multiple offer situation. My buyers are very serious and have no restrictions regarding seeing the interior as they walked it during the construction phase, (they are aware that there was a leak) and they will take property AS-IS. Please send confirmation of receipt and keep us informed. Thank you for this opportunity,
Siobhan McGill
Realty ONE Group

----- Forwarded message -----
From: <noreply@realtyonegroup.com>
Date: Wed, Mar 13, 2013 at 9:10 AM
Subject:
To: SiobhanM <slobhanmcgill@gmail.com>

This E-mail was sent from "RNPDF1855" (Aficio MP 6000).

Scan Date: 03.13.2013 12:10:38 (-0400)
Queries to: noreply@realtyonegroup.com



Siobhan McGill
Cell: (702) 349-5252
Fax: (702) 637-7210
SiobhanMcgill@gmail.com

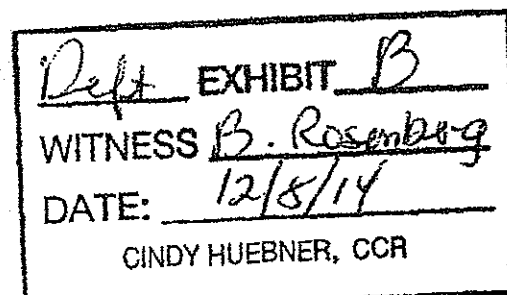


EXHIBIT G

870115/23



RESIDENTIAL PURCHASE AGREEMENT

(Joint Escrow Instructions and Earnest Money Receipt)

Date: March 13, 2013

1 Barbara and Fredric Rosenberg ("Buyer"), hereby offers to purchase
2 590 Laimont Place ("Property"),
3 within the city or unincorporated area of Henderson, County of Clark,
4 State of Nevada, Zip 89012, APN # 178-27-218-003 for the purchase price of \$ 2,160,000.00
5 (Two million one hundred sixty thousand dollars) ("Purchase Price") on the terms
6 and conditions contained herein:
7 BUYER ☒ does -OR- ☐ does not intend to occupy the Property as a residence.

Buyer's Offer

- 13 **1. FINANCIAL TERMS & CONDITIONS:**
14 \$ 325,000.00 A. EARNEST MONEY DEPOSIT ("EMD") is ☒ presented with this offer -OR- ☐
15 to escrow company within 24 hours of acceptance
16 (NOTE: It is a felony in the State of Nevada punishable by up to four years in prison and a \$5,000 fine to write a
17 check for which there are insufficient funds. NRS 193.130(2)(d).)
18
19 B. ADDITIONAL DEPOSIT to be placed in escrow on or before (date) _____. The
20 additional deposit ☐ will -OR- ☐ will not be considered part of the EMD. (Any conditions on this additional
21 deposit should be set forth in Section 2B herein.)
22
23 C. THIS AGREEMENT IS CONTINGENT UPON BUYER QUALIFYING FOR A NEW LOAN ON
24 THE FOLLOWING TERMS AND CONDITIONS:
25 ☐ Conventional, ☐ FHA, ☐ VA, ☒ Other (specify) CASH
26 Interest ☐ Fixed rate, _____ years -OR- ☐ Adjustable Rate, _____ years. Initial rate of interest not to
27 exceed _____ %, Initial monthly payment not to exceed \$ _____, not including taxes, insurance
28 and/or PMI or MIP.
29
30 D. THIS AGREEMENT IS CONTINGENT UPON BUYER QUALIFYING TO ASSUME THE
31 FOLLOWING EXISTING LOAN(S):
32 ☐ Conventional, ☐ FHA, ☐ VA, ☐ Other (specify) _____
33 Interest ☐ Fixed rate, _____ years -OR- ☐ Adjustable Rate, _____ years. Initial rate of interest not to
34 exceed _____ %, Monthly payment not to exceed \$ _____, not including taxes, insurance and/or PMI or MIP.
35
36 E. BUYER TO EXECUTE A PROMISSORY NOTE SECURED BY DEED OF TRUST PER TERMS
37 IN "FINANCING ADDENDUM."
38
39 F. BALANCE OF PURCHASE PRICE (Balance of Down Payment) in Good Funds to be paid prior to
40 Close of Escrow ("COE").
41
42 G. TOTAL PURCHASE PRICE (This price DOES NOT include closing costs, prorations, or other fees
43 and costs associated with the purchase of the Property as defined herein.)
44 \$ 2,160,000.00
45

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Barbara and Fredric Rosenberg

BUYER(S) INITIALS: B.R. F.R.

Property Address: 590 Laimont Place

SELLER(S) INITIALS: ML

Rev. 12/11

©2011 Greater Las Vegas Association of REALTORS®

Page 1 of 11

Deft EXHIBIT P
WITNESS B. Rosenberg
DATE: 12/8/14
CINDY HUEBNER, CCR

BANA000001

APP00096

JA_0328

1 2. **ADDITIONAL FINANCIAL TERMS & CONTINGENCIES:**

2 A. **NEW LOAN APPLICATION:** Within N/A business days of Acceptance, Buyer agrees to (1) submit a
3 completed loan application to a lender of Buyer's choice; (2) authorize ordering of the appraisal (per lender's requirements);
4 and (3) furnish a preapproval letter to Seller based upon a standard factual credit report and review of debt to income ratios. If
5 Buyer fails to complete any of these conditions within the applicable time frame, Seller reserves the right to terminate this
6 Agreement. In such event, both parties agree to cancel the escrow and return EMD to Buyer. Buyer

7 ☐ does -OR- ☐ does not

8 authorize lender to provide loan status updates to Seller's and Buyer's Brokers, as well as Escrow Officer. Buyer agrees to use
9 Buyer's best efforts to obtain financing under the terms and conditions outlined in this Agreement.

10 B. **CASH PURCHASE:** Within ONE business days of Acceptance, Buyer agrees to provide written evidence
11 from a bona fide financial institution of sufficient cash available to complete this purchase. If Buyer does not submit the
12 written evidence within the above period, Seller reserves the right to terminate this Agreement.

13 C. **APPRAISAL:** If an appraisal is required as part of this agreement, or requested by Buyer, and if the
14 appraisal is less than the Purchase Price, the transaction will go forward if (1) Buyer, at Buyer's option, elects to pay the
15 difference and purchase the Property for the Purchase Price, or (2) Seller, at Seller's option, elects to adjust the Purchase Price
16 accordingly, such that the Purchase Price is equal to the appraisal. If neither option (1) or (2) is elected, then Parties may
17 renegotiate; if renegotiation is unsuccessful, then either Party may cancel this Agreement upon written notice, in which event
18 the EMD shall be returned to Buyer.

19 3. **SALE OF OTHER PROPERTY:**

20 This Agreement

21 ☒ is not -OR-

22 ☐ is contingent upon the sale (and closing) of another property which address is

23 Said Property

24 ☐ is currently listed

25 ☐ is not -OR- ☐ is

26 presently in escrow with

27 Escrow Number: Proposed Closing Date:

28 When Buyer has accepted an offer on the sale of this other property, Buyer will promptly deliver a written notice of the sale to
29 Seller. If Buyer's escrow on this other property is terminated, abandoned, or does not close on time, this Agreement will
30 terminate without further notice unless the parties agree otherwise in writing. If Seller accepts a bona fide written offer from a
31 third party prior to Buyer's delivery of notice of acceptance of an offer on the sale of Buyer's property, Seller shall give Buyer
32 written notice of that fact. Within three (3) days of receipt of the notice, Buyer will waive the contingency of the sale and
33 closing of Buyer's other property, or this Agreement will terminate without further notice. In order to be effective, the waiver
34 of contingency must be accompanied by reasonable evidence that funds needed to close escrow will be available and Buyer's
35 ability to obtain financing is not contingent upon the sale and/or close of any other property.

36 4. **FIXTURES AND PERSONAL PROPERTY:** The following items will be transferred, free of liens, with the sale of
37 the Property with no real value unless stated otherwise herein. Unless an item is covered under Section 7(B) of this Agreement,
38 all items are transferred in an "AS IS" condition.

39 A. **ALL EXISTING** fixtures and fittings including, but not limited to: electrical, mechanical, lighting, plumbing
40 and heating fixtures, ceiling fan(s), fireplace insert(s), gas logs and grates, solar power system(s), built-in appliance(s),
41 window and door screens, awnings, shutters, window coverings, attached floor covering(s), television antenna(s),
42 satellite dish(s), private integrated telephone systems, air coolers/conditioner(s), pool/spa equipment, garage door
43 opener(s)/remote control(s), mailbox, in-ground landscaping, trees/shrub(s), water softener(s), water purifiers, security
44 systems/alarm(s);

45 B. The following additional items of personal property: Per MLS listing terms

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a
particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Barbara and Fredric Rosenberg

BUYER(S) INITIALS: [Signature]

Property Address: 590 Lairmont Place Henderson, NV 89012

SELLER(S) INITIALS: [Signature]

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1 5. ESCROW:

2 A. OPENING OF ESCROW: The purchase of the Property shall be consummated through Escrow
3 ("Escrow"). Opening of Escrow shall take place by the end of one (1) business day after execution of this Agreement
4 ("Opening of Escrow"), at seller's choice _____ title or escrow company ("Escrow Company" or
5 "ESCROW HOLDER") with _____ ("Escrow Officer") (or such other escrow officer as
6 Escrow Company may assign). Opening of Escrow shall occur upon Escrow Company's receipt of this fully accepted
7 Agreement and receipt of the EMD (if applicable). ESCROW HOLDER is instructed to notify the Parties (through their
8 respective Brokers) of the opening date and the Escrow Number.

9
10 B. EARNEST MONEY: Upon Acceptance, Buyer's EMD as shown in Section 1(A), and 1(B) if applicable, of
11 this Agreement, shall be deposited per the Earnest Money Receipt Notice and Instructions contained herein.

12
13 C. CLOSE OF ESCROW: Close of Escrow ("COE") shall be on (date) 4/30/2013 or sooner
14 If the designated date falls on a weekend or holiday, COE shall be the next business day.

15
16 D. IRS DISCLOSURE: Seller is hereby made aware that there is a regulation which became effective January
17 1, 1987, that requires all ESCROW HOLDERS to complete a modified 1099 form, based upon specific information known
18 only between parties in this transaction and the ESCROW HOLDER. Seller is also made aware that ESCROW HOLDER is
19 required by federal law to provide this information to the Internal Revenue Service after COE in the manner prescribed by
20 federal law.

21
22 E. FIRPTA: If applicable (as designated in the Seller's Response herein), Seller agrees to complete, sign, and
23 deliver to ESCROW HOLDER a certificate indicating whether Seller is a foreign person or a nonresident alien pursuant to the
24 Foreign Investment in Real Property Tax Act (FIRPTA). A foreign person is a nonresident alien individual; a foreign
25 corporation not treated as a domestic corporation; or a foreign partnership, trust or estate. A resident alien is not considered a
26 foreign person under FIRPTA. Additional information for determining status may be found at www.irs.gov. Buyer and Seller
27 understand that if Seller is a foreign person then the Buyer must withhold a tax in an amount to be determined by ESCROW
28 HOLDER in accordance with FIRPTA, unless an exemption applies. Seller agrees to sign and deliver to the ESCROW
29 HOLDER the necessary documents, to be provided by the ESCROW HOLDER, to determine if withholding is required. (See
30 26 USC Section 1445).

31
32 6. TITLE INSURANCE: Upon COE, Buyer will be provided with the following type of title insurance policy:
33 ☐ CLTA; ☒ ALTA-Residential; OR ☐ ALTA-Extended (including a survey, if required).

34
35 7. PRORATIONS, FEES AND EXPENSES (Check appropriate box):

36 A. TITLE AND ESCROW FEES:

37 TYPE	PAID BY SELLER	PAID BY BUYER	50/50	N/A
38 Escrow Fees	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
39 Lender's Title Policy	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
40 Owner's Title Policy	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
41 Real Property Transfer Tax	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
42 Other: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

43
44 B. PRORATIONS:

45 TYPE	PAID BY SELLER	PRORATE	N/A
46 CIC (Common Interest Community) Assessments	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
47 CIC Periodic Fees	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
48 SIDs / LIDs / Bonds / Assessments	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
49 Sewer Use Fees	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
50 Trash Service Fees	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
51 Real Property Taxes	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
52 Other: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

53
54 All prorations will be based on a 30-day month and will be calculated as of COE. Prorations will be based upon figures
55 available at closing. Any supplements or adjustments that occur after COE will be handled by the parties outside of Escrow.

56
57 Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a
particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Barbara and Fredric Rosenberg

BUYER(S) INITIALS: [Signature]

Property Address: 590 Leimont Place Henderson, NV 89012

SELLER(S) INITIALS: [Signature]

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1 C. INSPECTIONS AND RELATED EXPENSES (See also Section 12): Acceptance of this offer is subject to
 2 the following reserved right. Buyer may have the Property inspected and select the licensed contractors, certified building
 3 inspectors and/or other qualified professionals who will inspect the Property. Seller will ensure that necessary utilities (gas,
 4 power and water) are turned on and supplied to the Property within two (2) business days after execution of this Agreement, to
 5 remain on until COB. (It is strongly recommended that Buyer retain licensed Nevada professionals to conduct inspections.)

6	TYPE	PAID BY SELLER	PAID BY BUYER	50/50	WAIVED	N/A
7	Appraisal	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8	CIC Capital Contribution	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9	CIC Transfer Fees	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10	CLUE Report ordered by Seller	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11	Energy Audit	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12	Fungal Contaminant Inspection	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13	Home Inspection	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14	Mechanical Inspection	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
15	Oil Tank Inspection	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
16	Pool/Spa Inspection	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
17	Roof Inspection	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
18	Septic Inspection (requires pumping)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
19	Septic Lid Removal	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
20	Septic Pumping	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
21	Soils Inspection	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
22	Structural Inspection	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
23	Survey (Type)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
24	Termite/Pest Inspection	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
25	Well Inspection (Quantity)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
26	Well Inspection (Quality)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
27	Wood-Burning Device/Chimney Inspection	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
28	(includes cleaning)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
29	Other:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
30	Re-Inspections	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

32 If any inspection is not completed and requested repairs are not delivered to Seller within the Due Diligence Period, Buyer is
 33 deemed to have waived the right to that inspection and Seller's liability for the cost of all repairs that inspection would have
 34 reasonably identified had it been conducted, except as otherwise provided by law. The foregoing expenses for inspections will
 35 be paid outside of Escrow unless the Parties present instructions to the contrary prior to COB (along with the applicable
 36 invoice).

37 D. CERTIFICATIONS: Notwithstanding the elections below, in the event an inspection reveals problems with any
 38 of the foregoing, Buyer reserves the right to require a certification.

41	TYPE	PAID BY SELLER	PAID BY BUYER	50/50	WAIVED
42	Fungal Contaminant	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
43	Roof	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
44	Septic	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
45	Well	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
46	Wood-Burning Device/Chimney Certification	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
47	Other:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

49 The foregoing expenses for certifications will be paid outside of Escrow unless the Parties present instructions to the contrary
 50 prior to COB (along with the applicable invoice). A certification is not a warranty.

51 E. SELLER'S ADDITIONAL COSTS AND LIMIT OF LIABILITY: Seller agrees to pay a maximum
 52 amount of \$ 2500 to correct defects and/or requirements disclosed by inspection reports, appraisals,
 53 and/or certifications. It is Buyer's responsibility to inspect the Property sufficiently as to satisfy Buyer's use. Buyer reserves
 54 the right to request additional repairs, which may exceed the above-stated amount, based upon the Seller's Real Property
 55

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a
 particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Barbara and Fredric Rosenberg

BUYER(S) INITIALS: BR

Property Address: 590 Laimont Place Henderson, NV 89012

SELLER(S) INITIALS: MR

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APP00099

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1 Disclosure or items which materially affect value or use of the Property revealed by an inspection, certification or appraisal.
2 Items of a general maintenance or cosmetic nature which do not materially affect value or use of the Property, which existed at
3 the time of Acceptance and which are not expressly addressed in this Agreement are deemed accepted by the Buyer, except as
4 otherwise provided in this section. The Brokers herein have no responsibility to assist in the payment of any repair, correction
5 or deferred maintenance on the Property which may have been revealed by the above inspections, agreed upon by the Buyer
6 and Seller or requested by one party.

7
8 **F. LENDER AND CLOSING FEES:** In addition to Seller's expenses above, Seller will contribute
9 \$ zero to Buyer's Lender's Fees and/or Buyer's Title and Escrow Fees ☐ including -OR- ☐ excluding
10 costs which Seller must pay pursuant to loan program requirements. Different loan types (e.g., FHA, VA, conventional) have
11 different appraisal and financing requirements, which will affect the parties' rights and costs under this Agreement.

12
13 **G. HOME PROTECTION PLAN:** Buyer and Seller acknowledge that they have been made aware of Home
14 Protection Plans that provide coverage to Buyer after COB. Buyer ☐ waives -OR- ☒ requires a Home Protection Plan with
15 ☐ Seller -OR- ☒ Buyer will pay for the Home Protection
16 Plan at a price not to exceed \$ 190.00. Buyer will order the Home Protection Plan. Neither Seller nor Brokers make
17 any representation as to the extent of coverage or deductibles of such plans. ESCROW HOLDER is not responsible for
18 ordering the Home Protection Plan.

19
20 **H. TRANSFER OF TITLE:** Upon COB, Buyer shall tender to Seller the agreed upon Purchase Price, and Seller shall
21 tender to Buyer marketable title to the Property free of all encumbrances other than (1) current real property taxes,
22 (2) covenants, conditions and restrictions (CC&R's) and related restrictions, (3) zoning or master plan restrictions and public
23 utility easements; and (4) obligations assumed and encumbrances accepted by Buyer prior to COB. Buyer is advised the
24 Property may be reassessed after COB which may result in a real property tax increase or decrease.

25
26 **I. COMMON-INTEREST COMMUNITIES:** If the Property is subject to a Common Interest Community ("CIC"),
27 Seller or his authorized agent shall request the CIC documents and certificate listed in NRS 116.4109 (collectively, the "resale
28 package") within two (2) business days of Acceptance and provide the same to Buyer within one (1) business day of Seller's
29 receipt thereof. Buyer may cancel this Agreement without penalty until midnight of the fifth (5th) calendar day following the
30 date of receipt of the resale package. If Buyer does not receive the resale package within fifteen (15) calendar days of
31 Acceptance, this Agreement may be cancelled in full by Buyer without penalty. If Buyer elects to cancel this Agreement
32 pursuant to this section, he must deliver, via hand delivery or prepaid U.S. mail, a written notice of cancellation to Seller or his
33 authorized agent identified in the Confirmation of Representation at the end of this Agreement. Upon such written cancellation,
34 Buyer shall promptly receive a refund of the EMD. The parties agree to execute any documents requested by ESCROW
35 HOLDER to facilitate the refund. If written cancellation is not received within the specified time period, the resale package
36 will be deemed approved. Seller shall pay all outstanding CIC fines or penalties at COB.

37
38 **J. DISCLOSURES:** Within five (5) calendar days of Acceptance of this Agreement, Seller will provide the
39 following Disclosures and/or documents (each of which is incorporated herein by this reference). Check applicable boxes.

- 40 ☐ Construction Defect Claims Disclosure, if Seller has marked "Yes" to Paragraph 1(d) of the
41 Seller Real Property Disclosure Form (NRS 40.688)
42 ☐ Fungal (Mold) Notice Form (not required by Nevada law)
43 ☐ Lead-Based Paint Disclosure and Acknowledgment, required if constructed before 1978 (24 CFR 745.113)
44 ☐ Pest Notice Form (not required by Nevada law)
45 ☐ Promissory Note and the most recent monthly statement of all loans to be assumed by Buyer
46 ☐ Open Range Disclosure (NRS 113.065)
47 ☒ Seller Real Property Disclosure Form (NRS 113.130)
48 ☐ Other (list) _____

49
50
51 Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a
particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Barbara and Fredric Rosenberg

BUYER(S) INITIALS: [Signature]

Property Address: 590 Laimont Place Henderson, NV 89012

SELLER(S) INITIALS: [Signature]

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APP00100

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11. ADDITIONAL DISCLOSURES:

A. LICENSEE DISCLOSURE OF INTEREST (BUYER): Pursuant to NRS 645.252(1)(c), a real estate licensee must disclose if he/she is a principal in a transaction or has an interest in a principal to the transaction. Barbara Rosenberg is a licensed real estate agent in the State(s) of California, and has the following interest, direct or indirect, in this transaction: ☒ Principal (Buyer) -OR- ☐ family or firm relationship with Buyer or ownership interest in Buyer (if Buyer is an entity); (specify relationship) _____

B. In addition, for NEW CONSTRUCTION, to the extent applicable, Seller will provide: Public Offering Statement (NRS 116.4108); Electric Transmission Lines (NRS 119.1835); Public Services and Utilities (NRS 119.183); Initial Purchaser Disclosure (NRS 113); Construction Recovery Fund (NRS 624); Gaming Corridor (NRS 113.070); Water/Sewage (NRS 113.060); Impact Fees (NRS 278B.320); Surrounding Zoning Disclosure (NRS 113.070); FTC Insulation Disclosure (16 CFR 460.16); and Other: _____

C. AIRPORT NOISE: Buyer hereby acknowledges the proximity of various overflight patterns, airports (municipal, international, military and/or private) and helipads. Buyer also fully understands that existing and future noise levels at this location, associated with existing and future airport operations, may affect the livability, value and suitability of the Property for residential use. Buyer also understands that these airports have been at their present location for many years, and that future demand and airport operations may increase significantly. For further information, contact your local department of aviation or the Federal Aviation Administration.

D. FEDERAL FAIR HOUSING COMPLIANCE AND DISCLOSURES: All properties are offered without regard to race, color, religion, sex, national origin, ancestry, handicap or familial status and any other current requirements of federal or state fair housing law.

12. BUYER'S DUE DILIGENCE:

A. DUE DILIGENCE PERIOD: Buyer shall have 12 calendar days from Acceptance to complete Buyer's Due Diligence. Buyer shall ensure that all inspections and certifications are initiated in a timely manner as to complete the Due Diligence in the time outlined herein. (If utilities are not supplied by the deadline referenced herein or if the disclosures are not delivered to Buyer by the deadline referenced herein, then Buyer's Due Diligence Period will be extended by the same number of calendar days that Seller delayed supplying the utilities or delivering the disclosures, whichever is longer.) During this period Buyer shall have the exclusive right at Buyer's discretion to cancel this Agreement. In the event of such cancellation, unless otherwise agreed herein, the EMD will be refunded to Buyer. If Buyer provides Seller with notice of objections, the Due Diligence Period will be extended by the same number of calendar days that it takes Seller to respond in writing to Buyer's objections. If Buyer fails to cancel this Agreement within the Due Diligence Period (as it may be extended), Buyer will be deemed to have waived the right to cancel under this section.

B. PROPERTY INSPECTION/CONDITION: During the Due Diligence Period, Buyer shall take such action as Buyer deems necessary to determine whether the Property is satisfactory to Buyer including, but not limited to, whether the Property is insurable to Buyer's satisfaction, whether there are unsatisfactory conditions surrounding or otherwise affecting the Property (such as location of flood zones, airport noise, noxious fumes or odors, environmental substances or hazards, whether the Property is properly zoned, locally to freeways, railroads, places of worship, schools, etc.) or any other concerns Buyer may have related to the Property. During such Period, Buyer shall have the right to have non-destructive inspections of all structural, roofing, mechanical, electrical, plumbing, heating/air conditioning, water/well/septic, pool/spa, survey, square footage, and any other property or systems, through licensed and bonded contractors or other qualified professionals. Seller agrees to provide reasonable access to the Property to Buyer and Buyer's inspectors. Buyer agrees to indemnify and hold Seller harmless with respect to any injuries suffered by Buyer or third parties present at Buyer's request while on Seller's Property conducting such inspections, tests or walk-throughs. Buyer's indemnity shall not apply to any injuries suffered by Buyer or third parties present at Buyer's request that are the result of an intentional tort, gross negligence or any misconduct or omission by Seller, Seller's Agent or other third parties on the Property. Buyer is advised to consult with appropriate professionals regarding neighborhood or Property conditions, including but not limited to: schools; proximity and adequacy of law enforcement; proximity to commercial, industrial, or agricultural activities; crime statistics; fire protection; other governmental services; existing and proposed transportation; construction and development; noise or odor from any source; and other nuisances, hazards or circumstances. If Buyer cancels this Agreement due to a specific inspection report, Buyer shall provide Seller at the time of cancellation with a copy of the report containing the name, address, and telephone number of the inspector.

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Barbara and Fredric Rosenberg

BUYER(S) INITIALS: BR

Property Address: 590 Laimont Place Henderson, NV 89012

SELLER(S) INITIALS: ML

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APP00101

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1 C. PRELIMINARY TITLE REPORT: Within ten (10) business days of Opening of Escrow, Title Company
2 shall provide Buyer with a Preliminary Title Report ("PTR") to review, which must be approved or rejected within five (5)
3 business days of receipt thereof. If Buyer does not object to the PTR within the period specified above, the PTR shall be
4 deemed accepted. If Buyer makes an objection to any item(s) contained within the PTR, Seller shall have five (5) business
5 days after receipt of objections to correct or address the objections. If, within the time specified, Seller fails to have each such
6 exception removed or to correct each such other matter as aforesaid, Buyer shall have the option to: (a) terminate this
7 Agreement by providing notice to Seller and Escrow Officer, entitling Buyer to a refund of the EMD or (b) elect to accept title
8 to the Property as is. All title exceptions approved or deemed accepted are hereafter collectively referred to as the "Permitted
9 Exceptions."

10
11 13. WALK-THROUGH INSPECTION OF PROPERTY: Buyer is entitled under this Agreement to a walk-through of
12 the Property within 3 calendar days prior to COE to ensure the Property and all major systems, appliances,
13 heating/cooling, plumbing and electrical systems and mechanical fixtures are as stated in Seller's Real Property Disclosure
14 Statement, and that the Property and improvements are in the same general condition as when this Agreement was signed by
15 Seller and Buyer. To facilitate Buyer's walk-through, Seller is responsible for keeping all necessary utilities on. If any
16 systems cannot be checked by Buyer on walk-through due to non-access or no power/gas/water, then Buyer reserves the right
17 to hold Seller responsible for defects which could not be detected on walk-through because of lack of such access or
18 power/gas/water. The purpose of the walk-through is to confirm (a) the Property is being maintained (b) repairs, if any, have
19 been completed as agreed, and (c) Seller has complied with Seller's other obligations. If Buyer elects not to conduct a walk-
20 through inspection prior to COE, then all systems, items and aspects of the Property are deemed satisfactory, and Buyer
21 releases Seller's liability for costs of any repair that would have reasonably been identified by a walk-through inspection,
22 except as otherwise provided by law.

23
24 14. DELIVERY OF POSSESSION: Seller shall deliver the Property along with any keys, alarm codes, garage door
25 opener/controls and, if freely transferable, parking permits and gate transponders outside of Escrow, upon COE. Seller agrees
26 to vacate the Property and leave the Property in a neat and orderly, broom-clean condition and tender possession no later than
27 COE-OR- ☐ . In the event Seller does not vacate the Property by this time, Seller shall be
28 considered a trespasser and shall be liable to Buyer for the sum of \$ 150.00 per calendar day in addition to
29 Buyer's legal and equitable remedies. Any personal property left on the Property after the date indicated in this section shall be
30 considered abandoned by Seller.

31
32 15. RISK OF LOSS: Risk of loss shall be governed by NRS 113.040. This law provides generally that if all or any
33 material part of the Property is destroyed before transfer of legal title or possession, Seller cannot enforce the Agreement and
34 Buyer is entitled to recover any portion of the sale price paid. If legal title or possession has transferred, risk of loss shall shift
35 to Buyer.

36
37 16. ASSIGNMENT OF THIS AGREEMENT: Unless otherwise stated herein, this Agreement is non-assignable by
38 Buyer.

39
40 17. CANCELLATION OF AGREEMENT: In the event this Agreement is properly cancelled in accordance with the
41 terms contained herein, then Buyer will be entitled to a refund of the EMD. Neither Buyer nor Seller will be reimbursed for any
42 expenses incurred in conjunction with due diligence, inspections, appraisals or any other matters pertaining to this transaction
43 (unless otherwise provided herein).

44
45 18. DEFAULT:

46
47 A. MEDIATION: Before any legal action is taken to enforce any term or condition under this Agreement, the
48 parties agree to engage in mediation, a dispute resolution process, through GLVAR. Notwithstanding the foregoing,
49 in the event the Buyer finds it necessary to file a claim for specific performance, this section shall not apply.

50
51 B. IF SELLER DEFAULTS: If Seller defaults in performance under this Agreement, Buyer reserves all legal
52 and/or equitable rights (such as specific performance) against Seller, and Buyer may seek to recover Buyer's actual
53 damages incurred by Buyer due to Seller's default.

54
55 Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a
56 particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Barbara and Fredric Rosenberg

BUYER(S) INITIALS: Bar F

Property Address: 590 Leimont Place Henderson, NV 89012

SELLER(S) INITIALS: MR

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APP00102

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1 C. IF BUYER DEFAULTS: If Buyer defaults in performance under this Agreement, Seller shall have one of the
2 following legal remedies against Buyer (initial one only):

3
4 [] [] As Seller's sole legal recourse, Seller may retain, as liquidated damages, the EMD. In this
5 respect, the Parties agree that Seller's actual damages would be difficult to measure and that the EMD is in fact a
6 reasonable estimate of the damages that Seller would suffer as a result of Buyer's default. Seller understands that any
7 additional deposit not considered part of the EMD in Section 1(B) herein will be immediately released by ESCROW
8 HOLDER to Buyer.

9 -OR-

10 [] [] Seller shall have the right to recover from Buyer all of Seller's actual damages that Seller may
11 suffer as a result of Buyer's default including, but not limited to, commissions due, expenses incurred until the
12 Property is sold to a third party and the difference in the sales price.
13

Instructions to Escrow

14
15 19. ESCROW: If this Agreement or any matter relating hereto shall become the subject of any litigation or controversy,
16 Buyer and Seller agree, jointly and severally, to hold ESCROW HOLDER harmless from any loss or expense, except
17 losses or expenses as may arise from ESCROW HOLDER'S negligence or willful misconduct. If conflicting demands are
18 made or notices served upon ESCROW HOLDER with respect to this Agreement, the parties expressly agree that Escrow is
19 entitled to file a suit in interpleader and obtain an order from the Court authorizing ESCROW HOLDER to deposit all such
20 documents and monies with the Court, and obtain an order from the Court requiring the parties to interplead and litigate their
21 several claims and rights among themselves. Upon the entry of an order authorizing such interpleader, ESCROW HOLDER
22 shall be fully released and discharged from any obligations imposed upon it by this Agreement, and ESCROW HOLDER shall
23 not be liable for the sufficiency or correctness as to form, manner, execution or validity of any instrument deposited with it, nor
24 as to the identity, authority or rights of any person executing such instrument, nor for failure of Buyer or Seller to comply with
25 any of the provisions of any agreement, contract or other instrument filed with ESCROW HOLDER or referred to herein.
26 ESCROW HOLDER'S duties hereunder shall be limited to the safekeeping of all monies, instruments or other documents
27 received by it as ESCROW HOLDER, and for their disposition in accordance with the terms of this Agreement in the event
28 an action is instituted in connection with this escrow, in which ESCROW HOLDER is named as a party or is otherwise
29 compelled to make an appearance, all costs, expenses, attorney fees, and judgments ESCROW HOLDER may expend or incur
30 in said action, shall be the responsibility of the parties hereto.
31

32 20. UNCLAIMED FUNDS: In the event that funds from this transaction remain in an account, held by ESCROW
33 HOLDER, for such a period of time that they are deemed "abandoned" under the provisions of Chapter 120A of the Nevada
34 Revised Statutes, ESCROW HOLDER is hereby authorized to impose a charge upon the dormant escrow account. Said charge
35 shall be no less than \$5.00 per month and may not exceed the highest rate of charge permitted by statute or regulation.
36 ESCROW HOLDER is further authorized and directed to deduct the charge from the dormant escrow account for as long as the
37 funds are held by ESCROW HOLDER.
38

Brokers

39
40 21. BROKER FEES: Buyer herein requires, and Seller agrees, as a condition of this Agreement, that Seller will pay
41 Listing Broker and Buyer's Broker, who becomes by this clause a third party beneficiary to this Agreement, that certain sum
42 and/or percentage of the Purchase Price (commission), that Seller, or Seller's Broker, offered for the procurement of ready,
43 willing and able Buyer via the Multiple Listing Service, any other advertisement or written offer. Seller understands and
44 agrees that if Seller defaults hereunder, Buyer's Broker, as a third-party beneficiary of this Agreement, has the right to pursue
45 all legal recourse against Seller for any commission due. In addition to any amount due to Buyer's Broker from Seller or
46 Seller's Broker, Buyer ☐ will -OR- ☒ will not pay Buyer's Broker additional compensation in an amount determined
47 between the Buyer and Buyer's Broker.
48

49 22. WAIVER OF CLAIMS: Buyer and Seller agree that they are not relying upon any representations made by Brokers
50 or Broker's agent. Buyer acknowledges that at COE, the Property will be sold AS-IS, WHERE-IS without any representations
51 or warranties, unless expressly stated herein. Buyer agrees to satisfy himself, as to the condition of the Property, prior to COE.
Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a
particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Barbara and Fredric Rosenberg

BUYER(S) INITIALS: BR

Property Address: 590 Laimont Place Henderson, NV 89012

SELLER(S) INITIALS: FR

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APP00103

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1 Buyer acknowledges that any statements of acreage or square footage by Brokers are simply estimates, and Buyer agrees to
2 make such measurements, as Buyer deems necessary, to ascertain actual acreage or square footage. Buyer waives all claims
3 against Brokers or their agents for (a) defects in the Property; (b) inaccurate estimates of acreage or square footage; (c)
4 environmental waste or hazards on the Property; (d) the fact that the Property may be in a flood zone; (e) the Property's
5 proximity to freeways, airports or other nuisances; (f) the zoning of the Property; (g) tax consequences; or (h) factors related to
6 Buyer's failure to conduct walk-throughs or inspections. Buyer assumes full responsibility for the foregoing and agrees to
7 conduct such tests, walk-throughs, inspections and research, as Buyer deems necessary. In any event, Broker's liability is
8 limited, under any and all circumstances, to the amount of that Broker's commission/fee received in this transaction.

9 Other Matters

10
11 23. **DEFINITIONS:** "Acceptance" means the date that both parties have consented to and received a final, binding
12 contract by affixing their signatures to this Agreement and all counterparts. "Agent" means a licensee working under a Broker
13 or licensee working under a developer. "Agreement" includes this document as well as all accepted counterparts and
14 addenda. "Bona Fide" means genuine. "Buyer" means one or more individuals or the entity that intends to purchase the
15 Property. "Broker" means the Nevada licensed real estate broker listed herein representing Seller and/or Buyer (and all real
16 estate agents associated therewith). "Business Day" excludes Saturdays, Sundays, and legal holidays. "Calendar Day" means
17 a calendar day from/to midnight unless otherwise specified. "CFR" means the Code of Federal Regulations. "CIC" means
18 Common Interest Community (formerly known as "HOA" or homeowners associations). "CIC Capital Contribution" means
19 a one-time non-administrative fee, cost or assessment charged by the CIC upon change of ownership. "CIC Transfer Fee"
20 means the administrative service fee charged by a CIC to transfer ownership records. "CLUE" means Comprehensive Loss
21 Underwriting Exchange. "Close of Escrow (COE)" means the time of recordation of the deed in Buyer's name. "Default"
22 means the failure of a Party to observe or perform any of its material obligations under this Agreement. "Delivered" means
23 personally delivered to Parties or respective Agents, transmitted by facsimile machine, electronic means, overnight delivery, or
24 mailed by regular mail. "Down Payment" is the Purchase Price less loan amount(s). "EMD" means Buyer's earnest money
25 deposit. "Escrow Holder" means the neutral party that will handle the escrow. "FHA" is the U.S. Federal Housing
26 Administration. "GLVAR" means the Greater Las Vegas Association of REALTORS®, "Good Funds" means an acceptable
27 form of payment determined by ESCROW HOLDER in accordance with NRS 645A.171. "IRC" means the Internal Revenue
28 Code (tax code). "LID" means Limited Improvement District. "N/A" means not applicable. "NAC" means Nevada
29 Administrative Code. "NRS" means Nevada Revised Statutes as Amended. "Party" or "Parties" means Buyer and Seller.
30 "PITI" means principal, interest, taxes, and hazard insurance. "PMI" means private mortgage insurance. "PST" means
31 Pacific Standard Time, and includes daylight savings time if in effect on the date specified. "PTR" means Preliminary Title
32 Report. "Property" means the real property and any personal property included in the sale as provided herein. "Receipt"
33 means delivery to the party or the party's agent. "Seller" means one or more individuals or the entity that is the owner of the
34 Property. "SID" means Special Improvement District. "Title Company" means the company that will provide title insurance.
35 "USC" is the United States Code. "VA" is the Veterans Administration.

36 24. SIGNATURES, DELIVERY, AND NOTICES:

37 A. This Agreement may be signed by the parties on more than one copy, which, when taken together, each
38 signed copy shall be read as one complete form. This Agreement (and documents related to any resulting transaction) may be
39 signed by the parties manually or digitally. Facsimile signatures may be accepted as original.

40 B. Delivery of all instruments or documents associated with this Agreement shall be delivered to the Agent for
41 Seller or Buyer if represented.

42 C. Except as otherwise provided in Section 9, when a Party wishes to provide notice as required in this
43 Agreement, such notice shall be sent regular mail, personal delivery, by facsimile, overnight delivery and/or by email to the
44 Agent for that Party. The notification shall be effective when postmarked, received, faxed, delivery confirmed, and/or read
45 receipt confirmed in the case of email. Any cancellation notice shall be contemporaneously faxed to Escrow.

46 25. **IRC 1031 EXCHANGE:** Seller and/or Buyer may make this transaction part of an IRC 1031 exchange. The party
47 electing to make this transaction part of an IRC 1031 exchange will pay all additional expenses associated therewith, at no cost
48 to the other party. The other party agrees to execute any and all documents necessary to effectuate such an exchange.

49 Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a
50 particular paragraph is otherwise modified by addendum or counteroffer.

51 Buyer's Name: Barbara and Fredric Rosenberg

BUYER(S) INITIALS: [Signature]

Property Address: 590 Laimont Place Henderson, NV 89012

SELLER(S) INITIALS: [Signature]

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APP00104

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1 26. OTHER ESSENTIAL TERMS: Time is of the essence. No change, modification or amendment of this Agreement
2 shall be valid or binding unless such change, modification or amendment shall be in writing and signed by each party. This
3 Agreement will be binding upon the heirs, beneficiaries and devisees of the parties hereto. This Agreement is executed and
4 intended to be performed in the State of Nevada, and the laws of that state shall govern its interpretation and effect. The parties
5 agree that the county and state in which the Property is located is the appropriate forum for any action relating to this
6 Agreement. Should any party hereto retain counsel for the purpose of initiating litigation to enforce or prevent the breach of
7 any provision hereof, or for any other judicial remedy, then the prevailing party shall be entitled to be reimbursed by the losing
8 party for all costs and expenses incurred thereby, including, but not limited to, reasonable attorneys fees and costs incurred by
9 such prevailing party.

10
11 THIS IS A LEGALLY BINDING CONTRACT. All parties are advised to seek independent legal and tax advice to review
12 the terms of this Agreement.

13
14 NO REAL ESTATE BROKER/AGENT MAY SIGN FOR A PARTY TO THIS AGREEMENT UNLESS THE
15 BROKER OR AGENT HAS A PROPERLY EXECUTED POWER OF ATTORNEY TO DO SO.

16
17 THIS FORM HAS BEEN APPROVED BY THE GREATER LAS VEGAS ASSOCIATION OF REALTORS®
18 (GLVA®). NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY
19 PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO
20 ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN
21 APPROPRIATE PROFESSIONAL.

22
23 This form is available for use by the real estate industry. It is not intended to identify the user as a REALTOR®.
24 REALTOR® is a registered collective membership mark which may be used only by members of the NATIONAL
25 ASSOCIATION OF REALTORS® who subscribe to its Code of Ethics.

26
27 27. ADDENDUM(S) ATTACHED: _____

28 _____

29 _____

30 28. ADDITIONAL TERMS: _____

31 _____

32 _____

33 _____

34 _____

35 _____

36 _____

37 _____

38 _____

39 _____

Earnest Money Receipt

40
41 BUYER'S AGENT ACKNOWLEDGES RECEIPT FROM BUYER HEREIN of the sum of \$ 325,000.00
42 evidenced by ☐ Cash, ☐ Cashier's Check, ☒ Personal Check, or ☐ Other _____
43 payable to _____, Upon Acceptance, Earnest Money to be deposited within ONE (1) business
44 day, with ☒ Escrow Holder, ☐ Buyer's Broker's Trust Account, - OR - ☐ Seller's Broker's Trust Account.
45
46 Date: March 12, 2011 Signed: [Signature] Buyer's Agent: Stacy McGill

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a
particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Barbara and Fredric Rosenberg

BUYER(S) INITIALS: [Signature]

Property Address: 580 Leimont Place

SELLER(S) INITIALS: [Signature]

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APP00105

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Buyer's Acknowledgement of Offer

Upon Acceptance, Buyer agrees to be bound by each provision of this Agreement, and all signed addenda, disclosures, and attachments.

Buyer's Signature: [Signature] Buyer's Printed Name: Barbara Rosenberg Date: 3/13/13 Time: ☐ AM ☐ PM

Buyer's Signature: [Signature] Buyer's Printed Name: Fredric Rosenberg Date: 3/13/13 Time: ☐ AM ☐ PM

Seller must respond by: ☐ AM ☐ PM on (month) , (day) , (year) . Unless this Agreement is accepted, rejected or countered below and delivered to the Buyer's Broker before the above date and time, this offer shall lapse and be of no further force and effect.

Confirmation of Representation: The Buyer is represented in this transaction by:

Buyer's Broker: Kathryn Boyard Agent's Name: Stobhan McGill
 Company Name: Realty ONE Group Agent's Public ID: 214400
 Phone: 702-898-7575 Office Address: 2691 St. Rose Parkway # 100
 Email: stobhanmcgill@gmail.com City, State, Zip: Henderson, NV 89052
 Fax: 702-897-7210

Seller's Response

☐ ACCEPTANCE: Seller(s) acknowledges that he/she accepts and agrees to be bound by each provision of this Agreement, and all signed addenda, disclosures, and attachments.

☐ COUNTER OFFER: Seller accepts the terms of this Agreement subject to the attached Counter Offer #1.

☐ REJECTION: In accordance with NAC 645.632, Seller hereby informs Buyer the offer presented herein is not accepted.

FIRPTA DECLARATION: Pursuant to Section 5.B, herein, Seller declares that he/she

☐ is not OR-

☐ is a foreign person therefore subjecting this transaction to FIRPTA withholding.

Seller's Signature: [Signature] Seller's Printed Name: Mark Lumbert Date: 3/13 Time: 3:33 ☐ AM ☐ PM

Seller's Signature: Seller's Printed Name: Date: Time: ☐ AM ☐ PM

Confirmation of Representation: The Seller is represented in this transaction by:

Seller's Broker: Michael Dolron Agent's Name: Michael Dolron
 Company Name: MacDonald Highlands Realty Office Address: 552 S Stephanie Street
 Phone: 702-614-9100 City, State, Zip: Henderson, NV 89012
 Email: Fax: 702-614-9400

LICENSEE DISCLOSURE OF INTEREST (SELLER): Pursuant to NRS 645.252(1)(c), a real estate licensee must disclose if he/she is a principal in a transaction or has an interest in a principal to the transaction.

Is a licensed real estate agent in the State(s) of , and has the following interest, direct or indirect, in this transaction: ☐ Principal (Seller)-OR- ☐ family or firm relationship with Seller or ownership interest in Seller (if Seller is an entity): (specify relationship)

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Barbara and Fredric Rosenberg BUYER(S) INITIALS: [Initials]

Property Address: 590 Laimont Place Henderson, NV 89012 SELLER(S) INITIALS: [Initials]

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APP00106

JA_0338

EXHIBIT H



ADDENDUM NO. 1 TO PURCHASE AGREEMENT



In reference to the Purchase Agreement executed by Barbara and Fredric Rosenberg
as Buyer(s) and Bank of America
as Seller(s), dated March 10, 2013
covering the real property at 590 Laimont Place Henderson, NV 89012
, the ☒ Buyer ☐ Seller hereby proposes that the Purchase
Agreement be amended as follows:

Amended purchase price to be \$2,302,000.00.
All other terms to remain the same.

When executed by both parties, this Addendum is made an integral part of the aforementioned Purchase Agreement.

WHEN PROPERLY COMPLETED, THIS IS A BINDING CONTRACT. IF YOU DO NOT FULLY UNDERSTAND ITS CONTENTS, YOU SHOULD SEEK COMPETENT LEGAL COUNSEL BEFORE SIGNING.

[Signature] 3-19-13
☒ Buyer ☐ Seller Date

[Signature] 10:45
☒ Buyer ☐ Seller Time

Acceptance:
[Signature] 3-21-13
☐ Buyer ☒ Seller Date

☐ Buyer ☐ Seller Time

Prepared by: Slobhan McGill 702-349-5252
Agent's Name Phone

ADDENDUM NO. 1
TO PURCHASE AGREEMENT



In reference to the Purchase Agreement executed by Barbara Rosenberg, Fredric Rosenberg
as Buyer(s) and Bank America NA
as Seller(s), dated March 13, 2013
covering the real property at _____

_____, the ☒ Buyer ☐ Seller hereby proposes that the Purchase Agreement be amended as follows:

1) Buyer acknowledges and agrees to enter into a side agreement with the Master Developer for an extension of the construction clock to complete requirements of the exterior of the property.

☐ ADDITIONAL PAGE(S) ATTACHED. This Addendum is not complete without the additional terms on the attached _____ page(s).

When executed by both parties, this Addendum is made an integral part of the aforementioned Purchase Agreement.

WHEN PROPERLY COMPLETED, THIS IS A BINDING CONTRACT. IF YOU DO NOT FULLY UNDERSTAND ITS CONTENTS, YOU SHOULD SEEK COMPETENT LEGAL COUNSEL BEFORE SIGNING.

☒ Buyer ☐ Seller

3.14.13
Date

☒ Buyer ☐ Seller

11 am
Time

Acceptance:

☐ Buyer ☒ Seller

3-21-13
Date

☐ Buyer ☐ Seller

Time

Prepared by:

Agent's Printed Name

Phone

Addendum to Purchase Agreement 9/12

14100 Las Vegas Blvd. S. Suite 552 S. Henderson, NV 89012

Michael Dutton

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Phone (702) 514-9100

Fax (702) 514-9200

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APP00109

JA_0341

EXHIBIT I

From: Siobhan McGill <siobhanmcgill@gmail.com>

To: broseyb <broseyb@aol.com>

Cc: david rosenberg <droseyd@gmail.com>

Subject: 590 Lairmont

Date: Wed, Mar 27, 2013 11:18 am

Dear Barbara,

After our discussion the other day I did check to see if it is possible to change the circumstances of the purchase on the property. The answer is an emphatic NO! The contract that was entered into is the one that is approved, any request for changes allows the bank to scrap the deal and quite possible keep your earnest money deposit. So what we need/want to do is start thinking outside the box. This could easily occur with you and Fredric signing a quit claim deed after close of escrow to David and Lahna and then they can proceed to get a mortgage and repay you...another suggestion is possibly to put the property into a trust that includes all parties and working out the details that way. Unfortunately the bank will not look favorably on any type of financing change at all, but we may have a small chance of them being open to allowing a change to a trust with your names on it...???? Lets take some time to think this through and check with your banking connections and see if they are agreeable to placing a mortgage after the closing.

In the meantime the check was hand delivered to title and we will wait to hear when you can do inspections...do you have someone you use regularly or do you want to use the company that I normally use?

Let me know,

Siobhan



Siobhan McGill

Cell: (702) 349-5252

Fax: (702) 637-7210

SiobhanMcgill@gmail.com

Deft	EXHIBIT	<u>R</u>
WITNESS <u>B. Rosenberg</u>		
DATE: <u>12/8/14</u>		
CINDY HUEBNER, CCR		

EXHIBIT J



ADDENDUM NO. _____ TO PURCHASE AGREEMENT



In reference to the Purchase Agreement executed by Barbara and Fredric Rosenberg
as Buyer(s) and Bank of America
as Seller(s), dated March 13, 2013
covering the real property at 580 Lathrop Place Henderson, NV 89012
the ☒ Buyer ☐ Seller hereby proposes that the Purchase
Agreement be amended as follows:

Transfer of title of property to be to Fredric and Barbara Rosenberg Living Trust, instead of Barbara and Fredric Rosenberg. The buyers have not changed just the way they would like to take title.

When executed by both parties, this Addendum is made an integral part of the aforementioned Purchase Agreement.

WHEN PROPERLY COMPLETED, THIS IS A BINDING CONTRACT. IF YOU DO NOT FULLY UNDERSTAND ITS CONTENTS, YOU SHOULD SEEK COMPETENT LEGAL COUNSEL BEFORE SIGNING.

[Signature] 4/24/13
☒ Buyer ☐ Seller Date

[Signature] 4/24/13
☒ Buyer ☐ Seller Time

Acceptance: [Signature] 5-13-13
☐ Buyer ☒ Seller Date

☐ Buyer ☐ Seller Time

Prepared by: Slobhan McGill 702-449-5252
Agent's Name Phone

Addendum to Purchase Agreement 2/07
Sloby, Inc. Corp., Inc., NV

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Phone (702) 577-5111 Fax (702) 577-5112
P.O. Box 900000 Las Vegas, NV 89160-9000

Deft. EXHIBIT 9
WITNESS B. Rosenberg
DATE: 12/8/14
CINDY HUEBNER, CCR

MHR000023

APP00113

JA_0345

Address: 2831 St. Rose Pkwy #100
Henderson, NV 89052
Telephone: 702-349-5252
Fax: 702-637-7210

BUYER'S ATTORNEY:

Name: _____
Address: _____
Telephone: _____
Fax: _____

CLOSER:

Company Name: _____
Contact Person: _____
Telephone: _____
Fax: _____

BANK OF AMERICA CLOSING CONTACT:

Escrow/Closing Officer Name: _____
Escrow/Closing Officer Phone No.: _____
Escrow/Closing Asst. Name: _____
Escrow/Closing Asst. Phone No.: _____

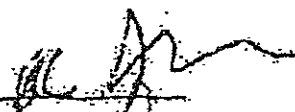
Address: _____
Telephone: _____
Fax: _____

SELLER'S ATTORNEY:

Name: _____
Address: _____
Telephone: _____
Fax: _____

TITLE COMPANY:

Company Name: _____
Contact Person: _____
Telephone: _____
Fax: _____

BUYER (initials) 

SELLER (initials) 

Revised 3/06

-16-

MHR000120

APP00114

JA_0346

EXHIBIT K

ZONING CLASSIFICATIONS AND LAND USE DISCLOSURE

Pursuant to NRS 113.070, requires that all purchasers of property in Clark County, Nevada receive a disclosure that contains the most recent zoning and land use information. That certain property is commonly known as Lot 3, Planning Area 10; address 590 LAIRMONT PLACE and located within MacDonald Highlands (formerly known as The Foothills at MacDonald Ranch).

Zoning Classifications and Master Plan Designations Information Required by NRS 113.070 (4), (5): The zoning classifications and master plan designations and the general land uses described therein, for the parcels of land adjoining the Subdivision are as follows:

North of the Subdivision: Zoning: RS-6 & RS-2; Master Plan: The Foothills at MacDonald Ranch

East of the Subdivision: Zoning: DH Master Plan: The Foothills at MacDonald Ranch
Development Holding;

South of the Subdivision: Zoning: RS-2; Master Plan: The Foothills at MacDonald Ranch

West of the Subdivision Zoning: RS-6 & RS-2; Master Plan: The Foothills at MacDonald Ranch

Zoning classifications describe the land uses currently permitted on a parcel of land. Designations in the master plan regarding land use describe the land uses that the governing city or county proposes for a parcel of land. Zoning classifications and designations in the master plan regarding land use are established and defined by local ordinances. If the zoning classification for a parcel of land is inconsistent with the designation in the master plan regarding land use for a parcel, the possibility exists that the zoning classification may be changed to be consistent with the designation in the master plan regarding land use for the parcel. Additionally, the local ordinances that establish and define the various zoning classifications and designations in the master plan regarding land use are also subject to change.

The master plan is for the general, comprehensive and long-term development of land in the area and the designations in the master plan regarding land use provides the most probable indication of future development, which may occur on the surrounding properties.

This information is current and plotted as of February 2010. Master plan designations and zoning classifications, ordinances and regulations adopted pursuant to the master plan are subject to change. You may obtain more current information regarding the zoning and master plan information from The City of Henderson, Planning Department, 240 Water Street, Henderson, NV 89015, Te.: 565-2474.

RECEIPT

Purchaser(s) hereby ACKNOWLEDGES RECEIPT of this disclosure document as of the date set forth below.

Dated: 4-13-13

Purchaser: [Signature]

Purchaser: [Signature]

Deft	EXHIBIT <u>V</u>
WITNESS	<u>B. Rosenberg</u>
DATE:	<u>12/8/14</u>
CINDY HUEBNER, CCR	

MHR000038

APP00116

JA_0348

EXHIBIT L

Richard MacDonald - February 2, 2015
The Fredric and Barbara Rosenberg Living Trust vs. Bank of America, N.A., et al

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6	Plaintiff,		5	EXHIBITS
7	vs.	CASE NO.	6	Exhibit 1 - Master Declaration of 19
8		A-13-689113-C	7	Covenants, Conditions and
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13	limited liability company;		12	Instruction Early Release of Funds
14	MICHAEL DOIRON, an individual;		13	Informational Meeting 132
15	SAHAHIN SHANE MALEK, an		14	Grant, Bargain, Sale Dee 137
16	individual; PAUL BYKOWSKI, an		15	map 144
17	individual; THE FOOTHILLS AT		16	Exhibit 8 - drawing 166
18	MACDONALD RANCH MASTER		17	
19	ASSOCIATION, a Nevada limited		18	CERTIFIED QUESTIONS
20	liability company; THE FOOTHILLS		19	(NONE)
21	PARTNERS, a Limited Partnerships;		20	
22	DOES I through X; and ROE		21	INFORMATION TO BE SUPPLIED
23	CORPORATIONS I through X,		22	(NONE)
24	inclusive		23	
25	Defendants.		24	
			25	
	DEPOSITION OF RICHARD C. MACDONALD			
	Taken at the Law Offices of			
	Howard Kim & Associates			
	1055 Whitney Ranch Drive			
	Suite 110			
	Henderson, Nevada 89014			
	Monday, February 2, 2015			
	9:50 a.m.			
	Reported by: Angela Campagna, CCR #495			

		Page 2		Page 4
1	APPEARANCES:		1	Whereupon--
2	For the Plaintiff:		2	RICHARD C. MACDONALD,
3	KAREN L. HANKS, ESQ.		3	was called as a witness, and having been first duly
4	MELISSA BARISHMAN, ESQ.		4	sworn, was examined and testified as follows:
5	Howard Kim & Associates		5	EXAMINATION
6	1055 Whitney Ranch Drive		6	BY MS. HANKS:
7	Suite 110		7	Q. Please state your name for the record.
8	Henderson, Nevada 89014		8	A. Richard C. MacDonald.
9	Karen@hkimlaw.com		9	Q. Mr. MacDonald, have you ever had your
10			10	deposition taken before?
11	For Sahahin Shane Malek:		11	A. I have.
12	JAY DEVROY, ESQ.		12	Q. On how many occasions?
13	The Firm, P.C.		13	A. I don't know. Quite a few.
14	200 East Charleston Blvd.		14	Q. Would you feel comfortable if I do away
15	Las Vegas, Nevada 89104		15	with the normal ground rules that I give any
16	Jay@thefirm-lv.com		16	deponent, or would you like me to go through those?
17			17	A. Sure.
18	For Bank of America:		18	Q. You feel comfortable without those?
19	NATALIE WINSLOW, ESQ.		19	A. I do.
20	Akerman LLP		20	Q. The only thing I do like to remind
21	1160 Town Center Drive		21	every person that's being deposed is the oath that
22	Suite 330		22	you just took is the same oath you would take in a
23	Las Vegas, Nevada 89144		23	court of law.
24	Natalie.winslow@akerman.com		24	So even though we're in a
25			25	conference room today --
	For MacDonald Highlands Realty, LLC and Michael			
	Doiron:			
	SPENCER H. GUNNERSON, ESQ.			
	Kemp, Jones & Coulthard			
	3800 Howard Hughes Pkwy.			
	17th Floor			
	Las Vegas, Nevada 89169			
	Sgunnerson@kempjones.com			

Page 5

1 A. I understand that.
2 Q. -- if we found out you didn't tell the
3 truth, it carries the same penalty of perjury.
4 A. Right. I understand.
5 Q. I'm going to remind you, though, in
6 terms of when we speak in conversation like we're
7 about to, we can often anticipate where the person
8 is going with their question which you've already
9 done, but it's really hard for her to take that down
10 in the transcription time of format.
11 So what I ask is that you wait
12 until I finish my question before you give your
13 answer, and I'll do the same. I'll make sure you're
14 finished with your answer before I go onto my next
15 question.
16 A. Okay. Fine.
17 Q. Just makes her job a little bit easier.
18 A. Sure.
19 Q. Could you just give me a brief
20 background of your education?
21 A. I probably went through about four to
22 five years of college.
23 Q. Did you receive a college degree?
24 A. I did not.
25 Q. And then what is your current

Page 6

1 occupation?
2 A. I'm a real estate developer.
3 Q. What is MacDonald Highlands?
4 A. MacDonald Highlands is a two square
5 mile of luxury community, planned community, master
6 planned community.
7 Q. And is it located in Henderson or Las
8 Vegas, Nevada?
9 A. Henderson.
10 Q. Who is the developer for that
11 community?
12 A. I am.
13 Q. And when you say "you", you personally
14 or a company that you're affiliated with?
15 A. A company that I own.
16 Q. What is the company that you own?
17 A. Foothills Partners basically which is
18 now FHP Ventures.
19 Q. Now, when you say Foothills Partners,
20 basically what do you mean by that?
21 A. There are other entities involved in
22 various phases of the development.
23 Q. Could you go through that and explain
24 which entities are involved and which vary various
25 phases of the development just so I can get a better

Page 7

1 understanding?
2 A. There's an area called PA-20, and
3 there's an area of the accompanying development
4 called PA-20 Ventures as an example.
5 Q. And what area of MacDonald Highlands is
6 PA-20?
7 A. We call it the southeast, I guess,
8 portion.
9 Q. Are you familiar with the properties
10 that are an issue in this litigation?
11 A. I am.
12 Q. What area of MacDonald Highlands are
13 they a part of?
14 A. That's called PA-10.
15 Q. And let's just stick with that area so
16 that we don't talk about the entire development.
17 A. Makes sense.
18 Q. For PA-10, what entities are involved
19 in that portion of the development of MacDonald
20 Highlands?
21 A. Would still be FHP Ventures.
22 Q. And I think you mentioned that had been
23 formally known as Foothills Partners?
24 A. Yes.
25 Q. When did that change in entities

Page 8

1 happen?
2 A. I don't know.
3 Q. What type of change was it?
4 A. A name change.
5 Q. Is FHP Ventures, LLC a partnership?
6 Corporation?
7 A. Not sure.
8 Q. I know you said owner, but what is your
9 actual title within FHP Ventures?
10 A. If it's an LLC, I would be the managing
11 member. If it's a limited partnership, I guess I
12 would be the managing member of the entity that owns
13 it or that manages it.
14 Q. And just to be clear -- I'm sorry. Did
15 you say that do you not know when the name change
16 happened?
17 A. No.
18 Q. Now, but at all times for PA-10 it was
19 either under Foothills Partners and then later FHP
20 Ventures?
21 A. Yes.
22 Q. When did PA-10 begin development? What
23 year?
24 A. Don't know.
25 Q. Is it completed development?

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1 A. In terms of the lots being completed,
2 yes.
3 Q. What other --
4 A. The houses are all built on the lots,
5 but we don't build those.
6 Q. So other than the houses built on the
7 lots, I guess that's the only remaining
8 construction, I guess, within PA-10?
9 A. Yes.
10 Q. Is there a golf course within MacDonald
11 Highlands?
12 A. Yes.
13 Q. What is its name?
14 A. Dragon Ridge.
15 Q. Has it always been known Dragon ridge?
16 A. No.
17 Q. What other names has it been known by?
18 A. MacDonald Ranch Country Club.
19 Q. When did it change from MacDonald Ranch
20 County Club to Dragon Ridge?
21 A. Don't know.
22 Q. In 2012, what was the name of the
23 course?
24 A. Dragon Ranch.
25 Q. In 2012, who owned the golf course?

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1 A. Well --
2 MR. GUNNERSON: Objection. Vague. Go ahead
3 and answer.
4 THE WITNESS: A couple different entities.
5 There is Dragon Ridge Golf Club and DRFH, and I'm
6 not sure when all that occurred.
7 BY MS. HANKS:
8 Q. Were there more than one entity that
9 owned the golf course in 2012?
10 A. One owned the land under the government
11 course, and the other was the operator.
12 Q. And that would have either been Dragon
13 Ridge Golf Club or DFRH?
14 A. Yes.
15 Q. Is it DFRH, is that the total name of
16 the entity?
17 MR. GUNNERSON: Counsel, just to be clear, I
18 think you're saying those letters -- I don't think
19 it's DFRH. It's DRFH.
20 THE WITNESS: Dragon Ridge Foothills.
21 BY MS. HANKS:
22 Q. Sorry. Is there an LLC? Is there
23 something after DRFH?
24 A. There may be. That's what I call it.
25 Q. Okay. As far as you can remember in

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1 2012, one of the entities, either Dragon Ridge Golf
2 Club or DRFH owned the land underneath the golf
3 course, and the other entity actually owned the
4 operation?
5 A. Probably DRFH little landowner.
6 Q. And then Dragon Ridge Golf Club was the
7 operator?
8 A. Correct.
9 Q. After 2012, did the ownership of the
10 golf course change in anyway?
11 A. Well, eventually, yes.
12 Q. How did it change?
13 A. I sold it.
14 Q. And when you say, "I sold it", who --
15 which entity sold it?
16 A. DRFH sold it.
17 Q. What is your relationship to DRFH?
18 A. I own it.
19 Q. Who did DRFH sell the golf course to?
20 A. Pacific Links International.
21 Q. Do you have any affiliation with
22 Pacific Links International?
23 A. No.
24 Q. As part of the sale, did they buy the
25 land and the operation of the golf course?

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1 A. They did.
2 Q. So they bought the whole package?
3 A. They did.
4 Q. As of today, is that still true,
5 Pacific Links International both owns the land and
6 the operation of the golf course?
7 A. Yes.
8 Q. Were there any conditions with respect
9 to that sale in terms of what Pacific Links
10 International could do with the golf course?
11 A. What they could do with it?
12 Q. Yeah. Could they tear it down and
13 start building condominiums on that land?
14 A. No. It has to be operated as a golf
15 course.
16 Q. So that was one condition that it has
17 to remain a golf course as part of that sale?
18 A. That's the condition of the community
19 master plan. Whether that is in the contract, I
20 don't remember.
21 Q. Okay. So as part of the community
22 master plan for MacDonald Highlands, the area that
23 is the golf course of Dragon Ridge will always
24 remain a golf course? Is that what you're saying?
25 MR. GUNNERSON: Objection. Foundation.

Page 13	Page 15
<p>1 THE WITNESS: I assume that.</p> <p>2 BY MS. HANKS:</p> <p>3 Q. Any other conditions as part of that</p> <p>4 golf sale?</p> <p>5 A. Many.</p> <p>6 Q. Can you give me them?</p> <p>7 A. No.</p> <p>8 Q. Where would I find those conditions?</p> <p>9 A. In a private sale document.</p> <p>10 Q. In 2012, was the golf course private?</p> <p>11 A. No.</p> <p>12 Q. What was it in 2012?</p> <p>13 A. Semi-private.</p> <p>14 Q. What does it mean to be semi-private?</p> <p>15 A. Semi-private means you can take</p> <p>16 additional play, outside play so to speak.</p> <p>17 Q. Meaning from the public?</p> <p>18 A. Well, from the public or from some</p> <p>19 hotel entity. Like we had arranged an agreement.</p> <p>20 Q. Okay.</p> <p>21 A. I'm not sure if that was in place in</p> <p>22 2012.</p> <p>23 Q. If it wasn't semi-private in 2012, was</p> <p>24 it ever public?</p> <p>25 A. Let me clarify. In 2012, it was</p>	<p>1 course, did you have to become a member of the golf</p> <p>2 course?</p> <p>3 A. No.</p> <p>4 Q. Again, I'm going to qualify all of my</p> <p>5 questions to be prior to Pacific Links International</p> <p>6 purchasing it, because I understand that is not your</p> <p>7 company?</p> <p>8 A. True.</p> <p>9 Q. If you didn't live in MacDonald</p> <p>10 Highlands could you become a member of the golf</p> <p>11 course?</p> <p>12 A. You could.</p> <p>13 Q. So in addition to being able to play on</p> <p>14 the golf course, you could also become a member of</p> <p>15 the golf club?</p> <p>16 A. Yes.</p> <p>17 Q. During that time was the price</p> <p>18 different for people who lived outside of MacDonald</p> <p>19 Highlands versus people who lived in MacDonald</p> <p>20 Highlands?</p> <p>21 A. No.</p> <p>22 Q. When MacDonald Highlands was being</p> <p>23 advertised as a community that was being developed</p> <p>24 was the golf course part of that advertisement?</p> <p>25 MR. GUNNERSON: Object to form.</p>
Page 14	Page 16
<p>1 semi-private. We took outside play in. Later, and</p> <p>2 I think it was later, we ended up with an agreement</p> <p>3 with a company, a specific hotel resort, to bring</p> <p>4 play. But it was semi-private at that point. So</p> <p>5 strangers from outside could come in and play the</p> <p>6 golf course at certain times.</p> <p>7 Q. And was that only if they were</p> <p>8 affiliated with that hotel?</p> <p>9 A. Not in 2012. I think it was later.</p> <p>10 Q. So in 2012, me having no affiliation</p> <p>11 with MacDonald Highlands or even the hotel, I could</p> <p>12 come and play on Dragon Ridge?</p> <p>13 A. You could.</p> <p>14 Q. And that has since changed though?</p> <p>15 A. I believe it has.</p> <p>16 Q. And is that under -- did that change</p> <p>17 under DRFH?</p> <p>18 A. Well, I think it changed under Pacific</p> <p>19 Links.</p> <p>20 Q. Do you know how it's changed?</p> <p>21 A. I don't. I don't operate Pacific</p> <p>22 Links.</p> <p>23 Q. When a person purchases property within</p> <p>24 MacDonald Highlands, and we'll go with the time</p> <p>25 before Pacific Links International owned the golf</p>	<p>1 BY MS. HANGS:</p> <p>2 Q. In other words, was it advertised as a</p> <p>3 golf club community with that one feature that it</p> <p>4 was advertised as?</p> <p>5 A. It was an amenity.</p> <p>6 Q. When was the golf course completed, the</p> <p>7 construction of the actual golf course completed?</p> <p>8 A. Either 2000 or 2001.</p> <p>9 Q. When was it opened for play?</p> <p>10 A. Sometime in April.</p> <p>11 Q. Of that same year, 2000-2001?</p> <p>12 A. Sometime in there.</p> <p>13 Q. Now, I think you mentioned something</p> <p>14 about the community master plan having a requirement</p> <p>15 that the golf course remain a golf course, correct?</p> <p>16 MR. GUNNERSON: Objection. Misstates prior</p> <p>17 testimony. Foundation. Go ahead and answer if you</p> <p>18 can.</p> <p>19 THE WITNESS: Repeat that again.</p> <p>20 BY MS. HANKS:</p> <p>21 Q. Yeah. I'm trying to summarize what you</p> <p>22 said earlier. I think you said something about the</p> <p>23 community master plan?</p> <p>24 A. I have a 90-year old mother I have to</p> <p>25 check on.</p>

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1 Q. Do you want to go off the record for a
2 second?
3 A. No. It's not her.
4 Q. What I was trying to get clarification
5 is I think you testified earlier something about the
6 community master plan indicates that the golf course
7 will always remain a golf course. Is that your
8 understanding?
9 MR. GUNNERSON: Same objections.
10 THE WITNESS: I believe that we control that.
11 BY MS. HANKS:
12 Q. And when you say "we", who are you
13 referring to?
14 A. Well, the company.
15 Q. When you say "the company", which
16 company?
17 A. Would be probably FHP Ventures.
18 Q. So would it be fair to state that FHP
19 Ventures as developer intended for the golf course
20 to always be an amenity as part of MacDonald
21 Highlands?
22 A. Yes.
23 Q. Would you agree that the golf course is
24 a major amenity of MacDonald Highlands?
25 MR. GUNNERSON: Objection. Form. Vague.

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1 THE WITNESS: I think it is an amenity.
2 BY MS. HANKS:
3 Q. Is it one of the key amenities to
4 MacDonald Highlands?
5 MR. GUNNERSON: Same objection.
6 THE WITNESS: Might be.
7 BY MS. HANKS:
8 Q. Would you agree it's at least a big
9 part of MacDonald Highlands' identity?
10 MR. GUNNERSON: Same objection.
11 THE WITNESS: It's a part of it, but it's, you
12 know, I mean most golf courses have two functions,
13 golf. And they also convey water, flood water. So
14 the real reason no one is going to build on it is
15 because it's a flood channel.
16 BY MS. HANKS:
17 Q. But when the golf course was advertised
18 as part of MacDonald Highlands, it wasn't advertised
19 as a flood channel, it was advertised as an amenity?
20 A. Typically, yes.
21 Q. It's an extra benefit of having it, but
22 the real reason --
23 A. It's a good benefit, but it's a
24 benefit.
25 Q. Are there any properties within

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1 MacDonald Highlands if purchased by an individual
2 that they have to be become a golf member?
3 A. No.
4 (Exhibit 1 marked.)
5 BY MS. HANKS:
6 Q. So the court reporter handed you what's
7 been marked as Exhibit 1. It's a document entitled
8 "Master Declaration of Covenants, Conditions and
9 Restrictions" for the Foothills at MacDonald Ranch.
10 I want to let you know this is not a complete set.
11 In order not to kill trees, I decided just to take
12 out the excerpts that we're going to talk about
13 today. So this is not a complete set.
14 My question before we get into the
15 actual document is when the term or the title here,
16 "The Foothills at MacDonald Ranch", that's another
17 term or previous name for MacDonald Highlands,
18 right?
19 A. Yes.
20 Q. So they are one in the same? When we
21 say MacDonald Highlands, that is the Foothills at
22 MacDonald Ranch?
23 A. Yes.
24 Q. It's my understanding there was a name
25 change for purposes of, I guess, advertising or what

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1 have you at some point during the development; is
2 that correct?
3 A. Yes.
4 Q. Now, when someone buys property within
5 MacDonald Highlands, do they receive a copy of the
6 CC&R's?
7 MR. GUNNERSON: Objection. Foundation.
8 THE WITNESS: I assume so.
9 BY MS. HANKS:
10 Q. Do these CC&R's run with the property
11 that's sold within MacDonald Highlands?
12 MR. GUNNERSON: Objection. Foundation. Calls
13 for legal conclusion. You can answer.
14 THE WITNESS: Yes. I would think so.
15 BY MS. HANKS:
16 Q. And I would like you to turn to page --
17 you should have a page five.
18 A. Yes, I do.
19 Q. And I want to talk about -- there is
20 some definitions on this page, and I want to refer
21 you to the middle of the page, definition of golf
22 club.
23 Do you see that?
24 A. I do.
25 Q. Okay. And I'm going to read it. It

Page 21

1 says "means any portion of the resort properties
2 operator used as a private membership golf club or
3 golf course and/or related amenities and
4 facilities."
5 Did I read that correctly?
6 **A. You did.**
7 **Q.** And, now, when this term is used, "golf
8 club", does that refer -- is this referring to
9 Dragon Ridge Golf Club?
10 **MR. GUNNERSON:** Objection. Foundation. Calls
11 for speculation.
12 **THE WITNESS:** Am I to answer that?
13 **MR. GUNNERSON:** Yeah. Go ahead.
14 **THE WITNESS:** It would.
15 **BY MS. HANKS:**
16 **Q.** Now, the definition of the CC&R's
17 references a private membership golf club, but if I
18 remember correctly, you said that you're not sure
19 there was anytime that Dragon Ridge was a private
20 golf club; is that right?
21 **A. Yes.**
22 **Q.** Now, if you'll turn to the next page,
23 page seven, I'll draw your attention to the term
24 "perimeter strip."
25 Do you see that? I think it's the

Page 22

1 third one down on that page.
2 **A. Yes.**
3 **Q.** And it reads, "Perimeter strips means a
4 five foot strip located within the resort properties
5 consisting of the area between the perimeter of the
6 resort properties abutting the common elements or a
7 unit in a distance of five feet from the boundary of
8 the applicable common elements or unit."
9 Do you see that -- or, actually,
10 did I read that correctly?
11 **A. You read it correctly.**
12 **Q.** Now, with respect to the resort
13 properties, is that referring to Dragon Ridge Golf
14 Club?
15 **MR. GUNNERSON:** Objection. Foundation. Calls
16 for speculation. Go ahead.
17 **THE WITNESS:** It may or may not.
18 **BY MS. HANKS:**
19 **Q.** Let's look at resort properties. That
20 is actually defined on the same page there, if you
21 go one, two, three -- to the fourth, it says "Resort
22 properties means all or any portion of the real
23 property described in Exhibit D-1 or such other real
24 property in the Foothills as may from time to time
25 be designated on the master plan as one golf course

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1 property or developed as a golf club in accordance
2 with city zoning." And I'll stop there.
3 So based on my reading of that
4 definition, does that refresh your recollection as
5 to whether the resort properties includes the Dragon
6 Ridge Golf Course?
7 **MR. GUNNERSON:** Same objection.
8 **THE WITNESS:** No. Because you don't have
9 Exhibit D-1. We had other properties on the resort
10 in the early days when we recorded these documents.
11 P-11 was zoned as a resort at that time. So it may
12 refer to that as well.
13 **BY MS. HANKS:**
14 **Q.** I have D-1 here. I have a full set of
15 CC&R's. It has listed lots 11, 23, 24, 28, 30, and
16 31.
17 Do you know if any of those lots
18 include the golf course?
19 **A. I don't. I know lot 11 does not. Lot**
20 **11 later became zoned for residential.**
21 **Q.** It's possible lots 23, 24, 28, or 30,
22 or 31 include the golf course?
23 **A. Possibly.**
24 **MR. GUNNERSON:** Objection. Foundation.
25 ////

Page 24

1 **BY MS. HANKS:**
2 **Q.** What would you look at to confirm what
3 those lots included?
4 **A. APN maps or site maps.**
5 **Q.** And then I also want to draw your
6 attention to the last term on this page where it
7 defines unit.
8 It says "Unit means a portion of
9 the properties whether improved or unimproved that
10 may be independently owned and conveyed." And I'll
11 stop there.
12 Just so we're clear, when we have
13 already used the term "lot", is that the same
14 meaning as unit?
15 **MR. GUNNERSON:** Objection. Foundation. Calls
16 for speculation.
17 **THE WITNESS:** It could be.
18 **BY MS. HANKS:**
19 **Q.** Could it be anything else?
20 **MR. GUNNERSON:** Same objection.
21 **THE WITNESS:** Could mean the house.
22 **BY MS. HANKS:**
23 **Q.** So that's what I want to make sure. So
24 unit means either a house or an unimproved -- what
25 we've already termed as a lot, correct?

Page 25

1 **MR. GUNNERSON:** Same objection.
2 **THE WITNESS:** Could. Could be a condominium.
3 Could be a town home. Any kind of dwelling unit.
4 **BY MS. HANKS:**
5 Q. Inside the MacDonald Highlands, right?
6 A. Yes.
7 Q. Okay. What is the Design Review
8 Committee?
9 A. It's the committee that controls the
10 construction of dwellings on the property.
11 Q. And have you ever served on the Design
12 Review Committee?
13 A. Yes.
14 Q. From what dates to when?
15 A. I don't know.
16 Q. Have you ever stopped serving on the
17 Design Review Committee?
18 A. I doubt it.
19 Q. So as far as you know, during the time
20 of Design Review Committee has been in operation,
21 you've always served on it?
22 A. Yes.
23 Q. Would you agree that the Design Review
24 Committee -- or excuse me -- the design guidelines
25 are an additional set of restrictions on a homeowner

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1 in addition to these CC&R's?
2 **MR. GUNNERSON:** Objection. Foundation. Form.
3 If you know, go ahead and answer.
4 **THE WITNESS:** I think so.
5 **BY MS. HANKS:**
6 Q. In other words, when a person purchases
7 an unimproved unit within MacDonald Highlands, they
8 are not only taking it subject to these CC&R's, they
9 are also taking it subject to the design guidelines
10 for the house they eventually intend to build on
11 that unit, correct?
12 **MR. GUNNERSON:** Objection. Foundation.
13 **THE WITNESS:** Yes.
14 **MR. GUNNERSON:** Objection. Form.
15 **BY MS. HANKS:**
16 Q. Now, if you could turn to page 52
17 within the CC&R's. I want to draw your attention to
18 section 13.5, and I wish I had a better copy. So
19 I'm going to do the best I can. If you see that I say
20 something and you know it's a different word, let me
21 know?
22 **MR. GUNNERSON:** I'm going to object, because
23 there are parts of that are illegible. So if you're
24 going to ask him if -- if you read it -- and I don't
25 know if you got a better copy than we do -- if

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1 you're going to ask him if it's stated what you just
2 read, then I just want to preserve that objection.
3 **BY MS. HANKS:**
4 Q. Certainly. If you can't read it, you
5 let me know.
6 I have a 13.5. I'm going to read
7 the first part of it. It says "Declarant." Before
8 we go any further, who is the declarant under the
9 CC&R's?
10 **MR. GUNNERSON:** Objection. Foundation.
11 **THE WITNESS:** I would suspect I am.
12 **BY MS. HANKS:**
13 Q. And you say you, who do you mean? You
14 individually or...?
15 A. I don't remember. It's either me
16 personally or an entity that I own.
17 Q. Since I have the full copy of the
18 CC&R's, I have in here stating on page four,
19 "Declarant means the Foothills Partners."
20 Does that refresh your
21 recollection?
22 A. Okay. That would be the answer.
23 Q. It says "Declarant -- this is back to
24 13.5 -- expressly reserves the benefit of the
25 association, its agents, employees, and contractors

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1 an easement over the perimeter strip for the
2 purposes of maintaining the planted landscaping on
3 the perimeter strip."
4 And I can't read the rest of that
5 word right there. "Substantially equal to the
6 landscaping located on the common elements."
7 And I'll stop there. Do you see
8 that?
9 A. I see it.
10 **MR. GUNNERSON:** Counsel, I don't know -- I'm
11 lost. Where did you start reading?
12 **MS. HANKS:** The very first sentence.
13 **MR. GUNNERSON:** Seems like you skipped a word
14 after "reserves". I can't read what it is.
15 **BY MS. HANKS:**
16 Q. "Reserves to the benefit of the
17 association --
18 **MR. DEVOY:** Looks like it might be "for".
19 **MR. GUNNERSON:** I can't read it.
20 **MS. HANKS:** It's either "reserves for or
21 reserves to the benefit of the association."
22 **MR. GUNNERSON:** Okay. And then you may have
23 skipped a part. If you'd mind reading it again, I'm
24 having a hard time following this.
25 ////

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1 **BY MS. HANKS:**
2 Q. "Declarant" -- and I'm thinking it says
3 "reserves to the benefit." But if it's "for", that
4 is fine.
5 "Declarant expressly reserves to
6 the benefit or for the benefit of the association
7 its agents, employees, and contractors an easement
8 over the perimeter strip for the purpose of
9 maintaining the planted landscaping on the perimeter
10 strip in a" and I don't know what that word is. I
11 think it might be "conditions". "Substantially
12 equal to the landscaping located on the common
13 elements", period.
14 With the exception of that one
15 word that I can't read, my question is based on this
16 section, is the understanding that the perimeter
17 strip, which we looked at the definition was before,
18 the five feet of the golf parcel abutting the units,
19 that that area would be maintained by the
20 association?
21 **MR. GUNNERSON:** Objection. Foundation. And,
22 again, illegible. Go ahead and answer to the best
23 you can.
24 **THE WITNESS:** No.
25 ////

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1 **BY MS. HANKS:**
2 Q. Okay. So what is this section, at
3 least that first sentence indicating to a homeowner?
4 **MR. GUNNERSON:** Same objection.
5 **THE WITNESS:** Well, what you need to
6 understand is that we have three landscape pallets
7 in the community. We have natural desert pallet
8 which is used in a lot of areas. We have an
9 enhanced desert pallet which is used in some others,
10 and then we have what is called the oasis pallet
11 which you find in places like the Stephanie entrance
12 close to this property or the Valle Verde entrance.
13 So you have three different
14 landscaping types that can be in that perimeter
15 area. And, now, if they -- if the HOA managed that
16 and maintained it, they would go bankrupt, because
17 they would be basically maintaining vegetation on
18 the golf course which they have never done.
19 So I don't know what relevance
20 that has to what we're discussing. But just so you
21 know, that doesn't mean that you're supposed to have
22 landscaping equal to the Valle Verde gate as you
23 come in, because as I said, we've had three
24 different pallets. And in this case it's mostly the
25 natural pallet.

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1 **BY MS. HANKS:**
2 Q. On the perimeter strip?
3 **A. Yes.**
4 Q. Okay. So let's take that as being the
5 pallet. I'm not really concerned, frankly, with the
6 actual landscaping. I'm more concerned with that
7 13.5 is saying that the association has an easement
8 and otherwise a right to access that perimeter
9 strip, that five foot area of the golf course to
10 maintain, whether it -- whatever landscape pallet it
11 might be, but that's their duty to maintain it,
12 correct?
13 **MR. GUNNERSON:** I'm going to object. First of
14 all, characterization of what you just read doesn't
15 say golf course, but, secondly, for foundation as
16 well. Go ahead and answer if you can.
17 **THE WITNESS:** I guess it might be interpreted
18 to mean that the HOA could plant pine trees in front
19 of everyone's houses. I don't know. But they
20 historically have not done that.
21 **BY MS. HANKS:**
22 Q. Okay. And just to be clear, the
23 perimeter strip as defined by the CC&R's says "the
24 area between the resort property is the five foot
25 strip between the resort properties abutting the

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1 common elements or unit."
2 So I just want to make sure that I
3 understand that 13.5 is saying that Foothills is
4 giving the association the right to access that five
5 foot perimeter area to maintain it with whatever
6 pallet of landscaping they choose?
7 **MR. GUNNERSON:** Objection. Foundation.
8 **THE WITNESS:** I guess it says that. Whether
9 or not that is the case, I don't really think -- I
10 don't know.
11 **BY MS. HANKS:**
12 Q. And then section 13.6 on that same
13 page, it says "Grant of Easement. Every unit is
14 hereby burdened with an easement allowing golf
15 balls." And I can't read the next word. "By any
16 golfers using the golf club to come over and on each
17 such unit."
18 Do you see that?
19 **A. I do.**
20 Q. And so just to add, these CC&R's apply
21 to any person who purchases property within
22 MacDonald Highlands, correct?
23 **MR. GUNNERSON:** Objection. Foundation.
24 **THE WITNESS:** I would think they would.
25 ////

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1 **BY MS. HANKS:**
2 Q. But this section is talking with
3 respect to specific unit owners near the golf
4 course; is that right?
5 **MR. GUNNERSON:** Objection. Foundation.
6 **THE WITNESS:** I believe this section is like a
7 navigation easement.
8 **BY MS. HANKS:**
9 Q. Allowing --
10 **A. Over the houses.**
11 Q. Right. Allowing golfers to more or
12 less access these people's properties?
13 **A. At least putting them on notice that**
14 **golf balls could access their property.**
15 Q. Certainly.
16 (Exhibit 2 marked.)
17 **BY MS. HANKS:**
18 Q. The court reporter has handed you
19 what's been marked as Exhibit 2, and I'll represent
20 to you I did the same thing I did with the CC&R's.
21 I'm only taking out certain portions of the design
22 guidelines that we're going to discuss rather than
23 copying the whole binder.
24 And it looks like from the front
25 page, at least from the set that we've received in

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1 this litigation, this is the complete set including
2 all revisions with the last revision happening on
3 September 1st, 2006?
4 **MR. GUNNERSON:** I'm just going to object that
5 you've just stated this is -- what he's been handed
6 is not the complete set. When you say this is the
7 complete set, it's just not defined what you're
8 referring to when you say "this."
9 **BY MS. HANKS:**
10 Q. When I say that, no. You don't have
11 the complete set. But in terms of all portions that
12 were taken out of the Design Guidelines that the
13 cover page to what we have been produced in this
14 litigation has all revised dates, last one being
15 September 1st, 2006.
16 Do you see that on the cover page?
17 **A. I see it.**
18 Q. Do you know if the Design Guidelines
19 have been amended or revised since September 1st,
20 2006?
21 **A. I do not.**
22 Q. Where would you go to find that out?
23 Is there a place where you could go to find that out
24 to confirm that?
25 **A. Just look in the files to find that**

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1 out.
2 Q. If I were to represent to you that the
3 portions which I've copied and provided to you came
4 from a binder that was given to the Rosenberg Trust
5 after they purchased property in 2013, is it more
6 probable then that the guidelines have not been
7 amended since September 1st, 2006?
8 **MM. GUNNERSON:** Objection. Foundation. Calls
9 for speculation. Go ahead.
10 **THE WITNESS:** I would think so.
11 **BY MS. HANKS:**
12 Q. Now, who drafted the Design Guidelines?
13 **MR. GUNNERSON:** Objection. Foundation.
14 **THE WITNESS:** I don't remember.
15 **BY MS. HANKS:**
16 Q. Did the developer hire a company to
17 draft the Design Guidelines?
18 **A. I believe we did.**
19 Q. In terms of input, how much input did
20 the developer have in the preparation of these
21 guidelines?
22 **A. Quite a bit.**
23 Q. In terms of the drafting process, were
24 multiple drafts provided? In other words, did the
25 developer work closely with whatever company you

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1 hired to draft these before a final set was
2 completed?
3 **A. I believe so.**
4 Q. So let me direct your attention to the
5 first page, page 1.1. And on each page we're always
6 going to talk about the areas that are highlighted
7 in yellow and underlined in orange.
8 So I want to direct your attention
9 to the middle sentence there. It says "additionally
10 to protect and enhance owner value, a strict set of
11 covenants and guidelines will be carefully monitored
12 by a professionally advised Design Review
13 Committee."
14 Do you see that?
15 **A. I do.**
16 Q. Can you explain what that sentence
17 means?
18 **MR. GUNNERSON:** Objection. Foundation.
19 **THE WITNESS:** Basically saying that the Design
20 Review Committee will monitor what gets built.
21 **BY MS. HANKS:**
22 Q. And when you say "enhance owner value",
23 why is it important that the Design Review Committee
24 monitor what's being built to enhance owner value?
25 What does that mean?

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1 **A. Just to create quality in the**
2 **community.**
3 Q. And would you agree that the purpose of
4 the Design Review Guidelines and the committee to
5 monitor the guidelines being used properly is so
6 that when one person buys a unit, let's say,
7 adjacent to an undeveloped unit, they know at least
8 a quality house is going to be built on that unit,
9 correct?
10 **THE WITNESS:** Say that again.
11 **BY MS. HANKS:**
12 Q. In other words, if I were to buy a unit
13 on a street where none of the other units have been
14 developed yet, I'm buying it within MacDonald
15 Highlands, knowing that the houses that are
16 eventually going to be built on those other units
17 surrounding my property are going to conform to
18 these guidelines, so I don't have to worry about the
19 loss of value in my property?
20 **A. That would be reasonable.**
21 Q. Now, let's go to actually the -- there
22 is a little snippet on page 1.1, "The community
23 identity is further enhanced by an 18-hole
24 championship golf course and destination resort."
25 Do you see that?

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1 **A. I do.**
2 Q. And we talked a little bit about that
3 already. You would agree then that this sentence
4 here is again indicating that the golf course is
5 part of the MacDonald Highlands' identity?
6 **MR. GUNNERSON:** Objection. Foundation.
7 **THE WITNESS:** Along with the destination
8 resort which isn't there.
9 **BY MS. HANKS:**
10 Q. If you go to the last paragraph on that
11 page, 1.2, there is a sentence I've highlighted in
12 orange, and we can read the whole sentence just to
13 make sure it's read in context.
14 It begins with "minimum standards
15 of design arising out of the environmental and
16 climatic needs of the desert provide direction to
17 lot or parcel owners and developers in the planning,
18 design, and construction of the residences or
19 projects to ensure compatibility with the
20 environment, harmonious architectural approaches,
21 and compatibility with the adjacent development
22 within the community."
23 Do you see that?
24 **A. I do.**
25 Q. So tell me if I'm correct when I read

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1 that paragraph, in particularly that last sentence,
2 the goal of the Design Guidelines and the standard
3 sets forth in these guidelines is to make sure that
4 all unit owners are compatible with each other?
5 In other words, you're not having
6 one person build a house that might be ultra modern
7 next to a house that is, I guess, mid century?
8 **A. No.**
9 **MS. HANKS:** Okay.
10 **MR. GUNNERSON:** Objection. Foundation. Go
11 ahead.
12 **BY MS. HANKS:**
13 Q. What is meant by that sentence,
14 "compatibility with adjacent development" --
15 **MR. GUNNERSON:** Same objection.
16 **THE WITNESS:** Okay.
17 **MR. GUNNERSON:** Go ahead.
18 **THE WITNESS:** We have -- especially when we
19 started this, many people liked Tuscan architecture.
20 Our concept was not Tuscan. We don't typically
21 allow Tuscan architecture.
22 What we typically do is something
23 called desert -- it's really desert contemporary or
24 what we call desert elegance, because that's a
25 better marketing term than contemporary.

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1 Contemporary used to scare people. Now everybody
2 wants the contemporary. But when we first started,
3 it was important to do to make sure that we had
4 continuity of houses that were more on the
5 contemporary lean than more of a -- I guess what you
6 say Tuscan. So that's what that refers to.
7 **BY MS. HANKS:**
8 Q. So you didn't want people coming in and
9 building Tuscan --
10 **A. No.**
11 Q. -- when you were trying to go for the
12 desert elegance?
13 **A. No. We referred them to Lake**
14 **Las Vegas.**
15 Q. And, again, the purpose of that is that
16 when you have a community like MacDonald Highlands
17 that people are going to be buying into where it's
18 not completely developed yet, they need to know
19 they're buying into a certain community, correct?
20 **MR. GUNNERSON:** Objection. Foundation.
21 **BY MS. HANKS:**
22 Q. In other words, the aesthetic look of
23 it, they need to know what they're buying into?
24 **A. Yes.**
25 Q. And it's not only full disclosure for

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1 the people buying in that community that they're
2 agreeing to that aesthetic identity, it's protecting
3 the people who have agreed to that aesthetic
4 identity, knowing that the person next to them is
5 going to build a similar character of a home?
6 **MR. GUNNERSON:** Same objection.
7 **THE WITNESS:** Similar architectural style.
8 **BY MS. HANKS:**
9 Q. Now, if you'll turn to page 1.6, I'm
10 going to talk about section 1.4. It's called the
11 Building Envelope, the title the Building Envelope.
12 I'll start with the first
13 paragraph. "Within the hillside buildable areas,
14 the concept of a maximal allowable building area
15 called the building envelope has been developed to
16 ensure the preservation of views from each residence
17 in MacDonald Highlands."
18 Can you explain that paragraph to
19 me?
20 **MR. GUNNERSON:** Objection. Foundation.
21 **THE WITNESS:** It relates to hillside areas of
22 which PA-10 is not. It talks about the mountainous
23 areas behind the golf course area.
24 **BY MS. HANKS:**
25 Q. Okay. So it's just that paragraph that

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1 doesn't apply to PA-10, or this whole section, 1.4,
2 doesn't apply to PA-10?
3 **A. My recollection is PA-10 didn't have a**
4 **building envelope, because it's not really hillside.**
5 **It's relatively flat.**
6 Q. So it's your understanding, your
7 recollection that only non-flat units had a building
8 envelope?
9 **A. Typically. The reason for a building**
10 **envelope is to preserve as much of the surrounding**
11 **terrain as possible to keep it more of a natural**
12 **state. You can do that on the hillside lots,**
13 **because they're bigger and there's more room around**
14 **them.**
15 Q. Now, the next paragraph says, "All
16 improvement on a lot or parcel within MacDonald
17 Highlands must be designed to be within this
18 building envelope including the residents' accessory
19 buildings, outside patios and terraces."
20 And I'll stop there. It goes on.
21 I just want to make sure before we go on and talk
22 about this section any further, your belief is that
23 there is no building envelope for PA-10?
24 **A. That's my recollection.**
25 Q. How would someone know that when

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1 purchasing a property within MacDonald Highlands?
2 **MR. GUNNERSON:** Objection. Foundation. Calls
3 for speculation.
4 **THE WITNESS:** Well, if you're building on a
5 vacant lot, you would probably have that discussion
6 with the -- initial discussion with the Design
7 Review Committee. They would have researched it,
8 and they would probably tell you. If you're buying
9 a house that's already built, it's kind of a moot
10 point.
11 **BY MS. HANKS:**
12 Q. Turn to page 1.12, define golf course
13 lots.
14 Do you see that?
15 **MR. GUNNERSON:** It's 1.12.
16 **THE WITNESS:** Oh, 1.12.
17 **BY MS. HANKS:**
18 Q. It's 1.12.
19 **A. Okay.**
20 Q. Up at the top it says "Golf course lots
21 shall mean a residential lot which has a portion of
22 the boundary immediately adjacent to the golf course
23 or a condominium or Cluster Residential Development
24 which has a portion of its common elements
25 immediately adjacent to the golf course."

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1 Are you familiar with 590 Lairmont
2 Place?
3 **A. Is that the house we're talking about**
4 **that your client owns?**
5 Q. Yes. The Rosenberg Trust owns that.
6 **A. I am familiar with that lot.**
7 Q. Is that considered a golf course lot?
8 **A. Yes. It fronts the golf course.**
9 Q. And would the same be true for 594
10 Lairmont Place which is the property adjacent to
11 them owned, I believe, currently by Mr. Malek?
12 **A. It would.**
13 Q. Turn to the next page, 1.15. It
14 defines the term "Visible from neighboring
15 property." And it states, "Shall mean with respect
16 to any given object that such object is" -- do you
17 not have this page?
18 **MR. GUNNERSON:** Oh, I'm at 2.15.
19 **MS. HANKS:** We're going to go right in order.
20 **MR. GUNNERSON:** I skipped one. Sorry. Thank
21 you.
22 **BY MS. HANKS:**
23 Q. We're talking about the definition. It
24 says "Visible from neighboring property defined."
25 "It shall mean with respect to any

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1 given object that such object is or would be visible
2 to a person six feet tall standing at ground level
3 on any part of such neighboring property."
4 Do you see that?
5 **A. I do.**
6 Q. Okay. Obviously this term is mentioned
7 somewhere in the design guidelines because the term
8 is defined.
9 Without reviewing the entire
10 guidelines, sitting here today do you know why that
11 term is defined in these guidelines?
12 **MR. GUNNERSON:** Objection. Foundation.
13 **THE WITNESS:** I would think it would be
14 pointless with that property, because you've got
15 strange people wondering around on your property
16 looking in at you. So it's kind of pointless.
17 **BY MS. HANKS:**
18 Q. Well, this talks about objects on the
19 property.
20 Am I reading that correctly?
21 **MR. GUNNERSON:** Same objection.
22 **BY MS. HANKS:**
23 Q. It says, "Shall mean with respect to
24 any given object", so it's talking about objects
25 that would be visible to a person standing six feet

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1 tall at ground level?
2 **A. It might be referring to slides, things**
3 **like that, for people who put in their yards art**
4 **objects and things like that. We control those too.**
5 Q. When you say "we", you mean Foothills
6 Partners?
7 **A. Yes.**
8 Q. The developer?
9 **A. Yes.**
10 Q. Do you know if the Design Guidelines
11 have rules governing whether objects can be taller
12 than six feet?
13 **A. My recollection is that they do. I**
14 **couldn't quote you a section.**
15 Q. Sure. And I'm just more or less
16 understanding where this definition might have come
17 into play in the Design Guidelines.
18 **A. Sure.**
19 Q. And why is that? Why did you guys --
20 why did you, the developer, put that, I guess,
21 condition in the Design Guidelines?
22 **MR. GUNNERSON:** Objection. Foundation.
23 **THE WITNESS:** We've had people want to put,
24 you know, 12 and 14, 16 foot tall slides in the
25 backyard which are visible from other homes and

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1 houses. And, you know, frankly, you really don't
2 want to look at that. If you want to go to a water
3 park, then go to one outside the community. It's
4 just a quality control criteria.
5 **BY MS. HANKS:**
6 Q. Okay. And, so in terms of the objects,
7 and one example you gave is the water slides that
8 people wanted to build. You want to control the
9 height of certain objects that --
10 **A. Even the art that people bring in is in**
11 **that too.**
12 Q. Like statues you put in the backyard?
13 **A. Yeah.**
14 Q. You want to control that because, one,
15 quality control of what the vision of MacDonald
16 Highlands is, right?
17 **A. It's a lot more money than taste**
18 **sometimes.**
19 Q. And then also the protecting the other
20 homeowners buying, you're basically telling them,
21 "look, we're not going to let people construct 20
22 foot water slides"?
23 **A. Sure.**
24 Q. The next page is 2.15. It's section
25 2.8. "Setbacks."

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1 **A. Uh-huh.**
2 Q. This reads "All developments within
3 MacDonald Highlands maintain setbacks and easements
4 consistent with the setback standard described in
5 section 3.0 of these Design Guidelines."
6 You should be able to go to the
7 next section. I'm going to jump us around for a
8 second.
9 If you go to 3.10, the next page,
10 so I believe this is the section three that the
11 setback definition that we just talked about is
12 referring to, at least one portion of it. And it
13 looks like there is a chart talking about minimum
14 setbacks on page 3.10.
15 Do you see that?
16 **A. Yes.**
17 Q. Okay. And it looks like the middle of
18 the chart has Manor Estate Planning Area 10. Is
19 that the area where 59 and 594 Lairmont Place are
20 located?
21 **A. Yes.**
22 Q. And it looks like the front setback is
23 25 feet. This is the minimum setback. Do you see
24 that? Is that correct?
25 **A. I do.**

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1 Q. I'm sorry. Is that correct?

2 A. Yes.

3 Q. And then for the side there's a minimum

4 of 15 foot setback, correct?

5 A. Yes.

6 Q. And then for the rear there's a minimum

7 of a 35 foot setback, correct?

8 A. Yes.

9 Q. And then there's a star at the bottom

10 of the page. The second sentence it says, "While

11 accessory structures provided on lots along the golf

12 course and/or common open space must be set back a

13 minimum of 10 feet from all property lines, except

14 for storage structures which shall not be allowed

15 along the golf course, common open space, and

16 hillside areas."

17 Does that mean that a golf course

18 lot cannot have an accessory building?

19 MR. GUNNERSON: Objection. Foundation.

20 BY MS. HANKS:

21 Q. Or excuse me. A storage structure?

22 MR. GUNNERSON: Same objection.

23 THE WITNESS: Apparently.

24 BY MS. HANKS:

25 Q. Okay. Now, what is the purpose for

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1 these minute setbacks? And we'll just stick with

2 Planning Area 10.

3 A. Just to create adequate space.

4 Q. For the residences that are going to be

5 built on the vacant lots?

6 A. Yes.

7 Q. And if you go back two pages from that

8 chart, there is section 3.8 or, excuse me, page 3.8,

9 it's just two pages prior to that chart. Yes.

10 Here we have another definition of

11 building envelope, and it looks like this is the

12 section that is more -- that would discuss Planning

13 Area 10; is that right?

14 If you see at the top of the page,

15 I think it lists Planning Area 10 as one of the

16 areas that this section addresses?

17 A. Yes.

18 Q. So for the building envelope in this

19 section, it states, "The building envelope is the

20 portion of the lot exclusive of any setbacks,

21 easements, or other encumbrances upon which lot

22 improvements may be located."

23 Can you explain that sentence?

24 MR. GUNNERSON: Objection. Foundation.

25 THE WITNESS: In essence, when you take the

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1 easements off on all the sides, what's left in the

2 middle you could say is a building envelope.

3 BY MS. HANKS:

4 Q. And the next paragraph goes onto state,

5 "A maximum building envelope has been established

6 for each custom lot to foster creative solutions to

7 the massing of building components and to ensure the

8 preservation of views from each residence in

9 MacDonald Highlands.

10 The building envelope is based

11 upon the minimum setbacks as outlined in table 3.9

12 and the building height limit as described in

13 section 3.4."

14 So am I correct in understanding

15 that paragraph to mean that the chart that we just

16 discussed which provided a 25 foot front setback, 15

17 foot side setback, and a 35 foot rear setback for

18 Planning Area 10, that that's my building envelope

19 for my house?

20 MR. GUNNERSON: Objection. Foundation. I

21 don't see on 3.10 where it says table 3.9.

22 MS. HANKS: Oh, it might be on the previous

23 page.

24 MR. GUNNERSON: I think you have three

25 including the page you have there, 3.9.

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1 BY MS. HANKS:

2 Q. Well, you can still answer the

3 question.

4 Would that be the building

5 envelope?

6 A. You could call it that. You could call

7 it that.

8 Q. It's basically the area where I have

9 to --

10 A. Where you can build.

11 Q. Where you can build?

12 A. Yeah.

13 Q. We're staying on page 3.8, the sentence

14 that describes the reason why the maximum building

15 envelope has been established.

16 "One of the reasons to ensure the

17 preservation of views from each residence in

18 MacDonald Highlands."

19 Can you explain that why? Is it

20 important to have a building envelope?

21 MR. GUNNERSON: Objection. Foundation.

22 BY MS. HANKS:

23 Q. To preserve views?

24 A. Well, from a technical standpoint, if

25 you wanted to be really technical about preserving

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1 views, you would never be able to build on any lot.
2 Because anytime you build, you're changing the view
3 from a particular parcel.
4 I think it was the Mazara
5 (phonetic) house that your clients bought. When
6 Marty Mazara and his wife built that house, it
7 impacted the view from the house next to him,
8 because suddenly instead of having open space, that
9 was gone. There was a house there instead.
10 So when we talk about views,
11 especially on a golf course lot, we're typically
12 looking at front foot on the golf course and trying
13 to maintain that kind of a view, not views in
14 general. Because you're always going have impacts
15 on views when you build.
16 Q. Then why have any minimum setback for
17 the rear if that were the case? Why wouldn't
18 property --
19 A. City ordinances. You have to have it.
20 Q. So it's your understanding that the
21 minimum setback set forth in the Design Guidelines
22 are in conjunction or consistent with the Henderson
23 zoning guidelines?
24 MR. GUNNERSON: Objection. Foundation.
25 THE WITNESS: Ours may be bigger than what

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1 they call for, and in some cases they're not.
2 BY MS. HANKS:
3 Q. When you say "bigger", more restrictive
4 is what you mean?
5 A. I mean more greater length or depth,
6 probably a better way to put it.
7 Q. If we could just talk about Planning
8 Area 10, because I know different areas are
9 different. For Planning Area 10 then, if all of the
10 views that you're concerned with are toward the golf
11 course, why have any setbacks greater than what the
12 City of Henderson requires for the rear of the
13 property?
14 MR. GUNNERSON: Objection. Foundation.
15 THE WITNESS: Just to get more depth. And,
16 again, I don't know what's the depth here.
17 BY MS. HANKS:
18 Q. Thirty-five feet according to this
19 chart for Planning Area 10 for the rear.
20 A. Yeah. It's just there's a presumption
21 of quality when you have more space back from the
22 golf course. And just as I mentioned earlier,
23 you've got a lot of strange people wondering through
24 or by your house on that golf course. And policing
25 them is an interesting event in itself. So it's

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1 good to have extra space between the house and the
2 golf course.
3 Q. Would you agree that the view
4 preservation is not only -- we'll strictly deal with
5 PA-10 not only from the back of the house but also
6 more diagonally from each side of the house?
7 A. No.
8 Q. The rear yard?
9 A. No. It's straight out at the golf
10 course.
11 Q. So the Design Guidelines, you had no
12 intention to ever protect any of the diagonal views
13 from the back of PA-10 back lots of PA-10?
14 A. There's a little bit of protection on
15 the sides, because we have a 15 foot setback, but
16 that's fairly minimal where we use fencing that's
17 open.
18 But the real value with a golf
19 course lot is the front footage, and typically your
20 premiums are based on front foot.
21 Q. Sure. Sure. I'm not talking about
22 where the real value or the premium is coming from.
23 I'm making sure when I'm reading these guidelines
24 that I understood you correctly that the guidelines
25 in terms of setting the minimum setbacks did not

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1 take into account the diagonal views that might be
2 seen from the rear of someone's property in PA-10
3 area?
4 MR. GUNNERSON: Objection. Asked and
5 answered.
6 THE WITNESS: Typically it would not.
7 BY MS. HANKS:
8 Q. When you say "typically," I want to
9 make sure, though. Did these guidelines do that?
10 MR. GUNNERSON: Objection. Foundation:
11 THE WITNESS: I said the same thing.
12 BY MS. HANKS:
13 Q. And so it's your testimony that the 35
14 foot rear setback minimum that's set forth in this
15 chart is only for the golf course?
16 In other words, the look of the
17 golf course from people playing on the golf course?
18 MR. GUNNERSON: Objection. Misstates prior
19 testimony. Foundation. Go ahead.
20 THE WITNESS: I think I answered the question.
21 It's to give a better setback from the golf course
22 for privacy.
23 BY MS. HANKS:
24 Q. Is it also for the benefit of the
25 houses located to each side of the property?

<p style="text-align: right;">Page 57</p> <p>1 A. No.</p> <p>2 Q. Well, I think we talked about earlier</p> <p>3 that you don't allow people to put, you know, a 40</p> <p>4 foot or 20 foot water slide in their backyard to</p> <p>5 protect the adjacent owners?</p> <p>6 A. True.</p> <p>7 Q. The setback doesn't play into that as</p> <p>8 well so that to ensure the structure won't be --</p> <p>9 A. No. Because you can put things like</p> <p>10 that or a little lower obviously in those setbacks.</p> <p>11 Q. If someone didn't care about their</p> <p>12 privacy and said, "I want to go all the way up until</p> <p>13 the back of my lot. I'm on PA-10. I want to go</p> <p>14 right up to the golf course. I'm not concerned</p> <p>15 about the privacy part of it," would you waive the</p> <p>16 35 foot rear setback?</p> <p>17 A. No.</p> <p>18 Q. Why not?</p> <p>19 A. Because when this was adopted, the city</p> <p>20 wanted those setbacks there. They became law. So</p> <p>21 it's law. It's 35 feet. We don't change it.</p> <p>22 Q. If you go onto the next page, page 3.9</p> <p>23 it's still talking about the building envelope. And</p> <p>24 I'll start at the beginning of the sentence.</p> <p>25 It says, "Although the shape and</p>	<p style="text-align: right;">Page 59</p> <p>1 MR. GUNNERSON: Objection. Misstates language</p> <p>2 in the contract or of the guidelines.</p> <p>3 BY MS. HANKS:</p> <p>4 Q. So that's what I'm asking. How does</p> <p>5 not allowing an owner to fill up their building</p> <p>6 envelope protect an adjacent lot?</p> <p>7 A. It just creates more space, you know,</p> <p>8 back from the golf course.</p> <p>9 Q. The next section talks about combined</p> <p>10 lots. It's on the same page.</p> <p>11 It says, "If an owner owns two</p> <p>12 contiguous lots and wants to combine the two lots</p> <p>13 into a single home site, the owner may do so only</p> <p>14 with the prior consent of the DRC and only if the</p> <p>15 change in the DRC's opinion does not materially</p> <p>16 impair views and/or privacy from neighboring lots or</p> <p>17 common areas."</p> <p>18 Why was that a concern of the</p> <p>19 Design Review Committee?</p> <p>20 MR. GUNNERSON: Objection. Foundation.</p> <p>21 BY MS. HANKS:</p> <p>22 Q. Or, actually, let me rephrase that,</p> <p>23 because that's not who drafted these guidelines.</p> <p>24 Why was that a concern of the</p> <p>25 developer in drafting these guidelines?</p>
<p style="text-align: right;">Page 58</p> <p>1 location of the building envelope are intended to be</p> <p>2 somewhat flexible, only the Design Review Committee</p> <p>3 can make modifications to the building envelope only</p> <p>4 if the modifications do not result in the</p> <p>5 significant adverse impact upon the natural features</p> <p>6 of the lot, adjacent lots, or the MacDonald</p> <p>7 Highlands community as a whole."</p> <p>8 How would allowing someone to fill</p> <p>9 up their complete building envelope affect an</p> <p>10 adjacent lot?</p> <p>11 MR. GUNNERSON: Objection. Foundation.</p> <p>12 THE WITNESS: Say that again.</p> <p>13 BY MS. HANKS:</p> <p>14 Q. How would allowing an owner to fill up</p> <p>15 their complete building envelope affect an adjacent</p> <p>16 lot?</p> <p>17 A. Well, we don't allow people to fill in</p> <p>18 their complete lot.</p> <p>19 Q. Right. That's what I'm asking. It</p> <p>20 looks like you explain here -- you know, it looks</p> <p>21 like you're explaining this section, "look, the</p> <p>22 building envelope's intent is to be somewhat</p> <p>23 flexible, but this is what we're trying to reserve,"</p> <p>24 and one of the items you're trying to preserve is</p> <p>25 adjacent lots?</p>	<p style="text-align: right;">Page 60</p> <p>1 A. I suspect it was put in by the</p> <p>2 developer's consultant early on. The reality is you</p> <p>3 don't have any privacy when you live on a golf</p> <p>4 course, period. You have no privacy whatsoever.</p> <p>5 Q. This section also talks about not</p> <p>6 materially impairing the views of the neighboring</p> <p>7 lots.</p> <p>8 Why was that an important aspect?</p> <p>9 A. It's not, because neighboring lots when</p> <p>10 they are built by their very nature impair the views</p> <p>11 to some extent.</p> <p>12 Q. If that were the case, why wasn't the</p> <p>13 section ever deleted from the guidelines?</p> <p>14 A. Because it was never an issue.</p> <p>15 Q. What do you mean "it's never an issue"?</p> <p>16 A. It's never been an issue.</p> <p>17 Q. You mean until this lawsuit?</p> <p>18 A. Until this lawsuit. Most people</p> <p>19 understand that when someone builds next to you,</p> <p>20 it's going to impact your view a little bit. You'll</p> <p>21 have a house there instead of a bunch of sagebrush.</p> <p>22 Q. Certainly. But when someone was</p> <p>23 reading these guidelines at least in terms of this</p> <p>24 particular section, would it be fair to say that</p> <p>25 they understood that the Design Review Committee was</p>

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1 going to protect them in terms of using privacies
2 when people did buy multiple lots?
3 **MR. GUNNERSON:** Objection. Foundation. Calls
4 for speculation.
5 **BY MS. HANKS:**
6 Q. When I say protect them, I mean you're
7 going to carefully review the proposed structure to
8 make sure it doesn't impair.
9 **A. Not to the point of precluding people**
10 **from building on adjacent lots. That would be**
11 **unreasonable.**
12 Q. Drawing your attention to page 3.11,
13 this might answer what we were talking about
14 earlier. And you can correct me if I'm wrong.
15 The last paragraph here indicates
16 that, "Any slope area adjacent to the golf course
17 and not a part of the area of home development or
18 construction shall be landscaped as a natural desert
19 zone or natural area."
20 Do you see that?
21 **A. Yes.**
22 Q. Is that one of the pallets of
23 landscaping we were discussing earlier that exists
24 within MacDonald Highlands?
25 **A. Yes.**

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1 Q. And to the best of your recollection,
2 would that be the natural desert zone or natural
3 area of pallet landscaping, likely be what was in
4 the perimeter strip that we discussed earlier?
5 **A. I think a lot of that was actually**
6 **enhanced in some areas. Along the houses, I think**
7 **that was enhanced, desert bloom and things like**
8 **that. The piece that was sold was actually just a**
9 **natural area, because it wasn't used by the golf**
10 **course.**
11 Q. So it would be the natural area as this
12 term is used in this paragraph?
13 **A. Correct.**
14 Q. And keeping with the building envelope
15 and the understanding of building on the different
16 lots, if you go to page 3.14, it's the paragraph
17 towards the middle in that section called "Building
18 Orientation."
19 And there is a sentence that
20 indicates, "The Design Review Committee will
21 consider each lot independently and will give
22 extensive consideration to view corridor impacts on
23 adjacent homes, solar orientation, drainage
24 patterns, impacts to existing conditions, and
25 driveway access."

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1 Do you see that?
2 **A. I do.**
3 Q. And, so, again, I understand that
4 people know people are going to build on the lots
5 next door to them. But at least in terms of this
6 paragraph, the Design Review Committee under these
7 guidelines is telling homeowners we're going to
8 carefully look at owners' different plans, and one
9 of the elements we're going to take into
10 consideration is the impact on your home.
11 I mean, is that a fair
12 understanding of that paragraph?
13 **MR. GUNNERSON:** Objection. Misstates what was
14 stated in the document. Go ahead and answer.
15 **THE WITNESS:** It basically says that we'll
16 review impacts on adjacent homes. You know, we
17 won't allow a big statue of Methuzelah looking over
18 your wall. That will have to be orientated in a
19 different location.
20 Certainly doesn't mean we won't
21 allow people to build on a certain lot.
22 **BY MS. HANKS:**
23 Q. I totally understand that. What I'm
24 saying is at least in these guidelines you're
25 indicating that you're still taking into

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1 consideration the adjacent lots when you're
2 reviewing someone's architectural plan to build on
3 their lot, correct?
4 **A. Yes.**
5 Q. They're not in a world of their own
6 where this is their lot and they can do anything on
7 it, you're still going to take into consideration
8 adjacent neighboring properties?
9 **A. It's one of the considerations that we**
10 **look at.**
11 Q. Understanding that when someone buys an
12 unimproved unit within MacDonald Highlands and
13 they're adjacent to another unimproved unit in
14 MacDonald Highlands, they're going to build their
15 home with the understanding that the home next to
16 them is going to be bound by the same guidelines,
17 correct?
18 **MR. GUNNERSON:** Objection. Foundation. Calls
19 for speculation.
20 **THE WITNESS:** I would assume so.
21 **BY MS. HANKS:**
22 Q. And, so let's just pretend, you know, I
23 bought 590 Lairmont and it was a vacant lot, and I'm
24 building on it.
25 If I bought that lot and I had my

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1 architecture come out and tell me how I should
2 position my house to maximize my views, am I going
3 to be able to build on that lot knowing the lot next
4 to me, 594 Lairmont, is going to have those setbacks
5 that we discussed, I can kind of have a general
6 understanding of what their building envelope is
7 going to be?
8 **MR. GUNNERSON:** Objection.
9 **THE WITNESS:** The client never built the house
10 anyway.
11 **BY MS. HANKS:**
12 Q. No. I know. I'm telling you to take
13 the hypothetical though. I'm just trying to
14 understand when you have a completely vacant street
15 and the first person to buy on that street, when
16 their architect says, "look, I'm going to build your
17 house -- when that architect designs that house on
18 their particular lot that they purchased, they
19 depend on these guidelines to give them a general
20 understanding of what the two adjacent lots'
21 residences might look like?
22 **MR. GUNNERSON:** Objection. Incomplete
23 hypothetical and foundation. Calls for speculation.
24 **THE WITNESS:** I don't think you can ever know
25 what the adjacent house is going to look like until

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1 they design it.
2 **BY MS. HANKS:**
3 Q. And I can clarify that. I'm not
4 actually concerned with what they're going to look
5 like. But when an architecture is designing a home
6 for one lot, when they look at these guidelines,
7 they have an expectation of what the building
8 envelope is going to be for the adjacent lots in
9 terms of what their recommendations are for that
10 particular house, correct?
11 **MR. GUNNERSON:** Same objection.
12 **BY MS. HANKS:**
13 Q. Am I making sense?
14 A. You kind of are in a way. The problem
15 that you have with your comment is where is the
16 front of the lot?
17 See, some lots you drive down the
18 street, this is the front, there's the back, and
19 then you've got the two sides. Some lots like
20 Malek's lot are different. They are in a
21 cul-de-sac. Where is the front? More importantly,
22 where's the rear yard setback? That's the issue.
23 Q. How would someone find that out? If
24 I'm an architecture building on -- I'm only going to
25 take the properties that I know, because I don't

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1 know any addresses within MacDonald Highlands.
2 Let's assume they're all vacant in
3 terms of this hypothetical. If I'm an architect
4 building on 590 Lairmont, how would I find out what
5 the rear side and front lot lines are for 594?
6 **MR. GUNNERSON:** Objection. Foundation. Calls
7 for speculation. Go ahead.
8 **THE WITNESS:** Yeah. I am speculating, because
9 I don't remember in this case what happened, but
10 maybe the City of Henderson.
11 **BY MS. HANKS:**
12 Q. And I'm not concerned with what
13 happened in this case. I'm just asking you from a
14 hypothetical standpoint before any of the lots were
15 developed on, how would you find out which part of
16 the lot was rear side and front, because you said it
17 was a cul-de-sac?
18 A. It's not an issue until you start to
19 build. So we wouldn't have addressed that, where
20 was the front, where was the rear until someone
21 decided to buy that lot and build on it.
22 Q. When you bought adjacent property, is
23 there any indication of where the properties next to
24 you, the rear, front, or side would be?
25 **MR. GUNNERSON:** Objection. Foundation. Calls

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1 for speculation.
2 **THE WITNESS:** I don't know how you would
3 determine that.
4 **BY MS. HANKS:**
5 Q. Is it a fluid or is it an nonexistent
6 thing until they're developed?
7 A. Well, I mean, it's --
8 **MR. GUNNERSON:** Objection. Form. Foundation.
9 **THE WITNESS:** It's really kind of a moot
10 point. It doesn't make sense that you worry about
11 that issue.
12 What you're buying when you buy a
13 golf frontage lot is here's my view, here to here,
14 my back frontage on the golf course, and I want to
15 make sure that I keep that view.
16 **BY MS. HANKS:**
17 Q. Yeah. And I'm not concerned with that.
18 I'm more concerned with when MacDonald Highlands
19 Planning Area 10 was developed, was there a map
20 indicating where the rear side and front of each lot
21 was?
22 **MR. GUNNERSON:** Objection. Form.
23 **THE WITNESS:** I don't know. I really don't
24 know.
25 ////

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1 **BY MS. HANKS:**
2 Q. I know one can assume it based on where
3 it's located on the golf course, correct?
4 **A. Some lots.**
5 Q. Some lots?
6 **A. Not Malek's. But most lots like your**
7 **client's lots, the ones that are to the north of him**
8 **are pretty easy to figure.**
9 Q. Do you know if the rear side and front
10 part of the lot are set by the city?
11 **MR. GUNNERSON:** Objection. Form as to the
12 lot. Vague.
13 **THE WITNESS:** They regulate it.
14 **BY MS. HANKS:**
15 Q. Do they have to establish which portion
16 is rear?
17 **A. It's not what I do.**
18 Q. Okay.
19 **A. I'm more the big picture.**
20 **MS. WINSLOW:** Counsel, can we take a five
21 minute break?
22 **MS. HANKS:** Sure.
23 (Short break.)
24 **BY MS. HANKS:**
25 Q. Okay. So turning your attention to

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1 3.16...
2 **A. Okay.**
3 Q. It's the last paragraph located on that
4 page.
5 It reads, "Furthermore, if
6 adjacent lots have existing homes, the lot owner is
7 to show the existing homes and its elevation in
8 relation to his or her proposed design."
9 Why is it important for someone
10 constructing a house on their vacant lot to show you
11 the elevation of the existing home next to them?
12 **A. It's typically not because of the**
13 **setbacks, but that's typically what you want to do.**
14 **You want to know how close those houses are**
15 **together.**
16 Q. And why? What are we trying to
17 preserve here with the design guidelines?
18 **A. You just don't want them on top of each**
19 **other.**
20 Q. Turn to the next page in this stack.
21 It's actually 3.57. The last paragraph reads,
22 "While views should be maximized from individual
23 home sites, the residences should be designed and
24 sited such that view opportunity from surrounding
25 lots are not object instructed."

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1 Can you explain that paragraph?
2 **MR. GUNNERSON:** Objection. Foundation.
3 **THE WITNESS:** Well, it's actually impossible
4 to do that, because like I said before, anything you
5 build on a lot adjacent to another one is going to
6 obstruct some of the views.
7 **BY MS. HANKS:**
8 Q. And then why have this section included
9 in the design guidelines, this paragraph?
10 **A. That's a good question. Well, you want**
11 **to maximize views from individual home sites, but no**
12 **one is going to believe that your view is not going**
13 **to change when someone builds next to you. I mean,**
14 **it just does. That's how it works.**
15 **It's not realistic to think that**
16 **someone builds next to you it's not going to impact**
17 **your view. It will just from the fact there's a**
18 **house there that used to be desert scrub.**
19 **Let me check this real quick.**
20 Q. And understanding that it's impossible
21 to preserve the -- we'll talk, I guess, the side
22 views so to speak, because we're talking about
23 adjacent lots once a home is built there.
24 The Design Guidelines at least
25 from this paragraph are still mandating that the

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1 side views are protected as much as possible, right?
2 **A. Yeah. We've done things to protect**
3 **that side view slightly.**
4 Q. How?
5 **A. Well, we have a 15 foot triangle on the**
6 **corner of each home lot fronting the golf course**
7 **where we restrict tree heights, vegetation heights**
8 **actually on -- it's on your next page.**
9 Q. You actually led right into where I was
10 going to go to, so that is perfect. Let's talk
11 about that 15 foot triangle.
12 What did you call it? Triangle
13 view?
14 **A. View. Triangle is what we call it.**
15 Q. I think you called it the cone of
16 vision in the Design Guidelines?
17 **A. Right.**
18 Q. So explain that to me. What is the
19 cone of vision?
20 **A. It allows each lot to have a little bit**
21 **of a view off to the sides and not be closed in with**
22 **vegetation, because there are people that really are**
23 **concerned about privacy that will put huge trees up.**
24 **And your view can be looking out through a corridor**
25 **of big trees.**

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1 **It's better to have the trees back**
2 **further near the house so you protect your privacy**
3 **from your neighbor more like by planting on the side**
4 **of your house.**
5 Q. And still preserve the view corridor of
6 the cone view?
7 **A. Yeah. Because 15 feet so to speak on**
8 **the sides.**
9 Q. We're both using our hands the same
10 way.
11 **A. I know you can't.**
12 Q. We'll make sure it's clear on the
13 record.
14 When we say cone, we're actually
15 almost making a triangle angle with our hands going
16 out, correct?
17 **A. Yes. From the corner property line.**
18 Q. So that would be essentially the house
19 is the tip of the triangle, and we're talking about
20 the cone of vision, we're going out 15 feet
21 diagonally both right and left?
22 **A. Yes. Yes. On the side lot easement on**
23 **the line of the golf course.**
24 Q. Right. And, so each corner of a
25 particular lot on the golf course has the 15 foot

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1 setback to preserve the rear cone of vision?
2 **A. I think it's actually --**
3 Q. I think it's the next page, 5.20.
4 **A. From the rear yard property corner.**
5 Q. Okay. And, so I'll just read it into
6 the record since we've already started talking about
7 it to make sure we keep it clean here.
8 It says "Those lots that require
9 preservation of view corridors will not be permitted
10 to install improvements, plant trees or install
11 other plant material that are taller than four feet,
12 i.e., at maturity, not with maintenance, within a
13 distance of 15 feet from the rear yard property
14 corner." And it says Exhibit O, 2.38.
15 So that's what we were basically
16 just talking about, correct?
17 **A. Yes.**
18 Q. And would that be for both corners of
19 the rear yard, both corners of the rear of the yard
20 have that?
21 **A. Of the rear property line.**
22 Q. Rear of the property line.
23 If we go to 2.36, this talks more
24 about that rear cone of vision.
25 It reads, "In all site design and

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1 layout careful attention to open space is important.
2 Those lots that front on the golf course open space
3 or possess strong view orientations may install a
4 community design view wall on the rear property
5 line.
6 If a solid wall is desired along
7 the side property lines, the solid side yard wall
8 must end at a distance of 15 feet from the property
9 corner."
10 I want to stop there and just make
11 sure I read that sentence correctly. The way I read
12 that is it means that your wall that's going to, I
13 guess, gate off your house has to be setback 15 feet
14 from your actual rear property line.
15 Am I reading that right?
16 **MR. GUNNERSON:** Objection. Foundation.
17 **THE WITNESS:** No. I don't believe so.
18 **MR. GUNNERSON:** Form.
19 **BY MS. HANKS:**
20 Q. Can you tell me what that means so that
21 I understand up until the end of that sentence that
22 I read?
23 **MR. GUNNERSON:** Objection. Foundation. Go
24 ahead, if you can.
25 **THE WITNESS:** The confusion there is that we

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1 typically don't want to have -- we have a community
2 view wall on golf courses. It's rod iron typically.
3 Sometimes there's a small masonry wall below that.
4 Because we want the golf areas to be open.
5 If someone doesn't want that, they
6 want a solid wall, they have to move it 15 feet back
7 from the end, from the golf course boundary.
8 **BY MS. HANKS:**
9 Q. I read that sentence if a solid wall is
10 desired from side property lines.
11 **A. Oh, okay. You're right.**
12 Q. So really it only talks about -- you
13 can only have a solid wall on the side property?
14 **A. On the sideline there's up to 15 feet**
15 **back from the property corner.**
16 Q. Right. So that's my question. The way
17 I read that sentence meant that if I'm going to
18 build a side solid wall on the side of my property
19 line, the last section or the beginning section of
20 that wall has to end at a distance of 15 feet from
21 my property corner.
22 Am I reading that right? So, in
23 other words, I almost lose 15 feet of my property if
24 I'm on the golf course?
25 **MR. GUNNERSON:** Objection. Misstates.

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1 **THE WITNESS:** You don't lose it. It's just
2 there's additional criteria that goes with it.
3 **BY MS. HANKS:**
4 Q. Okay. That may be a better way to say
5 it.
6 **A. You can't plant it as dense with tall**
7 **trees. They have to be four feet.**
8 Q. And they'll be 15 feet that won't even
9 be part of my yard, correct?
10 **A. No. It will be part of your yard.**
11 Q. Okay. Can you explain that? I guess
12 I'm confused as to where the distance of the 15 feet
13 is coming from if it's saying it has to be from the
14 corner of the property. Has to end at a distance of
15 15 feet from the property corner.
16 **A. It's just like we spoke about before.**
17 **It's that 15 feet either side on the side yard, side**
18 **yard boundary and the golf course boundary. You**
19 **would draw a line connecting those two points, and**
20 **within that area you can't plant anything that's**
21 **higher than four feet.**
22 **But it's part of your yard, and**
23 **you're in there. What you would typically do is**
24 **have a rod iron fence along that side yard that**
25 **would be 15 feet from the rear yard setback from the**

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1 **rear property boundary.**
2 Q. Right. So 15 feet from the property
3 line?
4 **A. Yes. On the side.**
5 Q. On the side. Let me just make sure.
6 I'm going to draw it and make sure we all understand
7 it just so I can make sure I understand what you're
8 saying, and this is not going to be to scale or
9 anything like that.
10 **A. It's okay.**
11 Q. I'm going to draw a square, and this is
12 going to represent a lot, and this will be the
13 entire property that I would own.
14 **A. Okay.**
15 Q. Except that. This line right here that
16 I'm going to mark as rear, and I'm going to mark
17 these two as side. And then this front one will be
18 the front. And we'll pretend I'm a golf course so
19 that we're doing the rear cone of vision.
20 If I understand this sentence
21 correctly for my side wall that I wanted to build, I
22 would have to end the wall 15 feet from my property
23 line?
24 **A. Correct.**
25 Q. Okay. And we'll mark this as 15 feet,

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1 and then I know this has to be set -- the wall has
2 to be set back a certain amount of feet from the
3 side property line. I'm not concerned about that.
4 **A. No, it doesn't.**
5 Q. Oh, it doesn't? So the wall can be
6 exactly where the sideline is of the property lot,
7 correct?
8 **A. Correct.**
9 Q. Okay. And then according to the next
10 sentence, it says, "Single pilaster is required at
11 each property line corner."
12 **A. That's pilaster.**
13 Q. Pilaster on both sides. So let's put a
14 box here. There has to be a pilaster there set back
15 15 feet from the rear property line, correct?
16 **A. Correct.**
17 Q. And then on the other side I have to
18 have another one, another solid pilaster set 15 feet
19 back?
20 **A. Yes.**
21 Q. And then -- I'm sorry. Did you have to
22 add anything?
23 **A. I didn't.**
24 **MS. HANKS:** I'm sorry. Did you want to add
25 anything?

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1 **MR. GUNNERSON:** It just says a single pilaster
2 is required at each property line corner. Where
3 you've drawn those pilasters is not a property line
4 corner. Property line corner is a different place.
5 **BY MS. HANKS:**
6 Q. No. It is, because it has to be 15
7 feet set back from the property corner, correct?
8 **A. Maybe I could speed this up a little**
9 **bit here. You'll typically have a pilaster here,**
10 **another one here, and there'll will be so many feet,**
11 **there will typically be pilasters here. That's kind**
12 **of what you're looking at here. So it's 15 feet, 15**
13 **feet, and then your plants in there are four feet.**
14 **That's all.**
15 Q. Now, you drew another square at the
16 corner of the actual --
17 **A. You typically have a pilaster at the**
18 **end, because when you have a rod iron fence, you**
19 **have to have something for it to anchor into.**
20 Q. So just so I'm clear then, the box that
21 I colored in, I'll draw an arrow going this way
22 going toward the front of this property, that could
23 be a solid wall on the side?
24 **A. Yes.**
25 Q. The 15 feet from the rear corner of the

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1 lot that is set back, that has to be a rod iron
2 fence; is that correct?
3 **A. Typically that's how it is.**
4 Q. That cannot be a solid wall, the 15
5 feet portion cannot be a solid wall under the Design
6 Guidelines?
7 **A. It might be in your client's case. It**
8 **might be.**
9 Q. Oh, it might be a solid wall?
10 **A. It might be able to be a solid wall if**
11 **he wants one.**
12 Q. I'm actually more or less trying to
13 understand this rear yard cone of vision.
14 **A. That is typically how it works, just**
15 **like that.**
16 Q. So it would be the 15 feet that's set
17 back from the rear corner would be a rod iron fence,
18 not a solid wall?
19 **A. Right. In most cases.**
20 Q. And then going along the rear would
21 continue the rod iron fence, correct?
22 **A. Typically, yes.**
23 Q. So the only reason the extra pilaster
24 is required set back 15 feet is if you want a solid
25 wall on your side yard?

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1 **A. Yes.**
2 Q. Okay. In other words --
3 **A. You don't have to have a wall if you**
4 **choose not to.**
5 Q. Right. And if you didn't want a wall
6 or even if you wanted a rod iron fence on the side,
7 then these two pilasters, the one that I colored in
8 would not be existing, correct?
9 **A. Well, you do have the requirement of**
10 **the fence along there so...**
11 Q. Okay.
12 **A. You would probably have that pilaster**
13 **there too unless you and your neighbor decide you**
14 **don't want a wall between you. Probably unlikely in**
15 **this case.**
16 Q. And then let's read the last sentence.
17 I think you already addressed it, but we'll make
18 sure we have it clear.
19 The last sentence is, "In addition
20 those lots that require preservation of view
21 corridors will not be permitted to install
22 improvements, plant trees or other plant material
23 that are taller than four feet within a distance of
24 15 feet from the rear yard property corner."
25 **A. Correct.**

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1 Q. And you kind of carved out a triangle
2 there on this little diagram. You put some dots
3 there. That is what the section that this paragraph
4 is talking about where you have to -- you can't put
5 any structures there, and you can't plant any trees
6 that are taller than four feet, correct?
7 **A. Correct.**
8 Q. Now, let's mark this and pretend this
9 is 590 Lairmont --
10 **A. Okay.**
11 Q. -- the next hypothetical that we're
12 going to do.
13 And then that would mean the
14 property next to it going to the right, to my right,
15 to your left, would be 594 Lairmont, right?
16 **MR. GUNNERSON: I'm going to object.**
17 **THE WITNESS: It doesn't look like that.**
18 **MR. GUNNERSON: I'm going to object on your**
19 **drawing, because you've made a square or rectangular**
20 **property, and that's clearly not what 594 is.**
21 So any answers related to your
22 questions are going to be potentially incorrect. So
23 I just object to your drawing.
24 **BY MS. HANKS:**
25 Q. And we can change that.

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1 The purpose of what I was going to
2 do, the rear lot line of 594 Lairmont before the
3 golf parcel was made a part of it, was that flush
4 with the rear lot line of 59 Lairmont?
5 **A. No.**
6 Q. Okay. Where was it in relation to 590
7 Lairmont?
8 **A. It's really now on Stephanie.**
9 Q. So the Stephanie line is the rear part
10 of 594 Lairmont?
11 **A. Yes.**
12 Q. So what is the part that's abutting the
13 golf course?
14 **A. That's the sideline setback.**
15 Q. Did the sideline setback run prior to
16 the addition of the golf parcel to 594 Lairmont, did
17 the sideline run in the same line as the rear of 590
18 Lairmont?
19 **A. No.**
20 Q. Okay. Where did it run?
21 **A. It's perpendicular. It's like this.**
22 Q. So the line you just drew going up,
23 what does that represent?
24 **A. That's the side lot line.**
25 Q. Is that without the addition of the

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1 golf parcel?
2 **A. I don't know.**
3 **MR. GUNNERSON:** You're drawing a bunch of
4 squares on a piece of property that has nothing to
5 do with squares other than your client's lot. So
6 anything that's being stated now, I'm completely
7 objecting to, because it totally distorts what's
8 going on here.
9 **MS. HANKS:** Hold on, Counsel.
10 **MR. GUNNERSON:** I just want to make sure
11 that's clear.
12 **MS. HANKS:** Okay. You're clear. But let's
13 back up for a second, because we already discussed
14 that this right here, these two lines that I drew
15 that draw another square do not represent 594
16 Lairmont.
17 So my questions to the witness was
18 merely just could he explain how 594 Lairmont looked
19 next to 59 Lairmont in terms of where the rear
20 property line is and the side property line. So I
21 understand what he was saying.
22 **MR. GUNNERSON:** I understand. My only point
23 is if you actually have a map of that, we can look
24 -- point out to him, then I think it would be an
25 easier discussion than to try to draw it in terms of

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1 squares.
2 **THE WITNESS:** Why don't you look at your
3 Exhibit O?
4 **BY MS. HANKS:**
5 Q. We are. We're going to go to that. I
6 just wanted to make sure that we had this rear cone
7 of vision understood.
8 **A. That's why I say it might be**
9 **meaningless in your client's case, because there's**
10 **no real reason to keep this open unless he would**
11 **like to see the Malek's.**
12 Q. That leads me to my next question then.
13 The rear cone of vision doesn't exist anymore for
14 the Rosenberg Trust, the 590 Lairmont owners now
15 that the golf parcel has been made part of 594
16 Lairmont; is that correct?
17 **A. No. That's not correct. Because the**
18 **part that was given to them or sold to them is the**
19 **area that's kind of coming out this direction, but**
20 **I'm not sure if your representation that this goes**
21 **straight.**
22 Q. Okay.
23 **A. And, you know, I don't do that, but I**
24 **don't believe it does.**
25 Q. So your understanding from just your

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1 best understanding of how the lots were situated is
2 that 590 Lairmont never had a rear cone of vision
3 towards the 594 Lairmont?
4 **A. It may not have, but I don't know for**
5 **sure.**
6 Q. How would you know that? How would you
7 determine that?
8 **A. I would probably check with Paul.**
9 Q. Pall Bykowski?
10 **A. Yes. That's what he does.**
11 Q. And before we get to the diagram that
12 is on the next page, what was the purpose again of
13 this rear cone of vision, rear yard cone of vision?
14 **MR. GUNNERSON:** Objection. Foundation.
15 **THE WITNESS:** Typically to open up your
16 landscape area so no one is really putting big trees
17 on either side of your golf frontage.
18 **BY MS. HANKS:**
19 Q. Take a look at the next page of Exhibit
20 O which you already talked about. Looks like it's
21 -- on this diagram, the lots that are colored in red
22 are lots that are required to have a rear cone of
23 vision.
24 Is that my understanding of this
25 diagram?

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1 **A. Yes.**
2 Q. And I'll mark it because you have the
3 original exhibit, so I'll have to mark it on yours.
4 I'm going to mark with an X.
5 **A. Oh, I thought I get to keep that.**
6 Q. No. You don't get to keep it.
7 I'll mark with an "X" -- we'll
8 just do it "X", "Y", "Z". "X" for the Rosenbergs'
9 which is 590 Lairmont, is that correct where I put
10 that X?
11 **A. Probably.**
12 Q. And then we'll mark "Y" to represent
13 594 Lairmont which is Mr. Malek's property, correct?
14 **A. Probably.**
15 Q. And then "Z" is the last lot on this
16 cul-de-sac on this side at least, and that's also --
17 I think it's 598 Lairmont; is that correct?
18 **A. I don't know.**
19 Q. Now, based on this map, understanding
20 this is also not an exact map, because it's just
21 used as a key for this rear yard cone of vision
22 discussion within the Design Guidelines, is it your
23 understanding that lot "X", 590 Lairmont does not
24 have a rear cone of vision?
25 **A. I would say that it does according to**

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1 that.
2 MR. GUNNERSON: Did you say 590?
3 BY MS. HANKS:
4 Q. Yes. 590, which we marked as an "X",
5 and I'll put that in here after we're done with the
6 deposition.
7 Now, it's my understanding with
8 the addition of the golf parcel that was sold to
9 Mr. Malek that he included as part of "Y" that we
10 have marked on here, which is 594 Lairmont. And
11 this is not going to be exact. Well, actually,
12 could you draw for me what you believe --
13 A. No.
14 Q. Okay. You don't know?
15 A. No.
16 Q. Is it your understanding, though, that
17 with the addition of the golf parcel as part of
18 594 Lairmont or what we've marked as "Y" on this
19 map, that the Rosenbergs lost their rear cone of
20 vision?
21 A. They didn't lose it. I just don't
22 understand why they would want it.
23 Q. What do you mean "they didn't lose it"?
24 A. Well, according to that, it's still
25 there. They have the requirement to have that.

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1 Q. You mean Mr. Malek still has to abide
2 by it?
3 A. Well, in his rear yard setback, he
4 does, but his rear yard setback is not adjacent to
5 your client's rear yard setback.
6 Q. Because of the addition of the golf
7 parcel, right?
8 A. No. Because of the configuration of
9 the roadway and the rear of the lot.
10 Q. I'm going to mark with the pen the
11 section of lot "Y" that we've marked as "Y" which is
12 594 Lairmont that abuts the golf course, correct?
13 A. Right.
14 Q. That is not the rear portion of
15 594 Lairmont?
16 A. No.
17 Q. Okay.
18 A. The rear portion is opposite the
19 street.
20 Q. And that is Stephanie?
21 A. Yes.
22 Q. Because of that, does that mean that
23 the 590 Lairmont never had a rear cone of vision on
24 the right-hand portion of the property?
25 A. I don't know.

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1 MR. GUNNERSON: Objection. Form as to "has".
2 I think when he talks about "has a rear cone of
3 vision", it's not giving it -- and if I'm
4 testifying, I apologize. That's not what I'm
5 intending to do, Counsel. I just want to make sure
6 we're all on the same page.
7 "Has" refers to I think your
8 requirement on your property to ensure you have a
9 cone of vision in your property. I don't think it
10 means that you have a right to have a cone of vision
11 with others. I think it's talking about there's a
12 requirement in your property.
13 It just sounds like there is two
14 different things being discussed. I want to make
15 sure we're all on the same page.
16 BY MS. HANKS:
17 Q. Actually, I thank you for that. That
18 would be a better way of stating it.
19 That when as -- because the rear
20 is not where I've marked as the side for 594, it's
21 the side property line for 594 Lairmont, right, the
22 part that I marked with my pen that I traced?
23 A. Right.
24 Q. Is that correct?
25 A. Uh-huh.

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1 Q. That the rear cone of vision does not
2 apply to that portion of the property?
3 A. Well --
4 Q. The guidelines?
5 A. Well, it would apply to.
6 Q. You can mark it with a circle if you
7 want.
8 A. It would apply to that property here in
9 a way, but in a way this is solid wall on that side.
10 Q. And I'm going to circle where you say
11 the rear cone of vision would apply for lot
12 594 Lairmont.
13 For the side yard, though, it was
14 15 feet of a setback, correct?
15 A. Correct.
16 Q. Meaning this structure has to be set
17 back 15 feet from the side property line, correct?
18 A. Yes.
19 Q. For lot 594 Lairmont?
20 A. Correct.
21 Q. So does that mean that Mr. Malek can
22 build a solid wall on the side portion of his lot
23 that is abutting the golf course?
24 A. It might appear so, but since he's on
25 the golf course, we don't allow solid walls on golf

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1 **courses.**
2 Q. Can you explain that to me? What do
3 you mean "since he owns the golf course"?
4 You mean since the addition of the
5 golf parcel?
6 **A. No. I didn't say he owns the golf**
7 **course. I said since he fronts the golf course. He**
8 **has to use the view wall, but in his case it's going**
9 **to be on the side, not the rear.**
10 Q. If you turn to page 2.28, this talks
11 about the view walls. And it indicates at the
12 second sentence of that paragraph, "Lots along the
13 golf course, open space or possess strong view
14 orientation may install a community designed view
15 wall on the rear property line."
16 Do you see that?
17 **A. I do.**
18 Q. So for Mr. Malek's lot, 594, that rear
19 view wall would actually be the property part that
20 is looking toward Stephanie Street, correct?
21 **A. No. Wouldn't be. His would be on the**
22 **golf course.**
23 Q. Okay. Because I thought we just
24 discussed that on the map would be the side property
25 line?

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1 **A. It's typically on the rear, but in his**
2 **particular case because he's fronting, he doesn't**
3 **front. Actually, his side setback is on the golf**
4 **course. We don't allow solid walls on the golf**
5 **course. It has to be a rod iron wall.**
6 Q. But here it doesn't make that
7 differentiation.
8 It says -- it almost assumes in
9 this sentence that all lots along the golf course,
10 that the part that's going to be abutting the golf
11 course is going to be the rear property line, right?
12 **A. It's worded that way in this particular**
13 **case, but the reality is we don't allow anything**
14 **other than view walls along with community of the**
15 **golf course.**
16 Q. If you could go to 2.29, it kind of
17 gives you a diagram of what a view wall looks like
18 and what we've been terming as the rod iron fence.
19 **A. Yes.**
20 Q. Are there any limitations -- well,
21 because Mr. Malek's, at least from the lot
22 594 Lairmont, the part of his parcel that is
23 actually adjacent to or abutting the golf course is
24 really his side yard, he's going to be bound by
25 these view wall restrictions, correct?

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1 **A. He is.**
2 Q. Is he going to be bound by any
3 additional reconstructions in terms of planting
4 stuff along that rear portion of the -- not. Sorry.
5 Correct that. Not the rear portion but along that
6 view wall?
7 **MR. GUNNERSON: Objection. Foundation.**
8 **THE WITNESS: Certainly one of the corners he**
9 **will. Whether he does on the area adjacent to your**
10 **client, I'm not sure.**
11 **BY MS. HANKS:**
12 Q. When you say "one of the areas", which
13 area will he be restricted in planting certain
14 materials?
15 **A. The one I circled for you or you**
16 **circled.**
17 Q. I'm sorry. Can you go back?
18 **MR. GUNNERSON: It's 2.38.**
19 **THE WITNESS: All right. That dot.**
20 **BY MS. HANKS:**
21 Q. So the circle, that's where he'll have
22 the rear cone of vision restriction?
23 **A. I would assume.**
24 Q. What about any other portion of the
25 side yard, will it have any other restriction?

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1 **A. Maybe.**
2 Q. When you say "maybe", where would you
3 find those?
4 **A. Maybe adjacent to your client, but I'm**
5 **not sure.**
6 Q. What about -- let's assume just along
7 the whole line of the rod iron fence, are there any
8 restrictions for golf parcels?
9 **A. I don't recall.**
10 Q. If you turn to page 2.41, the last
11 paragraph on this page, it reads, "Any portion of a
12 golf course lot or parcel which is visible from
13 neighboring property."
14 I want to stop there. We talked
15 about that definition before, right? Visible from
16 neighboring property meant a person -- an object
17 standing that could be seen by someone that was six
18 feet tall?
19 **A. Uh-huh.**
20 Q. I'm sorry. Is that a yes?
21 **A. Yes.**
22 Q. Continuing on with that paragraph, says
23 "Shall be kept neat, clean and free of weed and
24 residue. All golf course lots or parcels shall be
25 landscaped and maintained in accordance with the

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1 rules and regulations established by the declarant
2 or the Design Review Committee.
3 Such landscaping shall not be
4 modified without prior approval of the Design Review
5 Committee, which committee shall determine that such
6 modification will not interfere with the view from
7 neighboring property of that lot or parcel, thus
8 landscaped or of other golf course lots or parcels."
9 Do you see that?
10 A. I see that.
11 Q. Did I read that correctly to mean that
12 any portion of 594 Lairmont that can be seen on 590
13 Lairmont if I'm six feet tall cannot interfere with
14 the view?
15 In other words, if I'm standing
16 and I'm six feet tall and I'm looking next to
17 594 Lairmont, there's nothing that can interfere
18 with that sight line?
19 MR. GUNNERSON: Objection. Incomplete
20 hypothetical. Foundation.
21 THE WITNESS: Within reason.
22 BY MS. HANKS:
23 Q. And what's within reason?
24 A. Well, anything impacts the view. When
25 you build on the lot like I keep saying to you over

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1 and over, anytime you build on a lot, you impact the
2 view of somebody.
3 If you look at that and say we're
4 going to adhere to this strictly, no one is allowed
5 to build in the community. So, you know, you've got
6 to be reasonable in your approach.
7 Q. Then what did you mean when you
8 included "the visible from neighboring property"?
9 What was the purpose of that section?
10 A. I think I explained that before. It's
11 to keep the vegetation back so you have an open
12 view, not closed in by trees.
13 Q. Or a house, right?
14 A. Well, you'll never have a house there.
15 Q. How would you never have a house there?
16 A. Well, you won't have a house that
17 close. Put it that way. Vegetation can be planted
18 right up to the property line. The idea was to keep
19 the vegetation down to four feet on those edges.
20 It's a bigger impact when you're
21 along the fairways of the golf course than when
22 you're on a golf hole. A golf hole is a smaller
23 little bowl, and you don't really have need for the
24 view out on the sides, because you won't get a view
25 that way.

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1 If your client had bought down
2 further on the fairway, you would have a better
3 panoramic view, but you lose that when you buy where
4 he bought which is the bowl so to speak, on the
5 green of the golf course.
6 Q. But you would agree he only lost it to
7 the extent the golf parcels added to 590?
8 A. He didn't lose anything. Your client
9 didn't lose anything.
10 Q. Why are you saying that?
11 A. Because it doesn't impact his view.
12 Q. Even though the 594 Lairmont is as it's
13 depicted on the map within the Design Guidelines
14 doesn't exist?
15 A. I don't know what you're talking about
16 that way.
17 Q. Well, the lots drawn on that map in
18 Exhibit 0, it doesn't look like that now, right?
19 A. It pretty much does look like that now.
20 All we've done is taken the eastern most portion of
21 it, of the golf course, a little thin sliver, and
22 put it into that lot.
23 Q. A third of an acre, right?
24 A. Yeah. Didn't impact anyone's view.
25 Q. That's in your opinion?

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1 A. My opinion is what counts. I'm design
2 review along with the other people. It's a
3 rationale person -- put it this way -- wouldn't have
4 any impact with that.
5 Q. Did the Design Review Committee analyze
6 whether any views would be impaired prior to the
7 sale of the golf portion to Mr. Malek?
8 MR. GUNNERSON: Objection. Form as to
9 "analyze".
10 THE WITNESS: They didn't need to analyze it.
11 BY MS. HANKS:
12 Q. Why didn't they need to?
13 A. The golf course wouldn't impact the
14 view from that house, because that house was built
15 or under construction. And it doesn't impact the
16 view. What view is lost? You wouldn't see the
17 employees' parking lot? Is that the view you're
18 referring to?
19 Q. I understand you disagree with what the
20 Rosenbergs deemed their view was. But you would at
21 least agree that when they purchased 590 Lairmont,
22 based on the maps that they were looking at,
23 594 Lairmont did not include the golf parcel as part
24 of the lot?
25 MR. GUNNERSON: Objection. Foundation. Calls

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1 for speculation.
2 **THE WITNESS:** I wouldn't think it did.
3 **BY MS. HANKS:**
4 Q. Okay.
5 A. Well, or maybe it did. I don't know.
6 I don't know, actually. I don't know when they
7 bought versus when we divided that off.
8 Q. Well, the Design Guidelines that were
9 provided to them have -- this is from the Design
10 Guidelines that were provided to them, so that,
11 Exhibit O, doesn't show it, correct, lot
12 594 Lairmont?
13 A. I don't think that is an appropriate
14 scale that you can determine anything on that map.
15 Q. But it doesn't show it on that map,
16 correct?
17 A. It looks like it does to be honest with
18 you. There's a little bulb on that far side of
19 that, of the lot that looks like it almost does have
20 it included into it. For all I know, that's it.
21 Q. You would agree, though, that when the
22 Rosenbergs purchased 590 Lairmont, if they
23 understood the lot of 594 Lairmont to not include
24 the golf parcel, they would be judging all of the
25 setbacks that are in these Design guidelines from

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1 different property lines that now exist, right?
2 **MR. GUNNERSON:** Objection. Foundation. Calls
3 for speculation.
4 **THE WITNESS:** I have no way of knowing what
5 they thought. Clearly, their thought process is a
6 little different than most peoples'.
7 (Exhibit 3 marked.)
8 **BY MS. HANKS:**
9 Q. The court reporter handed you what's
10 been marketed as Exhibit 3. Like the other
11 documents, I just pulled certain excerpts from an
12 expert report that was prepared by Mr. Scott Dugan.
13 Have you ever seen this document
14 before?
15 A. No.
16 Q. Can you turn to page 13 in the -- and
17 the page numbers are actually at the top of these
18 pages.
19 This is discussing that paragraph
20 under that picture that you see on this page. It's
21 discussing kind of what we've already talked about
22 where the portion of 594 Lairmont that abuts the
23 golf course is actually the side yard of that lot,
24 correct?
25 A. Pardon me?

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1 Q. The portion of 594 Lairmont that abuts
2 against the golf course is actually the side yard
3 lot line?
4 A. Yes.
5 Q. And then he talks about here that the
6 property line which is parallel to Stephanie Street
7 is actually the rear yard, correct?
8 A. Okay.
9 Q. I'm sorry. Is that your understanding?
10 A. I would assume so.
11 Q. Okay. Now, because of that, correct me
12 if I'm wrong, I think you testified earlier
13 Mr. Malek would be bound by the 15 foot setback for
14 the portion of his property that's abutting the golf
15 course, correct?
16 **MR. GUNNERSON:** Objection. Foundation.
17 **THE WITNESS:** It's a 15 foot easement.
18 **BY MS. HANKS:**
19 Q. Fifteen foot easement. What do you
20 mean by that?
21 A. It's like having a 15 foot setback from
22 the golf course.
23 Q. And then from the 15 foot setback from
24 the golf course, the first -- the pilaster regarding
25 what we were talking about earlier in that diagram

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1 has to be 15 feet back from the corner, would be 15
2 feet from that setback?
3 **MR. GUNNERSON:** Objection. Form.
4 **THE WITNESS:** No. I believe it's a 15 foot
5 setback from the golf course.
6 **BY MS. HANKS:**
7 Q. And looking at this picture, can you
8 identify where the original property lines are, the
9 sidelines for 594 Lairmont were prior to the golf
10 parcel addition?
11 **MR. GUNNERSON:** Objection. Foundation.
12 **THE WITNESS:** Yes.
13 **BY MS. HANKS:**
14 Q. Can you mark that with a pen? Do you
15 need a pen?
16 A. There is a line on the document.
17 Q. I know, but there's several lines on
18 the document, so I want you to make it --
19 A. I don't have a pen.
20 Q. -- darker or circle it so that we know
21 what we're talking about before we go onto the next
22 questions.
23 So if you could --
24 A. (Witness indicates.)
25 Q. So the line that you made darker with

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1 the pen, am I correct in understanding that
2 according to the Design Guidelines assuming that the
3 parcel had stayed the same way, the lot lines,
4 Mr. Malek's residence would have had to have been
5 setback 15 feet from the line you drew in darker?
6 **A. Yes.**
7 **Q.** But, now that the property has been
8 extended to include some of the golf parcel, that
9 setback has changed, correct?
10 **A. Correct.**
11 **Q.** Let's assume the golf parcel wasn't
12 added. I understand this is technically the side
13 portion of this, the part that abuts the golf course
14 is actually the side lot line for 594 Lairmont.
15 But as a member of the Design
16 Review Committee, would you have enforced the rear
17 cone of vision -- I'm going to mark an "X" at this
18 corner.
19 **A. Sure.**
20 **MR. GUNNERSON:** I'm going to object. You say
21 "this corner." You don't state which property
22 you're referring to.
23 **MS. HANKS:** I marked it with an "X." It's the
24 corner that 590 and 594.
25 **MR. GUNNERSON:** I'm just stating you're "X"

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1 runs into two different properties. I don't know
2 which property you're referring to is all I'm
3 stating. It's unclear.
4 **MS. HANKS:** It's the corner of 590 and 594.
5 They both share the same corner.
6 **MR. GUNNERSON:** Right. But each property has
7 -- would have a cone of vision. And, so I don't
8 know which cone of vision you're referring to. And
9 I don't know if the witness is aware.
10 **BY MS. HANKS:**
11 **Q.** And clarify that, I think you already
12 answered the question, because you understood what I
13 was asking, but I want to make sure. That even
14 though the property line of 594 Lairmont that abuts
15 the golf course is actually the side yard property
16 line, the Design Review Committee would have been
17 forced the cone of vision for the 594 Lairmont where
18 I've marked with an "X". You said sure?
19 **MR. GUNNERSON:** Objection. Form. Calls for
20 speculation.
21 **THE WITNESS:** I would assume so.
22 **BY MS. HANKS:**
23 **Q.** Now, the second paragraph of this
24 expert's report talks about accessory buildings.
25 "It's important to note that the while the main

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1 building area or residence must be set back 15 feet,
2 accessory building, (storage, cabanas, etcetera) are
3 only required to be set back six feet by the
4 CC&R's."
5 Now, Mr. Malek is actually not
6 allowed to have accessory buildings on the side
7 portion of his yard, correct, because it abuts the
8 golf course?
9 **A. I don't know.**
10 **Q.** I thought we talked about in the Design
11 Guidelines it indicated that accessory buildings are
12 not allowed at all on golf lots?
13 **A. They shouldn't be. I don't know what**
14 **relevance it has.**
15 **Q.** So I just want to make sure then that
16 this sentence here in the expert report is actually
17 incorrect, right?
18 **A. I don't know.**
19 **Q.** Well, let's go back to exhibit --
20 **A. Why is it incorrect?**
21 **Q.** According to page 3.10 of the Design
22 Guidelines, it indicated that accessory structures
23 are not allowed on golf course lots. So I'm just
24 confirming.
25 **A. In which sentence says that they are?**

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1 **Q.** He says in the second paragraph, his
2 first sentence, "It's important to note that while
3 the main building area or residence must be set back
4 15 feet, accessory buildings (storage, cabanas,
5 etcetera) are only required to be set back six feet
6 by the CC&R's."
7 **A. I don't know, because you haven't given**
8 **me the full CC&R's, and you've just given me**
9 **excerpts from it. So maybe there is another part**
10 **that you can do that. I don't know.**
11 **Q.** Is it your understanding that people
12 who own lots on the golf courses can actually put an
13 accessory building such as storage or cabanas six
14 feet from their property line?
15 **A. I don't know. It never happened, I**
16 **don't think.**
17 **Q.** But at least in terms of the Design
18 Guidelines on page 3.10, we talked about this
19 earlier, and you can refer to it if you need to. It
20 says, "Except for storage structures, it shall not
21 be allowed along the golf course, common side, and
22 hillside areas."
23 **A. Okay.**
24 **Q.** So it would appear according to the
25 Design Guidelines that golf course parcels have an

Page 109

1 extra restriction?
2 **A. According to that section of it,**
3 **apparently.**
4 Q. Okay.
5 **A. There could be something somewhere**
6 **though.**
7 Q. Okay. Now, next page is page 14, and I
8 want to draw your attention -- probably be easier
9 for me to point to which one. It's the third
10 paragraph.
11 So this paragraph right here, the
12 second sentence, the expert says, "An important fact
13 (not addressed in the report under review) borrowed
14 views can be partially or totally obstructed --
15 obscured not by a new building but also by
16 landscaping."
17 And I want to focus on the
18 landscaping. That's not true for golf course
19 parcels, correct? They cannot use landscaping that
20 completely obstructs the view of from the rear line,
21 correct?
22 **MR. GUNNERSON:** Objection. Foundation. Calls
23 for speculation. He's already stated he has not
24 read this report.
25 **THE WITNESS:** I haven't read the report.

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1 **BY MS. HANKS:**
2 Q. But which we just talked about --
3 **A. But you can plant pretty much anything**
4 **you want within a certain plant pallet anywhere but**
5 **that cone of vision.**
6 Q. That's my question. So there is a
7 certain portion where it cannot be totally
8 obstructed with landscape?
9 **A. Just the cone of vision.**
10 Q. Can you plant for golf course parcels
11 that have that view fence with the rod iron, can
12 they plant any type of landscaping along that fence?
13 **A. Any is too broad a term, but they can**
14 **plant along that, sure.**
15 Q. Can they plant bushes that would
16 completely block the view into the yard?
17 **A. Yes.**
18 Q. Then what is the point of the rod iron
19 view fence if an owner can just block that view?
20 **A. Well, some people want the privacy.**
21 **And if they work it out with their neighbors, we let**
22 **them have that.**
23 Q. How would they have to work it out with
24 their neighbors?
25 **A. Get permission from the neighbors to**

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1 **eliminate the sort of triangular shaped cone of**
2 **vision. That can be eliminated if the neighbors are**
3 **okay with that.**
4 Q. And I'm not --
5 **A. We've had that happen before.**
6 Q. I'm stepping away from the cone of
7 vision. I'm just talking about the entire rod iron
8 fence line.
9 Can they block that with
10 landscaping?
11 **A. Yes.**
12 Q. Then what is the purpose of the rod
13 iron fence if an owner can build enough landscaping
14 to block that in?
15 **A. We encourage and most people would**
16 **prefer to keep that open so they can see the golf**
17 **course view that they are basically getting with**
18 **their lot.**
19 **Some people, though, have chosen**
20 **to be more protective and private, and they have**
21 **actually literally landscaped it all off so they**
22 **can't see them. They don't want golfers looking in**
23 **the windows at them.**
24 Q. So what is the purpose of requiring the
25 rod iron fence then if they can block it off with

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1 landscaping, I guess, is what I'm trying to get at?
2 **A. We prefer not to have a solid wall**
3 **fence along there, so we do require a rod iron**
4 **fence.**
5 Q. Could they plant trees there?
6 **A. They can put a rod iron fence, they**
7 **could put any pants there within reason, but has to**
8 **have the rod iron fence.**
9 Q. But then they can plant any brush, any
10 height, any tree any height? I understand most
11 practically speaking wouldn't, but I'm just saying
12 they could?
13 **A. Could.**
14 Q. Under the guidelines and the CC&R's?
15 **A. Yes.**
16 Q. With the exception of the cone of
17 vision that portion that we talked about?
18 **A. Yes.**
19 Q. Unless a property owner adjacent to
20 them agrees to eliminate the cone of vision?
21 **A. Correct.**
22 Q. If you turn to page 15, you'll see a
23 picture there. The expert has circles. There is
24 four circles, and they are on the corners of
25 594 Lairmont on the side yards.

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1 Do you see that on the side yard
2 line, the original side yard lot line? Do you see
3 that?
4 **A. Yes.**
5 **Q.** Given the cone of vision that you said
6 you would have still enforced --
7 **MR. GUNNERSON:** Objection. Misstates prior --
8 sorry. You're not finished. I apologize, Counsel.
9 **BY MS. HANKS:**
10 **Q.** That's all right.
11 Could trees be planted in the
12 section that says 30 foot trees -- could 30 foot
13 trees be planted there?
14 **MR. GUNNERSON:** Objection. Misstates prior
15 testimony.
16 **THE WITNESS:** I don't know, because I don't
17 know the size of those circles.
18 **BY MS. HANKS:**
19 **Q.** He says 30 foot.
20 **A. Well, then part of them could be**
21 **planted.**
22 **Q.** Which part?
23 **A. The part that doesn't have the cone of**
24 **vision.**
25 **Q.** And which part doesn't have the cone of

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1 vision on the circles that he's provided?
2 **A. The northern ones.**
3 **Q.** Can you mark --
4 **A. Well, actually, it's not even true**
5 **there, because with a 30 foot cone you do have --**
6 **you're still going to have not a 30 foot circle, I**
7 **guess you're still going to have a portion of those,**
8 **so that can be planted.**
9 **Q.** So it's your understanding that the
10 cone of vision allows for these 30 foot circles?
11 **A. No. But there's area in the circles**
12 **that are outside the cone of vision that you could**
13 **put a 30 foot tree if you chose to.**
14 **Q.** And what portion is that?
15 **A. The circle minus the triangle.**
16 **Q.** Can you show me? Can you draw in
17 those?
18 **A. No. Because there is no dimensions on**
19 **this, and I can't draw that.**
20 **If there were dimensions, I could,**
21 **but there are not. I don't know what the size, you**
22 **know, half of it, I don't know. Maybe it's less**
23 **than that even.**
24 **Q.** But at least from what the expert has
25 drawn, a portion of the circles that he's drawn does

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1 include the cone of vision?
2 **A. Well, some of them do. Some of them**
3 **don't. The southerly ones don't include the cone of**
4 **vision at all, I don't think.**
5 **Q.** Can you mark the southerly ones with an
6 "X". There is four circles on this page. I just
7 want to make sure the transcript is clear on which
8 ones are the southerly most --
9 **A. I'll put an "S". How's that?**
10 **Q.** That's fine.
11 Turn to page 32. It will be the
12 next page, because I did the excerpts.
13 **A. Okay.**
14 **Q.** If you go to the third paragraph on
15 that page, it reads, "Typically when the lots for
16 these homes are sold, the golf course is in place,
17 and buyers have some perspective as to the quality
18 and degree of view the lot will provide based upon
19 the design of the home, and most importantly the
20 orientation of the home on the lot that the buyer
21 anticipates."
22 Do you agree with that statement?
23 **A. Pretty much.**
24 **Q.** And let's turn to page 39. I don't
25 know how I'm going to indicate this to you, so I'm

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1 just going to point it to you. I'll start here.
2 It's called market participants.
3 Do you see that underneath the two bullets points.
4 **A. Uh-huh.**
5 **Q.** It says, "Market participants may
6 associate desirability to a borrowed view even when
7 they know it may or will be obstructed at some
8 future time."
9 Do you agree with that statement?
10 **MR. GUNNERSON:** Objection. Foundation. Calls
11 for speculation.
12 **THE WITNESS:** I don't know that I do.
13 **BY MS. HANKS:**
14 **Q.** How do you disagree with that
15 statement?
16 **A. I'm not sure what a borrowed view is.**
17 **And I'm not sure if people worry about things like**
18 **that.**
19 **Q.** Turn to page 40. It's the third
20 paragraph. It begins with the sentence, "No such
21 restrictions regarding the planting of trees exist
22 in the deeds and/or in the CC&R's for the lots
23 adjacent to 590 Lairmont Place and/or of the land
24 owned by the golf course."
25 There are actually restrictions

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1 for golf course parcels, correct, in terms of what
2 trees can be planted?
3 **MR. GUNNERSON:** Objection. Foundation.
4 **THE WITNESS:** No. Only in the four foot high
5 areas.
6 **BY MS. HANKS:**
7 Q. The cone of vision?
8 **A. The cone of vision. Other than that,**
9 **you can plant what you want.**
10 Q. Okay. But at least in that respect,
11 the sentence is not entirely true, because the
12 Design Guidelines do have one extra restriction even
13 though it's a small portion?
14 **MR. GUNNERSON:** Objection. Foundation.
15 **THE WITNESS:** It's minimal.
16 **BY MS. HANKS:**
17 Q. But it was important enough to include
18 in the Design Guidelines though, correct?
19 **MR. GUNNERSON:** Objection. Form.
20 **THE WITNESS:** Design Guidelines are written by
21 someone living far away from here not in the
22 community. They put a lot of things that aren't all
23 that relevant, but they're there.
24 So it doesn't mean that you go
25 back and erase things that don't come up or that you

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1 don't deal with. They're just there.
2 Does that make any sense to you?
3 **BY MS. HANKS:**
4 Q. Certainly, though, you played a part in
5 drafting the Design Guidelines?
6 **A. I did.**
7 Q. Played a big part, I think you
8 testified earlier?
9 **A. I did. And I did it before we had any**
10 **homes built. As you go through the development**
11 **process, other issues raise their heads and then you**
12 **adapt and you change things.**
13 Q. Has the rear cone of vision ever been
14 changed?
15 **A. I don't know. I guess there are cases**
16 **where they have been eliminated.**
17 Q. Can you turn to page 59? You're
18 already there.
19 **A. Yes.**
20 Q. It looks like the expert did additional
21 pictures. This is actually pictures -- looks like
22 of the actual property as opposed to just the
23 diagram or the property lines. And he has these
24 circles. I guess they're supposed to represent
25 trees.

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1 Take the first picture. Would
2 these trees be permissible under the Design
3 Guidelines if 594 Lairmont had still had its
4 original lot lines?
5 **MR. GUNNERSON:** Objection. Foundation and
6 form.
7 **THE WITNESS:** I believe one would, one may
8 not, but it's hard to tell. It's a terrible looking
9 view.
10 **BY MS. HANKS:**
11 Q. Which is the one that may not? I
12 understand that you probably need the exact
13 measurements.
14 **A. The one on the left may not.**
15 Q. Can you mark that one with an "X" or
16 whatever you want to mark it with?
17 **A. Give me your pen.**
18 Q. And then how about the picture below,
19 would either of these markings that are supposed to
20 represent trees, would they be permissible under
21 either the CC&R's or the Design Guidelines if
22 594 Lairmont had its original lot lines?
23 **MR. GUNNERSON:** Objection. Foundation.
24 **THE WITNESS:** I don't know for sure, but I
25 think the left one may not.

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1 **BY MS. HANKS:**
2 Q. Can you mark that with an "X"?
3 **A. (Witness indicates.)**
4 Q. And, again, the "may not's" that you
5 marked on both of those pictures, is that because of
6 the rear cone of vision we've been discussing today?
7 **A. That would be the only reason, but it**
8 **-- you know, whether you moved it over a few feet or**
9 **not would have an impact.**
10 Q. Now, with the addition of the golf
11 parcel -- let's start with picture one.
12 With the addition of the golf
13 parcel to 594 Lairmont, can both of those trees be
14 planted?
15 **A. Yes.**
16 Q. And then how about with picture two
17 with the addition of the golf parcel to 594
18 Lairmont, can both of those trees be planted?
19 **A. Probably.**
20 Q. Can you go to the last page? It's page
21 76. It's the second paragraph, the paragraph
22 underneath that bullet point. And I want to start
23 with the second sentence.
24 It says on page 34 of the report
25 under the report under review, "The report under

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1 review implies that the subject's building envelope
2 has changed due to the additional land acquired by
3 the adjacent lot. The subject's building envelope
4 (lot boundary) have not changed."
5 I want to put that sentence into
6 context. Has Mr. Malek's building envelope changed
7 by the acquisition of the golf parcel to his
8 594 Lairmont Place lot?
9 **MR. GUNNERSON:** Objection. Foundation.
10 **THE WITNESS:** I believe it has.
11 **BY MS. HANKS:**
12 Q. And do you have that belief because the
13 building envelope is based on a particular lot
14 property line?
15 **A. Excuse me. The envelope size has**
16 **changed, but the dimensions, the setbacks have not**
17 **changed.**
18 Q. Correct.
19 **A. So setbacks are still what they were.**
20 Q. Right. So, and that's a great
21 clarification. So the actual setbacks are still in
22 place. So the 15, 35, the ones we discussed in that
23 chart in the Design Guidelines still apply, but
24 where those setbacks need to get set back from the
25 actual property line has changed?

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1 **A. They have moved a bit, yes.**
2 **MS. HANKS:** Counsel, I'm about to go into a
3 whole different area. Let's go off the record.
4 (Short break)
5 **BY MS. HANKS:**
6 Q. We are back on the record after a
7 little break there.
8 What relation, if any, do you have
9 to Dragon Ridge Properties, LLC?
10 **A. Dragon Ridge properties became DRFH, I**
11 **believe.**
12 Q. Did Dragon Ridge Properties, LLC ever
13 own any portion of the golf course? And when I say
14 the golf course, the Dragon Ridge Golf Course is
15 located in MacDonald Highlands?
16 **A. You know what, I'm not sure. Dragon**
17 **Ridge Properties could be the name that Pacific**
18 **Links uses for their operation. I don't remember.**
19 **(Exhibit 4 marked.)**
20 **BY MS. HANKS:**
21 Q. And before we get started with the
22 exhibit that was just handed to you, I do want to
23 ask a question.
24 You had indicated that you had
25 some health issues before we took our break?

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1 **A. Right.**
2 Q. And I just want to make sure that up
3 until now, have those health issues affected your
4 ability to give truthful and accurate testimony here
5 today?
6 **A. Not today.**
7 Q. And do you feel comfortable enough
8 moving forward with today's deposition? We're going
9 to try to complete it, but do you feel comfortable?
10 **A. I do.**
11 Q. Okay. So addressing what's been handed
12 to you and been marked as Exhibit 4, this looks like
13 it's a document entitled Amendment to Escrow
14 Instructions Release of Funds. It's from Nevada
15 Title Company, and it looks like 40,000 dollars was
16 paid to Dragon ridge or released to Dragon Ridge
17 Properties, LLC.
18 And I'll represent to you that I
19 believe this is part of the sale of the golf parcel
20 to Mr. Malek.
21 Does that refresh your
22 recollection as to whether Dragon Ridge Properties,
23 LLC --
24 **A. It's probably the name that later**
25 **became DRFH. These are funds to be released to help**

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1 **in subdividing the property.**
2 Q. Okay. Now, Mr. Malek testified that
3 prior to his purchase of the golf parcel, the prior
4 owner of 594 Lairmont was discussing the purchase of
5 the golf parcel.
6 Do you have any knowledge
7 regarding that?
8 **A. No recollection.**
9 Q. Were you the person on behalf of
10 whether it be Dragon Ridge Properties, LLC or DRFH
11 that sold the golf parcel to Mr. Malek, were you the
12 person involved in that transaction?
13 **A. No.**
14 Q. Who was involved in that on behalf of
15 the golf course?
16 **A. Well, probably -- his conversation was**
17 **probably with Michael Doiron, I'm guessing. I don't**
18 **know. I don't know who he talked to. He didn't**
19 **talk to me.**
20 Q. That was my next question. Have you
21 ever had any conversations with Mr. Malek?
22 **A. Briefly. I tried to keep them brief.**
23 **But very few.**
24 Q. Prior to his purchase of the golf
25 parcel, had you had any conversations?

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1 **A. I don't think so, no.**
2 Q. And just so I understand your testimony
3 then, you don't have a recollection as to whether
4 the previous owner of 594 Lairmont had had any
5 discussions or approached you --
6 **A. I don't remember any of that.**
7 Q. I'm sorry. Let me just finish my
8 question so it's clear about what I'm asking you.
9 Approached you about purchasing
10 the golf parcel?
11 **A. Right. No. They did not.**
12 Q. Do you know how it came about with
13 Mr. Malek?
14 **A. I don't.**
15 Q. And I think you had already testified
16 or alluded to with regard to the 40,000 dollars that
17 was being released in the escrow, that was for
18 getting the golf parcel rezoned, correct?
19 **A. For the engineering and that stuff. I**
20 **think that's what it was. I don't know for sure. I**
21 **didn't deal with that either.**
22 Q. Who would have dealt with that?
23 **A. Paul.**
24 Q. Bykowski?
25 **A. Yes.**

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1 Q. And the reason rezoning was required
2 was to take it from, I guess, a golf course to a
3 residential area?
4 **A. Correct.**
5 Q. Was the golf parcel listed for sale?
6 **A. Don't know.**
7 Q. Who would know?
8 **A. Probably Michael. Oh, the golf parcel?**
9 Q. Yeah. The golf parcel?
10 **A. No.**
11 **MR. GUNNERSON:** Objection. Vague as to golf
12 parcel.
13 **BY MS. HANKS:**
14 Q. When I refer to the golf parcel, I'm
15 referring to the section that was eventually sold to
16 Mr. Malek and added to his lot of 594.
17 **A. It was not listed.**
18 Q. Do you know then how Mr. Malek knew it
19 was even possible for him to purchase that portion
20 of the golf course?
21 **A. I don't.**
22 Q. In the history of selling lots in
23 MacDonald Highlands that abut the golf course, have
24 you ever been approached to enlarge the lots and
25 actually purchase a portion of the golf course by

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1 any other lot purchasers?
2 **A. Yes.**
3 Q. On how many occasions has that
4 happened, approximately?
5 **A. There may have been three or four.**
6 Q. And can you explain to me generally
7 what happened in those instances where the owners
8 wanted to buy a little bit more land?
9 **A. Well, I mean, there is a lot of**
10 **variations. Some cases they wanted to do**
11 **landscaping, and they didn't buy it. We did the**
12 **landscape for them in a couple cases, maybe three.**
13 **There was another instance where a**
14 **lady wanted to buy another parcel. Again, you know,**
15 **scrap land that wasn't being used for the golf**
16 **course, but was within the golf course confines, and**
17 **that was sold and then my lot.**
18 Q. What happened with your lot?
19 **A. I had an area of the golf course that I**
20 **basically moved into, moved into with my yard so to**
21 **speak. It was technically part of the golf course,**
22 **but I haven't bothered to subdivide it, move it in,**
23 **it's just one of the things that I took care of when**
24 **the sale was negotiated.**
25 Q. Now, with respect to the landscape

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1 leases that you mentioned, what did they entail?
2 What exactly?
3 **A. Signing a lease so that they could**
4 **actually landscape the portion of a property.**
5 Q. Did those properties where they have
6 the landscape lease, do they have their yard fenced
7 off?
8 **A. No. I don't believe so. I think**
9 **they're open.**
10 Q. And I think you mentioned another one
11 not including yours, but there is another one where
12 they just -- how much area of that was sold?
13 **A. Don't remember.**
14 Q. And what was the purpose of that, if
15 you recall?
16 **A. Just enlarging the lot.**
17 Q. And each of those cases I guess with
18 the exception of the landscape lease, did the area
19 have to be rezoned for the City of Henderson?
20 **A. Yes.**
21 Q. In each of those cases with the
22 exception of the landscape lease, did notice have to
23 be sent to other owners within MacDonald Highlands?
24 **A. Yes.**
25 Q. How about with the landscape lease, did

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1 notice have to be sent for that?

2 A. No.

3 Q. Do you know the areas within MacDonald

4 Highlands -- obviously you'll know your lot -- but

5 the lot not including the landscape lease where that

6 individual bought an extra portion of the golf

7 parcel and added to their lot?

8 A. Do I know it?

9 Q. Yes.

10 A. You mean a specific lot number?

11 Q. Well, if you know that, sure but --

12 A. I don't.

13 Q. Do you know the area?

14 A. PA-20.

15 Q. When was that done year wise?

16 A. Not sure.

17 Q. Was it before or after Mr. Malek, which

18 I think he purchased his in 2012-13?

19 A. I don't know.

20 Q. How about your lot, when did that

21 happen?

22 A. I believe it's still happening. I

23 don't think it's finished yet. I don't handle the

24 paperwork on that stuff.

25 Q. But as far as you understand, you're

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1 still in the process of getting the rezoning

2 application approved?

3 A. I think the rezoning is done. I think

4 it's -- in my case it's the mapping.

5 Q. And where is your lot located within

6 MacDonald Highlands?

7 A. Adjacent to my house.

8 Q. Which is where?

9 A. Saint Croix.

10 Q. Do you know where the landscape leases

11 are, the three that you mentioned?

12 A. Not all of them.

13 Q. Which ones do you know? If you can

14 tell me which ones you do know.

15 A. I know there is one on Planning Area 1,

16 and there is one in Planning Area 3 and maybe 2

17 there, but I'm not sure.

18 Q. Now, with respect to the landscape

19 lease, have you set some restrictions on what they

20 can plant there to preserve, I guess, views from the

21 other lot owners?

22 A. Don't remember. That's been a while.

23 Q. Is it fair to say that is probably

24 prior to 2012?

25 A. That's a safe guess.

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1 Q. Would Paul Bykowski know the more

2 specific addresses?

3 A. Yes. He should. He did the work.

4 Q. I assume -- and maybe I'm wrong to

5 assume -- but I assume with the landscape lease

6 rezoning applications didn't need to be submitted?

7 A. They did not.

8 Q. It's my understanding that Mr. Malek

9 purchased the golf portion that he purchased from

10 Dragon Ridge for 200,000?

11 A. Don't remember.

12 Q. Do you know -- do you remember having

13 any discussions in order to determine the value of

14 that portion of the property?

15 A. No.

16 Q. Do you know who proposed the actual

17 portion that would be purchased? In other words,

18 who carved out the actual lot lines?

19 A. I think Paul and I did.

20 Q. And how did you do that?

21 A. We determined where we wanted to sell.

22 Q. So it was only just purely what you

23 want to sell?

24 A. Yes.

25 Q. Was that determined after Mr. Malek

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1 approached you or prior?

2 A. Had to be after. We didn't know he

3 wanted to buy it.

4 Q. How did you place a value on it?

5 A. We call.

6 Q. Would Paul Bykowski be the person to

7 ask about that?

8 A. Probably not.

9 Q. Who else would have knowledge or

10 regarding how the purchase price was decided upon?

11 A. I don't really recall. I mean, Michael

12 might but...

13 Q. What relation do you have to MacDonald

14 Highland Realty, LLC, if any?

15 A. I own the company.

16 (Exhibit 5 marked.)

17 BY MS. HANKS:

18 Q. The court reporter has handed you what

19 has been marked as Exhibit 5. It's a document

20 entitled Information Meeting for City of Henderson

21 Application. And it lists several numbers.

22 Did you attend this meeting?

23 A. No.

24 Q. Did anyone on behalf of MacDonald

25 Highlands attend the meeting?

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1 A. I don't know.
2 Q. Did anyone on behalf of Dragon Ridge
3 Country Club attend the meeting?
4 A. I don't know.
5 Q. Excuse me. Not country club. Dragon
6 Ridge Properties, LLC?
7 A. I don't know.
8 Q. Did anyone from MacDonald Realty attend
9 the meeting?
10 A. I don't know.
11 Q. Did you ever discuss this meeting with
12 anyone after it took place?
13 A. No.
14 Q. Are you aware if notice of the proposed
15 change here that was being submitted to the City of
16 Henderson, was that notice of that provided to other
17 owners within MacDonald Highlands?
18 A. I don't know for sure.
19 Q. Do you know if any individuals are
20 required to receive notice when you're submitting to
21 the City of Henderson to change the zone?
22 A. Typically there's a notice to do within
23 seven, 800 feet.
24 Q. Within the actual property you're
25 trying to rezone?

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1 A. Of the property typically.
2 Q. Have you ever been a part of -- and
3 doesn't have to be MacDonald Highlands, limited to
4 that, but have you ever been part of an application
5 to rezone an area that has been objected to by a
6 particular party? Been involved in anything like
7 that?
8 A. I don't know. Don't remember. Most of
9 my things get approved.
10 Q. Are you aware, though, that there is --
11 I guess, there is a possibility of notice being
12 sent?
13 A. Sure. Always.
14 Q. Now, the CC&R's that we talked about
15 earlier, they govern 594 Lairmont as the original
16 lot lines were carved out, correct?
17 A. They do what?
18 Q. The CC&R's govern 594 Lairmont Place,
19 the original lots lines?
20 A. They govern it, period.
21 Q. Okay. How about the golf parcel that
22 was sold, does that just get assumed into 594
23 Lairmont for purposes of the CC&R's?
24 MR. GUNNERSON: Objection. Foundation.
25 THE WITNESS: That is a legal question.

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1 BY MS. HANKS:
2 Q. Would it be your understanding that the
3 CC&R's still govern --
4 A. It would.
5 Q. -- the golf parcel?
6 A. That's my guess.
7 Q. When you were selling the lots in
8 MacDonald Highlands that were located on the golf
9 course, were they going for a higher premium than
10 lots not located on the golf course?
11 MR. GUNNERSON: Objection. Form.
12 THE WITNESS: Sometimes. Sometimes not.
13 BY MS. HANKS:
14 Q. What would make it not go for a higher
15 premium?
16 A. There were lots that were sitting on
17 top of the hillsides that had very broad expansive
18 views of the whole valley that had higher premiums,
19 but, you know, that was a whole different world back
20 then. It's not that way now.
21 Q. Pre 2008?
22 A. Pre 2008 is exactly what I'm talking
23 about.
24 Q. I think we can all define our world pre
25 2008 and post.

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1 A. They could. I think the appraisals
2 were giving golf evaluations at a 50,000 dollar
3 premium last time I checked, which is really
4 infuriating. But, you know, they were doing what
5 they were doing, and there is nothing we can do
6 about it.
7 Q. So just so I can understand, though,
8 with the exception of some of the lots that were on
9 the hillside that had an expansive view of the
10 valley, generally speaking the golf lots prior to
11 2008, I guess we'll say, went for a higher premium
12 than lots not on the golf course?
13 A. They did assuming. You have to
14 realize, we have a lot of lots on those big
15 hillsides with those kinds of views.
16 Q. Right. And we'll exclude any hillside
17 lots.
18 A. Yeah. Then that would be a good...
19 Q. Did you have any involvement with
20 preparing the applications that were submitted to
21 the City of Henderson to rezone the golf parcel?
22 A. No.
23 Q. Who would be the best person to talk
24 to?
25 A. Paul.

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1 **MR. GUNNERSON:** You have to let her finish.
2 The court reporter --
3 **THE WITNESS:** I'm sorry.
4 **BY MS. HANKS:**
5 Q. So the best person to talk to about the
6 applications that were submitted with the City of
7 Henderson would be Paul Bykowski?
8 **A. Yes.**
9 **(Exhibit 6 marked.)**
10 **BY MS. HANKS:**
11 Q. This is a document that's marked
12 Exhibit 6, and I'll represent to you this is the
13 grant, bargain, sale deed. Indicates DRFH Ventures,
14 LLC formerly known as Dragon Ridge Properties, LLC
15 conveying its -- my understanding -- the golf parcel
16 which we've been referring to as the golf parcel to
17 Sahahin Shane Malek.
18 Do you see that?
19 **A. I do.**
20 Q. Have you ever seen this document prior
21 to today?
22 **A. No.**
23 Q. It has a stamped recording on the top
24 there. You see it's dated 06-26-2013?
25 **A. Yes.**

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1 Q. Do you know who is responsible for the
2 recording of this document?
3 **A. No. Other than Nevada Title?**
4 Q. If you go to, it's the third page.
5 It's not numbered, but it's the third page in the
6 stack. Looks like you signed the instrument on the
7 8th of April 2013.
8 Is that your signature on there?
9 You signed it on behalf of DRFH?
10 **A. Yes.**
11 Q. Do you know why it took until June
12 26, 2013 for this document to be recorded if you
13 executed it on April 8, 2013?
14 **A. I have no idea. I didn't handle any of**
15 **that.**
16 Q. Between January 2013 and the present,
17 have you had any conversations with Barbara
18 Rosenberg?
19 **A. No.**
20 Q. Between January 2013 and the present,
21 have you had any conversations with Fredric
22 Rosenberg?
23 **A. No. Never met any of the Rosenbergs**
24 **ever.**
25 Q. And you said it, but I'll ask the next

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1 question.
2 I assume you haven't had any
3 conversations with David Rosenberg?
4 **A. That's true.**
5 Q. It's my understanding that Mr. Malek
6 has submitted plans for the building of his
7 residence on 594 Lairmont to the DRC?
8 **A. Yes.**
9 Q. Have you seen those plans?
10 **A. I saw one iteration of them.**
11 Q. Do you remember the last time you would
12 have reviewed plans submitted by Mr. Malek?
13 **A. No.**
14 Q. Do you know if you've approved any
15 plans submitted by Mr. Malek?
16 **A. I believe they were approved.**
17 Q. And when I say you, I mean the DRC.
18 **A. Yes.**
19 Q. Do you know when that approval was
20 provided?
21 **A. No.**
22 Q. When you say you've seen one iteration
23 of the plans he submitted, it's my understanding
24 there has been several plans. Not sure which one he
25 submitted to you and which one you recall.

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1 But were any part of his plans
2 ever denied by the DRC?
3 **A. I don't know. I don't handle that**
4 **either.**
5 Q. Who handles that?
6 **A. Paul.**
7 Q. Bykowski?
8 **A. Yes.**
9 Q. Does the DRC keep records of each
10 instance where they refuse a portion of a plan and
11 ask the owner to revise it or correct it?
12 **A. I really don't know for sure, but I**
13 **think they do. I think they address things in**
14 **writing so that people have something they can**
15 **remember when they go home and sit down and look at**
16 **their plans again to remember what they need to do.**
17 **So I think that's done in writing.**
18 Q. And do you remember --
19 **A. But I don't do that.**
20 Q. Do you remember if there was anything
21 with regard to Mr. Malek's plans, any of the ones he
22 might have submitted that came up where you had to
23 send him a letter back saying you need to fix X, Y,
24 Z?
25 **A. I'm sure that's happened, but I don't**

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1 know for sure. Again, that's not what I handle.
2 Q. What do you handle as part of -- when
3 you say "you handle", are you talking in your broad
4 sense of your job with MacDonald Highlands, or do
5 you just mean with the DRC?
6 A. The DRC.
7 Q. What do you handle with the DRC then?
8 A. I confer with Paul typically on
9 different product that comes through, product
10 meaning house plans.
11 And if there's something
12 interesting or unique, I'll look at them and, you
13 know, we'll discuss them. Typically I'm consulted
14 on coloration, and there's certain things that I'm
15 more interested in than others.
16 I don't care about the way a
17 person lays the interior of their house out. That's
18 really not my business, but I'm concerned about the
19 exteriors.
20 Q. And other than coloration, are you
21 concerned with anything else about exteriors, the
22 style?
23 A. Sure. Yes.
24 Q. How about where it's situated on the
25 lot, is that another concern that you get involved

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1 in?
2 A. I think the setbacks kind of deal with
3 that. We really didn't focus on that too much.
4 Q. Those can be varied, correct, if
5 there's a proposal or a request to submitted to the
6 DRC?
7 A. I believe so.
8 Q. So the setbacks never get changed as
9 far as you know?
10 A. No. They're set -- basically approved
11 by the city, and that's sort of what we live with.
12 Q. I know we talked earlier, and you said
13 sometimes the MacDonald Highlands or the Design
14 Guidelines could have been a bit more restrictive
15 than the City of Henderson, and you weren't sure if
16 they matched up exactly.
17 So my question is has there ever
18 been a situation where the setbacks were changed
19 because an owner requested it or you found out that
20 you could change it because it was still --
21 A. I don't believe so, no. I don't
22 remember any case like that. But, again, that's not
23 typically what I do.
24 Q. Do you look at every plan that's
25 submitted by an owner?

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1 A. No.
2 Q. Correct me if I'm wrong, but from what
3 I'm hearing you say, it sounds like they go through
4 Paul Bykowski for the most part. He understands
5 what the guidelines are. And if there's any
6 questions or I guess maybe other issues that might
7 come up, that's when he might confer with you.
8 Would that be a fair way to
9 describe what happens in the process?
10 A. He will typically confer with me about
11 them anyway, but there's always enough information
12 coming to me, so that if I decide I want to take a
13 look at the plans and review it, that I can do that
14 if I choose to, but I don't always choose to.
15 Q. Would it be fair to sate you depend in
16 large part on Paul Bykowski to enforce the Design
17 Guidelines and know what you're looking for in terms
18 of approving a plan?
19 A. Absolutely.
20 Q. Has there ever been a circumstance
21 where you were on the fence about approving
22 something and thought "why don't we ask the adjacent
23 owners to see if they will agree to it"?
24 A. No.
25 Q. Okay. So at the level of Design Review

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1 Committee, you have the unfettered control or, I
2 guess, power to say yes or no to a design plan?
3 A. We do.
4 Q. And at no time have you ever decided --
5 I'm not saying you have to -- at no time have you
6 decided to confer with an adjacent land owner on any
7 issue where you were trying to deny or approve
8 something?
9 A. Not that I can recall.
10 Q. It is my understanding, however, that
11 once the Design Review Committee approves the plans
12 for a particular residence and that's ultimately
13 approved after it's constructed, if an owner wants
14 to make any changes, then they have to go through
15 the HOA; is that correct?
16 A. No.
17 Q. Okay.
18 A. If they make a change to what the
19 Design Review Committee has done before the house is
20 finaled, they need to come back to the Design Review
21 Committee.
22 If the house is designed and
23 signed off, then they have to go to the HOA if they
24 make changes. It's a timing issue more than
25 anything else.

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1 (Exhibit 7 marked.)
2 **BY MS. HANKS:**
3 Q. I'm going to hand you what's been
4 marked as Exhibit 7, and I'm going to mark in blue
5 what I believe to be the original lot lines for 594
6 Lairmont. And you can tell me -- before I mark it,
7 I'll just trace it with my pen.
8 You tell me if I'm right or wrong.
9 Is it your understanding that the line I'm tracing
10 with my pen is the original line for 594 Lairmont?
11 **A. I don't know. I can't see it.**
12 Q. I'm going to mark it with a pen. And
13 I'll represent to you that Mr. Malek testified that
14 this was his understanding of what the original lot
15 line was for 594 Lairmont.
16 **MR. DEVOY:** As Mr. Malek's counsel, I just
17 want to point out, I do not believe this is the
18 final plans. I'm looking at the Bates Stamp 00447.
19 This is not the plans.
20 **MS. HANKS:** This is the one we attached to his
21 deposition.
22 **MR. DEVOY:** I'm just saying I don't believe
23 these are the final plans.
24 **MS. HANKS:** These are my understanding of what
25 the final plans are. I guess we'll find out.

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1 **MR. DEVOY:** I don't believe these are the
2 final plans, and we'll have to confirm that. But
3 just based on the Bates stamp alone which is not the
4 latest range that would comply with the last
5 production was, I have a question as to whether
6 these are the final plans.
7 **BY MS. HANKS:**
8 Q. Okay. We talked a little bit about the
9 rear lot line, side lot lines, and we talked about
10 how according to the City of Henderson, the rear lot
11 line of the 594 Lairmont is actually the portion of
12 the property that's parallel to Stephanie Street; is
13 that correct?
14 **A. Yes.**
15 Q. Now, when the City of Henderson
16 determines rear, front, and side of a particular
17 lot, does that mean the person has to build their
18 house in conformance with those lot lines?
19 In other words, does the person
20 have to build the rear of their house to the rear of
21 where the City of Henderson is saying their lot is?
22 **MR. GUNNERSON:** Objection. Foundation. Form.
23 **THE WITNESS:** Probably build your house
24 anywhere you wanted to as long as you honor the
25 easements and the setbacks.

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1 **BY MS. HANKS:**
2 Q. Okay. And just so I'm clear, when the
3 Design Review Committee approved Mr. Malek's design,
4 whatever design that may be, for the portion of the
5 property that abuts to the golf course, you're
6 imposing a 15 foot side setback, correct?
7 **A. I have no recollection of the approval**
8 **on his house.**
9 Q. Is there anywhere in the Design Review
10 Committee records where we could tell where a
11 setback is being imposed on that portion of his
12 property?
13 **A. I don't know. I don't keep those**
14 **records.**
15 Q. You personally or...?
16 **A. I personally don't keep those records.**
17 Q. Does the Design Review Committee keep
18 them?
19 **A. Paul Bykowski would keep them.**
20 Q. And my question is though -- and I'll
21 just tell you why I'm having trouble with the whole
22 rear and side. I think practically speaking, I look
23 at the partial of his land that's abutting the golf
24 course as the rear portion of his property, at least
25 that's how he's going to design his house.

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1 Do you understand that?
2 **A. I know what you're saying.**
3 Q. Okay. And, so what I'm trying to
4 understand is if Mr. Malek submitted his plans with
5 that understanding, his architecture likely would
6 have submitted the plans with a 35 foot set back,
7 right, according to the Design Guidelines?
8 **MR. GUNNERSON:** Objection. Foundation. Calls
9 for speculation.
10 **THE WITNESS:** Again, I don't do that. That's
11 not what I handle.
12 **BY MS. HANKS:**
13 Q. Okay. Paul Bykowski handles that?
14 **A. Yes.**
15 Q. Okay. Assuming the line that I drew
16 with the blue is the side yard lot line of the
17 original lot for 594 Lairmont, could you circle for
18 me where the rear cone of vision would apply in the
19 Design Guidelines?
20 **A. I don't know. It's a legal question.**
21 **I would have to have it looked at. Maybe Paul**
22 **already has. I don't know.**
23 Q. Okay. I'll ask Paul Bykowski. I'm
24 going to see him tomorrow.
25 Do you agree that the lots along

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1 the golf course within Macdonald Highlands were
2 originally mapped to or with the intent to maximize
3 views for those parcel owners? When you originally
4 mapped it out, was that -- one of your intents?
5 A. No. It was to achieve a yield.
6 Q. What is a yield?
7 A. How many lots you can get in the parcel
8 on the planning area. I mean, the views were going
9 to be what the views were depending on the size and
10 widths of the lots.
11 Q. What was determined first, the lots or
12 the golf course?
13 A. I don't know in that case for PA-10.
14 I'm not sure.
15 Q. Is there anywhere you could go to
16 determine that?
17 A. No. I can't remember.
18 Q. You agree that MacDonald Highlands is
19 comprised of high-end homes, correct?
20 A. Yes.
21 Q. Would you agree with the statement that
22 residential properties that are considered high-end
23 demand higher market values because of their assumed
24 prestigious views?
25 MR. GUNNERSON: Objection. Foundation.

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1 THE WITNESS: Not since 2008.
2 BY MS. HANKS:
3 Q. Not since 2008. But that's generally a
4 statement you would agree with?
5 A. We would like to have those, sure.
6 Q. Now, 590 Lairmont Place included not
7 only views towards the golf course, but also that, I
8 guess, triangle that we were talking about, correct?
9 MR. GUNNERSON: Objection. Form.
10 THE WITNESS: Did you say 509?
11 MR. GUNNERSON: You said 59.
12 MS. HANKS: Did I say 509?
13 MR. GUNNERSON: You didn't give a final digit.
14 BY MS. HANKS:
15 Q. Sorry. 590 Lairmont Place, would you
16 agree that that included view corridors to the right
17 diagonally, straight ahead towards golf hole nine
18 and to the left diagonally?
19 A. That's your client's lot?
20 Q. Yes.
21 A. Yeah. Within 15 feet back on each side
22 they would.
23 Q. Would you also agree that the addition
24 of the golf parcel to Mr. Malek's lot, 598 Lairmont
25 alters the Rosenbergs' views?

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1 A. I think it improves them.
2 MR. GUNNERSON: Objection to form.
3 BY MS. HANKS:
4 Q. You think it improves them?
5 A. I do.
6 Q. But it alters the views as they are
7 today, correct?
8 A. Any house you build is going to alter
9 the view. We've talked about this for hours now.
10 Anytime you build a house, you're going to change
11 the view.
12 Q. Do you know if in reviewing Mr. Malek's
13 design plans, do you know if his house interferes
14 with the Rosenbergs' views more so because of the
15 addition of the golf parcel to his property?
16 MR. GUNNERSON: I'm going to object as to form
17 as to the word "views".
18 THE WITNESS: I think that the house that
19 Malek has designed is far superior to the one that
20 the Rosenbergs purchased. It's a very attractive
21 looking house. And I, frankly, would much rather
22 look at it than look at the scrub that used to exist
23 on part of that property before.
24 Your own exhibit has a photograph
25 of what that view is, and as it sits today without

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1 anything on it, it's a terrible view.
2 BY MS. HANKS:
3 Q. Okay. So right now the view is the
4 scrub that you referred to?
5 A. Right.
6 Q. And it's your understanding with
7 Mr. Malek's residence being constructed, they will
8 actually have a view of his home?
9 A. Well, no. They will have a view of the
10 golf course, but if he turns to look to the right,
11 what he'll see is a nicely constructed designed
12 house with landscaping around it. That's always
13 preferable than looking at scrub wasteland which is
14 what it is now.
15 Q. That's your opinion, right?
16 A. I think that's the opinion of any
17 normal person that looks at it. Unless you're being
18 paid to say otherwise, I would think that's the
19 case.
20 Q. So would you say that the Rosenbergs'
21 property would increase in value by the construction
22 of Mr. Malek's residence as he intended to build it
23 today?
24 MR. GUNNERSON: Objection. Foundation.
25 THE WITNESS: Well, yeah. I would think it

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1 would, but, again, I'm not the one out there selling
2 houses.
3 **BY MS. HANKS:**
4 Q. Okay. Would you agree with the
5 statement that anytime you alter views sight lines
6 and/or privacy in high end homes, the value is
7 affected?
8 **MR. GUNNERSON:** Objection. Foundation.
9 **THE WITNESS:** No.
10 **BY MS. HANKS:**
11 Q. Why don't you agree with that
12 statement?
13 **A. Well, affected. Affected how?**
14 **Negatively or positively?**
15 Q. Let's go with negatively. Do you agree
16 they're negatively affected anytime you alter those
17 sight lines?
18 **A. No, I don't. Come on. Go to the last**
19 **page.**
20 Q. I'm at the last page. I'm just making
21 you sure I don't have anymore questions.
22 **A. Good.**
23 Q. Do you know if Mr. Malek's submitted
24 drawings showing the Rosenbergs' house in relation
25 to his house --

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1 **A. I don't know.**
2 Q. Okay. Because under the Design
3 Guidelines -- discussed that earlier -- it kind of
4 required that the home next to your adjacent lot
5 before it was built, you have to show the
6 elevations?
7 **MR. GUNNERSON:** Objection. Misstates prior
8 testimony.
9 **THE WITNESS:** You show the delimitation of
10 where the house is. You don't really show
11 elevations.
12 **BY MS. HANKS:**
13 Q. But you're not sure as you sit here
14 today whether Mr. Malek --
15 **A. Again, I didn't handle that.**
16 Q. Paul Bykowski handled that?
17 **A. Yes.**
18 Q. Now, the 598 Lairmont was sold through
19 an HOA sale, correct? That's the lot at the very
20 end of the cul-de-sac next to 594 Lairmont?
21 **A. I don't know.**
22 **MR. GUNNERSON:** Objection. Foundation.
23 **BY MS. HANKS:**
24 Q. Do you know how that sale was noticed?
25 **A. I have no idea.**

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1 **MR. GUNNERSON:** Objection. Foundation.
2 **BY MS. HANKS:**
3 Q. Who would know?
4 **A. I don't know. Maybe Michael.**
5 Q. Prior to the sale of 598 Lairmont, did
6 you know Mr. Malek was interested in purchasing it?
7 **A. No.**
8 **MR. GUNNERSON:** Objection. Foundation. Calls
9 for speculation.
10 **BY MS. HANKS:**
11 Q. Did you have any conversations with
12 Malek regarding 598 Lairmont?
13 **A. I've testified I have never talked to**
14 **him prior to his purchase, so no.**
15 Q. Okay. So the only time you've ever
16 talked to Mr. Malek was after he purchased all of
17 these lots?
18 **A. Yes, as far as I know. I mean, the**
19 **reality is, is there are hundreds of people living**
20 **in the community. And the problem is they all know**
21 **me, and I don't know them. And I end up talking to**
22 **a lot of people I don't know. And I may have had a**
23 **conversation with him in a social situation and**
24 **would be rather fleeting and not remember it.**
25 Q. But certainly nothing specific with

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1 regard to the properties he ultimately purchased
2 prior to any purchasing?
3 **A. No.**
4 Q. Do you know if there was a public
5 auction with respect to the HOA sale of
6 598 Lairmont?
7 **A. I don't recall.**
8 Q. How many HOA sales have there been of
9 lots within MacDonald Highlands?
10 **A. Don't recall.**
11 Q. Who would know that?
12 **A. The HOA records would show it.**
13 Q. Who has the HOA records?
14 **MR. GUNNERSON:** Objection. Foundation.
15 **THE WITNESS:** I guess Real Property Group.
16 **BY MS. HANKS:**
17 Q. Real Property Group?
18 **A. Yeah.**
19 Q. I think you testified to this earlier.
20 You've always served on the DRC. So that means you
21 were on the DRC when the original owner constructed
22 the house that the Rosenbergs purchased, correct, on
23 590 Lairmont Place?
24 **A. Yes.**
25 Q. I believe the name of the owner was

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1 Robert Panero (phonetic).
2 Does that sound familiar?
3 **A. Oh, yeah. Okay.**
4 **Q.** At the time he was submitting his
5 plans, was there any discussion about a portion of
6 the golf course might be sold off at some point?
7 **A. I have no recollection of the**
8 **transaction at all.**
9 **Q.** Do you ever give any input into a
10 person's design of their house, in other words, make
11 suggestions that you think this might be a better
12 way to position something? Ever done anything like
13 that?
14 **A. Occasionally. Rarely but occasionally.**
15 **Q.** So if you see something where you think
16 you should comment upon this, your role is not
17 simply to rubber stamp -- not rubber stamp -- but
18 approve every design you might have some input in
19 terms of --
20 **A. Sure.**
21 **Q.** Do you agree that owners when they're
22 designing their homes, they design it based on what
23 they understand the adjacent lots' building envelope
24 to be?
25 **MR. GUNNERSON:** Objection. Foundation. Calls

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1 for speculation.
2 **THE WITNESS:** I don't really come into contact
3 with that many people, but I don't believe that is
4 typically what they're worried about.
5 **BY MS. HANKS:**
6 **Q.** I understand they typically might not
7 be worried about that, but is it your understanding
8 that the architectures design the home understanding
9 that the adjacent lot has a particular building
10 envelope?
11 **MR. GUNNERSON:** Same objection.
12 **THE WITNESS:** There would be no need to do
13 that to be honest.
14 **BY MS. HANKS:**
15 **Q.** Why would there be no need?
16 **A. Because as long as you comply with the**
17 **guidelines and building the right kind of**
18 **architecture, it's sort of meaningless what's being**
19 **done next door in most cases.**
20 **Q.** And that's because the Design
21 Guidelines are going to be enforced the same for
22 every single lot with the exception of a few
23 variances?
24 **A. Typically. What people are concerned**
25 **about is here's my view of this golf course. What**

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1 **can I do to enhance that view? What can I do to**
2 **make it better? What can I do to make sure that the**
3 **rooms in my house are situated in such a way that I**
4 **can get the maximum view of the golf course?**
5 **The problem your client has is he**
6 **bought a house from the bank that, frankly, the view**
7 **is to the left. That's where the green is. And**
8 **that is where the golf green and fairways are off to**
9 **the left. There is not much impact on the right.**
10 **Frankly, it's a negative impact on**
11 **the right. The property on the right looks**
12 **terrible. So anything you do to improve that is**
13 **going to help their value and their house. But the**
14 **average person wants to make sure their view of the**
15 **golf course is maximized.**
16 **Q.** Do you have any independent
17 recollection of the architectural plans that were
18 submitted by Robert Panero?
19 **A. None at all.**
20 **Q.** So you don't know if his architecture
21 and him decided to situate their house to include
22 the views to the right?
23 **A. I have no idea what he and his**
24 **architect did.**
25 **Q.** Have you been to 590 Lairmont since it

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1 was sold to -- I guess -- well, I don't think Robert
2 Panero was the original owner. But since that lot
3 was sold, have you actually been to the property?
4 **A. I've been by it.**
5 **Q.** Right. But have you actually been on
6 the premises?
7 **A. Of the --**
8 **Q.** 590 Lairmont since the lot was sold?
9 **A. Which is?**
10 **Q.** My client's lot, yes.
11 **A. No.**
12 **Q.** Okay. Never been in the house?
13 **A. No.**
14 **Q.** Never been in the backyard?
15 **A. No.**
16 **MS. HANKS:** I don't have anything further. Do
17 you have any questions?
18 **MR. DEVOY:** Yes, I do. Are you passing the
19 witness?
20 **MS. HANKS:** Yes.
21 **EXAMINATION**
22 **BY MR. DEVOY:**
23 **Q.** Mr. MacDonald, good afternoon. We met
24 earlier. I'm Shane Malek's attorney. I just have a
25 few cleanup questions based on some things that

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1 arose. I'll try to keep it short.
2 **A. Good.**
3 Q. Turn to 6 which you previously
4 reviewed.
5 **A. I remember it.**
6 Q. You had previously testified that you
7 don't know why there was delay in the recording.
8 Do you know why there was a delay
9 in the recording?
10 **A. Maybe Michael Doiron.**
11 Q. Do you know if Paul Bykowski would know
12 anything about that?
13 **A. He might.**
14 Q. Do you know of any other people that
15 might have information in the delay in the
16 recording?
17 **A. Probably the title officer, but I'm not**
18 **sure.**
19 Q. And that's it?
20 **A. I wouldn't know who else would. Shane**
21 **might.**
22 Q. Now, turning to Exhibit 4 which is
23 the --
24 **A. Right.**
25 Q. -- the amendment to the escrow

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1 instructions. You had testified that the funds
2 released pursuant to this amendment were used to
3 reimburse people, would help subdivide the property?
4 **A. I suspect that. I don't know that for**
5 **sure.**
6 Q. You believe that is how the funds were
7 spent, correct?
8 **A. Correct.**
9 Q. Are you familiar with the steps taken
10 to subdivide the property?
11 **A. Vaguely. I know roughly what the**
12 **procedure is. They change from time to time. I**
13 **don't do that but...**
14 Q. Do you know the name of any of the
15 vendors that might have been used to subdivide the
16 property?
17 **A. No.**
18 Q. Are you aware of how any of these funds
19 were used to reimburse those vendors, if any?
20 **A. No.**
21 Q. Other than Michael Doiron, Paul
22 Bykowski, do you know of any people that might have
23 information about the reimbursement of these vendors
24 from the released funds?
25 **A. Not any longer. I mean our bookkeeper,**

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1 **accountant, comptroller may have known that when he**
2 **was here, but he's gone.**
3 Q. When you say he's gone, can you be more
4 specific?
5 **A. He moved.**
6 Q. Okay. And what was his name?
7 **A. Good question. Shoot. I don't**
8 **remember his name now. Sorry. Just escapes me.**
9 Q. If you don't recall it right now, are
10 there documents that we could potentially request in
11 the course --
12 **A. Paul. Or Paul would probably be the**
13 **one that would know that anyway. He would have**
14 **authorized the expenditures.**
15 Q. Do you know of any other documents that
16 would show how the 40,000 dollars released from
17 escrow were spend to reimburse vendors?
18 **A. No.**
19 Q. And then I just want to finish up with
20 a few questions about the 598 Lairmont.
21 Did you individually try to
22 purchase 598 Lairmont from the HOA sale?
23 **A. I don't believe so.**
24 Q. Do you recall if you tried to purchase
25 it through any companies that you owned either

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1 partially or wholly?
2 **A. 598 is Malek's lot?**
3 Q. One of them.
4 **A. Oh, okay. No. I don't believe I did.**
5 **I was approached to do that, but I don't know that I**
6 **did.**
7 Q. Do you recall who approached you to do
8 that?
9 **A. No. May have been Michael, but I'm not**
10 **sure.**
11 Q. Have you ever attempted to purchase any
12 other lots in MacDonald Highlands from an HOA
13 auction?
14 **A. Not sure. Don't know that I did.**
15 Q. Do you know of any records regarding
16 your attempts or potential attempts to purchase lots
17 from within MacDonald Highlands from an HOA auction?
18 **A. Vacant lots?**
19 Q. Yes.
20 **A. I don't think I did.**
21 Q. Okay.
22 **A. I don't think I did.**
23 **MR. DEVOY: I don't believe I have any further**
24 **questions then.**
25 **////**

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1 **EXAMINATION**
2 **BY MR. GUNNERSON:**
3 Q. Two quick questions for you. First of
4 all, you originally had stated, I believe, something
5 to the effect of that when talking about the cone of
6 vision and the old lot lines for the Malek property,
7 that you had assumed that the code of vision being
8 enforced on Malek's side property, that was just an
9 assumption? You don't know for sure, correct?
10 **A. No. It would be pointless to do it to**
11 **be honest.**
12 Q. So that was never a question that was
13 discussed or considered by you and the Design Review
14 Committee, correct?
15 **A. Not that I recall, no.**
16 Q. And, in fact, Paul may have had a
17 different opinion on that; is that correct?
18 **A. He may have.**
19 Q. And he may have sought legal counsel to
20 decide whether or not that was required or not?
21 **A. Certainly possible.**
22 Q. And as far as you stated previously,
23 the setbacks never get changed, who would know
24 better if setbacks have ever been changed?
25 **A. Paul would.**

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1 Q. So when you said it's not typically
2 what you do, what you're saying is that whether a
3 setback did or did not get changed, that's probably
4 a question for Paul; is that correct?
5 **A. Definitely.**
6 **MR. GUNNERSON:** I have no further questions.
7 **MS. HANKS:** I'm just going to attach this as
8 the last exhibit. But what I'm going to do is, I'm
9 taking out these extra lines that were going to
10 start the next property. So we'll just limit it to
11 the 590 Lairmont and just so we have an
12 understanding of what we were talking about when we
13 were talking about the rear cone of vision.
14 (Exhibit 8 marked.)
15 (Whereupon the deposition was
16 concluded at 1:55 p.m.)
17
18
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1 **CERTIFICATE OF DEPONENT**
2 PAGE LINE CHANGE
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4
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6
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8
9
10
11
12
13
14
15
16 * * * * *
17 I, RICHARD C. MACDONALD, deponent herein,
18 do hereby certify and declare under penalty of
19 perjury the within and foregoing transcription to be
20 my testimony in said action, that I have read,
21 corrected, and do hereby affix my signature to said
22 transcript this day of, 2015.
23
24 RICHARD C. MACDONALD
25 Deponent

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1 **REPORTER'S CERTIFICATE**
2
3 STATE OF NEVADA)
4 COUNTY OF CLARK) ss.
5
6 I, Angela Campagna, a certified court
7 reporter in Clark County, State of Nevada, do hereby
8 certify:
9 That I reported the taking of the
10 deposition of the witness, RICHARD C. MACDONALD, on
11 Monday, February 2, 2015, commencing at the hour of
12 9:50 a.m.
13 That prior to being examined, the
14 witness was by me first duly sworn to testify to the
15 truth, the whole truth, and nothing but the truth.
16 That I thereafter transcribed my said
17 shorthand notes into typewriting and that the
18 typewritten transcript of said deposition is a
19 complete, true, and accurate transcription of
20 shorthand notes taken down at said time.
21 I further certify that I am not a
22 relative or employee of an attorney or counsel of
23 any of the parties, nor a relative or employee of
24 any attorney or counsel involved in said action, nor
25 a person financially interested in said action.
 IN WITNESS WHEREOF, I have
hereunto set my hand in my office in the County of
Clark, State of Nevada, this 9th day of February
2015.

ANGELA CAMPAGNA, CCR #495

Case No. 69399 c/w 70478

IN THE SUPREME COURT OF NEVADA

FREDERIC AND BARBARA
ROSENBERG LIVING TRUST,
Appellant/Cross-Respondent,

vs.

MACDONALD HIGHLANDS
REALTY, LLC, a Nevada Limited
Liability Company; MICHAEL
DOIRON, an Individual; and FHP
VENTURES, a Nevada Limited
Partnership,
Respondent/Cross-Appellants.

Electronically Filed
Oct 12 2016 11:49 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

FREDERIC AND BARBARA
ROSENBERG LIVING TRUST,
Appellant,

vs.

SHAHIN SHANE MALEK,
Respondent.

APPEAL

from the Eighth Judicial District Court, Clark County
The Honorable KENNETH CORY, District Judge
District Court Case No. District Court Case No. A-13-689113-C

JOINT APPENDIX VOLUME 2

Respectfully submitted by:

JACQUELINE A. GILBERT, ESQ.
Nevada Bar No. 10593

KAREN HANKS, ESQ.
Nevada Bar No. 9578

KIM GILBERT EBRON
7625 Dean Martin Drive, Suite 110
Las Vegas, NV 89139
Telephone: (702) 485-3300
Facsimile: (702) 485-3301
Attorneys for Frederic and Barbara Rosenberg Living Trust

ALPHABETICAL INDEX

Vol.	Tab	Date Filed	Document	Bates Number
1	5	10/29/13	Affidavit of Service - Michael Doiron	JA_0031
1	3	10/24/13	Affidavit of Service - Shahin Shane Malek	JA_0025
1	2	10/24/13	Affidavit of Service - BAC Home Loans Servicing, LP	JA_0022
1	16	1/16/15	Affidavit of Service – Foothill Partners	JA_0114
1	15	1/16/15	Affidavit of Service – Foothills at MacDonald Ranch Master Association	JA_0112
1	14	1/16/15	Affidavit of Service – Paul Bykowski	JA_0110
1	4	10/24/13	Affidavit of Service - Real Properties Management Group, Inc.	JA_0028
1	13	1/12/15	Amended Complaint	JA_0089
2/3	22	4/16/15	Appendix of Exhibits to Motion for Summary Judgment	JA_0229
8/9/ 10/1 1	37	6/22/15	Appendix of Exhibits to Opposition to Motion to Amend Complaint to Conform to Evidence	JA_1646
1	6	12/30/13	Bank of America N. A.'s Answer to Plaintiff's Complaint	JA_0034
12	42	7/28/15	Bank of America N.A.'s Answer to First Amended Complaint	JA_2439
8	34	6/19/15	Bank of America N.A.'s Opposition to Motion to Amend to Conform to Evidence and Countermotion for Dismissal	JA_1620
1	1	9/23/13	Complaint	JA_0001
7	30	5/11/15	Errata to Motion for Summary Judgment	JA_1497

12	44	8/13/15	Findings of Fact and Conclusions of Law, and Judgement Regarding MacDonald Highlands Realty, Michael Doiron, and FHP Ventures' Motion for Summary Judgment	JA_2476
1	11	3/20/14	Frederic and Barbara Rosenberg Living Trust's Answer to Shahin Shane Malek's Counterclaim	JA_0081
1	19	4/16/15	Frederic and Barbara Rosenberg Living Trust's Motion for Summary Judgment Against Shahin Shane Malek	JA_0139
6	25	5/4/15	Frederic and Barbara Rosenberg Living Trust's Opposition to MacDonald Realty, Michael Dorion, and FHP Ventures' Motion for Summary Judgment	JA_1124
6/7	26	5/4/15	Frederic and Barbara Rosenberg Living Trust's Opposition to Shahin Shane Malek's Motion for Summary Judgment	JA_1215
7	29	5/11/15	Frederic and Barbara Rosenberg Living Trust's Reply to Malek's Opposition to Motion for Summary Judgment	JA_1486
7	27	5/4/15	Frederic and Barbara Rosenberg Living Trust's Response to Malek's Statement of Undisputed Facts	JA_1369
1	9	1/28/14	MacDonald Highland Realty's Answer to Plaintiff's Complaint	JA_0060
1	18	2/2/15	MacDonald Highland's and Michael Dorion's Answer to Amended Complaint	JA_0126
1	20	4/16/15	MacDonald Highlands Motion for Summary Judgment	JA_0175
13	55	12/11/15	MacDonald Highlands Realty, LLC, Michael Doiron and FHP Ventures Notice of Cross-Appeal	JA_2805

8	35	6/22/15	MacDonald Highlands' Opposition to Motion to Amend Complaint to Conform to Evidence	JA_1627
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13	54	12/9/15	Notice of Appeal	JA_2801
13	62	5/23/16	Notice of Appeal	JA_2854
12	45	8/13/15	Notice of Entry of Findings of Fact, Conclusions of Law and Judgement	JA_2489
13	57	1/20/16	Notice of Entry of Order	JA_2817
1	8	1/13/14	Notice of Entry of Order Dismissing Dragonridge Golf Club, Inc. and MacDonald Properties, LTD.	JA_0055
13	51	11/10/15	Notice of Entry of Order Granting (1) Motion for Attorney's Fees and Costs (2) Motion to Re- Tax Costs	JA_2778
13	52	11/10/15	Notice of Entry of Order Granting Motion for Certification	JA_2784
12	46	8/20/15	Notice of Entry of Order on Malek's Motion for Summary Judgment	JA_2504
13	61	5/18/16	Notice of Entry of Order Stipulation and Order	JA_2846
13	59	3/18/16	Notice of Entry of Order Stipulation and Order to Dismiss Bank of America N.A. with Prejudice	JA_2833
6	24	4/22/15	Notice of Voluntary Dismissal of Bykowski and Foothills at MacDonald Ranch Master Association	JA_1120
1	12	4/29/14	Notice of Voluntary Dismissal of Realty Property Management Group	JA_0086

13	49	10/23/15	Opposition to Malek's Motion for Attorney's Fees and Costs	JA_2763
12	41	7/23/15	Order Denying Motion for Summary Judgment	JA_2432
13	50	11/10/15	Order Granting (1) Motion for Attorney's Fees and Costs (2) Motion to Re- Tax Costs	JA_2774
1	7	1/10/14	Order Granting in Part DRFH Ventures, LLC; Dragonridge Golf Club, Inc. and MacDonald Properties, LTD.	JA_0052
13	56	1/13/16	Order on Shahin Shane Malek's Motion for Attorney's Fees and Costs and Frederic and Barbara Rosenberg Living Trust's Motion to Re-Tax Costs	JA_2809
12	43	8/13/15	Proposed Order, Findings of Fact and Conclusions of Law, and Judgement on Shahin Shane Malek's Motion for Summary Judgment	JA_2457
14	65	7/15/15	Recorder's Transcript Re: Status Check: Reset Trial Date	JA_2970
14	67	12/1/15	Recorders Transcript Re: Shahin Shane Malek's Motion for Attorney's Fees and Costs	JA_3048
7	32	5/12/15	Reply in Support of MacDonald Realty, Michael Dorion, and FHP Ventures' Motion for Summary Judgment	JA_1539
12	38	6/29/15	Reply to Bank of America N.A.'s Opposition to Motion to Amend Complaint to Conform on Evidence	JA_2404
7	31	5/12/15	Reply to Opposition to Malek's Motion for Summary Judgment	JA_1517
12	39	6/29/15	Reply to Opposition to Motion to Amend Complaint to Conform on Evidence	JA_2413

12	40	6/29/15	Reply to Shahin Shane Malek's Opposition to Motion to Amend Complaint to Conform to Evidence	JA_2423
1	21	4/16/15	Shahin Shane Malek Motion for Summary Judgment	JA_0198
1	10	2/20/14	Shahin Shane Malek's Answer and Counterclaim	JA_0072
1	17	1/27/15	Shahin Shane Malek's Answer to Amended Complaint and Counterclaim	JA_0116
13	48	9/9/15	Shahin Shane Malek's Motion for Attorney's Fees and Costs	JA_2684
7	28	5/5/15	Shahin Shane Malek's Opposition to Motion for Summary Judgment	JA_1416
8	36	6/22/15	Shahin Shane Malek's Opposition to Motion to Amend Complaint to Conform to Evidence	JA_1636
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4/5/ 6	23	4/16/15	Shahin Shane Malek's Statement of Undisputed Material Facts in Support of Motion for Summary Judgment	JA_0630
13	60	5/17/16	Stipulation and Order for Dismissal of Counterclaim without Prejudice	JA_2841
13	58	3/10/16	Stipulation and Order to Dismiss Bank of America N.A. with Prejudice	JA_2828
13/1 4	63	4/8/15	Transcript Re. FHP Ventures' Motion to Dismiss Amended Complaint	JA_2858
14	64	6/10/15	Transcript Re. Status Check: Reset Trial Date Motion for Summary Judgment	JA_2898

14	66	10/22/15	Transcript Re: Shahin Shane Malek's Motion for Attorney's Fees and Costs; MacDonald Highlands Realty, LLC, and FHP Ventures Motion for Attorney's Fees and Costs; Motion to Re-Tax and Settle Memorandum of Costs and Disbursements	JA_2994
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CHRONOLOGICAL INDEX

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1	12	4/29/14	Notice of Voluntary Dismissal of Realty Property Management Group	JA_0086
1	13	1/12/15	Amended Complaint	JA_0089
1	14	1/16/15	Affidavit of Service – Paul Bykowski	JA_0110

1	15	1/16/15	Affidavit of Service – Foothills at MacDonald Ranch Master Association	JA_0112
1	16	1/16/15	Affidavit of Service – Foothill Partners	JA_0114
1	17	1/27/15	Shahin Shane Malek's Answer to Amended Complaint and Counterclaim	JA_0116
1	18	2/2/15	MacDonald Highland's and Michael Doriron's Answer to Amended Complaint	JA_0126
1	19	4/16/15	Frederic and Barbara Rosenberg Living Trust's Motion for Summary Judgment Against Shahin Shane Malek	JA_0139
1	20	4/16/15	MacDonald Highlands Motion for Summary Judgment	JA_0175
1	21	4/16/15	Shahin Shane Malek Motion for Summary Judgment	JA_0198
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6/7	26	5/4/15	Frederic and Barbara Rosenberg Living Trust's Opposition to Shahin Shane Malek's Motion for Summary Judgment	JA_1215

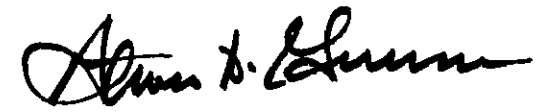
7	27	5/4/15	Frederic and Barbara Rosenberg Living Trust's Response to Malek's Statement of Undisputed Facts	JA_1369
7	28	5/5/15	Shahin Shane Malek's Opposition to Motion for Summary Judgment	JA_1416
7	29	5/11/15	Frederic and Barbara Rosenberg Living Trust's Reply to Malek's Opposition to Motion for Summary Judgment	JA_1486
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7	31	5/12/15	Reply to Opposition to Malek's Motion for Summary Judgment	JA_1517
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12	40	6/29/15	Reply to Shahin Shane Malek's Opposition to Motion to Amend Complaint to Conform to Evidence	JA_2423
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12	42	7/28/15	Bank of America N.A.'s Answer to First Amended Complaint	JA_2439
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13	49	10/23/15	Opposition to Malek's Motion for Attorney's Fees and Costs	JA_2763
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13	53	11/19/15	Shahin Shane Malek's Reply in Support of Motion for Attorney's Fees and Costs	JA_2790
13	54	12/9/15	Notice of Appeal	JA_2801
13	55	12/11/15	MacDonald Highlands Realty, LLC, Michael Doiron and FHP Ventures Notice of Cross-Appeal	JA_2805
13	56	1/13/16	Order on Shahin Shane Malek's Motion for Attorney's Fees and Costs and Frederic and Barbara Rosenberg Living Trust's Motion to Re-Tax Costs	JA_2809
13	57	1/20/16	Notice of Entry of Order	JA_2817
13	58	3/10/16	Stipulation and Order to Dismiss Bank of America N.A. with Prejudice	JA_2828
13	59	3/18/16	Notice of Entry of Order Stipulation and Order to Dismiss Bank of America N.A. with Prejudice	JA_2833
13	60	5/17/16	Stipulation and Order for Dismissal of Counterclaim without Prejudice	JA_2841
13	61	5/18/16	Notice of Entry of Order Stipulation and Order	JA_2846
13	62	5/23/16	Notice of Appeal	JA_2854
13/14	63	4/8/15	Transcript Re. FHP Ventures' Motion to Dismiss Amended Complaint	JA_2858
14	64	6/10/15	Transcript Re. Status Check: Reset Trial Date Motion for Summary Judgment	JA_2898
14	65	7/15/15	Recorder's Transcript Re: Status Check: Reset Trial Date	JA_2970

14	66	10/22/15	Transcript Re: Shahin Shane Malek's Motion for Attorney's Fees and Costs; MacDonald Highlands Realty, LLC, and FHP Ventures Motion for Attorney's Fees and Costs; Motion to Re-Tax and Settle Memorandum of Costs and Disbursements	JA_2994
14	67	12/1/15	Recorders Transcript Re: Shahin Shane Malek's Motion for Attorney's Fees and Costs	JA_3048

TAB 22



CLERK OF THE COURT

1 J. RANDALL JONES, ESQ. (#1927)
r.jones@kempjones.com
2 SPENCER H. GUNNERSON, ESQ. (#8810)
s.gunnerson@kempjones.com
3 KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway, 17th Flr.
4 Las Vegas, Nevada 89169
Telephone: (702) 385-6000
5 Facsimile: (702) 385-6001
Attorneys for Defendants
6 *MacDonald Highlands Realty, LLC,*
Michael Doiron, Paul Bykowski, and
7 *FHP Ventures, A Nevada Limited Partnership*

8
9 DISTRICT COURT
10 CLARK COUNTY, NEVADA

11 THE FREDRIC AND BARBARA
ROSENBERG LIVING TRUST,

12 Plaintiff,

13 vs.

14 BANK OF AMERICA, N.A.; BAC HOME
15 LOANS SERVICING, LP, a foreign limited
16 partnership; MACDONALD HIGHLANDS
REALTY, LLC, a Nevada limited liability
company; MICHAEL DOIRON, an
17 individual; SHAHIN SHANE MALEK, an
individual; PAUL BYKOWSKI, an
18 individual; THE FOOTHILLS AT
MACDONALD RANCH MASTER
19 ASSOCIATION, a Nevada limited liability
company; THE FOOTHILLS PARTNERS,
20 a Nevada limited partnership; DOES I
through X, inclusive; ROE
21 CORPORATIONS I through X, inclusive,

22 Defendants.

Case No.: A-13-689113-C
Dept. No.: I

**APPENDIX OF EXHIBITS TO MOTION
FOR SUMMARY JUDGMENT**


Exhibit No.	Document	Bates No.
A	Deposition of Barbara Rosenberg	APP00001-75
B	Letter of Intent and associated documents	APP00076-86
C	E-mail from Kelli Barrington dated February 26, 2013	APP00087-88
D	E-mail from Barbara Rosenberg dated March 6, 2013	APP00089-90

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kjc@kempjones.com

E	E-mail from Kelli Barrington dated March 7, 2013	APP00091-92
F	E-mail from Siobhan McGill dated March 13, 2013	APP00093-94
G	Residential Purchase Agreement	APP00095-106
H	Real Estate Purchase Addendum	APP00107-109
I	E-mail from Siobhan McGill to Rosenberg dated March 27, 2013	APP00110-111
J	Real Estate Purchase Addendum No. 4	APP00112-114
K	Zoning Classifications and Land Use Disclosure	APP00115-116
L	Deposition Transcript of Richard MacDonald	APP00117-159
M	Deposition Transcript of Scott Dugan	APP00160-220
N	Expert report of Scott Dugan	APP00221-298
O	Deposition Transcript of Michael Tassi	APP00299-315
P	Deposition of Michael Doiron, Volume II	APP00316-332
Q	City of Henderson Community Development Staff Report	APP00333-345
R	Grant, Bargain, and Sale Deed	APP00346-348
S	Deposition Transcript of Paul Bykowski	APP00349-397

DATED this 16th day of April, 2015.

Respectfully submitted by:


J. Randall Jones, Esq. (#1927)
Spencer H. Gunnerson, Esq. (#8810)
KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
Attorneys for Defendants MacDonald Highlands Realty, LLC, Michael Doiron, Paul Bykowski, and FHP Ventures, a Nevada Limited Partnership

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kjc@kempjones.com

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of April, 2015, pursuant to NRCP 5(b), I e-served via the Eighth Judicial District Court electronic service system the foregoing **APPENDIX OF EXHIBITS TO MOTION FOR SUMMARY JUDGMENT** to all parties on the e-service list.



An employee of Kemp, Jones & Coulthard

EXHIBIT A

1	3
DISTRICT COURT CLARK COUNTY, NEVADA	INDEX OF EXAMINATIONS
THE FREDRIC AND BARBARA ROSENBERG LIVING TRUST, Plaintiff, vs. BANK OF AMERICA, N.A.; BAC HOME LOANS SERVICES, LP, a foreign limited partnership; DRAGONRIDGE PROPERTIES, LLC; DRAGONRIDGE GOLF CLUB, INC., a Nevada corporation; MACDONALD PROPERTIES, LTD., a Nevada corporation; MACDONALD HIGHLANDS REALTY, LLC, a Nevada limited liability company; MICHAEL DOIRON, an individual; SHAHIN SHANE MALEK, an individual; REAL PROPERTIES MANAGEMENT GROUP, INC., a Nevada corporation; DOES I through X; and ROE CORPORATIONS I through X, inclusive, Defendants.	EXAMINATIONS BY MR. GUNNERSON BY MS. WINSLOW BY MR. DEVOI BY MR. GUNNERSON BY MS. CLINE BY MS. WINSLOW BY MR. GUNNERSON BY MS. CLINE
DEPOSITION OF BARBARA ROSENBERG Taken on Monday, December 8, 2014 By a Certified Court Reporter At 1:04 p.m. At Akerman, LLP 1160 Town Center Drive, Suite 330 Las Vegas, Nevada Reported By: Cindy Huebner, CCR 806	INDEX OF EXHIBITS NO. DESCRIPTION PAGE A. 2-19-13 email 29 B. 3/13/13 email chain 35 C. 2/20/13 email 37 D. 2/20/13 letter 43 E. 2/26/13 email chain 48 F. 2/26/13 email 54 G. 3/5/13 email chain 54 H. 3/6/13 email 54 I. 3/7/13 email chain 54 J. MLS listing 58 K. 3/12/13 email 64 L. 3-21-31 email 78 M. 3/19/13 email chain 79 N. Addendum No. 2 to Purchase Agreement 84
2	4
1 APPEARANCES: 2 For the Plaintiffs: 3 DIANA S. CLINE, ESQ. 4 MELISSA BARISHMAN 5 Howard Kim & Associates 6 1055 Whitney Ranch Drive 7 Suite 110 8 Henderson, NV 89014 9 For Bank of America and BAC Home Loans: 10 NATALIE WINSLOW, ESQ. 11 Akerman, LLP 12 1160 Town Center Drive 13 Suite 330 14 Las Vegas, NV 89144 15 For Michael Doiron and MacDonald Highlands Realty: 16 SPENCER H. GUNNERSON, ESQ. and 17 IAN MCGINN, ESQ. 18 Kemp, Jones & Coulthard 19 2800 Howard Hughes Parkway 20 Las Vegas, NV 89169 21 For Shahin Shane Malek: 22 JAY DEVOI, ESQ. 23 The Firm 24 200 East Charleston Boulevard 25 Las Vegas, NV 89104	1 O. Residential Purchase Agreement 86 2 P. Residential Purchase Agreement 94 3 Q. Real Estate Purchase Addendum 101 4 R. 3/27/13 email 109 5 S. Addendum No. 4 to Purchase Agreement 113 6 T. 4/24/13 email 114 7 U. Golf Disclosure 116 8 V. Zoning Classification and Land Use 9 Disclosure 118 10 W. Duties Owed by a Nevada Real Estate 11 Licensee 123 12 X. Walk-Through Inspection and Release 128 13 Y. Complaint 146 14 Z. Amended Complaint 161 15 AA. Plaintiff's Objections and Responses 16 to Defendant MacDonald Highlands 17 Realty, LLC's First Set of 18 Interrogatories 178 19 BB. Real Estate Damages Analysis 181 20 CC. Appraisal of Real Property 215 21 DD. City of Henderson City Council 22 Minutes, 1/8/13 222 23 EE. Plaintiff's Sixth Supplemental 24 Disclosures of Witnesses, Documents, 25 and Computations of Damages Pursuant to NRCP 16.1 226 FF. Record from Clark County Real Property Assessor's website 232 GG. Plaintiff's Objections and Responses to Defendant Bank of America, N.A.'s First Set of Interrogatories 240

<p style="text-align: right;">5</p> <p>1 HH. Notice of Henderson City Council Final Action 250</p> <p>2 II. Design Guidelines 270</p> <p>3 JJ. Governing Documents 271</p> <p>4 KK. 10/6/03 map 273</p> <p>5 LL. 11/6/03 map 273</p> <p>6 MM. 3/4/04 map 273</p> <p>7 NN. Gaming overlay area map 273</p> <p>8 OO. Map of valley, zoning 273</p> <p>9 PP. Seller's Real Property Disclosure Form 275</p> <p>10</p> <p>11</p> <p>12 INFORMATION TO BE PROVIDED</p> <p>13 None</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;">7</p> <p>1 A. 709 Via la Cuesta, Palos Verdes</p> <p>2 Estates, California, 90274.</p> <p>3 Q. And as far as it pertains to the</p> <p>4 Fredric and Barbara Rosenberg Trust, what is</p> <p>5 your role in that trust?</p> <p>6 A. I am a trustee.</p> <p>7 Q. Have you ever been asked to testify on</p> <p>8 behalf of the trust previously?</p> <p>9 A. No.</p> <p>10 Q. Have you ever had your deposition</p> <p>11 taken before?</p> <p>12 A. Yes.</p> <p>13 Q. About how many occasions have you had</p> <p>14 your deposition taken?</p> <p>15 A. One.</p> <p>16 Q. What was the purpose of your</p> <p>17 deposition in that case -- that was a poorly</p> <p>18 worded question.</p> <p>19 What was that case concerning in which</p> <p>20 your deposition was taken?</p> <p>21 A. It was concerning a problem we had</p> <p>22 with an investment adviser.</p> <p>23 Q. And in what capacity were you</p> <p>24 testifying?</p> <p>25 A. We were alleging fraud and we were</p>
<p style="text-align: right;">6</p> <p>1 (Court reporter's opening statement was waived.)</p> <p>2 * * * *</p> <p>3 (Witness sworn.)</p> <p>4 WHEREUPON:</p> <p>5 BARBARA ROSENBERG</p> <p>6 having been first duly sworn, was</p> <p>7 examined and testified as follows:</p> <p>8</p> <p>9 EXAMINATION</p> <p>10 BY MR. GUNNERSON:</p> <p>11 Q. Good afternoon. My name is Spencer</p> <p>12 Gunnerson. I am an attorney with Kemp, Jones &</p> <p>13 Coulthard, and we represent Michael Doiron and</p> <p>14 MacDonald Highlands Realty Company.</p> <p>15 We are here pursuant to a notice to</p> <p>16 take your deposition to discuss the issue of the</p> <p>17 cases regarding the Rosenberg Trust versus</p> <p>18 Malek.</p> <p>19 Does that all sound familiar to you?</p> <p>20 A. It does.</p> <p>21 Q. Could you please start by stating your</p> <p>22 full name and spell your last name for the</p> <p>23 record?</p> <p>24 A. Barbara Rosenberg, R-O-S-E-N-B-E-R-G.</p> <p>25 Q. And what is your current address?</p>	<p style="text-align: right;">8</p> <p>1 discussing the allegation.</p> <p>2 Q. Where was that litigation?</p> <p>3 A. In California.</p> <p>4 Q. What city?</p> <p>5 A. The depo actually took place in Santa</p> <p>6 Monica.</p> <p>7 Q. And was that where the case had been</p> <p>8 filed?</p> <p>9 A. The case was filed in Los Angeles.</p> <p>10 Q. Do you remember the names of the</p> <p>11 parties in that case, the main names of the</p> <p>12 parties of the case?</p> <p>13 A. You mean the person we were --</p> <p>14 Q. The name of the person who was suing</p> <p>15 and the name of the parties who were defending.</p> <p>16 A. Barbara and Fredric Rosenberg were</p> <p>17 suing and Robert Abbasi was the defendant.</p> <p>18 Q. As you have had your deposition taken</p> <p>19 before, this isn't going to be entirely new.</p> <p>20 However, I would like to remind you of a handful</p> <p>21 of things as we proceed with this deposition.</p> <p>22 First of all, as you will recall, this</p> <p>23 is the same oath you would be given in a</p> <p>24 courtroom and with it carries the same weight</p> <p>25 and concerns if you not be truthful. Do you</p>

<p style="text-align: right;">9</p> <p>1 understand that?</p> <p>2 A. Yes.</p> <p>3 Q. Are you on any medication currently?</p> <p>4 A. No.</p> <p>5 Q. Is there any reason why you cannot</p> <p>6 present your most truthful testimony today?</p> <p>7 A. None.</p> <p>8 Q. Obviously if you need a break, just</p> <p>9 let us know. What I would ask is that if there</p> <p>10 is a question pending that you first answer the</p> <p>11 question before you take the break. Is that</p> <p>12 fair?</p> <p>13 A. Yes.</p> <p>14 Q. If you don't understand any of my</p> <p>15 questions, please don't hesitate to ask and I</p> <p>16 will try to rephrase it or ask it in a more</p> <p>17 intelligible way. I hate to say this, but there</p> <p>18 will probably be a few. It tends to happen when</p> <p>19 I ask questions. If you don't understand it,</p> <p>20 please let me know.</p> <p>21 A. Understood.</p> <p>22 Q. Also, you have been doing a great job</p> <p>23 so far. When I ask you a question, if you would</p> <p>24 answer audibly with a yes or no. Uh-huh's or</p> <p>25 uh-uh's are not only difficult to read but</p>	<p style="text-align: right;">11</p> <p>1 A. No. That was a while ago.</p> <p>2 Q. Were there any other documents you</p> <p>3 could think of that you reviewed in preparation</p> <p>4 for your deposition today?</p> <p>5 A. No.</p> <p>6 Q. Other than conversations with your</p> <p>7 attorney -- actually, I will ask you.</p> <p>8 You said you spoke with your attorney.</p> <p>9 When did you speak with your attorney?</p> <p>10 A. Yesterday and today.</p> <p>11 Q. And for about how long did you speak</p> <p>12 with your attorney?</p> <p>13 A. About three hours yesterday, two hours</p> <p>14 this morning.</p> <p>15 Q. And then have you spoken with anyone</p> <p>16 else besides your attorney regarding today's</p> <p>17 deposition?</p> <p>18 A. My son, my husband.</p> <p>19 Q. What is the name of your son?</p> <p>20 A. David.</p> <p>21 Q. David Rosenberg?</p> <p>22 A. Rosenberg.</p> <p>23 Q. What is the name of your husband,</p> <p>24 Fredric?</p> <p>25 A. Fredric Rosenberg, yes.</p>
<p style="text-align: right;">10</p> <p>1 difficult to understand later on in the</p> <p>2 transcript. Same goes with a shake of the head,</p> <p>3 audible responses are necessary. Is that okay?</p> <p>4 A. Yes.</p> <p>5 Q. Have you reviewed any documents in</p> <p>6 preparation for your deposition today?</p> <p>7 A. Yes.</p> <p>8 Q. What have you reviewed?</p> <p>9 A. I reviewed -- I looked at some of --</p> <p>10 the purchase agreement for the house and I</p> <p>11 conferred with my lawyers.</p> <p>12 Q. Other than the purchase agreement, did</p> <p>13 you look at any other documents in preparation</p> <p>14 for today's deposition?</p> <p>15 A. No.</p> <p>16 Q. Did you review the complaint?</p> <p>17 A. Just before coming here?</p> <p>18 Q. In days preceding in preparation for</p> <p>19 the deposition.</p> <p>20 A. Yes.</p> <p>21 Q. You did review the complaint?</p> <p>22 A. Uh-huh.</p> <p>23 Q. Did you review any of your written</p> <p>24 discovery responses in preparation for your</p> <p>25 deposition today?</p>	<p style="text-align: right;">12</p> <p>1 Q. What did you speak with your son about</p> <p>2 regarding --</p> <p>3 A. Just the general mechanics of a</p> <p>4 deposition.</p> <p>5 Q. Did you speak about any of the</p> <p>6 substantive material issues in the litigation?</p> <p>7 A. No.</p> <p>8 MS. CLINE: Can you just give her more</p> <p>9 information on what you mean by substantive</p> <p>10 material issues?</p> <p>11 MR. GUNNERSON: That's fine.</p> <p>12 BY MR. GUNNERSON:</p> <p>13 Q. Have you spoken to anyone else besides</p> <p>14 your husband or your son?</p> <p>15 A. Aside from my lawyers?</p> <p>16 Q. Of course. Not including your</p> <p>17 lawyers.</p> <p>18 A. Not that I can think of.</p> <p>19 Q. What do you do for a living?</p> <p>20 A. I am a realtor.</p> <p>21 Q. How long have you been a realtor?</p> <p>22 A. About 25 years.</p> <p>23 Q. And is that a realtor in California?</p> <p>24 A. Yes.</p> <p>25 Q. Do you have a real estate license in</p>

13

1 any other state other than California?

2 A. No.

3 Q. Where do you currently work as a

4 realtor?

5 A. I work for Coldwell Banker in Palos

6 Verdes.

7 Q. How long have you worked for Coldwell

8 Banker?

9 A. Eight years.

10 Q. And where did you work before then?

11 A. I worked -- I had my own brokerage for

12 a while and I also worked for RE/MAX for a

13 while.

14 Q. You have been doing this a long time?

15 A. Yeah.

16 Q. Now, you said that you currently live

17 at 709 Via la Cuesta?

18 A. Yes.

19 Q. How long have you been at that

20 address?

21 A. Twenty-five years.

22 Q. Can you give me a little bit of a

23 description of the type of house you currently

24 live in? Let's start out with its size. How

25 large of a home is it?

14

1 A. It is about 8,000 square feet.

2 Q. How many bedrooms does it have?

3 A. Seven.

4 Q. Does it have a pool?

5 A. Yes.

6 Q. Is it located anywhere specific like

7 on a golf course or in a golf course community?

8 A. It is located adjacent to a golf

9 course but not on a golf course.

10 Q. Now, I know the property in question,

11 which we will get to, I believe we read

12 somewhere you called it renaissance as far as

13 the style of home. What kind of a style home

14 would you say you have at 709 Via la Cuesta?

15 A. Similar. Renaissance/tuscan.

16 Q. It sounds like it is a style you

17 prefer; is that correct?

18 A. Yes. We love that style. Yes.

19 MS. CLINE: Make sure he finishes his

20 question all the way. Otherwise, even though we

21 normally talk that way, the court reporter can't

22 take down both at the same time and it comes out

23 choppy.

24 THE WITNESS: Okay.

25

15

1 BY MR. GUNNERSON:

2 Q. Do you own any other homes besides

3 your home at Via la Cuesta and the subject

4 property?

5 A. Yes.

6 Q. Where else do you own a home?

7 A. We own Lairmont.

8 Q. You are talking about 590 Lairmont in

9 MacDonald Highlands?

10 A. Yes.

11 Q. For the purposes of this deposition,

12 if I just call that the subject property, would

13 that be sufficient to understand what we are

14 talking about?

15 A. Yes.

16 Q. Other than the subject property and

17 your property at Via la Cuesta, where else do

18 you own a home?

19 A. We own a home in Los Alamitos,

20 California, we own two condos in Manhattan

21 Beach, and a house in Hermosa Beach.

22 MS. CLINE: Just to clarify, you are

23 asking whether or not the Rosenbergs themselves

24 or the Rosenberg Trust?

25 MR. GUNNERSON: That's a great point.

16

1 BY MR. GUNNERSON:

2 Q. Because the Plaintiff in this case is

3 the trust and yet often times the trust don't do

4 things, normally people who are parties to the

5 trust are the ones that do things. I will be

6 better clarifying it.

7 At this point, let me differentiate

8 between the two. The homes and properties you

9 just told me about, are those homes owned by the

10 Rosenbergs themselves or by the trust?

11 A. Some are owned by the trust and some

12 are just by the Rosenbergs, and I really don't

13 know which right now.

14 Q. That's fair.

15 Of the other properties you informed

16 me of the Los Alamitos, the Manhattan Beach, and

17 the Hermosa Beach properties, are any of those

18 on golf courses?

19 A. No.

20 Q. When did you first begin looking for

21 property in Nevada?

22 A. We first started thinking about it in

23 2009.

24 Q. What was the reason for starting to

25 think about property purchases in Nevada?

<p style="text-align: right;">17</p> <p>1 A. My son, David, was living in Nevada.</p> <p>2 He had married. It became obvious he wasn't</p> <p>3 going to move back to California, so we thought</p> <p>4 we would like to be a part of his family.</p> <p>5 Q. What did you do to start looking for</p> <p>6 property in 2009?</p> <p>7 A. We asked David to start looking at</p> <p>8 homes that he would like to live in. Our first</p> <p>9 thought was that he buy a house since he was</p> <p>10 renting. After that, as it evolved, we began to</p> <p>11 think in terms of a family home for all of us;</p> <p>12 but in 2009, it was just David finding a house</p> <p>13 that he and Lana could live in.</p> <p>14 Q. Is there any certain part in Nevada</p> <p>15 that you started looking at homes in 2009?</p> <p>16 A. Henderson.</p> <p>17 Q. Why Henderson?</p> <p>18 A. David was living in Green Valley and</p> <p>19 when we visited him, we loved it. We loved The</p> <p>20 District. We loved the feeling. Just a</p> <p>21 beautiful place to live.</p> <p>22 Q. You said you started to have David</p> <p>23 looking for properties at first, correct?</p> <p>24 A. Yes.</p> <p>25 Q. Did you give him a certain criteria of</p>	<p style="text-align: right;">19</p> <p>1 the kind of criteria, size, style, number of</p> <p>2 bedrooms?</p> <p>3 A. Yes.</p> <p>4 Q. Let's start one by one. What was the</p> <p>5 size of home you were looking for to have a</p> <p>6 joint family home?</p> <p>7 A. It had to be a large home. It had to</p> <p>8 have bedrooms on -- it had to be sort of a</p> <p>9 situation where the bedrooms were on one side</p> <p>10 and the other bedrooms were on the other side so</p> <p>11 you didn't have everybody on the same side. It</p> <p>12 had to be spacious enough so you wouldn't hear</p> <p>13 the other people all the time. It wouldn't be</p> <p>14 intrusive. It had to be near a golf course, as</p> <p>15 close as possible to the driving range because</p> <p>16 my husband is an avid golfer. It had to have a</p> <p>17 really good view, and if we could find a tuscan</p> <p>18 or renaissance would be fabulous. It had to be</p> <p>19 in a gated community.</p> <p>20 Q. Why did you end up looking at the</p> <p>21 MacDonald Highlands community?</p> <p>22 A. MacDonald Highlands is really the only</p> <p>23 development that satisfied the criteria. It is</p> <p>24 guard gated, it has got one of the best golf</p> <p>25 courses in the area, if not the best, and it had</p>
<p style="text-align: right;">18</p> <p>1 what you were looking for?</p> <p>2 A. Initially, he was looking for</p> <p>3 something so our criteria didn't factor into it</p> <p>4 yet.</p> <p>5 Q. And at what point did your criteria</p> <p>6 factor into finding a property in Nevada?</p> <p>7 A. In 2012, we decided that we should</p> <p>8 look in terms of a joint family home.</p> <p>9 Q. What do you mean by a joint family</p> <p>10 home?</p> <p>11 A. A house that would be big enough to</p> <p>12 accommodate my husband and myself and he and his</p> <p>13 family where we wouldn't bump into each other</p> <p>14 every two minutes.</p> <p>15 Q. If I understand you correctly, a home</p> <p>16 that you could all live together but in</p> <p>17 different parts of the house?</p> <p>18 A. Exactly.</p> <p>19 Q. Did you start looking at that point or</p> <p>20 were you still having David look for a home in</p> <p>21 2012?</p> <p>22 A. No. David was looking.</p> <p>23 Q. Now that you were looking to be living</p> <p>24 with his family or them living with you or you</p> <p>25 living together, did you provide any comments on</p>	<p style="text-align: right;">20</p> <p>1 all the elements of what we were looking for.</p> <p>2 Q. Who first started looking at MacDonald</p> <p>3 Highlands? Was that one of your suggestions or</p> <p>4 is that something that came from David or it</p> <p>5 just kind of happened more naturally or organic</p> <p>6 which ended up being that is what you were</p> <p>7 focused on?</p> <p>8 A. I don't remember.</p> <p>9 Q. Did you look at any other homes in</p> <p>10 MacDonald Highlands other than the subject</p> <p>11 property?</p> <p>12 A. Yes.</p> <p>13 Q. How many other homes would you say you</p> <p>14 seriously considered in that community other</p> <p>15 than the subject property?</p> <p>16 A. One other.</p> <p>17 Q. Do you recall where that property was</p> <p>18 located?</p> <p>19 A. On Lairmont.</p> <p>20 Q. Do you recall the address by chance?</p> <p>21 A. I think it was 579. I am not sure,</p> <p>22 but I think it was 579.</p> <p>23 Q. And how long before you entered into</p> <p>24 negotiations on the subject property had you</p> <p>25 been looking at the property? We will call it</p>

5 (Pages 17 to 20)

<p style="text-align: right;">21</p> <p>1 579 just to clarify, and I will just put on the</p> <p>2 record now if it is a different address, we will</p> <p>3 supplement that at a later time, but we will</p> <p>4 refer to it -- let's make it easy. I will call</p> <p>5 it the other Lairmont property -- never mind.</p> <p>6 We will call it the 579. There is too many</p> <p>7 properties on Lairmont. The 579 Lairmont</p> <p>8 property.</p> <p>9 How soon before the subject property</p> <p>10 were you interested in the 579 Lairmont</p> <p>11 property?</p> <p>12 A. We actually had made an offer on the</p> <p>13 579.</p> <p>14 Q. Do you recall when you made that offer</p> <p>15 on 579?</p> <p>16 A. Not exactly, but it was towards in</p> <p>17 late 2012.</p> <p>18 Q. What happened with the offer you made</p> <p>19 on 579?</p> <p>20 A. We were negotiating the offer.</p> <p>21 Q. Apparently, it was unsuccessful,</p> <p>22 right, because you never purchased it, correct?</p> <p>23 A. No. What happened was there were so</p> <p>24 many problems with the other house. It had been</p> <p>25 flooded and it had mold and tiles were falling</p>	<p style="text-align: right;">23</p> <p>1 had previously been discussing with certain</p> <p>2 rooms on one side of the house and other rooms</p> <p>3 on the other side of the house to allow for two</p> <p>4 families to live there?</p> <p>5 A. It sort of was -- not really. It had</p> <p>6 problems in that respect also because there was</p> <p>7 so much square footage that it didn't lend</p> <p>8 itself as well as 590 did.</p> <p>9 Q. Did the 579 Lairmont property have</p> <p>10 views of the golf course?</p> <p>11 A. Yes.</p> <p>12 Q. Was the home also situated then on the</p> <p>13 9th hole of the golf course?</p> <p>14 A. No.</p> <p>15 Q. It was a view of a different part of</p> <p>16 the golf course?</p> <p>17 A. Right.</p> <p>18 Q. How much did you offer for the 579</p> <p>19 property?</p> <p>20 A. I don't remember the exact amount.</p> <p>21 Q. Do you remember an estimate?</p> <p>22 A. I would be guessing.</p> <p>23 Q. Let's try a range. Was it more than</p> <p>24 \$2 million?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">22</p> <p>1 off and there were so many really large</p> <p>2 structural problems that we decided it was too</p> <p>3 much at our advanced age to undertake.</p> <p>4 Q. My dad would say that is why we have</p> <p>5 kids, but I guess in this case, you decided then</p> <p>6 to walk away from the deal? You made an offer.</p> <p>7 Had they accepted the offer?</p> <p>8 A. We were in the midst of seriously</p> <p>9 negotiating.</p> <p>10 Q. There had not been an agreement signed</p> <p>11 at that point?</p> <p>12 A. No.</p> <p>13 Q. There was an agreement signed and you</p> <p>14 went through due diligence and walked away. You</p> <p>15 didn't even get an agreement signed because</p> <p>16 before it got to that point, the problems were</p> <p>17 just too significant?</p> <p>18 A. Yes. We had made an offer. It was</p> <p>19 not accepted. It was being negotiated.</p> <p>20 Q. How large of a place was that</p> <p>21 property?</p> <p>22 A. 17,500 square feet.</p> <p>23 Q. How many bedrooms?</p> <p>24 A. I don't know.</p> <p>25 Q. Was it arranged in the way that you</p>	<p style="text-align: right;">24</p> <p>1 Q. Was it more than \$3 million?</p> <p>2 A. No.</p> <p>3 Q. Was it more than \$2.5 million?</p> <p>4 A. Yes.</p> <p>5 Q. More than \$2.7 million?</p> <p>6 A. That is where I don't remember</p> <p>7 exactly.</p> <p>8 Q. So somewhere between \$2.5 and</p> <p>9 \$3 million?</p> <p>10 A. Yes.</p> <p>11 Q. Do you know if there were any other</p> <p>12 offers on the 579 property at the time you were</p> <p>13 attempting to purchase it?</p> <p>14 A. There had been an offer prior to the</p> <p>15 time that we put our offer in. I don't know if</p> <p>16 there were any offers exactly at the same time</p> <p>17 that our offer was in.</p> <p>18 Q. You stated earlier that the 579</p> <p>19 property as far as its layout goes was not as</p> <p>20 good as the 590.</p> <p>21 A. Right.</p> <p>22 Q. Did you see any other properties at</p> <p>23 the MacDonald Highlands Ranch that had as good</p> <p>24 of layout for your purposes as the 590 property?</p> <p>25 A. No.</p>

1 Q. Did you have any kind of a time frame
2 in which you were attempting to have a home
3 purchased by?

4 A. My son's wife was going to have a
5 baby, so we would have preferred if we could get
6 into the house by the time the baby was born.

7 Q. Congratulations.

8 A. Thank you.

9 Q. When was the baby born?

10 A. The baby was born August 13, 2013.

11 Q. So if I understand you correctly, it
12 wasn't a hard deadline, but you were hoping to
13 try to be in something by August 13, 2013 to
14 allow David and his family to be in with the new
15 baby?

16 A. Yes.

17 Q. And were they in by that time?

18 A. Yes.

19 Q. Did you have a price limit that you
20 were working with while you were looking for
21 homes at MacDonald Highlands Ranch?

22 A. No.

23 Q. You have mentioned that David was
24 helping you find properties in Las Vegas. Was
25 there anyone else in Las Vegas helping you look

1 for properties?

2 A. Yes.

3 Q. Who else was helping you look for
4 properties?

5 A. Siobhan was our realtor.

6 Q. Can you spell it for the record?

7 A. S-H-I-O-B-A-N.

8 Q. Do you remember the last name?

9 A. McGill, I think.

10 Q. And Siobhan, she is a female, correct?

11 A. Yes.

12 Q. It is a name unfamiliar to me.

13 When did you retain her to help you
14 find the property?

15 A. I don't remember exactly.

16 Q. Had you retained Ms. McGill prior to
17 putting your offer in on the 579 property in
18 2012?

19 A. Yes.

20 Q. Was there anyone else besides David or
21 Ms. McGill who was helping you find properties
22 in Nevada in 2012, 2013?

23 A. I don't know.

24 Q. We talked about some of the aspects of
25 the new home you were looking for. Was a pool

1 one of them?

2 A. Yes.

3 Q. Once you hired Ms. McGill to help you
4 with the properties, did David's efforts to help
5 you find the property stay the same, did they
6 decrease, or did they increase?

7 A. Basically, he was an adjunct. He
8 would look and he would pass it by Siobhan and
9 Siobhan would send me things. It was sort of
10 like a community effort.

11 Q. When did you first become aware of the
12 subject property?

13 A. 590?

14 Q. Yes.

15 A. We had left 579. We had gone to do an
16 inspection on 579. As I said, it had so many
17 problems. We were driving down the street and
18 David said to me this house over here is bank
19 owned and was on the market last year. I said,
20 David, my God, look at that house, it is our
21 house. It is tuscan, it has this gorgeous
22 presence, my God, it is across from the driving
23 range so dad could walk right over. It has
24 everything. It was like our house. I am in
25 love. That was it.

1 Q. That would have been in late 2012?

2 A. Yeah.

3 Q. Do you know if the 590 property was on
4 the market at that time?

5 A. It was not.

6 Q. Do you recall if the property was open
7 and available for people just to walk through?

8 A. It was not.

9 Q. Was it essentially complete, and this
10 is going to sound hard because I know we talked
11 about completing the exterior --

12 A. You asked if it was open for people to
13 walk through. The door was unlocked but it was
14 not for people to walk through. There were
15 working people in the house.

16 Q. That is what I am getting to. You
17 beat me to it. That is exactly what I was going
18 to ask.

19 At the time, there was construction
20 going on at the 590 property?

21 A. Yes.

22 Q. And to what extent was there
23 construction going on? Was it just framing or
24 was it finishing touches? What point of the
25 construction, if you recall, was going on at the

1 time you guys first became interested in 590?

2 A. It was all going on inside. There was

3 nothing outside that you could see.

4 Q. The outside appeared completed as far

5 as the building was concerned?

6 A. Yes. The outside was beautiful.

7 (Deposition Exhibit A marked.)

8 BY MR. GUNNERSON:

9 Q. I have handed you what we marked as

10 Exhibit A. Does this look familiar to you?

11 A. Yes.

12 Q. What is this?

13 A. This is me writing to my daughter,

14 Debra.

15 Q. If we look at this, and this was -- if

16 you look down on the bottom right-hand corner,

17 do you see where it says PLTF 3264, the bottom

18 right-hand corner?

19 A. Yes.

20 Q. This indicates we received this from

21 your attorney's office as one of your documents.

22 A. Okay.

23 Q. You are confirming that this is in

24 fact one of your emails; is that correct?

25 A. Yes.

1 Q. The first email, at the bottom or

2 towards the bottom of the page, says original

3 message. Do you see that?

4 A. Yes.

5 Q. That says it is from David Rosenberg,

6 correct?

7 A. Yes.

8 Q. And that is your son who we have been

9 discussing, correct?

10 A. Uh-huh.

11 Q. It appears this was sent on

12 February 19, 2013, correct?

13 A. Yes.

14 Q. And the subject is 590 Lairmont, the

15 subject property, correct?

16 A. Yes.

17 Q. He appears to attach a couple website

18 links. Do you see that?

19 A. Yes.

20 Q. Do you know what those links are?

21 A. Yes. Those are virtual tours of the

22 property.

23 Q. Now, do you know if on February 19,

24 2013 this property was being marketed for sale?

25 A. I don't remember the date that they

1 put it on the market.

2 Q. We will get to that later. If I told

3 you, and we will go to this later, that the date

4 that the property was put on MLS up for sale was

5 on March 8, 2013, then this would have been

6 before it, correct?

7 A. Yes.

8 Q. These tours, and you may not know and

9 that's okay, do you know as a realtor, as

10 someone involved in this case, why there would

11 have been virtual tours of the property on

12 websites if in fact the property was not being

13 marketed for sale at that time?

14 A. Because the property was marketed the

15 year before and actually was supposed to go to

16 sale and they didn't complete the sale, so when

17 Michael was doing the marketing, she did the

18 property tours, so he was referencing back to

19 those.

20 Q. When you talk about Michael, you mean

21 Michael Doiron?

22 A. Yes.

23 Q. These weren't tours that were done in

24 connection to selling the property to you or

25 other potential buyers, but previously the year

1 before?

2 A. They were done in an attempt to sell

3 the house the year before, yeah.

4 Q. And again, like you said, you told us

5 that you thought the house was perfect, so your

6 comment here in your email to your daughter that

7 the house is nice is just going along with that,

8 that you liked the property, correct?

9 A. Yes.

10 Q. So was David the one -- let me go

11 back.

12 You said you first saw the property in

13 2012 and so was David attempting to do research

14 on that property. How was it that he ended up

15 finding these links and sending them to you?

16 A. Because the property had been listed

17 the year before, so you just go in and you can

18 find these links and he sent them.

19 Q. I guess my question would be better

20 stated that when you first saw it in 2012, did

21 you not have access to these links or you did

22 not find these links?

23 A. When I first saw it in 2012, we didn't

24 get these links yet, but we did -- as you see,

25 we got the links subsequently.

<p style="text-align: right;">33</p> <p>1 Q. And these links were not the Multiple</p> <p>2 Listing Service, correct?</p> <p>3 A. These are from my understanding, I</p> <p>4 could be wrong, these were virtual tours that</p> <p>5 she had amended to her original listing.</p> <p>6 Q. One question about this email</p> <p>7 generally. It doesn't state the date on which</p> <p>8 it was sent or who it was to or from, the header</p> <p>9 information. Do you know if this is how you</p> <p>10 provided this to your counsel or how it printed</p> <p>11 off? Do you understand why there is not any</p> <p>12 information at the top that normally comes when</p> <p>13 someone prints an email?</p> <p>14 A. I have no idea.</p> <p>15 Q. Do you recall by any chance providing</p> <p>16 this specific email to your counsel?</p> <p>17 A. I gave them so many emails. I don't</p> <p>18 remember any one specific.</p> <p>19 Q. Do you have any recollection of</p> <p>20 removing or attempting to remove headers or date</p> <p>21 signatures on any of the emails that you sent to</p> <p>22 your counsel?</p> <p>23 A. Absolutely not.</p> <p>24 Q. We are going to come across this later</p> <p>25 because there were some other emails where there</p>	<p style="text-align: right;">35</p> <p>1 walked through the property prior to April 2013?</p> <p>2 A. I don't know.</p> <p>3 (Deposition Exhibit B marked.)</p> <p>4 BY MR. GUNNERSON:</p> <p>5 Q. The court reporter is handing to you</p> <p>6 an email that was marked as Exhibit B. Do you</p> <p>7 recognize this email at all?</p> <p>8 A. Can I read it?</p> <p>9 Q. Please do, yes.</p> <p>10 A. Yes, I read it.</p> <p>11 Q. Does this appear to be an email you</p> <p>12 were copied on on or about March 13, 2013?</p> <p>13 A. It looks like.</p> <p>14 Q. The CC line at broseyb@aol.com is your</p> <p>15 email address, correct?</p> <p>16 A. Yes.</p> <p>17 Q. It appears to be an email from</p> <p>18 Ms. McGill, your real estate agent, correct?</p> <p>19 A. Yes.</p> <p>20 Q. In this email, if you look at the</p> <p>21 third line down, it appears to be an email from</p> <p>22 your real estate agent to Michael, and it starts</p> <p>23 with the fourth sentence on the second line</p> <p>24 actually. It says, "My buyers are very serious</p> <p>25 and have no restrictions regarding seeing the</p>
<p style="text-align: right;">34</p> <p>1 was not information in the body. Do you recall</p> <p>2 ever removing any language of the email body</p> <p>3 before sending it to your counsel?</p> <p>4 A. Absolutely not.</p> <p>5 Q. When was the first time you visited</p> <p>6 590 Lairmont, the subject property?</p> <p>7 A. Physically?</p> <p>8 Q. Physically.</p> <p>9 A. In the inspection.</p> <p>10 MS. CLINE: And you are saying as</p> <p>11 opposed to being on the outside of the property?</p> <p>12 MR. GUNNERSON: Correct.</p> <p>13 BY MR. GUNNERSON:</p> <p>14 Q. I meant walking through the interior</p> <p>15 of the property.</p> <p>16 A. At the inspection.</p> <p>17 Q. Do you recall approximately when that</p> <p>18 inspection took place?</p> <p>19 A. In April.</p> <p>20 Q. Of 2013?</p> <p>21 A. Yes.</p> <p>22 Q. You had not walked through the</p> <p>23 property prior to April of 2013?</p> <p>24 A. Not that I remember.</p> <p>25 Q. Do you know if David or your husband</p>	<p style="text-align: right;">36</p> <p>1 interior as they walked it during the</p> <p>2 construction phase."</p> <p>3 Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. Do you know what she is talking about</p> <p>6 in that email?</p> <p>7 A. I would conjecture that David walked</p> <p>8 through.</p> <p>9 Q. So it wasn't you for sure, correct?</p> <p>10 A. Right.</p> <p>11 Q. And that you don't believe it was your</p> <p>12 husband because he was with you in California,</p> <p>13 correct?</p> <p>14 A. I think that's right.</p> <p>15 Q. And so if there is someone who walked</p> <p>16 through during the construction phase, you are</p> <p>17 presuming because you don't know for sure, but</p> <p>18 you are presuming it would have been your son,</p> <p>19 David?</p> <p>20 A. Yes.</p> <p>21 Q. Do you recall having a conversation</p> <p>22 with your real estate agent, Ms. McGill, about</p> <p>23 your son or anyone else walking the property</p> <p>24 prior to March 13, 2013?</p> <p>25 A. Well, according to this email, they</p>

<p style="text-align: right;">37</p> <p>1 must have had conversation.</p> <p>2 Q. They did. Do you recall you having a</p> <p>3 conversation with your real estate agent about</p> <p>4 her or David walking the property prior to</p> <p>5 March 13th?</p> <p>6 A. Yes.</p> <p>7 Q. You do recall. What do you recall</p> <p>8 about that conversation?</p> <p>9 A. I just recall that David told me that</p> <p>10 he had been in the master bedroom and he saw the</p> <p>11 extent of the construction they were doing.</p> <p>12 That's about all I remember.</p> <p>13 Q. Do you have any idea how David gained</p> <p>14 access to the property?</p> <p>15 A. I would assume he walked in.</p> <p>16 Q. You don't know if he called anyone up</p> <p>17 and asked for permission to go through it or if</p> <p>18 he spoke to somebody?</p> <p>19 A. I don't know.</p> <p>20 Q. Emailed somebody?</p> <p>21 A. I don't know.</p> <p>22 (Deposition Exhibit C marked.)</p> <p>23 BY MR. GUNNERSON:</p> <p>24 Q. Before we look at that exhibit, you</p> <p>25 had noted that one of the reasons why you</p>	<p style="text-align: right;">39</p> <p>1 A. No. You are talking about when you</p> <p>2 look out from the master bedroom?</p> <p>3 Q. Balcony.</p> <p>4 A. From the master bedroom -- from the</p> <p>5 balcony?</p> <p>6 Q. From the balcony. So we are both</p> <p>7 standing at the same spot. Looking out from the</p> <p>8 balcony, I believe the balcony is about in the</p> <p>9 center of the home; is that right?</p> <p>10 A. Yes.</p> <p>11 Q. If you look out from the balcony, if</p> <p>12 you look straight out from the balcony, straight</p> <p>13 ahead is the 9th hole, correct?</p> <p>14 A. Uh-huh.</p> <p>15 Q. And out in the distance, you see a</p> <p>16 valley?</p> <p>17 A. Yes.</p> <p>18 Q. And then you see the mountains out in</p> <p>19 the distance, correct?</p> <p>20 A. Yes.</p> <p>21 Q. If you look to kind of straight up but</p> <p>22 to your left, you actually see more of the</p> <p>23 valley; isn't that right?</p> <p>24 A. To your left, you see the lights.</p> <p>25 Q. Of the Strip?</p>
<p style="text-align: right;">38</p> <p>1 enjoyed this property was because of its view,</p> <p>2 correct?</p> <p>3 A. Yes.</p> <p>4 Q. What was it particularly about the</p> <p>5 view that you enjoyed?</p> <p>6 A. The view, it's completely not</p> <p>7 confining. You feel like you look out and you</p> <p>8 see way, way out into the distance and it is</p> <p>9 very open and it is beautiful. You are looking</p> <p>10 out at mountains, you are looking out at the</p> <p>11 golf course, you are looking at the 9th hole.</p> <p>12 It is beautiful, peaceful.</p> <p>13 Q. You could see the valley from your</p> <p>14 balconies, correct?</p> <p>15 A. Yes.</p> <p>16 Q. I have actually stood on your balcony</p> <p>17 and I believe your balconies are facing north.</p> <p>18 Does that sound right?</p> <p>19 A. I would not know.</p> <p>20 Q. If you look straight out from your</p> <p>21 balcony straight ahead, if I recall right, you</p> <p>22 have the 9th green in front of you, correct?</p> <p>23 A. Uh-huh.</p> <p>24 Q. And you have some homes and part of</p> <p>25 Henderson, correct? Does this sound familiar?</p>	<p style="text-align: right;">40</p> <p>1 A. Is that what you are talking about?</p> <p>2 Q. Yes.</p> <p>3 A. Yes.</p> <p>4 Q. You see more of the valley and you see</p> <p>5 the lights of the Strip, correct?</p> <p>6 A. Correct.</p> <p>7 Q. And then to the part regarding if you</p> <p>8 look to the right --</p> <p>9 A. Yes.</p> <p>10 Q. If you look to the right, that is</p> <p>11 where on the right side of the house is the</p> <p>12 Malek property, correct, 594 Lairmont?</p> <p>13 A. Yes.</p> <p>14 Q. And then I guess you could say we have</p> <p>15 the portion that we have been calling the bare</p> <p>16 lot which is the third acre purchased by Malek</p> <p>17 from the golf course. Do you understand what I</p> <p>18 am talking about?</p> <p>19 A. Yes.</p> <p>20 Q. It is roughly a third acre. If you</p> <p>21 look at that direction towards that bare lot,</p> <p>22 what do you see? What is your view?</p> <p>23 A. You are seeing -- you have an -- right</p> <p>24 now, you have unobstructed view of the 9th hole,</p> <p>25 you have the golf course --</p>

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1 Q. Excuse me for interrupting. I am
 2 talking only when you look towards the Malek
 3 property and the bare lot. When you look
 4 exactly at the Malek property and the bare lot,
 5 when you look up past that property and look up
 6 at the view, what do you see? I don't know if
 7 you have been there recently, because I know you
 8 live in California. But when you are there,
 9 what do you see?

10 MS. CLINE: Objection. Form.
 11 THE WITNESS: I just see a beautiful
 12 view.
 13 BY MR. GUNNERSON:

14 Q. We will come back to it as far as a
 15 map and that may make it a little bit easier, so
 16 we will come back to that.

17 After you purchased the property --
 18 after you negotiated -- strike that.

19 You gave your first offer letter, I
 20 believe, on or about February 20, 2013; isn't
 21 that correct?

22 A. Let's see what this says.
 23 Q. You are referencing Exhibit C?
 24 A. Right.
 25 Q. First of all, do you know what Exhibit

42

1 C is?
 2 A. Exhibit C is a letter of intent for
 3 590 Lairmont.
 4 Q. Does it appear to be an email?
 5 A. Yes, it is an email.
 6 Q. Is that an email from you?
 7 A. It says that it is from David and
 8 Lahna Rosenberg.
 9 Q. That is the original message -- Where
 10 are you looking?
 11 A. Oh, it is from me. Yes, it is from
 12 me.
 13 Q. And it appears at this point that you
 14 are instructing Elana to -- do you know who
 15 Elana is?
 16 A. Yes.
 17 Q. Who is that?
 18 A. That is the asset manager for Bank of
 19 America in Connecticut.
 20 Q. Do you recall her full name?
 21 A. No.
 22 Q. Do you know if it is Elana or Elena?
 23 A. I don't know.
 24 Q. And it appears you are providing her
 25 with a letter of intent, correct?

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1 A. Yes.
 2 Q. Regarding the subject property; is
 3 that right?
 4 A. Yes.
 5 Q. That email below it that says original
 6 message, it says it is from a
 7 palosverdesbeach@coldwellbanker.com. Do you
 8 know whose email that is?
 9 A. That is my office.
 10 Q. That is your office?
 11 A. Right. Coldwell Banker.
 12 Q. It says it is to you.
 13 A. I was scanning it. I scanned it at my
 14 office and then I sent it.
 15 Q. Which would explain why there is no
 16 body to the email message, correct, because it
 17 is just a scan?
 18 A. It is a scan.
 19 (Deposition Exhibit D marked.)
 20 BY MR. GUNNERSON:
 21 Q. I am handing you what is being marked
 22 as Exhibit D. Again, I would like to know if it
 23 is Elana or Elana, but I can't tell because
 24 someone attempted to correct the letter up
 25 above.

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1 Nevertheless, is this the letter of
 2 intent that you identified in your email in
 3 Exhibit C?
 4 A. Yes.
 5 Q. Now, do you know why this letter of
 6 intent is being sent by it appears David and is
 7 that his wife, Lahna Rosenberg?
 8 A. Yes, uh-huh.
 9 Q. Do you know why if you are the one who
 10 appears to be negotiating with Bank of America,
 11 why the letter of intent is coming from David
 12 and his wife?
 13 A. Because originally, we had thought
 14 that David and Lahna would buy the house, but
 15 they couldn't qualify because they don't have
 16 \$2.3 million in funds, so they could not buy the
 17 house, so it became obvious that the trust would
 18 have to buy the house.
 19 Q. At the time, it wasn't \$2.3 million,
 20 correct? At the time, your offer was different?
 21 A. Yes. We were negotiating.
 22 Q. At the time, your first offer -- let
 23 me be clear. This was your first offer letter,
 24 correct?
 25 A. Yes.

<p style="text-align: right;">45</p> <p>1 Q. When I say you, meaning whether that</p> <p>2 was the Rosenberg Trust or you or your son,</p> <p>3 correct?</p> <p>4 A. Yes.</p> <p>5 Q. And your first offer was for</p> <p>6 \$1.75 million?</p> <p>7 A. Yes.</p> <p>8 Q. How did you reach that number as a</p> <p>9 first offer?</p> <p>10 A. I wrote in the letter how I reached</p> <p>11 that number.</p> <p>12 Q. So there is bullet points in that</p> <p>13 letter. It talks about front and the back</p> <p>14 landscaping, extensive water damage, cracks in</p> <p>15 the interior, so on and so forth; is that</p> <p>16 correct?</p> <p>17 A. Yes.</p> <p>18 Q. We talked a minute ago about how if</p> <p>19 you look off your balcony, you could see the Las</p> <p>20 Vegas Strip lights, correct?</p> <p>21 A. Yes.</p> <p>22 Q. What were you referring to if in fact</p> <p>23 you had a part in drafting this -- Did you have</p> <p>24 a part in drafting this letter?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">47</p> <p>1 referring to the Malek property at --</p> <p>2 A. Yes.</p> <p>3 Q. Let me finish.</p> <p>4 Were you referring to the Malek</p> <p>5 property at 594 Lairmont Place?</p> <p>6 A. Yes.</p> <p>7 Q. How did you know the construction</p> <p>8 would be starting soon?</p> <p>9 A. Well, he had bought the lot. I</p> <p>10 assumed that he was going to build on it.</p> <p>11 Q. You hadn't spoken to him or anybody</p> <p>12 else about construction timing for the Malek</p> <p>13 property?</p> <p>14 A. No.</p> <p>15 Q. You didn't know if he was going to be</p> <p>16 flipping the property or sitting on it for a</p> <p>17 long time without building, you didn't know what</p> <p>18 he was going to do with it, correct, at the time</p> <p>19 you drafted the letter?</p> <p>20 A. Correct.</p> <p>21 Q. You hadn't spoken to the HOA or the</p> <p>22 developer about Malek's plans to develop the</p> <p>23 property, correct?</p> <p>24 A. Correct.</p> <p>25 Q. At this time?</p>
<p style="text-align: right;">46</p> <p>1 Q. Were you the sole drafter of the</p> <p>2 letter?</p> <p>3 A. I was the main drafter of the letter.</p> <p>4 Q. The second paragraph says, "Based on</p> <p>5 the current conditions of the home, the view is</p> <p>6 not facing the Las Vegas Strip." What were you</p> <p>7 meaning by that?</p> <p>8 A. There is a head-on Las Vegas Strip</p> <p>9 view where you look out your window and bam,</p> <p>10 there is the view. This is not a bam,</p> <p>11 straight-out Las Vegas Strip view. This is a</p> <p>12 beautiful view of the strip, but it is not in</p> <p>13 your face.</p> <p>14 Q. When you say the view is not facing</p> <p>15 the Las Vegas Strip, it doesn't mean there is</p> <p>16 not a view of the Strip, only that it doesn't</p> <p>17 directly face the Strip; is that correct?</p> <p>18 A. Exactly.</p> <p>19 Q. You also state in that same sentence,</p> <p>20 if you go on, "The home next door is halfway</p> <p>21 built (bank owned)," and then it says, "The</p> <p>22 piece of land next door will be starting</p> <p>23 construction soon." Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. That piece of land next door, are you</p>	<p style="text-align: right;">48</p> <p>1 A. Correct.</p> <p>2 Q. When you sent this letter of intent</p> <p>3 that is marked as Exhibit D, what was your</p> <p>4 anticipation as to the timing of the purchase of</p> <p>5 that property?</p> <p>6 A. That was going to be negotiated.</p> <p>7 Q. Was it your intent that it be done</p> <p>8 quickly, the purchase of the property?</p> <p>9 A. Yes.</p> <p>10 Q. Do you recall what kind of reaction</p> <p>11 you received when you sent the letter of intent,</p> <p>12 Exhibit D?</p> <p>13 A. Elana told me they were the wrong</p> <p>14 people, that it had to go to a different asset</p> <p>15 management department.</p> <p>16 Q. Did you do that?</p> <p>17 A. I did.</p> <p>18 Q. Do you recall how soon after sending</p> <p>19 this letter of intent at Exhibit D that you sent</p> <p>20 that to a different department?</p> <p>21 A. I don't remember the time frame.</p> <p>22 (Deposition Exhibit E marked.)</p> <p>23 BY MR. GUNNERSON:</p> <p>24 Q. I am handing you --</p> <p>25 A. If I could just mention something. In</p>

<p style="text-align: right;">49</p> <p>1 the offer, it had said that it would be 20 days</p> <p>2 or sooner after inspection, so we anticipated a</p> <p>3 quick close.</p> <p>4 Q. Thank you.</p> <p>5 I am handing you a group of emails</p> <p>6 which had been identified as Exhibit E. Could</p> <p>7 you just take a moment and look through those</p> <p>8 and see if this string of emails and associated</p> <p>9 emails look familiar to you?</p> <p>10 MS. CLINE: These are not --</p> <p>11 MR. GUNNERSON: It is just a group of</p> <p>12 emails.</p> <p>13 MS. CLINE: I just want to be clear</p> <p>14 that we are not saying that these are the</p> <p>15 same -- like they were produced -- they were not</p> <p>16 produced this way.</p> <p>17 MR. GUNNERSON: That's correct. It is</p> <p>18 just a group of emails.</p> <p>19 MS. CLINE: So not all the same email.</p> <p>20 MR. GUNNERSON: There are similarities</p> <p>21 between the emails and they all pertain to the</p> <p>22 same topic, I believe.</p> <p>23 MS. CLINE: Okay. I was like how did</p> <p>24 that get with that one?</p> <p>25 MR. GUNNERSON: No, this is not the</p>	<p style="text-align: right;">51</p> <p>1 A. Yes.</p> <p>2 Q. On February 21, 2013, it was not</p> <p>3 listed, right?</p> <p>4 A. Right.</p> <p>5 Q. At the top of that page, it states</p> <p>6 Kelli Barrington is going to be the contact on</p> <p>7 the file, correct?</p> <p>8 A. Yes.</p> <p>9 Q. If you go to the next page, it</p> <p>10 identifies PLTF 3294 -- actually, that appears</p> <p>11 to be similar emails to what we just looked at.</p> <p>12 So let's go to the first page, PLTF 3311. If</p> <p>13 you look at the email sent by Kelli Barrington,</p> <p>14 it states, "At this time, the seller is not</p> <p>15 ready to negotiate offers." Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. And that they anticipated completion</p> <p>18 of their due diligence and marketing</p> <p>19 preparations to be completed within the next few</p> <p>20 weeks at the latest, correct?</p> <p>21 A. Yes.</p> <p>22 Q. And she states she will contact you</p> <p>23 when they are ready to begin negotiations,</p> <p>24 correct?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">50</p> <p>1 grouping on which it was provided.</p> <p>2 BY MR. GUNNERSON:</p> <p>3 Q. Did you get a chance to look at those?</p> <p>4 A. Yes.</p> <p>5 Q. Are all of these emails true and</p> <p>6 correct copies of emails in which you were</p> <p>7 either the sender of the email or the receiver</p> <p>8 of the email?</p> <p>9 A. It appears so.</p> <p>10 Q. If we could go on to the first page --</p> <p>11 it appears if you go three pages down to what is</p> <p>12 on the bottom that says PLTF 3304, it looks like</p> <p>13 if you glance at these, this appears to be where</p> <p>14 you are trying to find the right contact,</p> <p>15 correct?</p> <p>16 A. Yes.</p> <p>17 Q. And then in fact, while you are in</p> <p>18 that process, the email you received at the</p> <p>19 bottom of that page from Elana Escobar states,</p> <p>20 "Good morning, Lisa -- actually, this isn't an</p> <p>21 email to you. It is to you but it is addressed</p> <p>22 to Lisa and you are copied on it. "Good</p> <p>23 morning, Lisa. This is a Bank of America</p> <p>24 property. It is not listed at this time."</p> <p>25 Is that what it states?</p>	<p style="text-align: right;">52</p> <p>1 Q. The email above that appears to be</p> <p>2 from your son to you. Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. It is also to somebody else. Do you</p> <p>5 know who that is?</p> <p>6 A. That is his wife.</p> <p>7 Q. That would be Lahna?</p> <p>8 A. No. Lachick888@yahoo.com is his wife.</p> <p>9 Q. The LB is?</p> <p>10 A. It is LA.</p> <p>11 Q. I am talking about the letters in</p> <p>12 front of the email address itself, which is LB.</p> <p>13 A. LB is Lahna Benson was her maiden</p> <p>14 name.</p> <p>15 Q. He states to you, "Why are they going</p> <p>16 to waste money with marketing preparations?</p> <p>17 Doesn't that mean they have to hire a realtor</p> <p>18 and put it on the MLS?" Was it the original</p> <p>19 intent of you or the company -- not the company.</p> <p>20 The trust or David to try and get this done</p> <p>21 without a realtor?</p> <p>22 A. Yes.</p> <p>23 Q. What was the purpose of doing it</p> <p>24 without a realtor?</p> <p>25 A. Because it wasn't on the market at the</p>

1 time. There was no realtor to go to.

2 Q. But were you hoping to do it without a
3 realtor?

4 A. Yes.

5 Q. Why were you hoping to do it without a
6 realtor?

7 A. First of all, as I just said, there
8 was no realtor to go to. Second of all, if you
9 could deal directly with the bank, the hope was
10 it could be done quickly and expeditiously.

11 Q. It says, "Why are they going to waste
12 money," correct?

13 A. Yes.

14 Q. Is that part of the concern as well is
15 that the more money they put in to marketing the
16 property, the higher the price goes?

17 A. No. He is asking how does that make
18 sense? They have a good offer, a person who
19 wants to purchase the property, why would they
20 go through wasting money to do marketing and
21 putting it on the MLS when they could go with us
22 when it is obvious we are serious and we want to
23 buy the property? That is what he was asking.

24 Q. Wouldn't you have concerns of
25 purchasing a property without the other side

1 having a real estate agent and with all of the
2 requirements that that real estate agent has
3 with disclosure and with preparation and help
4 making sure things run appropriately, wouldn't
5 it concern you to do this without a real estate
6 agent?

7 A. To buy directly from the bank?

8 Q. Right. Without a real estate agent.

9 A. Well, had we actually gotten to the
10 point where we would have had a deal together,
11 then we would have brought in lawyers and we
12 would have figured things out that way. This is
13 a letter of intent.

14 Q. We have three emails in a row here,
15 and I am going to hand them to you and mark them
16 separately.

17 (Deposition Exhibit F - H marked.)

18 MR. GUNNERSON: Exhibit F is a
19 mistake.

20 MS. CLINE: Can we take a quick break?

21 MR. GUNNERSON: Absolutely.

22 (Recessed from 2:03 p.m. to 2:08
23 p.m.)

24 (Deposition Exhibit I marked.)

1 BY MR. GUNNERSON:

2 Q. I have handed you what has been marked
3 as Exhibit G. Do you see that?

4 A. Yes, I do.

5 Q. Do you know what that is?

6 A. Yes.

7 Q. Is this a true and correct copy of an
8 email from Kelli to you and then from you to
9 Kelli regarding the 590 Lairmont Place property?

10 A. Yes.

11 Q. Is that a yes?

12 A. Yes.

13 Q. And it appears in the first email
14 that -- it appears in the email above from you
15 to Kelli, it appears you are reaching out to
16 find out when they are going to start
17 negotiations; is that correct?

18 A. Yes.

19 Q. That was on Tuesday, March 5th,
20 correct?

21 A. Yes.

22 Q. And then on Exhibit H, is this also a
23 true and correct copy of an email from you to
24 Kelli Barrington?

25 A. Yes.

1 Q. This is the next day on March 6th,
2 correct?

3 A. Yes.

4 Q. It states here you have been
5 attempting to contact her, correct?

6 A. Yes.

7 Q. You state in your email, "I left three
8 messages at your office to call me as to the
9 progress of Lairmont." Do you recall that?

10 A. Yes.

11 Q. Do you recall leaving those messages?

12 A. Yes.

13 Q. How often were you leaving messages
14 with her regarding this property?

15 A. I was not getting responses and I am
16 very serious about the property.

17 Q. And in fact, you stated at the end of
18 your email, "We would like to take the next step
19 to acquire the property," correct?

20 A. Yes.

21 Q. If you go to Exhibit I, is this also a
22 true and correct copy of an email from Kelli
23 Barrington to you from March 7, 2013?

24 A. Yes.

25 Q. And in her email to you, it states,

1 "When we talked previously -- this is on the
2 second line -- I indicated that this process
3 could take several weeks," and then is this her
4 way of telling you don't worry, we are still
5 working on it, it is just taking time?

6 A. I don't know what she intended by
7 saying that.

8 Q. How did you take that? What did you
9 take she was telling you with that?

10 A. I took it as to understand that she
11 understood that I had sincere interest in the
12 property and she would get back to me as soon as
13 I would be able to pursue acquiring the
14 property.

15 Q. And then a couple lines down, it says,
16 "Due to the restrictions in this neighborhood,
17 you will need to work with a realtor." Do you
18 see that?

19 A. Yes.

20 Q. Was this the first time you recall
21 being informed that you are going to need to
22 work with a realtor or had you known that prior
23 to this email, if you recall? If you don't
24 recall, that's fine.

25 A. I don't recall -- actually, in the

1 email that you showed me that said why are they
2 going to waste money, she doesn't write about a
3 realtor.

4 Q. Okay.

5 A. She doesn't.

6 Q. We had talked previously about when
7 the property was originally put up for listing
8 on MLS, correct?

9 A. Yes.

10 (Deposition Exhibit J marked.)

11 BY MR. GUNNERSON:

12 Q. I am handing you what we marked as
13 Exhibit J. Take a moment and flip through this
14 and tell me if you recognize what you are
15 looking at.

16 MS. CLINE: Is there a Bates number?

17 MR. GUNNERSON: They are yours. It
18 took me a while this morning too.

19 MS. CLINE: So this first page is
20 2184, but these other ones are in the 200's,
21 correct?

22 MR. GUNNERSON: That's correct, and I
23 believe the ones in the 200's are all
24 consecutive. Tell me if you see any pages
25 missing.

1 THE WITNESS: Yes.

2 BY MR. GUNNERSON:

3 Q. We actually have two different MLS
4 reports here, correct? The one on the first
5 page and the one on the second page -- excuse
6 me. Let me state it clearly.

7 It is regarding the same property but
8 printed on different dates. If you look at the
9 top, one appears to be printed on 6/9/14 and the
10 other one appears to be printed on 5/16/13. Do
11 you see that?

12 A. Yes.

13 Q. Do these appear to be true and correct
14 copies of the MLS listings pertaining to the
15 subject property?

16 A. I wouldn't know.

17 Q. I will note at the bottom, you will
18 see it says PLTF 2184 on the first page?

19 A. Yes.

20 Q. And this was a document provided to us
21 from your counsel. Does this appear to be what
22 an MLS listing looks like?

23 A. Yes.

24 Q. And do you recall having printed one
25 of these off in June of 2014?

1 A. I don't specifically recall that.

2 Q. But you have no reason to contend that
3 this is not an accurate MLS listing as of
4 6/9/14, correct?

5 A. I can assume it.

6 Q. You have no reason to dispute it,
7 correct?

8 A. No reason.

9 Q. The one after that, it says it is from
10 5/16/13. That appears to also be an MLS
11 listing; is that correct?

12 A. Which one?

13 Q. The second page, PLTF 223.

14 MS. CLINE: Do you recall if these
15 were ones that we provided as documents received
16 pursuant to a subpoena?

17 MR. GUNNERSON: I don't. I guess if I
18 am going to -- I think the second page, the PLTF
19 223, since the numbers are so low, I would
20 imagine this came from you. I don't know about
21 the first one.

22 BY MR. GUNNERSON:

23 Q. If you look at the one on PLTF 223, it
24 is dated May 16, 2013. This is around the time
25 the property was being purchased, correct?

<p style="text-align: right;">61</p> <p>1 A. Yes.</p> <p>2 Q. Do you know why or who may have</p> <p>3 printed this out, this MLS report, at that time?</p> <p>4 A. No.</p> <p>5 Q. In looking over this -- let me ask</p> <p>6 you.</p> <p>7 Did you review the MLS listing during</p> <p>8 the process of purchasing this property?</p> <p>9 A. The original one or the one that we</p> <p>10 bought from? The MLS when she originally listed</p> <p>11 the house or the MLS from when we bought the</p> <p>12 house?</p> <p>13 Q. I am talking about the MLS from 2013.</p> <p>14 A. Yes.</p> <p>15 Q. You reviewed the MLS from 2013?</p> <p>16 A. Yes.</p> <p>17 Q. And does this page, the second page,</p> <p>18 PLTF 223, appear to be as far as you can recall</p> <p>19 the same MLS that you looked at at that time?</p> <p>20 A. To the best of my knowledge.</p> <p>21 Q. You don't recall anything different or</p> <p>22 that stands out that is missing, correct?</p> <p>23 A. I don't have a recollection, a</p> <p>24 complete recollection. It looks like an MLS</p> <p>25 listing. That is what it looks like.</p>	<p style="text-align: right;">63</p> <p>1 Q. In fact, I don't know if -- there is a</p> <p>2 section that looks like that says REM. Do you</p> <p>3 see that?</p> <p>4 A. Yes. Remarks.</p> <p>5 Q. I wasn't sure what that stood for.</p> <p>6 Thank you.</p> <p>7 It says romantic tuscan-inspired</p> <p>8 estate sitting on the 9th hole of DragonRidge</p> <p>9 Country Club; is that correct?</p> <p>10 A. That's correct.</p> <p>11 Q. In that paragraph or multiple</p> <p>12 paragraphs regarding the remarks, is there</p> <p>13 anything in there about the view?</p> <p>14 A. It is on the 9th hole of the</p> <p>15 DragonRidge Country Club and there is one that</p> <p>16 says view in here.</p> <p>17 Q. Where is that?</p> <p>18 A. Usually in the listing, there is</p> <p>19 something that says view and they write in what</p> <p>20 the view is, so I would have to look at the</p> <p>21 listing.</p> <p>22 Q. Maybe this is down below. Do you see</p> <p>23 where it says midway, it says house views? Is</p> <p>24 that what you are talking about?</p> <p>25 A. Where do you see that? House views,</p>
<p style="text-align: right;">62</p> <p>1 Q. If you look at the very bottom of PLTF</p> <p>2 223, it states the listed date. Do you see</p> <p>3 that?</p> <p>4 A. Listed date, 3/08.</p> <p>5 Q. 2013, correct?</p> <p>6 A. Yes.</p> <p>7 Q. That means, and correct me if I am</p> <p>8 wrong, that this was listed on March 8, 2013,</p> <p>9 correct?</p> <p>10 A. Yes.</p> <p>11 Q. It gives a list price up at the top,</p> <p>12 correct?</p> <p>13 A. Yes.</p> <p>14 Q. And what is that list price?</p> <p>15 A. \$2,160,000.</p> <p>16 Q. Was this a lot higher than what you</p> <p>17 were intending to pay for this property?</p> <p>18 A. Well, we were negotiating, so it</p> <p>19 depended on where we ended up in our</p> <p>20 negotiating, but it was in the realm of where we</p> <p>21 would end up.</p> <p>22 Q. And on this MLS listing, it gives some</p> <p>23 descriptions regarding the property itself,</p> <p>24 correct?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">64</p> <p>1 yeah, right.</p> <p>2 Q. What does that state?</p> <p>3 A. It says golf view, mountain view.</p> <p>4 MS. CLINE: Just for the record, the</p> <p>5 one that was Bates stamped Plaintiff 2184, that</p> <p>6 was pursuant to a subpoena sent to the Greater</p> <p>7 Las Vegas Association of Realtors.</p> <p>8 MR. GUNNERSON: Thank you.</p> <p>9 Counsel, are you also confirming that</p> <p>10 PLTF 223 came from you directly or your client</p> <p>11 directly?</p> <p>12 MS. CLINE: I can't confirm that</p> <p>13 except it was in the file received from previous</p> <p>14 counsel. I am not sure where it came from.</p> <p>15 There are so many papers in the files that are</p> <p>16 exactly the same, some of them are very similar.</p> <p>17 MR. GUNNERSON: We have noticed.</p> <p>18 (Deposition Exhibit K marked.)</p> <p>19 BY MR. GUNNERSON:</p> <p>20 Q. Once you determined or once you</p> <p>21 learned that the property was to be listed, how</p> <p>22 did you determine your next offer?</p> <p>23 A. We just gave them a full price offer.</p> <p>24 Q. For the listed amount?</p> <p>25 A. Yes.</p>

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1 Q. And this price was more than \$400,000

2 higher than the original offer, correct?

3 A. Yes. Actually, was it 400 -- yeah,

4 okay.

5 Q. Am I right with my math?

6 A. Yes.

7 Q. Why were you willing to go up so much

8 higher for this property?

9 A. We loved this property. We loved it,

10 we wanted it, and we were going to pay what the

11 price was, period.

12 Q. I have handed you what has been marked

13 as exhibit -- Let me ask you this: Did they

14 accept that offer? The listed price offer, did

15 they accept that?

16 A. No.

17 Q. What do you recall happening after

18 that?

19 A. They told me they were going to do

20 highest and best, that they had another offer

21 that was coming in and that they were going to

22 see what it came in at and then do a highest and

23 best offer.

24 Q. You are a real estate agent, correct?

25 A. Yes.

66

1 Q. What does highest and best mean?

2 A. Highest and best is basically a blind

3 thing saying this is the best price I would give

4 you and these are the best terms I would give

5 you and you don't really know what the other

6 person is offering. You just give your best and

7 then they pick the person who is giving them the

8 best offer.

9 Q. When you were attempting to decide

10 what your highest and best offer was to be, what

11 did you consider?

12 A. What did we end up with?

13 Q. What did you consider when making that

14 offer? Did you consider comparables, did you

15 consider the type of home, did you consider how

16 much you wanted the home? What were the

17 parameters you took into consideration when

18 deciding what your highest and best offer would

19 be?

20 A. The parameters were we wanted the home

21 so you wanted to give them a price they couldn't

22 refuse and hopefully another person would not

23 give them that high a price because we really,

24 really wanted that house.

25 Q. I have handed you already what was

67

1 marked as Exhibit K. It appears to be an email

2 from Ms. McGill to you. Does this appear to be

3 a true and correct copy of an email from your

4 real estate agent to you on or about March 12,

5 2013?

6 A. Yes.

7 Q. And if you look at -- do you recall

8 the purpose of this email?

9 A. The purpose of this email is to make

10 me understand that I had to come up with a hard

11 price.

12 Q. And she states to you in here that

13 this is what sold in the last 90 days.

14 A. Uh-huh, yes.

15 Q. Lowest price for the 6,024 square feet

16 with no view was \$152. Do you see that?

17 A. Yes.

18 Q. Is she talking per square foot, \$152?

19 A. It would seem.

20 Q. What else could it be, correct?

21 A. Yes.

22 Q. Highest price for the 10,723 feet with

23 views was \$390. Is that what it says?

24 A. Yes.

25 Q. And that is apparently talking about

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1 square footage again, correct?

2 A. Yes.

3 Q. How many square feet was the subject

4 property?

5 A. It was 10,071 square feet.

6 Q. And you are referring to the MLS

7 listing on Exhibit J, correct?

8 A. Yes.

9 Q. So rough estimate, if we were to say

10 10,000 square feet at \$390 a square foot, even

11 my limited math skills, I think it says a price

12 at that square footage amount would be roughly

13 \$3.9 million, correct?

14 A. Your math is right.

15 Q. And then she says average is \$278. Do

16 you see that?

17 A. Yes.

18 Q. And that appears also to be per square

19 foot, correct?

20 A. Yes.

21 Q. And if we do rough math skills again,

22 then we are talking about somewhere in the area

23 of \$2.78 million, correct?

24 A. Yes.

25 Q. She says, "I don't think it will go

1 near this, but there is very little inventory
2 and the buyers are out in force." What does
3 that mean? Do you know what she is talking
4 about when she says there is very little
5 inventory?

6 A. First of all, we were only looking on
7 Lairmont. So if you are talking specifically
8 about inventory on Lairmont, there was nothing
9 aside from this that would fit our criteria.
10 There also was very little inventory going in
11 MacDonald Highlands because people were starting
12 to buy the bigger houses again.

13 Q. Which explains why she says, "And the
14 buyers are out in force."

15 A. Right.

16 Q. And then at the very bottom -- first
17 of all, she says, "Look at days on market for
18 some of these homes, the 10,723 square foot
19 stunner sold first day." Do you see that?

20 A. Yes.

21 Q. It goes again into what you were
22 saying about there were a lot of buyers at that
23 time for these bigger homes?

24 A. Starting to be a lot of buyers, yes.

25 Q. It says, "Jim said they will leave on

1 market for a couple of weeks." Do you know who
2 Jim is?

3 A. There was a reference to Jim Venable
4 or something in one of these emails, but I don't
5 know who it is.

6 Q. "B/A wants to see how many offers they
7 can get." Do you know who B/A is?

8 A. Bank of America.

9 Q. And then it says, "So our job is to
10 figure out how to be the best offer." Do you
11 see that?

12 A. Yes.

13 Q. What did you do to figure out how to
14 be the best offer?

15 A. As I told you before, we said to
16 ourselves what would be the price that nobody
17 would top.

18 Q. Did you look at all at -- Did you have
19 any way to find out who else was bidding on the
20 property?

21 A. No.

22 Q. Did you attempt to find out who else
23 was bidding on the property?

24 A. No.

25 Q. Did you try to find out how much any

1 other bidders were bidding on the property?

2 A. A realtor shouldn't tell me that.

3 Q. Did you make any attempt though to
4 find that out?

5 A. No.

6 Q. If we could go back to Exhibit B, we
7 have looked at this email earlier and you
8 confirmed that this was the email that you were
9 copied on from Ms. McGill to Michael who is the
10 real estate agent for Bank of America, correct?

11 A. Yes.

12 Q. And we talked about the part where she
13 said -- we talked about as it pertains to
14 walking the property during the construction
15 phase. Do you recall that?

16 A. Yes.

17 Q. Looking at this a little bit more in
18 detail, it says, "Dear Michael, I spoke at
19 length with Jim Venable about this property
20 yesterday." Do you see that?

21 A. Yes.

22 Q. Do you know who Jim Venable is?

23 A. No.

24 Q. You don't know if he worked with
25 Michael or with Bank of America or with anybody

1 else?

2 A. I don't know who he is.

3 Q. It says, "Here is the offer as
4 promised. Please let us know if we end up in a
5 multiple offer situation."

6 It appears then that your real estate
7 agent is attempting to find out if there is more
8 than one offer, correct?

9 A. No. Michael had told her that she
10 expected there to be multiple offers because the
11 price was good, so she said please let me know
12 so I don't just assume that it is an accepted
13 offer. She was trying to be proactive.

14 Q. And then you state, "My buyers are
15 very serious."

16 A. Yes.

17 Q. And you were very serious, correct?

18 A. Extremely.

19 MS. CLINE: Objection. This is not
20 her in the email.

21 MR. GUNNERSON: What's that?

22 MS. CLINE: I think you said you state
23 you were very serious.

24 THE WITNESS: It is Siobhan.

25

<p style="text-align: right;">73</p> <p>1 BY MR. GUNNERSON:</p> <p>2 Q. I didn't mean that. It stated, "My</p> <p>3 buyers are very serious," correct?</p> <p>4 A. Yes.</p> <p>5 Q. And by "my buyers", she is referring</p> <p>6 to you, your family, the trust, correct?</p> <p>7 A. Yes, uh-huh.</p> <p>8 Q. And you were very serious, correct?</p> <p>9 A. Yes.</p> <p>10 Q. It also says you have no restrictions</p> <p>11 regarding seeing the interior, correct?</p> <p>12 A. Yes, that is what she wrote.</p> <p>13 Q. And that is true, right?</p> <p>14 A. Yes.</p> <p>15 Q. And then it says if you go down a</p> <p>16 little bit more, second to last line, "And they</p> <p>17 will take property as is." Is that correct?</p> <p>18 A. That is what she wrote.</p> <p>19 Q. But is she relaying what you</p> <p>20 understood you and your family and the trust</p> <p>21 position to be, that you would take the property</p> <p>22 as is?</p> <p>23 A. It depends on how you define as is. I</p> <p>24 don't know how she was defining as is.</p> <p>25 Q. But that is what she says here?</p>	<p style="text-align: right;">75</p> <p>1 Q. Did you intend for it to cover that in</p> <p>2 this case?</p> <p>3 A. I didn't write this.</p> <p>4 Q. But you said you intended that you</p> <p>5 would take it as is as it pertains to structural</p> <p>6 parts, correct?</p> <p>7 A. Yes.</p> <p>8 Q. I am asking did it include some</p> <p>9 nonstructural parts such as any potential</p> <p>10 environmental concerns with the property?</p> <p>11 A. We never discussed that.</p> <p>12 Q. Did as is concern regarding any</p> <p>13 potential problems in the neighborhood?</p> <p>14 A. My understanding of as is and the way</p> <p>15 I always functioned as a broker realtor is as is</p> <p>16 has to do with the house structure itself and</p> <p>17 when you take a property as is, you assume that</p> <p>18 the seller is going to make no remediation to</p> <p>19 the structural problems in the house.</p> <p>20 Q. And in fact when you buy a property as</p> <p>21 is, that usually includes language in your</p> <p>22 agreement that states it as such, correct?</p> <p>23 A. Yes.</p> <p>24 Q. And usually in your agreement, you</p> <p>25 outline then in detail or a little more detail</p>
<p style="text-align: right;">74</p> <p>1 A. That is what she wrote, yes.</p> <p>2 Q. Do you recall telling her that you</p> <p>3 would take the property as is?</p> <p>4 A. I don't recall saying that.</p> <p>5 Q. Do you recall having any discussions</p> <p>6 with any of your family about taking the</p> <p>7 property as is?</p> <p>8 A. We understood from Bank of America</p> <p>9 that we would take it as is in terms of the</p> <p>10 structural problems that were inside the house,</p> <p>11 the cosmetic problems that were inside the</p> <p>12 house, and that was our understanding of what as</p> <p>13 is meant.</p> <p>14 Q. As a real estate agent when somebody</p> <p>15 takes a property as is, what does that mean?</p> <p>16 A. That means they take the property as</p> <p>17 they see it. If there are leaky faucets, they</p> <p>18 take them. If there is a problem with a wall</p> <p>19 that has cracks in it, the wood is warped, they</p> <p>20 take it that way. It deals with structural</p> <p>21 problems inside the house.</p> <p>22 Q. What if there were environmental</p> <p>23 concerns with the dirt on the property, would</p> <p>24 that "as is" also include that?</p> <p>25 A. Sometimes.</p>	<p style="text-align: right;">76</p> <p>1 then what as is means; is that correct?</p> <p>2 A. Yes.</p> <p>3 Q. But would you agree with me that the</p> <p>4 way Ms. McGill states it here, she doesn't make</p> <p>5 it clear what you meant by as is, correct?</p> <p>6 A. I don't know what her idea of what as</p> <p>7 is was.</p> <p>8 Q. I understand that. I am not asking</p> <p>9 what her idea was or what her thoughts were.</p> <p>10 I am saying reading the letter, she</p> <p>11 doesn't give any further explanation as to what</p> <p>12 as is means in here, does she?</p> <p>13 A. No, she doesn't explain.</p> <p>14 Q. During this time that you were</p> <p>15 negotiating the property, do you recall having</p> <p>16 any verbal communications with anyone at Bank of</p> <p>17 America or their real estate agents?</p> <p>18 A. Are you referring to Michael?</p> <p>19 Q. Michael would have been one of the</p> <p>20 real estate agents, so yes, Michael would have</p> <p>21 been included in that group?</p> <p>22 A. The negotiations were running through</p> <p>23 Siobhan. She was my agent. She was the one</p> <p>24 dealing with the appropriate people. That is</p> <p>25 what an agent is.</p>

1 Q. So you don't personally -- let's talk
2 about you personally.

3 Do you personally recall having any
4 direct communications, conversations with
5 Michael or anyone at her offices?

6 A. I had -- once Bank of America told me
7 that I could not negotiate with them directly
8 but I had to deal with the broker, I called her
9 office to try to talk to her to try to tell her
10 that I wanted to make the offer as soon as it
11 came up, and I think that I ended up speaking to
12 her once and she just told me that it would be
13 listed.

14 Q. No other communications that you
15 recall between you and her directly?

16 A. No. Not that I recall.

17 MS. CLINE: Are you talking about in
18 the negotiation process as far as -- I am
19 looking for a time frame here.

20 MR. GUNNERSON: During the negotiation
21 process.

22 BY MR. GUNNERSON:

23 Q. We are talking negotiation phase, so
24 prior to the acceptance of the offer.

25 A. Not that I remember. It was done

1 questions about this other than just for you to
2 confirm that this is in fact an email -- excuse
3 me. I thought you were on this email. It
4 doesn't look like -- Is this an email that you
5 would have received?

6 A. I am not CC'd.

7 Q. I don't see it either. I thought at
8 the time I grabbed this that that was your email
9 address, but you are broseyb and your son is
10 droseyd?

11 A. Exactly.

12 MS. CLINE: I think these were
13 disclosed from a subpoena that we sent to Realty
14 One.

15 MR. GUNNERSON: That's fine.

16 (Deposition Exhibit M marked.)

17 BY MR. GUNNERSON:

18 Q. I am handing you what has been marked
19 as Exhibit M. Does this appear to be a true and
20 correct copy of a string of emails in which you
21 were copied on?

22 A. Yes.

23 Q. If you start at the very bottom, it
24 appears to be an email from your agent to
25 Michael. Do you see that?

1 through Siobhan.

2 Q. Do you recall speaking with Jim
3 Venable directly at all?

4 A. No.

5 Q. Anyone else? With the developer at
6 that time?

7 A. No.

8 Q. Or the HOA?

9 A. No.

10 Q. Or the golf course?

11 A. No.

12 Q. Do you know, not including your real
13 estate agent, but if your husband or your son or
14 any of your other relatives had any
15 communications with Jim or Michael during the
16 negotiation period?

17 A. I don't know.

18 Q. So you are not aware of any?

19 A. Not that I am aware of.

20 Q. I will hand you what we will mark as
21 Exhibit L.

22 (Deposition Exhibit L marked.)

23 BY MR. GUNNERSON:

24 Q. I am handing you what we marked as
25 Exhibit L, and I am not going to ask very many

1 A. Yes.

2 Q. And that first line, it says, "I know
3 you probably do not have any news, but as you
4 can imagine, my buyers are completely stressed
5 out." Do you see that?

6 A. Yes.

7 Q. Was that a true statement on March 19,
8 2013?

9 A. We were anxious to know.

10 Q. You wouldn't call it stressed out
11 though?

12 A. I would call it very anxious. I
13 wouldn't call it completely stressed out, but I
14 would call it anxious to know. We really loved
15 the house.

16 Q. The next email up, Michael responds,
17 "The bank wants to know if all offers are the
18 final and best." Do you see that?

19 A. Yes.

20 Q. That is what we were talking about
21 that that is what the bank wanted and that is
22 what you were looking out to figure out what
23 that number would be, correct?

24 A. Yes.

25 Q. And then the top email to you and

1 David from your real estate agent is asking how
2 you want to proceed, correct?

3 A. Yes.

4 Q. And it says, "This house was put up
5 under market value." Do you see that?

6 A. Yes.

7 Q. Did you agree with that?

8 A. Michael did the appraisal and that is
9 the number she came up with, and I would assume
10 that since she was working for Bank of America,
11 she would have got Bank of America's best
12 possible price. So I would assume that she put
13 it up at the right price.

14 Q. You would disagree with your real
15 estate agent that the house was put up under
16 market value?

17 A. I would say that the house was
18 probably put up at the right price.

19 Q. The right price is kind of a funny
20 word, so let's talk about market value. Do you
21 think that Bank of America listed the property
22 at market value?

23 A. My personal opinion?

24 Q. Let's start with your personal
25 opinion.

1 A. I don't have a CMA in front of me, I
2 don't have a fair market analysis, so my opinion
3 is worthless. You base a market value on
4 statistics, so I don't know. It was that she
5 took all of the statistics, all of the relevant
6 statistics, she knows every house in MacDonald
7 Highlands, and I assume she was trying to get
8 Bank of America's highest and best price and
9 that is the price she came up with. I am
10 assuming that having done her due diligence that
11 she came up with the right market value.

12 Q. You used the word "assume" a lot. You
13 don't know though, correct?

14 A. No, because I don't have any of the
15 statistics.

16 Q. When your real estate agent sent this
17 to you, you neither agreed or disagreed, you
18 just knew it was under market value?

19 A. This is my realtor's opinion.

20 Q. You did not agree with her?

21 A. I didn't agree or disagree.

22 Q. This is just a yes or no question.
23 Did you agree with the statement that your
24 realtor sent about the property being put up
25 under market value, yes or no?

1 A. I think it was put up at market value.

2 Q. So you disagree?

3 A. Yes.

4 Q. "And the second offer that came in --
5 I continue reading. I apologize. "And the
6 second offer that came in knew there was already
7 an offer submitted so it is my guess they wrote
8 over asking, but the listing agent is giving
9 nothing up." Do you see that?

10 A. Yes.

11 Q. And that is when you were talking
12 about earlier that Michael would have needed to
13 not say what the prices were, correct?

14 A. Right.

15 Q. It appears that she was doing her duty
16 as a real estate agent by not stating what the
17 other party was offering?

18 A. Yes.

19 Q. And it says, "Let me know how you want
20 to proceed." Just to make it clear, I don't
21 remember if I asked the question this way:
22 Before giving your final and best offer, did you
23 know what the prior party was offering?

24 A. No.

25 Q. Did David know what the prior party

1 was offering?

2 A. No.

3 Q. Do you know if your real estate agent
4 knew what the prior party was offering?

5 A. She did not.

6 (Deposition Exhibit N marked.)

7 BY MR. GUNNERSON:

8 Q. I am handing you what we marked as
9 Exhibit N. Do you recognize this document?

10 A. I do.

11 Q. What is that?

12 A. That is an addendum to the original
13 purchase agreement in which we amended our
14 purchase price.

15 Q. And down below, I see some signatures.
16 The first line where it is marked buyer, do you
17 know whose signature that is?

18 A. Barbara Rosenberg.

19 Q. That is your signature?

20 A. Yes.

21 Q. And the one below that, do you know
22 whose signature that is?

23 A. Fred Rosenberg.

24 Q. Those are yours and your husband's
25 signatures?

<p style="text-align: right;">85</p> <p>1 A. Yes.</p> <p>2 Q. On here, it appears you amended your</p> <p>3 purchase price to be \$2,302,000, correct?</p> <p>4 A. Yes.</p> <p>5 Q. And do you recall how you ended up --</p> <p>6 I know the reasoning behind it, because you</p> <p>7 wanted to find the best because you really</p> <p>8 wanted the property, but do you recall how you</p> <p>9 ended up with \$2,302,000?</p> <p>10 A. Yes.</p> <p>11 Q. How is that?</p> <p>12 A. I had had a client who was a best and</p> <p>13 final about a year and a half before, and I had</p> <p>14 suggested to them that instead of just putting</p> <p>15 in at 2.3 or 2.1 or whatever, but just to add a</p> <p>16 little bit more because that way, you might edge</p> <p>17 out somebody who had come in exactly the same</p> <p>18 price you did. So I said to her I want</p> <p>19 \$2,302,000 so if someone comes in at \$2.3</p> <p>20 million, I will get it for the \$2,000.</p> <p>21 Q. Underneath the purchase price, it</p> <p>22 says, "All other terms to remain the same,"</p> <p>23 correct?</p> <p>24 A. Yes.</p> <p>25 Do you know what the other offer was?</p>	<p style="text-align: right;">87</p> <p>1 buyer?</p> <p>2 A. My husband and myself.</p> <p>3 Q. And the first set of initials is</p> <p>4 whose?</p> <p>5 A. Barbara Rosenberg and then Fred</p> <p>6 Rosenberg.</p> <p>7 Q. Were you there when your husband</p> <p>8 signed this document?</p> <p>9 A. Yes.</p> <p>10 Q. So you saw him put his initials on</p> <p>11 this document?</p> <p>12 A. Yes.</p> <p>13 Q. On the very last page, there is a</p> <p>14 buyer's signature.</p> <p>15 A. Yes.</p> <p>16 Q. Is that your signature where it is the</p> <p>17 first buyer's signature line?</p> <p>18 A. No. That is his signature, I think.</p> <p>19 Let me see.</p> <p>20 Q. There are two signatures, two buyer</p> <p>21 signature lines.</p> <p>22 A. Oh, I was looking down here.</p> <p>23 Q. The buyer's acknowledgment of offer.</p> <p>24 A. Yes. This is Barbara Rosenberg and</p> <p>25 that is Fred Rosenberg.</p>
<p style="text-align: right;">86</p> <p>1 MS. CLINE: He doesn't get to testify.</p> <p>2 THE WITNESS: We always wanted to</p> <p>3 know.</p> <p>4 MR. GUNNERSON: Unfortunately, I am</p> <p>5 asking the questions and not testifying.</p> <p>6 Since we are talking about the</p> <p>7 Residential Purchase Agreement, let's mark that</p> <p>8 as an exhibit.</p> <p>9 (Deposition Exhibit O marked.)</p> <p>10 BY MR. GUNNERSON:</p> <p>11 Q. So what I handed you is a document</p> <p>12 identified as Exhibit O. Do you recognize this?</p> <p>13 A. I do.</p> <p>14 Q. What is it?</p> <p>15 A. It is a Residential Purchase</p> <p>16 Agreement.</p> <p>17 Q. And this purchase agreement, it is</p> <p>18 dated March 13, 2013, correct?</p> <p>19 A. Yes.</p> <p>20 Q. And if you look through and number</p> <p>21 through the pages, you will see there is buyer's</p> <p>22 initials I think on every page. Do you</p> <p>23 recognize those initials?</p> <p>24 A. I do.</p> <p>25 Q. Whose are those initials for the</p>	<p style="text-align: right;">88</p> <p>1 Q. That is your signature and your</p> <p>2 husband's signature?</p> <p>3 A. Uh-huh, yes. Uh-huh.</p> <p>4 Q. Does this appear to be a correct copy</p> <p>5 of the Residential Purchase Agreement that you</p> <p>6 and your husband executed on March 13, 2013?</p> <p>7 A. Yes.</p> <p>8 Q. How many Residential Purchase</p> <p>9 Agreements have you worked with as a real estate</p> <p>10 agent?</p> <p>11 A. I don't know the exact number. Many.</p> <p>12 Q. Would you put it over a thousand?</p> <p>13 A. No.</p> <p>14 Q. In 25 years, you have not worked with</p> <p>15 more than a thousand real estate purchase</p> <p>16 agreements?</p> <p>17 A. I haven't done a thousand sales.</p> <p>18 Q. Would you say you have done more than</p> <p>19 500?</p> <p>20 A. Probably.</p> <p>21 Q. More than 600?</p> <p>22 A. I don't know. That is a guess.</p> <p>23 Q. But at least more than 500 sales you</p> <p>24 have done?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">89</p> <p>1 Q. You have looked at real estate</p> <p>2 purchase agreements many times; is that correct?</p> <p>3 A. Yes.</p> <p>4 Q. Did your husband review this in detail</p> <p>5 or did you review it in detail and tell him it</p> <p>6 was okay to sign it?</p> <p>7 A. This is a Residential Purchase</p> <p>8 Agreement from Las Vegas. I am very familiar</p> <p>9 with the California purchase agreement. This is</p> <p>10 a Nevada purchase agreement, so I had no</p> <p>11 familiarity with this purchase agreement.</p> <p>12 Q. So did you read this agreement in</p> <p>13 detail before you signed?</p> <p>14 A. Yes.</p> <p>15 Q. Did your husband read it in detail</p> <p>16 before he signed?</p> <p>17 A. Yes.</p> <p>18 Q. When it comes to property issues, does</p> <p>19 your husband come to you and ask questions if he</p> <p>20 has any questions on a document or is he pretty</p> <p>21 property savvy and usually picks it all up?</p> <p>22 A. He usually asks me.</p> <p>23 Q. Do you recall if he asked you anything</p> <p>24 about this purchase agreement off the top of</p> <p>25 your head?</p>	<p style="text-align: right;">91</p> <p>1 I have noticed that sometimes Nevada</p> <p>2 likes to copy California with things. I don't</p> <p>3 know if that is what happened here or not. I am</p> <p>4 curious as to whether or not -- how close this</p> <p>5 purchase agreement is to a California purchase</p> <p>6 agreement, generally speaking.</p> <p>7 A. I don't know. I didn't have a chance</p> <p>8 to really read this right now.</p> <p>9 Q. So at the time you read it, you don't</p> <p>10 recall saying oh, this is so different or not,</p> <p>11 that doesn't come to your recollection?</p> <p>12 A. No. You asked me my familiarity with</p> <p>13 Residential Purchase Agreements and my answer</p> <p>14 was that my familiarity with Nevada Residential</p> <p>15 Purchase Agreements was nil until I read this.</p> <p>16 That was the question you had asked me.</p> <p>17 Q. This is a different question.</p> <p>18 A. What's the different question?</p> <p>19 Q. The question is do you recall when you</p> <p>20 read this agreement if you recall thinking this</p> <p>21 is a lot different from California agreements?</p> <p>22 Do you recall having that recollection?</p> <p>23 A. I don't recall having that thought.</p> <p>24 Q. And would you take a look at it now</p> <p>25 and take a few minutes and look through it and</p>
<p style="text-align: right;">90</p> <p>1 A. I don't recall.</p> <p>2 Q. If you didn't agree with something in</p> <p>3 the purchase agreement, what would you do?</p> <p>4 A. I could have amended it.</p> <p>5 Q. And how would you have amended it?</p> <p>6 A. I could have crossed out something</p> <p>7 and -- oh, this is my purchase agreement.</p> <p>8 Q. Correct.</p> <p>9 A. Yes, I could have just crossed it out</p> <p>10 or written in the addendum that I wouldn't</p> <p>11 accept that particular agreement.</p> <p>12 Q. So with the previous addendum that we</p> <p>13 talked about that is Exhibit N, you specifically</p> <p>14 state in there all other terms remain the same,</p> <p>15 in other words, meaning with this purchase</p> <p>16 agreement, the terms are remaining the same, you</p> <p>17 are not changing them?</p> <p>18 A. Right.</p> <p>19 Q. I am looking through and I do not</p> <p>20 see -- tell me if you see something. I do not</p> <p>21 see anywhere you have crossed anything out as it</p> <p>22 pertains to this purchase agreement. Do you?</p> <p>23 A. No, I do not.</p> <p>24 Q. How different is this purchase</p> <p>25 agreement -- let me start this.</p>	<p style="text-align: right;">92</p> <p>1 see if anything looked particularly different or</p> <p>2 the same as to the agreements you worked with in</p> <p>3 California?</p> <p>4 A. Do you have a particular thing that</p> <p>5 you want me to look at?</p> <p>6 Q. Well, first of all, why don't you look</p> <p>7 at the general form and then I will ask you some</p> <p>8 specific questions.</p> <p>9 MS. CLINE: Just because I don't know,</p> <p>10 are there multiple types of Residential Purchase</p> <p>11 Agreements in Nevada or California?</p> <p>12 I will allow her to answer if she</p> <p>13 knows, but I am just going to object because it</p> <p>14 calls for speculation because we don't have any</p> <p>15 Residential Purchase Agreements right in front</p> <p>16 of us.</p> <p>17 THE WITNESS: I just want to see one</p> <p>18 thing. Okay.</p> <p>19 BY MR. GUNNERSON:</p> <p>20 Q. So does this appear to be similar in</p> <p>21 form to the type of agreements you work with in</p> <p>22 California?</p> <p>23 A. It is similar.</p> <p>24 Q. Can you turn to the 4th page of the</p> <p>25 agreement, which is identified as MHR 000097.</p>

<p style="text-align: right;">93</p> <p>1 A. Yes.</p> <p>2 Q. Section C talks about inspections and</p> <p>3 related expenses. Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. And it states on there</p> <p>6 approximately -- the side of the document</p> <p>7 appears to be numbered. If you look at Line 7,</p> <p>8 do you see that?</p> <p>9 A. Uh-huh.</p> <p>10 Q. It talks about the type of inspections</p> <p>11 as to who is going to pay for it and whether or</p> <p>12 not it is waived. Do you see that?</p> <p>13 A. Line 7 is appraisal.</p> <p>14 Q. And do you see what is marked for</p> <p>15 appraisal?</p> <p>16 A. Nothing is marked.</p> <p>17 Q. It appears that waived is marked.</p> <p>18 Does waived appear to be marked on yours?</p> <p>19 A. I can't tell. Is that an X?</p> <p>20 Q. You can't tell either way?</p> <p>21 A. No, I can't. Can you?</p> <p>22 MS. CLINE: This copy is really bad.</p> <p>23 MR. GUNNERSON: We are doing the best</p> <p>24 with what we have.</p> <p>25</p>	<p style="text-align: right;">95</p> <p>1 Q. If we go to the 4th page again, this</p> <p>2 one is Bates Numbered BANA 00004. So when you</p> <p>3 looked at Line 7 on the appraisal, do you see if</p> <p>4 waived has been checked?</p> <p>5 A. It looks like it.</p> <p>6 Q. You have no reason to dispute that the</p> <p>7 appraisal on this purchase was waived, correct?</p> <p>8 A. Correct.</p> <p>9 Q. And then if you go down to Line 23, do</p> <p>10 you see that?</p> <p>11 A. Uh-huh.</p> <p>12 Q. What does that say?</p> <p>13 A. It says survey.</p> <p>14 Q. Do you see what is marked for a survey</p> <p>15 at the property?</p> <p>16 A. It says waived.</p> <p>17 Q. And it is your recollection you waived</p> <p>18 taking a survey of the property, correct?</p> <p>19 A. That is what it says.</p> <p>20 Q. Is that your recollection?</p> <p>21 A. I don't have that recollection, but I</p> <p>22 see it is on the paper.</p> <p>23 Q. You have no reason to dispute it?</p> <p>24 A. No.</p> <p>25 Q. If you go now to -- we will stick with</p>
<p style="text-align: right;">94</p> <p>1 BY MR. GUNNERSON:</p> <p>2 Q. Do you recall if you waived the</p> <p>3 appraisal?</p> <p>4 A. I don't recall.</p> <p>5 MS. WINSLOW: I have a better copy if</p> <p>6 you want to use that.</p> <p>7 MR. GUNNERSON: Sure.</p> <p>8 MS. WINSLOW: These have the addendums</p> <p>9 attached to the back.</p> <p>10 MR. GUNNERSON: We will mark this as a</p> <p>11 separate exhibit number so you can reference it</p> <p>12 as you need.</p> <p>13 (Deposition Exhibit P marked.)</p> <p>14 BY MR. GUNNERSON:</p> <p>15 Q. It appears that we have a better copy.</p> <p>16 What we handed you is another Residential</p> <p>17 Purchase Agreement identified as Exhibit P.</p> <p>18 First look at the signatures and make sure this</p> <p>19 is the same document that we were referencing in</p> <p>20 Exhibit O.</p> <p>21 A. Yes. Here you could see it.</p> <p>22 Q. This is the same agreement then as we</p> <p>23 have been looking at with the other exhibit,</p> <p>24 just a clearer version?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">96</p> <p>1 the one we were working with.</p> <p>2 A few more pages over to BANA 00006,</p> <p>3 if you see on that, it says property inspection</p> <p>4 condition, 12-B. Do you see that?</p> <p>5 A. I do.</p> <p>6 Q. It says, "During the due diligence</p> <p>7 period, buyer shall take such action as buyer</p> <p>8 deems necessary to determine whether the</p> <p>9 property is satisfactory to buyer including, but</p> <p>10 not limited to, whether the property is</p> <p>11 insurable to buyer's satisfaction." Do you see</p> <p>12 that?</p> <p>13 A. Yes.</p> <p>14 Q. Is that a correct reading so far?</p> <p>15 A. Yes.</p> <p>16 Q. And I continue, "Whether there are</p> <p>17 unsatisfactory conditions surrounding or</p> <p>18 otherwise affecting the property." Do you see</p> <p>19 that?</p> <p>20 A. Yes.</p> <p>21 Q. What efforts were made to determine if</p> <p>22 there were any unsatisfactory conditions</p> <p>23 surrounding or otherwise affecting the property?</p> <p>24 A. We got a preliminary title report.</p> <p>25 Q. That affects your title of the</p>

24 (Pages 93 to 96)

<p style="text-align: right;">97</p> <p>1 property. Anything else that was done regarding</p> <p>2 the surrounding, otherwise, affecting the</p> <p>3 property?</p> <p>4 A. No, not really.</p> <p>5 Q. I know that you stated -- we have</p> <p>6 talked previously how you did not walk the</p> <p>7 property prior to this real estate purchase</p> <p>8 agreement, correct?</p> <p>9 A. Correct.</p> <p>10 Q. Did you walk the property after?</p> <p>11 A. At the inspection.</p> <p>12 Q. Was that the only time you walked the</p> <p>13 property prior to purchase?</p> <p>14 A. As I remember.</p> <p>15 Q. When you walked the property, did you</p> <p>16 go into the backyard?</p> <p>17 A. Yes.</p> <p>18 Q. Did you go onto the balconies?</p> <p>19 A. Yes.</p> <p>20 Q. Do you recall looking over at Malek's</p> <p>21 property?</p> <p>22 A. I don't recall it.</p> <p>23 Q. Do you recall looking at the bare lot</p> <p>24 that Malek purchased that sits right behind his</p> <p>25 property?</p>	<p style="text-align: right;">99</p> <p>1 Q. And she and the realty company would</p> <p>2 have been buyer's brokers, correct?</p> <p>3 A. Correct.</p> <p>4 Q. Seller's brokers?</p> <p>5 A. Seller's. I'm sorry.</p> <p>6 Q. Here it appears if you look at Line 41</p> <p>7 of that page, it talks about listing broker,</p> <p>8 correct?</p> <p>9 A. Listing broker, yes.</p> <p>10 Q. If you go down to Paragraph 22, Waiver</p> <p>11 of Claims, do you recall if you read that</p> <p>12 paragraph prior to signing the document?</p> <p>13 A. I don't specifically recall it, but I</p> <p>14 am assuming I did.</p> <p>15 Q. Because you read the whole thing in</p> <p>16 detail, correct?</p> <p>17 A. Yes. Which line are you referring to?</p> <p>18 Q. Paragraph Number 22 on Line 49, just</p> <p>19 generally the paragraph.</p> <p>20 A. Yes.</p> <p>21 Q. In that paragraph, as you can see on</p> <p>22 Line 50, about the middle of the sentence, it</p> <p>23 says, "The property will be sold as is." Do you</p> <p>24 see that?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">98</p> <p>1 A. I am assuming at some point, I looked</p> <p>2 at the lot.</p> <p>3 Q. But you don't recall?</p> <p>4 A. I don't recall, no.</p> <p>5 Q. This section we have been reading,</p> <p>6 12-B, as you stated, you read this entire</p> <p>7 agreement before you signed it. You would have</p> <p>8 read 12-B as well, correct?</p> <p>9 A. Yes.</p> <p>10 Q. If you will go with me to Page BANA</p> <p>11 000008, at the bottom of the page where it talks</p> <p>12 about brokers.</p> <p>13 A. Yes.</p> <p>14 Q. Do you know who the brokers were in</p> <p>15 this case?</p> <p>16 A. Siobhan was a broker and I was a</p> <p>17 referral broker.</p> <p>18 Q. Were there any other brokers?</p> <p>19 A. Michael.</p> <p>20 Q. And was she an agent or a broker, do</p> <p>21 you recall?</p> <p>22 A. She is an agent of the broker.</p> <p>23 Q. And the broker would have been</p> <p>24 MacDonald Highlands Realty, correct?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">100</p> <p>1 Q. It then says, "Where-is without any</p> <p>2 representations or warranties, unless expressly</p> <p>3 stated herein." Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. And that was your understanding of</p> <p>6 what you were agreeing to, correct?</p> <p>7 A. Yes.</p> <p>8 Q. It then goes on further on the next</p> <p>9 page on Page BANA 000009, on Line 2, "Buyer</p> <p>10 waives all claims against brokers or their</p> <p>11 agents." Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. "For (a)," do you see that?</p> <p>14 A. Yes, uh-huh.</p> <p>15 Q. "Defects in the property." Do you see</p> <p>16 that?</p> <p>17 A. Yes.</p> <p>18 Q. When you signed that, that was your</p> <p>19 understanding, correct?</p> <p>20 A. Yes. Defects in the property being</p> <p>21 structural defects in the house.</p> <p>22 Q. It doesn't say that though, does it?</p> <p>23 A. That was my understanding.</p> <p>24 Q. It doesn't say that in the agreement</p> <p>25 though, does it?</p>

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1 A. I understand it doesn't say that.
2 That is my understanding.
3 Q. I am looking for a yes or no. Does it
4 say that in the agreement that you signed?
5 A. It does not.
6 Q. Thank you.
7 MR. GUNNERSON: Let's take a break.
8 (Recessed from 3:08 p.m. to 3:14
9 p.m.)
10 (Deposition Exhibit Q marked.)
11 BY MR. GUNNERSON:
12 Q. The trust has sued a number of people
13 in this case related to the subject property,
14 correct?
15 A. Yes.
16 Q. That is why we are here today, right?
17 A. Yes.
18 Q. It is my understanding that it is a
19 result of the purchase of the bare lot which is
20 that third acre behind the Malek property to
21 Malek, that that is the basis for the
22 litigation; is that correct?
23 A. Yes.
24 Q. And if I understand it correctly, the
25 basis is that building on that property will

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1 affect your view and privacy; is that correct?
2 A. That is correct.
3 Q. Would you call that a hidden defect in
4 the property, the fact that this piece of
5 property was purchased, the bare lot was
6 purchased by Malek allegedly without your
7 knowledge?
8 A. Is that a defect in Lairmont?
9 Q. Yes. Would you consider that a defect
10 in the 590 Lairmont property?
11 A. I wanted to talk about the survey and
12 the defect thing. The reason we didn't have to
13 do a survey --
14 Q. That's okay. You could tell me that
15 in a second. I want you to answer the question
16 first.
17 Would you consider Malek's purchase of
18 the bare lot allegedly without your knowledge a
19 defect in your subject property?
20 MS. CLINE: Object to form.
21 Go ahead and answer.
22 THE WITNESS: I would consider it --
23 yes.
24 BY MR. GUNNERSON:
25 Q. In fact, would you call it a hidden

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1 defect since you claim you were unaware of it?
2 A. Yes.
3 Q. Go ahead. You were going to say
4 something.
5 A. I was going to say you asked why we
6 waived survey. My son had been looking at
7 Lairmont since 2009 and we had targeting
8 Lairmont only, so he had looked at all of the
9 plot maps, he had done all of the surveying, he
10 knew everything about -- he had all of the
11 information about every house that was on
12 Lairmont, so it wasn't that we didn't know the
13 parameters of the land that we were buying. We
14 basically knew that. We didn't know that Malek
15 had bought that piece of property and it was not
16 disclosed to us, as it should have been.
17 Q. I guess disclosure is probably a legal
18 question. Nonetheless, you just testified as to
19 what your son did, correct?
20 A. He did it on our behalf.
21 Q. You didn't do it, correct?
22 A. No.
23 Q. You weren't with him when he did it,
24 correct?
25 A. No -- I mean yes. It was correct.

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1 You asked me if that is correct. It is correct.
2 Q. Thank you.
3 And nonetheless, so you decided to
4 rely upon David's understanding of the
5 neighborhood, then obtain a survey; is that
6 correct?
7 A. To get a survey of the parameters of
8 the land, we had that, we had the plot maps that
9 we have done over the years. We knew the
10 parameters of the land.
11 Q. That is not the question.
12 The question is you said that David
13 was the one who knew the neighborhood. He had
14 seen maps, he understood the neighborhood.
15 A. Yes.
16 Q. And you relied on that instead of
17 obtaining a survey, correct?
18 A. Yes.
19 Q. David is not a surveyor, correct?
20 A. Right.
21 Q. He did not go out and measure lot
22 lines; is that correct?
23 A. That is correct.
24 Q. Do you know -- strike that.
25 You are not aware that he ever

1 consulted with a surveyor, correct?

2 A. No, he did not. He got it from title.

3 Q. Do you know if he went to the City of
4 Henderson to find out information regarding the
5 properties?

6 A. I don't know.

7 Q. Do you know if he went to the
8 developer to get maps and readings regarding the
9 properties in that neighborhood?

10 A. I don't know.

11 Q. Do you recall if he ever -- did he
12 ever tell you that he ever did those things?

13 A. No.

14 Q. I think I handed you what is marked as
15 Exhibit Q. I have handed you a document
16 entitled Real Estate Purchase Addendum and we
17 marked it as Exhibit Q. Do you see that?

18 A. Yes.

19 Q. At the bottom are some buyer initials
20 again. Do you see those?

21 A. Yes.

22 Q. Is that your initial and your
23 husband's initial?

24 A. It is.

25 Q. Ma'am, throughout the entirety of the

1 document, those initials appear. Do those
2 remain your initials?

3 A. Yes.

4 Q. Ma'am, on the second to last page, MHR
5 000119, it has some signatures there. Do you
6 see those?

7 A. Yes.

8 Q. Does that appear to be your signature
9 where it says buyer, that first line?

10 A. Yes.

11 Q. Is that your handwriting underneath?

12 A. Yes.

13 Q. And then it appears that -- is that
14 your husband's signature?

15 A. Yes, the squiggle.

16 Q. In the same column as your signature,
17 correct?

18 A. Yes, uh-huh.

19 Q. There is handwriting underneath his.
20 Is that his handwriting or yours?

21 A. I don't know.

22 Q. Why don't you take a second and glance
23 at the document. Does this appear to be a true
24 and correct copy of the real estate purchase
25 addendum in the subject case?

1 MS. CLINE: Do you happen to have a
2 clearer copy of this document?

3 MS. WINSLOW: No, not with me.

4 MS. CLINE: Could you read it?

5 THE WITNESS: No. It looks like it
6 is.

7 MR. GUNNERSON: If you have a better
8 copy of this in your files, we would love to
9 have it. We pulled this one out because we
10 didn't see one in yours, but maybe we missed it.

11 MS. CLINE: There are like 10,000
12 documents in this case.

13 MR. GUNNERSON: We are well aware.
14 There is actually about 2,000 but they are
15 repeated about five times.

16 BY MR. GUNNERSON:

17 Q. Have you had a chance to look at that,
18 Ms. Rosenberg?

19 A. Yes.

20 Q. Does it appear to be a true and
21 correct copy of the Real Estate Purchase
22 Addendum?

23 A. It looks like it.

24 Q. If I go back to your signature page on
25 the second to the last page, it appears this is

1 dated March 15th, is that correct, 2013?

2 A. Yes.

3 Q. And as with the purchase agreement, if
4 you wanted to make any changes on this document,
5 would you have done it by striking the language
6 and initialling it?

7 A. I would have, but I was also told that
8 basically there was no amending the document,
9 that Bank of America would not accept anything
10 that had been amended, so I really didn't have
11 the opportunity to do that.

12 Q. Do you recall having concerns with
13 this addendum?

14 A. I don't recall having concerns; but
15 that is basically what I was told, if I had any
16 problems with the way it was written, that Bank
17 of America would not accept the offer.

18 Q. And from what you said earlier, you
19 really wanted the property, right?

20 A. Yes.

21 Q. You weren't going to allow some
22 corrections to the addendum to stop you from
23 getting the property; is that correct?

24 A. That's correct.

25 Q. Do you know if you read this Real

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1 Estate Purchase Addendum in detail?

2 A. I would assume I did.

3 Q. As a real estate agent, you read all

4 of your real estate documents in detail,

5 correct?

6 A. Yes.

7 Q. If you look on the first page in the

8 first paragraph under Section 1, do you see

9 where it starts with "Buyer understands"?

10 A. Yes.

11 Q. The last sentence of that agreement

12 says, "Buyer agrees that buyer is buying the

13 property as is (as more fully set forth in

14 Section 13 of this addendum)." Do you see that?

15 A. I do.

16 Q. So when you and I had gone back and

17 forth as to what as is means, it appears that

18 was fully set forth in Paragraph 13 in this

19 agreement, correct?

20 A. Yes.

21 (Deposition Exhibit R marked.)

22 BY MR. GUNNERSON:

23 Q. We just handed you a document

24 identified as Exhibit R. Do you see that?

25 A. Yes.

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1 Q. It appears to be an email from

2 Ms. McGill to you and copied on your son. Do

3 you see that?

4 A. Yes.

5 Q. Does this appear to be a true and

6 correct copy of that email?

7 A. I didn't read it yet. I don't know

8 what it says. Yes.

9 Q. You have told me previously you were

10 doing all you can to avoid losing the sale of

11 this property, right?

12 A. Yes.

13 Q. Losing the purchase of this property,

14 correct?

15 A. Yes.

16 Q. And it is my understanding that there

17 was some effort to be made about allowing you

18 and your husband and your son and his wife a

19 chance to own the property together. Is that

20 what I am reading here, is that what you were

21 attempting to do?

22 A. I don't remember if it was that or we

23 wanted to put it into the trust name. I don't

24 remember exactly what the problem was here.

25 Q. It appears whatever the problem was is

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1 that the real estate agent, Ms. McGill, was

2 trying to avoid you guys having to go back to

3 the bank because you didn't want the bank to

4 scrap your offer, correct?

5 A. That is correct.

6 Q. And in the middle of that paragraph,

7 she gives a suggestion. She says, "Another

8 suggestion is possibly." Do you see that?

9 A. What line is that?

10 Q. It is right in the middle of the

11 paragraph in the middle.

12 A. "Another suggestion", yeah.

13 Q. "Another suggestion is possibly to put

14 the property into a trust that includes all

15 parties." Do you see that?

16 A. Yes.

17 Q. Do you know who all parties were to be

18 put into the trust?

19 A. I would be guessing.

20 Q. As the person most knowledgeable of

21 the trust, do you know which parties are in the

22 trust?

23 A. Barbara and Fred Rosenberg.

24 Q. Your son and his wife are not parties

25 to the trust?

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1 A. No.

2 MS. CLINE: Are you saying --

3 MR. GUNNERSON: At any time currently.

4 MS. CLINE: Parties to the trust or --

5 THE WITNESS: Are they trustees?

6 BY MR. GUNNERSON:

7 Q. I am using the language used in this

8 letter, so let me be a little more specific.

9 Are they trustees to the trust?

10 A. No.

11 Q. Are they beneficiaries of the trust?

12 A. Yes.

13 Q. And is the purchase of the subject

14 property the trust's only asset?

15 A. No.

16 Q. The trust has other assets?

17 A. Yes.

18 Q. And it would include some of those

19 properties we discussed at the beginning of the

20 deposition, correct?

21 A. Yes.

22 Q. You just don't recall which ones are

23 which, correct?

24 A. Right.

25 MS. CLINE: Just to clarify your

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1 question earlier, was it David and Lahna that
 2 you said or David and someone else?
 3 MR. GUNNERSON: David and his wife.
 4 THE WITNESS: No. David and his wife
 5 isn't. My son and my daughter is. David
 6 Rosenberg and Debbie Rosenberg.
 7 MR. GUNNERSON: Thank you for the
 8 clarification.
 9 BY MR. GUNNERSON:
 10 Q. Lahna is not a beneficiary to your
 11 trust or to the trust in this case?
 12 A. No.
 13 (Deposition Exhibit S marked.)
 14 BY MR. GUNNERSON:
 15 Q. I have handed you what we marked as
 16 Exhibit S. It appears to be an addendum -- it
 17 states Addendum Number 4 to Purchase Agreement.
 18 Do you see that?
 19 A. Yes.
 20 Q. It has two buyers' signatures which
 21 appear to be yours and your husband's?
 22 A. Yes.
 23 Q. It says this addendum is the transfer
 24 of title of property to be to Fredric --
 25 A. That is how he spells his name.

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1 Q. -- and Barbara Rosenberg Living Trust
 2 instead of Barbara and Fredric Rosenberg. The
 3 buyers have not changed -- I can't read that.
 4 MS. CLINE: Just.
 5 BY MR. GUNNERSON:
 6 Q. -- just the way they would like to
 7 take title. Do you see that?
 8 A. Yes, uh-huh.
 9 Q. So as a result of what you discussed
 10 previously with your real estate agent, it
 11 appears that at least at some point, maybe
 12 within the month, the addendum is 4/24, that
 13 that change was made to who was purchasing the
 14 property, correct?
 15 A. Yes.
 16 (Deposition Exhibit T marked.)
 17 BY MR. GUNNERSON:
 18 Q. There is an email -- you know what,
 19 this is an email that you were not a part of so
 20 I am not going to ask you to authenticate it.
 21 It appears to be an email from -- you are copied
 22 on it.
 23 Does this appear to be a true and
 24 correct copy of the email you received on or
 25 about April 24, 2013?

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1 A. Yes.
 2 Q. And then again, you see there are
 3 stars, three sets of three stars?
 4 A. Uh-huh.
 5 Q. The third set states, "Finally, on the
 6 advice from their attorney, he is recommending
 7 they take this home in their living trust as
 8 opposed to them individually." Do you see that?
 9 A. Yes.
 10 Q. Again, that is what happened, right?
 11 A. Yes.
 12 Q. What due diligence was done before you
 13 purchased the property? After the agreement was
 14 entered into and the due diligence period began,
 15 what did the Rosenbergs and the trust do to
 16 ensure this was the property they want?
 17 A. First of all, we knew this was the
 18 property we wanted because we only wanted on
 19 Lairmont. It was the street of dreams and that
 20 was our dream, and it was the only property that
 21 was across from the driving range and had the
 22 9th hole and had the view and had the floor plan
 23 that we needed, so we knew that this was the
 24 house we wanted.
 25 As I told you, my son had targeting

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1 every single one of the houses on Lairmont and
 2 found out who owned them, when they were
 3 available. We tracked them with Siobhan to see
 4 what homes came up specifically on that street,
 5 so we knew that this was the house that we
 6 wanted. We had an inspection done for the
 7 interior to see what were the problems that were
 8 in the house.
 9 Q. Other than the inspection to the
 10 interior, did you hire any other professionals
 11 to do any due diligence on the property?
 12 A. We had a pool inspector.
 13 Q. Anyone else besides a pool inspector
 14 and a home inspector?
 15 A. No.
 16 (Deposition Exhibit U marked.)
 17 BY MR. GUNNERSON:
 18 Q. I have handed you what has been marked
 19 as Exhibit U. It is titled Golf Disclosure. Do
 20 you see that?
 21 A. Yes.
 22 Q. Do you recognize this document?
 23 A. No, but give me a minute and I will
 24 read it.
 25 Q. On this document, I see two

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1 signatures. Do you recognize the signatures?

2 A. Yes.

3 Q. Is the first one your signature?

4 A. Yes.

5 Q. And the second one you called I think

6 the squiggle before or something like that, is

7 that your husband's?

8 A. It is.

9 Q. It is dated 4/13/13, correct?

10 A. Yes.

11 Q. And this would have been a disclosure

12 you would have signed while preparing for close

13 of escrow, correct?

14 A. Yes.

15 Q. And if you look at the second line of

16 that second paragraph -- let's start from the

17 beginning of the first paragraph.

18 It says, "Purchaser acknowledges that

19 the property is adjacent to the golf course

20 know -- probably meant to be "known as

21 DragonRidge Country Club (the Club) at MacDonald

22 Highlands and that the property may be subjected

23 to additional noise, reduced privacy and other

24 related impacts." Do you see that?

25 A. Yes.

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1 Q. And you signed your name to that,

2 correct?

3 A. Yes. Where it says reduced privacy,

4 it referred to the fact that it was a golf

5 course.

6 (Deposition Exhibit V marked.)

7 BY MR. GUNNERSON:

8 Q. Let's go back to that U then. You

9 said reduced privacy. I think you just stated

10 because it is a golf course, right?

11 A. Yes.

12 Q. There are players on the golf course,

13 right?

14 A. Yes.

15 Q. And the requirements don't allow you

16 to put up a two-story-high brick wall, nor would

17 you want to, to keep them from looking into your

18 backyard, potentially into your home if the

19 curtains are open, correct?

20 A. Yes.

21 Q. And so the privacy you were expecting

22 when you purchased this was the privacy akin to

23 someone being able to stand on the golf course

24 and look into your property and into your home,

25 directly into the backyard if they so desired,

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1 correct?

2 A. It goes with the golf course that

3 people are going to be on the golf course

4 golfing and once in a while, they might look

5 into the property. This is what the golf

6 disclosure is saying, you should expect that you

7 would have this minimal invasion of your privacy

8 having to do with the fact it is on a golf

9 course.

10 It doesn't refer to some big structure

11 that is right in your view that somebody decided

12 to put up that you had absolutely no knowledge

13 that it was coming and you guys should have

14 disclosed to me.

15 Q. That wasn't the question. The

16 question was you had an expectation that there

17 would be individuals on the golf course who

18 would look into your property and into your

19 home?

20 A. Possibly.

21 Q. In fact, the properties, you have

22 Lairmont Street but you also have Stephanie

23 Street, right?

24 A. Yes.

25 Q. And right next to Stephanie Street,

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1 there is a walking path, correct?

2 A. Yes.

3 Q. And I mean, really anyone could stand

4 on that walking path and if they really wanted

5 to look into the Rosenbergs' home for whatever

6 reason people want to do that kind of thing,

7 they could take a pair of binoculars and have a

8 pretty good view of inside your home especially

9 if your curtains are open, correct?

10 A. Yes.

11 Q. I handed you also what has been marked

12 as Exhibit V. This is entitled Zoning

13 Classifications and Land Use Disclosure. Do you

14 see that?

15 A. Yes.

16 Q. And then at the bottom, you have

17 signatures again. This time it appears your

18 husband's signature is on the top line; is that

19 correct?

20 A. Yes.

21 Q. And is that one below it your

22 signature?

23 A. Yes.

24 Q. Again, you would have read this

25 document as you read all documents pursuant to a

<p style="text-align: right;">121</p> <p>1 real estate transaction, correct?</p> <p>2 A. Yes.</p> <p>3 MS. CLINE: I'm sorry. What was that</p> <p>4 last question?</p> <p>5 (Record read as follows:</p> <p>6 "Q. Again, you would have read</p> <p>7 this document as you read all</p> <p>8 documents pursuant to a real</p> <p>9 estate transaction, correct?</p> <p>10 A. Yes.")</p> <p>11 BY MR. GUNNERSON:</p> <p>12 Q. The last paragraph, the third sentence</p> <p>13 starts with you.</p> <p>14 A. Uh-huh.</p> <p>15 Q. It says, "You may obtain more current</p> <p>16 information regarding the zoning and master plan</p> <p>17 information from the City of Henderson, Planning</p> <p>18 Department, 240 Water Street, Henderson, Nevada,</p> <p>19 89015," and it gives a telephone number. The</p> <p>20 Henderson city information is bolded and</p> <p>21 underlined. Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. Did you or to your knowledge did</p> <p>24 anyone else associated with you go to the City</p> <p>25 of Henderson Planning Department to look at</p>	<p style="text-align: right;">123</p> <p>1 did you or anyone associated with you go to the</p> <p>2 City of Henderson Planning Department to get</p> <p>3 current information?</p> <p>4 A. No. Had they gone, it was not</p> <p>5 recorded and they would not have found it out</p> <p>6 anyway.</p> <p>7 (Deposition Exhibit W marked.)</p> <p>8 THE WITNESS: If I could just add</p> <p>9 something. It says this information is current</p> <p>10 and it says if you want more current. There is</p> <p>11 no such thing as more current. Current by</p> <p>12 definition means something that as of this</p> <p>13 moment, this is the situation.</p> <p>14 BY MR. GUNNERSON:</p> <p>15 Q. What is the moment on that?</p> <p>16 A. It is April 13th.</p> <p>17 Q. That is not what the document says.</p> <p>18 The first line of the last paragraph, what does</p> <p>19 it say it is current on?</p> <p>20 A. It says this information is current</p> <p>21 and then it says it was plotted on</p> <p>22 February 2010, but it doesn't say -- it says</p> <p>23 this is information is current. It is two parts</p> <p>24 of the sentence.</p> <p>25 Q. It says, and I will read it word for</p>
<p style="text-align: right;">122</p> <p>1 zoning or master planned information?</p> <p>2 A. There would have been no reason to.</p> <p>3 It says here this information is current. It</p> <p>4 says on the top of it when they gave it to me</p> <p>5 that it is the most recent zoning and land use</p> <p>6 information. So as of April 13th, they were</p> <p>7 telling me you don't have to go there. If after</p> <p>8 you close there is a -- you want to know if</p> <p>9 something happened, fine. But as of this date,</p> <p>10 here is your current zoning information, and</p> <p>11 nobody told us about what was going on with the</p> <p>12 lot next door.</p> <p>13 Q. Ms. Rosenberg, my question was really</p> <p>14 simple. I understand you have an explanation.</p> <p>15 If your attorney wants you to explain further</p> <p>16 the response to the question, she can do that.</p> <p>17 That is fine. My question that I am asking is</p> <p>18 this states you may obtain current information</p> <p>19 regarding the zoning master planned information</p> <p>20 from the City of Henderson. Did you or are you</p> <p>21 aware of anyone associated with you go to the</p> <p>22 City of Henderson Planning Department to get</p> <p>23 further information?</p> <p>24 A. There was no need.</p> <p>25 Q. That is not the question. Yes or no,</p>	<p style="text-align: right;">124</p> <p>1 word, "This information is current and plotted</p> <p>2 as of February 2010." Isn't that correct, isn't</p> <p>3 that what it states?</p> <p>4 A. Well, that is not how I read it.</p> <p>5 Q. Is that what it states?</p> <p>6 A. That is what it says, but the way I</p> <p>7 read it is as a two-part sentence. Also, it</p> <p>8 says on top -- if you feel that that is</p> <p>9 confusing, it says on top that this is the most</p> <p>10 recent zoning and land use information, so you</p> <p>11 clarified it on top and you said don't worry</p> <p>12 about it, this is the most recent zoning and</p> <p>13 land use information that you can get.</p> <p>14 Q. First of all, I didn't do anything</p> <p>15 because I am just the attorney in this case.</p> <p>16 Secondly, I just asked you for that,</p> <p>17 and again, if your attorney wants you to clarify</p> <p>18 this, she can. Unfortunately right now, I am</p> <p>19 trying to get through this as quickly as I can</p> <p>20 and if you want to add more, have your attorney</p> <p>21 ask you more questions at the end. That is</p> <p>22 permissible. My question was what that read and</p> <p>23 you agreed that that is how that reads and that</p> <p>24 is what I was looking for, so I thank you.</p> <p>25 I would like to go to the next exhibit</p>

<p style="text-align: right;">125</p> <p>1 which is marked as Exhibit W --</p> <p>2 MS. CLINE: I want to object to your</p> <p>3 last statement because it misstates the prior</p> <p>4 testimony, but we could go ahead and go forward</p> <p>5 now.</p> <p>6 MR. GUNNERSON: I disagree.</p> <p>7 BY MR. GUNNERSON:</p> <p>8 Q. We will go ahead and go to the next</p> <p>9 one which is Duties Owed by a Nevada Real Estate</p> <p>10 Licensee. Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Again, at the bottom, I see</p> <p>13 signatures.</p> <p>14 A. Yes.</p> <p>15 Q. It appears to have your signature and</p> <p>16 your husband's; is that correct?</p> <p>17 A. That's correct.</p> <p>18 Q. This is a true and correct copy of the</p> <p>19 Duties Owed by a Nevada Real Estate Licensee?</p> <p>20 A. Yes.</p> <p>21 Q. And this is to state what your -- am I</p> <p>22 correct in that this is stating what duties your</p> <p>23 real estate agent holds to you; is that correct?</p> <p>24 A. This is approved by the Nevada Real</p> <p>25 Estate Division, so it is a boilerplate that</p>	<p style="text-align: right;">127</p> <p>1 A. Because she had done nothing wrong.</p> <p>2 Had she told us to go get these people, she</p> <p>3 could have looked up the lot lines and they</p> <p>4 would not have found anything because it is not</p> <p>5 recorded. They would have seen the same lot</p> <p>6 lines as my son David saw and that we saw in the</p> <p>7 preliminary title, so she did absolutely nothing</p> <p>8 wrong. There is nothing that set off an alarm</p> <p>9 that said you should go get a survey done --</p> <p>10 Bank of America should have told us if there was</p> <p>11 a problem where we needed to get a survey, but</p> <p>12 there was absolutely no indication that we</p> <p>13 needed to get a survey and that anything had</p> <p>14 changed. As I said before, even had we done a</p> <p>15 survey, it was not discoverable.</p> <p>16 Q. Did your real estate agent know how</p> <p>17 important the view was to you?</p> <p>18 A. Yes.</p> <p>19 Q. Did she know how important privacy was</p> <p>20 to you?</p> <p>21 A. Yes.</p> <p>22 Q. How important it was that you had a</p> <p>23 complete and expanding view of everything around</p> <p>24 you?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">126</p> <p>1 they give to you when you employ them.</p> <p>2 Q. So outlining what their duties are,</p> <p>3 correct?</p> <p>4 A. Yes.</p> <p>5 Q. If you look down towards the bottom</p> <p>6 half of the page, Item Number 6, do you see</p> <p>7 that?</p> <p>8 A. I do.</p> <p>9 Q. It says advise -- this is again your</p> <p>10 real estate agent's duty is to "advise the</p> <p>11 client to obtain advice from an expert relating</p> <p>12 to matters which are beyond the expertise of the</p> <p>13 licensee". Do you see that?</p> <p>14 A. I do.</p> <p>15 Q. Did your real estate agent ever</p> <p>16 discuss neighboring lot lines with you?</p> <p>17 A. No.</p> <p>18 Q. Did she ever advise you to seek an</p> <p>19 appraisal regarding lot lines of the properties</p> <p>20 or a survey of lot lines regarding the</p> <p>21 properties?</p> <p>22 A. No.</p> <p>23 Q. If she didn't give you this advice to</p> <p>24 obtain experts regarding these issues, why is</p> <p>25 she included as a party to this lawsuit?</p>	<p style="text-align: right;">128</p> <p>1 Q. And yet knowing this and how important</p> <p>2 that was to you, you are telling me she did not</p> <p>3 advise you to obtain an expert opinion as to the</p> <p>4 lot lines surrounding your property; is that</p> <p>5 correct?</p> <p>6 A. That is correct. That is not the</p> <p>7 norm. I have been doing this for 25 years. I</p> <p>8 never tell people to get a survey of the</p> <p>9 property because you have a preliminary title</p> <p>10 and when you get the title report, it tells you</p> <p>11 the outlines of the property. There is</p> <p>12 absolutely no reason.</p> <p>13 When the title company did this, they</p> <p>14 didn't discover it because it was not</p> <p>15 discoverable because it had not been recorded,</p> <p>16 so she did absolutely nothing wrong.</p> <p>17 (Deposition Exhibit X marked.)</p> <p>18 BY MR. GUNNERSON:</p> <p>19 Q. I am handing you what we marked as</p> <p>20 Exhibit X. This is entitled Walk-Through</p> <p>21 Inspection and Release. Do you see that?</p> <p>22 A. I do.</p> <p>23 Q. There are signatures at the bottom of</p> <p>24 the first page. Do you see that?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">129</p> <p>1 Q. And for the record, this is marked as</p> <p>2 Exhibit X. And then there are signatures as</p> <p>3 well as initials at the bottom of the second</p> <p>4 page, correct?</p> <p>5 A. Uh-huh.</p> <p>6 Q. Are these yours and your husband's</p> <p>7 initials and signatures?</p> <p>8 A. They are.</p> <p>9 Q. As far as you could tell, this is a</p> <p>10 true and correct copy of the Walk-Through</p> <p>11 Inspection and Release?</p> <p>12 A. Yes.</p> <p>13 Q. It appears in the middle of the first</p> <p>14 page and the top of the second page, there is a</p> <p>15 line through the inspection with the word</p> <p>16 handwritten waived. Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. Do you recognize whose handwriting</p> <p>19 that is that says waived?</p> <p>20 A. It is an assumption. I think it is</p> <p>21 Michael, but I don't know. I don't know. I am</p> <p>22 guessing.</p> <p>23 Q. It is not yours, correct?</p> <p>24 A. That is not my handwriting, no.</p> <p>25 Q. And is this true that you waived the</p>	<p style="text-align: right;">131</p> <p>1 inspection?</p> <p>2 A. We went through an inspection because</p> <p>3 we needed to know what the problems were. Just</p> <p>4 like with the other house, the other Lairmont</p> <p>5 house, we needed to know how pervasive the</p> <p>6 problems were and we also did try to get them to</p> <p>7 pay for some of the problems, which they -- you</p> <p>8 saw there was a letter where we tried to ask</p> <p>9 them to fix some of the problems, and so</p> <p>10 basically I needed to know how bad it was.</p> <p>11 Q. When you asked them to fix the</p> <p>12 problems, what was their response?</p> <p>13 A. Well --</p> <p>14 Q. Do you recall?</p> <p>15 A. I don't recall.</p> <p>16 Q. In going through this process of</p> <p>17 getting ready to close, do you recall -- we</p> <p>18 talked about communications you had with Michael</p> <p>19 or her office or MacDonald Highlands Realty</p> <p>20 during the negotiation phase. We will call it</p> <p>21 the due diligence phase or the pre-close of</p> <p>22 escrow phase. Do you recall having any</p> <p>23 conversations with Michael or Jim or anyone at</p> <p>24 their office?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">130</p> <p>1 Walk-Through Inspection and Release?</p> <p>2 A. It looks like it.</p> <p>3 Q. And you did say, however, you did</p> <p>4 conduct an inspection; is that correct?</p> <p>5 A. Yes.</p> <p>6 Q. When you conducted the inspection, you</p> <p>7 said you didn't really notice Malek's property,</p> <p>8 it was a bare lot, correct?</p> <p>9 A. Yes.</p> <p>10 Q. Do you recall seeing any stakes in the</p> <p>11 bare lot?</p> <p>12 A. No.</p> <p>13 Q. Because you don't remember looking at</p> <p>14 the bare lot at all, correct?</p> <p>15 A. I would assume in the course of normal</p> <p>16 looking I might have glanced over at the lot,</p> <p>17 but it was not on my mind that I needed to look</p> <p>18 at the lot because I didn't have any idea there</p> <p>19 was any problem.</p> <p>20 Q. Again, you don't recall looking at a</p> <p>21 lot or seeing anything on the lot; is that</p> <p>22 correct?</p> <p>23 A. That is correct.</p> <p>24 Q. If you waived the walk-through</p> <p>25 inspection, why did you then go forward with an</p>	<p style="text-align: right;">132</p> <p>1 Q. Who did you have a conversation with?</p> <p>2 A. We had a very lengthy conversation</p> <p>3 with Michael.</p> <p>4 Q. Who is we?</p> <p>5 A. My husband, David, his wife. We were</p> <p>6 all in her office together.</p> <p>7 Q. And you are in Michael's office?</p> <p>8 A. Yes.</p> <p>9 Q. And do you recall when this was?</p> <p>10 A. It was the day of the inspection.</p> <p>11 Q. The day of the inspection. So it</p> <p>12 was -- did she attend the inspection with you?</p> <p>13 A. Yes. She came over to the inspection.</p> <p>14 Q. Do you recall what day the inspection</p> <p>15 occurred on?</p> <p>16 A. I think it was April the 13th. Is</p> <p>17 that when it was? Yeah, April the 13th. That</p> <p>18 is when she gave us this.</p> <p>19 MS. CLINE: I am showing her Exhibit</p> <p>20 B. It is the disclosure.</p> <p>21 THE WITNESS: That is the date she</p> <p>22 gave us that paper.</p> <p>23 BY MR. GUNNERSON:</p> <p>24 Q. Exhibit B, which is the zoning</p> <p>25 disclosure, you are saying she gave that to you</p>

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1 on the day you inspected the property?

2 A. Yes, when we went to the office

3 afterward.

4 Q. Did you go to her office after the

5 inspection or before?

6 A. After.

7 Q. Who met you at the property to do the

8 inspection?

9 A. She was at the property and the

10 inspector was there.

11 Q. Was your real estate agent there?

12 A. Yes.

13 Q. And your husband was there, correct?

14 A. Yes.

15 Q. And David and his wife were there,

16 correct?

17 A. Yes.

18 Q. And so my count, there were seven

19 people, is that correct, two real estate agents

20 and an inspector?

21 A. Uh-huh, seven.

22 Q. Who was the inspector?

23 A. I don't remember his name.

24 Q. And who let you into the property?

25 A. Siobhan arrived first and let the

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1 inspector in.

2 Q. And how far along were you through the

3 inspection when you say Michael showed up?

4 A. I don't remember exactly.

5 Q. You don't remember exactly?

6 A. I don't remember exactly when she

7 came.

8 Q. You do recall, however, seeing her in

9 the property?

10 A. Yes.

11 Q. Or was it just that you recall talking

12 with her after the inspection?

13 A. No. She was in the property.

14 Q. And afterwards -- during that

15 inspection, did you have any conversations with

16 Michael?

17 A. Yes.

18 Q. What conversations did you have with

19 Michael during the inspection?

20 A. She was out with us by the pool when

21 they were inspecting the pool and she looked out

22 and she was telling us how beautiful this is,

23 what a wonderful view, you are so lucky to have

24 this property, my God, you are on the 9th hole

25 and right across from the driving range, it is

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1 such a beautiful property. She was very, very

2 auditory about the property and how smart we

3 were to get this property.

4 Q. It is a beautiful property.

5 A. It is, yes.

6 Q. It has spectacular views.

7 A. Yes, but she neglected to mention what

8 Mr. Malek was intending to do and that they had

9 sold him a piece of the golf course, and she had

10 every opportunity to do so.

11 Q. You are saying she did not mention it?

12 A. She did not mention it.

13 Q. And did you talk with her anymore,

14 have any other conversations with her during the

15 inspection that you recall?

16 A. Well, what we did is she said she was

17 going to go back to her office, to come over

18 after the inspection and we would all talk at

19 her office.

20 Q. And so did she leave right then and

21 you finished the inspection or did she stay with

22 you through the inspection?

23 A. No, we didn't stay the whole time. We

24 finished the inspection and then we all went

25 across the street.

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1 Q. Just as a reminder, let me finish the

2 questions because it is harder on the court

3 reporter than it is on me.

4 And so do you recall any other

5 conversations? I don't recall what you said.

6 Did you have any other conversations with her at

7 the property during the inspection?

8 A. I am sure we did chitchat.

9 Q. Nothing that you recall?

10 A. No. I remember being outside by the

11 pool and having that conversation.

12 Q. So she is there at the inspection, you

13 chitchat with her, but the only conversation you

14 recall is the one where she talks about the

15 beautiful view?

16 A. And how wonderful the house is.

17 Q. And then you went back to her office?

18 A. Right.

19 Q. And what was the purpose of the

20 discussion at the office?

21 A. She asked us to come back to the

22 office. She took us in. There is a big room

23 that has sort of a diagram of all of the lots,

24 and we all stood around the lots, and she said

25 here is your lot and she showed us all of the

<p style="text-align: right;">137</p> <p>1 delineation and possible lots, none of which</p> <p>2 showed Mr. Malek's piece. Everything was</p> <p>3 delineated exactly. It is still that way. If</p> <p>4 you go to the office today, it doesn't show</p> <p>5 Mr. Malek's land piece jutting out.</p> <p>6 She was telling us how wonderful the</p> <p>7 community was and we were so lucky to be in it,</p> <p>8 and we all went into her office and it was so</p> <p>9 crowded where my son David had to stand by the</p> <p>10 door. She told us all about the people living</p> <p>11 in the community and they are all rich, there</p> <p>12 was one lady who had this very, very big, long</p> <p>13 house and she got very angry at her neighbor who</p> <p>14 wouldn't allow her to raise her RV garage thing,</p> <p>15 so she went to her CC & R's, and she said we</p> <p>16 really care about our CC & R's here. She</p> <p>17 researched with a lawyer and she found out she</p> <p>18 could put in very low trees, and she put in</p> <p>19 those low trees and they grew like crazy and she</p> <p>20 obliterated the man's view, and when the guy</p> <p>21 came and said what did you do, she said I did it</p> <p>22 legally, that is what the CC & R's said.</p> <p>23 So she was basically telling us this</p> <p>24 was a community that had restrictions, that it</p> <p>25 had covenants, and you could depend on what they</p>	<p style="text-align: right;">139</p> <p>1 interpretation, correct?</p> <p>2 A. That was what she was trying to tell</p> <p>3 us.</p> <p>4 Q. You don't know what she was trying to</p> <p>5 do, do you? You are not Michael, right?</p> <p>6 A. Right. If not, then she was --</p> <p>7 Q. You are not Michael, correct?</p> <p>8 A. Right.</p> <p>9 Q. So you don't know what she was trying</p> <p>10 to do, correct?</p> <p>11 A. I don't know what she was trying to</p> <p>12 do.</p> <p>13 Q. When you state what she was trying to</p> <p>14 do, you don't know if that is true or not?</p> <p>15 A. I do not know.</p> <p>16 Q. After those discussions talking about</p> <p>17 the community and how beautiful your home is and</p> <p>18 so on and so forth, what else did you talk</p> <p>19 about?</p> <p>20 A. She gave us the CC & R's, she gave us</p> <p>21 the design booklets.</p> <p>22 Q. The zoning disclosure, correct?</p> <p>23 A. The zoning disclosure, no.</p> <p>24 Q. Do you recall --</p> <p>25 A. That was in the CC & R book.</p>
<p style="text-align: right;">138</p> <p>1 told you. She told us all tremendous gossip</p> <p>2 about a lot of people. She told us that the</p> <p>3 people whose house it was -- she had listings on</p> <p>4 the two houses across the street from us. She</p> <p>5 said both of them are way overpriced, she</p> <p>6 couldn't believe they had her put them up for</p> <p>7 those prices, it is ridiculous, which is not the</p> <p>8 way an agent speaks about your own listings.</p> <p>9 Being an agent myself, I know you don't speak</p> <p>10 like that. She told me she was going to be my</p> <p>11 best friend, she was going to introduce all of</p> <p>12 us to all of the people in the community, it was</p> <p>13 such a wonderful community, my husband was so</p> <p>14 lucky, we lived across the street, he had his</p> <p>15 9th hole, he could walk, he had his driving</p> <p>16 range, oh, my God, he had the 9th hole and he</p> <p>17 had this gorgeous view, and she went on and on.</p> <p>18 We were there a very, very long time and we</p> <p>19 walked out feeling very, very good.</p> <p>20 Q. Other than discussions about how</p> <p>21 wonderful the property is and what is going on</p> <p>22 in the community, and I understand that during</p> <p>23 that, you said what you recall her saying and</p> <p>24 then what it means. The part where you talked</p> <p>25 about what that means, that is your</p>	<p style="text-align: right;">140</p> <p>1 Q. Do you recall receiving any other</p> <p>2 documents?</p> <p>3 A. The CC & R book by the way has plot</p> <p>4 maps. She gave us this and --</p> <p>5 Q. I am going to cut you off because this</p> <p>6 is going really long and we are going to run out</p> <p>7 of time --</p> <p>8 MS. CLINE: She is trying to explain</p> <p>9 to you what she did.</p> <p>10 MR. GUNNERSON: Would you re-ask my</p> <p>11 question, please?</p> <p>12 (Record read as follows:</p> <p>13 "Q. Do you recall receiving any</p> <p>14 other documents?")</p> <p>15 MS. CLINE: She was explaining what</p> <p>16 documents she was given.</p> <p>17 BY MR. GUNNERSON:</p> <p>18 Q. Do you recall receiving any other</p> <p>19 documents?</p> <p>20 A. Yes.</p> <p>21 Q. What other documents did you receive?</p> <p>22 A. I received the book of the CC & R, I</p> <p>23 received the design plans. Inside the CC & R</p> <p>24 book, there were plot maps that showed the land,</p> <p>25 the Lairmont land exactly as we have seen it,</p>

1 and the preliminary title which did not include
 2 Malek's piece which was already in escrow, and
 3 we were asked to sign this which was inside the
 4 book that had pictures.
 5 Q. When you refer to this --
 6 A. I am referring to -- not this one. I
 7 am referring to the disclosure, the zoning
 8 classification which was given to us at the same
 9 time as the book which showed the current zoning
 10 as being that which was erroneous.
 11 MS. CLINE: Could we take a break for
 12 a second?
 13 MR. GUNNERSON: Sure.
 14 (Recessed from 3:59 p.m. to 4:04
 15 p.m.)
 16 BY MR. GUNNERSON:
 17 Q. One thing you mentioned before is that
 18 you received CC & R's that had maps and plots
 19 and so on and so forth, correct?
 20 A. Yes.
 21 Q. Did those CC & R's have a date on
 22 them, do you recall?
 23 A. I don't recall.
 24 Q. And you said that they were current as
 25 of that date, I believe. Tell me if I am wrong.

1 Were you claiming that the CC & R's along with
 2 the things they were showing you in the CC & R's
 3 and the maps, that they were current as of the
 4 date that you received them?
 5 A. I have no idea. They gave it to me
 6 and said here is our CC & R's, so I assumed they
 7 were current.
 8 Q. You don't know when they were current
 9 as of?
 10 A. No.
 11 Q. Did you ask when these were current
 12 through?
 13 A. Why would they give me antiquated
 14 CC & R's?
 15 Q. I don't know. As a real estate agent
 16 who sells, maybe you would be able to answer
 17 best. Does an HOA or a developer change their
 18 CC & R's every time somebody purchases a
 19 property?
 20 A. No.
 21 Q. So it may have been something from
 22 previous, correct?
 23 MS. CLINE: Objection.
 24 MR. GUNNERSON: That was a bad
 25 question.

1 BY MR. GUNNERSON:
 2 Q. The CC & R's may have been drafted
 3 much earlier than when you saw them, correct?
 4 A. What she said to us was --
 5 Q. Please just answer the question.
 6 Is it possible that the CC & R's you
 7 received were drafted much earlier than the day
 8 you received them?
 9 A. It is possible.
 10 Q. And you would have to either ask when
 11 they were done or find a date on there to know
 12 when they were current as of, correct?
 13 A. As a real estate agent, you don't give
 14 people out-of-date information. That is part of
 15 your obligation as a realtor to give people
 16 correct information.
 17 Q. That wasn't the question.
 18 The question was if you wanted to know
 19 when the CC & R's were drafted and created, you
 20 needed to either ask or find a date on the CC &
 21 R's, correct?
 22 A. Yes.
 23 Q. You say as a real estate agent. Did
 24 you ever provide CC & R's to a buying party as a
 25 real estate agent?

1 A. Yes.
 2 Q. When you provided those CC & R's, did
 3 you always update them to make them current for
 4 that date of that sale when you handed them to
 5 the opposing -- or to the buying party?
 6 A. When you give people CC & R's, you go
 7 to the homeowners association and say please
 8 give me a set of your CC & R's and they give you
 9 their most recent CC & R's. CC & R's are not
 10 amended all the time. They are only amended on
 11 occasion.
 12 Q. And you know that, right?
 13 A. Yes.
 14 Q. At the time you purchased the
 15 property, your son and his wife and his family
 16 moved in, correct?
 17 A. My son and his wife, yeah.
 18 Q. And then eventually their child was
 19 born?
 20 A. Right.
 21 Q. And who currently lives in the
 22 property?
 23 A. We all do. I mean, David and Lahna
 24 and Fred and I.
 25 Q. Are you currently living here in

<p style="text-align: right;">145</p> <p>1 Nevada now?</p> <p>2 A. No. We come and visit.</p> <p>3 Q. When I asked you where do you</p> <p>4 currently reside, you gave me a California</p> <p>5 address?</p> <p>6 A. Right.</p> <p>7 Q. So would you consider the subject</p> <p>8 property your current residence?</p> <p>9 A. No.</p> <p>10 Q. You have a room and you have stuff</p> <p>11 there and you come and visit and live there, but</p> <p>12 it is not your residence; is that correct?</p> <p>13 A. No.</p> <p>14 Q. That is not correct?</p> <p>15 A. That is not correct. It is not our</p> <p>16 main residence. It is our secondary residence.</p> <p>17 Q. How often would you say -- how much</p> <p>18 time do you spend in your residence at the</p> <p>19 subject property?</p> <p>20 A. We come usually between every three</p> <p>21 and four weeks and we usually stay three or four</p> <p>22 days.</p> <p>23 Q. Is there a plan to move out here</p> <p>24 permanently eventually?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">147</p> <p>1 parcels, which is what I was calling the bare</p> <p>2 lot, which as you can see from Paragraph 17 is</p> <p>3 the .34 acre portion that was a part of Golf</p> <p>4 Course 9 which was purchased by Malek. Are we</p> <p>5 on the same page?</p> <p>6 A. Yes.</p> <p>7 Q. On Number 18, it says, "Situated on</p> <p>8 the golf parcel were certain easements." Do you</p> <p>9 see that?</p> <p>10 A. Yes.</p> <p>11 Q. What easements are you claiming were</p> <p>12 on the golf parcel?</p> <p>13 A. I don't know. I am not an attorney.</p> <p>14 Q. So you don't know what this is</p> <p>15 referring to when it says there were easements</p> <p>16 on the golf parcel?</p> <p>17 A. No.</p> <p>18 Q. You are a real estate agent, correct?</p> <p>19 A. Yes, but I am not an attorney. This</p> <p>20 is a legal document.</p> <p>21 Q. That is okay. You are a real estate</p> <p>22 agent, correct?</p> <p>23 A. Yes.</p> <p>24 Q. And as a real estate agent, you looked</p> <p>25 at many title reports?</p>
<p style="text-align: right;">146</p> <p>1 (Deposition Exhibit Y marked.)</p> <p>2 BY MR. GUNNERSON:</p> <p>3 Q. I am handing you what has been marked</p> <p>4 as Exhibit Y. Do you know what that is?</p> <p>5 A. Yes.</p> <p>6 Q. What is this?</p> <p>7 A. It says it is the complaint.</p> <p>8 Q. It says it is the complaint that was</p> <p>9 filed, it says, on behalf of Fredric and Barbara</p> <p>10 Rosenberg Living Trust against Bank of America</p> <p>11 and a bunch of other defendants and it was filed</p> <p>12 on 9/23/13. Can you take a look at this and see</p> <p>13 if you looked at this previously.</p> <p>14 (Discussion held off the record.)</p> <p>15 BY MR. GUNNERSON:</p> <p>16 Q. Did you have a chance then to review</p> <p>17 Exhibit Y, which is the complaint?</p> <p>18 A. Yes.</p> <p>19 Q. And have you seen this prior to today?</p> <p>20 A. Yes.</p> <p>21 Q. If you turn to Page 5 of the</p> <p>22 complaint, the page in the bottom right-hand</p> <p>23 corner, Paragraph 18 says situated on the golf</p> <p>24 parcel, and I will tell you and we can look</p> <p>25 right above in the paragraph above, golf</p>	<p style="text-align: right;">148</p> <p>1 A. Yes.</p> <p>2 Q. When you look at title reports, do you</p> <p>3 look at easements on the title reports?</p> <p>4 A. Yes.</p> <p>5 Q. You understand what an easement is?</p> <p>6 A. I know what an easement is.</p> <p>7 Q. Without looking at this then, just me</p> <p>8 asking you, are you claiming there are certain</p> <p>9 easements on the bare lot or what is referenced</p> <p>10 in your complaint as the golf parcel?</p> <p>11 A. I don't know what is meant here</p> <p>12 because I am not a lawyer. I know what an</p> <p>13 easement is. I know what it does, but I don't</p> <p>14 know what it is claiming here.</p> <p>15 Q. Let's get away from the complaint real</p> <p>16 quick. I just want to know you personally, do</p> <p>17 you have any -- let me phrase this correctly.</p> <p>18 Are you aware personally of any</p> <p>19 easements on the bare lot?</p> <p>20 A. I would assume there is an easement</p> <p>21 because it is part of the golf course and can't</p> <p>22 be used to build.</p> <p>23 Q. You assume there are certain easements</p> <p>24 on there. Do you think there is a restriction</p> <p>25 for building an easement on that property?</p>

<p style="text-align: right;">149</p> <p>1 A. I don't know.</p> <p>2 Q. Who would know, what easement --</p> <p>3 A. Among other things, MacDonald Ranch</p> <p>4 would have known.</p> <p>5 Q. MacDonald Ranch is not claiming there</p> <p>6 is easements. Who would know --</p> <p>7 A. Michael should have known.</p> <p>8 Q. Michael is not the one who filed the</p> <p>9 complaint. As far as of the people who filed</p> <p>10 the complaint, who would know -- you are here --</p> <p>11 scratch all of that.</p> <p>12 You are here representing the Fredric</p> <p>13 and Barbara Rosenberg Living Trust, correct?</p> <p>14 A. Right.</p> <p>15 Q. You are the person that they</p> <p>16 designated who has information that we need</p> <p>17 regarding the complaint that was filed against</p> <p>18 us and the other Defendants, correct?</p> <p>19 A. Yes.</p> <p>20 Q. I am just asking if you know --</p> <p>21 actually, I already asked you if you know, and</p> <p>22 you said you don't know what easements would be</p> <p>23 on that property, correct?</p> <p>24 A. Correct.</p> <p>25 Q. Someone else would know that?</p>	<p style="text-align: right;">151</p> <p>1 MR. GUNNERSON: I am waiting for a</p> <p>2 response.</p> <p>3 MS. CLINE: Objection. Misstates</p> <p>4 prior testimony.</p> <p>5 BY MR. GUNNERSON:</p> <p>6 Q. All I need is a response is if all you</p> <p>7 are saying is that the lawyers know what these</p> <p>8 certain easements are.</p> <p>9 A. No. Actually, in Number 19, it says</p> <p>10 that Paul Bykowski submitted a vacation</p> <p>11 application to the City of Henderson along with</p> <p>12 supporting documentation requesting to vacate</p> <p>13 existing blanket easements, so obviously they</p> <p>14 know what they are because they asked for them</p> <p>15 to be vacated.</p> <p>16 Q. I just want to be clear here. I am</p> <p>17 really not trying to surprise you with</p> <p>18 something. I am really not trying to make this</p> <p>19 difficult. There has been certain allegations</p> <p>20 made in the complaint that we are expected to</p> <p>21 respond to and defend. I can't defend something</p> <p>22 that is as general as certain easements when</p> <p>23 those easements are not described. You may not</p> <p>24 know what those easements are. Your attorneys</p> <p>25 may have put that in your complaint and you just</p>
<p style="text-align: right;">150</p> <p>1 A. The lawyers would know.</p> <p>2 Q. So does David know what easements</p> <p>3 would be on the property?</p> <p>4 A. I don't know.</p> <p>5 Q. Do you know if your husband would?</p> <p>6 A. My husband would not know.</p> <p>7 Q. Would David's wife know?</p> <p>8 A. No.</p> <p>9 Q. So the only person who could tell us</p> <p>10 what easements you are referring to in Number 18</p> <p>11 in the complaint as far as which easements are</p> <p>12 situated in the golf parcel are your lawyers, is</p> <p>13 that what you are telling me?</p> <p>14 A. My lawyers, I guess the survey people.</p> <p>15 I don't know. I don't know who knows.</p> <p>16 Q. I'm sorry for talking over you.</p> <p>17 So you don't know who knows; but as</p> <p>18 far as the claims being made by you and your</p> <p>19 trust, not anyone else who would know but as far</p> <p>20 as in your camp, in your group of people, I just</p> <p>21 want to make it clear that the only person you</p> <p>22 are aware of who would know what these certain</p> <p>23 easements are are your lawyers?</p> <p>24 MS. CLINE: Objection. Asked and</p> <p>25 answered --</p>	<p style="text-align: right;">152</p> <p>1 read it and assumed you knew what they were</p> <p>2 talking about and you let it go. I am just</p> <p>3 asking if that is what happened.</p> <p>4 Is it your attorneys who know what</p> <p>5 these certain easements are on Number 18?</p> <p>6 A. Number 19 tells us that MacDonald</p> <p>7 Properties and DragonRidge Properties know</p> <p>8 because they asked to vacate them, so they must</p> <p>9 know what they are asking to vacate.</p> <p>10 Q. So let me --</p> <p>11 MS. CLINE: Counsel, it might help --</p> <p>12 MR. GUNNERSON: Let me rephrase then.</p> <p>13 BY MR. GUNNERSON:</p> <p>14 Q. Are you saying that the certain</p> <p>15 easements described in 18 are the easements</p> <p>16 which were vacated on Number 19?</p> <p>17 A. I don't know. It is legal. I don't</p> <p>18 know what this is.</p> <p>19 Q. Your attorney is the one who put it in</p> <p>20 there, correct?</p> <p>21 A. No. I don't know what it says. I</p> <p>22 don't understand it.</p> <p>23 Q. If your attorneys didn't put it in</p> <p>24 there, who put it in there?</p> <p>25 A. I don't understand what I am reading.</p>

1 MR. GUNNERSON: Let's take a quick
2 break and go off the record.
3 (Discussion held off the record.)
4 BY MR. GUNNERSON:
5 Q. My question is who put in on Number 18
6 that the golf parcel had certain easements?
7 MS. CLINE: Objection. Form.
8 THE WITNESS: This is written by my
9 lawyer.
10 BY MR. GUNNERSON:
11 Q. So your lawyer put that in the
12 complaint; is that correct?
13 A. Yes.
14 Q. Thank you.
15 So if I wanted to find out what those
16 certain easements are, I would have to ask your
17 lawyers, right?
18 A. You could ask my lawyer, you could ask
19 Paul Bykowski because he asked for them to be
20 vacated, you could ask DragonRidge Properties.
21 I don't know who you could ask, but there are
22 several people you could ask.
23 Q. I am not interested in what other
24 people think the easements are. I am interested
25 in what you and your lawyers think they are.

1 That was the purpose of the question.
2 If you could go to Paragraph
3 Number 55, Paragraph 55 states, "Michael Doiron,
4 seller's representative, knew, or should have
5 known, that the adjacent Malek Property lot
6 lines were other than as presented to Plaintiff
7 and had been amended in such a way to materially
8 effect the value of the subject property or its
9 use in an adverse manner." Do you see that?
10 A. I do.
11 Q. Malek Property says lot lines were
12 other than what were presented to Plaintiff.
13 Who presented those lot lines to you?
14 A. Michael.
15 Q. And are you referring back to then the
16 conversation you had both during the inspection
17 and at her office or are you referring to
18 somewhere else?
19 A. Also in her literature, in her listing
20 agreement, she shows plot lines, I believe; and
21 in her conversations, she never talked about
22 anything having changed with the Malek property.
23 She absolutely knew about it because she was the
24 broker on it. She sold it to Malek so she knew
25 that this had happened, and she failed to

1 disclose to us. She had multiple opportunities
2 to tell us as Bank of America's representative
3 that there had been a material change to the
4 property line, and she didn't do it. That is
5 what we are alleging here.
6 Q. I see that. I understand when you
7 said before that Michael had conversations when
8 she talked about the view, how wonderful the
9 property was, where she told you all of these
10 wonderful things about what you could see and
11 all of that, where she handed you the CC & R's,
12 which they had in the office a layout of the
13 properties.
14 Did anyone present to you lot lines,
15 specific lot lines, not an assumption of lot
16 lines but actual lot lines?
17 MS. CLINE: Objection. Form.
18 Go ahead and answer if you understand
19 the question.
20 THE WITNESS: I told you there was a
21 plot line map in the CC & R's and there was the
22 display of all of the lots and exactly what
23 their lines were, the plot lines were.
24 BY MR. GUNNERSON:
25 Q. Thank you. Just to be clear just to

1 check, when you are talking about lot lines were
2 other than what was presented and I am asking
3 how were the lot lines presented to you, you are
4 talking about the plot lines or the lot lines
5 that were in the CC & R's and on the display
6 table in or near Michael's office?
7 A. And the title company.
8 Q. The title company presented you lot
9 lines?
10 A. They gave us a preliminary title that
11 showed lot lines and it did not show the Malek
12 property.
13 Q. You are stating that your view of the
14 title report provided lot lines?
15 A. Yes.
16 Q. Did it provide Malek's lot lines, the
17 title report?
18 A. The original ones.
19 Q. So you are saying your title report
20 showed Malek's lot lines?
21 A. It shows the adjacent property lot
22 lines, I think. I am not sure. I am not sure.
23 Q. I don't recall seeing that. I don't
24 have them with me, so I can't pull them up and
25 ask you.

1 A. I am not sure.
 2 Q. So you are not sure they do, but you
 3 think they might?
 4 A. I thought they might.
 5 Q. We could always go back and look at
 6 those and see if they are actually in the title
 7 report. I used to be an attorney for a title
 8 company for many years, and I don't recall
 9 seeing lot lines for adjacent properties in the
 10 title reports, but it may be in this one. I am
 11 not saying it is not. I appreciate that.
 12 MS. CLINE: Just a point of
 13 clarification, when she says the CC & R's, I
 14 believe, and you could ask her about it, there
 15 is a binder that was handed that included the
 16 CC & R's and also maps. I don't think the maps
 17 were actually a part of the CC & R's.
 18 BY MR. GUNNERSON:
 19 Q. Did the CC & R's include maps?
 20 A. Yes, in the binder.
 21 Q. Did the binder include something more
 22 than CC & R's?
 23 A. It had the maps.
 24 Q. So were the maps a part of the CC &
 25 R's or were the maps separate from the CC & R's

1 in the binder?
 2 A. I don't remember if they were
 3 separate.
 4 MR. GUNNERSON: That is the binder,
 5 Counsel, you said you have --
 6 MS. CLINE: I have them in my car and
 7 I could grab them later if you went.
 8 MR. GUNNERSON: That would be helpful.
 9 They were not produced or they were just
 10 produced?
 11 MS. CLINE: They were just produced,
 12 but it is easier to look at the binder format.
 13 It is a little bit confusing when they are all
 14 just scanned.
 15 BY MR. GUNNERSON:
 16 Q. How did you find out that the bare lot
 17 was being sold to Malek?
 18 A. A friend of David's told him.
 19 Q. Do you remember when that was?
 20 A. That was after we bought the property.
 21 Q. Do you remember how far past after you
 22 bought the property?
 23 A. It would be a guess. Maybe a month or
 24 two. I don't know.
 25 Q. Do you recall anything about the

1 manner in which David found out about it? Was
 2 there a conversation, was it an email, do you
 3 remember how David found out?
 4 A. One of his friends approached Malek
 5 about possibly selling his property for him. In
 6 discussing that he would possibly sell the
 7 property, he mentioned I have three pieces, and
 8 the agent said to him what do you mean three
 9 pieces, you have two pieces. He said no, I have
 10 this third piece that is not recorded.
 11 Q. Who was that that was the friend that
 12 was talking to --
 13 A. Bob Diamond.
 14 Q. Bob Diamond?
 15 A. Yeah.
 16 Q. And Bob Diamond was having this
 17 conversation with Malek because Malek was
 18 interested in using him as an agent or Bob
 19 Diamond approached Malek about buying the
 20 property?
 21 A. They were having -- no. They were
 22 having a friendly conversation, and Malek was
 23 talking about possibly selling his land.
 24 Q. So this is just Bob and Malek are
 25 friends, is that what you are saying?

1 A. They are not friends. They are
 2 acquaintances.
 3 Q. And they just happened to have a
 4 discussion about this property?
 5 A. They had a discussion about possibly
 6 selling his land.
 7 Q. Bob Diamond is also friends with your
 8 son?
 9 A. Yes.
 10 Q. And Bob Diamond is the one who
 11 informed your son?
 12 A. Yes.
 13 Q. On Number 83 -- actually, I could have
 14 picked a lot of paragraphs because a lot of
 15 paragraphs make this statement -- strike that.
 16 I think what I am going to do is I
 17 noticed that generally speaking, the claims
 18 against my clients are basically the same
 19 between the original complaint and the amended
 20 complaint.
 21 Would you agree, Counselor?
 22 MS. CLINE: Yes.
 23 MR. GUNNERSON: I am going to mark as
 24 Exhibit Z, and we are going to go through them
 25 together and look at them both, and I don't

<p style="text-align: right;">161</p> <p>1 think it is going to be too cumbersome.</p> <p>2 (Deposition Exhibit Z marked.)</p> <p>3 BY MR. GUNNERSON:</p> <p>4 Q. I handed you what has been marked as</p> <p>5 Exhibit Z, and I will let you know this has been</p> <p>6 what was presented to us as an amended complaint</p> <p>7 which is basically similar to the original</p> <p>8 complaint but it adds stuff and takes some stuff</p> <p>9 away to say it in very legal terms.</p> <p>10 What I would like to do is ask about</p> <p>11 some of the claims made against my client and</p> <p>12 see what you know about those claims. Is that</p> <p>13 okay?</p> <p>14 A. Yes.</p> <p>15 Q. I would like to start with what is the</p> <p>16 third claim for relief. On Exhibit Y, you will</p> <p>17 find it -- do you have both exhibits open? We</p> <p>18 will kind of go through these and look at both</p> <p>19 of them together. It is Page 13 of Exhibit Y</p> <p>20 and Page 11 of Exhibit Z. Do you see that?</p> <p>21 A. Uh-huh.</p> <p>22 Q. Here you claimed in your third claim</p> <p>23 for relief, and I will represent they are fairly</p> <p>24 similar, I don't think there is a lot of</p> <p>25 changes, that there was unjust enrichment.</p>	<p style="text-align: right;">163</p> <p>1 been?</p> <p>2 A. Well, it says unjust enrichment</p> <p>3 against Bank of America. So I guess had we</p> <p>4 known about that, the property would have been</p> <p>5 worth a lot less than what we paid for it. So</p> <p>6 Bank of America was unjustly -- had unjust</p> <p>7 enrichment because it would have been completely</p> <p>8 devalued had we known about it and we wouldn't</p> <p>9 have bought it actually had we known about that.</p> <p>10 Q. Anything else, anyone else?</p> <p>11 A. It states everybody that was unjustly</p> <p>12 enriched, Bank of America, Home Loans Servicing,</p> <p>13 DragonRidge, DragonRidge Golf Club, MacDonald</p> <p>14 Properties, MacDonald Highlands Realty --</p> <p>15 Q. It says who. I just don't understand</p> <p>16 how they were unjustly enriched. You explained</p> <p>17 a lot of it. I just want you to know a lot of</p> <p>18 those parties are no longer a party to the case,</p> <p>19 so that is why I believe your counsel is trying</p> <p>20 to do an amended complaint which changes those</p> <p>21 who are being included as being unjustly</p> <p>22 enriched. That may have been the thought in the</p> <p>23 beginning, but I think that has changed with a</p> <p>24 little bit of litigation.</p> <p>25 A. Well, since you knew it was on the new</p>
<p style="text-align: right;">162</p> <p>1 Do you know what unjust enrichment is?</p> <p>2 A. Where is that?</p> <p>3 Q. That is your third claim for relief.</p> <p>4 If you look on Line 20 of Page 11 on Z, do you</p> <p>5 see where it says unjust enrichment?</p> <p>6 A. Yes.</p> <p>7 Q. Do you know what unjust enrichment is?</p> <p>8 A. No.</p> <p>9 Q. Are you claiming, do you know if you</p> <p>10 are claiming if anyone received funds or</p> <p>11 property that they shouldn't have but did as a</p> <p>12 result of this transaction?</p> <p>13 A. Malek gaining the piece of land on the</p> <p>14 golf course. You shouldn't be selling the land</p> <p>15 that is part of the golf course, and commissions</p> <p>16 by Michael and commissions for MacDonald</p> <p>17 Highland's Realty, things like that.</p> <p>18 Q. So commissions received you believe</p> <p>19 were received unjustly?</p> <p>20 A. Yes. They had no right to sell the</p> <p>21 piece of property as it is part of the golf</p> <p>22 course. They had no right to sell it as</p> <p>23 anything that could be used to build on.</p> <p>24 Q. Any other things that you could think</p> <p>25 of that people were enriched that shouldn't have</p>	<p style="text-align: right;">164</p> <p>1 one, why did you point me to the old one?</p> <p>2 Q. Because right now, the new one isn't</p> <p>3 official. They proposed it, but it hasn't --</p> <p>4 that is why I am trying to have you look at both</p> <p>5 because we are kind of in a gap where both</p> <p>6 complaints -- well, one complaint is really at</p> <p>7 issue but the other complaint could be soon.</p> <p>8 Does that make sense?</p> <p>9 A. Yes.</p> <p>10 Q. Other than who we just discussed, is</p> <p>11 there anyone else that you know of who you</p> <p>12 believe was enriched unjustly?</p> <p>13 A. No. Just the people listed in the</p> <p>14 third claim for relief.</p> <p>15 Q. And your thought is then what you</p> <p>16 stated, and I don't mean to misstate you so</p> <p>17 please correct me if I am wrong, Bank of America</p> <p>18 you are saying received more money than they</p> <p>19 should have on the sale of the property; is that</p> <p>20 correct? Is that how they were unjustly</p> <p>21 enriched?</p> <p>22 A. Yes, yes.</p> <p>23 Q. And BAC Home Loans Servicing, I don't</p> <p>24 think you mentioned them. I will leave that to</p> <p>25 counsel to ask, but that doesn't bother me</p>

1 either way.

2 But I will go to MacDonald Highlands
3 Realty and Michael Doiron. Your claim is they
4 received commissions they shouldn't have
5 received and they were unjustly enriched; is
6 that correct?

7 A. Yes.

8 Q. Other than those, are there any other
9 ways you are claiming that these parties were
10 unjustly enriched?

11 A. I think that is about it.

12 Q. We will go to the fourth claim of
13 relief, which is regarding -- in fact, it is
14 regarding fraudulent and intentional
15 misrepresentation. I am not looking to go into
16 the particulars of the claim. You are looking
17 now at the new one, and I think Number 94 on the
18 new one is essentially the same as Number 83 on
19 the old one, other than the names are gone and
20 there has been a couple of word changes, but the
21 part I want to point out is not different.

22 If you look at that 94, after the
23 names of all of the Defendants, it says these
24 Defendants knowingly made false representations
25 and/or wilful omissions to Plaintiff over the

1 course of their involvement with Plaintiff. Do
2 you see that?

3 A. Yes.

4 Q. Those false representations, what
5 false representations were being made?

6 A. It was willful omissions.

7 Q. So willful omissions --

8 A. Let me answer your question. It was
9 false representations in that they showed us
10 plot lines that weren't the real plot lines and
11 they represented that we were going to have an
12 unobliterated view going out there, and they
13 didn't tell us there was a possible problem with
14 someone building directly into that and
15 obstructing our privacy and willfully omitting
16 facts they knew which were germane.

17 In California if I had omitted this
18 fact, I would have lost my license. That is how
19 stringent it is in California, failure to
20 disclose. This is a very material fact that was
21 not disclosed. It was purposely omitted, and
22 there was every opportunity to tell us, and Bank
23 of America was served with a notice that this
24 was happening so Bank of America knew all the
25 time that this was going on. Their agent knew

1 that it was going on and they should have
2 informed us. They informed us about problems
3 with mold, they informed us about problems with
4 the bathroom, but they omitted the problem with
5 the fact that they were selling this piece of
6 land directly in front of the house.

7 Q. This land was not directly in --

8 A. It is not directly in front of the
9 house, no.

10 Q. It is not even directly behind it, is
11 it?

12 A. We had not have bought the property
13 had we known.

14 Q. You said it was stated to you that you
15 had an unobliterated view. Was that a quote by
16 Michael, that your view would be unobliterated?

17 A. No. I don't remember her saying that.

18 Q. What she really talked about when it
19 came to the view was saying how wonderful the
20 view was, right?

21 A. Yes.

22 Q. She didn't talk about whether or not
23 you were going to have anything blocking your
24 view or what or would not happen, she just said
25 you had a great view, correct?

1 A. You could not talk about blocking the
2 view because there was nothing out there to
3 block it. She should have said you possibly
4 could have something out there to block it
5 because we just sold a piece to Malek and it is
6 going to be right over there.

7 Q. I understand what you feel she should
8 have said. What I am asking is what she
9 actually said. Did she say -- and I think you
10 already answered the question. Let me just
11 confirm.

12 She did not say you have an
13 unobliterated view, correct?

14 A. No.

15 MS. CLINE: No, that is not correct or
16 yes, it is correct?

17 THE WITNESS: I don't remember.

18 BY MR. GUNNERSON:

19 Q. So I don't remember works.

20 MS. CLINE: Just you answered no and
21 he asked the question is that correct.

22 THE WITNESS: Is what correct?

23 MR. GUNNERSON: Let's ask the question
24 again.

25 (Record read as follows:

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1 "Q. I understand what you feel
 2 she should have said. What I am
 3 asking is what she actually said.
 4 Did she say -- and I think you
 5 already answered the question.
 6 Let me just confirm.
 7 She did not say you have an
 8 unobliterated view, correct?
 9 A. No.")
 10 THE WITNESS: I want to amend that
 11 answer to I don't remember.
 12 MR. GUNNERSON: Counselor, would you
 13 please not make notes to your client during the
 14 deposition? If you want to take a break and
 15 talk to her, you can.
 16 MS. CLINE: There is no pending
 17 question.
 18 MR. GUNNERSON: There was previously
 19 when you did a note and I let it slide. I would
 20 appreciate it if you didn't do it. You are
 21 right, there is not a pending question, but
 22 previously there was.
 23 BY MR. GUNNERSON:
 24 Q. Are there any other misrepresentations
 25 or willful omissions that you are referencing in

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1 this lawsuit other than ones pertaining to the
 2 lot lines and Malek purchasing the property?
 3 A. Could you ask me the question again?
 4 (Record read as follows:
 5 "Q. Are there any other
 6 misrepresentations or willful
 7 omissions that you are referencing
 8 in this lawsuit other than ones
 9 pertaining to the lot lines and
 10 Malek purchasing the property?")
 11 MS. CLINE: Object as to form,
 12 misstates prior testimony.
 13 THE WITNESS: Well, as it says in the
 14 complaint that it was -- it says that it is not
 15 limited -- although it dealt mainly with the
 16 Malek property lines, that it is not limited by
 17 that, including but not limited to failing to
 18 disclose to Plaintiff that adjacent Malek
 19 property lot lines were other than presented, so
 20 it is not limited to that.
 21 BY MR. GUNNERSON:
 22 Q. You are right. That is exactly what
 23 the complaint says, which is the reason why I am
 24 asking the questions. I am trying to understand
 25 what it is we are fighting about. That's one of

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1 the purposes of this deposition, what this
 2 litigation is about.
 3 I want to know is there anything else
 4 other than Malek purchasing the bare lot and the
 5 lot lines associated with that?
 6 MS. CLINE: Objection. Misstates
 7 prior testimony, form.
 8 You can go ahead and answer, if you
 9 know.
 10 THE WITNESS: Basically, we were
 11 misrepresented as to the view, the privacy, the
 12 possibility of something being built in the line
 13 of the 9th hole, and it was information that
 14 Bank of America had, that MacDonald Properties
 15 had, that MacDonald Highlands had, that Michael
 16 Doiron had. It is uncontroverted that they had
 17 this information and they failed to tell us
 18 about it, so it is willful omission on their
 19 part and caused us significant problems and
 20 damages.
 21 BY MR. GUNNERSON:
 22 Q. It sounds like what you said was
 23 everything you stated pertains to Malek's
 24 purchase of the bare lot and those lot lines
 25 surrounding it or pertaining to it, correct?

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1 A. It has to do with in terms of Bank of
 2 America, it has to do not with his purchasing it
 3 but their failure to tell us about his
 4 purchasing it.
 5 Q. Fair enough. Thank you.
 6 Is there anything else other than
 7 that?
 8 A. There might be. I don't know.
 9 Q. You are unaware of anything else,
 10 because this is your chance to tell me if there
 11 is. Are you aware of anything else?
 12 A. No, not right this minute.
 13 Q. Hopefully, it is before we end the
 14 deposition because we need to proceed
 15 accordingly.
 16 Let's go to the sixth claim for relief
 17 which is real estate broker's violations of NRS
 18 645. Again, this is an attempt to clarify
 19 because what is stated here is that it is on the
 20 newer version which I think is fairly identical
 21 to the older one. It states that in Number 104,
 22 do you see that?
 23 A. Yes.
 24 Q. Defendants MacDonald Highlands Realty
 25 and Michael Doiron violated the duties and

1 obligations as defined in NRS 645.252 and
 2 additional provisions of NRS 645.
 3 I don't know if you know this or not,
 4 but I have to ask. Do you know what additional
 5 provisions of NRS 645 were violated by the
 6 realty company and Michael Doiron?
 7 A. No, but my attorneys do.
 8 Q. Your attorneys know but you do not?
 9 A. No.
 10 Q. So I will have to ask them.
 11 A. Good idea.
 12 Q. You are unaware of any other
 13 provisions sitting here today, correct?
 14 A. Any other provisions?
 15 Q. Let me ask you this: Back to what we
 16 were talking about in 104, you said your
 17 attorneys would know, and I want to make sure I
 18 have your knowledge. You are not aware of any
 19 additional provisions, are you?
 20 A. I don't know what NRS 645 is. I don't
 21 know what 645.252 is. I am not a lawyer.
 22 Q. That is fair enough.
 23 So the answer would be you do not know
 24 what other provisions are violated?
 25 A. That's correct.

1 Q. If we go to Number 7, on both, this
 2 is -- you have sued my client regarding an
 3 easement. Again, I was attempting -- we already
 4 had the discussion regarding easements, so I am
 5 not going to get into that again.
 6 It says in Paragraph 107 of the newer,
 7 not yet filed complaint, which is the same as
 8 Number 96 of the current complaint, that these
 9 parties acted in contravention of Plaintiff's
 10 easement and claiming that you have an easement
 11 surrounding the golf course.
 12 Just to confirm, are you aware of what
 13 easement this is or would I need to ask your
 14 lawyers?
 15 A. I am not.
 16 MR. GUNNERSON: I would also note that
 17 I believe -- Counsel, this may be for your
 18 edification more than anyone's -- that the first
 19 party identified there is McDonald's Properties,
 20 LTD on the new complaint. My understanding is
 21 they were dismissed from the litigation some
 22 time ago, so I don't know if you are attempting
 23 to bring them back into the lawsuit, although I
 24 don't see them on the front, or it might have
 25 just been a scrivener's error and you didn't

1 intend for them to be there, but I thought I
 2 would double-check and see if you would know.
 3 Do you have any idea about that?
 4 MS. CLINE: Are you asking me or
 5 asking the witness?
 6 MR. GUNNERSON: I am asking her. I
 7 could ask you later. I just want to make sure.
 8 THE WITNESS: What was the question?
 9 BY MR. GUNNERSON:
 10 Q. Are you attempting to bring MacDonald
 11 Properties, Limited back into the lawsuit, do
 12 you know?
 13 A. I don't know.
 14 Q. The last claim for relief is
 15 declaratory relief against all Defendants. It
 16 is not the last of the complaint but it is the
 17 last against my clients.
 18 A. Could we take a break for a minute?
 19 MR. GUNNERSON: Absolutely. No
 20 problem. Let's go off the record.
 21 (Recessed from 4:50 p.m. to 4:59
 22 p.m.)
 23 BY MR. GUNNERSON:
 24 Q. If you will look at the last claim for
 25 relief that pertains to my clients is the eighth

1 claim for relief in both complaints and it is
 2 for declaratory relief. On the new complaint,
 3 it is found on Page 15. On the old complaint,
 4 it is found on Page 18.
 5 I am trying to understand what this is
 6 talking about. Insofar as you could help me do
 7 that, I would appreciate that. In the new
 8 complaint, it is Paragraph 115. In the old
 9 complaint, it is Paragraph 104. In your request
 10 for declaratory relief, you request to have the
 11 court make a declaration. We are just trying to
 12 figure out how the property rights --
 13 declaration of property rights pertains to my
 14 client who is the agent and the real estate
 15 company and wanted to know if you had any
 16 information on that.
 17 A. Well, let me read what it says. I am
 18 not a lawyer. I can only guess.
 19 Q. I don't want you to guess.
 20 So you don't know what respective
 21 property rights as it pertains to my clients
 22 that Plaintiff is seeking a declaration from
 23 this court regarding?
 24 A. Well, I would assume that they are
 25 speaking to the fact that she knew about the

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1 Malek sale. In fact, she was the broker on the
 2 Malek sale so she knew about the property
 3 changes and she knew about the respective
 4 property rights when she did her due diligence,
 5 so I would assume that is what that means.
 6 Q. Let me ask you another way. Do you
 7 contend that my clients, Michael Doiron and
 8 MacDonald Highlands Realty Company, have any
 9 property rights to the properties in question?
 10 A. Property rights?
 11 Q. Do my clients have any property rights
 12 to either the bare lot, Malek's property or the
 13 subject property?
 14 A. Do they have ownership, is that what
 15 you are asking me?
 16 Q. I could ask it that way.
 17 Is it your contention or do you
 18 believe my client or the company my client works
 19 for or works with had any ownership rights to
 20 any of the properties in question in this
 21 lawsuit?
 22 A. It doesn't say ownership rights. It
 23 says property rights, so maybe that refers to
 24 description of limits. I really don't know what
 25 it means because I am not a lawyer.

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1 Q. You don't know what it is referring
 2 to?
 3 A. Right.
 4 Q. You don't think my client has any
 5 ownership rights to the properties, right?
 6 A. To my knowledge, no.
 7 Q. Do you recall having to do any
 8 responses to requests made from my clients
 9 regarding information, something we call
 10 interrogatories?
 11 A. Vaguely.
 12 Q. In those interrogatories that we
 13 provided to you and your counsel, we asked
 14 questions regarding damages. Do you recall
 15 answering questions regarding damages?
 16 A. No.
 17 (Deposition Exhibit AA marked.)
 18 BY MR. GUNNERSON:
 19 Q. Would you go to the last page of the
 20 document identified as -- second to last page of
 21 the document identified as AA. It says
 22 verification. Do you see that?
 23 A. Yes.
 24 Q. This says, "I, Barbara Rosenberg,
 25 being first duly sworn, deposes and says that I

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1 am a trustee of the Fredric and Barbara
 2 Rosenberg Living Trust, the Plaintiff herein."
 3 Is that true?
 4 A. That is true.
 5 Q. "That I have read the entirety of the
 6 foregoing responses to interrogatories and know
 7 the contents thereof." Is that true when you
 8 signed this?
 9 A. At that time, yeah.
 10 Q. "That the same is true of my own
 11 knowledge, except for those matters therein
 12 contained stated upon information and belief."
 13 Is that true?
 14 A. Yes.
 15 Q. "And as to those matters, I believe
 16 them to be true." Is that correct?
 17 A. Yes.
 18 Q. And then is that your signature?
 19 A. That is my signature.
 20 Q. And do you remember signing this
 21 verification?
 22 A. Not really.
 23 Q. Fair enough.
 24 In one of the interrogatories, we
 25 asked you about damages, and it said that you

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1 were seeking an expert opinion as to replacement
 2 value of the subject property at the time of the
 3 purchase of the sale. Do you recall making that
 4 statement that you were looking --
 5 A. What page?
 6 Q. I am looking at Page 2, Line 26.
 7 A. Uh-huh.
 8 Q. Do you recall stating that you were
 9 seeking an expert opinion as to replacement
 10 value?
 11 A. Yes.
 12 Q. The deadline for experts have passed
 13 and I have not seen an expert opinion as to
 14 replacement value. Do you know if you are no
 15 longer seeking replacement value as damages or
 16 do you know if you are intending a different
 17 way?
 18 MS. CLINE: Answer how you know.
 19 THE WITNESS: It is my understanding
 20 that we did get -- that we did get opinions as
 21 to value.
 22 BY MR. GUNNERSON:
 23 Q. So maybe perhaps what you are talking
 24 about then is -- I want to make sure I know
 25 everything. I am not trying to sneak it by you.

<p style="text-align: right;">181</p> <p>1 (Deposition Exhibit BB marked.)</p> <p>2 BY MR. GUNNERSON:</p> <p>3 Q. I am handing you what was marked as</p> <p>4 Exhibit BB. This is stated Real Estate Damages</p> <p>5 Analysis. Do you see that?</p> <p>6 A. I do.</p> <p>7 Q. And that this is not -- I will</p> <p>8 represent to you that this is not the entire</p> <p>9 report. The entire report was much thicker. We</p> <p>10 just pulled out portions that we wanted to have</p> <p>11 during the deposition. Do you understand?</p> <p>12 A. Yes.</p> <p>13 Q. We received this Real Estate Damages</p> <p>14 Analysis in identification of Mr. -- I don't</p> <p>15 know how to pronounce his name.</p> <p>16 MS. CLINE: Jiu.</p> <p>17 BY MR. GUNNERSON:</p> <p>18 Q. Mr. Craig Jiu as the expert. I see it</p> <p>19 on Page 5, his name and signature. Jiu is</p> <p>20 spelled J-I-U.</p> <p>21 Is this the expert report you are</p> <p>22 stating -- this is the only expert report we</p> <p>23 received. I will represent that to you. Are</p> <p>24 you aware of any other expert reports that we</p> <p>25 should have received regarding damages?</p>	<p style="text-align: right;">183</p> <p>1 would be worth.</p> <p>2 Q. Did you provide that to your lawyers?</p> <p>3 A. Yes.</p> <p>4 MR. GUNNERSON: And we received that?</p> <p>5 MS. CLINE: Yes.</p> <p>6 BY MR. GUNNERSON:</p> <p>7 Q. That wasn't tied to any expert,</p> <p>8 correct?</p> <p>9 A. That was their expert opinion. They</p> <p>10 do full-on appraisals.</p> <p>11 Q. You have not identified any person</p> <p>12 related to the insurance company as your expert</p> <p>13 in this case, correct?</p> <p>14 A. You mean have we employed them?</p> <p>15 Q. Have you identified anyone from the</p> <p>16 insurance company as an expert in this case?</p> <p>17 A. They gave you the report.</p> <p>18 Q. They gave us a report in a group of</p> <p>19 documents, but it is not an expert report, and</p> <p>20 it wasn't identified or disclosed as an expert</p> <p>21 report, which is why I am trying to find out if</p> <p>22 I am missing an expert report or if what you are</p> <p>23 talking about is a document received from the</p> <p>24 insurance company that is not tied to an expert?</p> <p>25 A. That is an expert report.</p>
<p style="text-align: right;">182</p> <p>1 A. No.</p> <p>2 Q. Are you stating that this is the</p> <p>3 expert report that should support your</p> <p>4 replacement value damages?</p> <p>5 A. Yes.</p> <p>6 Q. I will represent to you I could not</p> <p>7 find in here any statement regarding replacement</p> <p>8 value. All I have, in fact you could look at</p> <p>9 the end of the report --</p> <p>10 A. I am wrong. I am wrong.</p> <p>11 Q. That is why I am going through more</p> <p>12 questions and not just leaving it out there.</p> <p>13 This appears to talk about damages to</p> <p>14 the property in the amount of \$750,000 to</p> <p>15 \$1 million. That is obviously not replacement</p> <p>16 value. That is something different.</p> <p>17 Do you have an expert that you are</p> <p>18 attempting to or -- am I missing an expert</p> <p>19 report that pertains to replacement value?</p> <p>20 A. We had gotten a report from the</p> <p>21 insurance company when they went out to insure</p> <p>22 the house, and they did a complete analysis and</p> <p>23 they came out with replacement value of being, I</p> <p>24 believe, 3.5 and then you added in the cost of</p> <p>25 the land to get to a figure for what the house</p>	<p style="text-align: right;">184</p> <p>1 MS. CLINE: I think that maybe she is</p> <p>2 not understanding the technical term of an</p> <p>3 expert report and so that is probably the issue.</p> <p>4 MR. GUNNERSON: Counsel, I usually</p> <p>5 don't ask attorneys questions. Am I missing an</p> <p>6 expert report other than the real estate</p> <p>7 damages?</p> <p>8 MS. CLINE: No, you are not. This is</p> <p>9 the expert report. It gives a valuation and the</p> <p>10 replacement value of the house is something that</p> <p>11 doesn't have a separate expert report for it.</p> <p>12 MR. GUNNERSON: It doesn't have an</p> <p>13 expert report at all for it.</p> <p>14 MS. CLINE: That is what I said.</p> <p>15 MR. GUNNERSON: I didn't know if you</p> <p>16 meant it was combined in this one. I understand</p> <p>17 what you are saying now.</p> <p>18 MS. CLINE: So at the time, that is</p> <p>19 what the intention was and it ended up as this.</p> <p>20 So that is what we are clear on.</p> <p>21 BY MR. GUNNERSON:</p> <p>22 Q. In Interrogatory Number 2 on the next</p> <p>23 page, Number 3, Line 9 of Page 3, it says,</p> <p>24 "Without waiving said objections, Plaintiff</p> <p>25 contends that the subject property has zero</p>

46 (Pages 181 to 184)

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1 value to Plaintiff if Malek builds a structure
 2 on the golf course parcel or modifies the fence
 3 line to incorporate the golf course parcel." Do
 4 you see that?
 5 A. Yes.
 6 Q. Is that still your position that the
 7 property has zero value if he builds on the lot?
 8 A. It has zero value to us. We wouldn't
 9 stay there.
 10 Q. Where would you go?
 11 A. We would either reposition the house
 12 if we had to or buy an analogous house hopefully
 13 on Lairmont if something shows up or if we could
 14 find something that would even in some ways be
 15 equivalent to it. No, we would not stay there.
 16 We would not have bought the house if we had
 17 known this.
 18 We are too old. We are at a stage in
 19 life where we just can't go through this kind of
 20 stuff. Basically, you want peaceful enjoyment
 21 of the house, you want to just move in. If
 22 there is a couple of leaky faucets, I don't care
 23 about it. I don't want to deal with litigation
 24 like we are right now.
 25 Q. When you say the property has zero

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1 value --
 2 A. To us.
 3 Q. You are not saying the property has no
 4 value, right?
 5 A. No. It says zero value to Plaintiff.
 6 Q. In reality, you just told me you
 7 believe the replacement value or the insurance
 8 company believes the replacement value is over
 9 \$4 million, right?
 10 A. For the house, yeah, 3 1/2. It says
 11 zero value to us.
 12 Q. I got that.
 13 In Interrogatory Number 3, which is on
 14 the same page, Line 21, do you see that?
 15 A. Yes.
 16 Q. It says, "Plaintiff purchased the
 17 subject property based on its unique
 18 characteristics." Do you see that?
 19 A. What line?
 20 Q. Line 21 on the same page.
 21 A. Okay, yeah.
 22 Q. "Plaintiff purchased the subject
 23 property based on its unique characteristics
 24 including, but not limited to, its location in a
 25 Henderson golf course community," right?

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1 A. Yes.
 2 Q. Even if Malek purchases the property,
 3 do you still have that with the subject
 4 property?
 5 A. It is located in a golf course --
 6 Q. That remains, right?
 7 A. Yes.
 8 Q. Its proximity to the 9th hole of the
 9 golf course, Malek's purchase of the bare lot
 10 and building whatever he does with those lots,
 11 that does not change your proximity to the 9th
 12 hole of the golf course, does it?
 13 A. It absolutely does because they have
 14 to reconfigure the golf course. It is not the
 15 9th hole that we bought. I don't know what he
 16 is building there. If he is building something
 17 obstructive, there is going to be fencing and a
 18 house and the 9th hole will not look like the
 19 way it does right now. It is going to look
 20 completely different.
 21 Q. It doesn't say the look of the 9th
 22 hole. It says your proximity to the 9th hole.
 23 Your proximity of the home to the 9th hole is
 24 the same distance as it was previously, correct?
 25 A. I don't know if they will have to

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1 modify the 9th hole if he builds. I don't know.
 2 Q. You are saying maybe --
 3 A. Hypothetically, I don't know because
 4 he has not given us any papers to show what his
 5 plans are.
 6 Q. He has. Nonetheless --
 7 A. No. My attorneys told me they
 8 requested it, they keep requesting and they
 9 don't get any plans to show them what his
 10 intention is.
 11 Q. They may have received them by now. I
 12 don't know if they have.
 13 A. They did not.
 14 MS. CLINE: I have not received all of
 15 the plans and I also have not received anything
 16 that says this is the final version that is
 17 going to be approved. It is not one that they
 18 said in any way this is definitely the way we
 19 want to build.
 20 BY MR. GUNNERSON:
 21 Q. But as far as you have not seen
 22 anything to indicate that the 9th hole is being
 23 moved, correct?
 24 A. As of yet.
 25 Q. Right. All you know is what happened

<p style="text-align: right;">189</p> <p>1 up until now. Up until now, you have seen</p> <p>2 nothing that says the 9th hole is being moved,</p> <p>3 right?</p> <p>4 A. Nothing has happened yet.</p> <p>5 Q. You are unaware of anything that will</p> <p>6 happen to move the 9th hole as of now, correct?</p> <p>7 A. I am aware a piece of property has</p> <p>8 been bought and there will be changes made.</p> <p>9 Q. The piece of property you are talking</p> <p>10 about is the bare lot, right?</p> <p>11 A. What was part of the golf course</p> <p>12 before.</p> <p>13 Q. I was calling it the bare lot. That</p> <p>14 lot has no grass on it, correct?</p> <p>15 A. Yeah.</p> <p>16 Q. And it doesn't have any part of the</p> <p>17 green or the fairway on that lot, correct?</p> <p>18 A. But it is part of the golf course.</p> <p>19 Q. I am asking you a question.</p> <p>20 A. Yes.</p> <p>21 Q. Am I correct?</p> <p>22 A. Uh-huh.</p> <p>23 Q. And it does not appear to be any kind</p> <p>24 of a water hazard or a sand trap for that hole,</p> <p>25 correct?</p>	<p style="text-align: right;">191</p> <p>1 sale solely of that land change the hole itself?</p> <p>2 A. It depends.</p> <p>3 Q. But as of today, you are unaware of</p> <p>4 how it would change the hole, correct?</p> <p>5 MS. CLINE: Objection.</p> <p>6 THE WITNESS: As of today, I don't</p> <p>7 know his plans.</p> <p>8 BY MR. GUNNERSON:</p> <p>9 Q. I am talking about the golf course's</p> <p>10 plans to change the hole. You said the hole</p> <p>11 would be changed. Who is changing the hole?</p> <p>12 A. Hopefully, nobody. Hopefully, this</p> <p>13 whole thing goes away. If he builds on it, the</p> <p>14 whole configuration of the golf course is going</p> <p>15 to change.</p> <p>16 Q. I don't understand. You keep saying</p> <p>17 that. You said you are not a golfer, but you</p> <p>18 keep saying that the whole configuration of the</p> <p>19 golf course will change if this small piece of</p> <p>20 desert land that may or may not be out of bounds</p> <p>21 on the hole is sold, and I guess I don't</p> <p>22 understand how the whole golf course changes if</p> <p>23 a small desert piece of land that may or may not</p> <p>24 be outside the out-of-bounds markers for the 9th</p> <p>25 hole changes anything with the golf course?</p>
<p style="text-align: right;">190</p> <p>1 A. I am not a golfer. I don't know.</p> <p>2 Q. In fact, if you were to view it today,</p> <p>3 it appears to be raw desert land; is that</p> <p>4 correct?</p> <p>5 A. It looks -- yeah, I guess.</p> <p>6 Q. You say you are not a golfer. Do you</p> <p>7 know if that land is inbounds or out of bounds</p> <p>8 for the 9th hole?</p> <p>9 A. I don't know.</p> <p>10 Q. So if that bare lot was out of bounds</p> <p>11 for the hole, then wouldn't you agree that</p> <p>12 selling that property to Malek would not be a</p> <p>13 sale of the 9th hole because it is out of bounds</p> <p>14 of the 9th hole?</p> <p>15 A. I don't know what he is going to do</p> <p>16 there, so I don't know how it is going to affect</p> <p>17 the 9th hole. I don't know what they would say</p> <p>18 how they would have to reconfigure it based on</p> <p>19 what he was doing, so I don't know. You are</p> <p>20 asking me will it purely stay the way it is. I</p> <p>21 have no idea.</p> <p>22 Q. That is not what I am asking.</p> <p>23 What I am asking is does the sale of</p> <p>24 that desert land which may be outside the</p> <p>25 out-of-bounds markers for the hole, will that</p>	<p style="text-align: right;">192</p> <p>1 MS. CLINE: Objection. Form, calls</p> <p>2 for speculation.</p> <p>3 THE WITNESS: Do I still answer?</p> <p>4 MR. GUNNERSON: Please.</p> <p>5 MS. CLINE: You can answer if you</p> <p>6 understand his question.</p> <p>7 THE WITNESS: It is speculation.</p> <p>8 BY MR. GUNNERSON:</p> <p>9 Q. Thank you.</p> <p>10 We are still on Line 24 on Page 3. It</p> <p>11 says the view of the golf course and mountains</p> <p>12 from the decks, that that was the reason why you</p> <p>13 purchased the property, right?</p> <p>14 A. Yeah. That would be changed</p> <p>15 materially if he builds right into it.</p> <p>16 Q. I don't know what you mean by into it,</p> <p>17 but let me ask you this: The view of the golf</p> <p>18 course, when you say view of the golf course,</p> <p>19 does that include the fairway?</p> <p>20 A. It includes the view you get right now</p> <p>21 from the house, and the view you get right now</p> <p>22 from the house would have whatever it is he</p> <p>23 builds in it. It is not the view we bought.</p> <p>24 Q. We are just talking about the view of</p> <p>25 the golf course. So the view of the golf</p>

1 course, would that be where the grass ends at
2 the end of the hole all the way to where the
3 grass begins, is that where you are calling the
4 golf course, or are you talking about any piece
5 of dirt or rock, how ugly or pretty that may be,
6 somewhere in the vicinity of the hole? I don't
7 understand what you mean by golf course.

8 A. I am talking about the piece of land
9 he bought.

10 Q. I am just saying I don't understand
11 how the piece he bought is part of the golf
12 course because I have golfed and I don't hit out
13 of what he bought and that is not part of the
14 golf course for me. So I don't understand how
15 the piece he bought is part of the golf course
16 as far as your view is concerned.

17 A. On the club map, it is part of the
18 golf course.

19 Q. You are saying it was owned by the
20 golf course?

21 A. It is owned by the golf course. It is
22 part of the golf course. It was always assumed
23 it would stay part of the golf course.

24 Q. Isn't the best view of the golf course
25 the grass portion? Isn't that what makes the

1 view of a golf course so nice?

2 A. I am not a golfer. You would have to
3 ask my husband because he is the one who gets
4 this huge pleasure out of being on the 9th hole,
5 and that pleasure is gone.

6 Q. You do look out your window onto the
7 9th hole, correct?

8 A. Yes.

9 Q. And when you look out and you say that
10 is a beautiful hole for this golf course, are
11 you talking about the grass area?

12 A. I would normally just look out and say
13 this looks beautiful, it is a beautiful golf
14 course, it is a view that doesn't have things in
15 it, this is wonderful.

16 Q. Are you talking about the grass area
17 when you are talking about the view?

18 A. It is part of the view, but most
19 people don't go you should see my grass. Most
20 of the time when you talk about a view, you go
21 oh, my God, look at this, look at the mountains.
22 Most people don't go whoa, I have got grass.

23 Q. I understand that. I am trying to
24 understand what it is that is so interesting to
25 you about viewing the dirt, desert land that

1 Malek bought. Because my understanding is that
2 when people buy for a golf course view, they buy
3 it to see the grass and the fairway and the
4 green or whatever it might be of the golf
5 course, and I am just trying to understand what
6 part of this view is it as it pertains to the
7 golf course that you are losing by him buying
8 the desert landscape bare lot?

9 MS. CLINE: Objection. Form.

10 You can answer, if you understand.

11 THE WITNESS: What we are losing
12 possibly is privacy. When you look out, you
13 have this confining thing coming back at you,
14 which is not what we bought into. That is not
15 what we wanted. What we wanted was this
16 peaceful, unobstructed view. What we understood
17 was it was a golf course. Who in their right
18 mind would think a piece of the golf course
19 would be sold?

20 In fact, there is now a covenant that
21 none of the other pieces of the golf course can
22 be sold, so we are the only people that have to
23 mitigate this problem. Everybody else, they
24 must have figured something was wrong with doing
25 it because right after us, they did a whole

1 thing saying nobody else is going to have to
2 experience this. To me, that says to me they
3 knew what they did was wrong and they didn't
4 want to have this stuff happen again.

5 We bought into -- you see if it is a
6 duck, it is a duck. If you see a golf course,
7 it is a golf course. You don't expect to hear
8 it is a golf course but this piece is sold and
9 this one is sold. You expect what you see is
10 what you get, and that is what we expected.

11 BY MR. GUNNERSON:

12 Q. If he builds with the setbacks
13 included on this property, will you still be
14 able to see all of the grass area of the current
15 9th hole?

16 MS. CLINE: Objection. Form.

17 THE WITNESS: How do I know? I don't
18 know what he is building.

19 BY MR. GUNNERSON:

20 Q. Do you know what the setbacks are for
21 the property?

22 A. No.

23 Q. So you don't know what the setbacks
24 are of the property, you don't know what he is
25 building, you don't know if it is going to

<p style="text-align: right;">197</p> <p>1 obstruct your view of the grass part of the 9th</p> <p>2 hole. Are those all correct statements?</p> <p>3 A. Yes.</p> <p>4 Q. And yet, you are making a claim that</p> <p>5 your view of the 9th hole is being obstructed</p> <p>6 even though you don't know any of those things;</p> <p>7 is that correct?</p> <p>8 A. I am saying that these are all</p> <p>9 possibilities and if these possibilities --</p> <p>10 Q. I am sorry to interrupt. I need you</p> <p>11 to answer yes or no.</p> <p>12 Could you repeat the question?</p> <p>13 (Record read as follows:</p> <p>14 "Q. And yet, you are making a</p> <p>15 claim that your view of the 9th</p> <p>16 hole is being obstructed even</p> <p>17 though you don't know any of those</p> <p>18 things; is that correct?")</p> <p>19 THE WITNESS: Yes.</p> <p>20 MS. CLINE: I am going to object as</p> <p>21 argumentative. And, Counsel, could you tone it</p> <p>22 down a little bit?</p> <p>23 MR. GUNNERSON: My tone is not going</p> <p>24 anywhere. I don't know what you are saying.</p> <p>25</p>	<p style="text-align: right;">199</p> <p>1 Q. I am not sure exactly. What you are</p> <p>2 saying is what you could see out the living room</p> <p>3 is what you mean here when you say the living</p> <p>4 room is unique. You are talking about the view</p> <p>5 from the living room is unique?</p> <p>6 A. This says we bought it based on -- it</p> <p>7 still has a very nice living room; but if he</p> <p>8 builds something, it could have an obstructed</p> <p>9 view which doesn't have that.</p> <p>10 Q. Even if he didn't buy the bare lot, he</p> <p>11 is still going to build on that property which</p> <p>12 you would still be able to see out your living</p> <p>13 room window, correct?</p> <p>14 A. Yes, but you would see it</p> <p>15 peripherally.</p> <p>16 Q. It also says you bought it because of</p> <p>17 the kitchen?</p> <p>18 A. Yes.</p> <p>19 Q. And the dining room?</p> <p>20 A. Uh-huh.</p> <p>21 Q. Do the kitchen and dining room change</p> <p>22 if Malek purchases the property and builds on</p> <p>23 it?</p> <p>24 A. Not the kitchen, but possibly the</p> <p>25 dining room.</p>
<p style="text-align: right;">198</p> <p>1 BY MR. GUNNERSON:</p> <p>2 Q. Number 3, Page 3, Number 24, it also</p> <p>3 says the view, it says the golf course and the</p> <p>4 mountains; is that correct?</p> <p>5 A. Yes.</p> <p>6 Q. What mountains are you referring to</p> <p>7 there?</p> <p>8 A. The mountains that you see from the</p> <p>9 house.</p> <p>10 Q. When I looked out of your house, I saw</p> <p>11 mountains in the distance straight back behind</p> <p>12 the house and then around us towards the front</p> <p>13 of the house are a lot of foothills. When you</p> <p>14 say mountains, are you also including the</p> <p>15 foothills or are you referencing the mountains</p> <p>16 in the distance?</p> <p>17 A. I am referencing the views from the</p> <p>18 back of the house.</p> <p>19 Q. And then it says you also bought the</p> <p>20 property because of the living room. Does that</p> <p>21 remain the same if in fact Malek purchases and</p> <p>22 builds on the bare lot?</p> <p>23 A. Well, the living room has this</p> <p>24 beautiful view. So if he builds into the view,</p> <p>25 then it is damage to the living room.</p>	<p style="text-align: right;">200</p> <p>1 Q. Because of the view?</p> <p>2 A. Yeah.</p> <p>3 Q. And it says also the master bedroom,</p> <p>4 right, that is something that was unique?</p> <p>5 A. Major league, yeah.</p> <p>6 Q. Are you saying that -- has that</p> <p>7 changed as a result of him purchasing the</p> <p>8 property, the master bedroom?</p> <p>9 A. That would be the most impacted if he</p> <p>10 builds on that piece of land.</p> <p>11 Q. You are not talking about the master</p> <p>12 bedroom itself won't change, that remains the</p> <p>13 same as far as the carpet and the color of the</p> <p>14 walls and the furniture and the layout. What</p> <p>15 you are saying is the view from the master</p> <p>16 bedroom changes?</p> <p>17 A. Yes.</p> <p>18 Q. And you also talk about then the</p> <p>19 privacy created by the lack of residential</p> <p>20 building lots to the rear of the property,</p> <p>21 correct?</p> <p>22 A. Yes.</p> <p>23 Q. What lack of -- To the rear of the</p> <p>24 property is the 9th hole.</p> <p>25 A. Yes.</p>

<p style="text-align: right;">201</p> <p>1 Q. So even if Malek buys the piece of</p> <p>2 property on the side yard, that doesn't obstruct</p> <p>3 your view to the rear of the property?</p> <p>4 A. We don't have a problem with him</p> <p>5 building on his lot, the lot that he bought. We</p> <p>6 bought the house knowing that he was going to</p> <p>7 build a house. We have a problem with that</p> <p>8 third piece of land which nobody disclosed and</p> <p>9 which is going to directly impact us.</p> <p>10 Q. I am just trying to understand when</p> <p>11 you say to the rear of the property. You say</p> <p>12 privacy created by the lack of residential</p> <p>13 building lots to the rear of the property. I</p> <p>14 think maybe the distinction here is that there</p> <p>15 is the side of the property and the rear of the</p> <p>16 property, and you are not claiming that he is</p> <p>17 going to be building to the rear of the</p> <p>18 property, he is actually building to the side of</p> <p>19 your property, correct?</p> <p>20 A. Yes.</p> <p>21 Q. And that privacy is privacy, again,</p> <p>22 you wouldn't have had from people walking on the</p> <p>23 path on Stephanie Street, correct?</p> <p>24 A. No. It is a different kind of</p> <p>25 privacy. When somebody builds -- arguably, I</p>	<p style="text-align: right;">203</p> <p>1 the back of your property, you understand that</p> <p>2 you don't have a right of privacy to those</p> <p>3 people stopping on Stephanie Street and looking</p> <p>4 into your property?</p> <p>5 A. Right.</p> <p>6 Q. It says the size and style of the home</p> <p>7 is something that was unique, right?</p> <p>8 A. Right.</p> <p>9 Q. We talked a lot about that in the</p> <p>10 beginning when you were telling me that this</p> <p>11 property was -- how did you put it -- on the</p> <p>12 street of dreams I think you said, right?</p> <p>13 A. Right.</p> <p>14 Q. And that it had the perfect layout,</p> <p>15 correct?</p> <p>16 A. Right.</p> <p>17 Q. And it was a tough market to buy</p> <p>18 property?</p> <p>19 A. Uh-huh.</p> <p>20 Q. And you were willing to buy as is</p> <p>21 because you wanted the property so bad, correct?</p> <p>22 A. Uh-huh.</p> <p>23 Q. And that you knew that buying was</p> <p>24 going to be tough because of the number of</p> <p>25 buyers out there, correct?</p>
<p style="text-align: right;">202</p> <p>1 don't know what he is going to build. If he is</p> <p>2 building a structure where he is looking into</p> <p>3 our living room and bedroom, you basically have</p> <p>4 pretty much like a tract house because you look</p> <p>5 out and somebody looks in. That is an intrusion</p> <p>6 into your privacy.</p> <p>7 The idea of golfers being out on the</p> <p>8 golf course, it is lovely. It is sort of like</p> <p>9 you are watching golf. It is like a little</p> <p>10 motion picture right in front of you.</p> <p>11 Q. So you don't mind the golfers being</p> <p>12 able to look into your property?</p> <p>13 A. Most golfers are not looking into your</p> <p>14 property. They are playing golf.</p> <p>15 Q. But you don't mind if they do?</p> <p>16 A. If occasionally, but it doesn't</p> <p>17 happen. That is not what golfers do.</p> <p>18 Q. But you don't mind if they do?</p> <p>19 A. I wouldn't like it, but I don't mind.</p> <p>20 Q. People walking on Stephanie Street,</p> <p>21 you don't mind if they look into your property</p> <p>22 because you understand that that happens?</p> <p>23 A. They are not looking into my property.</p> <p>24 They are on Stephanie Street.</p> <p>25 Q. Let's say one stopped and looked into</p>	<p style="text-align: right;">204</p> <p>1 A. Yes.</p> <p>2 Q. And that it was in a gated community,</p> <p>3 that was essential?</p> <p>4 A. Yes.</p> <p>5 Q. And this was the only community in the</p> <p>6 area, at least in Henderson, that had the kinds</p> <p>7 of homes you wanted, correct?</p> <p>8 A. Yes.</p> <p>9 Q. And that it was close to the driving</p> <p>10 range. The proximity to the driving range</p> <p>11 hasn't changed. Your husband could still get in</p> <p>12 his cart and drive to the driving range, right?</p> <p>13 A. Yes.</p> <p>14 Q. That hasn't changed. And then the</p> <p>15 style home, the tuscan/renaissance style,</p> <p>16 correct?</p> <p>17 A. Yes.</p> <p>18 Q. So all of those things other than the</p> <p>19 view issues on that one small sliver of bare lot</p> <p>20 property, everything else remains the same?</p> <p>21 MS. CLINE: Objection.</p> <p>22 MR. GUNNERSON: I haven't asked my</p> <p>23 question, Counselor.</p> <p>24 MS. CLINE: I thought you did.</p> <p>25</p>

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1 BY MR. GUNNERSON:

2 Q. All the things remain the same, and

3 therefore, the question is: You are still

4 saying you would not have purchased that

5 property if you knew that a third acre of desert

6 landscape had been purchased by your next-door

7 neighbor?

8 MS. CLINE: Objection.

9 THE WITNESS: The answer is we would

10 not have bought the property because if you read

11 the Real Estate Damages Analysis, they clearly

12 point out that his building would make a net

13 effect of almost a million dollars in damages in

14 terms of the value of the property.

15 BY MR. GUNNERSON:

16 Q. So --

17 A. And this is an expert opinion telling

18 you that.

19 Q. I understand that.

20 A. So it is not all the same as you keep

21 saying. It is not all the same.

22 Q. All of the other things were the same.

23 All the things you agreed with were the same?

24 A. Yes, except for this major problem.

25 Q. Except for this issue, everything else

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1 remains the same?

2 A. And one of the things they mention in

3 the damage analysis is there is a huge emphasis

4 on view on Page 22. They talk about the

5 emphasis on view, view, view, and that is what

6 is being impacted.

7 Q. His conclusions in his report talk

8 about, the second to last page of the report,

9 which is Exhibit BB, he says all of the above

10 research and analysis have brought me to the

11 following conclusions: Published research shows

12 that view, amenities, site lines, and privacy

13 are beneficial characteristics. Do you see

14 that?

15 A. What page are you on?

16 Q. Second to the last page at the top.

17 And then he goes on to the next bullet

18 point and says altering site lines and/or

19 privacies for homes at this level of market is

20 not well received. Do you see that?

21 A. Uh-huh.

22 Q. As I read this report, everything I

23 saw pertained to view and privacy.

24 A. Uh-huh, yes.

25 Q. And I did not have a chance to depose

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1 your expert and I could ask him this as well.

2 Are you aware of any other damages to your

3 property other than those identified in this

4 expert report pertaining to view, site lines,

5 and privacy?

6 A. Well, it all depends if he builds and

7 he builds something that obstructs, then damages

8 would be going and finding another house, so we

9 would have to find a house that would probably

10 cost us over \$4 million at this point, or we

11 would have to redevelop this house so it looks

12 in a different way which is not something we are

13 going to do at age 70, and we have all of the

14 fees that it cost us to get to where we are

15 including the legal fees and everything else

16 that has been going on and all of the

17 aggravation, so basically there is a huge

18 impaired value here.

19 Q. Understood.

20 I guess my question is I am trying to

21 find out what the basis for your damages is and

22 see if there is anything more than what we

23 already talked about. I am not looking to talk

24 about that anymore -- I may have one more

25 question on that.

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1 But as far as view and privacy goes,

2 other than view and privacy concerns because I

3 didn't see anything else in the expert report

4 other than view and privacy concerns, other than

5 those, is there anything else forming the basis

6 of your damages other than your lack of view and

7 lack of privacy?

8 A. Misrepresentation. We weren't told.

9 Q. Misrepresentations leading to your

10 lack of view --

11 A. Michael never told us. She could

12 have -- you know, this whole thing never would

13 have happened if she told us. If she just said

14 I want you to know this has happened, this is a

15 material fact. I know what a material

16 disclosure is because I did it for 25 years. If

17 I have a leaky faucet, if I don't disclose it,

18 no big deal; but if I have something that is

19 going to go up smack dab into view, I tell the

20 people.

21 Q. As lawyers, we have these fine

22 distinctions, and those are the claims for your

23 relief. I am trying to figure out what forms

24 the damages and what has been damaged, what has

25 been hurt, what are you looking to fix. My

<p style="text-align: right;">209</p> <p>1 understanding is that it is concerns about view 2 and privacy alone and there is nothing else that 3 is damaging you, the trust, or the property, the 4 subject property? 5 MS. CLINE: Objection. Form, 6 misstates prior testimony. 7 MR. GUNNERSON: Let me rephrase it 8 then because your counsel is objecting. I want 9 to make sure I get a question that she doesn't 10 feel she needs to object to. 11 BY MR. GUNNERSON: 12 Q. Other than the concerns for view and 13 privacy, whether it is your lack of disclosure 14 of the purchase to affect your view and 15 privacy -- strike that. 16 Other than view and privacy, how else 17 has your property been damaged as a result of 18 these claims against the Defendants? 19 A. Well, according to this, if you went 20 out to try to resell it, you would have to sell 21 it at a very, very reduced price. 22 Q. And why is that? 23 A. It tells you it went down in value by 24 almost a million dollars. 25 Q. As a result of what?</p>	<p style="text-align: right;">211</p> <p>1 Q. Go ahead. 2 A. Right now? I would think that is the 3 primary concern, privacy and view. It is also 4 emotional distress. We have been spending so 5 much time and effort on this thing, and fees for 6 the attorneys and all of the fees and all of 7 that. Those are the main damages. 8 Q. Sitting here today, and I think I will 9 tell you your expert even talks about damages 10 related to the purchase of the property like 11 fees, title fees, recording fees, those kinds of 12 things. Other than what you just said and what 13 is contained in his report, are you aware of 14 anything else that has damaged your property? 15 A. Well, that it has become public 16 knowledge. 17 Q. But that hasn't damaged your property, 18 right? 19 A. On resale it would. We would disclose 20 to the next person. So as I said, it completely 21 damages the value of the property. 22 Q. Because it takes away view and 23 privacy? 24 A. Right. 25 Q. I just want to make sure. It seems to</p>
<p style="text-align: right;">210</p> <p>1 A. As a result of if he builds. 2 Q. And -- 3 A. If he doesn't build, that is a whole 4 other thing. 5 Q. If he builds, it takes away what from 6 you? 7 A. Read the report. 8 Q. I have. I want to know your thoughts. 9 It takes away what from you? 10 A. It takes away the reason we bought 11 this thing. We bought this thing because we 12 wanted to be -- it is our dream. It was my 13 husband's dream to be on the 9th hole, to be 14 across the street from the driving range, to be 15 in this beautiful gated community, to have 16 peaceful enjoyment of the property, not to have 17 another house with somebody staring from their 18 window into your master bedroom. That was never 19 the idea behind this. 20 Q. If your expert's report at BB is based 21 entirely upon damages resulting from view and 22 privacy, is that your understanding as to the 23 basis for your damages? 24 A. I would have to think about it some 25 more.</p>	<p style="text-align: right;">212</p> <p>1 me that everything is based on view and privacy. 2 That is the basis of your damages, and I just 3 wanted to make sure that that was it. So I 4 thank you for your responses to that. 5 A. And the obstruction of the 9th hole. 6 I am not an expert on golf courses so I can't 7 tell you exactly what it would do to the 9th 8 hole, but in preserving the integrity of the 9 golf course the way it is now -- 10 Q. But you don't own the golf course, 11 correct? 12 A. No. But you had a reasonable 13 expectation that when you bought the house that 14 the golf course was going to remain the way it 15 looked at that time and that is what we were 16 represented. 17 Q. We have gone the rounds on this one 18 already. I won't go again other than just to 19 ask as far as your view goes, where Malek's 20 property is and where the bare lot is, when you 21 look out towards those, what view do you see? I 22 am not talking about the 9th hole itself, 23 meaning the green part of the 9th hole. I am 24 not talking about the view of the valley or the 25 Strip or the mountains in the distance.</p>

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1 What view is going to be blocked as a
2 result of if he were to build fully on both his
3 lot and the bare lot that he purchased?
4 A. I don't know. I don't know what he is
5 intending to build.
6 Q. But you know what is in that
7 direction. If you are looking out your living
8 room window --
9 A. I can't answer that question if I
10 don't know what he is going to build.
11 Q. Let me ask you some other questions.
12 If you look out that window and you see the bare
13 lot and Malek's property, is the elevation to
14 Stephanie Street, is it flat, does it decrease
15 or does it increase up to Stephanie Street?
16 A. I don't remember.
17 Q. And do you recall after Stephanie
18 Street what is located on the other side of
19 Stephanie Street from where your view would be?
20 A. The country club.
21 Q. Before the country club comes the
22 country club's parking lot, right?
23 A. Yes.
24 Q. And then there is the country club.
25 Do you know what is above the country club if

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1 you look in that distance?
2 A. I don't remember.
3 MS. CLINE: Counselor, earlier you
4 said you will maybe pull out a map when you are
5 talking about where to look.
6 MR. GUNNERSON: That is a good point.
7 I was. I think she described it well enough
8 that it is Stephanie Street. She doesn't
9 remember the elevation. I don't think a map is
10 going to show anything with elevation.
11 MS. CLINE: It is just earlier we were
12 confused about where you were looking from and
13 exactly what direction.
14 THE WITNESS: It shows you here
15 looking northeast from the master bedroom. The
16 pictures in here is exactly what you see when
17 you look out.
18 MR. GUNNERSON: Given that she has
19 discussed the country club and the parking lot
20 and the street, I think she is well aware so I
21 am fine with that.
22 BY MR. GUNNERSON:
23 Q. And you may not know this, but I would
24 like to ask should the damages in this case be
25 attributed differently to each Defendant or are

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1 you saying everyone is at fault and everyone
2 should be fixing the problem together?
3 A. I don't care who pays. I just want it
4 taken care of.
5 Q. So you are not saying Bank of
6 America --
7 A. You could all decide how you want to
8 apportion it.
9 Q. We received recently what we will mark
10 as the last exhibit.
11 (Deposition Exhibit CC marked.)
12 BY MR. GUNNERSON:
13 Q. Exhibit CC is an Appraisal of Real
14 Property. It appears to be an appraisal of
15 Malek's actually two properties as well as the
16 bare lot that he purchased. Do you see that red
17 highlighted area on the front of that exhibit?
18 A. Uh-huh.
19 Q. Do you recall having ever reviewed
20 this before?
21 A. No.
22 MS. CLINE: Could you give her a
23 chance to look at it?
24 MR. GUNNERSON: I didn't know she
25 could tell from the front.

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1 THE WITNESS: But this shows the view
2 from the bedroom.
3 MS. CLINE: He already asked. We are
4 fine with that. Go ahead and review that
5 exhibit.
6 BY MR. GUNNERSON:
7 Q. So exhibit marked as CC, you have seen
8 this before?
9 A. I haven't seen it. I have heard about
10 it.
11 Q. And it appears to be an appraisal of
12 Malek's properties; is that correct?
13 A. Yes.
14 Q. Did you obtain this appraisal, you or
15 your counsel obtain this appraisal?
16 A. My counsel did, yes.
17 Q. We received this. Don't quite
18 understand the purpose of it. What was the
19 purpose of obtaining an appraisal of your
20 neighbor's property?
21 A. Mr. Malek told us he would sell us his
22 property for \$6 million, which is totally out of
23 range. So in thinking that we could solve this
24 whole thing even though we don't really want to
25 buy the property, we thought okay, let's find

1 out what it is really worth and maybe make a
2 counter-offer and have this whole thing over and
3 done with. This is the actual real value of
4 what his property is worth, not the \$6 million
5 that he threw out.

6 Q. And so the object was to see what it
7 was really worth?

8 A. The object was if we could put this
9 whole -- if we could buy it even though we don't
10 want it and put this whole thing to bed and have
11 it over and done with.

12 Q. I see.

13 A. I should also mention that in making
14 an offer and we should buy it for \$6 million
15 really shows lack of good faith.

16 MR. GUNNERSON: I might be done. Can
17 we go on a quick break?

18 THE WITNESS: Sure.

19 (Recessed from 5:46 p.m. to 5:56
20 p.m.)

21 BY MR. GUNNERSON:

22 Q. I am going to finish up from over
23 here. I don't have any other questions right
24 now. I am going to pass the witness.

25 Your counsel just handed me two

1 Binders 1. One is entitled Governing Documents.
2 Do you see that?

3 A. Yes.

4 Q. One is entitled Design Guidelines. Do
5 say that?

6 A. Yes.

7 Q. We were talking about the meeting with
8 Michael in her office on the day you claim was
9 the inspection, correct?

10 A. Yes.

11 Q. Which binder or binders did she give
12 you on that date?

13 A. Both.

14 MR. GUNNERSON: I am going to look
15 through them while she is asking questions and I
16 might have some later. I pass the witness.

18 EXAMINATION

19 BY MS. WINSLOW:

20 Q. My name is Natalie Winslow, and I
21 represent Bank of America and Bank of America's
22 successor, BAC Home Loans, in this litigation.
23 I just have a couple of questions relating to
24 Bank of America that Mr. Gunnerson didn't cover
25 which I would like to cover with you now.

1 Because I know we covered a lot of
2 ground, to kind of direct where I want the
3 deposition to go, what I want to talk about is
4 what you believe Bank of America -- and when I
5 say Bank of America, I am going to say that as
6 Bank of America for itself and its successor,
7 BAC. Is that okay with you?

8 A. Yes.

9 Q. I will just use Bank of America for
10 both and if there is any distinction in your
11 answer, just let me know that.

12 A. What was the second entity?

13 Q. The entity that you sued was BAC Home
14 Loan Servicing, LP.

15 A. Okay.

16 Q. And Bank of America is that entity's
17 successor, so I represent Bank of America for
18 itself and as its successor to BAC Home Loans.

19 A. Okay.

20 Q. What I want to talk to you about is
21 what you believe Bank of America knew related to
22 the bare parcel and what you believe Bank of
23 America should have told you before selling the
24 property to you. Okay?

25 A. Yes.

1 Q. Now, you mentioned earlier that Bank
2 of America had notice that the bare lot that we
3 also talked about as the golf parcel, that there
4 was some changes happening to that piece of
5 property; is that correct?

6 A. Yes.

7 Q. When you say notice, what do you mean
8 by notice?

9 A. Well, my attorneys told me they were
10 sent letters saying that this was happening.

11 Q. Saying that what was happening?

12 A. In other words, when you sell a piece
13 of property like that, you notice all of the
14 people that are in proximity, all of the homes
15 that are in proximity, so they sent a notice to
16 Bank of America saying we are selling this piece
17 of property, we want you to know. Michael, who
18 was your broker for Bank of America, was the
19 broker on that sale.

20 Q. So if you turn to what was previously
21 marked as Exhibit Y, it is the complaint in this
22 action, if you turn to Paragraph 36, it is on
23 Page 7, it says Bank of America received notices
24 of the public hearing regarding the vacation
25 application, correct?

<p style="text-align: right;">221</p> <p>1 A. That is what it says.</p> <p>2 Q. And if you look earlier in the</p> <p>3 complaint, you defined -- you or your attorneys</p> <p>4 defined vacation application as Paragraph 19.</p> <p>5 A. Uh-huh, yes.</p> <p>6 Q. It says Paul Bykowski submitted a</p> <p>7 vacation application to the City of Henderson</p> <p>8 along with supporting documentation requesting</p> <p>9 to vacate existing blanket easements of the golf</p> <p>10 parcel.</p> <p>11 When you are talking about the notice</p> <p>12 that Bank of America had, are you referring to</p> <p>13 the notice of the public hearing that you</p> <p>14 reference in Paragraph 36 of the complaint?</p> <p>15 A. Yes.</p> <p>16 Q. Is there any other notice that you</p> <p>17 allege that Bank of America had that it should</p> <p>18 have told you about?</p> <p>19 A. I don't know.</p> <p>20 Q. As you sit here today, the only notice</p> <p>21 that you know of is the notice of public hearing</p> <p>22 referenced in Paragraph 36 of the complaint?</p> <p>23 A. They also should have been told by</p> <p>24 their broker when they were selling Lairmont</p> <p>25 that there is this new development that is</p>	<p style="text-align: right;">223</p> <p>1 MacDonald Highlands Golf Hole Number 9 in the</p> <p>2 northwest quarter of Section 27, Township 22</p> <p>3 South, Range 62 East, generally located</p> <p>4 northwest of MacDonald Ranch Drive and Stephanie</p> <p>5 Street in the MacDonald Ranch Planning Area,</p> <p>6 correct?</p> <p>7 A. That is what it says.</p> <p>8 Q. It says below that that the petition</p> <p>9 to vacate the blanket easements were approved,</p> <p>10 correct?</p> <p>11 A. Where does it say that?</p> <p>12 Q. Where it says Councilman Sam Bateman</p> <p>13 moved to approve --</p> <p>14 A. Yes, uh-huh.</p> <p>15 Q. To your knowledge, were the blanket</p> <p>16 easements approved?</p> <p>17 A. I assume because he bought the</p> <p>18 property and he is talking about building.</p> <p>19 Q. Turn to the next page, Page 162. It</p> <p>20 says Number 1, the acceptance or approval of</p> <p>21 this item does not authorize or entitle the</p> <p>22 applicant, which would be Mr. Malek, to</p> <p>23 construct the project referred to in such</p> <p>24 application or to receive further development</p> <p>25 approvals, grading permits, or building permits,</p>
<p style="text-align: right;">222</p> <p>1 happening in terms of the property and you need</p> <p>2 to disclose it to whoever wants to buy this</p> <p>3 property.</p> <p>4 Since she was integral in the sale,</p> <p>5 she should have told Bank of America, and I</p> <p>6 don't know, maybe she did, maybe she didn't, but</p> <p>7 she should have told them. It was a material</p> <p>8 disclosure that she should have made to them.</p> <p>9 Q. So let's talk about the public hearing</p> <p>10 that happened.</p> <p>11 (Deposition Exhibit DD marked.)</p> <p>12 BY MS. WINSLOW:</p> <p>13 Q. Ms. Rosenberg, these are minutes that</p> <p>14 your counsel disclosed to us as part of this</p> <p>15 litigation. It is minutes I will represent to</p> <p>16 you that was from the public hearing that was</p> <p>17 held on January 8, 2013.</p> <p>18 If you turn to the second page, which</p> <p>19 is marked Plaintiff's 161, this is the notice</p> <p>20 that Bank of America allegedly had in advance --</p> <p>21 this is the notice that Bank of America</p> <p>22 allegedly had of the public hearing. If you</p> <p>23 look at what the minutes say from the public</p> <p>24 hearing, it says it's a petition to vacate</p> <p>25 existing blanket easements over a portion of</p>	<p style="text-align: right;">224</p> <p>1 correct?</p> <p>2 A. That is what it says.</p> <p>3 Q. My question to you is what is it that</p> <p>4 you expected Bank of America to tell you about</p> <p>5 the golf parcel?</p> <p>6 A. That it had been sold, it was directly</p> <p>7 in our view, they didn't know the impact it</p> <p>8 would have, but that we had to know that it had</p> <p>9 been sold to a private individual, and most</p> <p>10 people don't buy a piece of land not to build on</p> <p>11 it, just to stare at blank land.</p> <p>12 Q. My question to you, Ms. Rosenberg, and</p> <p>13 tell me if I understand you correctly, what Bank</p> <p>14 of America should have told you was that that</p> <p>15 property was sold?</p> <p>16 A. What Bank of America should have told</p> <p>17 us is that there was this contiguous property</p> <p>18 that might affect our view and our privacy.</p> <p>19 Q. Thank you.</p> <p>20 Now, as you sit here today,</p> <p>21 Ms. Rosenberg, you don't know if Mr. Malek is</p> <p>22 going to build on that bare parcel, do you?</p> <p>23 A. No.</p> <p>24 Q. So what you wanted Bank of America to</p> <p>25 tell you or what you are alleging Bank of</p>

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1 America should have told you is that that may or
 2 may not happen, that Mr. Malek may or may not
 3 build on that property?

4 A. Yes. In other words, if they had just
 5 disclosed, we wouldn't be sitting here because I
 6 would not have bought the property.

7 Q. I know we talked about damages a lot.
 8 As you sit here today, are you alleging that you
 9 had been damaged in any way by Bank of America?

10 A. It depends on how all of this works
 11 out.

12 Q. As you sit here today, is it yes or
 13 no?

14 A. Yes.

15 Q. How have you been damaged by Bank of
 16 America as you sit here today?

17 A. I spent a lot of money on fees and
 18 lawyers to try to get this thing resolved. At
 19 this point, I have no idea if it is going to
 20 resolve or not. If they had told me about the
 21 situation, I wouldn't be sitting here today and
 22 spending money and spending time doing this.

23 Q. So your damages as you sit here today
 24 are attorney's fees?

25 A. No. It depends. It depends. If I

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1 have to go out and get another house, if it
 2 turns out he is building and I have to go out
 3 and get another house or I have to reposition
 4 this house or I have to replace the property,
 5 then the damages are whatever it costs me to get
 6 this new property.

7 Q. But those damages are speculative,
 8 correct, as you sit here today?

9 A. Speculative? What is the definition
 10 of speculative?

11 Q. You don't know that you are going to
 12 incur those damages.

13 A. I don't know that, no.

14 Q. I am going to show you some --
 15 (Deposition Exhibit EE marked.)

16 BY MS. WINSLOW:

17 Q. We are marking this document as
 18 Exhibit EE. It is entitled Plaintiff's Sixth
 19 Supplemental Disclosure of Witnesses, Documents,
 20 and Computation of Damages Pursuant to NRCP
 21 16.1. These are documents that your attorney
 22 served on us, I believe, on Friday.

23 If you turn to Page 2, it has a
 24 computation of the damages. It says in addition
 25 to the injunctive relief, the Plaintiff

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1 estimates its damages as follows: Number 1, the
 2 cost to replace the home if injunctive relief is
 3 not obtained, including lot of similar size,
 4 approximately \$4,320,500. I think I said that
 5 correct. Where does that number come from?

6 A. That comes from the insurance
 7 appraisal that replacement value is probably
 8 about 3.5, 3.6 and from the appraisal that we
 9 had on the land value and that computed to about
 10 4.3, 4.4 million.

11 Q. So you are adding in the 3.5, 3.6 from
 12 the insurance appraisal?

13 A. For replacement, replacing 10,000
 14 square feet.

15 Q. Plus the --

16 A. The cost of the land.

17 Q. Which we got --

18 A. From the appraisal that you got from
 19 Brunson Jiu for the land next door.

20 Q. The 3.4, 3.6 for the replacement value
 21 plus the million dollars, the amount that your
 22 expert disclosed that you were damaged as a
 23 result of the potential problem with the view
 24 and privacy, correct?

25 A. No. The cost of the land. In other

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1 words, if you had to replace -- if you had to
 2 replace this, you had the replacement --
 3 basically, the value is what the land is plus
 4 the replacement of the house.

5 Q. So 3.5 to 3.6, where does that number
 6 come from?

7 A. That comes from the insurance man said
 8 if I had to go out and rebuild this house, it
 9 would cost 3.6 million.

10 Q. That is from the insurance?

11 A. Right, and then I would have to buy
 12 the lot.

13 Q. You would have to buy a new lot?

14 A. A new lot.

15 Q. I understand.

16 A. If I could find an analogous lot,
 17 which I couldn't.

18 Q. And you would only incur that,
 19 according to your computation of damages, if
 20 injunctive relief is not obtained, in other
 21 words, if Mr. Malek builds on this property as
 22 you suspect he might build on this property?

23 A. This all depends on what he is going
 24 to do with that piece of land. We don't know.

25 Q. We don't know, correct.

1 A. Yes, so we don't know.
 2 Q. Now, you are also claiming attorney's
 3 fees to your prior counsel in the amount of
 4 \$46,447.22, correct?
 5 A. Yes.
 6 Q. Have you actually paid those amounts
 7 to your former counsel?
 8 A. I paid their fees. I am not exactly
 9 sure if that is exactly the right number, but it
 10 is in the ballpark. I could get the exact
 11 number.
 12 Q. It is close to that?
 13 A. Yes.
 14 Q. And then attorney's fees to Howard
 15 Kim & Associates in excess of \$300,000; is that
 16 correct?
 17 A. Yes, it is.
 18 Q. Have you paid that amount to Howard
 19 Kim & Associates?
 20 A. Yes.
 21 Q. Are you alleging that the value of
 22 your property as you sit here today has been
 23 diminished?
 24 A. Yes.
 25 Q. How?

1 A. It has not been diminished as we sit
 2 here today because he hasn't done anything --
 3 Q. So the answer to that question would
 4 be no, right?
 5 A. It would be no -- no, the answer would
 6 be yes. Because if I went out and I wanted to
 7 sell this property, I would have to disclose
 8 what is going on here and I would then lose the
 9 million dollar value because nobody is going to
 10 pay me the right amount knowing that there is
 11 litigation and knowing what is going on, so the
 12 answer is it is affecting the present value of
 13 the house.
 14 Q. By a million dollars?
 15 A. That is what he says.
 16 Q. Is that what you believe? Do you
 17 believe the value of your house has been
 18 diminished by a million dollars as we sit here
 19 today?
 20 A. Yes.
 21 Q. Do you pay property taxes on this
 22 property?
 23 A. Yes.
 24 Q. You yourself pays property taxes?
 25 A. The trust. The trust pays, yes.

1 Q. When was the first year that you paid
 2 property taxes on this property?
 3 A. When we bought it, 2013.
 4 Q. If I understand the way property taxes
 5 work correctly, the tax assessor will value your
 6 house and you pay property taxes on that amount;
 7 is that correct?
 8 A. I think so, yes.
 9 Q. Do you know how much the tax assessor
 10 valued your property at in 2013?
 11 A. I don't.
 12 Q. Did you dispute the amount that the
 13 tax assessor valued your property at in 2013?
 14 A. No.
 15 Q. I am going to show you --
 16 MS. CLINE: Just for the record, that
 17 wasn't one of the things that was on the list
 18 for subjects.
 19 MS. WINSLOW: I believe it is all of
 20 the allegations in the complaint, correct?
 21 MS. CLINE: What the assessed value is
 22 by the tax assessor.
 23 MS. WINSLOW: Right. We are talking
 24 about what her damages are and what the value of
 25 the property is and that is included as part of

1 the complaint.
 2 MS. CLINE: The taxed value?
 3 MS. WINSLOW: What the property is
 4 valued at, yes.
 5 MS. CLINE: I just want to make sure
 6 because I didn't have her go look up what the
 7 assessed value is.
 8 MS. WINSLOW: I am going to show her.
 9 You guys disclosed it as part of your
 10 disclosures.
 11 (Deposition Exhibit FF marked.)
 12 BY MS. WINSLOW:
 13 Q. This is a document that your attorney
 14 disclosed to us as a part of this litigation.
 15 A. Yes.
 16 Q. It appears to be a record from the
 17 Clark County Real Property Assessor's website.
 18 Would you agree?
 19 A. That is what it looks like.
 20 Q. It has on here real property assessed
 21 value, do you see it, toward the bottom of the
 22 page?
 23 A. Yes, uh-huh.
 24 Q. It has a whole bunch of columns, but
 25 one of the columns is total taxable value. Do

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1 you see that?

2 A. Yes.

3 Q. It has for 2013, 2014 the total

4 taxable value of \$2,791,377. Is that what it

5 says?

6 A. That is what it says.

7 Q. Does that appear to be a correct

8 number to you?

9 A. No.

10 Q. That does not appear to be a correct

11 number to you?

12 A. Are you asking is that a correct

13 number from the assessor's office or a correct

14 number of the value?

15 Q. I am asking is it a correct number

16 from the assessor's office.

17 A. It is a correct number from the

18 assessor's office, yes.

19 Q. You didn't dispute that that was the

20 total taxable value with the assessor's office

21 for the 2013, 2014 taxes, did you?

22 A. Did I dispute it to make it less?

23 Q. Yes. Did you do that?

24 A. No.

25 Q. Have you disputed with the tax

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1 assessor's office your taxes for the current

2 year?

3 A. No.

4 Q. For the 590 Lairmont property?

5 A. No.

6 Q. Have you ever disputed the taxable

7 value with the tax assessor's office for the 590

8 Lairmont property?

9 A. No.

10 Q. I would like to turn back to --

11 A. I would just mention that usually

12 assessed value is based on what you paid for the

13 property, not its actual value.

14 Q. But it looks like the taxable value

15 went up, right, from 2012/2013 to 2013/2014?

16 A. Yes.

17 Q. I would like to go through some of the

18 allegations you have against my client in the

19 complaint. For simplicity sake, I am going to

20 only refer to the original complaint, which is

21 Exhibit Y, which is the operative complaint as

22 we sit here today.

23 If you turn to Page 11, Paragraph 66,

24 it says Bank of America made expressed

25 representations and warranties in the purchase

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1 agreement, and Paragraph 67 says Bank of America

2 materially breached the contract as detailed in

3 Paragraphs 1 through 63 herein.

4 How do you allege that Bank of America

5 materially breached the contract? I am assuming

6 contract means purchase agreement?

7 A. Right. Well, by omission, by not

8 telling us that this was going on. This was a

9 material fact that they did not disclose to us.

10 Q. What was a material fact?

11 A. That the golf course piece of property

12 had been bought and that there was a possibility

13 that it could be built on.

14 Q. The second claim for relief,

15 Paragraph 75, it says Plaintiffs were justified

16 in their expectations under the contract, the

17 purchase agreement, and as a result of the

18 breach, these expectations were denied.

19 What were your expectations under the

20 purchase agreement that you are referring to

21 here in Paragraph 75?

22 A. Our expectations were we were buying

23 what we were seeing, that basically it was as

24 presented. It was this view. It was we knew

25 there were problems with the house but this was

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1 the house, this is where it was situated, and

2 this is what we were getting.

3 Q. And you are talking with respect to

4 the view?

5 A. Yes, and privacy.

6 Q. And privacy.

7 Unjust enrichment I know we talked

8 about a little bit earlier in a different

9 context --

10 A. If I could add to unjust enrichment,

11 they would not have been able to sell the house

12 for this price had they disclosed this problem

13 existed, so they were unjustly enriched by the

14 sales price.

15 Q. Bank of America would not be able

16 to --

17 A. They would have had a problem -- based

18 on the expert's evaluation of how that impairs

19 the price, they were unduly enriched in their

20 purchase price because I was buying something

21 that was misrepresented. Had it been

22 represented accurately, it would have been of a

23 much lower value.

24 Q. Is there any other way that you are

25 alleging that Bank of America was unjustly

237

1 enriched?

2 A. The commissions, just the purchase

3 price as I said.

4 Q. Which we just talked about. Is there

5 any other way that you believe that Bank of

6 America was unjustly enriched?

7 A. No, I think that is it.

8 Q. When we talk about fraudulent or

9 intentional misrepresentation, you state that

10 Bank of America made false representations in

11 their willful omissions to Plaintiff. You are

12 talking about not telling you about the view and

13 the privacy change that may occur if Mr. Malek

14 built on this property; is that correct?

15 A. Yes.

16 Q. Is there any other fraudulent or

17 intentional misrepresentation that you are

18 alleging that Bank of America made to you?

19 A. No. That is it.

20 Q. Similar question for your fifth claim

21 for relief, negligent misrepresentation, you are

22 alleging that Bank of America negligently

23 misrepresented the view and privacy issues

24 relating to Mr. Malek potentially building on

25 his property?

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1 A. What page is this?

2 Q. I am just asking you. I could point

3 to a paragraph. In Paragraph 88, you say made

4 false representations and/or willful omissions.

5 You are talking about not telling you that

6 Mr. Malek might potentially build on this

7 property, correct?

8 A. Well, it says that that was it, but

9 not limited to, so I might be missing something.

10 Q. That is what I am asking you. It

11 says, "But not limited to". What other

12 potential negligent misrepresentations would you

13 be alleging against Bank of America?

14 A. I think that is it.

15 Q. Do you know if Mr. Malek has approval

16 to construct on that bare lot today?

17 A. We don't know because they won't give

18 us any papers. We mentioned this before. We

19 asked several times and nobody will give us

20 anything.

21 If I could go back to the negligent

22 misrepresentation, when they listed it, it

23 should have been in the listing, the agent

24 should have told us about it. I mean, it was

25 just something -- to answer your question, it is

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1 the privacy and the view, but there were so many

2 opportunities for them to disclose.

3 Q. So when you say -- I just want to make

4 sure -- I have a hard time with this too. I

5 want to make sure I understand correctly. When

6 you say that it should have been in the listing,

7 you are saying that Bank of America should have

8 put in its MLS listing that a neighboring

9 property may obstruct views or privacy for this

10 property that Bank of America was selling?

11 A. No. They should have put it in their

12 disclosures.

13 Q. So in their disclosures, not the MLS?

14 A. They didn't have to put it in the MLS,

15 but they had to put it in their disclosures.

16 Q. I don't have this printed, but I could

17 print it if I need to. We served some written

18 discovery to you earlier in this litigation, and

19 one of the things that you had stated in your

20 response was that Bank of America affirmatively

21 represented the property was not located next to

22 or near any future development.

23 Did Bank of America affirmatively

24 represent to you that your property was not

25 located next to or near any known future

240

1 development?

2 A. I have to read what they gave me.

3 Q. As you sit here today --

4 A. I can't answer that question without

5 reading what they gave me.

6 Q. You can't answer whether you recall

7 whether Bank of America affirmatively

8 represented that to you?

9 A. Well, if I wrote that, then they must

10 have, but I would have to look in the papers.

11 Q. You want to look at the interrogatory

12 responses to refresh your recollection?

13 A. Yes.

14 Q. Okay.

15 MS. WINSLOW: Can we take a

16 couple-minute break?

17 MR. GUNNERSON: Yes.

18 (Recessed from 6:25 p.m. to 6:29

19 p.m.)

20 (Deposition Exhibit GG marked.)

21 BY MS. WINSLOW:

22 Q. So here is what we marked as

23 Exhibit GG. These are the responses to our

24 interrogatories to you.

25 A. Can I go back to something you asked

<p style="text-align: right;">241</p> <p>1 me about the misrepresentations --</p> <p>2 MS. CLINE: These are the ones that</p> <p>3 she was asking you about.</p> <p>4 THE WITNESS: Okay.</p> <p>5 BY MS. WINSLOW:</p> <p>6 Q. So Interrogatory Number 1 on Page 2</p> <p>7 states at the bottom, "Describe how the lot</p> <p>8 lines presented at the time of Plaintiff's</p> <p>9 negotiations and purchase of the subject</p> <p>10 property were not accurate, as alleged in</p> <p>11 Paragraph 59 of the complaint."</p> <p>12 You say a whole bunch of things, but</p> <p>13 what I want to ask about is if you turn to the</p> <p>14 next page, it says at Line 4, BANA, Bank of</p> <p>15 America, affirmatively -- it says Bank of</p> <p>16 America affirmatively represented that the</p> <p>17 property was not located next to or near any</p> <p>18 known future development. Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. So my question is how did Bank of</p> <p>21 America affirmatively represent that the</p> <p>22 property was not located next to or near any</p> <p>23 known future development?</p> <p>24 A. Michael gave me a disclosure that she</p> <p>25 signed that said that it was not going to have</p>	<p style="text-align: right;">243</p> <p>1 Bank of America related to the property?</p> <p>2 A. Yes.</p> <p>3 Q. When was the first time you had a</p> <p>4 conversation with Bank of America related to the</p> <p>5 property?</p> <p>6 A. I don't remember the exact date.</p> <p>7 Q. When you were looking at putting in an</p> <p>8 offer for the property, would that be around the</p> <p>9 correct time frame?</p> <p>10 A. No. It was earlier.</p> <p>11 Q. Who did you speak to at Bank of</p> <p>12 America?</p> <p>13 A. I spoke to Elana in Connecticut, part</p> <p>14 of asset management.</p> <p>15 Q. That is all of the stuff we were</p> <p>16 talking about earlier?</p> <p>17 A. Yes.</p> <p>18 Q. Once you got an agent and once Bank of</p> <p>19 America had an agent, did you have any further</p> <p>20 discussions with Bank of America, you</p> <p>21 personally?</p> <p>22 A. Directly?</p> <p>23 Q. Yes.</p> <p>24 A. No. You are talking about after it</p> <p>25 was listed?</p>
<p style="text-align: right;">242</p> <p>1 any future development.</p> <p>2 Q. What disclosure was that, do you</p> <p>3 recall?</p> <p>4 A. It is one of the disclosures she gave</p> <p>5 me.</p> <p>6 Q. One of the ones that you disclosed in</p> <p>7 the litigation?</p> <p>8 A. Right. I think it was the zoning</p> <p>9 thing. It was one of those where she</p> <p>10 affirmatively represented that there wasn't</p> <p>11 going to be a problem with future development,</p> <p>12 knowing that Malek had bought the land.</p> <p>13 Q. Is there any other affirmative</p> <p>14 representation that Bank of America made to you</p> <p>15 that you recall?</p> <p>16 A. No. That was it.</p> <p>17 Q. Earlier you stated, and correct me if</p> <p>18 I am wrong, that you didn't have any personal</p> <p>19 conversations with Bank of America but rather,</p> <p>20 and these were your words, negotiations were</p> <p>21 running through the agents; is that correct?</p> <p>22 MS. CLINE: Objection. Misstates</p> <p>23 prior testimony.</p> <p>24 BY MS. WINSLOW:</p> <p>25 Q. Did you have any conversations with</p>	<p style="text-align: right;">244</p> <p>1 Q. Correct.</p> <p>2 A. No, but she is their agent. Michael</p> <p>3 is their agent.</p> <p>4 Q. All of the questions went through the</p> <p>5 agents -- all of the conversations went through</p> <p>6 the agents, correct?</p> <p>7 A. But she represents Bank of America.</p> <p>8 Q. I understand, but I am trying to</p> <p>9 figure out the conversations. The conversations</p> <p>10 went through the agents, correct?</p> <p>11 A. Yes.</p> <p>12 Q. Did your agent tell you of any</p> <p>13 conversations that she had with Bank of America</p> <p>14 related to views from the property?</p> <p>15 A. When you say Bank of America, do you</p> <p>16 mean with Michael?</p> <p>17 Q. I mean with Bank of America, anyone --</p> <p>18 you said that Bank of America -- that Michael</p> <p>19 was Bank of America's agent, so it would be</p> <p>20 Michael or Bank of America or anyone at Bank of</p> <p>21 America.</p> <p>22 A. Not specific conversations about view.</p> <p>23 Nobody knew about this problem.</p> <p>24 Q. You said earlier that your son, David,</p> <p>25 did a lot of investigation on the property back</p>

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1 in 2009, correct?

2 A. He started looking on Lairmont, yeah.

3 Q. In 2009?

4 A. Yeah.

5 Q. And what you said actually was that

6 you didn't feel you needed to hire experts in

7 advance of purchasing the property because David

8 had done all of the research, correct?

9 A. Yes.

10 Q. And just for clarification, was that

11 research done in 2009 or was that something that

12 was ongoing because the way I understood earlier

13 was that the research happened in 2009 and that

14 is what you were --

15 A. No, no. It became concentrated in

16 2011, 2012.

17 Q. It was ongoing until --

18 A. It was ongoing, yeah.

19 MS. WINSLOW: I think that is all I

20 have. I will pass the witness.

21 MR. DEVOI: Do you want to take five

22 minutes?

23 THE WITNESS: No, I am fine.

24

25

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1 EXAMINATION

2 BY MR. DEVOI:

3 Q. I am just going to pick up where

4 everybody else kind of left off. I am Jay

5 Devoi. I represent Shane Malek and I am counsel

6 from the firm that represents him.

7 I want to pick up and start talking

8 about 2009 where we just talked about with

9 David's investigation of the house. Did you ask

10 David to do anything specific to investigate

11 Lairmont when you started looking there?

12 A. In 2009?

13 Q. Yeah. He was living in Green Valley

14 at the time, correct?

15 A. Yeah. No.

16 Q. When did he start looking at Lairmont?

17 A. In 2012.

18 Q. We know you are a real estate broker.

19 What does David do?

20 A. David is a bankruptcy trustee.

21 Q. Is he familiar with real estate?

22 A. Somewhat.

23 Q. Had you had conversations with him in

24 the past about his familiarity with real estate

25 transactions?

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1 A. Could you be more specific?

2 Q. Like have you talked to him about

3 purchasing homes before?

4 A. Yeah. He grew up with me. I was a

5 realtor and he grow up in the house and we

6 always talked about that.

7 Q. So he is familiar with things like

8 zoning?

9 A. No -- I mean, generally.

10 Q. As a real estate broker, you are

11 familiar with the concept of zoning and how it

12 is important --

13 A. That concept, yes.

14 Q. Did you have any conversations with

15 David about the zoning of the potential Lairmont

16 property?

17 A. No.

18 Q. Did you have any conversations with

19 anybody else about the potential purchase of

20 Lairmont and the zoning of that property?

21 A. No. There didn't seem to be any

22 problem with the zoning. There didn't seem to

23 be any reason. When you got title reports and

24 everything, everything seemed to be fine.

25 Q. So from what you were telling us

248

1 earlier when you were staking out Lairmont from

2 2011 and beyond through David, did he ever

3 discuss any kind of activity in the neighborhood

4 with you in terms of construction or new

5 building?

6 A. Yes.

7 Q. What did he tell you about new

8 construction in that neighborhood?

9 A. We would see which properties were

10 available and if they came out, we would talk

11 about possibly going in and making an offer, and

12 that is how we did 579.

13 Q. So from 2011 onward, you knew new

14 construction was ongoing within the Lairmont

15 area?

16 A. Yes.

17 Q. I want to refer to Exhibit D quickly.

18 It is your letter of intent from February 20,

19 2013. We have been over this document before,

20 but just to confirm the full first paragraph.

21 You state that you knew there was going to be

22 construction adjacent to the 590 Lairmont Place

23 property for the coming years, correct?

24 A. Yes.

25 Q. You knew there was construction in the

<p style="text-align: right;">249</p> <p>1 neighborhood and you knew it was going to be</p> <p>2 next to your house, correct?</p> <p>3 A. Yes.</p> <p>4 Q. I want to turn to the next couple</p> <p>5 pages of that. There are three comparable</p> <p>6 properties. Starting on the third from last</p> <p>7 page, it is PLTF 3291, next to the picture of</p> <p>8 the house, it says zoning, single family,</p> <p>9 correct?</p> <p>10 A. Yes.</p> <p>11 Q. And if we go to the second to the last</p> <p>12 page, PLTF 3292, it says single family in the</p> <p>13 same position, correct?</p> <p>14 A. Yes.</p> <p>15 Q. And it's the same on the last page as</p> <p>16 well, correct?</p> <p>17 A. Yes.</p> <p>18 Q. So we have been over the fact that</p> <p>19 there was a vacation of easements and a change</p> <p>20 of the zoning from the portion of the land that</p> <p>21 was part of the golf course that later became</p> <p>22 part of Mr. Malek's property. Are we on the</p> <p>23 same page about that?</p> <p>24 A. Uh-huh, yes.</p> <p>25 MR. DEVOI: I would like to have this</p>	<p style="text-align: right;">251</p> <p>1 to VLDR, which is very low density residential.</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Turn to the next page. Under Heading</p> <p>5 D, it says, "The proposal mitigates any</p> <p>6 potential significant adverse impacts to the</p> <p>7 maximum practical extent." Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. Do you understand that the Henderson</p> <p>10 City Council made this as one of its findings of</p> <p>11 facts?</p> <p>12 A. No. I don't know what that means.</p> <p>13 Q. Would you agree that the Henderson</p> <p>14 City Council reviewed the proposal to change the</p> <p>15 zoning of the golf course portion and made this</p> <p>16 conclusion based on the MacDonald transfer</p> <p>17 proposal?</p> <p>18 A. I don't know what that means. What</p> <p>19 does that mean?</p> <p>20 Q. The proposal is on the first page. It</p> <p>21 says to amend the land use policy plan so the</p> <p>22 golf course portion could become part of</p> <p>23 Mr. Malek's property.</p> <p>24 A. So what they are saying is basically</p> <p>25 by amending the use of the land, it is not</p>
<p style="text-align: right;">250</p> <p>1 marked as Exhibit HH.</p> <p>2 (Deposition Exhibit HH marked.)</p> <p>3 BY MR. DEVOI:</p> <p>4 Q. I am showing you what has been marked</p> <p>5 as Exhibit HH. Have you seen this document</p> <p>6 before?</p> <p>7 A. Yes.</p> <p>8 Q. Would you accept this as a true and</p> <p>9 correct copy of the then notice of final action?</p> <p>10 A. Yes.</p> <p>11 Q. It is Bates stamped PLTF 1907, which</p> <p>12 meant that your attorneys produced this. Would</p> <p>13 you agree with that?</p> <p>14 A. Yes.</p> <p>15 Q. I want to turn your attention to the</p> <p>16 next page where it says findings of fact. If</p> <p>17 you need a moment to review the document, just</p> <p>18 let me know.</p> <p>19 A. Where did you want me to look?</p> <p>20 Q. Let's go back to the first page for a</p> <p>21 moment. I want to go over underneath the big</p> <p>22 block in the center, it says under Point A, the</p> <p>23 point of the hearing final action is to amend</p> <p>24 the land use policy plan of the zoning of the</p> <p>25 golf parcel from PS, which is public/semipublic,</p>	<p style="text-align: right;">252</p> <p>1 having adverse impact, until you do something on</p> <p>2 the land that it has an adverse impact.</p> <p>3 Q. I am asking if you agree that the</p> <p>4 proposed change in zoning mitigates potential</p> <p>5 significant adverse impacts to the maximum</p> <p>6 practical extent?</p> <p>7 MS. CLINE: Calls for speculation.</p> <p>8 THE WITNESS: I do not agree. Calls</p> <p>9 for speculation.</p> <p>10 MR. DEVOI: I am asking if she agrees</p> <p>11 that that is what the council --</p> <p>12 THE WITNESS: It says finding of fact.</p> <p>13 MS. CLINE: Are you asking about what</p> <p>14 the document says?</p> <p>15 MR. DEVOI: If she agrees that is what</p> <p>16 the findings were. Yes, that's what the</p> <p>17 document says. I think we are on the same page</p> <p>18 now.</p> <p>19 MS. CLINE: Are we?</p> <p>20 THE WITNESS: No. If you are asking</p> <p>21 me was this is the finding of fact, it says this</p> <p>22 was their finding of fact. If you are asking me</p> <p>23 if I understand what that means, I do not.</p> <p>24 BY MR. DEVOI:</p> <p>25 Q. What do you believe that to mean?</p>

<p style="text-align: right;">253</p> <p>1 MS. CLINE: If you know.</p> <p>2 THE WITNESS: I don't know.</p> <p>3 BY MR. DEVOI:</p> <p>4 Q. Let's go to Subheading F where it</p> <p>5 says, "The same development could not be</p> <p>6 accomplished through the use of other</p> <p>7 techniques, such as re-zonings, variances or</p> <p>8 administrative adjustments."</p> <p>9 A. Which one are you reading?</p> <p>10 Q. Subheading F. I want to confirm that</p> <p>11 that is the finding of fact, that that is what</p> <p>12 is on the document and you read it and</p> <p>13 understand it.</p> <p>14 A. What does that mean, the same</p> <p>15 development? What does that refer to?</p> <p>16 Q. The same development with the proposed</p> <p>17 use of the land from the golf course.</p> <p>18 MS. CLINE: Objection. Calls for</p> <p>19 speculation.</p> <p>20 BY MR. DEVOI:</p> <p>21 Q. Let's move on.</p> <p>22 Subheading O, "The proposed master</p> <p>23 plan will not have a significant adverse impact</p> <p>24 on other property in the vicinity." Do you see</p> <p>25 that?</p>	<p style="text-align: right;">255</p> <p>1 sliver up here.</p> <p>2 A. Okay.</p> <p>3 Q. So Document DD, which we reviewed when</p> <p>4 Bank of America's counsel was questioning you,</p> <p>5 turning to the second page, which is PLTF 161,</p> <p>6 do you see where it says that the petition to</p> <p>7 vacate existing blanket easements over a portion</p> <p>8 of MacDonald Highlands Golf Hole Number 9, and</p> <p>9 then incorporating the reference of the</p> <p>10 description that Bank of America's counsel read</p> <p>11 into this earlier, do you understand that that</p> <p>12 terminated the easements in the property there?</p> <p>13 MS. CLINE: Objection. Form, calls</p> <p>14 for speculation.</p> <p>15 THE WITNESS: I see they approved the</p> <p>16 petition to vacate.</p> <p>17 BY MR. DEVOI:</p> <p>18 Q. While that was happening in January</p> <p>19 of 2013, nobody --</p> <p>20 A. Could I just review this for a second?</p> <p>21 Q. So you were not following these</p> <p>22 developments in the City of Henderson while you</p> <p>23 were looking at properties on Lairmont?</p> <p>24 A. Nobody knew about it.</p> <p>25 Q. Did you ask anyone to find out about</p>
<p style="text-align: right;">254</p> <p>1 A. I see that. I don't agree with it.</p> <p>2 Q. I am just asking you to review the</p> <p>3 findings of fact and then a few pages ahead to</p> <p>4 where it says PLTF 1912. Public Works</p> <p>5 Department Conditions specifically said,</p> <p>6 "Applicant must apply and receive approval to</p> <p>7 vacate unnecessary rights-of-way and/or</p> <p>8 easements per Public Works' requirements and</p> <p>9 provide proof of vacation prior to approval</p> <p>10 final map." Do you see that?</p> <p>11 A. Uh-huh.</p> <p>12 Q. Do you understand that that means that</p> <p>13 any easements on the property had to be vacated</p> <p>14 before developing the golf course property into</p> <p>15 a new use?</p> <p>16 A. It says unnecessary rights-of-way or</p> <p>17 easements, yeah.</p> <p>18 Q. Turning back to DD, which we just</p> <p>19 reviewed --</p> <p>20 A. I have never seen this before. I am</p> <p>21 just looking at it.</p> <p>22 Q. Please take your time.</p> <p>23 A. On this tentative map, does it show</p> <p>24 that parcel?</p> <p>25 Q. I believe it does. It is this little</p>	<p style="text-align: right;">256</p> <p>1 them?</p> <p>2 A. That is like asking somebody do you</p> <p>3 know when the lighting is going to strike. If</p> <p>4 you have absolutely no idea that this kind of</p> <p>5 thing is going on, how would you know what to</p> <p>6 look for?</p> <p>7 Q. If you are spending \$2 million on a</p> <p>8 home, did you ask your agent or anybody else to</p> <p>9 look into potential problems that might impair</p> <p>10 your investment?</p> <p>11 MS. CLINE: Objection. Form. Go</p> <p>12 ahead and answer it if you understand his</p> <p>13 question.</p> <p>14 THE WITNESS: We did inspections and</p> <p>15 we did due diligence.</p> <p>16 BY MR. DEVOI:</p> <p>17 Q. Your inspections were limited purely</p> <p>18 to the internal and surface inspections of the</p> <p>19 house, correct?</p> <p>20 MS. CLINE: Objection. Misstates</p> <p>21 prior testimony.</p> <p>22 THE WITNESS: We had no way of knowing</p> <p>23 that this was going on.</p> <p>24 BY MR. DEVOI:</p> <p>25 Q. Prior to filing this lawsuit, did you</p>

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1 ever speak with Shane Malek?

2 A. No.

3 Q. Do you know if David ever spoke with

4 Shane Malek?

5 A. Yes.

6 Q. Prior to filing the lawsuit?

7 A. I don't remember when.

8 Q. When did David tell you about his

9 meeting with Shane Malek?

10 A. He told me he was extremely rude and

11 he told me he had tons of money and he was going

12 to do what he wanted to do, period. David said

13 let's work this out amicably, and he said I have

14 a ton of money and I don't need to work out

15 anything with you and then used an expletive

16 that starts with an F.

17 Q. Do you know if anyone else talked to

18 Shane Malek?

19 A. I don't know of anybody else.

20 MS. CLINE: Are you talking

21 specifically about this property or the lawsuit?

22 THE WITNESS: Bob Dunn spoke to him.

23 BY MR. DEVOI:

24 Q. Let's keep it general. Do you know

25 how many --

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1 MS. CLINE: Ever? Did anyone ever

2 speak to Malek?

3 BY MR. DEVOI:

4 Q. Did anyone ever -- Let's go with Bob

5 Diamond. Do you know how many conversations

6 Mr. Diamond had with Shane Malek?

7 A. No.

8 Q. Did Mr. Diamond relay these

9 conversations to you or to David?

10 A. To David.

11 Q. And was there any progress with those

12 conversations about how to resolve this property

13 issue prior to the offer of \$6 million?

14 A. Mr. Malek was considering selling the

15 property as I told you before, and he talked to

16 Bob Diamond in terms of possibly listing the

17 property. When he talked to him about possibly

18 listing the property, he talked about his three

19 pieces property. As I told you, Bob Diamond

20 said there are no three pieces. At which point,

21 he told him about the golf course.

22 Q. Let's turn to the complaint. It is

23 Exhibit Y. We have gone over this, but not in

24 detail to the sections I want to talk about with

25 you.

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1 Starting on Page 17 for the seventh

2 claim for relief, in Paragraph Number 97, you

3 claim that, "Defendants are estopped to deny

4 Plaintiffs grant of the easement by express and

5 implied agreement."

6 Can you tell me what expressed

7 agreement you are identifying in that paragraph?

8 A. No.

9 Q. Do you know what implied agreement you

10 are identifying in that paragraph?

11 A. I am not a lawyer. I don't know

12 exactly what that means.

13 Q. So the answer is no, you don't know

14 what agreement you are referencing in that

15 paragraph?

16 A. No.

17 MS. CLINE: That was a double

18 negative. You said you don't know and you said

19 no, which would mean that you do know?

20 BY MR. DEVOI:

21 Q. Can you clarify yes, I do know or no,

22 I don't know?

23 A. I think what it means is that he

24 didn't have the right to change the easement on

25 the golf course. I think that is what it means,

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1 but I am guessing.

2 Q. So that is speculation on your part?

3 A. Speculation.

4 Q. Thank you.

5 Eighth claim for relief, it is on the

6 next page, Page 18.

7 A. Which number?

8 Q. Let's start with Paragraph Number 104.

9 It says, "Plaintiff seeks a declaration from

10 this Court regarding the respective property

11 rights."

12 Are you asserting Mr. Malek has any

13 property rights in 590 Lairmont?

14 A. No.

15 Q. Are you asking for a declaration

16 regarding his property rights on his property?

17 A. On the new property.

18 Q. The golf course property integrated

19 into 594 Lairmont?

20 A. Yes.

21 Q. That is what this paragraph relates

22 to?

23 A. Yes.

24 Q. Let's move to the amended complaint.

25 I believe it is Exhibit Z. Let's start on

<p style="text-align: right;">261</p> <p>1 Page 10 before we get to the causes of action. 2 On Paragraph 72, it says, "Malek's construction 3 plans for the Malek property do not comply with 4 the golf course deed restriction and the 5 construction deed restriction." 6 These are specified in the preceding 7 paragraphs, if you need a chance to go back and 8 review what those terms are. How do you contend 9 that Malek's plan does not comply with the golf 10 course deed restriction? 11 A. Well, since we have not gotten the 12 plans, we can't contend at this point -- our 13 supposition was that since he acquired the land, 14 he would be building on it. 15 Q. So this paragraph at least with 16 respect to the golf course deed restriction is 17 pure speculation? 18 A. It is speculation because we haven't 19 gotten the construction plans. 20 Q. Now, as to the construction deed 21 research, how do you allege that Malek's 22 property violates that? 23 A. Let me change that. Can I change 24 that? His construction plans do not comply with 25 the golf deed restriction because it is supposed</p>	<p style="text-align: right;">263</p> <p>1 A. It has been requested. 2 MS. CLINE: We could talk about that 3 later. We will do a motion to compel to get the 4 information. Let him ask the question and you 5 answer. 6 MR. DEVOI: We will deal with the 7 lawyer stuff later. 8 BY MR. DEVOI: 9 Q. With respect to the tenth claim for 10 relief, let's look at Page 15 of the amended 11 complaint -- let's go to Paragraph 126 on 12 Page 16. It states that, "An implied 13 restrictive covenant running with the land 14 requires the golf parcel to be used as part of 15 the 18-hole golf course and for no other 16 purpose." 17 Do you have any other documentation to 18 support this claim? 19 A. The word implied means there isn't 20 documentation. Implied. It is a golf course, 21 so you are not supposed to build on a golf 22 course. 23 Q. Do you believe anything that happened 24 that terminated this covenant? 25 A. No.</p>
<p style="text-align: right;">262</p> <p>1 to be a golf course and you are not supposed to 2 build on it. 3 Q. That is your position? 4 A. Yes. 5 Q. Now, with respect to the construction 6 deed restriction, how do you contend that 7 Malek's property violates that? 8 A. What is that? 9 Q. The construction deed restriction. 10 A. If there is a construction deed 11 restriction and you build on it, then you are 12 not complying with it. 13 Q. He hasn't built on the property though 14 yet, has he? 15 A. Not yet. 16 Q. So this too is a premature allegation? 17 A. Yes. Since you are sitting here, is 18 he intending to build? 19 Q. I am asking the questions 20 respectfully. 21 A. As his attorney, could you provide us 22 with that information? 23 Q. Through discovery, we can provide 24 information that is requested from the 25 Plaintiff.</p>	<p style="text-align: right;">264</p> <p>1 Q. Do you believe that Henderson City 2 Council's resolution negatively affected this 3 implied restrictive covenant that you allege in 4 your complaint? 5 A. No. 6 Q. I am going to turn your attention now 7 to things that happened during the course of the 8 litigation. Are you familiar with the lis 9 pendens that you filed -- strike that. 10 Turning to the litigation, are you 11 familiar with the lis pendens that your counsel 12 filed on 590 Lairmont Place? 13 A. On 590? 14 Q. Mr. Malek's property. 15 MS. CLINE: He is not 590. 16 MR. DEVOI: 594. My mistake. I 17 apologize for that. It has been a long day. 18 BY MR. DEVOI: 19 Q. Are you familiar with the lis pendens 20 that you filed on 594 Lairmont? 21 A. I know they did. 22 Q. Do you know that they later lifted 23 that lis pendens? 24 A. Yes. 25 Q. And there was a filing of an amended</p>

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1 lis pendens on the same property, 594 Lairmont?

2 A. I don't know about that.

3 Q. Speaking generally about the lis

4 pendens, and speaking both the amended original

5 lis pendens collectively as a lis pendens, do

6 you know why you filed a lis pendens on Malek's

7 property?

8 A. I think because of the new piece of

9 property, to try to stop him from building on

10 the new piece of property.

11 Q. You are a real estate agent. You know

12 what a lis pendens is, correct?

13 A. Yes.

14 Q. You know the effect a lis pendens

15 could have on a piece of property?

16 A. Yes.

17 Q. You filed it for the purposes of

18 keeping him from constructing on the new

19 property?

20 A. We filed it because we felt what he

21 was doing was illegal.

22 Q. And the collateral effect of filing a

23 lis pendens is that you believe he could not

24 build on the property while it was pending?

25 MS. CLINE: Objection. Calls for

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1 speculation, form.

2 MR. DEVOI: I am only asking for her

3 state of mind at the time she filed --

4 THE WITNESS: I am not a lawyer.

5 BY MR. DEVOI:

6 Q. You were not unhappy that a lis

7 pendens would have kept him from building on the

8 property?

9 A. I would not be unhappy, no.

10 Q. And you are aware that the lis pendens

11 was discharged by the court, right?

12 A. Yes.

13 Q. You mentioned earlier that disclosure

14 is a big issue, you said you would have lost

15 your license in California if you had not

16 disclosed something of this character. Have you

17 ever had any complaints arising from

18 circumstances arising after you sold a house to

19 someone?

20 A. After I sold a house?

21 Q. Yes.

22 A. No.

23 Q. Are you aware of any clients you had

24 during the course of your career that had their

25 property values decline after you sold them the

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1 house?

2 A. Well, if the market goes down, then

3 the value of the property goes down.

4 Q. You had clients who have had their

5 property value decrease after you sold them a

6 home?

7 A. Yes.

8 Q. Had they ever complained to you about

9 it?

10 A. No.

11 Q. None in the --

12 A. They have whined about the fact that

13 the property was worthless, but they haven't

14 complained in terms of it being my fault.

15 Q. Are you aware of any other property

16 owners ever complaining about your client's

17 purchase of the home degrading their property

18 value?

19 MS. CLINE: Objection. Form.

20 THE WITNESS: Say it again.

21 (Record read as follows:

22 "Q. Are you aware of any other

23 property owners ever complaining

24 about your client's purchase of

25 the home degrading their property

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1 value?")

2 THE WITNESS: Not that I remember.

3 BY MR. DEVOI:

4 Q. Are you aware of any clients ever

5 being involved with litigation arising from

6 homes that you sold them?

7 A. Not that I remember.

8 Q. Have you only sold completed

9 residences or have you ever sold bare land such

10 as the case here with 594 Lairmont?

11 A. I sold bare land.

12 Q. Have you ever had situations where the

13 construction was tied up in litigation for some

14 reason?

15 A. I haven't sold properties where -- I

16 sold vacant lots, but I haven't sold properties

17 under construction, in other words, like a spec

18 house or something. Is that what you are

19 talking about?

20 Q. No. Have you ever sold bare land that

21 was later built up to a house similar to what is

22 happening now with 594 Lairmont?

23 A. Where they bought the lot and they

24 built a house?

25 Q. Correct.

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1 A. Yes.

2 Q. Have you ever had clients who

3 encountered litigation as a result of selling

4 the bare land that they built a new house on?

5 MS. CLINE: Objection to form.

6 THE WITNESS: Not really.

7 BY MR. DEVOI:

8 Q. Not really, so it has happened?

9 A. No. Not to my memory, no.

10 MR. DEVOI: I don't think I have

11 anything more at this time. Anybody else?

12 MR. GUNNERSON: I just have a few

13 follow up questions.

14

15 FURTHER EXAMINATION

16 BY MR. GUNNERSON:

17 Q. Spencer Gunnerson again. Just as I

18 was finishing my questions earlier, your counsel

19 handed me these binders you say you received

20 when you met with Michael Doiron. I am going to

21 hand you first what appears to be the Design

22 Guidelines. I don't know how we are going to

23 mark this as an exhibit since I am not aware of

24 what exhibit numbers these are.

25 MS. CLINE: I could figure out what

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1 the Bates numbers are for these.

2 MR. GUNNERSON: Do you have that front

3 cover -- Did you produce the front covers of

4 these?

5 MS. CLINE: I don't know if I do. If

6 you want, I can mark it separately and disclose

7 it again.

8 MR. GUNNERSON: Let's mark it as next

9 in line, the Design Guidelines. If we could,

10 Counsel, if you could get me those numbers and

11 put a blank in the transcript, is that okay?

12 MS. CLINE: Yes.

13 MR. GUNNERSON: And we could insert it

14 in. What is the next exhibit number?

15 COURT REPORTER: II.

16 (Deposition Exhibit II marked.)

17 BY MR. GUNNERSON:

18 Q. I handed you what we marked as Exhibit

19 II. We will mark it as Exhibit II. It is

20 Design Guidelines that you claim were provided

21 to you. Can you state to me when those appear

22 to be revised as of?

23 A. The last one?

24 Q. Yes.

25 A. September 1, 2006.

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1 (Deposition Exhibit JJ marked.)

2 BY MR. GUNNERSON:

3 Q. In addition to that, I am going to

4 hand you we are going to mark as JJ. It is the

5 Governing Documents, and that binder I believe

6 if you open it up to the first page, there is, I

7 believe, three maps on the front of that binder.

8 Do you see that?

9 A. Yes.

10 Q. Those three maps we will mark JJ as

11 the cover page, if we could, of the binder, and

12 then Exhibit KK will be the first page of that

13 plot map.

14 Could you open up that map you have

15 right there and tell me the date on the bottom

16 right-hand corner?

17 A. 10/06/03.

18 Q. So October 6, 2003.

19 Could you turn to the second map and

20 we will mark the second map as LL. Also, could

21 you tell me the date it says on the bottom

22 right-hand corner?

23 A. 11/06/03.

24 Q. That is November 6, 2003, correct?

25 A. Yes.

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1 Q. Turn to the next one, which we will

2 mark as MM. Can you tell me on that map what

3 the date is on the bottom right-hand corner?

4 A. 3/04/04.

5 Q. Go ahead and close that. Is that all

6 of the maps there at the front?

7 I didn't see any other maps in this

8 binder. Do you see the one at the very end

9 there? The one at the very end, if you open it

10 up, it is not a plat map. It doesn't show the

11 properties specifically, does it? It is a map

12 of the valley; is that correct?

13 A. It says gaming overlay area.

14 Q. It doesn't show the lot lines for the

15 properties, correct?

16 A. No.

17 Q. We will mark that as NN.

18 And then the next map at the end of

19 the binder, which I believe is the last map, we

20 will mark this as OO. That is a map it appears

21 of the valley?

22 A. It is a zoning map of Henderson.

23 Q. And that does not show any lot lines

24 as well, correct?

25 A. It shows zoning.

<p style="text-align: right;">273</p> <p>1 Q. But no lot lines on Lairmont Street,</p> <p>2 correct?</p> <p>3 A. No.</p> <p>4 Q. Is that correct?</p> <p>5 A. Yes, that is correct.</p> <p>6 Q. Are there any other maps that you</p> <p>7 could see in that binder?</p> <p>8 A. I don't think so.</p> <p>9 Q. I didn't see any either. I have no</p> <p>10 further questions.</p> <p>11 MS. CLINE: Natalie, did you have any</p> <p>12 follow-up?</p> <p>13 MS. WINSLOW: No.</p> <p>14 MS. CLINE: If we could take a</p> <p>15 couple-minute break and I will have a couple of</p> <p>16 follow-up questions.</p> <p>17 (Recessed from 7:07 p.m. to 7:17</p> <p>18 p.m.)</p> <p>19 (Deposition Exhibits KK - OO</p> <p>20 marked.)</p> <p>21</p> <p>22 EXAMINATION</p> <p>23 BY MS. CLINE:</p> <p>24 Q. Just a couple of things I want to</p> <p>25 clarify with you. When did your son, David, get</p>	<p style="text-align: right;">275</p> <p>1 Form ever provided to you?</p> <p>2 A. Yes.</p> <p>3 Q. I am going to hand you a document that</p> <p>4 we will mark as Exhibit PP.</p> <p>5 (Deposition Exhibit PP marked.)</p> <p>6 BY MS. CLINE:</p> <p>7 Q. Have you seen this document before?</p> <p>8 A. Yes.</p> <p>9 Q. And what is it?</p> <p>10 A. It is a Seller's Real Property</p> <p>11 Disclosure Form.</p> <p>12 Q. If you look at the bottom of each of</p> <p>13 the pages, do you see initials?</p> <p>14 A. Yes.</p> <p>15 Q. On the right-hand side of each of the</p> <p>16 pages over buyer's initials, are those your</p> <p>17 initials?</p> <p>18 A. That is mine and my husband.</p> <p>19 Q. And just make sure on each of the</p> <p>20 pages that that is correct.</p> <p>21 A. Yes.</p> <p>22 Q. Can you tell me what this form is?</p> <p>23 A. A Seller's Real Property Disclosure</p> <p>24 Form tells you basically everything you need to</p> <p>25 know about the property and they disclose their</p>
<p style="text-align: right;">274</p> <p>1 married?</p> <p>2 A. He got married in 2010, got engaged in</p> <p>3 2009.</p> <p>4 Q. I am going to show you again what was</p> <p>5 previously marked as Exhibit P. The page that</p> <p>6 is Bates stamped BANA 000005, can you tell me</p> <p>7 what Paragraph 10 is?</p> <p>8 A. Disclosures. Shall I read it?</p> <p>9 Q. Yes.</p> <p>10 A. "Within five calendar days of</p> <p>11 acceptance of this agreement, seller will</p> <p>12 provide the following disclosure and/or</p> <p>13 documents, each of which is incorporated herein</p> <p>14 by this reference. Check applicable boxes."</p> <p>15 Q. Is there any box that is checked?</p> <p>16 A. Buyer Real Property Disclosure Form.</p> <p>17 Q. Buyer?</p> <p>18 A. I'm sorry. Seller. It is late.</p> <p>19 Seller Real Property Disclosure Form.</p> <p>20 Q. Is it your understanding that the</p> <p>21 Seller Real Property Disclosure Form if it was</p> <p>22 provided would be incorporated into this</p> <p>23 agreement?</p> <p>24 A. Yes.</p> <p>25 Q. Was a Seller Real Property Disclosure</p>	<p style="text-align: right;">276</p> <p>1 knowledge of it.</p> <p>2 Q. Can you tell me what it says on</p> <p>3 Number 11 on the pages that are Bates stamped</p> <p>4 MHR 000051?</p> <p>5 A. It says are you aware of any of the</p> <p>6 following, and it says, "Any other conditions or</p> <p>7 aspects of the property which materially affect</p> <p>8 its value or use in an adverse manner."</p> <p>9 Q. And what box was checked?</p> <p>10 A. No.</p> <p>11 Q. Is it your understanding that that was</p> <p>12 correct?</p> <p>13 A. No, it is not correct.</p> <p>14 Q. Is it your understanding that Bank of</p> <p>15 America who was the seller had knowledge of</p> <p>16 another adverse condition or aspect of the</p> <p>17 property which materially affects its value or</p> <p>18 use in an adverse manner?</p> <p>19 A. Yes.</p> <p>20 Q. Is there any other things provided</p> <p>21 within the seller's disclosures that you believe</p> <p>22 was answered incorrectly by the seller? You can</p> <p>23 take a second to look at it.</p> <p>24 A. Whether the property was located next</p> <p>25 to or near any known future development.</p>

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1 Q. And what was the answer?

2 A. And the answer was no.

3 Q. Is there anything else that you see?

4 A. Any encroachments, easements, zoning

5 violations, or nonconforming uses, possibly.

6 MS. WINSLOW: What paragraph?

7 THE WITNESS: 2, land or foundation.

8 BY MS. CLINE:

9 Q. Paragraph 9 talks about common

10 interest communities. Can you tell me what that

11 says and which box was checked?

12 A. "Any common areas, facilities like

13 pools, tennis courts, walkways or other areas

14 co-owned with others, or homeowner association

15 which has any authority over the property," and

16 the box checked is no.

17 Q. Is that accurate?

18 A. Yes.

19 Q. Is it accurate that --

20 A. Is it accurate that they didn't know?

21 Q. Is there a common interest community?

22 A. Yes, there is a common interest

23 community.

24 Q. If you go a little bit further to MHR

25 000372, do you recognize that page?

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1 A. Yes.

2 Q. What is it?

3 A. Property conditions, same page.

4 Q. Is there a change to that page?

5 A. Yes.

6 Q. From the first one that was marked as

7 MHR 00051?

8 A. Yes.

9 Q. What is the change?

10 A. There were three changes, Number 9,

11 (a), (b), and (c).

12 Q. When is that dated?

13 A. 5/10/13.

14 Q. Do you know who signed that or

15 initialed it?

16 A. No.

17 Q. It wasn't you?

18 A. No, it wasn't me.

19 Q. Is it your understanding that the

20 seller amended part of the disclosure form?

21 A. Yes.

22 Q. On the amended disclosure form or that

23 amended page marked MHR 372, did they change

24 Paragraph 11?

25 A. No.

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1 Q. So that still reads they are unaware

2 of any other conditions or aspects of the

3 property which materially affect its value or

4 use in an adverse manner?

5 A. Yes.

6 Q. You have talked some about what you

7 believe is important and what you appreciate

8 about the property. Are you aware of what, if

9 anything, was important about this property to

10 your husband?

11 A. Yes. My husband grew up very poor and

12 the money we have we worked for and he worked

13 very, very hard all his life, and one of the

14 things that he really wanted was to have a golf

15 community, be on his street of dreams, and be

16 able to enjoy his old age or our old age

17 actually because we are heading to 70, in a

18 nice, quiet, beautiful place.

19 He loved -- when we saw the house, not

20 only did he love the fact that it was on the

21 driving range -- it was across from the driving

22 range and it was on the 9th hole, he loved when

23 he looked out the flow of the land and it was so

24 beautiful. He is very aesthetic. I am from

25 Brooklyn and I have no aesthetic sense at all.

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1 He is extremely aesthetic. When he found out

2 about this, he was so appalled that his dream

3 was shattered. Now we are in litigation and we

4 have to deal with all of this. Basically, this

5 was the perfect house. It was the fulfillment

6 of all of his dreams, and this is a big mess.

7 It is really a mess.

8 The other thing is he is so committed

9 to golf that our little grandson who is 15

10 months old, he took him across the street to see

11 if he could get him fitted for golf clubs, and

12 of course at 15 or 16 months you don't get

13 fitted for golf clubs. He is in the house with

14 the little golf club and showing him. His dream

15 was he would finish out his medical practice and

16 we would come out here and stay with the

17 grandchildren and doing all of the things that

18 it took him all of those years to accomplish.

19 It has been a very long haul. We are very, very

20 fortunate. A lot of very good things happened

21 to us, but this is sort of a culmination of all

22 of his hard work.

23 Q. You said earlier, you were asked the

24 question before when Mr. Gunnerson was asking

25 you questions about did you ever go to the

<p style="text-align: right;">281</p> <p>1 developer to get maps or anything like that, and</p> <p>2 it is my understanding that you said no.</p> <p>3 Are you aware of whether or not David</p> <p>4 went to the developer to get any maps or</p> <p>5 brochures?</p> <p>6 MR. GUNNERSON: Objection.</p> <p>7 Foundation, calls for speculation.</p> <p>8 THE WITNESS: What I am aware of is</p> <p>9 that once we targeted Lairmont, David went like</p> <p>10 a feign after it. He got brochures, he got MLS</p> <p>11 listings, he looked up plot maps, every time</p> <p>12 something would come up, he said you have to</p> <p>13 come out, you have to see this.</p> <p>14 It was like all of our dream that this</p> <p>15 thing would happen; and when we found 579, we</p> <p>16 said okay, this looks like this is going to be</p> <p>17 the dream. When the dream was floating after a</p> <p>18 flood, what are we going to do now? Then we</p> <p>19 found this house, which is just fabulous.</p> <p>20 David was very instrumental in staying</p> <p>21 on it. He had friends in real estate and</p> <p>22 sometimes there are listings that are not on the</p> <p>23 open market. There is pocket listings that</p> <p>24 other people don't know about, so if something</p> <p>25 would have come up that was not listed, he would</p>	<p style="text-align: right;">283</p> <p>1 privacy was very important.</p> <p>2 So basically it started getting</p> <p>3 smaller and smaller. So basically it had to be</p> <p>4 MacDonald Highlands because there really is no</p> <p>5 premier golf community that has a guarded gate</p> <p>6 and has all of the amenities that that has.</p> <p>7 And then when we found out about</p> <p>8 Lairmont, it became it is going to be Lairmont</p> <p>9 because it is right next to the clubhouse, it is</p> <p>10 right next to the driving range. It is a small</p> <p>11 cul-de-sac street and it is double-gated. It is</p> <p>12 one of the very few streets that is</p> <p>13 double-gated, so you have the first gate and</p> <p>14 then you have the gate in Lairmont, so you are</p> <p>15 tremendously secure. My husband has a fear of</p> <p>16 being attacked and he has a safety problem,</p> <p>17 thing. Having come from New York, we knew that</p> <p>18 we had experienced other things.</p> <p>19 But anyway, so basically it narrowed</p> <p>20 down to there really was no other place where we</p> <p>21 could look, and then it was Lairmont. Then we</p> <p>22 were fortunate when things came up on Lairmont,</p> <p>23 we pursued them and that is how we ended up, but</p> <p>24 it was always Lairmont. Once we really got</p> <p>25 targeted after 2012, it was Lairmont.</p>
<p style="text-align: right;">282</p> <p>1 have known about it. So when we finally found</p> <p>2 it, he had done all of this due diligence for us</p> <p>3 and we didn't feel that we needed to do a lot</p> <p>4 more than that.</p> <p>5 BY MS. CLINE:</p> <p>6 Q. Do you know how you or David or both</p> <p>7 of you or all of you narrowed it down to the</p> <p>8 MacDonald Highlands Ranch community?</p> <p>9 MR. GUNNERSON: Objection. Asked and</p> <p>10 answered, foundation.</p> <p>11 BY MS. CLINE:</p> <p>12 Q. Go ahead.</p> <p>13 A. That was easy. Basically, as I told</p> <p>14 you, David lived in Green Valley. He started</p> <p>15 renting in Green Valley. We started visiting</p> <p>16 him. The area was gorgeous. You have the</p> <p>17 District, you have the little pretty parks, you</p> <p>18 could take walks, you could do golfing.</p> <p>19 So when we decided where we would</p> <p>20 live, we decided to live in that area. Security</p> <p>21 is very important to us so we needed to have a</p> <p>22 gate-guarded community. We lived in one</p> <p>23 previously and it gives you a tremendous level</p> <p>24 of comfort, especially as you get older that you</p> <p>25 don't have to worry about those things, and</p>	<p style="text-align: right;">284</p> <p>1 Q. Did he look at the website for</p> <p>2 MacDonald Highlands?</p> <p>3 A. The website for?</p> <p>4 Q. Are you aware of any materials or</p> <p>5 brochures or marketing advertising that David</p> <p>6 looked at?</p> <p>7 A. Yes.</p> <p>8 MR. GUNNERSON: Same objection.</p> <p>9 THE WITNESS: He showed us some of the</p> <p>10 marketing materials and then I saw the MLS</p> <p>11 listings.</p> <p>12 BY MS. CLINE:</p> <p>13 Q. And that was before you put an offer</p> <p>14 in on the property?</p> <p>15 A. Yes.</p> <p>16 Q. It was before you sent the letter of</p> <p>17 intent?</p> <p>18 A. Yes.</p> <p>19 Q. Earlier you were being asked questions</p> <p>20 by Mr. Gunnerson and he asked you if you would</p> <p>21 consider the fact that Malek purchased the</p> <p>22 property a hidden defect. Do you recall that?</p> <p>23 A. Yes.</p> <p>24 Q. What did you mean by that?</p> <p>25 A. It was hidden to me. It wasn't hidden</p>

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1 to them because they knew about it, so that is
 2 what I meant.

3 Q. And earlier you were being asked
 4 questions by Mr. Winslow about expressed
 5 representations and misrepresentations by Bank
 6 of America.

7 Would you consider the Seller's Real
 8 Property Disclosure Form, which was marked as
 9 Exhibit PP, a representation made by Bank of
 10 America?

11 A. Absolutely.

12 Q. Would you also consider the Seller's
 13 Real Property Disclosure Form a representation
 14 made by Michael Doiron?

15 A. Yes.

16 MR. GUNNERSON: Could you read that
 17 back? I didn't hear that.

18 (Record read as follows:
 19 "Q. Would you also consider the
 20 Seller's Real Property Disclosure
 21 Form a representation made by
 22 Michael Doiron?
 23 A. Yes.")

24 BY MS. CLINE:
 25 Q. And would you consider the answers in

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1 Paragraph 11 about not having any knowledge of
 2 any other conditions or aspects of the property
 3 which materially affect its value or use in any
 4 adverse manner an expressed misrepresentation by
 5 Bank of America?

6 A. Yes.

7 Q. And the same thing for Michael Doiron?

8 A. Yes.

9 MS. CLINE: I think that is all I
 10 have. Do you guys have any other questions?

11 MS. WINSLOW: I just have one.

12

13 FURTHER EXAMINATION

14 BY MS. WINSLOW:
 15 Q. Talking about expressed
 16 representations that Bank of America made to
 17 you, Paragraph 11, any other conditions or
 18 aspects of the property which materially
 19 affected value or used in an adverse manner, the
 20 material misrepresentation that you are talking
 21 about here is again the view and the privacy
 22 issues that we talked about earlier, correct?

23 A. The acquisition of the lot.

24 Q. That affected your view and privacy
 25 allegedly, correct?

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1 A. It could possibly, yes.

2 Q. And there is no other condition or
 3 aspect of the property referenced in
 4 Paragraph 11 that you feel was a material
 5 misrepresentation by Bank of America?

6 A. That's right.

7

8 FURTHER EXAMINATION

9 BY MR. GUNNERSON:
 10 Q. I have a follow-up question for you.
 11 If you look on what has been marked as
 12 Exhibit PP, the Seller's Real Property
 13 Disclosure Form, if you go to the second to the
 14 last page, MHR 000052, do you see that?

15 A. Yes.

16 Q. Do you see on the bottom there is some
 17 signatures. You testified earlier that these
 18 are your initials and your husband's initials
 19 down there; is that correct?

20 A. Yes, uh-huh.

21 Q. If you look in the middle of that
 22 page, there is a statute that says NRS 113.120.
 23 Do you see that?

24 A. Yes.

25 Q. If you follow that down to

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1 Number 2(b), do you see that?

2 A. Yes.

3 Q. That states that the disclosure set
 4 forth on the form is made by the seller and not
 5 by his agent. Do you see that?

6 A. Uh-huh.

7 Q. Does that change your testimony as to
 8 whether or not this Seller's Real Property
 9 Disclosure Form was attributed at all to my
 10 client?

11 A. No.

12 Q. Why not?

13 A. Michael had knowledge. She had
 14 knowledge of what was going on. She was Bank of
 15 America's agent, but she also had knowledge on
 16 her own and she should have disclosed.

17 Q. Regardless of that, as far as
 18 particularly only to this form that is
 19 identified as Exhibit PP, it seems pretty clear
 20 from that statute that it is not to be
 21 attributed to the seller's agent. Regardless of
 22 that, you are saying this form should still
 23 apply to Michael Doiron; is that correct?

24 A. Yes, because in getting the -- as an
 25 agent when your seller is lying, you are

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1 supposed to tell the seller I know you are
 2 lying, this has to be truthful. I had people
 3 fill out seller disclosures and they wanted to
 4 fudge. I said no, you have to tell the truth.
 5 If she didn't have knowledge that this
 6 was the case, that is one thing. But she had
 7 the absolute knowledge that this was going on
 8 and she had the responsibility and obligation to
 9 say to Bank of America that is not a truthful
 10 response.
 11 Q. That's fine. The law is the law.
 12 If you go to the last page, the second
 13 statute down says NRS 113.140. Do you see that?
 14 MS. CLINE: When we marked Exhibit PP,
 15 that included MRH 000372 as the last page, the
 16 amended page. Are you looking at --
 17 MR. GUNNERSON: You didn't mark the
 18 last two pages, you took those off?
 19 MS. CLINE: They are just all
 20 attached.
 21 MR. GUNNERSON: MHR 00053 at the very
 22 end of the packet of the exhibit, do you have
 23 that?
 24 MS. CLINE: This one.
 25 THE WITNESS: Yeah.

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1 BY MR. GUNNERSON:
 2 Q. Again, that is your signature at the
 3 bottom of the page?
 4 A. It is.
 5 Q. Indicating you read the document,
 6 correct?
 7 A. Uh-huh.
 8 Q. And where it says NRS 113.140, do you
 9 see that, top third of the page?
 10 A. Okay, yeah.
 11 Q. Number 3 under there says, "Neither
 12 this chapter nor Chapter 645 of NRS relieves a
 13 buyer or perspective buyer of the duty to
 14 exercise reasonable care to protect himself."
 15 Did you read that?
 16 A. I see that, yes.
 17 Q. Do you recall reading that before you
 18 signed this disclosure statement?
 19 A. Yes.
 20 MR. DEVOI: No further questions.
 21
 22 FURTHER EXAMINATION
 23 BY MS. CLINE:
 24 Q. Do you believe that you exercised
 25 reasonable care in investigating the property

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1 and looking for any problems?
 2 A. Yes.
 3 Q. Why do you think that?
 4 A. I did what you normally do when you
 5 buy a property and even had I gone and done --
 6 even had I gone, this was not recorded so I
 7 would have never found it anyway.
 8 Q. In your experience as a realtor, have
 9 you ever suggested to someone that they should
 10 check to see if an adjoining golf course was
 11 going to be changed for a different use?
 12 A. No. As I mentioned, I actually
 13 brought this up in my office because it was such
 14 a strange idea to me that somebody could sell
 15 off a piece of the golf course. We have 50 or
 16 60 agents and I brought it up in a meeting and
 17 absolutely nobody had ever heard of this. These
 18 are agents that sell high-value properties, many
 19 of them on the golf course. Nobody ever heard
 20 of this happening. It just doesn't happen.
 21 People don't sell off pieces of the golf course.
 22 Q. Earlier, you were discussing the
 23 things that could be changed or be different
 24 about the property if Malek builds on the
 25 property or on the golf course parcel.

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1 Is it possible that the light in the
 2 house, like in the dining room or in the master
 3 bedroom, could also be changed, the natural
 4 lighting?
 5 A. Yeah, absolutely. It completely
 6 depends on what it is he is intending to build;
 7 and since we don't know that yet, we don't know
 8 the effect on the property.
 9 Q. Earlier we marked a document as
 10 Exhibit V and you testified that you believed
 11 that that disclosure, Zoning Classifications and
 12 Land Use Disclosure, meant that the maps and the
 13 documents that they were handing you, that
 14 Michael Doiron was handing you were current; is
 15 that correct?
 16 A. Yes, uh-huh.
 17 Q. And do you believe that this document
 18 saying that you were receiving the most current,
 19 most recent zoning and land use information is a
 20 misrepresentation?
 21 A. Yes.
 22 Q. Do you believe that that should be
 23 attributed to Michael Doiron?
 24 A. Yes.
 25 Q. Do you also believe that that should

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1 be attributed to Bank of America?

2 A. Yes.

3 Q. Looking at Mr. Malek's property, is

4 there anything about the property that made you

5 think that it was going to be as shown on the

6 map?

7 A. There was no activity on the property.

8 There was nothing to indicate that anything was

9 going to happen to that property. There was no

10 way I could have possibly known that there was

11 going to be a purchase or any kind of a building

12 on that piece of property. The flow of the golf

13 course goes right there. I mean, it is just a

14 natural flow of the land. There would be

15 nothing that would indicate to me that there

16 would be anything different.

17 MS. CLINE: I think that is all of the

18 questions that I have.

19 MR. GUNNERSON: I have no further

20 questions. Full and electronic.

21 MS. CLINE: E-trans and regular.

22 (Proceedings concluded at

23 7:43 p.m.)

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2 CERTIFICATE OF DEPONENT

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4 PAGE LINE CHANGE REASON

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18 DECLARATION OF DEPONENT

19 I, BARBARA ROSENBERG, Deponent herein, do

20 hereby declare the within and foregoing

21 transcription to be my deposition in said

22 action; that I have read, corrected and do

23 hereby affix my signature to said deposition

24 this _____ day of _____, 2014.

25

BARBARA ROSENBERG
Deponent

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1

2 REPORTER'S DECLARATION

3

4 STATE OF NEVADA)

5) SS.

6 COUNTY OF CLARK)

7

8 I, CINDY L. HUEBNER, Certified Court

9 Reporter No. 806, declare as follows:

10 That I reported the taking of the deposition

11 of the witness, BARBARA ROSENBERG, commencing on

12 December 8, 2014 at the hour of 1:04 p.m.

13 That prior to being examined, the witness

14 was by me duly sworn to testify to the truth,

15 the whole truth, and nothing but the truth.

16 During the deposition, the deponent was

17 advised of the opportunity to read and sign the

18 deposition transcript under Rule 30, the

19 original signature page is being forwarded to

20 Diana Cline, Esq. to obtain the deponent's

21 signature.

22 That I thereafter transcribed said shorthand

23 notes into typewriting and that the typewritten

24 transcript of said deposition is a complete,

25 true and accurate transcription of said

shorthand notes taken down at said time.

I further declare that I am not a relative

or employee of counsel of any party involved in

said action, nor a relative or employee of the

parties involved in said action, nor a person

financially interested in the action.

Dated at Las Vegas, Nevada this 22nd day of

December, 2014.

Cindy L. Huebner, CCR 806