

**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 11:53 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

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**JOINT APPENDIX VOLUME 4**

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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*

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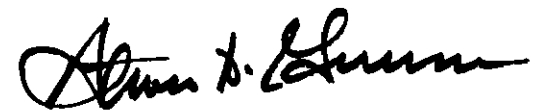
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CLERK OF THE COURT

**STAT**

Preston P. Rezaee, Esq.  
Nevada Bar No. 10729  
Jay DeVoy, Esq., of counsel  
Nevada Bar No. 11950  
Sarah Chavez, Esq., of counsel  
Nevada Bar No. 11935  
THE FIRM, P.C.  
200 E. Charleston Blvd.  
Las Vegas, NV 89104  
Telephone: (702) 222-3476  
Facsimile: (702) 252-3476  
Attorneys for Defendant,  
SHAHIN SHANE MALEK

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

THE FREDERIC AND BARBARA  
ROSENBERG LIVING TRUST,

Plaintiff,

vs.

CASE NO.: A-13-689113-C  
DEPT NO.: I

BANK OF AMERICA, N.A.; BAC HOME  
LOANS SERVICING, LP, a foreign limited  
partnership; MACDONALD HIGHLANDS  
REALTY, LLC, a Nevada limited liability  
company; MICHAEL DOIRON, an individual;  
SHAHIN SHANE MALEK, an individual;  
PAUL BYKOWSKI, an individual; THE  
FOOTHILLS AT MACDONALD RANCH  
MASTER ASSOCIATION, a Nevada limited  
liability company; THE FOOTHILLS  
PARTNERS, a Nevada limited partnership;  
DOES I through X, inclusive; and ROE  
BUSINESS ENTITY I through XX, inclusive,

Defendants.

**DEFENDANT SHAHIN SHANE  
MALEK'S STATEMENT OF  
UNDISPUTED MATERIAL FACTS IN  
SUPPORT OF MOTION FOR SUMMARY  
JUDGMENT**

**STATEMENT OF UNDISPUTED MATERIAL FACTS**

Defendant Shahin Shane Malek ("Malek") submits the following statement of undisputed material facts, and corresponding evidence as required by Nevada Rule of Civil Procedure 56(c) in support of his contemporaneously filed partial motions for summary judgment. Documents already on file in this

case, including Plaintiff's Complaint, Amended Complaint, Answer, Notice of Lis Pendens, and Amended Notice of Lis Pendens, and Answer to Counterclaim, as well as Defendant / Counterclaimant Malek's Answer, Answer to Amended Complaint and Counterclaim, are referenced herein, but not attached.

No.	Undisputed Fact	Evidence
1	Golf courses within Las Vegas' exclusive communities sell pieces of land to adjacent landowners	Excerpts of Lubawy Rebuttal Expert Report (Exhibit 1) at 7-13; Excerpts of Dugan Rebuttal Expert Report (Exhibit 2) at 4-5; Dep. of Paul Bykowski Vol. I ("Bykowski Dep. I") at 39:16-40:19; Dep. of Michael Doiron Vol. I ("Doiron Dep. I") at 110:9-111:25; Dep. of Richard MacDonald ("MacDonald Dep.") at 126:22-128:20.
2	Red Rock Country Club has sold parts of golf course land to landowners within the community.	Exhibit 1 at 7-13;
3	Southern Highlands' Golf Community has sold parts of golf course land to property owners within the community.	Exhibit 2 at 4-5.
4	The MacDonald Highlands Community has sold or leased out-of-bound portions of its golf course to property owners within the community.	Bykowski Dep. I at 39:16-40:19; Doiron Dep. I at 110:9-111:25; MacDonald Dep. at 126:22-128:20.
5	DRFH Ventures LLC sold approximately 15,000 square feet of land, APN 178-28-520-001, to Shane Malek.	Am. Compl. ¶¶ 16, 71; Dep. of Shahin Shane Malek ("Malek Dep.") at 54:2-21.
6	Plaintiff does not wish for Malek to build on the Golf Parcel.	Dep. of Barbara Rosenberg ("Rosenberg Dep") at 266:6-9.; Compl. at 19:6-8; Am. Compl. ¶¶ 109, 118, 130.
7	Barbara and Frederic Rosenberg paid for 590 Lairmont because David Rosenberg and his wife could not qualify to pay for it.	Rosenberg Dep. at 44:9-18.
8	Barbara and Frederic Rosenberg took title to 590 Lairmont as the Frederic and Barbara Rosenberg Living Trust.	Rosenberg Dep. at 115:2-11; <i>see generally</i> Complaint, Amended Complaint.
9	The Golf Parcel went through a re-zoning process before its sale to Malek was recorded.	Bykowski Dep. I at 38:12-20; Malek Dep. at 43:10-21, 47:4-20; Dep. of Michael Tassi, 30(b)(6) designee for the City of Henderson ("Tassi Dep.") at 16:6-23:9; <i>see</i> Am. Compl. ¶¶ 18-25.
10	Malek has lived in MacDonald Highlands since 2006.	Malek Dep. at 10:2-17.
11	Malek was looking in several Las Vegas communities for vacant lots to build a home in the Summer of 2012.	Malek Dep. at 12:5-13:17.



No.	Undisputed Fact	Evidence
12	Malek decided to purchase 594 Lairmont.	Malek Dep. at 14:17-15:2; <i>see</i> Am. Compl. ¶ 14.
13	Malek learned from his agent that 594 Lairmont's prior owner planned to acquire an out-of-bounds portion of the golf course to add to the lot.	Malek Dep. at 19:16-22.
14	Malek planned to buy 594 Lairmont as well as the Golf Parcel to increase his lot size and building area.	Malek Dep. at 19:16-20:5; Doiron Dep. I at 120:7-122:5; Bykowski Dep. I at 38:12-20.
15	Malek planned to merge the Golf Parcel into 594 Lairmont.	Malek Dep. at 21:16-22:10; Bykowski Dep. I at 38:12-20.
16	The CC&R's that control MacDonald Highlands create the Design Review Committee ("DRC"), an independent design approval panel.	Bykowski Dep. I at 28:9-29:5, 30:12-31:5; <i>see</i> Doiron Dep. I at 39:19-40:23; MacDonald Dep. at 25:7-18.
17	The DRC applies written guidelines when deciding what construction projects to approve.	Bykowski Dep. I at 35:13-36:6; Deposition of Paul Bykowski Vol. II ("Bykowski Dep. II") at 32:6-10; MacDonald Dep. at 37:3-20, 142:12-20.
18	The DRC's design guidelines are distributed to all property owners in MacDonald Highlands.	Doiron Dep. I at 148:150-18; Rosenberg Dep. at 217:22-218:13 (noting that Barbara Rosenberg received a copy of the design guidelines).
19	The DRC's design guidelines are more restrictive than the City of Henderson's requirements.	Bykowski Dep. I at 35:13-36:6; Bykowski Dep. II at 109:15-112:12.
20	The DRC's design guidelines serve to promote MacDonald Highlands' unique character.	MacDonald Dep. at 34:16-36:9; 37:3-20; Bykowski Dep. II at 39:23-42:7; Excerpts of design guidelines, attached as Exhibit 3, at 19.
21	The DRC has discretion to approve construction plans that do not strictly comply with the design guidelines.	Bykowski Dep. I at 22:13-23:16, 23:17-24:10; Bykowski Dep. II at 79:7-80:11.
22	The City of Henderson can reject plans that the DRC has approved.	Bykowski Dep. II at 110:11-17.
23	The City of Henderson has previously rejected plans the DRC approved.	Bykowski Dep. II at 110:11-19.
24	In order to construct his home, Malek had to obtain DRC approval of his plans.	Malek Dep. at 73:9-12; Bykowski Dep. II at 36:10-37:21; <i>see</i> Doiron Dep. I at 71:10-72:10.
25	MacDonald Highlands hired B2 Development to apply for the Golf Parcel's re-zoning.	Bykowski Dep. II at 95:1-20.
26	MacDonald Highlands has re-zoned other portions of the golf course to residential use, and added them to adjacent residential lots.	Bykowski Dep. I at 39:16-41:23; MacDonald Dep. at 127:3-128:20; <i>see</i> Doiron Dep. I at 110:9-111:22.
27	MacDonald Highlands complied with the steps necessary to re-zone the Golf Parcel from public / semi-public to residential.	Bykowski Dep. II at 93:22-97:16, 99:4-105:25; Tassi Dep. at 16:6-23:9; Notice of Final Action by City

No.	Undisputed Fact	Evidence
		of Henderson, attached as Exhibit 4; Recorded Final Action, attached as Exhibit 5;
28	The City of Henderson requires a community meeting to occur before considering a re-zoning application.	Bykowski Dep. II at 97:17-100:19.
29	The City of Henderson requires the applicant to send notice of the community meeting to residents within a certain distance of the proposed zoning change.	Bykowski Dep. II at 93:22-97:16
30	After that meeting, the City of Henderson's planning commission considers the re-zoning application and any community feedback from the meeting.	Tassi Dep. at 16:6-17:5.
31	Following the planning commission's approval, the proposed zoning change must be approved at two meetings of the Henderson City Council.	Tassi Dep. at 16:24-17:16, 21:11-22:11.
32	Once the Henderson City Council approves the zoning change, the changes are reflected on the City of Henderson's zoning maps	Tassi Dep. at 22:8-23:9.
33	An applicant records a final map with Clark County after all of the necessary departments have signed off on that map.	Tassi Dep. at 53:6-53:13; Bykowski Dep. I at 39:24-41:23.
34	B2 mailed notices of an October 22, 2012 meeting discussing the Golf Parcel's re-zoning to potentially affected residents as required by the City of Henderson.	Bykowski Dep. II at 95:1-23; Dep. of Jessica Woodbridge, Rule 30(b)(6) Designee for Bank of America N.A. ("Woodbridge Dep.") at 57:4-58:2; Affidavit of Compliance, attached as Exhibit 6.
35	Nobody objected to the Golf Parcel's re-zoning at the October 22, 2012 meeting.	Bykowski Dep. II at 92:2-18.
36	Nobody sent any other objections regarding the Golf Parcel's re-zoning to the City of Henderson.	Tassi Dep. at 55:3-23.
37	The City of Henderson held a planning commission meeting about the Golf Parcel's proposed re-zoning.	Tassi Dep. at 16:6-23, 22:8-11;
38	On December 4, 2012, the City of Henderson's City Council passed a resolution approving the re-zoning the Golf Parcel from public / semi-public to residential use	Tassi Dep. at 18:18-25, 21:22-22:7; Exhibit 4.
39	The Henderson City Council approved the proposed zoning change again at its December 18, 2012 meeting	Tassi Dep. at 22:8-23:17; Exhibit 5.
40	The Henderson City Council was required to approve the zoning change at two consecutive meetings.	Tassi Dep. at 22:8-23:17.
41	The City of Henderson recorded its December 18, 2012 ordinance approving the zoning change with the Clark County Recorder on January 7, 2013.	Tassi Dep. at 22:8-9; Exhibit 5.
42	The City of Henderson made a new map reflecting the Golf Parcel's new residential zoning available at the front desk of city hall by January 24, 2013.	Tassi Dep. at 23:10-24:6, 25:2-26:1, 27:17-28:11.
43	The new map showed the Golf Parcel's new zoning as residential-use land.	Tassi Dep. at 27:17-28:11; Printout of online map as it would have

No.	Undisputed Fact	Evidence
		appeared in February 2013, attached as Exhibit 7.
44	The City of Henderson's new zoning map was available to the public.	Tassi Dep. at 56:16-24.
45	By mid-February 2013 the Golf Parcel's new residential zoning classification was reflected in the City of Henderson's interactive, Internet-based zoning map.	Tassi Dep. at 30:6-20; Exhibit 7 at 6.
46	The City of Henderson's online map was free and available to the public.	Tassi Dep. at 30:24-38:3; <i>see</i> Exhibit 7.
47	According to the City of Henderson's representative, checking the zoning for a piece of property on the online map takes less than 5 minutes.	Tassi Dep. at 26:14-27:7.
48	The City of Henderson's final map showing the changed zoning for the Golf Parcel was not recorded until on or about June 26, 2013, although maps showing the new zoning were available from the City of Henderson before recordation.	Bykowski Dep. II at 180:14-182:6; Tassi Dep. at 28:5-22, 36:16-20, 53:6-10, 56:15-24.
49	Bank of America, N.A. ("BANA") owned 590 Lairmont Place from approximately October 27, 2011 through May 10, 2013.	Woodbridge Dep. at 15:1-20; Rosenberg Depo at 43:31-44:25; Exhibit 8.
50	B2 sent notice of the October 22, 2012 neighborhood meeting concerning the Golf Parcel's re-zoning to BANA's valid addresses as owner of 590 Lairmont Place.	Woodbridge Dep. at 56:19-58:2; Exhibit 6.
51	BANA did not take any action in response to B2's notice of the October 22, 2012 neighborhood meeting about a proposed zoning change to the Golf Parcel.	Woodbridge Dep. at 50:25-51:25, 53:4-13, 53:21-54:4, 55:10-17, 58:8-59:9.
52	Barbara and Frederic Rosenberg, individually and through the trust, own a 8,000 square foot, seven-bedroom primary residence in California, they also own a house in Los Alamitos, California, two condos in Manhattan Beach, California, and a house in Hermosa Beach, California.	Rosenberg Dep. at 13:22-16:13.
53	Barbara Rosenberg is a realtor with more than 25 years of experience.	Rosenberg Dep. at 12:19-13:15.
54	Barbara Rosenberg estimates she has participated in more than 500 property sales.	Rosenberg Dep. at 88:8-25.
55	David Rosenberg is a licensed attorney and has lived in the Green Valley, Nevada area since 2009.	Rosenberg Dep. at 16:20-18:8; Malek Dep. at 102:13-103:14, 106:10-17.
56	Barbara and David Rosenberg began contacting BANA to purchase 590 Lairmont in February 2013.	Rosenberg Dep. at 55:1-57:14; Exhibit 8; Emails to BANA attached as Exhibit 9.
57	The Rosenbergs sent BANA a letter of intent to purchase 590 Lairmont on February 20, 2013.	Rosenberg Dep. at 43:20-46:3; Letter of Intent to BANA sent via Barbara Rosenberg's e-mail attached as Exhibit 8.

No.	Undisputed Fact	Evidence
58	BANA did not accept the Rosenbergs' offer contained in the letter of intent.	Rosenberg Dep. at 50:3-51:25.
59	The Rosenbergs ultimately made the winning bid for 590 Lairmont at a price of \$2,302,000.00, and to be paid entirely in cash.	Rosenberg Dep. at 85:1-86:5.
60	None of the Rosenbergs ever researched or investigated the zoning near 590 Lairmont, and never contacted the City of Henderson about the same.	Rosenberg Dep. at 95:9-19, 103:17-104:23, 115:12-116:15, 121:23-123:6, 129:1-130:2; Tassi Dep. at 55:24-56:12.
61	The Trust waived much of its right to inspections of 590 Lairmont.	Rosenberg Dep. at 95:1-16, 129:1-130:2; Waived Inspection Document attached as Exhibit 10.
62	Barbara Rosenberg did not look onto Malek's property when walking through 590 Lairmont.	Rosenberg Dep. at 130:3-23.
63	The Golf Parcel had been marked with stakes, some of which contained orange flags, since December 2012.	Malek Dep. at 112:4-113:10.
64	The Trust's representatives signed a disclosure regarding their reduced privacy by living on a golf course.	Rosenberg Dep. at 116:18-118:19; Privacy Disclosure attached as Exhibit 11.
65	The Trust's representatives signed a disclosure regarding the nearby zoning classifications for 590 Lairmont, advising that its data was only current through February 2010.	Rosenberg Dep. at 120:11-6; Zoning Disclosure attached as Exhibit 12.
66	The zoning notice the Trust signed advised the trust, in bold type, that it could obtain more current information from the City of Henderson, and contained the address and phone number for Henderson's city hall.	Rosenberg Dep. at 120:10-23, 121:12-22; Exhibit 12.
67	Doiron provided all of these disclosures to the Trust's representatives.	Doiron Dep. I at 145:25-149:25.
68	Doiron advised the Trust's representatives that the Trust had 5 days to review the disclosures and even back out of the transaction.	Doiron Dep. I at 145:25-149:25; Common Interest Community Disclosure attached as Exhibit 13; Residential Purchase Agreement attached as Exhibit 14 at 5:25-37.
69	The Trust bought 590 Lairmont from BANA "as-is, where is" and understood that it agreed to those terms.	Rosenberg Dep. at 86:11-88:7, 94:15-25, 95:9-19, 95:25-97:4, 99:10-100:7; Exhibit 14 at 8:48-51.
70	The Trust bought 590 Lairmont from BANA agreeing to satisfy itself as to the property's condition before closing on May 10, 2013.	Rosenberg Dep. at 96:2-20; Exhibit 14 at 8:48-51.
71	Barbara Rosenberg discovered Malek purchased the Golf Parcel one or two months after the Trust closed on 590 Lairmont.	Rosenberg Dep. at 158:16-24.
72	The Trust learned Malek purchased the Golf Parcel through Bob Diamond, a friend of David Rosenberg's.	Rosenberg Dep. at 158:25-160:12.
73	Malek hoped for a happy meeting the first time he met David Rosenberg, his future neighbor.	Malek Dep. at 101:7-102:12.

No.	Undisputed Fact	Evidence
74	David Rosenberg informed Malek that he was an attorney and would make it “very expensive” for Malek to build a home, among other threats.	Malek Dep. at 102:13-20, 103:8-14.
75	David Rosenberg was “screaming” at Doiron about Malek’s purchase of the Golf Parcel, but would not specify what he believed Doiron did wrong.	Doiron Dep. I at 80:15-81:6.
76	Doiron later offered to meet with David Rosenberg to discuss his concerns, but David Rosenberg did not calm down.	Doiron Dep. I at 81:16-82:17.
77	The Trust filed suit on September 23, 2013.	Compl. at 1.
78	The Trust sued BANA for breach of contract, unjust enrichment, and misrepresentation claims.	Compl. ¶¶ 64-90.
79	The Trust sued MacDonald Highlands-related entities for claims seeking legal (monetary) damages.	Compl. ¶¶ 78-94.
80	The Trust added FHP Ventures to its amended complaint, also seeking money damages against it.	Am. Compl. ¶ 9.
81	The Trust has only sought injunctive relief against Malek’s construction throughout the litigation.	Compl. ¶¶ 95-105; Am. Compl. ¶¶ 106-131.
82	The Trust filed suit and asked for injunctive relief without knowing what his construction plans were.	Rosenberg Dep. at 201:24-202:6, 213:1-10; Compl. ¶¶ 60-61.
83	The Trust filed a lis pendens on Malek’s property on September 30, 2015.	Notice of <i>Lis Pendens</i> .
84	The Court expunged the Trust’s lis pendens on Malek’s Property	Order of Jan. 9, 2014.
85	Malek filed a counterclaim against the Trust.	Counterclaim at 1.
86	The Golf Parcel contains rocks and brush, consistent with undeveloped desert.	Rosenberg Dep. at 190:2-5; Malek Dep. at 67:9-68:8; MacDonald Dep. at 60:17-21.
87	Beyond the desert of the Golf Parcel, 590 Lairmont looks out to Stephanie Street and the Dragonridge Country Club employee parking lot.	Rosenberg Dep. at 213:11-23; MacDonald Dep. at 100:12-18.
88	Varying elevations of 590 Lairmont, surrounding houses, the golf course, and Stephanie Street create a privacy-diminishing effect.	Rosenberg Dep. at 213:11-23. 201:10-203:5.
89	The Trust claims that the loss of privacy caused by Malek’s potential building makes 590 Lairmont worthless to it.	Rosenberg Dep. at 184:22-187:20.
90	The Trust’s discovery responses identify damages to its view, privacy and access to air and light as the harms caused by Malek’s potential building.	Excerpts from Trust responses to Interrogatories from MacDonald Highlands, attached as Exhibit 15 at 3:13-27, 4:24-5:10, 5:17-25, ; Excerpts from Trust responses to Interrogatories from BANA, attached as Exhibit 16 at 3:9-21, 6:12-23; Rosenberg Dep. at 101:12-102:2, 192:10-23, 198:2-25, 209:12-210:25.
91	Development is considered to improve views	MacDonald Dep. at 60:18-21,

No.	Undisputed Fact	Evidence
	compared to undeveloped land.	100:10-18.
92	The Trust considered 590 Lairmont a “dream” home, and Lairmont Place the street of dreams.	Rosenberg Dep. at 115:17-24, 210:5-19.
93	The deed restrictions on Malek’s property in MacDonald Highland require compliance with the design review guidelines.	Am. Compl. ¶ 71; Bykowski Dep. II at 31:18-32:10; MacDonald Dep. at 25:7-26:13.
94	The deed restrictions do not prohibit Malek from developing the Golf Parcel.	Bykowski Dep. II at 74:16-21, 34:22-36:9; MacDonald Dep. at 33:16-36:3; MacDonald Design Guideline Excerpts attached as Exhibit 3.
95	Malek submitted numerous versions of his construction plans to the DRC.	Malek Dep. at 76:7-21, 81:12-22; Bykowski Dep. II at 74:22-77:23.
96	The DRC required Malek to make changes to his plans prior to approval.	Bykowski Dep. II at 74:16-77:23.
97	The DRC approved Malek’s plans after he made the specified changes.	Bykowski Dep. II at 74:16-21, 76:4-77:23.
98	As part of its re-zoning of the Golf Parcel, B2 submitted an application to vacate any easements on that property.	Bykowski Dep. II at 183:25-185:7; Application for Vacation attached as Exhibit 17 at 4.
99	The City of Henderson found there were no easements on the Golf Parcel to vacate.	Bykowski Dep. II at 183:25-185:24.
100	The Trust asserts a cause of action against Malek is for implied restrictive covenant.	Am. Compl. ¶¶ 120-131.
101	The Trust claims “an implied restrictive covenant running with the land requires the Golf Parcel to be used as part of the 18-hole golf course and for no other purpose.”	Am. Compl. ¶ 126.
102	The Amended Complaint alleges that the implied restrictive covenant binds Malek and forbids him from building on the Golf Parcel	Am. Compl. ¶¶ 127-130.
103	Construction on the Golf Parcel would affect the Trust’s secondary, or “borrowed” view across the adjacent Golf Parcel, if anything.	Rosenberg Dep. at 198:2-199:9; Bykowski Dep. II at 125:24-129:21; MacDonald Dep. at 60:18-21, 100:10-18.
104	Secondary views are not permanent and not guaranteed.	MacDonald Dep. at 60:5-21 Bykowski Dep. II at 125:24-127:5.
105	The Trust’s Amended Complaint does not allege an easement or implied restrictive covenant by way of necessity.	<i>See generally</i> Am. Compl.
106	The Trust filed an Amended Notice of <i>Lis Pendens</i> on the Golf Parcel as APN 178-27-218-002 on October 24, 2013.	Amended Notice of <i>Lis Pendens</i> , filed October 24, 2013.
107	The Trust’s complaint did not make any allegations about the title or possession of Malek’s property.	Compl. ¶¶ 12-63, 95-105.
108	The Trust’s complaint sought only an easement and declaratory relief against Malek.	Compl. ¶¶ 95-105.
109	The Trust initially used David Rosenberg as its main	Rosenberg Dep. at 16:20-18:8,

No.	Undisputed Fact	Evidence
	point of information when pursuing its purchase of 590 Lairmont.	103:3-8.
110	Barbara Rosenberg hopes Malek does not build on the Golf Parcel.	Rosenberg Dep. at 266:6-9.
111	The Trust's counsel asked numerous deponents for information about Malek's building plans.	Malek Dep. at 91:17-94:24; Bykowski Dep. II at 74:16-79:4; MacDonald Dep. at 139:5-21; Doiron Dep. I at 127:7-24.
112	Malek has suffered damages in the form of attorneys' fees and costs in removing the Trust's false <i>lis pendens</i> from his property.	Malek Dep. at 106:25-107:17; Malek's Fourth Supplemental Disclosures, attached as Exhibit 18, at 5.
113	The Trust knew that there would be construction on Lairmont Place after purchasing 590 Lairmont, including on the adjacent lot.	Rosenberg Dep. at 46:19-47:24; Exhibit 8.
114	The Trust's claim declaratory relief seeks relief that is coextensive with its claim for easement.	Am. Compl. ¶¶ 112-115
115	The Trust asserts a claim for "mandatory injunction" against Malek.	Am. Compl. ¶¶ 117-119.
116	The Trust filed a <i>lis pendens</i> on Malek's property to prevent him from building on it.	Rosenberg Dep. at 265:3-10.
117	As the Trust's trustee, Barbara Rosenberg knew what a <i>lis pendens</i> was, and its legal consequences.	Rosenberg Dep. at 265:11-16.
118	In her December 8, 2014 deposition, Barbara Rosenberg stated that "what we losing possibly is privacy" in discussing the Trust's perceived injuries.	Rosenberg Dep. at 195:11-12.
119	The design review guidelines state: "MacDonald Highlands is planned as one of the premier luxury communities in the United States."	Bykowski Dep. II at 74:16-21, 34:22-36:9; MacDonald Dep. at 33:16-36:3; Exhibit 3 at 19.
120	The design review guidelines state: "The design must fully analyze the physical characteristics of the lot, including topography, slope, view, drainage, vegetation, and access."	Bykowski Dep. II at 74:16-21, 34:22-36:9; MacDonald Dep. at 33:16-36:3; Exhibit 3 at 20.
121	The design review guidelines state: "The siting of individual structures on the lot should consider the following three primary factors: 1) Solar Orientation; 2) View Orientation; and 3) Relationship to adjacent lots and the overall community. The Design Review Committee will consider each lot independently, and will give extensive consideration to [these factors]."	Bykowski Dep. II at 74:16-21, 34:22-36:9; MacDonald Dep. at 33:16-36:3; Exhibit 3 at 24.

1 DATED this 16th day of April, 2015.

2 THE FIRM, P.C.

3  
4 BY: /s/ Jay DeVoy  
5 Preston P. Rezaee, Esq.  
6 Nevada Bar No. 10729  
7 Jay DeVoy, Esq., *of counsel*  
8 Nevada Bar No. 11950  
9 Sarah Chavez, Esq., *of counsel*  
10 Nevada Bar No. 11935  
11 200 E. Charleston Blvd.  
12 Las Vegas, NV 89104  
13 Attorneys for Defendant/Counterclaimant  
14 SHAHIN SHANE MALEK  
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that one this 16<sup>th</sup> day of April, 2015, pursuant to NRCP 5(b), I served via the Eighth  
3 Judicial District Court electronic service system and to be placed in the United States Mail, with first  
4 class postage prepaid thereon, and addressed the foregoing **STATEMENT OF UNDISPUTED**  
5 **MATERIAL FACTS** and all attachments the following parties:

6  
7 Howard C. Kim, Esq.  
8 Email: Howard@hkimlaw.com  
9 Diana S. Cline, Esq.  
10 Email: Diana@hkimlaw.com  
11 Jacqueline A. Gilbert, Esq.  
12 Email: Jackie@hkimlaw.com  
13 *Attorneys for Plaintiff*

14 Darren Brenner  
15 Email: Darren.brenner@akerman.com  
16 Deb Julien  
17 Email: Debbie.julien@akerman.com  
18 Natalie Winslow  
19 Email: Natalie.winslow@akerman.com  
20 *Attorneys for Bank of America, N.A.*

21 Erica Bennett  
22 Email: E.bennett@kempjones.com  
23 J. Randall Jones  
24 Email: Jrj@kempjones.com  
25 Janet Griffin  
26 Email: janetjamesmichael@gmail.com  
27 Email: jlg@kempjones.com  
28 Spencer Gunnerson  
Email: S.gunnerson@kempjones.com  
*Attorneys for Michael Doiron & MacDonald Highlands Realty, LLC*

23 */s/ Jacqueline Martinez*  
24 Employee of The Firm, P.C.

1 DISTRICT COURT  
2 CLARK COUNTY, NEVADA

3 \* \* \* \* \*

CERTIFIED  
TRANSCRIPT

4 THE FREDRIC AND BARBARA ROSENBERG )  
5 LIVING TRUST, )

6 Plaintiff, )

7 vs. )

CASE NO.  
A-13-689113-C

8 BANK OF AMERICA, N.A.; BAC HOME )  
9 LOANS SERVICING, LP, a foreign )  
10 limited partnership; DRAGONRIDGE )  
11 PROPERTIES, LLC; DRAGONRIDGE GOLF )  
12 CLUB, INC., a Nevada corporation; )  
13 MACDONALD PROPERTIES, LTD., a )  
14 Nevada corporation; MACDONALD )  
15 HIGHLANDS REALTY, LLC, a Nevada )  
16 limited liability company; MICHAEL )  
17 DOIRON, an individual; SHAHIN SHANE )  
18 MALEK, an individual; REAL )  
19 PROPERTIES MANAGEMENT GROUP, INC., )  
20 a Nevada corporation; DOES I )  
21 through X; and ROE CORPORATIONS I )  
22 through X, inclusive, )

23 Defendants. )  
24 )  
25 )

17  
18  
19 DEPOSITION OF PAUL BYKOWSKI

20 Taken on Wednesday, January 21, 2015

21 At 10:00 a.m.

22 At 1055 Whitney Ranch Drive, Suite 110

23 Henderson, Nevada

24  
25 REPORTED BY: CHRISTY LYN DeJONKER, CCR NO. 691

1 APPEARANCES:

2 For the Plaintiff:

3 DIANA S. CLINE, ESQ.  
4 KAREN HANKS, ESQ.  
5 Howard Kim & Associates  
6 1055 Whitney Ranch Drive  
Suite 110  
Henderson, Nevada 89012  
(702) 485-3300

7  
8 For MacDonald Highlands Realty, LLC, and Michael  
Doiron:

9 SPENCER GUNNERSON, ESQ.  
10 Kemp, Jones & Coulthard  
3800 Howard Hughes Parkway  
11 17th Floor  
Las Vegas, Nevada 89169  
(702) 385-6000

12

13 For Bank of America:

14 NATALIE WINSLOW, ESQ.  
15 Akerman, LLP  
1160 Town Center Drive  
Suite 330  
16 Las Vegas, Nevada 89144  
(702) 634-5000

17

18 For Shahin Shane Malek:

19 J. MALCOLM DEVOY, ESQ.  
20 DeVoy Law  
200 East Charleston Boulevard  
Las Vegas, Nevada 89104  
21 (702) 706-3051

22

23

24

25

1 For Foothills Partners:

2 RYAN D. HASTINGS, ESQ.  
3 Leach, Johnson, Song & Gruchow  
4 8945 West Russell Road  
5 Suite 330  
6 Las Vegas, Nevada 89148  
7 (702) 538-9074

8 I N D E X

9 WITNESS: PAUL BYKOWSKI

10 EXAMINATION FURTHER EXAMINATION

11 By Ms. Cline: 4

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E X H I B I T S		
Exhibit No.	Description	Page
1	Notice of Taking Deposition	55

1 (Prior to the commencement of the deposition, all of  
2 the parties present agreed to waive statements by the  
3 court reporter, pursuant to Rule 30(b)(4) of NRCP.)  
4 Thereupon --

5 PAUL BYKOWSKI,  
6 was called as a witness, and having been first duly  
7 sworn, was examined and testified as follows:

8 EXAMINATION

9 BY MS. CLINE:

10 Q Can you please state your name for the  
11 record.

12 A Paul Bykowski.

13 Q What is your address?

14 A 207 Prairie Creek Street, Henderson, 89012.

15 Q What is your birth date?

16 A November 14th, 1971.

17 Q How long have you been living in Henderson?

18 A Nineteen years.

19 Q And where did you live before that?

20 A Las Vegas.

21 Q And how long did you live there?

22 A A year.

23 Q And did you graduate high school?

24 A Yes.

25 Q Where did you graduate high school?

1 Q And how long have you been the senior VP of  
2 land development?

3 A Senior VP, I would guess nine years.

4 Q When did you start working for Foothills  
5 Partners or FHP?

6 A 2003.

7 Q Have you always been the senior VP of land  
8 development?

9 A No.

10 Q Have you had other positions?

11 A Yes.

12 Q What were they?

13 A VP of land development.

14 Q Where did you work before Foothills Partners?

15 A Immediately before?

16 Q Yes.

17 A Landwell Company.

18 Q What is that company?

19 A Land development.

20 Q How long did you work there?

21 A I think four years.

22 Q What was your position at Landwell Company?

23 A I believe I was a project manager.

24 Q And where did you work before Landwell  
25 Company?

1           **A       The CC&Rs or the declaration for the**  
2           **community. I believe it might be the declaration for**  
3           **the Foothills at MacDonald Ranch Master Association or**  
4           **something of that nature.**

5           **Q       So if there is over a thousand units or past**  
6           **a thousand units and the board becomes member**  
7           **controlled, will the declarant still have the ability**  
8           **to appoint people to the Design Review Committee?**

9           **A       Yes.**

10          **Q       So that will always be controlled by the**  
11          **declarant?**

12          **A       Yes.**

13          **Q       What is your -- what are your**  
14          **responsibilities on the Design Review Committee?**

15          **A       Currently I take in any plans that need to be**  
16          **reviewed, document the submittals. I review all of the**  
17          **submittals for compliance with the design guidelines**  
18          **and make notes of anything that is not in conformance.**  
19          **I discuss with other members of the committee any items**  
20          **that are not in compliance. And I write the**  
21          **correspondence back to the applicant owners or owner**  
22          **representative any changes that need to be made to the**  
23          **plans to bring them in compliance with the design**  
24          **guidelines.**

25               **If all of the items are addressed, I will**

1 write the approval letters and contact the City of  
2 Henderson regarding any approvals so that the resident  
3 can move forward with the submission to the City of  
4 Henderson for their building permit. I coordinate with  
5 the architects and contractors to answer any questions  
6 they have on the process or what would be required of  
7 them to bring their project in compliance with the  
8 design guidelines.

9 And when the home is completed, I will do an  
10 inspection to ensure that the improvements match what  
11 was approved by the Design Review Committee. I will  
12 write a letter to the owner or representative noting  
13 any differences between the approved plans and what was  
14 constructed. And if all of the improvements match the  
15 approved plans, I will then write an approval letter  
16 that it is in compliance, and that may be it.

17 Q What do the other members of the Design  
18 Review Committee do?

19 A The other members will get involved if there  
20 is an item requiring a design decision that is not  
21 black and white or a request for a variance from the  
22 guidelines of any specific guideline that they may not  
23 be able to or not want to follow to the letter of the  
24 law.

25 There is an ability within the guidelines to



1 have some leeway depending on the overall quality of  
2 the project or what they are trying to do  
3 architecturally, or if there are hardships regarding  
4 topography location setbacks, the committee can grant a  
5 variance for specific situations. So anything that  
6 there is not a letter of the law, there would be a  
7 discussion with other committee members for any design  
8 decision as far as colors or exterior fixtures, the  
9 look of the house, something that is not black and  
10 white.

11 Q Are there regularly scheduled Design Review  
12 Committee meetings?

13 A No.

14 Q Are those meetings open to the public?

15 A No.

16 Q Do you keep minutes of the Design Review  
17 Committee meetings?

18 A No.

19 Q Do you send like e-mail confirmation after a  
20 meeting saying what was discussed?

21 A No.

22 Q Are there different positions within the  
23 Design Review Committee other than the president?

24 A No.

25 Q Sorry, I asked kind of a compound question.

1           So the homeowners association and the  
2       appointed Modifications Committee members will enforce  
3       the design guideline after everything is built. And  
4       they will go on after the developer is gone. And they  
5       will be around for the rest of the time to make sure  
6       that the modifications to the home still stay within  
7       the intent of the design guidelines.

8       BY MS. CLINE:

9           Q     Okay. But just to be clear, the design  
10      review committee isn't like a department within  
11      Foothills Partners, right?

12           A     **No. The Design Review Committee are three**  
13      **individuals that are appointed by the declarant,**  
14      **Foothills. And those individuals that are appointed by**  
15      **Foothills are responsible for administering the design.**

16           Q     Is it fair to say that the Design Review  
17      Committee is within the homeowners association that is  
18      controlled by the declarant?

19           A     **No.**

20           Q     No. Why would you say no?

21           A     **Because the Design Review Committee is not**  
22      **appointed by the homeowners association. They have no**  
23      **communication with the homeowners association. The**  
24      **plans that they review are never shown to the**  
25      **homeowners association. They have no contact with the**

1     **homeowners association at all. They are individuals**  
2     **who are appointed by the declarant. They have**  
3     **exclusive jurisdiction over the initial construction.**  
4     **And they have no communication with the homeowners**  
5     **association.**

6           Q     Sorry, I am a little bit confused. You are  
7     the president of the homeowners association and also on  
8     the Design Review Committee, right?

9           A     **Yes.**

10          Q     So I guess who are you talking about when you  
11     are saying they are never shown to the homeowners  
12     association?

13          A     **Well, the homeowners association consists of**  
14     **people beyond me. They are other board members that**  
15     **are elected and the Modifications Committee have two**  
16     **other members that are individual homeowners. So the**  
17     **answer to that would be that if someone applies to the**  
18     **DRC, I see them in my capacity as a DRC member. But**  
19     **the Modifications Committee does not receive an**  
20     **application, notice that it's being reviewed, they**  
21     **don't look at the plans.**

22                **So as the Modifications Committee member I**  
23     **haven't seen them. And I would say that because there**  
24     **are two other members on the Modifications Committee**  
25     **who only are on the Modifications Committee and they**

1 have no contact with any of the initial plan design  
2 plans that get submitted. They are not aware what's  
3 happening, that it's come in.

4 So personally I am aware of it, but I am  
5 saying as a Modifications Committee or anyone else on  
6 the homeowners board, anybody else on the Modifications  
7 Committee, that application doesn't go to them. They  
8 are not aware of what is going on. It doesn't ever  
9 come in contact with anyone at the RPMG or management  
10 company, they ever never mailed to them. They are  
11 never noticed that the building is happening.

12 Q You testified earlier -- you can correct me  
13 if I am wrong -- that it was the CC&Rs and the  
14 declaration of the community that allowed the DRC to be  
15 formed?

16 A Yes.

17 Q But it's not part of the association?

18 A Correct. The section that establishes the  
19 DRC has a declarant right to declare the members of the  
20 association. The CC&Rs establishes certain declarant  
21 rights that the association has no control over. So  
22 while the committee was established in the CC&Rs, it  
23 also states that the homeowners association and the  
24 members of the board have no control over it. So there  
25 are numerous declarant rights within documents that the

1 homeowners association can't change or control, even  
2 though they are responsible for administering the  
3 CC&Rs. That is one of the things that the declarant  
4 retains control over regardless of the makeup of the  
5 board.

6 Q So what happens if somebody does not get a  
7 final approval letter? Does that mean they can't move  
8 into their house?

9 A No, they can move in. It means generally  
10 there is a provision in the sales contract of a time  
11 clock so that you don't have land speculating within a  
12 custom home community. Generally in the business, you  
13 don't want to start a custom home community and have  
14 people come in and purchase lots and sit on them. And  
15 then when the real estate values go up, you would be  
16 competing against your original purchasers.

17 So in an effort to stop land speculating and  
18 custom home developments, developers generally set a  
19 certain time clock you have to construct within or you  
20 will be fined. And those time clocks are generally  
21 tied to completion of the home through the Design  
22 Review Committee. You don't want to tie them to C of O  
23 or moving in.

24 Because as I had brought up earlier, you can  
25 change plans at the City. Or a lot of times what

1 people do is at the end of the project they will  
2 eliminate stone from their house because it's  
3 expensive. And the distribution of stone around the  
4 house is dictated in the guidelines so that it's a  
5 little more evenly distributed, and not just on the  
6 front like in a tract home. And you will have people  
7 that will not put it on the back of the home. This  
8 won't hold them up from getting a C of O from the City,  
9 moving into their house, but yet they didn't build a  
10 home with their approved plans, so their time clock  
11 will continue.

12 So we will get into a situation where the  
13 fines will accumulate and we have to notify them that  
14 you have to complete your home the way it was initially  
15 designed and approved or your fines will accumulate.  
16 And generally once people see they are getting fined,  
17 they will do their plans correctly and get the approval  
18 letter from the DRC.

19 Q Do the fines become a lien on the property,  
20 or do you know?

21 A They don't automatically become a lien, but I  
22 believe we could sue.

23 MR. GUNNERSON: I am going to object to  
24 foundation to that question. Calls for a legal  
25 conclusion.

1 BY MS. CLINE:

2 Q Do the DRC guidelines contain information  
3 about the building envelope?

4 MR. GUNNERSON: Same objection.

5 THE WITNESS: Can you clarify what you are  
6 getting at with the information?

7 BY MS. CLINE:

8 Q Do you know what a building envelope is?

9 A Yes.

10 Q What is it?

11 A A building envelope would be the area within  
12 a lot where the primary structure should be contained.

13 Q And when you review plans, is one of the  
14 things that you look at as a member of the Design  
15 Review Committee, whether or not the proposed plans  
16 included compliance of building within that building  
17 envelope?

18 A Yes.

19 Q How do you know what the building envelope  
20 is?

21 A There are a few different ways. There is a  
22 building envelope by code, which is established through  
23 the City of Henderson based upon your zoning. And that  
24 building envelope may be amended through the Design  
25 Guidelines. So sometimes the design guidelines could

1     **be more restrictive than the City requirements.**

2           Q     Do you know if the design guidelines are more  
3     restrictive for the properties on Laramont than they  
4     are in the building envelope provided by the code of  
5     the City of Henderson?

6           A     **I believe they are more restrictive.**

7           Q     And where would you look to find out what  
8     those restrictions were?

9           A     **The design guidelines has the setbacks noted  
10    for each individual planning area. And the City of  
11    Henderson would have the setbacks noted under their  
12    zoning.**

13          Q     What do you mean by "individual planning  
14    area"?

15          A     **The community is separated into planning  
16    areas. They are developed separately. So the planning  
17    area for Laramont is planning area 10. For example,  
18    planning area 11 is a Toll Brothers subdivision just  
19    north of the clubhouse. Planning area 7 is down the  
20    street to the south of planning area 10. So each  
21    planning area is developed with its own set of  
22    improvement plans. Generally it goes through  
23    entitlements separately and is mapped separately.**

24                **In the master plan, you will have an overall**  
25    **master plan that sets out the parcel acreage for each**



1     **planning area. So there is an overall plan that may**  
2     **show where the golf course is, where planning area 1,**  
3     **2, 3, 4 has maybe 15, 20-acre pieces of property and**  
4     **it's one large parcel that is shown as a planning area**  
5     **on the overall master plan. But you don't lay out each**  
6     **individual lot for your entire master plan right up**  
7     **front. You will lay out where each area is. And then**  
8     **as the master plan develops, you will go back and then**  
9     **do an individual plan for each planning area.**

10           **So back to your lot line question, you may**  
11     **have the exterior boundaries of a planning area set**  
12     **during initial master planning or design, but the**  
13     **individual lot lines would then be established at a**  
14     **later time when that planning area is developed.**

15           **Q     Do you know the boundaries of planning area**  
16     **10?**

17           **A     Yes.**

18           **Q     What are they?**

19           **A     Could you clarify?**

20           **Q     Okay. So I understand that Laramont, the**  
21     **street and the parcels on that street are included in**  
22     **planning area 10. Are there any other streets**  
23     **included? Does it include the golf course? What is**  
24     **the --**

25           **A     Oh, okay. Planning area 10 are the lots on**

1     **Laramont. It's bounded by the ninth hole on the east**  
2     **side, I believe the fourth hole on the west side and**  
3     **MacDonald Ranch Drive to the south. That would be the**  
4     **general description of the area that is planning area**  
5     **10.**

6           Q     I think you said earlier you are not sure who  
7     would have done the original lot lines for the whole  
8     community. But do you know if it was specifically --  
9     I'm just asking about planning area 10. Do you know  
10    who did the original lot lines?

11           A     **I don't.**

12           Q     Do you know if lot lines have been changed in  
13    planning area 10 since the original planning?

14           A     **Yes.**

15           Q     What changes have been made?

16           A     **Lot 2 was expanded into what was formerly**  
17    **golf course property, after the back of the golf hole**  
18    **where the inbounds playing area had ended. So the**  
19    **outbounds former golf course property changed to**  
20    **residential.**

21           Q     Do you know if there have been any other lot  
22    line changes within planning area 10?

23           A     **Yes.**

24           Q     What other changes?

25           A     **The size of the lots were changed.**

1           Q     So you are saying the size of all of the lots  
2     were changed?

3           A     I don't know if it was all of them.

4           Q     Do you know when that change took place?

5           A     I believe it was around the time I started  
6     because the utilities were being moved and I had to  
7     manage some of the construction of moving or I believe  
8     adding utilities. So I think the lots got a little  
9     smaller and we had to add some utility connections.  
10    But I remember the utility connections were moved  
11    around, so the lot lines changed from the original  
12    layout.

13          Q     Were there any other changes besides lot 2  
14    and the sizes being run for utilities?

15          A     Not that I am aware of.

16          Q     Do you know of any other instances within the  
17    community? So in area 10 or anywhere else where lot  
18    lines were changed to incorporate a piece of the golf  
19    course?

20          A     Yes.

21          Q     When -- or I guess, let me start with how  
22    many are you aware of?

23          A     Four other adjustments in various stages.

24          Q     What do you mean "in various stages"?

25          A     To change a golf course property to

1     **residential there is a number of entitlement procedures**  
2     **and maps that need to be recorded and changed. So the**  
3     **other golf course changes are at various stages of the**  
4     **process.**

5           Q     Do you know the address or lot numbers of the  
6     ones that are in the process of being changed or are  
7     completed?

8           A     **Some.**

9           Q     What are the ones that you remember?

10          A     **I don't recall the addresses, but there is a**  
11     **residence on Toucan Ridge near the lake that is**  
12     **completed, was rezoned and the lot lines were moved.**  
13     **There is an area north of planning area 11 that has**  
14     **been rezoned but not mapped. There is an area on the**  
15     **west side of St. Croix that has been zoned, tentative**  
16     **mapped and the final map is routing for signature. Lot**  
17     **1 in planning area 20 was expanded and that area has**  
18     **been zoned, tentative mapped, and the final map is**  
19     **routing for final signature.**

20          Q     Who would do the final signature, if you  
21     know?

22          A     **I don't know who the last person to sign the**  
23     **final map is, but there are numerous signatures. So**  
24     **the map has to be routed to companies and entities to**  
25     **sign the map before it records. I don't know who the**

1     **last signature is prior to recordation.**

2           Q     Okay. And I think what I meant to ask you  
3     was, for final signature, what does that mean and who  
4     has to sign it? So let me ask you again in a not  
5     compound question.

6                     What entities have to approve the final map?

7           A     **There are various departments at the City of**  
8     **Henderson that all need to sign the map. So a map will**  
9     **get routed through the City of Henderson and has to be**  
10    **signed by a representative in certain departments. For**  
11    **example, Public Works, the survey department, planning**  
12    **signs it. Numerous signatures at the City of**  
13    **Henderson. Southwest Gas and Nevada Power need to sign**  
14    **a map. There is a water representative, I believe. I**  
15    **don't know if it's the Water District or Southern**  
16    **Nevada Health District. That might be the one. I**  
17    **think Southern Nevada Health District. And I think**  
18    **there is an environmental group also that needs to sign**  
19    **it, as well as the land owners.**

20          Q     The people -- when you say "the land owners,"  
21    do you mean the people who own the parcel that are  
22    trying to be remapped?

23          A     **Correct.**

24          Q     Is there anyone else you can think of that  
25    would need to sign off on the final map?

1           **A     Not offhand.**

2           Q     Okay. So you said -- besides lot 2 in  
3 planning area 10, there is one near Toucan Ridge, one  
4 north of planning area 11, one west of St. Croix and  
5 one -- or lot No. 1 in planning area 20.

6                     Is that all the ones that you can think of  
7 that have been changed or in the process of changing?

8           **A     Yes.**

9           Q     For the one on Toucan Ridge, you said the lot  
10 lines have been moved. Do you know when that was  
11 complete?

12          **A     Not certain.**

13          Q     And just to be clear, we would say that it  
14 would be complete when the final map is approved or at  
15 a different point in time?

16          **A     I would term "complete" when the final map is**  
17 **recorded.**

18          Q     Is there a specific process someone needs to  
19 go through or that any of these land owners went  
20 through to have the lot lines moved?

21          **A     Yes.**

22          Q     What is the first thing that they would need  
23 to do?

24          **A     I believe the first thing that needs to be**  
25 **done is an amendment to the comprehensive plan at the**

1     **City of Henderson which establishes zoning categories**  
2     **for land within the city limits. Call it a comp plan**  
3     **amendment.**

4             Q     And then what would they do?

5             A     **After the comp plan amendment -- and**  
6     **sometimes it's done concurrently -- would be a zone**  
7     **change and tentative map needs to be amended or**  
8     **approved.**

9             Q     And what's next?

10            A     **The improvement plans for the area need to be**  
11    **amended to conform to the new tentative map after that**  
12    **is approved.**

13            Q     What happens next?

14            A     **The final map needs to be submitted to**  
15    **Henderson, and then the final map needs to match the**  
16    **improvement plans, the tentative map and all the**  
17    **previous entitlements, and that would then be routed**  
18    **for approval and then final recordation.**

19            Q     Did you have any involvement with that  
20    process for the Toucan Ridge property?

21            A     **Yes.**

22            Q     Did you also have involvement with the  
23    property that was north of planning area 11?

24            A     **Yes.**

25            Q     And the one that was west of St. Croix?

1           **A     Yes.**

2           **Q     And how about lot No. 1 in planning area 20?**

3           **A     Yes.**

4           **Q     Was your involvement about the same**  
5 **throughout the process for all of those, or did you**  
6 **play different roles?**

7           **A     I believe they were all the same except for**  
8 **Toucan Ridge. I think the process had started prior to**  
9 **my employment. And I believe it finished up while I**  
10 **was there. The others I believe I was involved with**  
11 **for the entire process.**

12          **Q     Okay. And is the one that is west of**  
13 **St. Croix and lot 1 for planning area 20, there isn't a**  
14 **final map yet. It's being routed for signature?**

15          **A     There is a final map, but it has not been**  
16 **recorded.**

17          **Q     Okay.**

18          **A     There may have been one other change off of**  
19 **MacDonald Ranch Drive prior to my employment that I was**  
20 **not involved in. I believe there was an adjustment to**  
21 **the east side of the first hole, which would be the**  
22 **west side of the homes off of MacDonald Ranch Drive**  
23 **where the rear lot line was adjusted. Because I**  
24 **believe when I started they were getting final**  
25 **signatures, so I was not directly involved in that one.**



1 But now that we are discussing them, I think I remember  
2 that was another adjustment to the golf course  
3 property.

4 Q Okay. And just to be clear, the four we just  
5 talked about were also adjusted to the golf course.  
6 The lot lines were moved to incorporate part of what  
7 had been the golf course?

8 A Yes. Generally when that initial master plan  
9 is done, you create a parcel for the golf course to  
10 exist within. And then a golf course designer will  
11 come in and lay out the specific design of the hole  
12 within that property. Sometimes due to how the golf  
13 hole plays, the playable area within that designated  
14 property isn't utilizing all of the property.

15 For example, on the ninth hole the green did  
16 not go all the way to the back of the planned property.  
17 I don't know why it wasn't utilized. It could be a  
18 yardage issue playability. But the green wasn't  
19 located all the way to the boundary of the initial  
20 parcel. So there was an area beyond where the grass  
21 stopped that was not playable for the golf course and  
22 yet was not residential, because it wasn't originally  
23 planned that way.

24 So there are some areas around the community  
25 where the playable golf area doesn't stretch as far as

1 was initially anticipated and there's vacant land  
2 between the playable golf course area and the  
3 residential lot. And sometimes a request comes in to  
4 adjust the lot to use that area since it's not being  
5 utilized by the golf course.

6 Q So who would make the request?

7 A Various people. Sometimes the request would  
8 be from a lot owner that notices an empty area between  
9 his lot and the golf course. I believe I suggested one  
10 of them.

11 Q Which one?

12 A Lot 1 in PA20. I believe Mr. MacDonald  
13 suggested one of them, the one by St. Croix. The one  
14 near planning area 11 I believe was my suggestion as  
15 well due to a topography issue.

16 Q Do you know about Toucan Ridge?

17 A Toucan Ridge I believe was the request of the  
18 lot purchaser.

19 Q And what about planning area 10 in lot 1?

20 A I believe that request was from the lot  
21 owner.

22 Q It seems like you do a lot of things for the  
23 MacDonald entities. Is one of your roles marketing?

24 A Not directly, but I am occasionally consulted  
25 on some marketing issues.

1 Q What kind of marketing issues?

2 A Proofreading brochures, checking content of  
3 advertising material for accuracy, coordinating with  
4 marketing consultants, providing them with material  
5 information plans.

6 Q Anything else?

7 A Not that I think of.

8 Q Have you been involved with creating,  
9 updating or proofreading their Web site?

10 A No.

11 Q Going back to adjustments and lot lines,  
12 after the lot lines were adjusted in those  
13 circumstances that we talked about, including planning  
14 area 10, was there new -- were there new building  
15 envelopes created?

16 A Yes.

17 Q Do you know who did that?

18 A I don't know if anyone did that. The new  
19 building envelopes were created by the new lot lines.

20 Q So what are the criteria for building  
21 envelopes?

22 MR. GUNNERSON: Objection. Foundation.

23 THE WITNESS: What do you mean "criteria"?

24 BY MS. CLINE:

25 Q Well, I guess if in any of the places that

1 had their lot lines adjusted, how would the land owner  
2 know what the new building envelope was?

3 **A The building envelope is generally measured**  
4 **from the lot line. So where the lot line changed, the**  
5 **owner would then measure from the new lot line.**

6 Q And where are those measurements found?

7 **A What do you mean "found"?**

8 Q So you said that the building envelope is  
9 usually measured from the lot lines?

10 **A Correct.**

11 Q So there is a number written down somewhere  
12 that says, you know, however many feet?

13 **A Oh, what the actual setbacks are to the**  
14 **building envelope? Okay. The setbacks are described**  
15 **in two places. The City of Henderson in their code has**  
16 **zoning categories that have setbacks. Often 15 to 30**  
17 **feet in the rear, 5 to 15 feet on the side. Generally**  
18 **20 feet in the front yard. And the setbacks will vary**  
19 **based on what type of zoning the land has.**

20 **Additionally, the design guidelines for**  
21 **MacDonald Highlands has a section that includes**  
22 **setbacks. Most of them are the same as the City; some**  
23 **of them may be a little more restrictive depending on**  
24 **the location within the community. And in general, I**  
25 **believe all of our front setbacks are greater than the**

1     **City.**

2           Q     When you are going through the process that  
3     you described earlier for changing the lot lines, is  
4     there any point where you have to give notice to other  
5     people in the community about the change?

6           A     **Yes.**

7           Q     Do you know when those notices would need to  
8     go out or what type of notice would need to go out?

9           A     **Yes.**

10          Q     What type of notice would need to be given?

11          A     **You have to send out a public notice to every**  
12     **land owner within a certain distance. For a**  
13     **comprehensive plan amendment, the notices are based**  
14     **upon the entire master plan. So not just the location**  
15     **of the change, but it would be everybody within the**  
16     **master plan plus a certain distance outside the**  
17     **boundaries of the master plan would have to be noticed**  
18     **of the change. And that notice is for a neighborhood**  
19     **meeting that needs to take place prior to the public**  
20     **hearing. So as one of the conditions prior to the**  
21     **public hearing, they make you send out notices to all**  
22     **of those homeowners; hold the public meeting to discuss**  
23     **the changes in your application, and the City will send**  
24     **a representative to that and note any conversations,**  
25     **objections or anything else that would be relevant so**

1     that the planning commission who then hears the  
2     application after that would have input from the  
3     public.

4             There is additional notice that is sent out  
5     by the City for the public hearings. Generally those  
6     are a postcard where you can then voice your support or  
7     objection to the change, so that the planning  
8     commission or city council knows what type of support  
9     or objection the community has prior to voting on that  
10    change. And those notices I believe are also sent out  
11    within a certain distance of the border of your master  
12    plan.

13            Q     So if someone owned the parcel or the lot  
14    next door, they would get all of the notices?

15            A     Yes.

16            Q     Is the association involved in that process  
17    at all?

18            A     No. Except for that they would receive a  
19    notice as a land owner within the master plan.

20            Q     So your involvement with the process of  
21    changing the lot lines noticing the public as required,  
22    was all in your capacity as an employee of Foothills  
23    Partners or in some other capacity?

24            A     I believe it would be in the capacity of a  
25    representative of Dragonridge because Foothills

CERTIFICATE OF REPORTER

STATE OF NEVADA )  
 ) SS:  
COUNTY OF CLARK )

I, Christy L. DeJonker, a duly commissioned Notary Public, Clark County, State of Nevada, do hereby certify: That I reported the deposition of Paul Bykowski, commencing on Wednesday, January 21, 2015, at 10:00 a.m.

That prior to being deposed, the witness was duly sworn by me to testify to the truth. That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript is a complete, true and accurate transcription of my said shorthand notes. That review of the transcript was requested.

I further certify that I am not a relative, employee or independent contractor of counsel of any of the parties; nor a relative, employee or independent contractor of the parties involved in said action; nor a person financially interested in the action; nor do I have any other relationship with any of the parties or with counsel of any of the parties involved in the action that may reasonably cause my impartiality to be questioned.

IN WITNESS WHEREOF, I have set my hand in my office in the County of Clark, State of Nevada, this 27th day of January, 2015.

  
CHRISTY LYN DEJONKER, CCR NO. 691

1 DISTRICT COURT

2 CLARK COUNTY, NEVADA

3 THE FREDRIC AND BARBARA )  
ROSENBERG LIVING TRUST, )

4 )  
Plaintiff, )

5 vs. )

6 )

BANK OF AMERICA, N.A.; BAC )

7 HOME LOANS SERVICING, LP, )

foreign limited partnership; )

8 DRAGONRIDGE PROPERTIES, LLC; )

DRAGONRIDGE GOLF CLUB, INC., )

9 is a Nevada corporation; )

MACDONALD PROPERTIES, LTD., a )

10 Nevada corporation; MACDONALD )

HIGHLANDS REALTY, LLC, a )

11 Nevada limited liability )

company; MICHAEL DOIRON, an )

12 individual; SHAHIN SHANE )

MALEK, an individual; REAL )

13 PROPERTIES MANAGEMENT GROUP, )

INC., a Nevada corporation; )

14 DOES I through X; and ROE )

CORPORATIONS I through X, )

15 inclusive, )

)

16 Defendants. )

)

17

18 DEPOSITION OF MICHAEL ANN DOIRON  
VOLUME I, DAY 1, PAGES 1 THROUGH 153

19

20 Taken on Friday, January 16, 2015  
At 10:16 a.m.

21 At 1055 Whitney Ranch Drive, Suite 110  
Henderson, Nevada

22

23

24

25 REPORTED BY: JEAN DAHLBERG, RPR, CCR NO. 759, CSR 11715

CERTIFIED  
TRANSCRIPT



**Michael Doiron - 1/16/2015**  
**The Fredric and Barbara Rosenberg Living Trust vs. Bank of America, N.A., et al**

1 APPEARANCES:

2 For the Plaintiff, THE FREDRICK AND BARBARA ROSENBERG  
LIVING TRUST:

3

4 HOWARD KIM & ASSOCIATES  
BY: DIANA S. CLINE, ESQ.  
1055 Whitney Ranch Drive, Suite 110  
5 Henderson, Nevada 89014  
(702) 485-3300  
6 (702) 485-3301  
diana@hkimlaw.com

7

8 For the Defendant, BANK OF AMERICA, N.A.:

9 AKERMAN SENTERFITT, LLP  
BY: NATALIE L. WINSLOW, ESQ.  
10 1160 North Town Center Drive, Suite 330  
Las Vegas, Nevada 89144  
11 (702) 634-5008  
(702) 380-8572 (Facsimile)  
12 natalie.winslow@akerman.com

13

14 For the Defendants MACDONALD HIGHLANDS REALTY, LLC and  
MICHAEL ANN DOIRON:

15 KEMP, JONES & COULTHARD  
BY: SPENCER H. GUNNERSON, ESQ.  
16 3800 Howard Hughes Parkway, Seventeenth Floor  
Las Vegas, Nevada 89169  
17 (702) 385-6000  
(702) 385-6001 (Facsimile)  
18 s.gunnerson@kempjones.com

19

20 For the Defendant, SHAHIN SHANE MALEK:

21 THE FIRM  
BY: JAY MALCOLM DeVOY, ESQ.  
200 East Charleston Boulevard  
22 Las Vegas, Nevada 89104  
(702) 222-3476  
23 (702) 252-3476 (Facsimile)  
jay@thefirm-lv.com

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**Michael Doiron - 1/16/2015**  
**The Fredric and Barbara Rosenberg Living Trust vs. Bank of America, N.A., et al**

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1 HENDERSON, NEVADA; FRIDAY, JANUARY 16, 2015

2 10:15 A.M.

3 -oOo-

4 Whereupon --

5 (In an off-the-record discussion held prior to  
6 the commencement of the proceedings, counsel agreed to  
7 waive the court reporter's requirements under  
8 Rule 30(b)(4) of the Nevada Rules of Civil Procedure.)

9

10 MICHAEL ANN DOIRON,  
11 having been first duly sworn to testify to the truth,  
12 the whole truth, and nothing but the truth, was examined  
13 and testified as follows:

14 EXAMINATION

15 BY MS. CLINE:

16 Q. Good morning. My name is Diana Cline, and I  
17 represent the Rosenberg Trust in this case.

18 Can you please state your name for the record.

19 A. Michael Ann Doiron.

20 MS. CLINE: And if we can just go around and  
21 have the attorneys introduce themselves. All right?

22 MR. DeVOY: I'm Jay DeVoy. I am counsel for  
23 Shane Malek. Your attorney introduced you to me before  
24 the deposition began. I'm of counsel for The Firm PC,  
25 and I will be asking you questions today, as well.

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1 MS. WINSLOW: Hi, Ms. Doiron. Natalie Winslow,  
2 representing Bank of America.

3 BY MS. CLINE:

4 Q. And is it okay if I call you Michael, or do you  
5 prefer Ms. Doiron?

6 A. That's fine.

7 Q. Thank you.

8 How long have you lived in this area?

9 MR. GUNNERSON: Objection; vague.

10 BY MS. CLINE:

11 Q. Okay. What's your address?

12 A. 8091 Yucca Springs Drive, Las Vegas, Nevada  
13 89129.

14 Q. And how long have you lived in Las Vegas?

15 A. About 40 years.

16 Q. Are you currently employed?

17 A. Yes.

18 Q. Where you are employed?

19 A. MacDonald Highlands Realty.

20 Q. And what's your job title there?

21 A. I am the real estate broker.

22 Q. How long have you worked for MacDonald Highlands  
23 Realty?

24 A. On and off for about 16 years.

25 Q. Do you have any other employment currently other

1 than MacDonald Highlands Realty?

2 A. No.

3 Q. Have you ever had your deposition taken before?

4 A. Once with a homeowner, and then I sat in on a  
5 deposition with Bank of America.

6 Q. Were you a party to either of those cases where  
7 there were depositions?

8 A. You know, I don't remember.

9 Q. Do you know if you've ever been a plaintiff in a  
10 lawsuit where you've sued someone?

11 A. I don't understand what that means.

12 Q. Okay. Have you ever been involved in litigation  
13 where you were the one who was suing someone else?

14 A. I've never sued anybody, no.

15 Q. Okay. Have you ever been sued before,  
16 personally before, not including this case?

17 A. I've never been sued, no.

18 Q. When was the deposition that you had once with a  
19 homeowner?

20 A. I'm going to guess around five years ago,  
21 somewhere in there.

22 Q. Do you remember what that case was about?

23 A. I believe -- and I'm guessing -- that it was  
24 construction time clocks.

25 Q. And then you said that you sat in a deposition

1           Q.    All right.  So are you aware of any requirement  
2           of Bank of America to you, as MacDonald Highlands  
3           Realty, to sell properties in the community?

4           A.    As I stated before, I was there at the  
5           deposition for a Bank of America representative.  He cut  
6           it short and offered us a deal.  I stepped out of the  
7           room, I called my developer in Hawaii, and I know a  
8           settlement agreement was reached.

9           MR. GUNNERSON:  I believe that settlement  
10          agreement is confidential, and so I'm not going to allow  
11          her to answer any questions about the contents of the  
12          settlement agreement.

13          MS. CLINE:  Okay.  And that's --

14          MR. GUNNERSON:  Just so you're aware.

15          MS. CLINE:  That's fine.

16          MR. GUNNERSON:  I think that's where it's  
17          headed, so --

18          BY MS. CLINE:

19          Q.    I'm just trying to get an idea, you know, if  
20          there was one.  And I think the existence of one would  
21          show in the documents that were produced already, so --

22                Do you remember when that deposition was?

23          A.    No.

24          Q.    Was it within the last ten years?

25          A.    Yes.

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1           Q.    Was it within the last five years?

2           A.    I believe so.

3           Q.    Do you know if it was within the last two years?

4           A.    I don't know.

5           Q.    So I'm not going to ask you -- or I guess I can  
6 ask, but they can tell you not to answer -- you're aware  
7 that there was some sort of settlement in relation to  
8 litigation between Bank of America and Richard  
9 MacDonald; is that correct?

10          A.    Yes.

11          Q.    Do you know if that related to any particular  
12 entity of Richard MacDonald or him personally?

13          A.    I don't know.

14          Q.    Do you know it if was related to MacDonald  
15 Highlands Realty?

16          A.    I don't know.

17          Q.    In 2012, do you know where Richard MacDonald had  
18 his offices or had an office?

19               MR. GUNNERSON:  Objection; foundation.

20               You can answer.

21               THE WITNESS:  We've moved so many times, so I  
22 couldn't give you exact dates.

23               BY MS. CLINE:

24          Q.    Okay.  So let's just go with MacDonald Highlands  
25 Realty --

1           Q.    Do you know who else besides Richard MacDonald  
2           has an office in his corporate office -- or who works in  
3           his corporate offices?

4           A.    Paul Bykowski was the head of construction,  
5           Joyce Muir is his personal secretary, and Jan Maynor,  
6           M-a-y-n-o-r, is his controller.

7           Q.    Do you know what Paul Bykowski does as the head  
8           of construction?

9           MR. GUNNERSON:  Objection; foundation.

10          THE WITNESS:  A little bit of everything.  
11          Helps -- is the head of DRC, is the president of the HOA  
12          right now, he handles supervising all of the  
13          construction of the land.  He handles getting our maps,  
14          our planning areas zoned.  He handle the design review  
15          process.

16          BY MS. CLINE:

17          Q.    Anything else of which you're aware?

18          A.    No.  I'm sure.  I'm leaving a lot of things out.

19          Q.    That's okay.  What is the DRC?

20          A.    Design Review Committee.

21          Q.    What's your understanding of what the Design  
22          Review Committee is?

23          A.    They --

24          MR. GUNNERSON:  Objection; foundation.

25          Go ahead.



1           THE WITNESS: They review plans that owners turn  
2   in for their custom homes.

3   BY MS. CLINE:

4           Q. Do you know if the Design Review Committee is a  
5   separate legal entity of its own, or if it belongs to  
6   something else?

7           MR. GUNNERSON: Objection; foundation, calls for  
8   speculation.

9           THE WITNESS: I don't know.

10   BY MS. CLINE:

11          Q. Do you have an understanding of what Paul  
12   Bykowski does as the president of the HOA?

13          MR. GUNNERSON: Objection; foundation, calls for  
14   speculation.

15          THE WITNESS: No.

16   BY MS. CLINE:

17          Q. Do you know who else is on the Design Review  
18   Committee besides Paul Bykowski?

19          A. I have sat on it before. Rich MacDonald. And  
20   we used to have an outside architect. We used to have  
21   several other people that were employees of Rich  
22   MacDonald. Paula Gibson. I can't remember the others'  
23   names.

24          Q. When were you on the Design Review Committee?

25          A. Through the years, if they needed a vote and

1 penalties. That normally was handled by our controller,  
2 but the controllers didn't understand it. They would  
3 send out the penalties, but they didn't understand it  
4 because they would have to come to me to get the  
5 contracts out, and then the owners or the new buyers  
6 would call me for those dates and when the clocks were  
7 supposed to start and when they were supposed to stop  
8 and how much money was owed, so I ended up being in the  
9 mix of that. So I was kind of responsible for that.

10 Q. Can you just give me a brief overview of what a  
11 construction clock penalty is, because I'm not very  
12 familiar with that?

13 A. Okay. Each lot has a construction clock on it.  
14 So if you were to buy a lot from me, you would be put  
15 into a developer contract. More than likely you would  
16 be put into a three-year clock, unless you were building  
17 a 10,000 square foot house, which can take a little bit  
18 longer.

19 So a three-year clock would consist of 21 months  
20 to get through the Design Review and get approved with a  
21 letter. 24 months from the close of escrow, or two  
22 years, would be when you needed to start the  
23 construction of the home, and then you would have an  
24 additional 12 months, or a year, to complete the home  
25 and get signed off by the DRC that you actually built

1     what you turned in to the DRC, and you actually  
2     landscaped anything on the exterior what you turned in  
3     to the DRC.

4             Each one of those clocks goes through Design  
5     Review. Starting construction and completing the  
6     construction normally has a one-year -- or a \$100  
7     penalty per day if you miss it. So if you never did  
8     anything to the lot that I sold you, never did a thing,  
9     you would owe \$300 a day. Per day, that's 9,000 a  
10    month.

11       Q.    So \$300 per day?

12       A.    Per penalty. If you never did a thing. And a  
13    lot of people got through Design Review and they shut  
14    the clock off. When we hit 2008, a lot of people  
15    started construction and then couldn't complete it.

16       Q.    So what happens if somebody --

17       A.    So two clocks are shut off. But then you've got  
18    one clock that continues to run because the house was  
19    never completed, it was never signed off, such as the  
20    Rosenbergs' house. The clock kept running.

21       Q.    Okay. Well, we'll get back to that. But what  
22    happens, just generally, if the clock doesn't shut off  
23    and there's penalties assessed?

24       A.    I would normally -- the controller would, but I  
25    took it over -- would send out letters to the owners

1       you are suing me, and I hung up the phone.

2       Q.     Did she call you at your office --

3       A.     Probably.

4       Q.     -- or your cell phone?

5       A.     But if they call my office, they will forward  
6       the calls to my cell. So I don't know whether she has  
7       my cell number or not, so I'm going to say that she did  
8       call the office.

9       Q.     Before that phone call, when was the last time  
10      that you spoken to Barbara Rosenberg?

11      A.     I don't remember.

12      Q.     Did you talk with Fred Rosenberg about the  
13      construction clock?

14      A.     I don't know who Fred Rosenberg is.

15      Q.     Okay. Have you talked to David Rosenberg about  
16      the construction clock?

17      A.     I don't know who David is. I don't know who's  
18      who, who's the father, who's the son. I don't know.

19      Q.     Okay. David is the son and Fred is the father.  
20      Have you talked to the father?

21      A.     I have not talked to the father.

22      Q.     Have you talked to the son, David?

23      A.     The very last time that I talked to the son, and  
24      maybe the only time, is when he walked into my sales  
25      office screaming at me. And I was trying to leave my

1 sales office because I had customers out in my car, and  
2 he was screaming at me. And I kept trying calm him down  
3 and say, "I have to leave. I have an appointment. Can  
4 I make an appointment with you right now so that we can  
5 sit down and discuss whatever you want to discuss?" And  
6 he just kept screaming.

7 And when I walked out the clubhouse door, Shane  
8 Malek was headed up, and he was screaming about the  
9 Rosenbergs. And I said, "Shane, I can't talk to you.  
10 He's in there screaming, you're out here screaming, and  
11 I have customers in my car. So if everybody wants to  
12 make an appointment, I'll talk to people later, but I  
13 have a customer sitting in my car." So that's the last  
14 time I've talked to David Rosenberg. It may have been  
15 the only time I met him.

16 Q. Okay. Do you remember the content of the  
17 conversation, like what he was talking to you about?

18 A. I don't. He just -- he was -- he was standing  
19 there looking at the ground, shaking his head, "I can't  
20 believe this. I just can't believe this." And I'm,  
21 like, "Can I help you?"

22 "I can't believe that you did this." And I'm,  
23 like, I -- "I don't have time to talk to you."

24 Q. Did you --

25 A. And then he just kept repeating that over and

1 over and over. I left him with his head down, shaking  
2 his head, talking like that.

3 Q. Did he give any more specifics on what he  
4 couldn't believe that you did?

5 A. No. No.

6 Q. And did you at that time ask him?

7 A. I didn't have time. I had customers out in the  
8 parking lot in my car, running.

9 Q. Right. So you didn't ask him anything at that  
10 time; right?

11 A. I did not have time, no.

12 Q. Okay. I just --

13 A. All I wanted to do was, I said, "Can I meet you  
14 in an hour? Can I meet you in a week? When can I" --  
15 and he just was not -- he was staring at the ground,  
16 shaking his head just like this, "I cannot believe this.  
17 I cannot believe this." It just went on like that.

18 Q. Okay. And then you said you were on your way  
19 out. You left him there and you were on your way out,  
20 and Mr. Malek came up?

21 A. Mr. Malek was out walking up under the porte  
22 cochere, and I was walking out the door to get to my  
23 customers. And Shane was screaming too about the  
24 Rosenbergs. I'm like --

25 Q. What did he say?

1     what she's asking.

2             THE WITNESS:  Yes.  I think -- I think I  
3     understand that because -- but, no, I don't because  
4     there's been different suits.  I mean, originally it  
5     said something about they were suing me because of the  
6     Strip view.  Like, what Strip view?  So there's been  
7     several pages of paperwork that I've read through.

8     BY MS. CLINE:

9             Q.     Okay, I understand what you're saying.

10            Besides that parcel that's the subject of this  
11     lawsuit, are you aware of any other parcels of -- that  
12     were pieces of the golf course that were sold to anyone  
13     else?

14            A.     In the past years or now or --

15            Q.     Ever in the history of the community.

16            A.     I remember that we had someone that purchased  
17     a -- I sold two lots to, and they merged the two lots  
18     together in front of our water feature.  I wasn't  
19     involved in it.  I think this was something that Rich  
20     had done with the owner.  They needed some more land for  
21     whatever reason, and I don't know what the reasons are.

22            Q.     What water feature are you talking about?

23            A.     There's a 2-1/2 acre lake feature in MacDonald  
24     Highlands.  It's our signature hole, Hole Number 7.

25            Q.     And it's your understanding that part of what

1 used to be the golf course was sold to the person who  
2 had two lots in front of the water feature on Hole  
3 Number 7?

4 A. I don't know if it was sold. I do not know  
5 anything about the negotiations at all.

6 Q. How did you hear about it?

7 A. I don't know if it came from the owner himself.  
8 Again, I've known them for 16 years, and he was -- owned  
9 a huge landscaping company. And I don't know if he  
10 needed more land for his palm trees or what the deal  
11 was, or helped Rich with a portion of the golf course or  
12 something. I have no idea. I just know there was some  
13 more land that he needed.

14 Q. And what's his name?

15 A. That would be Ray Beer.

16 Q. B-e-e-r?

17 A. Uh-huh. And then there was another -- his  
18 partner Russ Bay actually leased -- I believe it's a  
19 half-acre -- leased a half-acre of golf course land on a  
20 99-year lease. And that lease is no longer valid  
21 because I sold the house, and new owners didn't have any  
22 use for it.

23 Q. So the lease is no longer valid because the  
24 house was sold or because the people didn't --

25 A. Because the house was sold.



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1 BY MS. CLINE:

2 Q. Before we went on break, we were talking about  
3 the lots purchased by Mr. Malek, and the first one we  
4 talked about was Lot Number 1, and that he got it  
5 through paying the association dues or through an HOA  
6 foreclosure sale.

7 So let's talk about Lot Number 2. How did you  
8 become involved with the sale of Lot Number 2?

9 A. I actually don't remember. It was owned by the  
10 owner myspace.com, and it was a resale lot. I would  
11 have to pull the paperwork.

12 Q. Okay. And do you remember how you first --  
13 well, I guess go back.

14 Were you retained by the owner of myspace.com to  
15 sell Lot Number 2?

16 A. I don't remember.

17 Q. Do you know if there was a different way that  
18 you would have been retained?

19 A. I believe I may have worked on his construction  
20 clock.

21 Q. And so what do you mean by that?

22 A. He probably called me because he owed money, and  
23 I had to go to Rich to negotiate it. But I would have  
24 to pull that paperwork.

25 Q. And so what did you do once you were retained?

1           A.    I don't remember.

2           Q.    Did you put it on the MLS?

3           A.    I don't remember if I even listed it. I would  
4    have to go back and look at the paperwork. I don't know  
5    if I sold it to Mr. Anderson and sold it to Shane, or  
6    Shane bought it through me or another agent, or if Shane  
7    and Mr. Anderson just came to me and I helped negotiate  
8    a construction clock. I don't remember.

9           Q.    Okay. I'm sorry. I thought you had said  
10   earlier that sold him that parcel?

11          A.    I did say that. And as I thought about it, I  
12   remembered that was a resale lot. Shane was not the  
13   original owner.

14          Q.    Okay. So did you sell Shane the golf course  
15   parcel?

16          A.    I believe so.

17          Q.    And when did you first talk to him about selling  
18   him the golf course parcel?

19          A.    I don't remember.

20          Q.    Do you know in what context you would have  
21   started to talk to him about the golf course parcel?

22          A.    He would have called me, or he would have come  
23   up to my office to discuss it.

24          Q.    Do you remember the terms of the sale of the  
25   golf course parcel to Mr. Malek?

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1           A.    No.

2           Q.    Did you remember how much he purchased it for?

3           A.    No.

4           Q.    Do you remember how big the parcel was?

5           A.    I believe a third-acre.

6           Q.    Do you know if you received a commission for the  
7 sale of that parcel?

8           A.    I believe so.

9           Q.    Do you know how much that commission was?

10          A.    No. I would have to look it up.

11          Q.    And do you know if anyone else received a  
12 commission for that parcel?

13          A.    My partner, Jim, would have received a  
14 commission.

15          Q.    Would anyone else receive money from the sale of  
16 that golf course parcel?

17          A.    Part of the commission would have gone to  
18 MacDonald Highlands Realty.

19          Q.    So you mean -- is this the structure that we  
20 were talking about before, so there's -- 42 percent  
21 would go to Rich --

22          A.    It could have been. I'm not saying that was --

23               MR. GUNNERSON: Let her ask the full question.

24          BY MS. CLINE:

25          Q.    So 42 percent would go to Rich MacDonald, and

1       give us the 5,000. And I was hightailing it out of  
2       there. I was like in and out with Shane and myself.

3       Q.    Do you know if he paid the 5,000?

4       A.    I have no idea.

5       Q.    Do you know who he would have paid it to?

6       A.    FHP Ventures.

7       Q.    Have you seen any plans --

8       A.    Have I seen --

9       Q.    -- for Mr. Malek's properties?

10      A.    No.

11      Q.    Are you aware of any?

12      A.    I'm aware he's been working on plans.

13      Q.    How are you aware of that?

14      A.    Probably from texts with Paul, probably a couple  
15      of texts with Shane, but I don't know any more than  
16      that.

17      Q.    Have you ever talked to Shane about his plans?

18      A.    Probably through the years.

19      Q.    And do you remember any specific conversations?

20      A.    No. I remember he was going to use Blue Heron,  
21      but I have no idea if he's still using them or someone  
22      else. I haven't been involved.

23      Q.    Who's Blue Heron?

24      A.    It's a builder.

25      Q.    Does Blue Heron have a relationship with

1           Q.    Okay.  And you said you would be pulling out  
2   maps.  What kind of maps would you be pulling out?

3           A.    Sales exhibits.

4           Q.    What do you mean by that?

5           A.    For each planning area, a sales exhibits has  
6   been created to show the different lots and the lot  
7   numbers, and I use that to write on it, This one's sold,  
8   this one's a million dollars, this one's been sold, this  
9   one's been sold, this one is 800,000, the whole  
10   neighborhood's been sold.  There's two left, which one  
11   do you want?

12          Q.    Okay.  So it's just not like a formal map, it's  
13   just --

14          A.    Sales exhibit.

15          Q.    Sales exhibit.  And isn't not -- is it also one,  
16   as you were saying, not --

17          A.    It's not a final recorded map.

18          Q.    Okay.  Did you ever show any maps to the  
19   Rosenbergs?

20          A.    Did I ever show them a map?  No.

21          Q.    Did you ever have them in your office?

22                MR. GUNNERSON:  Objection; vague as to "them."

23                Go ahead, if you understand.

24   BY MS. CLINE:

25          Q.    Have you ever had the Rosenbergs in your office?

1           A.     The Rosenbergs were in my office when I was out  
2     on site with a customer. And I got a call from my  
3     partner, Jim, that the Rosenbergs were disrupting my  
4     office and I needed to hurry up and get there because  
5     they were screaming and hollering, because I was  
6     supposed to be there. And their agent couldn't be there  
7     to pick up paperwork, and they were there now and needed  
8     to pick up paperwork.

9           So I got through with my clients. My partner  
10    tried to calm them down, but he couldn't. And I came in  
11    and gave them a package of disclosures, a design  
12    guidelines book, and a CC&R book.

13          Q.     Do you know when that was?

14          A.     No.

15          Q.     Do you know if it was before they signed a sales  
16    contract?

17          A.     No, it would have been after they signed a sales  
18    contract, because those books don't go out to just  
19    anyone.

20          Q.     Do you know when -- like, if that was after they  
21    closed or before they closed?

22          A.     It wouldn't have been after they closed. It  
23    would have been before, during their due diligence  
24    period. Those were disclosures that I needed signed.  
25    And the CC&R book or HOA documents, where they were

1 given five days to read through the documents and decide  
2 whether they wanted the property or not.

3 Q. So the documents that they have five days to  
4 read through were the CC&Rs?

5 A. Uh-huh.

6 Q. Yes?

7 A. Yes.

8 Q. And other HOA documents?

9 A. No. Design guidelines book, a three-ring binder  
10 of design guidelines, and then my company disclosures.  
11 And I'm sure their agent had their disclosures.

12 Q. What kind of disclosures do you normally give  
13 out?

14 A. Off the top of my head, that there is a beltway,  
15 the 215, that there is an airport disclosure, a pest  
16 disclosure, a gaming disclosure, a zoning disclosure.  
17 They were already built, so there probably wasn't a  
18 blasting and drainage disclosure, but maybe. Off the  
19 top of my head, I don't remember what others.

20 Q. And those are ones that you would give to  
21 everyone?

22 A. Uh-huh, yes.

23 Q. And there are some that -- some disclosures that  
24 you give only to purchasers of vacant lots; is that  
25 correct?

1           A.    Yeah.  It wouldn't make any sense to anyone that  
2           owned a house because it was already done.

3           Q.    Do you know if you gave the Rosenbergs any maps  
4           included with any of the documents that you gave them,  
5           or the disclosures that you gave them that day?

6           A.    My CC&R book contains a gaming map in the back  
7           and a zoning map in the back.  And the two disclosers  
8           that needed to be signed would be for those maps, that  
9           they received them.

10          Q.    Did you talk to the Rosenbergs about the CC&R  
11          binder that you gave them?

12          A.    No.  Normally, because I didn't represent the  
13          Rosenbergs, I would have their real estate agent sign  
14          off on it and give them everything along with their  
15          company disclosures.  So again, other than presenting  
16          them with, This is the design guidelines book, sign here  
17          that you received it, this is the CC&R book, sign here  
18          that you received it, and then a package of disclosures.

19          Q.    And did they sign the disclosures, the other  
20          disclosures, or were there just the two?

21          A.    They took everything with them and went into the  
22          clubhouse for lunch.  I don't know if their agent was  
23          out of town or was meeting with them later or whatnot.  
24          I don't know.

25          Q.    Do you remember anything else about that



1 meeting? You said that you were out on site with a  
2 customer, and your partner said the Rosenbergs were  
3 screaming and hollering --

4 A. My partner called me once or twice, talking  
5 about the uproar that was going on in my sales office  
6 that the Rosenbergs caused. And I was with a customer,  
7 and I got done as fast as possible, and walked in and  
8 calmed them down and handed them the books and the  
9 disclosures, and got them into the clubhouse for lunch.

10 And I probably -- because at this time, we  
11 weren't allowing the general public to eat there. It  
12 was members only -- so I probably walked over to the  
13 waitress or waiter and said, Let them eat here. I  
14 needed to get them out of the sales office. They  
15 disrupted everything.

16 Q. What do you mean by "disrupted"?

17 A. Well, according to my partner, they were  
18 screaming and hollering in there.

19 Q. What were they screaming and hollering? Did he  
20 tell you that?

21 A. I don't remember. I don't remember, but they  
22 were loud when I walked in.

23 Q. Did you have any conversation with them besides  
24 to say, Here are the disclosures and please sign this?

25 A. I don't remember. I don't remember.

1           Q.    Do you know when the sale of the golf course  
2   parcel was final to Mr. Malek?

3           **A.    No.**

4           Q.    Is that something that you would have in your  
5   records?

6           **A.    Yes.**

7           Q.    Did you ever talk to the Rosenbergs about the  
8   sale of the golf course parcel to Malek before they  
9   signed the purchase agreement?

10          **A.    No.**

11          Q.    Did you ever talk to them about the sale of the  
12   golf course parcel to Mr. Malek before the Rosenbergs  
13   closed on the property?

14          **A.    No.**

15                   **We have five minutes left.**

16          Q.    I know.

17          **A.    I need to leave by 4:00.**

18          Q.    That's fine.   That's fine.

19          **A.    I apologize.**

20                   MS. CLINE:   No problem.   And we are going to  
21   come back another time.   I don't know if you want to  
22   stop the questions right now and decide --

23                   MR. GUNNERSON:   If you feel this is a natural  
24   place to stop, then we can stop now.

25                   MS. CLINE:   We're fine.

CERTIFICATE OF REPORTER

STATE OF NEVADA )  
 ) SS:  
COUNTY OF CLARK )

I, Jean M. Dahlberg, a duly commissioned and licensed Court Reporter, Clark County, State of Nevada, do hereby certify: That I reported the taking of the deposition of the deponent, Michael Ann Doiron, commencing on Friday, January 16, 2015, at 10:16 a.m.

That prior to being examined, the deponent was, by me, duly sworn to testify to the truth. That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript of said deposition is a complete, true and accurate transcription of said shorthand notes.

I further certify that I am not a relative or employee of an attorney or counsel of any of the parties, nor a relative or employee of an attorney or counsel involved in said action, nor a person financially interested in the action.

IN WITNESS HEREOF, I have hereunto set my hand in my  
office in the County of Clark, State of Nevada, this  
21st day of January, 2015.

JEAN M. DAHLBERG, RPR, CCR NO. 759, CSR 11715

DISTRICT COURT

CLARK COUNTY, NEVADA

CERTIFIED  
TRANSCRIPT

THE FREDRIC AND BARBARA  
ROSENBERG LIVING TRUST,

Plaintiff,

vs.

CASE NO.  
A-13-689113-C

BANK OF AMERICA, N.A.; BAC HOME  
LOANS SERVICING, LP, a foreign  
limited partnership; MACDONALD  
HIGHLANDS REALTY, LLC, a Nevada  
limited liability company;  
MICHAEL DOIRON, an individual;  
SAHAHIN SHANE MALEK, an  
individual; PAUL BYKOWSKI, an  
individual; THE FOOTHILLS AT  
MACDONALD RANCH MASTER  
ASSOCIATION, a Nevada limited  
liability company; THE FOOTHILLS  
PARTNERS, a Limited Partnerships;  
DOES I through X; and ROE  
CORPORATIONS I through X,  
inclusive

Defendants.

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

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DISTRICT COURT  
  
CLARK COUNTY, NEVADA  
  
THE FREDRIC AND BARBARA  
ROSENBERG LIVING TRUST,  
  
Plaintiff,  
  
vs.  
  
BANK OF AMERICA, N.A.; BAC HOME  
LOANS SERVICING, LP, a foreign  
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HIGHLANDS REALTY, LLC, a Nevada  
limited liability company;  
MICHAEL DOIRON, an individual;  
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Monday, February 2, 2015  
9:50 a.m.

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1 APPEARANCES:

2 For the Plaintiff:

KAREN L. HANKS, ESQ.  
MELISSA BARISHMAN, ESQ.  
Howard Kim & Associates  
1055 Whitney Ranch Drive  
Suite 110  
Henderson, Nevada 89014  
Karen@hkimlaw.com

7 For Sahahin Shane Malek:

JAY DEVOY, ESQ.  
The Firm, P.C.  
200 East Charleston Blvd.  
Las Vegas, Nevada 89104  
Jay@thefirm-lv.com

10 For Bank of America:

NATALIE WINSLOW, ESQ.  
Akerman LLP  
1160 Town Center Drive  
Suite 330  
Las Vegas, Nevada 89144  
Natalie.winslow@akerman.com

14 For MacDonald Highlands Realty, LLC and Michael  
15 Doiron:

SPENCER H. GUNNERSON, ESQ.  
Kemp, Jones & Coulthard  
3800 Howard Hughes Pkwy.  
17th Floor  
Las Vegas, Nevada 89169  
Sgunnerson@kempjones.com

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 8 Covenants, Conditions and  
 9 Restrictions  
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18  
 19 CERTIFIED QUESTIONS  
 20 (NONE)

21  
 22 INFORMATION TO BE SUPPLIED  
 23 (NONE)

24

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1 Whereupon--

2 RICHARD C. MACDONALD,

3 was called as a witness, and having been first duly  
4 sworn, was examined and testified as follows:

5 EXAMINATION

6 BY MS. HANKS:

7 Q. Please state your name for the record.

8 A. Richard C. MacDonald.

9 Q. Mr. MacDonald, have you ever had your  
10 deposition taken before?

11 A. I have.

12 Q. On how many occasions?

13 A. I don't know. Quite a few.

14 Q. Would you feel comfortable if I do away  
15 with the normal ground rules that I give any  
16 deponent, or would you like me to go through those?

17 A. Sure.

18 Q. You feel comfortable without those?

19 A. I do.

20 Q. The only thing I do like to remind  
21 every person that's being deposed is the oath that  
22 you just took is the same oath you would take in a  
23 court of law.

24 So even though we're in a  
25 conference room today --



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

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

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

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

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

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?

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?

1 MR. GUNNERSON: Objection. Misstates language  
2 in the contract or of the guidelines.

3 BY MS. HANKS:

4 Q. So that's what I'm asking. How does  
5 not allowing an owner to fill up their building  
6 envelope protect an adjacent lot?

7 A. It just creates more space, you know,  
8 back from the golf course.

9 Q. The next section talks about combined  
10 lots. It's on the same page.

11 It says, "If an owner owns two  
12 contiguous lots and wants to combine the two lots  
13 into a single home site, the owner may do so only  
14 with the prior consent of the DRC and only if the  
15 change in the DRC's opinion does not materially  
16 impair views and/or privacy from neighboring lots or  
17 common areas."

18 Why was that a concern of the  
19 Design Review Committee?

20 MR. GUNNERSON: Objection. Foundation.

21 BY MS. HANKS:

22 Q. Or, actually, let me rephrase that,  
23 because that's not who drafted these guidelines.

24 Why was that a concern of the  
25 developer in drafting these guidelines?



1           **A. I suspect it was put in by the**  
2           **developer's consultant early on. The reality is you**  
3           **don't have any privacy when you live on a golf**  
4           **course, period. You have no privacy whatsoever.**

5           Q. This section also talks about not  
6           materially impairing the views of the neighboring  
7           lots.

8                       Why was that an important aspect?

9           **A. It's not, because neighboring lots when**  
10          **they are built by their very nature impair the views**  
11          **to some extent.**

12          Q. If that were the case, why wasn't the  
13          section ever deleted from the guidelines?

14          **A. Because it was never an issue.**

15          Q. What do you mean "it's never an issue"?

16          **A. It's never been an issue.**

17          Q. You mean until this lawsuit?

18          **A. Until this lawsuit. Most people**  
19          **understand that when someone builds next to you,**  
20          **it's going to impact your view a little bit. You'll**  
21          **have a house there instead of a bunch of sagebrush.**

22          Q. Certainly. But when someone was  
23          reading these guidelines at least in terms of this  
24          particular section, would it be fair to say that  
25          they understood that the Design Review Committee was

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.

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."

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 Methuzulah 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

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

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

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

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



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

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

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.

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

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.

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

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

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?



REPORTER'S CERTIFICATE

STATE OF NEVADA )  
 ) ss.  
COUNTY OF CLARK )

I, Angela Campagna, a certified court reporter in Clark County, State of Nevada, do hereby certify:

That I reported the taking of the deposition of the witness, RICHARD C. MACDONALD, on Monday, February 2, 2015, commencing at the hour of 9:50 a.m.

That prior to being examined, the witness was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth.

That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript of said deposition is a complete, true, and accurate transcription of shorthand notes taken down at said time.

I further certify that I am not a relative or employee of an attorney or counsel of any of the parties, nor a relative or employee of any attorney or counsel involved in said action, nor 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

*Angela Campagna*

1

DISTRICT COURT

2

CLARK COUNTY, NEVADA

3

4

THE FREDRIC AND BARBARA  
ROSENBERG LIVING TRUST,

5

Plaintiff,

6

vs.

7

Case A-13-689113-C

Dept I

8

BANK OF AMERICA, N.A.; BAC HOME  
LOANS SERVICING, LP, a foreign

9

limited partnership; MACDONALD  
HIGHLANDS REALTY, LLC, a Nevada

10

limited liability company;  
MICHAEL DOIRON, an individual;

11

SHAHIN 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 Nevada limited  
partnership; DOES I through X;

15

and ROE CORPORATIONS I through  
X, inclusive,

16

Defendants.

17

CERTIFIED  
TRANSCRIPT

18

19

DEPOSITION OF SHAHIN SHANE MALEK

20

Taken at the Law Offices of  
Howard Kim & Associates

21

1055 Whitney Ranch Drive, Suite 110  
Henderson, Nevada 89014

22

On Tuesday, January 27, 2015

23

At 1:02 p.m.

24

25

Reported by: Leah D. Armendariz, CCR No. 921

1 A P P E A R A N C E S

2 For the Plaintiff:

3 Karen L. Hanks, ESQ.  
4 Melissa Barishman, ESQ.  
5 Howard Kim & Associates  
6 1055 Whitney Ranch Drive  
7 Suite 110  
8 Henderson, Nevada 89014

9 For the Defendant, Shahin Malek:

10 James M. DeVoy, ESQ.  
11 DeVoy Law, P.C.  
12 521 South Sixth Street  
13 Las Vegas, Nevada 89101

14 Sarah M. Chavez  
15 Lee Hernandez Landrum Garofalo & Blake  
16 7575 Vegas Drive  
17 Suite 150  
18 Las Vegas, Nevada 89128

19 For the Defendant, Bank of America:

20 Natalie L. Winslow, ESQ.  
21 Akerman, LLP  
22 1160 Town Center Drive  
23 Suite 330  
24 Las Vegas, Nevada 89144

25 For the Defendant, Michael Doiron:

26 Ian P. McGinn, ESQ.  
27 Kemp, Jones & Coulthard, LLP  
28 3800 Howard Hughes Parkway  
29 Seventeenth Floor  
30 Las Vegas, Nevada 89169

1 (In an off-the-record discussion held prior to the  
2 commencement of the deposition proceedings, counsel  
3 agreed to waive the court reporter requirements  
4 under Rule 30(b)(4) of the Nevada Rules of Civil  
5 Procedure.)

6

7 Whereupon,

8

SHAHIN SHANE MALEK,

9 having been sworn to testify to the truth, the whole  
10 truth, and nothing but the truth was examined and  
11 testified as follows:

12

13

EXAMINATION

14

BY MS. HANKS:

15

16

Q. Please state and spell your name for the  
record.

17

18

**A. Shahin Shane Malek; S-h-a-h-i-n,  
S-h-a-n-e, M-a-l-e-k.**

19

20

Q. And, Mr. Malek, have you ever had your  
deposition taken before?

21

**A. Yes.**

22

Q. On how many occasions?

23

**A. On a few on one case.**

24

Q. And it has been recently?

25

**A. Three years ago.**

1 Q. Three years ago?

2 A. **Four years, four years ago.**

3 Q. I'll just go over some of the general  
4 rules since it's kind of been some years since you  
5 took a deposition. The first thing I like to point  
6 out is the oath you just took is the same oath you  
7 would take in a court of law. So while we're here  
8 in my conference room at my office, it's more of an  
9 informal setting, it still carries the same penalty  
10 of perjury as if you lied in court if you lie here  
11 today. Do you understand that?

12 A. **Yes.**

13 Q. Another thing you will notice is we have  
14 the court reporter and she's taking everything we  
15 say down into a written format so that we have a  
16 booklet later on.

17 Because of that, it's very important we  
18 avoid nonverbal responses, such as shakes of the  
19 head, nods of the head, shrugs of the shoulder.  
20 From time to time you might forget because we can  
21 certainly communicate that way in person. I might  
22 remind you and say, "Is that a yes?" or "Is that a  
23 no?" I'm not trying to be rude. I'm just trying to  
24 make sure we have a clear record. Do you understand  
25 that?

1           **A.     Yes.**

2           Q.     What did you do after you went on your  
3 own?

4           **A.     I worked on my inventions. One of my**  
5 **intentions had flourished and won an award. It was**  
6 **presented in a show in New York, so I started**  
7 **getting orders and phone calls for that. So I**  
8 **started working on that then, you know, went on from**  
9 **there.**

10          Q.     What invention was that?

11          **A.     That was the office product.**

12          Q.     Now how long have you lived in Las Vegas?

13          **A.     Since 2001.**

14          Q.     Where did you live prior to that?

15          **A.     In Albany, New York.**

16          Q.     Much better weather here, huh?

17          **A.     Oh, my God.**

18          Q.     Do you own any properties in Albany, New  
19 York?

20          **A.     No.**

21          Q.     Do you own any properties in Nevada?

22          **A.     I own my home and then 598 and 594**  
23 **Lairmont.**

24          Q.     Okay. So a total of three, I guess,  
25 addresses that you would own in Las Vegas, Nevada?

1           **A.     Yes.**

2           Q.     What is your current address?

3           **A.     544 Regents, R-e-g-e-n-t-s, Gate Drive.**

4           Q.     And where is that located?

5           **A.     It's in MacDonald Highlands.**

6           Q.     How long have you lived at that address?

7           **A.     Since 2006.**

8           Q.     Since you didn't list that as a home that  
9 you own, I assume that you rent?

10          **A.     No, that's the home that I own.**

11          Q.     So you -- I'm sorry, so I misheard you.

12          So you own 544 Regents Gate Drive, and the other two  
13 are 598 Lairmont and 594 Lairmont?

14          **A.     Yes.**

15          Q.     Had you lived in MacDonald Highlands prior  
16 to 2006 when you purchased 544 Regents Gate?

17          **A.     No.**

18          Q.     What made you -- well, actually, back up.  
19 When you purchased 544 Regents Gate, was that a  
20 vacant lot that you had to build a home on?

21          **A.     No.**

22          Q.     The home already existed on the lot?

23          **A.     Yes.**

24          Q.     Was it a custom home?

25          **A.     Yes.**

1 Q. What made you purchase that particular  
2 home? Was there anything particular about it that  
3 stood out from any other homes that you might have  
4 been looking at around that time.

5 A. I like the layout. It's a beautiful home.  
6 It's got a waterfall right outside the window.  
7 Yeah, I mean, the lay outlet.

8 Q. How about MacDonald Highlands? Was that a  
9 particular community you were interested in living  
10 or it just happened that the house was located in  
11 MacDonald Highlands?

12 A. Kind of both. I was looking at The Ridges  
13 and at MacDonald Highlands.

14 Q. Now, I'm not as familiar with MacDonald  
15 Highlands maybe as some of the other attorneys here  
16 are. Where in MacDonald Highlands is the Regents  
17 Gate Drive property located?

18 A. When you come in from Valle Verde, it's  
19 the second right.

20 Q. Is it on a golf course?

21 A. No.

22 Q. Is it -- I think they have -- there's  
23 hillside communities. Is it a hillside community?

24 A. (No audible response.)

25 Q. Do you know if it's in a certain community



1 that MacDonald Highlands classifies?

2 **A. Oh, like a separate gate?**

3 **Q. Yes.**

4 **A. No.**

5 **Q. Okay. Now, at some point you bought you**  
6 **mentioned 594 Lairmont, correct?**

7 **A. Yes.**

8 **Q. And my understanding of that is that is a**  
9 **vacant lot that you purchased, correct?**

10 **A. Yes.**

11 **Q. And what made you purchase that property?**

12 **A. We were looking to move. I married since**  
13 **I bought that house and thinking about starting a**  
14 **family, and my home is not really for a family, so**  
15 **we decided to look for a home. And we looked at**  
16 **pretty much everything that was on the market, you**  
17 **know, in our budget, and we didn't like anything.**  
18 **So we decided to have a home built and at one point**  
19 **we were at one of the custom home builders, and one**  
20 **of the people that worked there told us -- they were**  
21 **telling us about their homes. One of the**  
22 **builders -- one of the agents, I guess, that work**  
23 **there told us about this lot that's available that**  
24 **her client had bought and they were going to -- had**  
25 **bought this lot. They were going to add -- there**

1 was another piece in front of it that they were  
2 going to add to it, then he changed his mind and  
3 bought a house -- bought a lot in The Ridges so he  
4 was looking to sell that, and she said that's a good  
5 lot for you to look at.

6 Q. Okay. I'm sorry, when you said an agent,  
7 who -- when you say an agent you were speaking to,  
8 was it an agent in MacDonald Highlands --

9 A. No.

10 Q. -- or a separate agent?

11 A. You know, I forget her name. I forget her  
12 name, but she was an agent, she worked for Blue  
13 Heron at the time.

14 Q. I'm sorry, you said you were somewhere  
15 talking to them about custom homes. Where were you  
16 when this conversation took place?

17 A. I was at the Blue Heron's office.

18 Q. How did you learn about Blue Heron?

19 A. I don't remember.

20 Q. Okay. So just so I understand, when you  
21 started looking for homes, you couldn't find  
22 anything you liked. Then you had a conversation  
23 with this particular agent. She said there's a lot  
24 in MacDonald Highlands that her client was looking  
25 to sell?

1 MR. DEVOY: I want to object about  
2 misstating former testimony about not finding  
3 anything he liked.

4 You still have to answer the question.

5 THE WITNESS: Okay.

6 BY MS. HANKS:

7 Q. It's okay. I'll go ahead and repeat. I'm  
8 just kind of summarizing what you said just to make  
9 sure I understood.

10 My understanding is you had -- you and  
11 your wife had looked for homes in the community,  
12 couldn't really find anything that you cared for or  
13 liked so you thought about building your own home?

14 A. We decided if we build, we could probably  
15 incorporate all the things that we needed into the  
16 home.

17 Q. Sure. And at some point, you were talking  
18 to an agent at Blue Heron who was explaining she had  
19 a client that had bought a parcel or a lot in  
20 MacDonald Highlands and was looking to sell it?

21 A. Yes.

22 Q. And thought that you might be interested  
23 in it?

24 A. Yes.

25 Q. And it's your understanding that's the

1 594 Lairmont that you eventually purchased?

2 **A. Yes.**

3 Q. Now, you indicate she also mentioned  
4 something about he was going to buy another parcel  
5 to extend it?

6 MR. DEVOY: Objection. Vague.

7 You still have to answer.

8 THE WITNESS: Yes.

9 BY MS. HANKS:

10 Q. And what was your understanding of what  
11 other parcel?

12 **A. Well, there was a vacant piece of golf**  
13 **course in front of the building -- in front of the**  
14 **other lot. Not the building, I apologize. In front**  
15 **of the other lot, that was separated from trees from**  
16 **the actual golf course. It was just vacant land**  
17 **that was just sitting there.**

18 Q. Okay. And the conversation you had with  
19 her, it was her understanding based on her  
20 communications with her client that he was thinking  
21 about purchasing that?

22 **A. Yeah, I think that was her plan -- that**  
23 **was their plan.**

24 Q. Okay. But at the time, you were talking  
25 to him, he had not owned it, correct?

1 MR. DEVOY: Objection. Vague.

2 You still have to answer.

3 THE WITNESS: At the time I talked, he  
4 didn't own it.

5 BY MS. HANKS:

6 Q. Do you know how she learned that he was in  
7 the process of possibly buying that parcel, the golf  
8 portion?

9 A. They were building for him. She worked  
10 for Blue Heron. I think Blue Heron was building for  
11 him. They were planning on building the house for  
12 him on that -- on that lot.

13 Q. So when -- after talking to the agent and  
14 learning about this property, what did you do next?

15 A. I don't remember exactly, but eventually I  
16 contacted Michael Doiron to represent me as the --  
17 as a buyer.

18 Q. How did you know to contact Michael Doiron  
19 to represent you?

20 A. They're the -- they're the Heron, James --  
21 or Jim Venable passed away. They were the agents  
22 that represented -- I mean, they showed MacDonald  
23 Highlands. They knew -- they were more, I guess,  
24 knowledgeable about MacDonald highlands properties.

25 Q. Do you know how long after you had the

1 BY MS. HANKS:

2 Q. What views from that lot that you thought  
3 you would have?

4 A. Views of the golf course. Got about an  
5 eighth of a mile of green. I mean, I'm estimating.

6 Q. Sure.

7 A. A large length of green. It's a very  
8 unique lot. It's right on the golf course. And  
9 then when you look the valley under your feet.  
10 You're close to the Strip, which is a thing when  
11 you're looking at view lots. Sometimes the Strip is  
12 a lot smaller; sometimes larger. So I like the  
13 proximately to the Strip. I like the fact that you  
14 can see Sunrise Mountain from there, so it had  
15 really, really nice views.

16 Q. Now, you indicated that it was your  
17 understanding that the previous owner was in the  
18 works of trying to buy the other part of the golf  
19 parcel to add to the lot, correct?

20 A. I was told by her that that was on the  
21 table -- by the -- when I say by her, by the agent  
22 at Blue Heron.

23 Q. Did you mention that to Michael?

24 A. Yes.

25 Q. And what was her response?

1           A.     I think that -- again, I don't remember  
2 exactly, but I think that we had talked about it.  
3 I'm pretty sure -- I'm pretty sure she know about  
4 it, just not exactly what she told me, but it was  
5 definitely on the table.

6           Q.     It's fair to say she wasn't surprised by  
7 that when you indicated that to her?

8           MR. DEVOY: Objection. Calls for  
9 speculation.

10          THE WITNESS: Yeah, I wouldn't know  
11 whether or not she was surprised.

12 BY MS. HANKS:

13          Q.     Did she indicate to you that she doesn't  
14 know anything about that or was it -- I mean, I'm  
15 just trying to get an impression, when you said that  
16 to her, did she make it sound like that was  
17 something that could be done, or was she thinking, I  
18 don't know what you're talking about, that's not  
19 part of the lot?

20          MR. DEVOY: Objection to form and the  
21 foundation of this line of questioning.

22                 Still answer if you understand.

23          THE WITNESS: Okay. Honestly, I don't  
24 remember exactly. So anything I would say would be  
25 speculative right now.

1 BY MS. HANKS:

2 Q. But you did -- but just to be clear, when  
3 you did approach Michael, you did indicate to her  
4 that not only were you interested in the actual lot,  
5 but you were interested in the extra parcel of the  
6 golf course?

7 A. Yes.

8 Q. When you told her that, did she say how to  
9 go about that?

10 MR. DEVOY: Objection. Foundation.

11 You can still answer.

12 THE WITNESS: Well, at some point, it came  
13 up that it had to be -- we had to rezone it and then  
14 attach them together to become one parcel.

15 BY MS. HANKS:

16 Q. Would you have purchased Lot 2 if -- 594  
17 Lairmont if the golf parcel couldn't be a part of  
18 that deal?

19 A. No.

20 Q. And why is that?

21 A. Because, again, the I like that parcel  
22 initially because of the views. And the proximity  
23 to the golf course and the way the whole golf course  
24 would make that.

25 Q. Okay. So I'm just going to paraphrase



1 that then. If I'm understanding you correctly then,  
2 in order to get the views that you liked so much  
3 about that part of the property, you would have to  
4 get the golf parcel attached to the lot?

5 MR. DEVOY: Objection. Mischaracterizes  
6 past testimony.

7 You can still answer.

8 THE WITNESS: The only way I would have  
9 bought that parcel is if they were going to be  
10 connected to each other.

11 BY MS. HANKS:

12 Q. And that's because it helps, I guess,  
13 better situate the house on it to get the views you  
14 were talking about -- the mountain, the golf course  
15 the city views?

16 A. Not just the house but the whole backyard,  
17 the pool, the lawn. You know, the backyard, the  
18 whole -- the whole property.

19 Q. Would it be fair to state that when you  
20 purchased the lot that you believed there would be  
21 no hiccups with getting the golf parcel purchased as  
22 well and rezoned?

23 MR. DEVOY: Objection. Calls for  
24 speculation.

25 You can still answer.

1 THE WITNESS: I would be speculating, but  
2 I didn't foresee anything that would be an issue.

3 BY MS. HANKS:

4 Q. Because you purchased -- you ultimately  
5 purchased the golf parcel after you purchased the  
6 lot, correct?

7 A. Yes.

8 Q. Did you speak to anyone else other than  
9 Michael with MacDonald Highlands Realty regarding  
10 the purchase of the golf parcel?

11 A. I probably talked to Jim as well, but,  
12 yeah, that would be the only two.

13 Q. Before we get to -- actually, let me ask  
14 you, when did you enter into an agreement to  
15 purchase the golf course? And when I mean when, how  
16 soon after you purchased the 594 Lairmont lot did  
17 that come about?

18 MR. DEVOY: Objection. Compound question.

19 THE WITNESS: I'm really confused about  
20 the dates. There was a lot going on in my own life.  
21 It was all around the same time, and it was all part  
22 of one -- it was one piece of property that I wanted  
23 to build on was the combination of the two.

24 MS. HANKS: Mark that as one.

25

1 the second page. It's the page Bates-stamped  
2 Malek0151.

3 **A. Mm-hmm.**

4 **Q.** If you go to paragraph 2A.

5 **A. Mm-hmm.**

6 **Q.** It looks like the date that you agreed  
7 with MacDonald Highlands Realty that you would  
8 obtain approval of the DRC on or before  
9 December 10th, 2014. Do you know what DRC means?

10 **A. Design review committee?**

11 **Q.** Yes. Did I read that correctly that you  
12 would get approval of the DRC on or about  
13 December 10th, 2015?

14 **A. Well, that's what it says here.**

15 **Q.** Okay. Then it says, "To cause  
16 construction of a residence to commence on or before  
17 February 10th, 2016, and be completed on or before  
18 August 10th, 2018."

19 Do you see that?

20 **A. Yes.**

21 **Q.** Just so I understand, is there any other  
22 agreement that you've entered into since this one  
23 that relates to the construction of the residence on  
24 594 Lairmont Place?

25 **A. I don't know.**

1 that into escrow?

2 MR. DEVOY: Objection. Foundation.

3 You can answer if you understand.

4 THE WITNESS: Honestly, I don't know.

5 They asked for a down payment or whatever it was.

6 BY MS. HANKS:

7 Q. Was there any understanding between you  
8 and MacDonald Highlands Realty or the owner of the  
9 golf parcel -- let me make sure I say it right --  
10 DRFH Ventures, LLC that if the rezoning didn't get  
11 approved you could back out of the purchase of the  
12 golf parcel?

13 MR. DEVOY: Objection. Compound.

14 You can answer if you understand.

15 THE WITNESS: To the best of my  
16 recollection -- I mean, what was going on through my  
17 mind I can tell you that.

18 BY MS. HANKS:

19 Q. That's what I want to know.

20 **A. Yeah, what was going through my mind if it**  
21 **didn't happen, I didn't want that other parcel.**

22 Q. What would you have done with the other  
23 parcel if the rezoning hadn't been completed?

24 Because you already purchased it by the time of the  
25 rezoning, correct?

1 MR. DEVOY: Objection. Compound. Calls  
2 for speculation.

3 You can answer if you can.

4 THE WITNESS: I don't know. Honestly, I  
5 don't know. I mean, I didn't think of it because I  
6 didn't think there would be any obstacles stopping  
7 that from happening. It wasn't bothering anyone.  
8 It's just a piece of dirt.

9 BY MS. HANKS:

10 Q. Did anyone explain to you the process of  
11 having it rezoned?

12 MR. DEVOY: Objection. Vague.

13 THE WITNESS: I mean, I kind of know more  
14 now after than I did before, but I don't know who  
15 exactly explain it to me, but yeah, I kind of get  
16 it, what they have to do.

17 BY MS. HANKS:

18 Q. And what is your understanding of what had  
19 to be done?

20 A. It had to be rezoned and then combined.  
21 Remapped, I guess.

22 Q. Did you have any understanding as to  
23 whether the rezoning could have been objected to by  
24 anyone?

25 A. It's possible.

1     **year -- January, February the following year.**

2           Q.     January, February 2013?

3           **A.     Yes.**

4           Q.     And what -- when you say the area had to  
5     be rezoned, what was your understanding of what the  
6     area was zoned for at the time before you purchased  
7     it?

8           MR. DEVOY:  Objection.  Vague as to what  
9     the area is.

10          You can answer if you understand.

11          THE WITNESS:  I think I understand.

12     You're talking about the golf parcel?

13     BY MS. HANKS:

14          Q.     Golf parcel.

15          **A.     It was called a golf parcel, so I'm**  
16     **assuming it was as part -- you know, as part of the**  
17     **golf course.**

18          Q.     And when they said they rezoned it, it was  
19     your understanding they were rezoning it to what?

20          **A.     To be residential.**

21          Q.     Did anyone explain to you -- I know you  
22     understood there was going to be a hearing of some  
23     sort.  Did anyone explain to you that notice would  
24     be sent to other lot owners within the community  
25     about the rezoning?

1           A.     I do remember that. I don't remember  
2 exactly when or how it came up, but I do remember  
3 that that was part of it.

4           Q.     Do you remember who had explained that to  
5 you?

6           A.     Probably Michael because she was the only  
7 one I spoke with.

8           Q.     Do you remember generally what she  
9 explained about the reason for the notice to the  
10 other owners?

11           MR. DEVOY: Objection. Calls for  
12 speculation. Misstates prior testimony as to  
13 whether the conversation even occurred.

14           THE WITNESS: It would have been normal  
15 routine thing. You know, you send out -- I guess  
16 you file an application with the city, plan out the  
17 lot. Just, you know, pretty much standard stuff  
18 that you do. Then you send out notices to people  
19 within a certain geographic distance.

20           BY MS. HANKS:

21           Q.     Did she explain why those people had to  
22 get notice of it?

23           MR. DEVOY: Objection. Foundation.

24           THE WITNESS: I mean, a lot of stuff I  
25 would just assume. You know, if someone tells you

1 BY MS. HANKS:

2 Q. Do you know if anyone on your behalf  
3 attended?

4 A. Yeah, it would have been the agents that I  
5 hired to handle this.

6 Q. So Michael Doiron would have been the  
7 agent?

8 A. No, I hired -- honestly, I don't even know  
9 who I hired, but it was one of the Dragonridge  
10 companies because that's what they -- they knew how  
11 to do that stuff. I had no idea what to do.

12 Q. When you said you hired, who did you have  
13 to hire?

14 A. I don't remember the name of the actual  
15 organization or company, but it was one of the  
16 Dragonridge or MacDonald Highlands.

17 Q. What was your understanding of what you  
18 were hiring them for is what I'm trying to  
19 understand.

20 A. Well, usually, you hire someone to help do  
21 the rezoning for you. Whether it's an architect or  
22 an attorney. Whoever does it. There's -- you've  
23 got to -- you've got to map the area. There's a lot  
24 involved, I guess. Not something I don't think you  
25 take on as an individual.



1 meeting.

2 THE WITNESS: -- informational meeting. I  
3 don't know if I had a direct conversation.

4 BY MS. HANKS:

5 Q. If you could just go back to Exhibit 3.  
6 This is the grant bargain deed -- the grant bargain  
7 sale deed for the golf parcel. It looks like it was  
8 recorded on -- well, they're changing the, I guess,  
9 property description. It was recorded on  
10 December 3, 2013, but the original one was recorded  
11 the second page, June 26, 2013. Do you see that?  
12 The second page?

13 A. I see April 8th -- oh, Page 2?

14 Q. Yeah.

15 A. Crap, I don't see a date on here. Are we  
16 looking at the same thing.

17 Q. Right at the top, the stamp at the top.  
18 It says 6/26/2013?

19 A. Oh, that page, I'm sorry.

20 Q. It's okay.

21 A. Okay. 6/26, yes, at 3:15.

22 Q. Okay. That's the stamp at the time this  
23 document was recorded, but I think you already  
24 indicated on the third page of that document you see  
25 it's dated April 8, 2013, correct?

1 you were talking about that stake, the wooden stake  
2 with the flag on it?

3 **A. Yes.**

4 Q. And were there any wooden stakes with  
5 respect to Lot 2, just Lot 2 before any other  
6 parcels were added to it or any additional stakes as  
7 to just Lot 2?

8 MR. DEVOY: Objection. Calls for  
9 speculation. Also vague as to time.

10 THE WITNESS: You're talking about before  
11 the golf parcel came about.

12 BY MS. HANKS:

13 Q. Let's take a day when you went to go look  
14 at the parcel. When you went to go look at it, how  
15 did you know where the boundaries were for Lot 2?

16 **A. Oh, I don't know if there were stakes**  
17 **there when I was looking at the lots. I think they**  
18 **put the stakes -- again, I don't know. I mean,**  
19 **honestly, this is not what I do, so I don't know.**  
20 **Whatever I'm telling you, I'm speculating, but my**  
21 **assumption is the stakes go on when you're --**  
22 **when -- after someone purchases the property and**  
23 **they're trying to, you know, set the boundaries**  
24 **after they purchase. I don't think -- I don't know**  
25 **if there were stakes there before. That's my**

1     **understanding.**

2           Q.     When you were -- let's back up to when you  
3     were looking at Lot 1, the very first lot that you  
4     purchased.

5           A.     **Okay. That's not the first lot I**  
6     **purchased.**

7           Q.     Sorry. When you purchased -- Lot 2 is the  
8     first lot you purchased. When you purchased Lot 2,  
9     how did you know what the boundaries were when you  
10    were looking at it?

11          A.     **The boundaries of Lot 2 I owned were not**  
12    **that important to me because it was going to be --**  
13    **you know, the whole thing was going to be defined as**  
14    **one with the -- with the golf course parcel that you**  
15    **call, so I don't remember exactly what that boundary**  
16    **would be, but that wasn't important to me, so that's**  
17    **why I never paid attention to it.**

18          Q.     And I know you originally learned about  
19    the golf parcel being a possibility to add to the  
20    lot when you were talking to the agent at Blue  
21    heron. Did there come a time when you went on the  
22    actual property and determined what part of the golf  
23    parcel would be included?

24          A.     **Okay. Oh, yes.**

25          Q.     That she was actually talking about?

1           **A.     Yes.**

2           Q.     How did you -- who were you with when you  
3 did that?

4           MR. DEVOY:   Objection.   Foundation.

5           THE WITNESS:   I don't understand.

6     Honestly, I think I went by myself for the first  
7 time or first couple times I went there.

8     BY MS. HANKS:

9           Q.     And how did you determine or understand  
10 what she was talking about when she said part of the  
11 golf parcel?

12          MR. DEVOY:   Objection.   Vague.

13          THE WITNESS:   It was the -- I mean, we  
14 looked at it on the map.   Once you look at it on the  
15 map, it's pretty clear when you walk out and you  
16 know exactly what is on the map.

17     BY MS. HANKS:

18          Q.     What map did you look at?

19          **A.     Google map, I think, or -- I think it was**  
20 **Google map, but it's -- I mean, it's really easy to**  
21 **determine what that is.   If I knew where you're**  
22 **going, I could help you -- you know, I could help**  
23 **answer your question.   I don't know.**

24          Q.     I'm not going anywhere.   I'm just trying  
25 to understand when you were looking at the lots how

1 you know what the agent from Blue heron knew what  
2 they were talking about?

3           **A.     Because it's a dirt -- it's a really ugly**  
4 **piece of dirt with black rocks and garbage that was**  
5 **hidden behind a birch of trees from the golf course**  
6 **that's below it, so if you look at it, you know**  
7 **exactly -- if you take a drive there today, you will**  
8 **know exactly what that.**

9           MR. DEVOY: If we can take a five minute  
10 break before you continue on this line of  
11 questioning and get a map together, I think this  
12 would be easier. If we're not asking how he knew  
13 what the map looked like, if we get a map I think we  
14 could use that to hash out these property issues a  
15 little easier. I think we can all agree on that.

16           MS. HANKS: That's fine. We can do that  
17 later.

18           MR. DEVOY: Okay.

19           MS. HANKS: I'm just trying to understand  
20 how Blue Heron was talking about.

21           MR. DEVOY: Okay. If you --

22 BY MS. HANKS:

23           Q.     I'm not worried about where it's actually  
24 located.

25           **A.     How I knew?**

1 started off saying it's your understanding and  
2 you're asking if he's agreeing with you.

3 BY MS. HANKS:

4 Q. Do you know if you have to have a  
5 predesign conference with the design review  
6 committee to approve your architectural plans?

7 A. Again, I don't know what you mean by  
8 predesign conference.

9 Q. What's your understanding of what you're  
10 obligated to do in terms of your plans before you  
11 start building in MacDonald Highlands?

12 A. Well, DRC has to approve your plans.

13 Q. Have you had a conference -- in other  
14 words, have you sat down with anyone with the design  
15 review committee since you purchased your lots?

16 A. I sat down with them a couple times.  
17 Mostly my architect has sat down, but I sat down  
18 several times, yes.

19 Q. Who was present at the meetings when you  
20 were also present?

21 MR. DEVOY: Objection. Foundation.

22 THE WITNESS: Its Paul Bykowski and my  
23 architect was present.

24 BY MS. HANKS:

25 Q. You said you had several meetings. Why

1 will receive the written approval?

2 **A. I don't know.**

3 **(Plaintiff's Exhibit 6 was**  
4 **marked for identification.)**

5 BY MS. HANKS:

6 Q. The court reporter handed you what has  
7 been marked as Exhibit 6, and I'll give you the  
8 Bates stamp documents. These are documents  
9 Malek0358 through 376.

10 And I understand you're not an architect,  
11 but these are documents that were disclosed  
12 recently, January 20th, 2015, by your attorneys as  
13 part of what we call a 16.1 disclosure, supplement  
14 to that. Is that -- these designs that were  
15 attached to that disclosure, is that the final  
16 design?

17 **A. To the best of my knowledge, when I -- the**  
18 **design we submitted to you are the final designs.**  
19 **That being said, based on that assumption, these are**  
20 **the final designs, yes.**

21 Q. These are the designs you are anticipating  
22 the written approval from the Design Review  
23 Committee?

24 **A. Yes.**

25 Q. When you say you've gotten verbal

1 approval, who gave the verbal approval?

2 **A. Paul Bykowski.**

3 Q. Did he personally speak with you?

4 **A. I've spoken with him on several occasions.**  
5 **I think the approval was given to my architect and**  
6 **to me, yes.**

7 Q. Did you submitted any plans prior to this  
8 final plan that we have here that were ever  
9 disapproved in any respect by the DRC, the Design  
10 Review Committee?

11 MR. DEVOY: Objection. Foundation.

12 THE WITNESS: Yes, there were a few  
13 versions of it that were disapproved.

14 BY MS. HANKS:

15 Q. Can you walk me through what the  
16 disapprovals were? You say there was a few, so can  
17 you walk me through each of the approvals?

18 **A. I don't remember all of them, but wall**  
19 **heights, plans, distance with the neighboring**  
20 **property of the driveway, for example. Different**  
21 **things like that that we have to change.**

22 Q. Once you receive the written approval from  
23 the Design Review Committee, is there a certain  
24 timeline in which you have to start and complete  
25 building the residence?



1 sign a contract with the builder and then you sign a  
2 contract with the bank.

3 MS. HANKS: Okay.

4 (Plaintiff's Exhibit 7 was  
5 marked for identification.)

6 BY MS. HANKS:

7 Q. Okay. The court reporter handed you what  
8 has been marked as Exhibit 7, and this is a document  
9 entitled "Malek Residence Site and First Floor  
10 Plan." Do you see that?

11 A. Yes.

12 Q. This is also -- you have a real tiny, tiny  
13 Bates stamp at the very bottom Malek000447. I  
14 believe also this was produced as part of that last  
15 supplement that we had talked about. In looking at  
16 this, does this look like this is the final design  
17 plan for your -- that you plan on building on your  
18 lots?

19 A. I think the driveway might have changed a  
20 little bit. I think the driveway might have changed  
21 a little bit. Is that on here? The house has not  
22 changed. So if that's the main -- main concern.

23 Q. I just want to make sure that what we have  
24 is what you understand to be the final?

25 A. Yeah.

1 what the golf parcel was in comparison to Lot 2.

2 I'll identify the line has 65.6 feet it's marked as?

3 MR. DEVOY: What line 65.6 feet?

4 MS. HANKS: Yeah, go ahead and look at the

5 65.60 feet underneath. It's north 36 degrees,

6 0433 degrees east. Do you see that?

7 MS. WINSLOW: Can I see the --

8 MS. HANKS: Yeah.

9 MR. DEVOY: It's very small, that's the  
10 reason I ask.

11 MS. HANKS: Yeah, it's hard to --

12 MR. MCGINN: Okay. It's the side line.

13 MS. WINSLOW: Thank you.

14 MS. CHAVEZ: Actually, can I see that?

15 MS. HANKS: Sure.

16 BY MS. HANKS:

17 Q. In terms of what you understand your plans  
18 to be, what type of, I guess, perimeter will be  
19 there? Type of fencing?

20 MR. DEVOY: Objection. Vague.

21 BY MS. HANKS:

22 Q. If any?

23 A. My architect talked that out with the

24 RC -- I know that -- I know we have a fence.

25 There's a view fence that goes around the whole

1 parcel, I think, between the -- again, I'm  
2 speculating. This is between the -- between my  
3 architect and the RC.

4 Q. Okay. When you say a view fence, do you  
5 mean like a wrought-iron fence that we see here in  
6 Exhibit 8?

7 A. I think you have to have a -- I think --  
8 again, I'm speculating. I think you have to have a  
9 wrought-iron fence around your property. It's  
10 between -- I'm actually doing that in my home now.  
11 One of the fences fell off, and I'm replacing it.  
12 So between the -- especially, if you're on the golf  
13 course, I think you're supposed to have a  
14 wrought-iron fence to keep -- whatever it is. I  
15 don't know what the purposes is. But there's going  
16 to be a wrought-iron fence around the whole  
17 property.

18 Q. Okay. And when you say the whole  
19 property, does that also mean the two sides of the  
20 property?

21 MR. DEVOY: Objection. Vague.

22 THE WITNESS: I think -- I don't know  
23 if -- you know, there's a wall that comes to here,  
24 so there's a wall, but then, you know, you put up a  
25 fence above it to make up the fence for privacy and

1 also for -- I don't know, my -- again, my main  
2 concern is privacy and to keep intruders and animals  
3 out, coyotes and stuff out of there. So I know, you  
4 know, that's why, I think, along the golf course at  
5 least, I know we're putting a view fence or one of  
6 these fences all around the whole property here.

7 BY MS. HANKS:

8 Q. Okay. And so it would be your  
9 understanding -- and I understand I'm not going to  
10 lock you to it because it's better to ask your  
11 architect, but as far as you understand, the best  
12 recollection today is that the blue line that we  
13 highlighted on Exhibit 7 would be a wrought-iron  
14 fence?

15 A. It will be a wrought-iron fence around the  
16 parameter, yes.

17 Q. Okay. Now, do you know how much in terms  
18 of square footage, based on the little diagram we're  
19 looking at on your residence on Exhibit 7, will go  
20 into the golf parcel portion?

21 MR. DEVOY: Objection. Vague. Calls for  
22 speculation. Foundation.

23 THE WITNESS: It does, but I can -- I  
24 can -- I can estimate.

25

1 BY MS. HANKS:

2 Q. Sure. I'm not going to lock you down to  
3 exact --

4 A. It will be a guess.

5 Q. -- square footage but just generally  
6 speaking?

7 A. Yeah. It will be probably about maybe  
8 15 percent.

9 Q. Of the lot?

10 A. Of the what?

11 Q. 15 percent of what?

12 A. Of the house.

13 Q. Oh, the house, okay.

14 A. So the house is 12,000 square -- 11,000  
15 and change. Probably around 1,000 square feet,  
16 1,500, if that. Actually, honestly, a lot less than  
17 that. I mean, it's part of the bedroom and a small  
18 part of the living room and a closet. Is that what  
19 you're asking me?

20 Q. Yes.

21 A. What's going to be on here?

22 Q. Yeah. Because you marked the blue line as  
23 the part where the golf parcel started. I know it's  
24 all 594 Lairmont now, but --

25 A. No, I get it.

1 Q. Yeah.

2 A. So it's going to be probably about 10 to  
3 15 percent.

4 Q. Okay.

5 A. So just do the math, probably about 1,000,  
6 1,500 square feet.

7 Q. Do you know if there will be any windows  
8 in this portion of the property, of the 15 percent  
9 that's going to carry over onto the golf parcel?

10 A. There's a --

11 MR. DEVOY: Objection. Vague.

12 THE WITNESS: Okay. On the portion you're  
13 pointing at, just to make it clear for everyone who  
14 is reading, it's the side of the closet so there's  
15 no windows and there's no second floors. It's just  
16 a closet.

17 BY MS. HANKS:

18 Q. Okay. Just a closet?

19 A. So there's no --

20 Q. Can you mark that with the orange  
21 highlighter so that we know?

22 A. With orange?

23 Q. Yeah.

24 A. The closets?

25 Q. Yeah.

1 THE WITNESS: On this project?

2 MS. HANKS: Correct.

3 THE WITNESS: No, not that I know of.

4 BY MS. HANKS:

5 Q. The two stakes that you circled in Exhibit  
6 8, do you know when they were put there?

7 A. I think they were put there -- I mean, I'm  
8 almost 100 percent sure, but, again, to the best of  
9 my knowledge they were put there in December of  
10 2012.

11 Q. Do you know who put them there?

12 A. I'm assuming it was B2.

13 Q. And who is B2?

14 A. That's the surveyors that I think were  
15 hired -- I mean I know were hired. I think they're  
16 surveyors. That's the company I hired to survey and  
17 handle the, I guess, remapping or whatever.

18 Q. At any time prior to March 13th, 2013,  
19 that's when the Rosenberg Trust purchased 590  
20 Lairmont, did you ever have any conversations with  
21 Barbara Rosenberg?

22 A. Okay. I don't know if March 13th is an  
23 accurate date, but I've never had a conversation  
24 with Barbara Rosenberg, ever.

25 Q. How about Fredric Rosenberg?

1 MR. DEVOY: Objection. Foundation.

2 THE WITNESS: Who's Fredric? Who's

3 Fredric? The father?

4 MS. HANKS: Yes.

5 THE WITNESS: No.

6 BY MS. HANKS:

7 Q. How about David Rosenberg, ever have any  
8 conversations --

9 A. Is David the son?

10 Q. Yes.

11 A. He came up to me at one point, but it  
12 wasn't March 13th -- again, I don't know where  
13 you're getting the date March 13th from, but I  
14 hadn't met David yet.

15 Q. Did you have a conversation with him on  
16 that one occasion that you met him?

17 A. Yes.

18 Q. What was the conversation? The  
19 substance --

20 A. The substance was he -- I was walking with  
21 the architect into the -- my father-in-law. Walking  
22 into -- we walked the property and we're walking  
23 into the clubhouse, and somebody yelled out, Are you  
24 Shane Malek? I turn around and it's -- you know,  
25 the guy was sweaty. He looked like he was running.



1 His shirt was kind of untucked. And I said, Yeah,  
2 I'm Shane Malek. He says, I'm your neighbor. And  
3 immediately I smiled and I extended my hand to shake  
4 his hand. I said, Oh, nice to meet you, and I still  
5 didn't know exactly what he was talking about.

6 And I don't remember the exact sentence  
7 that came out of his mouth or the words that came  
8 out of his mouth, but he immediately became very  
9 hostile and started threatening me, like  
10 immediately. He pulled his hand back. He wouldn't  
11 shake my hand, and he became very hostile. That's  
12 the only conversation I had with this guy.

13 Q. Did you say anything else besides nice to  
14 meet you?

15 A. I don't know what I said to him. He told  
16 me -- I remember he said he was an attorney and he's  
17 going to make it very expensive for me to build a  
18 home. I'm like, I don't know who the hell you are,  
19 and as an attorney it's very unprofessional for you  
20 to speak like this.

21 Q. Any other things that you said and he said  
22 to you in the conversation?

23 A. Honestly, I don't remember the  
24 conversation. It became blurry. It was very  
25 upsetting, and it was very abrupt. Usually, when

1     you meet your neighbors, it's a happy occasion and  
2     you talk. This was just -- this was a hostile guy  
3     coming at me. Even though I extend my hand to shake  
4     his hand, he basically attacked.

5             And what I know is either me or maybe it  
6     was my father-in-law said that to him, but one of us  
7     said to him that it is unbecoming of an attorney to  
8     speak like this. Because he was threatening me not  
9     going to -- the way -- the way it sounded like was  
10    I'm an attorney, I'm going to sue you. You're going  
11    to have to hire a lot of attorneys. I'm going to  
12    make it very expensive -- oh, yeah, I remember  
13    something else. He said, You better have very deep  
14    pockets if you ever dream of building on this lot.

15            Q. Other than that one interaction with David  
16    Rosenberg, any other interactions with him?

17            A. Never met him again. Never even saw him  
18    again. In fact, if I saw him, I'd probably steer  
19    clear of him. I think he said, My wife saw you guys  
20    walking the lot. I guess she called him at work.  
21    And he just ran out of work. I don't know what he  
22    was doing. He was so sweaty, but he ran out and  
23    made that contact. You know, that's what I  
24    remember.

25            MS. HANKS: Okay. Can we go off the

1 THE WITNESS: Can I speculate?

2 MR. DEVOY: She's asking if you have  
3 knowledge.

4 THE WITNESS: I don't know exactly what  
5 that means, but towards me, I feel it was very  
6 malicious, yes. I was threatened that he was going  
7 to do that. He had no round, so, yes, it was very  
8 malicious.

9 BY MS. HANKS:

10 Q. Okay. And you're referring to David  
11 Rosenberg?

12 A. I talked to David and then they followed  
13 through. So I don't know who is representing who.  
14 The guy told me he is an attorney. I don't know if  
15 he's an attorney for Fredric or for Barbara or who  
16 the hell these people are, but it's very malicious,  
17 yes.

18 Q. Do you know when that interaction happened  
19 between and Mr. -- or David Rosenberg?

20 A. Yeah, it was July -- June or July or  
21 August. It was in the summer. I know it was hot  
22 because he was sweating very badly.

23 Q. What year?

24 A. 2013.

25 Q. As you sit here today, do you know the

1 amount of attorney fees that you incurred up until  
2 the time it took to get the lis pendens removed from  
3 the property?

4 THE WITNESS: I mean, I can guess. Should  
5 I -- is that something I should answer?

6 BY MS. HANKS:

7 Q. I don't want you to guess, but if you  
8 have -- you can certainly approximate. But I don't  
9 want you to guess. So if you don't know, I rather  
10 you say you don't know. But if you have an  
11 approximate or a general number of how much  
12 incurred, then yes, please provide that.

13 A. I don't know, but I'm sure it will be  
14 provided at some point. I don't know.

15 Q. So it's information that you could obtain  
16 from your own records?

17 A. Probably.

18 Q. You indicated that the positioning of the  
19 residence has changed since some of the earlier  
20 plans; is that right?

21 A. Yes.

22 Q. Was that because the Design Review  
23 Committee denying it?

24 A. No.

25 Q. Okay. That was just a personal decision

1 redirect. We're back on the record?

2 EXAMINATION

3 BY MR. DEVOY:

4 Q. Shane, as you know, I'm your attorney.

5 You testified earlier that the stakes could have  
6 been -- the stakes on the golf parcel, adjacent to  
7 590, that could have been in the ground as soon as  
8 December 2012; is that correct?

9 A. The stakes depicting the golf parcel,  
10 placed around the golf parcel?

11 Q. The stakes that we can see in Exhibit 8  
12 that you circled?

13 A. Oh, those, yes, yes.

14 Q. It's your belief that those could have  
15 been there as early as December 2012, correct?

16 A. To the best of my knowledge, that's when  
17 they were placed there.

18 Q. Do you recall seeing those stakes in 2013?

19 A. Yes.

20 Q. Do you recall how the stakes -- strike  
21 that.

22 When was the last time you were on  
23 594 Lairmont and the golf parcel?

24 A. A couple days ago.

25 Q. Do you recall seeing the stakes then?

REPORTER'S CERTIFICATE

STATE OF NEVADA     )  
                              )   SS  
COUNTY OF CLARK    )

I, Leah Armendariz, Certified Court  
Reporter, do hereby certify:

That I reported the taking of the  
deposition of the witness, Shahin Shane Malek,  
commencing on Tuesday, January 27, 2015, at  
1:02 p.m. That prior to being examined, the witness  
was by me duly sworn to testify to the truth.

That I thereafter transcribed my shorthand  
notes, and the typewritten transcript of said  
deposition is a complete, true, and accurate  
transcription of said shorthand notes.

That a request has been made to review the  
transcript.

I further certify that I am not a relative  
or employee of an attorney or counsel of any party  
involved in said action, nor a relative or employee  
of the parties involved, nor a person financially  
interested in the action.

Dated this 3rd day of February, 2015.

Leah D. Armendariz  
Leah D. Armendariz, RPR, CCR No. 921

## DISTRICT COURT

CLARK COUNTY, NEVADA

THE FREDRIC AND BARBARA )  
 ROSENBERG LIVING TRUST, )

Plaintiff, )

vs. )

No. A-13-689113-C

Dept. No. I

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. )



## 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

CSR ASSOCIATES OF NEVADA  
 LAS VEGAS, NEVADA (702) 382-5015

## 1 APPEARANCES:

2

For the Plaintiffs:

3

DIANA S. CLINE, ESQ.  
MELISSA BARISHMAN  
Howard Kim & Associates  
1055 Whitney Ranch Drive  
Suite 110  
Henderson, NV 89014

4

5

6

7

For Bank of America and BAC Home Loans:

8

NATALIE WINSLOW, ESQ.  
Akerman, LLP  
1160 Town Center Drive  
Suite 330  
Las Vegas, NV 89144

9

10

11

12 For Michael Doiron and MacDonald Highlands Realty:

13

SPENCER H. GUNNERSON, ESQ. and  
IAN MCGINN, ESQ.  
Kemp, Jones & Coulthard  
2800 Howard Hughes Parkway  
Las Vegas, NV 89169

14

15

16

For Shahin Shane Malek:

17

JAY DEVOI, ESQ.  
The Firm  
200 East Charleston Boulevard  
Las Vegas, NV 89104

18

19

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23

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# INFORMATION TO BE PROVIDED

None

1 (Court reporter's opening statement was waived.)

2 \* \* \* \* \*

3 (Witness sworn.)

4 WHEREUPON:

5 BARBARA ROSENBERG

6 having been first duly sworn, was  
7 examined and testified as follows:

8

9 EXAMINATION

10 BY MR. GUNNERSON:

11 Q. Good afternoon. My name is Spencer  
12 Gunnerson. I am an attorney with Kemp, Jones &  
13 Coulthard, and we represent Michael Doiron and  
14 MacDonald Highlands Realty Company.

15 We are here pursuant to a notice to  
16 take your deposition to discuss the issue of the  
17 cases regarding the Rosenberg Trust versus  
18 Malek.

19 Does that all sound familiar to you?

20 A. It does.

21 Q. Could you please start by stating your  
22 full name and spell your last name for the  
23 record?

24 A. Barbara Rosenberg, R-O-S-E-N-B-E-R-G.

25 Q. And what is your current address?

1       A.       709 Via la Cuesta, Palos Verdes  
2 Estates, California, 90274.

3       Q.       And as far as it pertains to the  
4 Fredric and Barbara Rosenberg Trust, what is  
5 your role in that trust?

6       A.       I am a trustee.

7       Q.       Have you ever been asked to testify on  
8 behalf of the trust previously?

9       A.       No.

10      Q.       Have you ever had your deposition  
11 taken before?

12      A.       Yes.

13      Q.       About how many occasions have you had  
14 your deposition taken?

15      A.       One.

16      Q.       What was the purpose of your  
17 deposition in that case -- that was a poorly  
18 worded question.

19               What was that case concerning in which  
20 your deposition was taken?

21      A.       It was concerning a problem we had  
22 with an investment adviser.

23      Q.       And in what capacity were you  
24 testifying?

25      A.       We were alleging fraud and we were

1 Q. What did you speak with your son about  
2 regarding --

3 A. Just the general mechanics of a  
4 deposition.

5 Q. Did you speak about any of the  
6 substantive material issues in the litigation?

7 A. No.

8 MS. CLINE: Can you just give her more  
9 information on what you mean by substantive  
10 material issues?

11 MR. GUNNERSON: That's fine.

12 BY MR. GUNNERSON:

13 Q. Have you spoken to anyone else besides  
14 your husband or your son?

15 A. Aside from my lawyers?

16 Q. Of course. Not including your  
17 lawyers.

18 A. Not that I can think of.

19 Q. What do you do for a living?

20 A. I am a realtor.

21 Q. How long have you been a realtor?

22 A. About 25 years.

23 Q. And is that a realtor in California?

24 A. Yes.

25 Q. Do you have a real estate license in

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?

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



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.

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?

1       A.       My son, David, was living in Nevada.  
2 He had married. It became obvious he wasn't  
3 going to move back to California, so we thought  
4 we would like to be a part of his family.

5       Q.       What did you do to start looking for  
6 property in 2009?

7       A.       We asked David to start looking at  
8 homes that he would like to live in. Our first  
9 thought was that he buy a house since he was  
10 renting. After that, as it evolved, we began to  
11 think in terms of a family home for all of us;  
12 but in 2009, it was just David finding a house  
13 that he and Lana could live in.

14      Q.       Is there any certain part in Nevada  
15 that you started looking at homes in 2009?

16      A.       Henderson.

17      Q.       Why Henderson?

18      A.       David was living in Green Valley and  
19 when we visited him, we loved it. We loved The  
20 District. We loved the feeling. Just a  
21 beautiful place to live.

22      Q.       You said you started to have David  
23 looking for properties at first, correct?

24      A.       Yes.

25      Q.       Did you give him a certain criteria of

1 what you were looking for?

2 A. Initially, he was looking for  
3 something so our criteria didn't factor into it  
4 yet.

5 Q. And at what point did your criteria  
6 factor into finding a property in Nevada?

7 A. In 2012, we decided that we should  
8 look in terms of a joint family home.

9 Q. What do you mean by a joint family  
10 home?

11 A. A house that would be big enough to  
12 accommodate my husband and myself and he and his  
13 family where we wouldn't bump into each other  
14 every two minutes.

15 Q. If I understand you correctly, a home  
16 that you could all live together but in  
17 different parts of the house?

18 A. Exactly.

19 Q. Did you start looking at that point or  
20 were you still having David look for a home in  
21 2012?

22 A. No. David was looking.

23 Q. Now that you were looking to be living  
24 with his family or them living with you or you  
25 living together, did you provide any comments on

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.

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.

1 Q. When I say you, meaning whether that  
2 was the Rosenberg Trust or you or your son,  
3 correct?

4 A. Yes.

5 Q. And your first offer was for  
6 \$1.75 million?

7 A. Yes.

8 Q. How did you reach that number as a  
9 first offer?

10 A. I wrote in the letter how I reached  
11 that number.

12 Q. So there is bullet points in that  
13 letter. It talks about front and the back  
14 landscaping, extensive water damage, cracks in  
15 the interior, so on and so forth; is that  
16 correct?

17 A. Yes.

18 Q. We talked a minute ago about how if  
19 you look off your balcony, you could see the Las  
20 Vegas Strip lights, correct?

21 A. Yes.

22 Q. What were you referring to if in fact  
23 you had a part in drafting this -- Did you have  
24 a part in drafting this letter?

25 A. Yes.

1 Q. Were you the sole drafter of the  
2 letter?

3 A. I was the main drafter of the letter.

4 Q. The second paragraph says, "Based on  
5 the current conditions of the home, the view is  
6 not facing the Las Vegas Strip." What were you  
7 meaning by that?

8 A. There is a head-on Las Vegas Strip  
9 view where you look out your window and bam,  
10 there is the view. This is not a bam,  
11 straight-out Las Vegas Strip view. This is a  
12 beautiful view of the strip, but it is not in  
13 your face.

14 Q. When you say the view is not facing  
15 the Las Vegas Strip, it doesn't mean there is  
16 not a view of the Strip, only that it doesn't  
17 directly face the Strip; is that correct?

18 A. Exactly.

19 Q. You also state in that same sentence,  
20 if you go on, "The home next door is halfway  
21 built (bank owned)," and then it says, "The  
22 piece of land next door will be starting  
23 construction soon." Do you see that?

24 A. Yes.

25 Q. That piece of land next door, are you



1 referring to the Malek property at --

2 A. Yes.

3 Q. Let me finish.

4 Were you referring to the Malek  
5 property at 594 Lairmont Place?

6 A. Yes.

7 Q. How did you know the construction  
8 would be starting soon?

9 A. Well, he had bought the lot. I  
10 assumed that he was going to build on it.

11 Q. You hadn't spoken to him or anybody  
12 else about construction timing for the Malek  
13 property?

14 A. No.

15 Q. You didn't know if he was going to be  
16 flipping the property or sitting on it for a  
17 long time without building, you didn't know what  
18 he was going to do with it, correct, at the time  
19 you drafted the letter?

20 A. Correct.

21 Q. You hadn't spoken to the HOA or the  
22 developer about Malek's plans to develop the  
23 property, correct?

24 A. Correct.

25 Q. At this time?

1 grouping on which it was provided.

2 BY MR. GUNNERSON:

3 Q. Did you get a chance to look at those?

4 A. Yes.

5 Q. Are all of these emails true and  
6 correct copies of emails in which you were  
7 either the sender of the email or the receiver  
8 of the email?

9 A. It appears so.

10 Q. If we could go on to the first page --  
11 it appears if you go three pages down to what is  
12 on the bottom that says PLTF 3304, it looks like  
13 if you glance at these, this appears to be where  
14 you are trying to find the right contact,  
15 correct?

16 A. Yes.

17 Q. And then in fact, while you are in  
18 that process, the email you received at the  
19 bottom of that page from Elana Escobar states,  
20 "Good morning, Lisa -- actually, this isn't an  
21 email to you. It is to you but it is addressed  
22 to Lisa and you are copied on it. "Good  
23 morning, Lisa. This is a Bank of America  
24 property. It is not listed at this time."

25 Is that what it states?

1 A. Yes.

2 Q. On February 21, 2013, it was not  
3 listed, right?

4 A. Right.

5 Q. At the top of that page, it states  
6 Kelli Barrington is going to be the contact on  
7 the file, correct?

8 A. Yes.

9 Q. If you go to the next page, it  
10 identifies PLTF 3294 -- actually, that appears  
11 to be similar emails to what we just looked at.  
12 So let's go to the first page, PLTF 3311. If  
13 you look at the email sent by Kelli Barrington,  
14 it states, "At this time, the seller is not  
15 ready to negotiate offers." Do you see that?

16 A. Yes.

17 Q. And that they anticipated completion  
18 of their due diligence and marketing  
19 preparations to be completed within the next few  
20 weeks at the latest, correct?

21 A. Yes.

22 Q. And she states she will contact you  
23 when they are ready to begin negotiations,  
24 correct?

25 A. Yes.

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 A. Yes.

2 Q. On here, it appears you amended your  
3 purchase price to be \$2,302,000, correct?

4 A. Yes.

5 Q. And do you recall how you ended up --  
6 I know the reasoning behind it, because you  
7 wanted to find the best because you really  
8 wanted the property, but do you recall how you  
9 ended up with \$2,302,000?

10 A. Yes.

11 Q. How is that?

12 A. I had had a client who was a best and  
13 final about a year and a half before, and I had  
14 suggested to them that instead of just putting  
15 in at 2.3 or 2.1 or whatever, but just to add a  
16 little bit more because that way, you might edge  
17 out somebody who had come in exactly the same  
18 price you did. So I said to her I want  
19 \$2,302,000 so if someone comes in at \$2.3  
20 million, I will get it for the \$2,000.

21 Q. Underneath the purchase price, it  
22 says, "All other terms to remain the same,"  
23 correct?

24 A. Yes.

25 Do you know what the other offer was?

1 MS. CLINE: He doesn't get to testify.

2 THE WITNESS: We always wanted to  
3 know.

4 MR. GUNNERSON: Unfortunately, I am  
5 asking the questions and not testifying.

6 Since we are talking about the  
7 Residential Purchase Agreement, let's mark that  
8 as an exhibit.

9 (Deposition Exhibit O marked.)

10 BY MR. GUNNERSON:

11 Q. So what I handed you is a document  
12 identified as Exhibit O. Do you recognize this?

13 A. I do.

14 Q. What is it?

15 A. It is a Residential Purchase  
16 Agreement.

17 Q. And this purchase agreement, it is  
18 dated March 13, 2013, correct?

19 A. Yes.

20 Q. And if you look through and number  
21 through the pages, you will see there is buyer's  
22 initials I think on every page. Do you  
23 recognize those initials?

24 A. I do.

25 Q. Whose are those initials for the



1 buyer?

2 A. My husband and myself.

3 Q. And the first set of initials is  
4 whose?

5 A. Barbara Rosenberg and then Fred  
6 Rosenberg.

7 Q. Were you there when your husband  
8 signed this document?

9 A. Yes.

10 Q. So you saw him put his initials on  
11 this document?

12 A. Yes.

13 Q. On the very last page, there is a  
14 buyer's signature.

15 A. Yes.

16 Q. Is that your signature where it is the  
17 first buyer's signature line?

18 A. No. That is his signature, I think.  
19 Let me see.

20 Q. There are two signatures, two buyer  
21 signature lines.

22 A. Oh, I was looking down here.

23 Q. The buyer's acknowledgment of offer.

24 A. Yes. This is Barbara Rosenberg and  
25 that is Fred Rosenberg.

1 Q. That is your signature and your  
2 husband's signature?

3 A. Uh-huh, yes. Uh-huh.

4 Q. Does this appear to be a correct copy  
5 of the Residential Purchase Agreement that you  
6 and your husband executed on March 13, 2013?

7 A. Yes.

8 Q. How many Residential Purchase  
9 Agreements have you worked with as a real estate  
10 agent?

11 A. I don't know the exact number. Many.

12 Q. Would you put it over a thousand?

13 A. No.

14 Q. In 25 years, you have not worked with  
15 more than a thousand real estate purchase  
16 agreements?

17 A. I haven't done a thousand sales.

18 Q. Would you say you have done more than  
19 500?

20 A. Probably.

21 Q. More than 600?

22 A. I don't know. That is a guess.

23 Q. But at least more than 500 sales you  
24 have done?

25 A. Yes.

1 BY MR. GUNNERSON:

2 Q. Do you recall if you waived the  
3 appraisal?

4 A. I don't recall.

5 MS. WINSLOW: I have a better copy if  
6 you want to use that.

7 MR. GUNNERSON: Sure.

8 MS. WINSLOW: These have the addendums  
9 attached to the back.

10 MR. GUNNERSON: We will mark this as a  
11 separate exhibit number so you can reference it  
12 as you need.

13 (Deposition Exhibit P marked.)

14 BY MR. GUNNERSON:

15 Q. It appears that we have a better copy.  
16 What we handed you is another Residential  
17 Purchase Agreement identified as Exhibit P.  
18 First look at the signatures and make sure this  
19 is the same document that we were referencing in  
20 Exhibit O.

21 A. Yes. Here you could see it.

22 Q. This is the same agreement then as we  
23 have been looking at with the other exhibit,  
24 just a clearer version?

25 A. Yes.

1 Q. If we go to the 4th page again, this  
2 one is Bates Numbered BANA 00004. So when you  
3 looked at Line 7 on the appraisal, do you see if  
4 waived has been checked?

5 A. It looks like it.

6 Q. You have no reason to dispute that the  
7 appraisal on this purchase was waived, correct?

8 A. Correct.

9 Q. And then if you go down to Line 23, do  
10 you see that?

11 A. Uh-huh.

12 Q. What does that say?

13 A. It says survey.

14 Q. Do you see what is marked for a survey  
15 at the property?

16 A. It says waived.

17 Q. And it is your recollection you waived  
18 taking a survey of the property, correct?

19 A. That is what it says.

20 Q. Is that your recollection?

21 A. I don't have that recollection, but I  
22 see it is on the paper.

23 Q. You have no reason to dispute it?

24 A. No.

25 Q. If you go now to -- we will stick with

1 the one we were working with.

2 A few more pages over to BANA 00006,  
3 if you see on that, it says property inspection  
4 condition, 12-B. Do you see that?

5 A. I do.

6 Q. It says, "During the due diligence  
7 period, buyer shall take such action as buyer  
8 deems necessary to determine whether the  
9 property is satisfactory to buyer including, but  
10 not limited to, whether the property is  
11 insurable to buyer's satisfaction." Do you see  
12 that?

13 A. Yes.

14 Q. Is that a correct reading so far?

15 A. Yes.

16 Q. And I continue, "Whether there are  
17 unsatisfactory conditions surrounding or  
18 otherwise affecting the property." Do you see  
19 that?

20 A. Yes.

21 Q. What efforts were made to determine if  
22 there were any unsatisfactory conditions  
23 surrounding or otherwise affecting the property?

24 A. We got a preliminary title report.

25 Q. That affects your title of the

1 property. Anything else that was done regarding  
2 the surrounding, otherwise, affecting the  
3 property?

4 A. No, not really.

5 Q. I know that you stated -- we have  
6 talked previously how you did not walk the  
7 property prior to this real estate purchase  
8 agreement, correct?

9 A. Correct.

10 Q. Did you walk the property after?

11 A. At the inspection.

12 Q. Was that the only time you walked the  
13 property prior to purchase?

14 A. As I remember.

15 Q. When you walked the property, did you  
16 go into the backyard?

17 A. Yes.

18 Q. Did you go onto the balconies?

19 A. Yes.

20 Q. Do you recall looking over at Malek's  
21 property?

22 A. I don't recall it.

23 Q. Do you recall looking at the bare lot  
24 that Malek purchased that sits right behind his  
25 property?

1 A. I am assuming at some point, I looked  
2 at the lot.

3 Q. But you don't recall?

4 A. I don't recall, no.

5 Q. This section we have been reading,  
6 12-B, as you stated, you read this entire  
7 agreement before you signed it. You would have  
8 read 12-B as well, correct?

9 A. Yes.

10 Q. If you will go with me to Page BANA  
11 000008, at the bottom of the page where it talks  
12 about brokers.

13 A. Yes.

14 Q. Do you know who the brokers were in  
15 this case?

16 A. Siobhan was a broker and I was a  
17 referral broker.

18 Q. Were there any other brokers?

19 A. Michael.

20 Q. And was she an agent or a broker, do  
21 you recall?

22 A. She is an agent of the broker.

23 Q. And the broker would have been  
24 MacDonald Highlands Realty, correct?

25 A. Yes.

1 Q. And she and the realty company would  
2 have been buyer's brokers, correct?

3 A. Correct.

4 Q. Seller's brokers?

5 A. Seller's. I'm sorry.

6 Q. Here it appears if you look at Line 41  
7 of that page, it talks about listing broker,  
8 correct?

9 A. Listing broker, yes.

10 Q. If you go down to Paragraph 22, Waiver  
11 of Claims, do you recall if you read that  
12 paragraph prior to signing the document?

13 A. I don't specifically recall it, but I  
14 am assuming I did.

15 Q. Because you read the whole thing in  
16 detail, correct?

17 A. Yes. Which line are you referring to?

18 Q. Paragraph Number 22 on Line 49, just  
19 generally the paragraph.

20 A. Yes.

21 Q. In that paragraph, as you can see on  
22 Line 50, about the middle of the sentence, it  
23 says, "The property will be sold as is." Do you  
24 see that?

25 A. Yes.



1 Q. It then says, "Where-is without any  
2 representations or warranties, unless expressly  
3 stated herein." Do you see that?

4 A. Yes.

5 Q. And that was your understanding of  
6 what you were agreeing to, correct?

7 A. Yes.

8 Q. It then goes on further on the next  
9 page on Page BANA 000009, on Line 2, "Buyer  
10 waives all claims against brokers or their  
11 agents." Do you see that?

12 A. Yes.

13 Q. "For (a)," do you see that?

14 A. Yes, uh-huh.

15 Q. "Defects in the property." Do you see  
16 that?

17 A. Yes.

18 Q. When you signed that, that was your  
19 understanding, correct?

20 A. Yes. Defects in the property being  
21 structural defects in the house.

22 Q. It doesn't say that though, does it?

23 A. That was my understanding.

24 Q. It doesn't say that in the agreement  
25 though, does it?

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

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

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.

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 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

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.

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



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

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.

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,

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,

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

1 real estate transaction, correct?

2 A. Yes.

3 MS. CLINE: I'm sorry. What was that  
4 last question?

5 (Record read as follows:

6 "Q. Again, you would have read  
7 this document as you read all  
8 documents pursuant to a real  
9 estate transaction, correct?

10 A. Yes.")

11 BY MR. GUNNERSON:

12 Q. The last paragraph, the third sentence  
13 starts with you.

14 A. Uh-huh.

15 Q. It says, "You may obtain more current  
16 information regarding the zoning and master plan  
17 information from the City of Henderson, Planning  
18 Department, 240 Water Street, Henderson, Nevada,  
19 89015," and it gives a telephone number. The  
20 Henderson city information is bolded and  
21 underlined. Do you see that?

22 A. Yes.

23 Q. Did you or to your knowledge did  
24 anyone else associated with you go to the City  
25 of Henderson Planning Department to look at

1 zoning or master planned information?

2       A.       There would have been no reason to.  
3 It says here this information is current. It  
4 says on the top of it when they gave it to me  
5 that it is the most recent zoning and land use  
6 information. So as of April 13th, they were  
7 telling me you don't have to go there. If after  
8 you close there is a -- you want to know if  
9 something happened, fine. But as of this date,  
10 here is your current zoning information, and  
11 nobody told us about what was going on with the  
12 lot next door.

13       Q.       Ms. Rosenberg, my question was really  
14 simple. I understand you have an explanation.  
15 If your attorney wants you to explain further  
16 the response to the question, she can do that.  
17 That is fine. My question that I am asking is  
18 this states you may obtain current information  
19 regarding the zoning master planned information  
20 from the City of Henderson. Did you or are you  
21 aware of anyone associated with you go to the  
22 City of Henderson Planning Department to get  
23 further information?

24       A.       There was no need.

25       Q.       That is not the question. Yes or no,

1 did you or anyone associated with you go to the  
2 City of Henderson Planning Department to get  
3 current information?

4 A. No. Had they gone, it was not  
5 recorded and they would not have found it out  
6 anyway.

7 (Deposition Exhibit W marked.)

8 THE WITNESS: If I could just add  
9 something. It says this information is current  
10 and it says if you want more current. There is  
11 no such thing as more current. Current by  
12 definition means something that as of this  
13 moment, this is the situation.

14 BY MR. GUNNERSON:

15 Q. What is the moment on that?

16 A. It is April 13th.

17 Q. That is not what the document says.

18 The first line of the last paragraph, what does  
19 it say it is current on?

20 A. It says this information is current  
21 and then it says it was plotted on  
22 February 2010, but it doesn't say -- it says  
23 this is information is current. It is two parts  
24 of the sentence.

25 Q. It says, and I will read it word for



1 Q. And for the record, this is marked as  
2 Exhibit X. And then there are signatures as  
3 well as initials at the bottom of the second  
4 page, correct?

5 A. Uh-huh.

6 Q. Are these yours and your husband's  
7 initials and signatures?

8 A. They are.

9 Q. As far as you could tell, this is a  
10 true and correct copy of the Walk-Through  
11 Inspection and Release?

12 A. Yes.

13 Q. It appears in the middle of the first  
14 page and the top of the second page, there is a  
15 line through the inspection with the word  
16 handwritten waived. Do you see that?

17 A. Yes.

18 Q. Do you recognize whose handwriting  
19 that is that says waived?

20 A. It is an assumption. I think it is  
21 Michael, but I don't know. I don't know. I am  
22 guessing.

23 Q. It is not yours, correct?

24 A. That is not my handwriting, no.

25 Q. And is this true that you waived the

1 Walk-Through Inspection and Release?

2 A. It looks like it.

3 Q. And you did say, however, you did  
4 conduct an inspection; is that correct?

5 A. Yes.

6 Q. When you conducted the inspection, you  
7 said you didn't really notice Malek's property,  
8 it was a bare lot, correct?

9 A. Yes.

10 Q. Do you recall seeing any stakes in the  
11 bare lot?

12 A. No.

13 Q. Because you don't remember looking at  
14 the bare lot at all, correct?

15 A. I would assume in the course of normal  
16 looking I might have glanced over at the lot,  
17 but it was not on my mind that I needed to look  
18 at the lot because I didn't have any idea there  
19 was any problem.

20 Q. Again, you don't recall looking at a  
21 lot or seeing anything on the lot; is that  
22 correct?

23 A. That is correct.

24 Q. If you waived the walk-through  
25 inspection, why did you then go forward with an

1 Nevada now?

2 A. No. We come and visit.

3 Q. When I asked you where do you  
4 currently reside, you gave me a California  
5 address?

6 A. Right.

7 Q. So would you consider the subject  
8 property your current residence?

9 A. No.

10 Q. You have a room and you have stuff  
11 there and you come and visit and live there, but  
12 it is not your residence; is that correct?

13 A. No.

14 Q. That is not correct?

15 A. That is not correct. It is not our  
16 main residence. It is our secondary residence.

17 Q. How often would you say -- how much  
18 time do you spend in your residence at the  
19 subject property?

20 A. We come usually between every three  
21 and four weeks and we usually stay three or four  
22 days.

23 Q. Is there a plan to move out here  
24 permanently eventually?

25 A. Yes.

1 (Deposition Exhibit Y marked.)

2 BY MR. GUNNERSON:

3 Q. I am handing you what has been marked  
4 as Exhibit Y. Do you know what that is?

5 A. Yes.

6 Q. What is this?

7 A. It says it is the complaint.

8 Q. It says it is the complaint that was  
9 filed, it says, on behalf of Fredric and Barbara  
10 Rosenberg Living Trust against Bank of America  
11 and a bunch of other defendants and it was filed  
12 on 9/23/13. Can you take a look at this and see  
13 if you looked at this previously.

14 (Discussion held off the record.)

15 BY MR. GUNNERSON:

16 Q. Did you have a chance then to review  
17 Exhibit Y, which is the complaint?

18 A. Yes.

19 Q. And have you seen this prior to today?

20 A. Yes.

21 Q. If you turn to Page 5 of the  
22 complaint, the page in the bottom right-hand  
23 corner, Paragraph 18 says situated on the golf  
24 parcel, and I will tell you and we can look  
25 right above in the paragraph above, golf

1 parcels, which is what I was calling the bare  
2 lot, which as you can see from Paragraph 17 is  
3 the .34 acre portion that was a part of Golf  
4 Course 9 which was purchased by Malek. Are we  
5 on the same page?

6 A. Yes.

7 Q. On Number 18, it says, "Situated on  
8 the golf parcel were certain easements." Do you  
9 see that?

10 A. Yes.

11 Q. What easements are you claiming were  
12 on the golf parcel?

13 A. I don't know. I am not an attorney.

14 Q. So you don't know what this is  
15 referring to when it says there were easements  
16 on the golf parcel?

17 A. No.

18 Q. You are a real estate agent, correct?

19 A. Yes, but I am not an attorney. This  
20 is a legal document.

21 Q. That is okay. You are a real estate  
22 agent, correct?

23 A. Yes.

24 Q. And as a real estate agent, you looked  
25 at many title reports?

1 A. Yes.

2 Q. When you look at title reports, do you  
3 look at easements on the title reports?

4 A. Yes.

5 Q. You understand what an easement is?

6 A. I know what an easement is.

7 Q. Without looking at this then, just me  
8 asking you, are you claiming there are certain  
9 easements on the bare lot or what is referenced  
10 in your complaint as the golf parcel?

11 A. I don't know what is meant here  
12 because I am not a lawyer. I know what an  
13 easement is. I know what it does, but I don't  
14 know what it is claiming here.

15 Q. Let's get away from the complaint real  
16 quick. I just want to know you personally, do  
17 you have any -- let me phrase this correctly.

18 Are you aware personally of any  
19 easements on the bare lot?

20 A. I would assume there is an easement  
21 because it is part of the golf course and can't  
22 be used to build.

23 Q. You assume there are certain easements  
24 on there. Do you think there is a restriction  
25 for building an easement on that property?

1 A. I don't know.

2 Q. Who would know, what easement --

3 A. Among other things, MacDonald Ranch  
4 would have known.

5 Q. MacDonald Ranch is not claiming there  
6 is easements. Who would know --

7 A. Michael should have known.

8 Q. Michael is not the one who filed the  
9 complaint. As far as of the people who filed  
10 the complaint, who would know -- you are here --  
11 scratch all of that.

12 You are here representing the Fredric  
13 and Barbara Rosenberg Living Trust, correct?

14 A. Right.

15 Q. You are the person that they  
16 designated who has information that we need  
17 regarding the complaint that was filed against  
18 us and the other Defendants, correct?

19 A. Yes.

20 Q. I am just asking if you know --  
21 actually, I already asked you if you know, and  
22 you said you don't know what easements would be  
23 on that property, correct?

24 A. Correct.

25 Q. Someone else would know that?

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

1 MS. CLINE: I think that maybe she is  
2 not understanding the technical term of an  
3 expert report and so that is probably the issue.

4 MR. GUNNERSON: Counsel, I usually  
5 don't ask attorneys questions. Am I missing an  
6 expert report other than the real estate  
7 damages?

8 MS. CLINE: No, you are not. This is  
9 the expert report. It gives a valuation and the  
10 replacement value of the house is something that  
11 doesn't have a separate expert report for it.

12 MR. GUNNERSON: It doesn't have an  
13 expert report at all for it.

14 MS. CLINE: That is what I said.

15 MR. GUNNERSON: I didn't know if you  
16 meant it was combined in this one. I understand  
17 what you are saying now.

18 MS. CLINE: So at the time, that is  
19 what the intention was and it ended up as this.  
20 So that is what we are clear on.

21 BY MR. GUNNERSON:

22 Q. In Interrogatory Number 2 on the next  
23 page, Number 3, Line 9 of Page 3, it says,  
24 "Without waiving said objections, Plaintiff  
25 contends that the subject property has zero

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

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?

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

1 A. I am not a golfer. I don't know.

2 Q. In fact, if you were to view it today,  
3 it appears to be raw desert land; is that  
4 correct?

5 A. It looks -- yeah, I guess.

6 Q. You say you are not a golfer. Do you  
7 know if that land is inbounds or out of bounds  
8 for the 9th hole?

9 A. I don't know.

10 Q. So if that bare lot was out of bounds  
11 for the hole, then wouldn't you agree that  
12 selling that property to Malek would not be a  
13 sale of the 9th hole because it is out of bounds  
14 of the 9th hole?

15 A. I don't know what he is going to do  
16 there, so I don't know how it is going to affect  
17 the 9th hole. I don't know what they would say  
18 how they would have to reconfigure it based on  
19 what he was doing, so I don't know. You are  
20 asking me will it purely stay the way it is. I  
21 have no idea.

22 Q. That is not what I am asking.

23 What I am asking is does the sale of  
24 that desert land which may be outside the  
25 out-of-bounds markers for the hole, will that

1 MS. CLINE: Objection. Form, calls  
2 for speculation.

3 THE WITNESS: Do I still answer?

4 MR. GUNNERSON: Please.

5 MS. CLINE: You can answer if you  
6 understand his question.

7 THE WITNESS: It is speculation.

8 BY MR. GUNNERSON:

9 Q. Thank you.

10 We are still on Line 24 on Page 3. It  
11 says the view of the golf course and mountains  
12 from the decks, that that was the reason why you  
13 purchased the property, right?

14 A. Yeah. That would be changed  
15 materially if he builds right into it.

16 Q. I don't know what you mean by into it,  
17 but let me ask you this: The view of the golf  
18 course, when you say view of the golf course,  
19 does that include the fairway?

20 A. It includes the view you get right now  
21 from the house, and the view you get right now  
22 from the house would have whatever it is he  
23 builds in it. It is not the view we bought.

24 Q. We are just talking about the view of  
25 the golf course. So the view of the golf



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 BY MR. GUNNERSON:

2 Q. Number 3, Page 3, Number 24, it also  
3 says the view, it says the golf course and the  
4 mountains; is that correct?

5 A. Yes.

6 Q. What mountains are you referring to  
7 there?

8 A. The mountains that you see from the  
9 house.

10 Q. When I looked out of your house, I saw  
11 mountains in the distance straight back behind  
12 the house and then around us towards the front  
13 of the house are a lot of foothills. When you  
14 say mountains, are you also including the  
15 foothills or are you referencing the mountains  
16 in the distance?

17 A. I am referencing the views from the  
18 back of the house.

19 Q. And then it says you also bought the  
20 property because of the living room. Does that  
21 remain the same if in fact Malek purchases and  
22 builds on the bare lot?

23 A. Well, the living room has this  
24 beautiful view. So if he builds into the view,  
25 then it is damage to the living room.

1 Q. I am not sure exactly. What you are  
2 saying is what you could see out the living room  
3 is what you mean here when you say the living  
4 room is unique. You are talking about the view  
5 from the living room is unique?

6 A. This says we bought it based on -- it  
7 still has a very nice living room; but if he  
8 builds something, it could have an obstructed  
9 view which doesn't have that.

10 Q. Even if he didn't buy the bare lot, he  
11 is still going to build on that property which  
12 you would still be able to see out your living  
13 room window, correct?

14 A. Yes, but you would see it  
15 peripherally.

16 Q. It also says you bought it because of  
17 the kitchen?

18 A. Yes.

19 Q. And the dining room?

20 A. Uh-huh.

21 Q. Do the kitchen and dining room change  
22 if Malek purchases the property and builds on  
23 it?

24 A. Not the kitchen, but possibly the  
25 dining room.

1 Q. Because of the view?

2 A. Yeah.

3 Q. And it says also the master bedroom,  
4 right, that is something that was unique?

5 A. Major league, yeah.

6 Q. Are you saying that -- has that  
7 changed as a result of him purchasing the  
8 property, the master bedroom?

9 A. That would be the most impacted if he  
10 builds on that piece of land.

11 Q. You are not talking about the master  
12 bedroom itself won't change, that remains the  
13 same as far as the carpet and the color of the  
14 walls and the furniture and the layout. What  
15 you are saying is the view from the master  
16 bedroom changes?

17 A. Yes.

18 Q. And you also talk about then the  
19 privacy created by the lack of residential  
20 building lots to the rear of the property,  
21 correct?

22 A. Yes.

23 Q. What lack of -- To the rear of the  
24 property is the 9th hole.

25 A. Yes.

1 Q. So even if Malek buys the piece of  
2 property on the side yard, that doesn't obstruct  
3 your view to the rear of the property?

4 A. We don't have a problem with him  
5 building on his lot, the lot that he bought. We  
6 bought the house knowing that he was going to  
7 build a house. We have a problem with that  
8 third piece of land which nobody disclosed and  
9 which is going to directly impact us.

10 Q. I am just trying to understand when  
11 you say to the rear of the property. You say  
12 privacy created by the lack of residential  
13 building lots to the rear of the property. I  
14 think maybe the distinction here is that there  
15 is the side of the property and the rear of the  
16 property, and you are not claiming that he is  
17 going to be building to the rear of the  
18 property, he is actually building to the side of  
19 your property, correct?

20 A. Yes.

21 Q. And that privacy is privacy, again,  
22 you wouldn't have had from people walking on the  
23 path on Stephanie Street, correct?

24 A. No. It is a different kind of  
25 privacy. When somebody builds -- arguably, I

1 don't know what he is going to build. If he is  
2 building a structure where he is looking into  
3 our living room and bedroom, you basically have  
4 pretty much like a tract house because you look  
5 out and somebody looks in. That is an intrusion  
6 into your privacy.

7           The idea of golfers being out on the  
8 golf course, it is lovely. It is sort of like  
9 you are watching golf. It is like a little  
10 motion picture right in front of you.

11       Q.     So you don't mind the golfers being  
12 able to look into your property?

13       A.     Most golfers are not looking into your  
14 property. They are playing golf.

15       Q.     But you don't mind if they do?

16       A.     If occasionally, but it doesn't  
17 happen. That is not what golfers do.

18       Q.     But you don't mind if they do?

19       A.     I wouldn't like it, but I don't mind.

20       Q.     People walking on Stephanie Street,  
21 you don't mind if they look into your property  
22 because you understand that that happens?

23       A.     They are not looking into my property.  
24 They are on Stephanie Street.

25       Q.     Let's say one stopped and looked into

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?

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.



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

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.

17

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 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

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

## REPORTER'S DECLARATION

STATE OF NEVADA )  
 ) SS.  
COUNTY OF CLARK )

I, CINDY L. HUEBNER, Certified Court Reporter No. 806, declare as follows:

That I reported the taking of the deposition of the witness, BARBARA ROSENBERG, commencing on December 8, 2014 at the hour of 1:04 p.m.

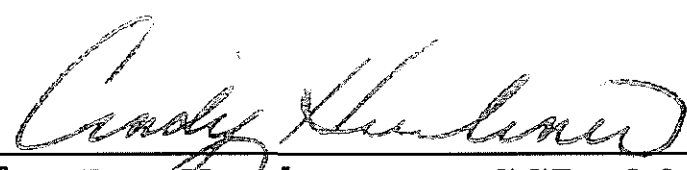
That prior to being examined, the witness was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth.

During the deposition, the deponent was advised of the opportunity to read and sign the deposition transcript under Rule 30, the original signature page is being forwarded to Diana Cline, Esq. to obtain the deponent's signature.

That I thereafter transcribed said shorthand notes into typewriting and that the typewritten transcript of said deposition is a complete, 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

1	DISTRICT COURT		
2	CLARK COUNTY, NEVADA		
3			
4	THE FREDRIC AND BARBARA	)	
	ROSENBERG LIVING TRUST,	)	
5		)	
		)	
6	Plaintiff,	)	
		)	
7	vs.	)	Case No. A689113
		)	DEPT. NO. I
8	BANK OF AMERICA, N.A.; BAC	)	
	HOME LOANS SERVICING, LP, a	)	
9	foreign limited partnership;	)	
	DRAGONRIDGE PROPERTIES, LLC;	)	
10	DRAGONRIDGE GOLF CLUB, INC. is	)	
	a Nevada corporation;	)	
11	MACDONALD PROPERTIES, LTD., a	)	
	Nevada corporation; MACDONALD	)	
12	HIGHLANDS REALTY, LLC, a	)	
	Nevada limited liability	)	
13	company; MICHAEL DOIRON, an	)	
	individual; SHAHIN SHANE	)	
14	MALEK, an individual; REAL	)	
	PROPERTIES MANAGEMENT GROUP,	)	
15	INC., a Nevada corporation;	)	
	DOES I through X, inclusive;	)	
16	ROE BUSINESS ENTITY I through	)	
	XX, inclusive,	)	
17		)	
		)	
18	Defendants.	)	
		)	

19

20

21 DEPOSITION OF MICHAEL TASSI

22 LAS VEGAS, NEVADA; THURSDAY, FEBRUARY 5, 2015

23

24 Reported by: Johanna Vorce, CCR No. 913

25 JOB NO.: 235400

1 DEPOSITION OF MICHAEL TASSI, taken at 3800 Howard  
2 Hughes Parkway, Seventeenth Floor, Las Vegas, Nevada 89169,  
3 on Thursday, February 5th, 2015, at 10:26 a.m., before  
4 Johanna Vorce, Certified Court Reporter, in and for the  
5 State of Nevada.

6

7 APPEARANCES:

8 For the Plaintiff: KAREN HANKS, ESQ.

9 Howard Kim & Associates  
10 1055 Whitney Ranch Drive  
Suite 110  
11 Henderson, Nevada 89014

12 For the Defendants, MacDonald Highlands Realty, LLC, and

13 Michael Doiron: SPENCER H. GUNNERSON, ESQ.

14 Kemp, Jones & Coulthard  
15 3800 Howard Hughes Parkway  
Seventeenth Floor  
16 Las Vegas, Nevada 89169  
sgunnerson@kempjones.com

17

18 For the Defendant, Shahin Shane Malek:

19 J. MALCOLM DEVOY, ESQ.

20 The Firm, P.C.  
21 200 East Charleston Boulevard  
Las Vegas, Nevada 89104  
jay@thefirmlv.com

22

23

24

25



1 For the Defendant, Bank of America:

2 Natalie Winslow, ESQ.

3 Akerman  
4 1160 Town Center Drive  
5 Suite 330  
6 Las Vegas, Nevada 89144  
7 natalie.winslow@akerman.com

8 For the City of Henderson:

9 BRANDON P. KEMBLE, ESQ.

10 City Attorney's Office  
11 240 Water Street  
12 P.O. Box 95050 MSC 144  
13 Henderson, Nevada 89009-5050  
14 Brandon.Kemble@cityofhenderson.com

15 Also Present: SARAH GUNNERSON

16

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## I N D E X

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WITNESS: MICHAEL TASSI

EXAMINATION

PAGE

By Mr. Gunnerson

5

By Ms. Hanks

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By Mr. DeVoy

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Further Examination

By Mr. Gunnerson

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By Ms. Hanks

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## EXHIBITS

NUMBER

MARKED

Exhibit A Deposition Subpoena

5

Exhibit B Notice of Henderson City Council Final Action

17

Exhibit C Recorded Document

21

Exhibit D Recorded Document

21

Exhibit E Screen Shots

30

1 LAS VEGAS, NEVADA; THURSDAY, FEBRUARY 5, 2015

2 10:26 A.M.

3 -oOo-

4 (The Court Reporter was relieved of her duties  
5 under NRCP 30(b)(4).)

6 Whereupon,

7 MICHAEL TASSI,  
8 having been first duly sworn to testify to the truth, was  
9 examined and testified as follows:

10  
11 EXAMINATION

12 BY MR. GUNNERSON:

13 Q. Could you please state your name and spell your  
14 last name?

15 A. Michael Tassi. And it's spelled T as in Tom, a, s  
16 as in Sam, s as in Sam, i.

17 Q. And let me just introduce myself. We met  
18 previously. My name is Spencer Gunnerson, and I represent a  
19 couple of defendants, Michael Doiron and MacDonald Highlands  
20 Realty, in this case. We have noticed your deposition.

21 Are you here today pursuant to a subpoena?

22 A. Yes.

23 MR. GUNNERSON: I'm going to mark this Exhibit A.

24 (Defendants' Exhibit A was marked  
25 for identification.)

1           MR. GUNNERSON: I don't know that you received the  
2 top part of this. But I think you may have received the  
3 bottom part.

4           MR. KEMBLE: Sorry. Counsel, what do you mean by  
5 "top part"?

6 BY MR. GUNNERSON:

7           Q. I'll show you. On this there's a Notice of Taking  
8 Deposition, which I don't think was supplied to you. This  
9 was supplied for the parties. But if you'll see -- go two  
10 pages into it. There's a deposition subpoena. Do you see  
11 that?

12          A. Yes, I do.

13          Q. Is this the same copy of the same deposition  
14 subpoena that you received in order to come today? You can  
15 take a second and look at it, if you'd like.

16          A. Yes. This looks like the one.

17          Q. And on that last page, page 3 of 3 -- you see that  
18 on the very last page?

19          A. Yes, I do.

20          Q. It identified matters on which the examination was  
21 requested. Had you reviewed those prior to coming to your  
22 deposition today?

23          A. Yes, I did.

24          Q. Are you the person with knowledge regarding these  
25 topics?

1           A.    Yes, I am.

2           Q.    Have you ever had your deposition taken before?

3           A.    Yes, I have.

4           Q.    Approximately how many times?

5           A.    I believe it's only been once.

6           Q.    One other time.

7                   Can you tell me in what capacity were you having  
8 your deposition taken in that other deposition?

9           A.    Subject matter expert on a particular development  
10 project.

11          Q.    So it was as an expert, not in your employment  
12 with the City of Henderson; is that correct?

13          A.    Well, no. I take it back. It was because I was  
14 employed with the City of Henderson.

15          Q.    Was it a zoning issue that you were dealing with  
16 or another issue?

17          A.    It was a zoning. It was a development agreement.

18          Q.    Did the development agreement deal with zoning  
19 issues?

20          A.    It did.

21          Q.    Now, just as a reminder, the oath you've taken  
22 today is the same oath that you would have taken in a court  
23 of law and holds up the same penalties for perjury. Do you  
24 understand that?

25          A.    I do.

1 BY MR. GUNNERSON:

2 Q. You've stated you are aware of the zoning change  
3 process at the City of Henderson from inception to  
4 completion, correct?

5 A. Correct.

6 Q. Can you give me just a general understanding of  
7 how the process begins and when it ends?

8 A. Process begins when an applicant submits an  
9 application making a request to, in this case, change of  
10 land use and the zoning on this .34 acres. It then gets  
11 scheduled for a staff review committee meeting. So this --  
12 we provide comments back to the applicant before we schedule  
13 it for planning commission. The item then goes to planning  
14 commission. We write staff -- I'm sorry. Let me back up.  
15 We write a staff report for -- based on the -- the  
16 information they submitted. And that staff report provides  
17 the staff's recommendation based on the analyses that we've  
18 done.

19 That gets forwarded to the planning commission  
20 with the recommendation. They hold a public hearing. The  
21 planning commission then makes a recommendation by motion on  
22 whether they're going to recommend approval of the  
23 application or recommend denial.

24 That gets automatically forwarded to the city  
25 council. And the city council takes potentially two

1 meetings. They have a public hearing as well. If they  
2 approve the item, then it gets forwarded to a committee  
3 meeting. And then it's just a process of creating an  
4 ordinance of those from a committee through the regular  
5 meeting at that same time for adoption.

6 Q. Is it ultimately adopted by the city council? Is  
7 that correct?

8 A. In the zone -- for the zone change, yes, that's  
9 correct.

10 Q. And once the city council has approved a zoning  
11 change, do they provide notice of final action, if you're  
12 aware?

13 A. I -- I'm not -- yes, they do provide notice of  
14 final action. I think it's in the form of the minutes. I'm  
15 not with the clerk's office, so I have some cursory  
16 understanding of that process.

17 (Defendants' Exhibit B was marked  
18 for identification.)

19 BY MR. GUNNERSON:

20 Q. I'm going to hand you what I've marked as Exhibit  
21 B. The document I've handed you is entitled Notice of  
22 Henderson City Council Final Action. Have you ever seen a  
23 document like this before?

24 A. Yes, I have.

25 Q. Do you know if this is a notice that's provided

1    **when a zoning change has been approved by the city council?**

2               MR. KEMBLE: Give me one second. I need to make  
3    an objection. This is outside the scope of the matters on  
4    which examination would occur. But I'll let Mr. Tassi  
5    testify if he has knowledge.

6               MR. GUNNERSON: That's fine. And the sole purpose  
7    of this is going to be to set forward the zoning change  
8    number with the property itself. I'm not going to be  
9    getting into very many of the specifics of this document.

10              MR. KEMBLE: That's fine. He may know. But if  
11   he's offering testimony here, it's in his individual  
12   capacity and not as a 30(b)(6) witness.

13              MR. GUNNERSON: Okay.

14              THE WITNESS: What was the question again?

15   BY MR. GUNNERSON:

16              **Q.    So have you seen notices like this before?**

17              A.    Yes, I have.

18              **Q.    Now, it states at the beginning that, "Notice is**  
19   **hereby given on December 4th, 2012. The city council of**  
20   **Henderson took the following action on the application**  
21   **listed below."**

22                    Is it your understanding that on December 4th  
23   there was a city council hearing regarding a zoning change  
24   plan?

25              A.    Yes.



1           Q.    Now, if you look at -- turn with me to -- it's at  
2   the bottom right-hand corner.  It's identified as PLTF1792.  
3   Do you see that?

4           A.    Yes, I do.

5           Q.    On that it provides -- after that whereas clause  
6   on the left, it talks about a -- it provides a legal  
7   description.

8                   In preparation for your deposition today, is that,  
9   to your knowledge, the same property that you have been  
10  prepared to discuss today?

11          A.    I recognize the -- at the top, below resolution,  
12  where it says MacDonald Highlands Golf Hole Nine.  I did not  
13  look at the legal description as it's listed here.  So I  
14  can't say that that is legal description.  This appears to  
15  be the property I did research on.

16          Q.    If you go back to Exhibit 1 where we provide you  
17  with the subpoena, on there it states in No. 2, "The  
18  Henderson City Council approved zoning changes for  
19  APN:178-28-520-001, certain real property totaling 0.34  
20  acres, more or less, located in a portion of Section 27,  
21  Township 22 South, Range 62 East, located within the  
22  MacDonald Highlands master plan, off MacDonald Ranch Drive  
23  and Stephanie Street."  And then it goes into the zoning.

24                   If you look at that page I've just marked, do you  
25  see at the whereas clause where it discusses the 0.34 acres?

1           A.    Yes, I do.

2           Q.    And then you see also in the next paragraph that  
3 begins with "Being a portion of lot?" I just want you to  
4 look at about halfway through that paragraph. It talks  
5 about locating the Northwest corner Section 27, Township 22  
6 South, Range 62 East. Do you see that?

7           A.    I do, yes.

8           Q.    Is it your understanding then that this Notice of  
9 Henderson City Council Final Action is referencing the same  
10 property in which you prepared to discuss today?

11          A.    Yes, I do.

12          Q.    If you then go back to the front page, I note on  
13 here it gives a zoning change number. It says  
14 ZCA-06-660018-A15. Do you see that?

15          A.    I do.

16          Q.    Did I read that correctly?

17          A.    Yes, you did.

18          Q.    Is that the zoning change number for the zoning  
19 change at which you prepared yourself --

20          A.    Yes, it is.

21          Q.    -- to talk about today?

22          A.    Yes, it is. Sorry.

23               MR. GUNNERSON: Thank you.

24               MR. KEMBLE: Counsel, when you said "front page,"  
25 you were referring to Exhibit B, Bates Stamped PLTF1785?