

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR COLLIER COUNTY, FLORIDA

KIMBERLY ANN SCHNELL MITCHELL,
and DONNIE GENE MITCHELL, and
DOLPHIN POINT, LLC, a Florida limited
liability company,

Plaintiffs,

v.

CASE NO.: 2019-CA-3254

THE CLUB AT LA PENINSULA, INC., a
Florida Corporation

Defendant.

**NOTICE OF FILING DEPOSITION TRANSCRIPT OF KIMBERLY ANN SCHNELL
MITCHELL IN SUPPORT OF PLAINTIFF'S MOTION FOR PARTIAL SUMMARY
JUDGMENT**

Plaintiff, DOLPHIN POINT, LLC, a Florida limited liability company, pursuant to Fla.R.Civ.P. 1.500, hereby gives notice of filing the deposition transcript of Kimberly Ann Schnell Mitchell taken on January 11, 2023 in support of its Motion for Partial Summary Judgment which is set for hearing on February 17, 2023.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed the foregoing document on January 23, 2023 with the Clerk of Court using the Florida Courts E-filing Portal which will send electronic copies to: **Wayde P. Seidensticker, Jr., Esquire**, Seidensticker & San Filippo, LLC, 791 10th Street South, Suite 202, Naples, Florida 34102 at wps@sandslawoffices.com; wserve@sandslawoffices.com; psf@sandslawoffices.com, *Co-counsel for Plaintiffs* and **Jeffrey D. Fridkin, Esquire**, and **Michael T. Traficante, Esquire**, Grant Fridkin Pearson, P.A., 5551

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1 IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
2 IN AND FOR COLLIER COUNTY, FLORIDA
3 CIVIL ACTION

4 KIMBERLY ANN SCHNELL
5 MITCHELL and DONNIE GENE
6 MITCHELL, and DOLPHIN
7 POINT, LLC, a Florida
8 limited liability company, CASE NO. 2019-CA-3254

9 Plaintiffs,

10 vs.

11 THE CLUB AT LA PENINSULA,
12 INC., a Florida
13 corporation,

14 Defendant.
15 _____/

16 VIDEOTAPED DEPOSITION OF: Kimberly Mitchell
17 DATE: January 11, 2023
18 TIME: 9:05 a.m. to 2:08 p.m.
19 PLACE: 791 10th Street South
20 Suite 202
21 Naples, Florida 34102
22 TAKEN BY: Counsel for Defendant
23 COURT REPORTER: Susan C. Baker, RMR, CRR

24 Naples Court Reporting & Legal Services
25 2315 Stanford Court
Suite 301
Naples, Florida 34112
(239) 316-7733

NaplesCourtReporting.com

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1	APPEARANCES:	1	Exhibit 17 - Certificate of Amendment 9/18/15
2	For the Plaintiffs: Wayde P. Seidensticker, Jr., Esq. Seidensticker & San Filippo, LLC	2	Exhibit 18 - Vote Tally 8/5/15
3	791 10th Street South Suite 202	3	Exhibit 19 - Bill Morris 30-Day Notice 11/21/17
4	Naples, Florida 34102 Wps@sandslawoffices.com	4	Exhibit 20 - Letter to Bill Morris 12/11/17
5		5	Exhibit 21 - Second 30-Day Notice
6	David L. Boyette, Esq. Adams and Reese, LLP	6	Exhibit 22 - 11/22/19 Letter
7	1515 Ringling Boulevard Suite 700	7	Exhibit 23 - Text Messages
8	Sarasota, Florida 34230 David.boyette@arlaw.com	8	Exhibit 24 - Collier County Portal Printout 1/4/23
9		9	Exhibit 25 - Letter to Chris Scott
10	For the Defendant: Michael T. Traficante, Esq. Grant Fridkin Pearson, P.A.	10	Exhibit 26 - Mor-Sports Bid
11	5551 Ridgewood Drive Suite 501	11	Exhibit 27 - Letter from Bill Morris 2/6/19
12	Naples, Florida 34108 Mtraficante@gfpac.com	12	Exhibit 28 - Letter from Bill Morris 3/7/19
13		13	Exhibit 29 - E-mail Chain 3/19/19
14	Also Present: Gregg Clemons, Videographer	14	Exhibit 30 - Letter to Yovanovich 6/14/19
15		15	Exhibit 31 - E-mail from Ann Hall
16		16	Exhibit 32 - E-mail from Robert Pritt
17		17	Exhibit 33 - First Request for Production (Mitchell)
18		18	Exhibit 34 - Second Request for Production (Mitchell)
19		19	Exhibit 35 - First Request for Production (Dolphin)
20		20	Exhibit 36 - Interrogatory Responses
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1 THE VIDEOGRAPHER: This is the videotaped
 2 deposition of Kimberly Mitchell taken in the manner of
 3 Kimberly Ann Schnell Mitchell and Donnie Gene Mitchell
 4 and Dolphin Point, LLC, a Florida limited liability
 5 company, versus The Club at La Peninsula, Inc., a
 6 Florida corporation, pending in the Circuit Court of
 7 the 20th Judicial Circuit in and for Collier County,
 8 Florida, Civil Action, Case Number 2019-CA-3254.
 9 Today's date is January 11th, 2022. The time is
 10 9:06 a.m. The videographer is Gregg Clemons. The
 11 court reporter is Susan Baker.
 12 At this time will the attorneys please state
 13 their appearances for the record.
 14 MR. SEIDENSTICKER: Wayne Seidensticker on behalf
 15 of the Plaintiffs.
 16 MR. BOYETTE: David Boyette here for the
 17 Plaintiffs also.
 18 MR. TRAFICANTE: And Michael Traficante on behalf
 19 of the Defendant.
 20 THE VIDEOGRAPHER: Will the court reporter please
 21 swear in the witness.
 22 THE COURT REPORTER: Raise your right hand,
 23 please.
 24 Do you solemnly swear the testimony you are about
 25 to give shall be the truth, the whole truth, and

Page 7

1 nothing but the truth?
 2 THE WITNESS: Yes.
 3 THE COURT REPORTER: Thank you.
 4 - - -
 5 KIMBERLY MITCHELL,
 6 having been first duly sworn, was examined and testified
 7 as follows:
 8 DIRECT EXAMINATION
 9 BY MR. TRAFICANTE:
 10 Q. Mrs. Mitchell, can you please state your full
 11 name and address just for the record.
 12 A. Kimberly Ann Schnell Mitchell, 85 West Pelican
 13 Street, Naples, Florida 34113.
 14 Q. And, Ms. Mitchell, as you are aware, my law firm
 15 and I represent The Club at La Peninsula, Inc. in this
 16 lawsuit. And you're here for your deposition both in your
 17 individual capacity as well as the corporate
 18 representative of Dolphin Point, LLC.
 19 I want to -- before we get started, what I'd like
 20 to do is give you a couple of instructions because I don't
 21 know if you have ever been through this process just to
 22 make sure you understand how it works.
 23 Have you ever --
 24 MR. SEIDENSTICKER: I was just going to ask if
 25 the court -- it's a little off center. It's a little

Page 8

1 panned onto my side. That's why I moved some things
 2 over. If you can pan it a little bit to the left.
 3 THE VIDEOGRAPHER: We need Pete to do that.
 4 That's your mic. Mine --
 5 MR. SEIDENSTICKER: Oh, okay.
 6 THE VIDEOGRAPHER: Mine is centered.
 7 MR. TRAFICANTE: I believe that's just the --
 8 THE VIDEOGRAPHER: That's just the Zoom.
 9 MR. TRAFICANTE: That's just the Zoom.
 10 MR. SEIDENSTICKER: Got it.
 11 MR. TRAFICANTE: We can go off the record.
 12 MR. SEIDENSTICKER: That's fine.
 13 THE VIDEOGRAPHER: We are going off the record?
 14 MR. TRAFICANTE: Oh, no. We can go back on then.
 15 THE VIDEOGRAPHER: Oh, okay.
 16 BY MR. TRAFICANTE:
 17 Q. So before we get started, what I'd like to do is
 18 just give you a few instructions.
 19 Have you ever been deposed before?
 20 A. No.
 21 Q. Okay. And so, first -- and you're doing a good
 22 job so far -- if you can, please respond to all of my
 23 questions verbally. Because although we have a court
 24 reporter and although we have a videographer, the court
 25 reporter is taking down everything we say verbatim. And

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1 it's hard for her to take down a nod of the head. So if
 2 you could just respond to all of my questions or any of
 3 the other attorneys' questions verbally. Okay?
 4 A. Okay.
 5 Q. Second, lawyers are notoriously bad at talking
 6 over people. And although I know you might anticipate
 7 where some of my questions are going, what I would ask you
 8 too is just let me finish my question before you answer
 9 because it's hard for the court reporter to take down two
 10 people talking at once.
 11 A. Okay.
 12 Q. Next, if you don't understand a question, please
 13 ask me to rephrase. If you do answer the question, it
 14 will be assumed and understood that you understood what I
 15 was asking.
 16 A. Okay.
 17 Q. And then, last, this isn't by any means meant to
 18 be a marathon. So if you need a break, please just let me
 19 know. And as long as there's not a question pending, we
 20 will be more than happy to accommodate you.
 21 A. Okay.
 22 Q. All right. Do you have any questions before we
 23 get started then?
 24 A. No.
 25 Q. Okay. In preparation for your deposition today,



Page 10

1 other than your attorneys, did you speak with anyone else?

2 A. No.

3 Q. Okay. Did you review any documents?

4 A. Yes.

5 Q. And what documents did you review?

6 A. Just refreshed myself from the beginning to where

7 we are today.

8 Q. And so which documents did you review; do you

9 recall, Mrs. Mitchell?

10 A. Everything that I've -- starting with Rich

11 Yovanovich all the way to Wayde, just anything,

12 communications that we had.

13 Q. Okay. Did you review any pleadings --

14 A. No.

15 Q. -- in this case?

16 Did you review any deposition transcripts?

17 A. No -- well, I was in the Zoom meeting.

18 Q. Are you referring to the deposition of the

19 corporate representative --

20 A. Yes.

21 Q. -- of The Club?

22 Okay. That occurred last week?

23 A. Yes.

24 Q. Did you review any other deposition transcripts?

25 A. No.

Page 11

1 Q. Okay. Did you review, other than correspondence

2 -- and let me do another ground rule. If I'm ever asking

3 you about communications that you've had, assume that I'm

4 not asking you for communications you've had with any of

5 your attorneys.

6 A. Okay.

7 Q. Those are privileged, and I'm not asking you for

8 those.

9 A. Okay.

10 Q. But you mentioned you reviewed communications.

11 A. Just through my attorney.

12 Q. Okay. So you just reviewed communications

13 between you and your attorney?

14 A. Correct.

15 Q. Okay. Did you review any other correspondence or

16 communications?

17 A. No.

18 Q. Okay. Any other documents?

19 A. No. Just legal documents from my attorney.

20 Q. Okay. Have you spoken to any members of The Club

21 about this lawsuit?

22 A. No.

23 Q. And I want to show you what I have marked as

24 Exhibit 1, which for Mr. Boyette is the amended notice of

25 taking your deposition.

Page 12

1 Here is a copy.

2 MR. SEIDENSTICKER: Thank you.

3 BY MR. TRAFICANTE:

4 Q. Take a second and just look at it, and you can

5 let me know when you're done.

6 A. Yeah, I'm familiar with this document.

7 Q. Okay. So you've seen this document before?

8 A. Yes.

9 Q. Okay. And for the record, can you identify what

10 this document is?

11 A. This is a counterclaim.

12 Q. Is this the amended notice of taking your

13 videotaped deposition for today?

14 A. I believe so.

15 Q. Okay. And you will see on pages 1 through 3 you

16 are here. And have you been designated as the corporate

17 representative of Dolphin Point, LLC for each of these

18 subject matters?

19 A. Yes.

20 Q. Okay. And you're also here in your individual

21 capacity, correct?

22 A. Yes.

23 Q. Okay. Is your knowledge in your individual

24 capacity the same as your knowledge as the corporate

25 representative of Dolphin Point, LLC?

Page 13

1 A. Yes.

2 Q. Okay. So I probably then won't differentiate

3 today if it's the same. Is that okay with you?

4 A. Thank you.

5 Q. Okay. You're aware in this case as part of this

6 case -- and I don't want to get into what was discussed at

7 it -- but as part of this case a mediation occurred,

8 correct, in this matter?

9 A. Yes.

10 Q. Have you discussed anything that occurred in that

11 mediation or offers made at that mediation with anyone

12 other than your attorneys?

13 A. No.

14 Q. So you haven't discussed it with any other

15 members of The Club?

16 A. No.

17 Q. Okay. And just before we get into, I guess, the

18 details, just briefly can you just describe your

19 education, background post-high school?

20 A. I have a degree in -- a Bachelor of Science from

21 the University of -- Ohio State University.

22 Q. Okay. Do you have any graduate degrees?

23 A. No.

24 Q. Okay. And then work experience, just briefly

25 since college, can you just take us through that?

Page 14

1 A. I taught school for a number of years, and then I
 2 worked for my husband in the John Deere business.
 3 Q. And what subject matter did you teach?
 4 A. I was a vice president of John Deere
 5 international sales.
 6 Q. When you were a teacher, which subject matter
 7 were you a teacher of?
 8 A. Oh. They had me everywhere.
 9 Q. Everywhere?
 10 A. Yeah.
 11 Q. It's a tough job.
 12 And Dolphin Point, LLC, do you recall when
 13 Dolphin Point, LLC was formed?
 14 A. Not exactly.
 15 Q. Would it have been around October 18th of 2017?
 16 A. That sounds probably correct.
 17 Q. And why was Dolphin Point, LLC formed?
 18 A. For protection against the Mitchells to protect
 19 our interest in 85 West Pelican.
 20 Q. So was it formed to purchase a property?
 21 A. No. It was formed to protect us.
 22 Q. When you say protect you, what do you mean?
 23 A. The intrusion of the community. There was a lot
 24 of foot traffic. There was a lot of dogs. There was a
 25 lot of golf carts. There was a lot of that.

Page 15

1 Q. So does Dolphin Point, LLC own any real property?
 2 A. No. That's it. That's all they are, the 2.1
 3 acres.
 4 Q. The 2.1 acres?
 5 A. Yes.
 6 Q. Which is -- I will refer to it -- it's been
 7 referred to in the complaint filed by you in this matter
 8 as the subject parcel.
 9 A. Okay.
 10 Q. Is it okay if I refer to the 2.1 acres as the
 11 subject parcel?
 12 A. Sure.
 13 Q. Okay. Other than owning the subject parcel, does
 14 Dolphin Point, LLC own any other real property?
 15 A. No.
 16 Q. And originally the subject parcel was owned by
 17 you and your husband Donnie, correct?
 18 A. Correct.
 19 Q. Okay. And your husband's name, just for the
 20 record, is Donnie Gene Mitchell?
 21 A. Correct.
 22 Q. Okay. Dolphin Point, LLC was formed on October
 23 18th of 2017; but it didn't own property until later,
 24 correct?
 25 A. Yes. It's a new LLC.

Page 16

1 Q. Okay. And so was it only formed in order to own
 2 a real property, own real property?
 3 A. Yes.
 4 Q. Okay. And who are the members of Dolphin Point,
 5 LLC?
 6 A. Donnie Gene Mitchell and Kimberly Mitchell.
 7 Q. So you and your husband are the only members?
 8 A. Yes.
 9 Q. Okay. And its principal address is 85 West
 10 Pelican Street, Naples, Florida 34113?
 11 A. Correct.
 12 Q. Is that the adjacent part -- property to the
 13 subject parcel?
 14 A. Yes.
 15 Q. Okay. And do you and your husband own that
 16 property?
 17 A. Yes.
 18 Q. And is it held in your names individually?
 19 A. Yes.
 20 Q. Okay. And is that where your residence is
 21 located?
 22 A. Yes.
 23 Q. Okay. And who are the managers of Dolphin Point,
 24 LLC?
 25 A. At this time just myself.

Page 17

1 Q. Okay. Was there a time where you and your
 2 husband were both managers?
 3 A. Yes.
 4 Q. And when did your husband get removed as a
 5 manager of Dolphin Point?
 6 A. He hasn't been removed. But he has Alzheimer's,
 7 and he is full-time in Ohio in memory care.
 8 Q. I'm sorry to hear.
 9 When did --
 10 A. Thank you.
 11 Q. When did he go full-time in memory care?
 12 A. April.
 13 Q. Okay. April of last year?
 14 A. Yes.
 15 Q. Okay. And I understand from speaking to your
 16 attorneys that your husband is not -- doesn't have the
 17 ability to be -- to testify or be through a deposition in
 18 this case; is that correct?
 19 A. Unfortunately not.
 20 Q. Okay. Do you have power of attorney or
 21 guardianship over your husband?
 22 A. Yes.
 23 Q. Okay. Which -- which one?
 24 A. Both.
 25 Q. Both. Okay.

Page 18

1 And where has the guardianship been initiated?

2 Has that been up in Ohio?

3 A. No. It's here in the state of Florida, and I

4 just transferred it to the state of Ohio.

5 Q. Okay.

6 A. No, that's not true. I transferred it to a new

7 attorney out in -- I think he's in New York.

8 Q. So was a guardianship matter initiated in --

9 A. Florida.

10 Q. Florida. In Collier County?

11 A. Yes.

12 Q. Okay. And you said now you have transferred it

13 to an attorney in New York?

14 A. Yeah. I'm just in the process of making some

15 adjustments because now I have Don in Ohio.

16 Q. Okay. And so are you moving, I guess, for

17 guardianship in Ohio then? Is that why you have retained

18 your counsel?

19 A. I guess I would have to have them in both. He

20 will not be returning to the state of Florida.

21 Q. Understood. Okay. Just wanted to make sure I

22 understand.

23 One of the subject matters that you've been

24 designated as the corporate representative is as an

25 ownership of the subject parcel as well as the prior

Page 19

1 assignments of alleged declarant rights under the

2 declaration covenants, conditions and restrictions of La

3 Peninsula.

4 Are you aware -- are you familiar with that?

5 A. What is your question?

6 Q. You have been designated as the corporate rep for

7 Dolphin Point on those subject matters.

8 A. Yes.

9 Q. Correct?

10 Okay. And you're familiar with the declaration

11 of covenants, conditions and restrictions of La Peninsula

12 --

13 MR. SEIDENSTICKER: Are you finished with your

14 question?

15 BY MR. TRAFICANTE:

16 Q. Not yet.

17 Well, let me ask you. Are you familiar with the

18 declaration of covenants, conditions and restrictions with

19 La Peninsula as amended?

20 MR. SEIDENSTICKER: Objection. Form.

21 MR. TRAFICANTE: Okay.

22 MR. SEIDENSTICKER: You can answer.

23 BY MR. TRAFICANTE:

24 Q. You can answer.

25 A. Yes.

Page 20

1 Q. Okay. And you -- well, neither you, your husband

2 or Dolphin Point were the original owners of the subject

3 parcel, correct?

4 MR. SEIDENSTICKER: Objection. Form.

5 BY MR. TRAFICANTE:

6 Q. You can answer.

7 A. We are now the owners, yes.

8 Q. Right. And you bought it from someone?

9 A. Aircraft.

10 Q. Okay. So I want to just take you through some of

11 the deeds for that parcel and just see what your knowledge

12 is regarding those deeds. So I want to show you what we

13 have previously marked as Exhibit 2 to your deposition.

14 And just for Mr. Boyette's knowledge, these are

15 bates stamped Mitchell/DP-249 through 252.

16 MR. SEIDENSTICKER: Have you forwarded copies of

17 your exhibits to David?

18 MR. TRAFICANTE: No. I only have hard copies

19 because I knew we were going to be in person.

20 MR. SEIDENSTICKER: I know he was always planning

21 to appear by Zoom. Is there -- can you perhaps e-mail

22 these so that he has access to them?

23 MR. TRAFICANTE: They are all, Wayde, from your

24 production or pleadings. There's nothing else. So I

25 have --

Page 21

1 MR. SEIDENSTICKER: No, I understand. But if you

2 have them all prepared and ready to go --

3 MR. TRAFICANTE: I don't have them all scanned

4 in. I have hard copies. I had to send it out to

5 copying because there's numerous amounts.

6 We can go off the record. But I don't -- I have

7 hard copies because I knew you would be here.

8 MR. SEIDENSTICKER: David, do you have access --

9 can you access these so you know what he's referring

10 to?

11 MR. BOYETTE: If he's -- if he's going to tell me

12 the bates stamp page and it's in his production, yes.

13 THE VIDEOGRAPHER: We're going off the record at

14 9:19 a.m.

15 MR. SEIDENSTICKER: No, we don't need to go off

16 the record. We can stay on.

17 MR. TRAFICANTE: Okay. We can stay.

18 THE VIDEOGRAPHER: We're back on the record at

19 9:19 a.m.

20 MR. TRAFICANTE: David, just so you know, most of

21 the exhibits are from the Mitchells' document

22 production. But I will -- I will give you each bates

23 stamp number when I'm showing just like I just did.

24 MR. BOYETTE: All right. That'll work.

25 BY MR. TRAFICANTE:

Page 22

1 Q. And, Ms. Mitchell, speaking of document
 2 production, both you, your husband -- or you, your husband
 3 and Dolphin Point have been served with requests for
 4 production in this case, correct?
 5 A. We've been served with what?
 6 Q. Requests for production to produce documents in
 7 this case?
 8 A. Yes.
 9 MR. SEIDENSTICKER: Well, hang on. Make sure you
 10 understand what his question is --
 11 THE WITNESS: Well, I mean, I've been produced
 12 documents from my attorney.
 13 BY MR. TRAFICANTE:
 14 Q. Did you see -- were you served in this case with
 15 requests for production of documents --
 16 A. No.
 17 Q. -- by The Club at La Peninsula?
 18 MR. SEIDENSTICKER: Hang on. Listen.
 19 THE WITNESS: Okay.
 20 MR. SEIDENSTICKER: Let him finish his
 21 question --
 22 THE WITNESS: Okay.
 23 MR. SEIDENSTICKER: -- before you answer it. And
 24 if you don't understand his question, ask him to
 25 clarify it and break it down for you.

Page 23

1 THE WITNESS: Okay. Clarify and break it down.
 2 MR. SEIDENSTICKER: Because he is referring to
 3 things that were passed back and forth between the
 4 attorneys, and he may be using terms. Just have him
 5 clarify his question if there's anything you don't
 6 think you understand about it.
 7 THE WITNESS: Okay. Thank you.
 8 BY MR. TRAFICANTE:
 9 Q. As part of this lawsuit, are you aware that The
 10 Club at La Peninsula served requests to produce documents
 11 on the Plaintiffs?
 12 A. No.
 13 Q. So you've never received any types of documents
 14 requesting that you produce certain categories of
 15 documents as part of this lawsuit?
 16 A. Not that I'm aware of, no.
 17 Q. Okay. Are you aware that you've produced
 18 documents as part of this lawsuit?
 19 A. No.
 20 Q. Okay.
 21 A. Are you referring that I've provided documents to
 22 whom?
 23 Q. Your attorneys on your behalf --
 24 A. Oh.
 25 Q. -- produced documents.

Page 24

1 A. Well, that could be. I don't know.
 2 Q. Okay. And the totality of the documents produced
 3 is 809 pages of documents.
 4 Does that sound correct?
 5 A. That sounds like that's what I wrote the
 6 checkbook out for, about that many.
 7 Q. Okay. Other than those documents, do you have
 8 any other documents in your possession that would be
 9 responsive to the requests for production that were
 10 previously served in this matter?
 11 MR. SEIDENSTICKER: Objection. Form. You can
 12 answer.
 13 THE WITNESS: Not that I'm aware of.
 14 BY MR. TRAFICANTE:
 15 Q. Okay. So I've shown you what's been previously
 16 marked as Exhibit 2 to your deposition.
 17 Have you seen this Warranty Deed before?
 18 A. Recently, yes.
 19 Q. Okay. And you say recently.
 20 When did you see this?
 21 A. Yesterday.
 22 Q. So did you review this document in preparation
 23 for your deposition today?
 24 A. Yes.
 25 Q. Okay. So I just want to go back to the question

Page 25

1 when I originally asked what documents did you review.
 2 So other than communications with your attorneys
 3 which I don't want to know, other than this Warranty Deed
 4 what other documents did you review in preparation for
 5 your deposition?
 6 A. I guess it'll probably be on your next exhibit.
 7 Just it's dating back to this is 1998. So the first time
 8 I saw this was yesterday.
 9 Q. Did you review any other documents in preparation
 10 for your deposition?
 11 A. Yes, but I can't tell you which ones because
 12 there was a few of them. So I'll --
 13 Q. Okay.
 14 A. -- admit to them as they come up.
 15 Q. Were they all deeds?
 16 A. Three of them, I believe, were deeds.
 17 Q. Okay. And what about the others, do you recall
 18 what those were?
 19 A. No.
 20 Q. Okay. So do you have any personal knowledge
 21 regarding the parties to this deed --
 22 A. No.
 23 Q. -- that's Exhibit 2?
 24 Do you have any personal knowledge regarding the
 25 authority of the parties who executed this deed at Exhibit

Page 26

1 2?
 2 A. No.
 3 Q. Okay. And just for the record, Exhibit 2, is
 4 this a Warranty Deed dated May 14th, 1998, between Isle of
 5 Capri Associates, Inc. as grantor and Twin Dolphins Equity
 6 Partners, Limited as grantee?
 7 A. Yes.
 8 Q. Okay. And do you know who Isle of Capri
 9 Associates, Inc. is?
 10 A. No.
 11 Q. Okay. You can put that to the side.
 12 I want to show you what we are marking as Exhibit
 13 3 to your deposition.
 14 And, Mr. Boyette, this is Mitchell 575 through
 15 Mitchell 579.
 16 Have you seen this Quitclaim Deed before?
 17 A. No.
 18 Q. Okay. And for the record, is this a Quitclaim
 19 Deed dated February 4th, 2004, between Twin Dolphins
 20 Equity Partners, Limited and The Club at La Peninsula,
 21 Inc.?
 22 A. Yes.
 23 Q. Okay. And if you turn to the second page which
 24 is bates stamped Mitchell 576 at the bottom, do you see
 25 that this is a deed to The Club at La Peninsula for the

Page 27

1 clubhouse and pool area?
 2 A. Yes.
 3 Q. Were you aware of this deed before today?
 4 A. No.
 5 Q. Okay. So this wasn't one of the deeds that you
 6 reviewed in preparation for your deposition?
 7 A. No.
 8 Q. I want to show you what we are marking as Exhibit
 9 4 to your deposition.
 10 MR. SEIDENSTICKER: It was previously marked as
 11 Exhibit 3.
 12 BY MR. TRAFICANTE:
 13 Q. This was previously marked as Exhibit 3 by
 14 Mr. Boyette to a prior deposition.
 15 Have you seen this Warranty Deed before,
 16 Ms. Mitchell?
 17 A. No.
 18 Q. Okay. And is this -- for the record, is this a
 19 Warranty Deed dated March 8th, 2007, between Twin Dolphins
 20 Equity Partners, Limited and Aircraft Investment, LLC?
 21 A. Yes.
 22 Q. And is this a deed -- do you know is this a deed
 23 for the subject parcel?
 24 A. I'm not exactly sure. But it does say Aircraft
 25 Investment, so I'm guessing yes.

Page 28

1 Q. Okay. So you've never seen this deed before
 2 today?
 3 A. No.
 4 Q. So you don't have any personal knowledge
 5 regarding this deed?
 6 A. No.
 7 Q. Do you have any personal knowledge regarding the
 8 parties' authority to execute this deed?
 9 A. No.
 10 Q. If you look at page 2 of Exhibit 4, you will see
 11 that it's executed by Twin Dolphins Equity Partners,
 12 Limited, a Florida limited partnership. And it's executed
 13 by a James Kabcenell as manager.
 14 Do you see that?
 15 A. Uh-huh. Yes.
 16 Q. Do you have any familiarity with Mr. Kabcenell?
 17 A. No.
 18 Q. Okay. And if you actually look at Exhibit 3 --
 19 and I apologize to go backwards, so the prior exhibit --
 20 do you see that deed which is also on behalf of Twin
 21 Dolphins Equity Partners, Limited is executed by an
 22 S. Charles Bennett, III on behalf of Twin Dolphins?
 23 A. Yes.
 24 Q. Do you have any familiarity with Charlie Bennett?
 25 A. No.

Page 29

1 Q. Okay. I want to show you what we have previously
 2 marked as Exhibit 5 to your deposition. It was marked as
 3 Exhibit 4 by Mr. Boyette in a prior deposition.
 4 Have you seen this document before?
 5 A. No.
 6 Q. Okay. And for the record, is this a Bill of Sale
 7 and Assignment between Twin Dolphins Equity Partners and
 8 Aircraft Investment, LLC, also dated March 8th of 2007?
 9 A. Yes. 2000 -- oh, that's --
 10 Q. Do you see at the top --
 11 A. Yeah.
 12 Q. -- March 8th of 2007?
 13 A. Yes.
 14 Q. Okay. And so have you seen this document prior
 15 to today's deposition?
 16 A. No.
 17 Q. Okay. So you don't have any personal knowledge
 18 regarding this document?
 19 A. No.
 20 Q. Do you have any personal knowledge regarding the
 21 parties' -- the parties who executed -- strike that.
 22 Do you have any personal knowledge regarding the
 23 authority of the party who executed this document
 24 apparently on behalf of Twin Dolphins Equity Partners,
 25 Limited?

Page 30

1 A. No.

2 Q. I want to show you what we're marking as Exhibit

3 6 to your deposition.

4 Have you seen this document before, Ms. Mitchell?

5 MR. SEIDENSTICKER: For purposes of the record,

6 you want to identify the bates number?

7 BY MR. TRAFICANTE:

8 Q. Oh, yeah. David, it's bates stamped Mitchell 271

9 through 273.

10 Have you seen this document before today,

11 Mrs. Mitchell?

12 A. No.

13 Q. Okay. So do you have any personal knowledge

14 regarding this document?

15 A. No.

16 Q. And just for the record, is this a Corrective

17 Quitclaim Deed dated March 8th of 2007 between Twin

18 Dolphins Equity Partners, Limited and Aircraft Investment,

19 LLC?

20 A. Yes.

21 Q. Okay. And it was recorded -- if you look at the

22 top right on the first page, it was recorded on April 24th

23 of 2007 in Collier County?

24 A. Yes.

25 Q. And, again, do you have any -- so you don't have

Page 31

1 any personal knowledge regarding this corrective deed?

2 A. No.

3 Q. And do you have any personal knowledge regarding

4 the authority of the party who executed --

5 A. No.

6 Q. -- this corrective deed?

7 MR. SEIDENSTICKER: Just to be clear, since

8 there's not a question pending, when she has advised

9 you that she hasn't had any personal knowledge

10 regarding it, you're just asking her to read what's

11 recorded on it? You're not asking her to authenticate

12 the document itself?

13 MR. TRAFICANTE: I'm asking her if she has

14 personal knowledge regarding the deed in its entirety.

15 I've already asked her if she's ever seen it before.

16 MR. SEIDENSTICKER: Understood.

17 MR. TRAFICANTE: She said she hasn't.

18 MR. SEIDENSTICKER: Since you're also asking her

19 essentially to read -- just to be clear, all

20 objections are not waived with regard to --

21 MR. TRAFICANTE: No objections are waived, Wayde.

22 So let's -- no more -- no speaking objections.

23 MR. SEIDENSTICKER: Okay.

24 MR. TRAFICANTE: We can keep it to object to

25 form.

Page 32

1 MR. SEIDENSTICKER: I just want to be clear.

2 MR. TRAFICANTE: Yep. Same stipulation that we

3 had in the corporate rep for The Club of La Peninsula,

4 no trial objections are being waived.

5 MR. SEIDENSTICKER: Understood.

6 BY MR. TRAFICANTE:

7 Q. I want to show you what we are marking as Exhibit

8 7 to your deposition. And for the record, this is bates

9 stamped Mitchell 274 through 278.

10 And, Mrs. Mitchell, I meant to ask you, on all

11 these documents that are bates stamped Mitchell with

12 numbers I will represent to you these are documents that

13 were produced on behalf of the Plaintiffs by your

14 attorneys as part of this case. Okay?

15 A. Which attorney?

16 Q. Mr. Seidensticker's office.

17 A. Okay.

18 Q. Have you ever seen the document that we've marked

19 as Exhibit 7, this Warranty Deed, before today?

20 A. No.

21 Q. Okay. And for the record, this is the Warranty

22 Deed dated October 4th, 2007, between Twin Dolphins Equity

23 Partners, LLLP and Aircraft Investment, LLC.

24 Do you see that?

25 A. Yes.

Page 33

1 Q. Okay. And if you look back at the prior exhibits

2 we were looking at, Exhibits 5 and 6, do you see the name

3 of the entity was Twin Dolphins Equity Partners, LTD?

4 A. Yes.

5 Q. And on Exhibit 7 you will see that the grantor is

6 Twin Dolphins Equity Partners, LLLP.

7 A. Yes.

8 Q. Do you see that?

9 Do you know why there was a change in the names?

10 A. No.

11 Q. Okay. Do you have any personal knowledge

12 regarding these entities?

13 A. No.

14 Q. And, again, you've never seen this Warranty Deed

15 prior to today?

16 A. No.

17 Q. Even though it was produced, all these documents

18 were produced on your behalf as part of this lawsuit, you

19 have no --

20 MR. SEIDENSTICKER: Objection. Argumentative.

21 MR. TRAFICANTE: Again, Wayde, object to form.

22 We're not going to -- we're not going to do speaking

23 objections.

24 BY MR. TRAFICANTE:

25 Q. But my question, Ms. Mitchell, was even though

Page 34

1 these documents that we went over were produced, the ones
 2 that are bates stamped Mitchell were produced on your
 3 behalf as part of this lawsuit, you have never seen these
 4 documents before?
 5 A. No.
 6 Q. Okay. And do you have any -- on Exhibit 7, one
 7 more question before you put it away.
 8 A. Okay.
 9 Q. Do you have any personal knowledge regarding the
 10 authority of the party who executed this deed to do so?
 11 A. Who are you speaking of?
 12 Q. On page 2, just like we have asked on all the
 13 other deeds, you will see it's executed on behalf of Twin
 14 Dolphins Equity Partners, LLLP. And it's executed by a
 15 Mr. Kabcenell --
 16 A. Correct.
 17 Q. -- as manager of Twin Dolphins Enterprises, LLC.
 18 Do you see that?
 19 A. Yes.
 20 Q. Do you have any personal knowledge regarding
 21 Mr. Kabcenell's authority to execute this deed?
 22 A. No.
 23 Q. Okay. I want to show you what we are marking as
 24 Exhibit 8 to your deposition.
 25 And for the record, Mr. Boyette, it's Mitchell

Page 35

1 253 through Mitchell 266.
 2 Have you seen this document, Mrs. Mitchell,
 3 before today?
 4 A. No.
 5 Q. So, again, even though this was produced on your
 6 behalf by your attorneys as part of this lawsuit, you've
 7 never seen this document before today?
 8 A. No.
 9 Q. Okay. And for the record, this is a Special
 10 Warranty Deed dated April 16th of 2010 by Aircraft
 11 Investment, LLC as grantor to The Club at La Peninsula,
 12 Inc. as grantee, correct?
 13 A. Yes.
 14 Q. And you're familiar with Aircraft Investment, LLC
 15 -- or strike that.
 16 Are you familiar with Aircraft Investment, LLC?
 17 A. Just on paper.
 18 Q. Okay. How are you familiar with them?
 19 A. That's who we purchased the land from.
 20 Q. Okay. So when you say "the land," are you
 21 referring to both the subject parcel and 85 Pelican
 22 Street?
 23 A. No, just the subject parcel.
 24 Q. Okay. When did you and your husband purchase 85
 25 Pelican Street?

Page 36

1 A. It'll be six years old -- it's six years old.
 2 Six years old in May.
 3 Q. So 2016 or '17?
 4 A. Pretty close.
 5 Q. Okay. And who did you purchase 85 Pelican Street
 6 from?
 7 A. It was in foreclosure, so we purchased it from a
 8 bank.
 9 Q. Okay. And Aircraft Investment, LLC owned the
 10 subject parcel prior to you, correct?
 11 A. Correct.
 12 Q. Okay. And you purchased the subject parcel from
 13 Aircraft Investment, LLC?
 14 A. Correct.
 15 Q. At the time you purchased it, were you aware that
 16 The Club at La Peninsula was in negotiations with Aircraft
 17 Investment, LLC to purchase the subject parcel?
 18 A. Yes.
 19 Q. And how were you aware of that?
 20 A. They had a backdoor deal going on to -- they had
 21 gone to the bank to try to finance some money to purchase
 22 it, but they did it -- the master board did it without the
 23 approval of the membership. There were only -- I don't
 24 know if it was two, three or four members that tried to do
 25 it on their own.

Page 37

1 Q. And so how do you -- when you say a backdoor
 2 deal, what do you mean by that?
 3 A. Publicly, they were at Pelican Bend at a
 4 restaurant. And people around them heard, and they were
 5 announcing that they had gone to the bank, that they were
 6 trying to get the financing, that they were trying to -- I
 7 guess the words were "beat the Mitchells to the project."
 8 We weren't even in town at the time. We were in Texas,
 9 so...
 10 Q. Who were these individuals on behalf of The Club
 11 that were saying that?
 12 A. I don't know them, and I don't know any of -- any
 13 of the master board. I have never met any of them, so I
 14 can't tell you who it was.
 15 Q. Have you ever met any of the current master board
 16 members?
 17 A. No.
 18 Q. Have you ever met David Petrella?
 19 A. No.
 20 Q. Have you ever met Tina Petrik?
 21 A. I have spoken to Tina.
 22 Q. Okay. Have you ever met her in person?
 23 A. I believe she came over to the house once.
 24 Q. Okay. And so other than Ms. Petrik, you said
 25 you've never met Dr. Petrella?

Page 38

1 A. Not that I'm aware of.
 2 Q. Okay.
 3 A. I didn't recognize him at all.
 4 Q. Okay. And have you ever met any other board
 5 members?
 6 A. I met a guy named Clay that was on their board at
 7 one time.
 8 Q. Is that Clayton Keeler?
 9 A. Yes.
 10 Q. Okay. And when did you meet Mr. Keeler?
 11 A. When he came off the tennis courts to my front
 12 door and asked to speak to me, and I said that I didn't
 13 think it was appropriate that without a meeting that we
 14 talk at this time.
 15 Q. And when did that happen?
 16 A. Shortly after we finished the house.
 17 Q. So would that have been in 2017?
 18 A. I'd have to go back and look. Yeah, I don't know
 19 when we finished it.
 20 Q. Would that have been about six years ago?
 21 A. Yes.
 22 Q. So it was prior to this lawsuit, correct?
 23 A. Yes.
 24 Q. Why did you believe it wasn't appropriate to
 25 speak with Mr. Keeler?

Page 39

1 A. Well, it was early in the morning. I was still
 2 in my pajamas, and he was sweaty coming off the tennis
 3 courts.
 4 Q. Okay. And no other reason? It was that --
 5 A. No.
 6 Q. Okay. And did Mr. Keeler tell you what he wanted
 7 to speak about?
 8 A. Yes. He recognized that the Mitchells had
 9 purchased the subject project, and they wanted to see if
 10 we could sit down and negotiate.
 11 Q. Negotiate about what?
 12 A. The easements.
 13 Q. When you say easements --
 14 A. The tennis courts.
 15 Q. Okay. When you say the easements, just because I
 16 want to make sure the record's clear, what easements are
 17 you referring to?
 18 A. Well, there's 16 easements on the property.
 19 Q. Okay.
 20 A. One of the 16 are the tennis courts. His passion
 21 is with the tennis courts only.
 22 Q. Okay. And when you say there's 16 easements on
 23 the property, those you were all familiar with prior to
 24 purchasing the subject parcel, correct?
 25 A. Yes.

Page 40

1 Q. And when we're talking about the property, again,
 2 we're talking about the subject parcel?
 3 A. Yes.
 4 Q. Not 85 West Pelican Street?
 5 A. No.
 6 Q. Okay. You mentioned these backdoor discussions.
 7 How did you become aware of those backdoor
 8 discussions?
 9 A. It's a small island. You know, everybody talks.
 10 There's little social parties that go on. And people
 11 would say, "Did you hear that La Peninsula was at Pelican
 12 Bend making a backdoor deal, that they've been to the
 13 bank?" And I mean, it was all through the community
 14 that's what they were trying to do. We weren't even in
 15 town. I just heard it.
 16 Q. Do you recall who told you?
 17 A. No.
 18 Q. Did you talk to any members of The Club at La
 19 Peninsula about it?
 20 A. No.
 21 Q. Okay. So how do you know that the -- you
 22 testified that you had heard that the membership hadn't
 23 approved the deal.
 24 How are you familiar with that?
 25 A. Just that they didn't get the property bought.

Page 41

1 The Mitchells got the property subject bought.
 2 Q. So are you assuming that there was not approval
 3 then?
 4 A. Yes.
 5 Q. Okay.
 6 A. Neither bank approval or that the three partners
 7 or four partners or whoever was involved, you know, it
 8 went south.
 9 Q. Did anyone ever tell you that there wasn't
 10 approval?
 11 A. Just through social cocktail parties.
 12 Q. Did Mr. Benedetti ever disclose anything to you
 13 about that?
 14 A. No.
 15 Q. So you have had no conversations with
 16 Mr. Benedetti regarding La Pen's purchase of the
 17 property or --
 18 A. No.
 19 Q. -- negotiations of the purchase of the property?
 20 A. I don't even know that he was one of them that
 21 was involved.
 22 Q. Do you know Mr. Benedetti?
 23 A. Just from walking out my front door.
 24 Q. Okay.
 25 A. Oh, and I have met him -- I have talked to him on

Page 42

1 the tennis courts.

2 Q. Okay. Going back to what we have marked as

3 Exhibit 8, prior to today have you ever seen this Special

4 Warranty Deed between Aircraft Investment, LLC and The

5 Club at La Peninsula dated April 16th of 2010?

6 A. No.

7 Q. Okay. And do you know whether this deed was also

8 a deed conveying common property of La Peninsula to The

9 Club?

10 A. Ask me that again.

11 Q. Do you know whether this deed conveyed a common

12 property from Aircraft Investments, LLC to The Club at La

13 Peninsula?

14 A. No, I don't know that.

15 Q. Okay. Do you have any personal knowledge

16 regarding the authority of Mr. Kabcenell to execute this

17 deed?

18 A. No.

19 Q. And if you look at -- just one more thing. If

20 you look at it's bates stamped Mitchell 262 at the bottom,

21 if you can turn to that page of Exhibit 8.

22 A. Which page?

23 Q. It's Mitchell 262.

24 A. Oh.

25 Q. You will see there's bates stamping at the bottom

Page 43

1 that your attorneys put on the documents.

2 Are you aware that Aircraft had reserved certain

3 easements when they conveyed these properties?

4 A. I'm aware of the 16 easements.

5 Q. And when you say the 16 easements, what easements

6 are you referring to?

7 A. I can't tell you all 16 of them, but they are on

8 the blueprints that we were shown at closing and before

9 closing of what these easements were. Some of them were

10 the 12 feet of the swimming pool, Twin Dolphins, that we

11 own and pay taxes on. That's an easement.

12 We own a quarter of the pump house. That's an

13 easement. We own a corner of the sub pump. That's an

14 easement. They have an easement for four tennis courts

15 for 18 months before we relocate the tennis courts with a

16 30-day notice.

17 There's an easement between the walkway between

18 the clubhouse and the tennis courts, just the walkway, not

19 the surrounding ground around the walkway.

20 There's an easement from the entry to La

21 Peninsula to the right. The first right turn that you can

22 make there's an easement there. And it goes on.

23 I think there's some maybe electrical easements

24 underground, water easements, things that are -- have to

25 be recognized for the relocation and reconstruction that,

Page 44

1 you know, we are aware of that these easements are there

2 and be careful.

3 Q. And those are all -- those easements are all

4 recorded in the public records, correct?

5 A. Yes.

6 Q. And they were all disclosed on your title policy?

7 A. Yes.

8 Q. Was -- you're familiar with the declaration of

9 covenants and restrictions of La Peninsula as well,

10 correct?

11 A. Yes.

12 Q. And that was also recorded in the public records?

13 A. Yes.

14 Q. And that was also disclosed in your title policy

15 when you purchased the subject parcel?

16 A. Yes.

17 Q. Okay.

18 MR. BOYETTE: Let me interrupt for just a second

19 and just ask Ms. Mitchell to slow down a bit because

20 I'm -- I'm not getting a chance to hear the question.

21 And if I want to make an objection, I really don't get

22 a chance because you're answering it almost before

23 he's done asking it. So if you could just slow down,

24 let the question finish, let me hear it and then

25 answer it, please.

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1 Thank you.

2 BY MR. TRAFICANTE:

3 Q. You can put that exhibit to the side,

4 Mrs. Mitchell.

5 A. I am going to do it slowly.

6 Q. I am going to show you what we have marked as

7 Exhibit 9 to your deposition. It was previously marked,

8 Mr. Boyette, as Exhibit 6 by you to a prior deposition.

9 Have you seen this Special Warranty Deed before?

10 A. Yes.

11 Q. And can you identify this exhibit for the record?

12 A. This is where we purchased the land, Donnie Gene

13 and Kimberly Ann Mitchell from Aircraft.

14 Q. And when you say the land, are you referring to

15 the --

16 A. Subject.

17 Q. -- subject parcel?

18 A. Yes.

19 Q. And is this a Special Warranty Deed dated October

20 31st of 2017?

21 A. Yes.

22 Q. And it was recorded in the public records of

23 Collier County on November 7th of 2017?

24 A. Yes.

25 Q. And you previously discussed Dolphin Point, LLC

Page 46

1 was formed on October 18th of 2017; is that correct?
 2 A. Yes.
 3 Q. So why was this property conveyed to you and your
 4 husband instead of Dolphin Point, LLC at this time?
 5 A. It was -- we purchased it on a 1031 exchange.
 6 Q. Okay. And prior to purchasing this property, you
 7 were aware as we talked about that The Club -- and when I
 8 refer to The Club, is it okay if I refer to The Club at La
 9 Peninsula, Inc. as The Club?
 10 A. Sure.
 11 Q. Okay. You will understand who I'm referring to?
 12 A. Yes.
 13 Q. And, again, you testified that you were aware
 14 that The Club was negotiating to try to purchase this
 15 property, the subject parcel, from Aircraft Investment,
 16 LLC?
 17 A. That's my understanding.
 18 Q. Okay. Were you aware that The Club had
 19 negotiated the price to -- down to about 1.35 million with
 20 Aircraft?
 21 A. No.
 22 Q. Okay. And you will see on the second page of
 23 Exhibit 9 this document on behalf of Aircraft is now being
 24 executed by a Dollie Costa.
 25 . Do you see that?

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1 A. Yes.
 2 Q. Do you have any -- are you familiar with
 3 Ms. Costa?
 4 A. I'm not.
 5 Q. Okay. Do you have any personal knowledge
 6 regarding Ms. Costa's authority to execute this document?
 7 A. No.
 8 Q. Okay. And if you go back to the first page, you
 9 will see that Aircraft was conveying the subject parcel to
 10 you and your husband. And it's subject to certain things.
 11 Do you see the subject to? It's the --
 12 A. Subject to --
 13 Q. -- fourth paragraph?
 14 A. Yes.
 15 Q. And it's subject to matters of record,
 16 rights-of-way, restrictions, reservations, covenants,
 17 conditions and easements without reimposing the same.
 18 Do you see that?
 19 A. Yes.
 20 Q. And you would agree then that this was being
 21 conveyed to you and your husband subject to any of those
 22 documents which were of public record, correct?
 23 MR. SEIDENSTICKER: Objection to form.
 24 BY MR. TRAFICANTE:
 25 Q. You can answer.

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1 A. Yes.
 2 Q. Okay. And at this time, prior to this deed, you
 3 were aware of the declaration as recorded for The Club?
 4 MR. SEIDENSTICKER: Objection. Form.
 5 BY MR. TRAFICANTE:
 6 Q. You can answer. Let me rephrase it.
 7 Prior to this date, I believe you testified that
 8 you were aware that the declaration for The Club had been
 9 recorded; is that correct?
 10 MR. SEIDENSTICKER: Objection. Form.
 11 BY MR. TRAFICANTE:
 12 Q. You can answer.
 13 A. Yes.
 14 Q. Okay. And so you would agree that you are bound
 15 by that declaration?
 16 MR. SEIDENSTICKER: Objection. Form.
 17 THE WITNESS: No, I don't agree.
 18 BY MR. TRAFICANTE:
 19 Q. Okay. Why don't you believe you are bound by the
 20 declaration?
 21 A. Because we were willing and happily to follow the
 22 rules of which were that we gave 18 months' notice to
 23 relocate the tennis courts to the construction zone.
 24 Q. So you're referring to the tennis court easement?
 25 A. Yeah, that's the only thing I'm referring to.

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1 Q. Okay. Is the subject parcel part of La
 2 Peninsula?
 3 A. No.
 4 Q. Okay. You don't believe it's part of La
 5 Peninsula?
 6 A. Never.
 7 Q. Okay. Is 85 West Pelican Street part of La
 8 Peninsula?
 9 A. No.
 10 Q. Okay. So -- okay. So it's your position,
 11 Ms. Mitchell, that the subject parcel is not governed by
 12 the declaration for The Club, correct?
 13 A. That's correct.
 14 Q. Okay. And that it's not part of The Club at La
 15 Peninsula?
 16 A. Absolutely not.
 17 Q. Okay. The subject parcel, do you know when that
 18 property was originally put up for sale by Aircraft?
 19 A. No.
 20 Q. Okay. Do you know whether it had been put up for
 21 sale since 2012?
 22 A. No, I'm not familiar with that.
 23 Q. Okay. So prior to you putting an offer on that
 24 parcel, had you ever been familiar with that parcel?
 25 A. Only by looking at it because we lived across the

Page 50

1 street.

2 Q. And so by living across the street, do you know

3 when that parcel was originally put up for sale?

4 A. We bought in 1999 on 75 West Pelican. So, yeah,

5 we had looked at it for many, many years. But you

6 couldn't see the property because it was covered up and

7 had been pretty much ignored.

8 Q. Covered up in shrubs?

9 A. Yes.

10 Q. Okay. And so why hadn't you offered or

11 approached the owner of that property since 1998 to

12 purchase it?

13 A. Because at that time 75 West Pelican would not

14 have been affected by the development that would happen on

15 the subject project. But when we bought and built 85, my

16 husband thought, you know, if this comes up for sale, if

17 it's still for sale, let's go ahead and take it. We have

18 a 1031 exchange, and let's protect our investment at 85.

19 Q. And how did it -- how were you made familiar that

20 that property was up for sale?

21 A. Beau Middlebrook, the realtor.

22 Q. Okay. And Beau Middlebrook, just for the record,

23 is he a realtor on Isle of Capri?

24 A. Yes.

25 Q. Okay. And have you done work with

Page 51

1 Mr. Middlebrook before?

2 A. Yes.

3 Q. Okay. And so when did Mr. Middlebrook contact

4 you to let you know that the subject parcel was up for

5 sale?

6 A. Well, I wasn't involved then. But I'm sure what

7 happened was he contacted Don. And Don would have spoken

8 with Beau saying, Hey, I have a 1031 exchange at this

9 point --

10 Q. So let me just stop you because I can guarantee

11 you Mr. Seidensticker and Mr. Boyette are going to jump

12 in. I don't want -- I only want you testifying to what

13 you have knowledge on or what as corporate rep you have

14 knowledge on. I don't want you guessing.

15 MR. SEIDENSTICKER: I think she was just -- you

16 cut her off when she was answering her question.

17 MR. TRAFICANTE: Well, I think she said I wasn't

18 part of it, but I would guess. I don't want you

19 guessing. If you have personal knowledge regarding it

20 or were part of the conversation --

21 THE WITNESS: My personal knowledge is --

22 MR. SEIDENSTICKER: Well, hang on a second. You

23 cut her off in her answer. She has given a precursor

24 to some of her prior answers. This one you cut her

25 off on. I think the record's clear.

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1 Go ahead and answer the question.

2 THE WITNESS: Okay.

3 BY MR. TRAFICANTE:

4 Q. You can answer.

5 How did you become aware that the -- how did

6 Mr. Middlebrook make you aware that this property was for

7 sale?

8 A. What I was aware of is that the Mitchells had a

9 1031 exchange, and the 1031 exchange gives you three

10 months to allocate three properties. And so Don called

11 Beau and said, "Do you have anything for sale?" You know,

12 we were looking at three different parcels where to

13 redistribute this money. And that one came up, and it was

14 our interest to buy it to save the investment we had at

15 85.

16 Q. Were you part of those discussions?

17 A. Yes.

18 Q. Okay. So you were on the telephone call when

19 your husband called Beau?

20 A. I probably had the telephone on speaker while Don

21 was driving the combine and had the conversation.

22 Q. Do you recall the dates when it happened?

23 A. No. It would have been in the fall because it

24 was during harvest.

25 Q. So it would have been in 2017, though?

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1 A. Yes.

2 Q. Okay. And you believe in the fall of 2017?

3 A. I believe it, yes.

4 Q. Okay.

5 A. Could have been during planting season. I don't

6 know which it was.

7 Q. I have showed you what's been marked as Exhibit

8 10 to your deposition. For Mr. Boyette, it was previously

9 marked by Mr. Boyette as Exhibit 7 to a prior deposition.

10 Have you seen this document before,

11 Mrs. Mitchell?

12 A. Yes.

13 Q. And can you identify this document for the

14 record?

15 A. This document is Assignment and Assumption of

16 Development Rights, Permits, Contracts, Declarant Rights

17 and the Other Intangible Rights.

18 Q. And this is from Aircraft Investment, LLC to you

19 and your husband, and it's recorded on 8-16 of 2018; is

20 that correct?

21 A. Yes.

22 Q. Okay. And do you have any personal knowledge

23 again of Mrs. Costa's authority to execute this document?

24 A. No.

25 Q. Okay. And you will see in here Aircraft

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1 Investment, LLC is assigning to you and your husband
 2 certain things, including any rights of Aircraft as
 3 successor declarant or developer under the declaration of
 4 covenants, conditions and restrictions of La Peninsula
 5 recorded in O.R. Book 1213, page 770, of the public
 6 records of Collier County, Florida, to the extent any such
 7 rights may be held by Aircraft.
 8 Do you see that?
 9 A. Yes.
 10 Q. What rights were held by Aircraft that were being
 11 assigned to you and your husband pursuant to this
 12 document?
 13 A. I don't know.
 14 Q. And on the subject parcel just really quick, are
 15 you familiar that there were For Sale signs on that
 16 property for a while before you purchased it?
 17 A. Just one that I'm aware of.
 18 Q. And where was that located?
 19 A. At the gate to the entry to the property on West
 20 Pelican.
 21 Q. And do you know when that For Sale sign was
 22 originally put up?
 23 A. It could have been back as far as 1999 with Gulf
 24 Shores Properties, I think it was.
 25 Q. Okay. Other than the Special Warranty Deed that

Page 55

1 we looked at as Exhibit 9 and this assignment that we
 2 looked at as Exhibit 10, did you and your husband have any
 3 other agreements with Aircraft?
 4 A. No.
 5 Q. Okay. Other than, obviously, a purchase to -- a
 6 purchase-and-sale contract to purchase the parcel?
 7 A. But I never -- we were never at the same table.
 8 Q. Okay. I'm just wondering were there any other
 9 written agreements between you and your husband or Dolphin
 10 Point and Aircraft Investments?
 11 A. No.
 12 Q. Okay. And you're aware that you and your husband
 13 initially -- subsequently Dolphin Point was added -- have
 14 filed a lawsuit against The Club?
 15 A. No.
 16 Q. No, you're not familiar with that?
 17 A. Ask the question again.
 18 Q. Are you familiar that a lawsuit was filed against
 19 The Club by you and your husband initially?
 20 A. A lawsuit filed against The Club initially by the
 21 Mitchells?
 22 Q. Correct.
 23 A. I don't understand the question, I guess.
 24 Q. Are you aware that you as Plaintiffs have filed a
 25 lawsuit against The Club?

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1 A. Currently. Okay.
 2 Q. Yeah.
 3 A. I thought you meant back on --
 4 Q. The current lawsuit that we are in today.
 5 A. Okay. Yeah.
 6 Q. Okay.
 7 A. My mistake. Sorry.
 8 Q. And Dolphin Point was subsequently added as a
 9 party to that lawsuit, correct?
 10 A. Yes.
 11 Q. Okay. And I want to show you what we are marking
 12 as Exhibit 11 to your deposition.
 13 And, Mr. Boyette, this was previously marked as
 14 Exhibit 8 to a prior deposition by you.
 15 Have you seen this document before,
 16 Mrs. Mitchell?
 17 A. Yes.
 18 Q. And you will see at the top it says prepared by
 19 and when recorded return to William G. Morris, P.A.
 20 Do you see that?
 21 A. Yes.
 22 Q. And was Attorney Morris your attorney, yours and
 23 your husband's attorney at some point?
 24 A. Yes.
 25 Q. Okay. And for the record, is this a Warranty

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1 Deed between you and your husband as grantor to Dolphin
 2 Point, LLC as grantee for the subject parcel dated
 3 December 3rd of 2019?
 4 A. Yes.
 5 Q. And this deed occurred and was executed after you
 6 and your husband had filed this lawsuit against The Club,
 7 correct?
 8 A. Yes.
 9 Q. And so as of December 3rd, 2019, you and your
 10 husband individually no longer owned the subject parcel,
 11 correct?
 12 MR. SEIDENSTICKER: Form. Objection.
 13 BY MR. TRAFICANTE:
 14 Q. You can answer.
 15 A. No. We own now the Dolphin, LLC.
 16 Q. But Dolphin Point, LLC owns the subject parcel,
 17 correct?
 18 A. Yes.
 19 Q. Kimberly Ann Schnell Mitchell and Donnie Gene
 20 Mitchell do not individually own the subject parcel today,
 21 correct?
 22 A. Correct.
 23 Q. And you both individually haven't owned the
 24 parcel since December 3rd of 2019, correct?
 25 A. Yes.

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1 Q. Shortly after you and your husband purchased the
 2 subject parcel, did you cause to be removed a buffer of
 3 plantings along the Twin Dolphins swimming pool?
 4 A. Yes.
 5 Q. And what did you cause to be removed?
 6 A. We just went in there and cleaned it up. And
 7 then I think it was Tina that said, you know, Kim, those
 8 are our plants. So I replanted new ones.
 9 Q. Okay. And so you ended up having to replant new
 10 ones?
 11 A. Yes.
 12 Q. Okay. I'm going to show you what we've marked as
 13 Exhibit 12 to your deposition, which for Mr. Boyette was
 14 previously marked by him as Exhibit 9 to a prior
 15 deposition.
 16 Have you seen this document before,
 17 Mrs. Mitchell?
 18 A. Yes.
 19 Q. And is this an Assignment and Assumption of
 20 Development Rights between you and your husband and
 21 Dolphin Point, LLC dated August 14th of 2020 that was
 22 recorded on August 20th of 2020 in Collier County?
 23 A. Yes.
 24 Q. And this was signed -- if you look at page 3, was
 25 this signed by both you and your husband?

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1 A. Yes.
 2 Q. Okay. And you will see on the first page it says
 3 it was prepared without opinion of title by Francesca
 4 Passidomo, Esquire, of the Coleman, Yovanovich & Koester
 5 firm.
 6 Do you see that?
 7 A. Yes.
 8 Q. Is Ms. Passidomo also one of your attorneys?
 9 A. Yes.
 10 Q. Okay. And the deed from you and your husband to
 11 Dolphin Point, LLC for the subject parcel was dated
 12 December 3rd of 2019, if you look at Exhibit 11.
 13 Do you see that?
 14 A. Yes.
 15 Q. This Assignment and Assumption of Development
 16 Rights is dated about eight or nine months later; is that
 17 correct?
 18 A. It looks like because I was looking back here at
 19 the notary. We must have been in Ohio because this was
 20 notarized by Auglaize County which is a county in the
 21 state of Ohio.
 22 Q. Okay. And do you know why it took another eight
 23 or nine months for you and your husband to assign develop
 24 -- alleged development rights to Dolphin Point, LLC?
 25 A. Nope. I guess we were busy.

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1 Q. And this also occurred after you and your husband
 2 had originally filed this lawsuit against The Club at La
 3 Peninsula, correct?
 4 A. Well, I don't know the timeline on that, but...
 5 Q. Do you know when you initially filed a complaint
 6 in this lawsuit?
 7 A. Let's see. No, I don't.
 8 Q. Okay. But you would agree as of August 14th of
 9 2020 you and your husband had assigned all of the
 10 development rights referenced in this document to Dolphin
 11 Point, LLC?
 12 A. Yes.
 13 Q. Okay. So as of that date, neither you nor your
 14 husband owned these development rights anymore
 15 individually?
 16 MR. SEIDENSTICKER: Objection. Form. You can
 17 answer.
 18 BY MR. TRAFICANTE:
 19 Q. You can answer.
 20 A. Yes.
 21 Q. Okay. Is that yes, as of that date neither you
 22 and your husband owned these development rights
 23 individually?
 24 A. Yeah. It's now an LLC.
 25 Q. Okay. Do you need a break?

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1 I know we have been going for an hour. I just
 2 want --
 3 A. I'm good, but thank you.
 4 Q. You're okay?
 5 A. Yeah.
 6 Q. All right. I want to show you what's been marked
 7 as Exhibit 13 to your deposition. And for Mr. Boyette,
 8 this was previously Exhibit 1 as marked by Mr. Boyette to
 9 a different deposition.
 10 And just let me know when you are done going
 11 through it, Mrs. Mitchell.
 12 A. Okay.
 13 Q. Okay. Have you seen this document before?
 14 A. No.
 15 Q. So as of today, as you sit here today, you've
 16 never seen this document before?
 17 A. No.
 18 Q. Okay. And for the record, this is the
 19 Declaration of Covenants, Conditions and Restrictions of
 20 La Peninsula dated August 15th of 1986 as recorded in
 21 Collier County on August 19th of 1986, correct?
 22 A. Yes.
 23 Q. Okay. In this lawsuit is it your position that
 24 you're the declarant under this document?
 25 A. Yes.

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1 Q. If you have never seen this document before, how
 2 do you believe you are the declarant under it?

3 A. Because we purchased from Aircraft, and they were
 4 the declarant.

5 Q. Okay. So is it the only -- is the only reason
 6 that you believe you are the declarant is because you
 7 purchased from Aircraft?

8 A. Yes.

9 Q. Okay. And do you believe that you're the
 10 declarant -- well, let me ask you, who do you believe is
 11 the declarant currently?

12 A. Dolphin Point, LLC.

13 Q. Okay. And do you believe that Dolphin Point, LLC
 14 is the declarant over The Club?

15 MR. SEIDENSTICKER: Objection. Form.

16 THE WITNESS: I guess over The Club as in what
 17 respect? La Peninsula Club?

18 BY MR. TRAFICANTE:

19 Q. Correct. When I refer to The Club, I am only
 20 referring to the master association, The Club at La
 21 Peninsula, Inc.

22 A. So now what's the question?

23 Q. Is it your position that Dolphin Point, LLC is
 24 the declarant over The Club?

25 A. No.

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1 Q. Is it your position that Dolphin Point, LLC
 2 controls The Club?

3 A. No.

4 Q. Okay. So what is it that you believe is Dolphin
 5 Point's rights as declarant?

6 MR. SEIDENSTICKER: Objection. Form. Legal
 7 conclusion.

8 MR. TRAFICANTE: Again, no -- we're not going to
 9 do speaking objections, Wayde. We'll preserve it, but
 10 let's not keep doing it. I appreciate it. You can
 11 just object to form.

12 THE WITNESS: From day one the declarant in our
 13 minds was that we had 18 months to remove four tennis
 14 courts -- I mean, once we gave them notice that we
 15 were allowed 18 months to remove the tennis courts
 16 which is that's all we have ever claimed.

17 BY MR. TRAFICANTE:

18 Q. Okay. As the declarant, is it your position that
 19 you have any other rights other than under the tennis
 20 court easement?

21 A. No.

22 Q. Okay. And as the declarant, do you believe
 23 Dolphin Point has any obligations under Exhibit 13?

24 A. No.

25 Q. Okay. So is it your position that Dolphin Point

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1 as the declarant doesn't have to pay any expenses or
 2 assessments to The Club?

3 A. Correct.

4 Q. And when you and your husband originally
 5 purchased the subject parcel, though, you were aware of
 6 this declaration, Exhibit 13, correct?

7 A. No, not this one.

8 Q. Was this included in your title commitment?

9 A. Not that I'm aware of.

10 Q. Okay. Was the 2015 --

11 A. I have never even heard of Barclays.

12 Q. Okay. So you don't know who Barclays --

13 A. No.

14 Q. -- Capri Point Partnership is?

15 A. No.

16 Q. Okay. Was the 2015 amended declaration what was
 17 included in your title commitment?

18 A. I don't understand the question.

19 Q. You previously testified you were aware of the
 20 declaration for The Club at the time you purchased the
 21 subject parcel; is that correct?

22 A. Okay.

23 Q. And you testified that the declaration was
 24 included in your title commitment or title policy when you
 25 purchased the subject parcel; is that correct?

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1 MR. SEIDENSTICKER: Objection. Form. You can
 2 answer.

3 THE WITNESS: I guess I still don't know if
 4 you're trying to confuse me or what.

5 BY MR. TRAFICANTE:

6 Q. No, no, I'm not trying to confuse you. I'm
 7 trying to just get the record clear.

8 So remember we looked at the deed where you and
 9 your husband purchased the property from Aircraft, and
 10 it's Exhibit 9.

11 MR. SEIDENSTICKER: Let him ask the question.

12 THE WITNESS: Pardon me?

13 MR. SEIDENSTICKER: Let him ask the question.

14 MR. TRAFICANTE: Again, Wayde, please, stop with
 15 the coaching. We're not going to do it.

16 MR. SEIDENSTICKER: I want her to listen to your
 17 question. She is flipping through documents.

18 MR. TRAFICANTE: I asked her to go to Exhibit 9.
 19 I agree. Please, no more speaking.

20 BY MR. TRAFICANTE:

21 Q. So on this deed, remember when we talked about
 22 the subject two paragraph that you purchased -- you and
 23 your husband purchased this property from Aircraft subject
 24 to matters of record.

25 Do you recall those questions?

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1 A. Yes.

2 Q. And as part of that, one of those matters of

3 record was the declaration for La Pen for The Club as

4 recorded, correct?

5 A. Yes.

6 Q. And you've actually made a claim against your

7 title company, have you not, regarding the declaration?

8 A. Yes.

9 Q. And when did you make a claim against your title

10 company?

11 A. I have no idea.

12 Q. And that was related to the 2015 amended

13 declaration for The Club, correct?

14 A. I can't be for sure. I don't know the date.

15 Q. Have you filed a lawsuit against your title

16 company?

17 A. Not that I'm aware of.

18 Q. So you don't recall when you initiated a claim?

19 A. No.

20 Q. And what was your claim that you initiated with

21 your title company?

22 A. Back -- go ahead.

23 MR. SEIDENSTICKER: I think you are invading

24 attorney-client and/or work product privilege.

25 MR. TRAFICANTE: If she sent a claim to her

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1 insurance company, I'm entitled to know what that

2 claim was about. I'm assuming she just admitted she

3 sent a claim to her title company. I'm not sure how

4 that's attorney-client or work product.

5 MR. SEIDENSTICKER: Re-ask your question.

6 BY MR. TRAFICANTE:

7 Q. Okay. Mrs. Mitchell, did you and your husband

8 make a claim against your title policy with your title

9 company?

10 A. No, we didn't personally. Now, our attorneys may

11 have.

12 Q. So your attorneys made it on your behalf?

13 A. Could be.

14 Q. Okay. And what was the factual basis of that

15 claim?

16 A. From what I understand is that there -- in 2015

17 there was an illegal vote taken and that there were yeas

18 and nays on one side, on the right side being the bylaws

19 of The Club; and on the left side of this vote that was

20 taken were La Peninsula trying to vote and change

21 something. Anyhow, there is somewhere between six and ten

22 votes that were illegally taken at that time.

23 Q. And how do you have that knowledge?

24 A. I have that because I have seen the registration

25 and the proxy vote sheets.

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1 Q. Okay. So you have seen the vote tally and the

2 proxies?

3 A. Yes.

4 Q. Okay. Do you have any personal knowledge

5 regarding that vote?

6 A. Just that there are simply people that were

7 voting that didn't own units. There were people that were

8 voting that had voted prior to the date of the vote. So

9 there's -- it's somewhere between six -- like I said, six

10 and ten.

11 They needed 118 votes. They got 119. We have

12 gone through the paperwork and already seen that there are

13 three illegal votes that have been taken that people

14 didn't vote the way that --

15 Q. So let me -- I'm going to get there --

16 A. Okay.

17 Q. -- on that.

18 But I guess my question was a little different is

19 what claim have you and your husband made against your

20 title company?

21 A. We haven't made a claim that I'm aware of.

22 Q. Well, I thought you just testified that your

23 attorneys have made a claim against your title company on

24 your behalf?

25 A. Well, I'm confused then. I don't know if a claim

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1 -- we purposely did not go to claim -- put a claim against

2 our title company. I think the title company got involved

3 because they knew something wasn't right about this

4 voting.

5 Q. Okay. So prior to this lawsuit, did you ever

6 make a claim against your title company?

7 A. No.

8 Q. Okay. As part of this lawsuit, have you made a

9 claim against your title company?

10 A. Not -- I don't know. I'm not -- are you asking

11 me if I'm suing my title company?

12 Q. No. Or just made a claim under your title

13 policy.

14 A. I don't know if I have or not.

15 Q. You don't know?

16 A. No.

17 Q. Okay. You were mentioning now proxies and the

18 vote tally sheet. You've seen that as part of this

19 lawsuit, correct?

20 A. Yes.

21 Q. Have you ever seen it prior to this lawsuit?

22 A. No.

23 Q. Okay. And you said six to eight what I think you

24 referred to as illegal votes that you have seen?

25 A. What I have seen is -- what I said was six to ten

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1 votes. There were 118 votes needed for this vote, and
 2 they came up one on the favor it was called in favor of
 3 purchasing the subject project. But if you go back and
 4 look at the tallies in the individual units from Building
 5 100 to 700, there is discrepancies on who voted, when they
 6 voted, the time that they voted and the permission that
 7 they had to vote that some of them didn't even own the
 8 land or the building or the unit at that time.
 9 Q. Were you present or part of that vote?
 10 A. No.
 11 Q. Okay. So do you have any personal knowledge
 12 regarding the execution of those proxies or the taking of
 13 that vote?
 14 A. No.
 15 Q. And you said six to ten people the votes are a
 16 problem. Which votes are you referring to?
 17 A. I would have to go back and look at my notes, and
 18 maybe David could help me with that.
 19 Q. Mr. Boyette can't help you --
 20 A. Oh, okay.
 21 Q. -- as part of the deposition.
 22 A. Oh.
 23 Q. So I'm entitled to know what your personal
 24 knowledge is.
 25 A. Okay.

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1 Q. And as the corporate rep of Dolphin Point, one of
 2 the subject matters were -- and we're referring to the
 3 passage of the amended and restated declaration of The
 4 Club in September of 2000 -- that was recorded in
 5 September of 2015, correct?
 6 A. Yes.
 7 Q. Okay. And what -- so what personal knowledge do
 8 you have regarding that vote?
 9 A. I have read the whole voting document, and
 10 there's between six and ten that either people didn't own
 11 the property that voted. There's a discrepancy on the
 12 date that they voted because the date was in May, and some
 13 voted in June. There's discrepancies on three people on
 14 one building that they changed the title to another
 15 individual. I believe it was a son. And they voted, not
 16 the son. Don't quote me on that one. But there's each --
 17 it added up to somewhere between six and ten votes that
 18 were illegally counted.
 19 Q. Do you have any personal knowledge regarding the
 20 authority of the people who executed the proxies to do
 21 so --
 22 A. From the paperwork that I have --
 23 Q. Let me -- let me finish my question --
 24 A. Okay.
 25 Q. -- just so that we're not interfering because I'm

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1 sure you are going to get -- you're going to get an
 2 objection.
 3 But do you have any personal knowledge regarding
 4 the authority of the individuals who executed the proxies
 5 for this vote to do so?
 6 A. Do I have any individual knowledge?
 7 Q. Right.
 8 A. Just from what I have read.
 9 Q. Okay.
 10 A. From documents that have been recorded.
 11 Q. And from seeing those documents, how can you tell
 12 that these parties didn't have authority to execute these
 13 proxies?
 14 A. Oh, it's -- it's pretty clear.
 15 Q. How is it clear?
 16 A. Some of them didn't even own the property to
 17 vote. Their name wasn't on the deed of the -- on the
 18 property.
 19 Q. Who are you referring to?
 20 A. I don't know what their names are. There's too
 21 many of them. But there is --
 22 Q. So you don't know as you sit --
 23 MR. SEIDENSTICKER: Hang on. You cut her off.
 24 Please let her finish her answer.
 25 BY MR. TRAFICANTE:

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1 Q. You can finish.
 2 MR. SEIDENSTICKER: You can answer.
 3 THE WITNESS: Well, there's so many that, you
 4 know, with all this paperwork that I can't remember
 5 their names. I can't even remember the board names.
 6 But I can read numbers, and I can see that it was an
 7 illegal vote done more than -- with more than just one
 8 vote.
 9 BY MR. TRAFICANTE:
 10 Q. So how could you tell that they didn't own their
 11 properties?
 12 A. Because the deeds are right there. It says in
 13 the paperwork during the vote from the paperworks that I
 14 have read that's in public record. Now, it's hard to get
 15 to because the managing company, you know, it was pulling
 16 teeth to get that information from them.
 17 Q. So you're referring to -- there's a roster of
 18 vote tallies. You're referring to the name that was on
 19 there was different --
 20 A. Right.
 21 Q. -- from the name --
 22 A. On the deed.
 23 Q. -- of the party who owned it?
 24 A. That's correct.
 25 Q. Okay. And do you know whether it's the party,

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1 one of the parties who actually owned it that executed the
 2 proxies?
 3 A. No, I don't know that.
 4 Q. Okay. You didn't go through the public records
 5 and check?
 6 A. I didn't personally go through the public
 7 records, no.
 8 Q. So as you sit here today, you don't have personal
 9 knowledge regarding the authorities of the parties who
 10 executed the proxies to do so --
 11 MR. SEIDENSTICKER: Objection.
 12 BY MR. TRAFICANTE:
 13 Q. -- is that correct?
 14 MR. SEIDENSTICKER: Objection. Form.
 15 THE WITNESS: No, not necessarily because in the
 16 paperwork it shows the proxies.
 17 BY MR. TRAFICANTE:
 18 Q. So your only knowledge is based on what The Club
 19 has produced as part of this lawsuit?
 20 A. I think not only just The Club but their managing
 21 -- whoever their property manager is.
 22 Q. Let me rephrase it.
 23 Your knowledge is solely based on the vote tally
 24 sheet and -- is that it?
 25 MR. SEIDENSTICKER: Objection. Form.

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1 BY MR. TRAFICANTE:
 2 Q. What else did you look at other than the vote
 3 tally sheet?
 4 A. The vote tally sheet showed discrepancies of
 5 times that votes were taken. It shows discrepancies of
 6 who owned the property and who voted that shouldn't have
 7 been voting.
 8 Q. So you believe the vote tally sheet shows the
 9 date of the vote?
 10 A. Yes.
 11 Q. Okay. And you believe the vote tally sheet shows
 12 who actually signed the proxies?
 13 A. Yes.
 14 Q. Okay. Other than the vote tally sheet for your
 15 testimony that you're testifying that there were these
 16 improper votes, what else are you relying on or basing
 17 that on?
 18 A. Just that.
 19 Q. Okay. Have you had any discussions other than
 20 with your attorneys regarding the validity of the 2015
 21 vote?
 22 A. No.
 23 Q. Okay. You have never discussed that with anyone
 24 at The Club at La Peninsula?
 25 A. No, because they've hidden the information from

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1 the membership.
 2 Q. Have you asked any of the members of The Club at
 3 La Peninsula to do a public records request for this?
 4 A. No. But they -- I have heard that they have
 5 asked for one. I didn't ask them to, but I heard that
 6 they asked for one.
 7 Q. How have you heard that?
 8 A. From different members that are there. But they
 9 did refuse.
 10 Q. Which members?
 11 A. His first name is Mike. I can't tell you his
 12 last name.
 13 Q. Who else?
 14 A. Frank.
 15 Q. Frank?
 16 A. Apuzzo.
 17 Q. Apuzzo.
 18 Okay. Anyone else?
 19 A. No.
 20 Q. So you have had discussions with members of The
 21 Club then regarding this vote?
 22 A. Not really. Just that they had requested the
 23 same documents in a -- I said, That's funny, we have
 24 requested the same documents too.
 25 Q. Did you have any other discussions with

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1 Mr. Apuzzo or Mike regarding this vote?
 2 A. I don't know Mike. Frank is a friend of mine.
 3 He rented from us. So, yeah, I see him socially.
 4 Q. Have you discussed this lawsuit with Mr. Apuzzo?
 5 A. Well, not in detail because I have been advised
 6 not to.
 7 Q. Okay. But have you had -- when you say not in
 8 detail, have you in generalities discussed this lawsuit
 9 with Mr. Apuzzo?
 10 A. Well, yeah. I have said how -- what happened
 11 with your golf cart. You know, what's happening with your
 12 unit that you don't have any -- the double standards that
 13 they have over there that he's not allowed to have brick
 14 pavers but other members are. So, yeah, we have talked
 15 about the controversies and how difficult it is to get
 16 along with the master board and their double standards.
 17 Q. And maybe my question wasn't clear.
 18 Have you discussed with Mr. Apuzzo this lawsuit
 19 that you have brought against The Club?
 20 A. No.
 21 Q. Okay. So you've never had any discussions with
 22 Mr. Apuzzo regarding this lawsuit?
 23 MR. SEIDENSTICKER: Objection. Form.
 24 THE WITNESS: Not -- not in -- no.
 25 BY MR. TRAFICANTE:

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1 Q. Okay.

2 A. Not in detail.

3 Q. And we were talking before, as part of your and

4 your husband's purchase of the subject parcel you received

5 a title commitment, correct?

6 A. Yes.

7 Q. And that title commitment listed certain things

8 of record like easements, declarations, et cetera; is that

9 correct?

10 A. Yes.

11 Q. And I think you mentioned there was 16 easements

12 listed in that?

13 A. Yes.

14 Q. Okay. Was this declaration that's Exhibit 13,

15 was this listed as part of your title commitment or title

16 policy?

17 A. No. I've never seen this document.

18 Q. Understood.

19 But was it listed as part of the title policy; do

20 you recall?

21 A. I don't know.

22 Q. Okay. Do you know whether the 2015 amended

23 declaration of The Club was listed as part of your title

24 policy?

25 A. Yes.

Page 79

1 Q. It was?

2 MR. SEIDENSTICKER: Objection. Form.

3 THE WITNESS: Which form again?

4 BY MR. TRAFICANTE:

5 Q. The 2015 amended declaration for The Club, was

6 that listed --

7 A. Number 9, is that what you're referring to?

8 Q. No. We haven't gotten there yet.

9 A. Oh. Then I don't know.

10 Q. It's part of this lawsuit.

11 A. No, I don't know.

12 Q. It's the document that you were saying was

13 invalid because of the improper votes.

14 A. Oh, okay. I'm with you now.

15 Q. Was that listed as part of your title policy?

16 A. No.

17 Q. No, it was not?

18 A. Not that I'm aware of.

19 Q. Okay. And you would agree that The Club is the

20 master association over La Peninsula, the development,

21 correct?

22 A. Yes.

23 Q. Okay. And is -- do you agree that The Club is a

24 condo association, a condominium association?

25 A. Yes.

Page 80

1 Q. Okay. But the subject parcel, just so we're

2 clear, your position is the subject parcel is not part of

3 The Club or La Peninsula?

4 A. That is absolutely correct.

5 Q. Okay. I want to show you what we have marked as

6 Exhibit 14 to your deposition. And for Mr. Boyette, this

7 was previously marked as Exhibit 5 by him in a prior

8 deposition. And just let me know, Mrs. Mitchell, when

9 you're done reviewing that.

10 A. Okay.

11 Q. Have you seen this document before?

12 A. Not to my knowledge.

13 Q. Okay. So prior to your deposition today, you

14 don't recall ever seeing this document?

15 A. That's correct.

16 Q. And for the record, this is the Declarant

17 Amendment to Declaration of Covenants, Conditions and

18 Restrictions dated February 12th, 2013, by Aircraft

19 Investment. And it was recorded on February 14th of 2013

20 in Collier County; is that correct?

21 A. Yes.

22 Q. Okay. So do you have any personal knowledge

23 regarding this document?

24 A. No.

25 Q. Okay. Is it your position that this document is

Page 81

1 valid?

2 A. Yes.

3 Q. And why do you believe it's valid?

4 A. Well, you got a notary that signed it. You got

5 the right signatures.

6 Q. Do you have any personal knowledge regarding

7 Aircraft Investment, LLC's authority to execute or record

8 this document?

9 A. No.

10 Q. Do you have any personal knowledge regarding

11 Mr. Kabcenell's authority to execute this document?

12 A. No.

13 Q. Okay. So your position is is that this is valid

14 because it's been signed before a notary; is that correct?

15 A. And let's see. It was -- it went through the

16 Clerk of Courts.

17 Q. And because it was recorded?

18 A. Yes.

19 Q. So are all documents that are recorded in the

20 public records valid if they are executed in front of a

21 notary?

22 A. I hope so.

23 Q. Okay.

24 A. And the Clerk of Courts.

25 Q. Which is the recording information at the top; is

Page 82

1 that what you're referring to?

2 A. Yes.

3 Q. Okay. So in your -- it's your understanding as

4 long as it's been recorded and it's been executed in front

5 of a notary the document is valid?

6 MR. SEIDENSTICKER: Objection. Form.

7 BY MR. TRAFICANTE:

8 Q. You can answer.

9 MR. SEIDENSTICKER: You can answer.

10 THE WITNESS: Yes.

11 BY MR. TRAFICANTE:

12 Q. Okay. Are you aware of when turnover of The Club

13 occurred --

14 A. No.

15 Q. -- from the developer?

16 A. No.

17 Q. Okay. So you don't know when turnover occurred

18 from the developer to The Club?

19 A. No.

20 Q. Okay. Are you aware of when the members of The

21 Club started electing the board of directors for The Club?

22 A. No.

23 Q. Okay. You have no personal knowledge one way or

24 the other?

25 A. No.

Page 83

1 Q. And you saw we went over a couple of deeds where

2 common property was conveyed to The Club back in 2004, the

3 clubhouse and the pool area as well as 2010.

4 Do you recall that?

5 A. Yes.

6 Q. Do you have any other knowledge regarding when

7 the common property was conveyed by the developer to The

8 Club?

9 A. No.

10 Q. Okay. Do you have any knowledge regarding

11 Aircraft Investment, LLC's involvement with The Club as

12 either the developer or the declarant?

13 A. No.

14 Q. What about your involvement with The Club as

15 either the developer or the declarant?

16 A. No involvement.

17 Q. No involvement at all?

18 A. (Witness shakes head.)

19 Q. You've never done anything with The Club?

20 A. Nothing.

21 Q. Okay. I want to show you what we're marking as

22 Exhibit 15 to your deposition.

23 And, Mr. Boyette, for the record, this is bates

24 stamped Mitchell 760 through 774.

25 And just let me know, Mrs. Mitchell -- take your

Page 84

1 time, but let me know when you're done.

2 A. Okay.

3 Q. Have you seen this document?

4 A. I have seen this, the second half of it.

5 Q. When you say the second half?

6 A. Exhibit A.

7 Q. Okay. So you've seen -- and just so the record's

8 clear, I am going to use the bates stamp numbers at the

9 bottom.

10 A. Okay.

11 Q. You have seen the document that's bates stamped

12 Mitchell 766 through Mitchell 774?

13 A. Yes.

14 Q. Okay. Prior to today, have you ever seen the

15 rest of this exhibit?

16 A. I think I saw this, these first two pages. I

17 think we -- I went through this yesterday.

18 Q. So these are one of -- this is one of the

19 documents that you reviewed in preparation for your

20 deposition?

21 A. Yes.

22 Q. Okay. And for the record, this is the Memorandum

23 of Settlement between The Club and Aircraft Investment,

24 LLC dated, if you look at the second page, March 14th of

25 2013; is that correct?

Page 85

1 A. Yes.

2 Q. Okay. Do you have any personal knowledge

3 regarding this document?

4 A. No.

5 Q. Do you have any personal knowledge regarding the

6 negotiations that led to the execution of this document?

7 A. No.

8 Q. Okay. Have you ever discussed this document with

9 anyone other than your attorneys?

10 A. No.

11 Q. And as part of this lawsuit you've alleged,

12 though -- well, strike that.

13 So you haven't seen this document you believe

14 prior to yesterday?

15 MR. SEIDENSTICKER: Objection. Form.

16 THE WITNESS: I have seen the pages Exhibit A

17 that you are calling 0766. This I have seen.

18 BY MR. TRAFICANTE:

19 Q. Okay. And I apologize. That was my fault.

20 If you go back to the beginning of the page, the

21 first two pages, the Memorandum of Settlement, prior to

22 yesterday had you ever seen that document before?

23 A. No.

24 Q. Okay. You've sued as part of this lawsuit

25 alleging that The Club has breached this Memorandum of

Page 86

1 Settlement.

2 A. Okay.

3 Q. Are you aware of that?

4 A. No.

5 Q. Okay. So you're not aware of that allegation?

6 A. I'm not aware of it. But this is what they

7 should have done.

8 Q. When you say, "This is what they should have

9 done," what do you mean?

10 A. Because we gave them the 30-day notice.

11 Q. Where does it talk about a 30-day notice in --

12 A. (B) on page 1 within that 30-day notice of the

13 execution of all necessary settlement documents.

14 Q. Well, that required Aircraft to pay \$7,000 --

15 A. Oh, that's talking about the seawall.

16 Q. -- correct?

17 A. Yeah. I'm confused. Yeah.

18 Q. Okay. And so my question, let me ask it again

19 just to make sure it's clear.

20 A. Yes.

21 Q. Have you raised a claim in this lawsuit that The

22 Club breached this Memorandum of Settlement?

23 A. I don't know. I think so.

24 Q. Okay. And what's the basis of that claim? Why

25 do you believe The Club has breached this settlement?

Page 87

1 A. Because in this -- to me, my recall is that this

2 was -- what I was reading earlier was about the tennis

3 court relocation to the construction zone. Then on the

4 front page it talks about -- you're talking about the

5 tennis courts here and whatnot. On the front page now it

6 talks about sea cap.

7 Q. Well, so I guess my question is, Mrs. Mitchell,

8 is why do you believe The Club has breached this

9 Memorandum of Settlement agreement?

10 A. I don't know why I believe it.

11 Q. Do you have any factual support --

12 A. Because -- well, because it --

13 Q. Hold on. You can go ahead. Go ahead, actually.

14 A. They've breached it that -- you know, that

15 they're trying to -- that we were allowed to build 37

16 units on that -- that subject project.

17 Q. Okay.

18 A. That the \$7,000 to repair a portion of the

19 seawall, that never happened.

20 Q. That was to be paid by Aircraft to The Club,

21 correct?

22 A. Well, I don't know if it happened then or not.

23 You know, they offered us to pay two or three hundred

24 thousand dollars into an escrow account that Don wouldn't

25 do.

Page 88

1 Q. So other than the payment of the \$7,000 to repair

2 a portion of the seawall cap and the construction of up to

3 a 37-unit condominium on the development parcel --

4 A. And the relocation. See, this document happened

5 in March 14th, 2023. We -- you know, we weren't involved

6 then. But I just recognize this paperwork, simply just

7 recognize it. I'm not familiar with the details of it. I

8 just recognize it that I have seen it somewhere along the

9 line.

10 Q. Understood.

11 But you filed a lawsuit against The Club,

12 correct?

13 A. Yes.

14 Q. And one of your allegations is that The Club has

15 breached this settlement agreement.

16 A. Okay. Yes.

17 Q. Is that correct?

18 A. Yes.

19 Q. How has The Club breached this settlement

20 agreement?

21 A. Well, they won't -- they won't -- they haven't

22 moved forward in the construction area to allow us to

23 relocate the tennis courts.

24 Q. Okay. And that's under the tennis court easement

25 which is an attachment to this settlement agreement --

Page 89

1 A. Yes.

2 Q. -- correct?

3 A. Yes. If I understand it correctly, yes.

4 Q. How else, if at all, has The Club breached this

5 settlement agreement?

6 A. I'm not familiar with anything else.

7 Q. Okay.

8 A. Just we have only ever been in at the tennis

9 court easement.

10 Q. Okay. And you talked about -- don't put that

11 document away yet.

12 A. Okay.

13 Q. You talked about 3(B). Three says that the

14 Defendant, which is Aircraft Investment, LLC, agrees to

15 within 30 days of the execution of all necessary

16 settlement documents pay to The Club \$7,000 to repair a

17 portion of the seawall cap.

18 Do you see that?

19 A. Yes.

20 Q. So that was an obligation of Aircraft to The

21 Club, correct?

22 A. Yes.

23 Q. Okay. Then you talked about 4(B) which is -- it

24 says Plaintiff agrees, The Club agrees, to approve

25 construction of up to a 37-unit condominium on the

Page 90

1 development parcel that will be part of The Club at La
 2 Peninsula.
 3 Do you see that?
 4 A. Yes.
 5 Q. And do you know is the development parcel, is
 6 that the subject parcel?
 7 A. Yes.
 8 Q. Okay. And you've filed to rezone -- you have an
 9 application for rezoning pending, correct?
 10 A. Yes.
 11 Q. And that's to rezone it -- what is that
 12 application for?
 13 A. It's to not build 37 units, you know, to have the
 14 permission -- it's going from a C-12 to a different zoning
 15 that Rich is working on.
 16 Q. Right. It's going from RSF-12 to RSF-4?
 17 A. Possibly.
 18 Q. Okay. And it's to build single-family residences
 19 on that property?
 20 A. Possibly.
 21 Q. Okay. So your rezoning is not to build 37-unit
 22 condominiums, correct?
 23 A. But we still can.
 24 Q. Correct. But that's not what your rezoning is
 25 doing?

Page 91

1 MR. SEIDENSTICKER: Objection. Form. You can
 2 answer.
 3 BY MR. TRAFICANTE:
 4 Q. Is your rezone application to construct 37
 5 units --
 6 A. It's pending right now.
 7 Q. Let me -- let me ask it fully.
 8 Your pending rezoning application, is it to
 9 construct 37 -- a 37-unit condominium --
 10 A. Could be.
 11 Q. -- on the subject parcel?
 12 A. Could be.
 13 Q. Okay. So you believe that's part of what your
 14 rezone application is right now?
 15 A. We're leaving the opportunity to do whatever we
 16 want.
 17 Q. And has La Peninsula rejected that or stood in
 18 the way?
 19 A. I don't think they've had any communications with
 20 it that I'm aware of besides the negotiation.
 21 Q. And you will see in the negotiation you are
 22 talking about are the confidential settlement negotiations
 23 that occurred as part of this case?
 24 A. Yes.
 25 Q. Okay. I don't want to get into that.

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1 And you will see under 4(B) it says that will be
 2 part of The Club at La Peninsula.
 3 Do you see that?
 4 A. That's why we're where we're at because we don't
 5 agree that we will ever or ever have been wanting to be
 6 any part of The Club.
 7 Q. Okay. So even though this Memorandum of
 8 Settlement says that it will be part of The Club at La
 9 Peninsula, it's your position that the subject parcel is
 10 not part of The Club?
 11 MR. SEIDENSTICKER: Hang on. Objection to form.
 12 Let him finish his question.
 13 THE WITNESS: Okay.
 14 MR. SEIDENSTICKER: Objection to form.
 15 BY MR. TRAFICANTE:
 16 Q. You can answer. I finished.
 17 MR. SEIDENSTICKER: Asked and answered. Answer
 18 again.
 19 MR. TRAFICANTE: Again, no speaking objections,
 20 Wayde. I appreciate --
 21 MR. SEIDENSTICKER: Objection. Form. Asked and
 22 answered. Answer again.
 23 MR. TRAFICANTE: And, Wayde, we are going to stop
 24 with the speaking objections or we will go to the
 25 Court?

Page 93

1 MR. SEIDENSTICKER: I don't consider that a
 2 speaking objection.
 3 MR. TRAFICANTE: How is "asked and answered" not
 4 a speaking objection?
 5 MR. SEIDENSTICKER: It's redundant, asked and
 6 answered.
 7 MR. TRAFICANTE: You can object to form again or
 8 we'll go to the Court with speaking. Speaking
 9 objections we've agreed, one, they're not appropriate
 10 under the rules, and we've agreed not to do it. So I
 11 will ask you again nicely, please, no more speaking
 12 objections.
 13 BY MR. TRAFICANTE:
 14 Q. You can answer the question.
 15 A. Ask me the question again.
 16 Q. So this Memorandum of Settlement agreement under
 17 4(B) states that the 37-unit condominium on the
 18 development parcel will be part of The Club at La
 19 Peninsula.
 20 Do you see that?
 21 A. I see it.
 22 Q. But it's your position that the subject parcel is
 23 not part of La Peninsula?
 24 A. That's correct.
 25 Q. Or The Club at La Peninsula?

Page 94

1 A. Correct.

2 Q. Okay. And --

3 MR. SEIDENSTICKER: Objection to form.

4 BY MR. TRAFICANTE:

5 Q. I want to show you what we've marked as Exhibit

6 16 to your deposition. And for Mr. Boyette, it's bates

7 stamped Mitchell 32 through Mitchell 46.

8 Have you seen this document before,

9 Mrs. Mitchell?

10 A. I've seen pages 41 through Exhibit D.

11 Q. Okay. Other than 41 through -- Mitchell 41

12 through Mitchell 46 which is Exhibit D, have you seen the

13 prior --

14 A. I'm not familiar with the first part of it.

15 Q. Okay. And for the record, this is the Tennis

16 Court Easement and Covenants dated May 8th, 2013, between

17 Aircraft Investment, LLC and The Club as recorded on June

18 7th of 2013.

19 Do you see that?

20 A. Correct.

21 Q. Okay. Prior to today, though, have you ever seen

22 this document --

23 A. No.

24 Q. -- other than those -- other than 41 through --

25 A. I'm not familiar with it.

Page 95

1 Q. -- 46? Not familiar with it?

2 A. No.

3 Q. Okay. Do you believe that this Tennis Court

4 Easement and Covenants is binding on you, your husband and

5 Dolphin Point?

6 A. Well, it was a deal with Aircraft that Aircraft

7 had done in May of 2023.

8 Q. Are you -- do you believe as you sit here today

9 that you are bound by this easement?

10 A. Yes.

11 Q. Okay. And this easement -- you were aware of

12 this easement before you purchased your property, correct?

13 A. Yes.

14 Q. Because I believe this is one of the 16 that you

15 testified to previously; is that correct?

16 A. Yes.

17 Q. Okay. And as part of this lawsuit, you've

18 alleged that The Club has breached this tennis court

19 easement; is that correct?

20 A. Yes.

21 Q. Okay. How has The Club breached this tennis

22 court easement?

23 A. We've sent them two notifications on a 30-day

24 notice that we were going to proceed to allow two tennis

25 courts and start building the new tennis courts and

Page 96

1 relocate to their construction site.

2 Q. And so how did The Club breach this tennis court

3 easement?

4 A. They breached it in the fact that their

5 construction site, it's got Port-a-Johns, it's got

6 dumpsters, it has a material that there was a letter that

7 came out from The Club itself on the last hurricane five

8 years ago that stated that it was going to take them eight

9 months to rebuild their seawall. And we thought eight

10 months, well, we're not going to be able to relocate these

11 tennis courts because they are going to have the

12 construction site tied up for eight months.

13 Q. Is there any other reason why you believe The

14 Club has breached this tennis court easement?

15 A. They have fought us every step of the way to stop

16 us from doing the relocation.

17 Q. When you say fought you, what do you mean?

18 A. They won't let us -- they won't clean up the

19 relocation site. They won't clean up the construction

20 site. We can't move forward 'til we get their belongings

21 out of the way so we can bring in our belongings.

22 Q. So other than the relocation site or the

23 construction site being cleaned up, do you believe there's

24 any other reason that The Club has breached this tennis

25 court easement?

Page 97

1 A. Well, that's the only thing I can think of off

2 the top of my head.

3 Q. Have you requested to The Club that they clean up

4 the relocation site and remove their construction

5 materials?

6 A. No. What we've requested is on two occasions to

7 give them 30-day notice that we were moving forward.

8 Q. Right. Did you ever tell them to whoever, you

9 know, at The Club, did you ever say you need to remove the

10 construction material off the relocation site?

11 A. No.

12 Q. Okay. And you have not obtained permitting to

13 relocate the tennis courts, correct, from Collier County?

14 A. We're -- we're in permitting now.

15 Q. Right. Has the permit been issued to relocate

16 the tennis courts?

17 A. No, because it's -- it's pending.

18 Q. And you would agree you can't relocate the tennis

19 courts until you receive permitting --

20 A. No, I don't agree to that at all.

21 Q. Why not?

22 MR. SEIDENSTICKER: Objection to form.

23 Slow down. Let me object. Objection to form.

24 You can answer.

25 BY MR. TRAFICANTE:

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1 Q. So is it your position that you don't need
 2 permitting from Collier County to relocate the tennis
 3 courts?
 4 MR. SEIDENSTICKER: Objection to form. You can
 5 answer.
 6 THE WITNESS: It is -- I totally 100 percent
 7 agree that we have to do permitting through Collier
 8 County and zoning. But we have 18 months to make that
 9 accomplishment happen. It doesn't say in the
 10 agreement that we signed -- it says we have 18 months
 11 to relocate and have to let stand two tennis courts
 12 and can remove two, and those two tennis courts which
 13 happen to be Number 3 and 4 is where we can now open
 14 up our site for construction.
 15 BY MR. TRAFICANTE:
 16 Q. Do you believe you can remove two tennis courts
 17 without permitting from Collier County?
 18 A. Yes, I do.
 19 Q. Okay.
 20 A. Because we're not demoing anything. We don't
 21 need a demo. I know Collier County's permitting very
 22 well.
 23 Q. And as we sit here today, though, you don't have
 24 -- or you -- neither you, your husband or Dolphin Point
 25 have obtained permitting from Collier County to relocate

Page 99

1 the tennis courts; is that correct?
 2 MR. SEIDENSTICKER: Objection. Form.
 3 THE WITNESS: No. We are -- we're in Collier
 4 County. We have got all the engineering done. We
 5 have all the plans done. We have -- yes.
 6 BY MR. TRAFICANTE:
 7 Q. But the permitting hasn't been issued, correct?
 8 A. We haven't asked for it yet.
 9 Q. Okay. If you turn to page 2 of Exhibit 16, it's
 10 bates stamped Mitchell 33.
 11 Do you see under 4.1 it states that the grantor,
 12 Aircraft, grants and conveys to the grantee, The Club, and
 13 its authorized users, as hereinafter defined, a temporary,
 14 non-exclusive appurtenant easement (the easement) over and
 15 across the easement area for the purposes of accessing and
 16 using the existing tennis courts located thereon?
 17 You see that?
 18 A. I see where you're reading, yes.
 19 Q. And do you agree that you, your husband and
 20 Dolphin Point are bound by that language?
 21 MR. SEIDENSTICKER: Objection. Form.
 22 BY MR. TRAFICANTE:
 23 Q. You're not disputing that you, your husband or
 24 Dolphin Point are bound by this tennis court easement,
 25 correct?

Page 100

1 A. I don't understand the question. I have told you
 2 what I know.
 3 Q. Is it -- is it your position that you and Dolphin
 4 Point also have to comply with this tennis court easement?
 5 A. Yes.
 6 Q. Okay. And you will see it says -- oh, the
 7 existing tennis courts, there's four tennis courts; is
 8 that correct?
 9 A. Yes.
 10 Q. And part of one is located on The Club's
 11 property; is that correct?
 12 A. Tennis Court 4. But I would call it a sliver.
 13 Q. Okay. It's a corner of one of the courts; is
 14 that correct?
 15 A. Yeah.
 16 Q. Okay. And it says in 4.1, as used in this
 17 agreement, authorized users shall mean all owners and
 18 members as those terms are defined in the declaration of
 19 covenants, which we have already looked at, and their
 20 guests, lessees and invitees.
 21 Do you see that?
 22 A. Uh-huh.
 23 Q. Do you have any evidence as you sit here today of
 24 The Club allowing people other than its owners and
 25 members, guests, lessees and invitees of using the tennis

Page 101

1 courts?
 2 A. No.
 3 Q. And then under 4.3 it states that the grantor,
 4 which was Aircraft, reserves onto itself the right and
 5 privilege to use and occupy and to grant to others the
 6 right to use and occupy the surface and subsurface of the
 7 easement area for such uses and purposes which shall not
 8 be inconsistent with the easement as described in this
 9 instrument.
 10 Do you see that?
 11 A. Uh-huh. Yes.
 12 Q. Have you, your husband or Dolphin Point invited
 13 members of the general public to use the tennis courts?
 14 A. What we did was had our attorney, Bill Morris,
 15 send an official letter to the master board asking that
 16 after-hours could we start a youth program for Isles of
 17 Capri. It would be we would not interfere with any of the
 18 programs that they had. It would be off-hours. It was
 19 going to be -- we had discussed and talked to a pro on how
 20 much she would charge our youth in our community. And
 21 they -- they wouldn't let us do it.
 22 Q. Did you also invite the Isle of Capri community
 23 in its entirety to use the tennis courts?
 24 MR. SEIDENSTICKER: Objection to form.
 25 THE WITNESS: No.

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1 BY MR. TRAFICANTE:
 2 Q. Okay.
 3 A. The letter states that for a youth program.
 4 Q. Okay. If you go to page 4 which is Mitchell 35
 5 and paragraph 7, I believe this is the paragraph about the
 6 18 months that you were referring to and the 30-day
 7 notice.
 8 Do you see that?
 9 A. Yes.
 10 Q. And it says grantor may at any time upon 30 days
 11 advance written notice elect at its expense to remove the
 12 tennis courts within the easement area and construct four
 13 replacement tennis courts in an area adjacent to the
 14 grantor property as depicted on the sketch attached hereto
 15 as Exhibit D.
 16 Do you see that?
 17 A. Yes.
 18 Q. Okay. And so you testified that you provided or
 19 your attorney provided two 30 days' notice --
 20 A. Yes.
 21 Q. -- to The Club?
 22 A. Yes.
 23 Q. Do you recall when those notices were provided?
 24 A. Shortly after we bought the property. What year
 25 did we buy the property?

Page 103

1 Shortly after that. And then the hurricane came.
 2 And then the second one went out. So, no, I can't give
 3 the exact dates.
 4 Q. And why were there two notices?
 5 A. Because they wouldn't -- they didn't cooperate on
 6 the first one. The first one after it came out, the
 7 hurricane we had five years ago, they brought all their
 8 construction site in there, heavy equipment construction
 9 site, rocks, whatever they needed to rebuild their
 10 seawall.
 11 Q. But, again, did you ever --
 12 MR. SEIDENSTICKER: Excuse me. Were you
 13 finished?
 14 THE WITNESS: Yes.
 15 BY MR. TRAFICANTE:
 16 Q. But, again, did you ever advise The Club to
 17 remove stuff from the relocation area?
 18 A. No. I didn't feel that the little common sense
 19 is when somebody's going to relocate under what the
 20 agreement was that I needed to give them a little common
 21 sense that, you know, you realize you can't -- the
 22 Mitchells can't move these tennis courts until we
 23 cooperate and get rid of our construction site and make it
 24 available for them.
 25 Q. And so then you waited two years to give another

Page 104

1 notice?
 2 A. Yeah. It took them a while to build their
 3 seawall. At that point really we thought, you know, we're
 4 not in a big hurry, it's no big deal, we'll cooperate.
 5 They -- I mean, they got hit hard.
 6 Q. So is it your testimony that the only reason you
 7 waited the two years was because --
 8 A. In good faith.
 9 Q. -- was because La Pen was rebuilding its seawall?
 10 A. That's absolutely correct, and thought, you know,
 11 we'll just be a good neighbor, there's no hurry on this,
 12 you know. At the time there was because we were going to
 13 start moving along and try to sell it and -- or develop
 14 it. But, you know, then the second hurricane hit. So
 15 we're in the same situation again.
 16 Q. Did you have any discussions with The Club at La
 17 Pen regarding the first notice?
 18 A. Never any discussions.
 19 Q. Did you have any discussions with The Club at La
 20 Pen regarding the second notice?
 21 A. No.
 22 Q. Okay. And then if you go back to paragraph 7 of
 23 Exhibit 16, it says: However, grantor shall be obligated
 24 to construct the replacement tennis courts in the
 25 relocation area at such time as it elects to develop the

Page 105

1 easement area.
 2 Do you see that?
 3 A. Uh-huh.
 4 Q. And then it goes on: The replacement tennis
 5 courts shall be new and of equivalent size and of like
 6 kind and quality to the existing tennis courts and related
 7 improvements, including clay construction and irrigation.
 8 Did I read that correctly?
 9 A. Yes.
 10 Q. And then if you skip a sentence or two, it talks
 11 about the 18 months.
 12 Do you see that?
 13 A. Yes.
 14 Q. And it says: Grantor shall conduct the removal
 15 and replacement of the tennis courts so as to provide four
 16 tennis courts available for play at all times except for
 17 that a period of up to 18 months grantor may provide only
 18 two tennis courts available for play in order to leave
 19 space in the easement area and/or relocation area for
 20 staging construction materials and equipment.
 21 Do you see that?
 22 A. Yes.
 23 Q. And so this envisioned staging construction
 24 materials and equipment for the relocation of the tennis
 25 courts on two of the four tennis courts; is that correct?

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1 A. Yes.

2 Q. Okay. If you go to page 6 which is Mitchell 37,

3 paragraph 12.12, the second-to-last sentence says grantee,

4 meaning The Club, shall obtain such policies of public

5 general liability insurance as may be reasonably requested

6 by grantor in connection with obligations created under

7 this section.

8 Do you see that?

9 A. Uh-huh. Yes.

10 Q. Did you ever make a request to The Club to obtain

11 the general liability insurance that's required under this

12 contract?

13 A. Yes.

14 Q. When did you do that?

15 A. Mr. Morris did it initially. And the insurance

16 paperwork came in under a balloon policy, I believe it's

17 called; and our names were not attached to that. So we

18 requested again, and there was a lapse in time when we

19 requested again with that now can you put it in Don and

20 Kim Mitchell's name. Then it went to the LLC, and then

21 they said can you put it now in that. So there was a

22 lapse every time. So it was -- it required an attorney to

23 get the -- that insurance policy.

24 Q. Did you ever request it, though, prior?

25 A. No. Our attorneys did.

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1 Q. Okay. So the only request came from Mr. Morris?

2 A. Yeah. And then we have requested since.

3 Mr. Morris has -- couldn't do the attorney anymore.

4 Q. And Mr. Morris's request came in February of

5 2019; is that correct?

6 A. That could probably be.

7 Q. And the policy with showing you and your husband

8 as additional insureds was provided to Mr. Morris that

9 next month; is that correct?

10 A. It showed, yeah -- no, it didn't at first. The

11 first one didn't show our names on it. What it showed was

12 a balloon policy, and it was La Peninsula. Then came --

13 through time came the second one with our personal names

14 on it. Then through time came Dolphin, LLC.

15 Q. When you say a balloon policy, are you referring

16 to an umbrella policy?

17 A. I'm sorry. Pardon me. Yes.

18 Q. Okay. I just wanted to make sure I was

19 understanding.

20 A. Yes.

21 Q. Let me show you what we have been marked as

22 Exhibit -- or what we're marking as Exhibit 17 which was

23 previously marked as Exhibit 12 by Mr. Boyette to a prior

24 deposition.

25 Have you seen this document before,

Page 108

1 Mrs. Mitchell?

2 A. Nope, never seen it.

3 Q. So prior to today, you have never seen this

4 document before?

5 A. Never.

6 Q. So do you have any knowledge as to whether this

7 document is valid or not?

8 MR. SEIDENSTICKER: Objection. Form.

9 THE WITNESS: I do not.

10 BY MR. TRAFICANTE:

11 Q. Okay. You've raised a claim in this lawsuit that

12 this document is invalid.

13 Are you aware of that?

14 A. No.

15 Q. Okay. So as you sit here today, you have no

16 factual support that this document is invalid?

17 MR. SEIDENSTICKER: Objection. Form.

18 THE WITNESS: No. Because this appears to be

19 bylaws and stuff. I wouldn't have read this. This is

20 some of their liens and how they handle their business

21 over there. So I'd refer to my attorneys who have my

22 best interest in mind.

23 BY MR. TRAFICANTE:

24 Q. So, for the record, this is the Certificate of

25 Amendment and the Amended and Restated Declaration,

Page 109

1 Articles and Bylaws from 2015 for The Club; is that

2 correct?

3 A. Yes.

4 Q. Okay. And this was recorded before you bought

5 the subject parcel; is that correct?

6 A. Looks like it, yes.

7 Q. Okay. It was recorded on 9-18 of '15; is that

8 correct?

9 A. It was recorded on 9-18-2015, yes.

10 Q. And you will see it's also notarized?

11 A. Yes.

12 Q. And so because it's been recorded and it's

13 notarized it's your belief that this would be a valid

14 document, correct?

15 MR. SEIDENSTICKER: Object. Objection. Form.

16 BY MR. TRAFICANTE:

17 Q. You can answer.

18 A. Yes.

19 Q. Okay. I want to show you what we're marking as

20 Exhibit 18 to your deposition which was previously marked

21 by Mr. Boyette as Exhibit 17 to a prior deposition.

22 Have you seen this document before?

23 A. Yes.

24 Q. Okay. And is this the vote tally that you were

25 referring to previously?

Page 110

1 A. Yes.

2 Q. And this is the vote tally for The Club at La
3 Peninsula for -- and it's dated -- well, there's a couple
4 of dates on it. But on the top right it's handwritten
5 8-17.

6 Do you see that?

7 A. Yes.

8 Q. And on the top left it's dated 8-5 of '15?

9 A. Yes.

10 Q. Okay. And you've seen this as part of this
11 lawsuit?

12 A. Yes.

13 Q. Is that correct?

14 A. Yes.

15 Q. Okay. And prior to this lawsuit, have you ever
16 seen this document?

17 A. No.

18 Q. Okay. And you were not part of the vote that's
19 referenced in this document; is that correct?

20 A. No.

21 Q. Okay. Do you have any knowledge regarding the
22 meetings that occurred for this vote?

23 A. No.

24 Q. Do you have any knowledge regarding the notices
25 that went out concerning this vote?

Page 111

1 A. No.

2 Q. Okay. Are you aware that this was originally set
3 for a vote in May of 2015, but then it was changed to July
4 of 2015?

5 A. No.

6 Q. Okay. And are you aware that it was subsequently
7 changed to be a vote on August 2015?

8 A. No.

9 Q. Okay. Do you have any knowledge regarding --
10 strike that.

11 I believe, though, you previously testified that
12 you believed this vote was invalid; is that correct?

13 A. Yes.

14 Q. And why do you believe this is invalid again?

15 A. Unless the court reporter wanted to go back, so I
16 mean, there are people that didn't own properties --

17 Q. And I believe you referred to six to ten people?

18 A. Yes.

19 Q. Who on this list didn't own the properties?

20 A. I don't have those notes in front of me, but
21 there are.

22 Q. So as you sit here today, you can't identify
23 them?

24 A. No, because I don't know any of these people. I
25 don't even know the building numbers.

Page 112

1 Q. And you don't know who actually owned those
2 properties as of 8-5 of '15; is that correct?

3 A. That's correct.

4 Q. Okay. And you will see on the last page, page 15
5 of 15 of this Exhibit 18, there's a tally of votes on the
6 bottom right?

7 A. Yep.

8 Q. Do you see that?

9 A. Yes.

10 Q. And you see it says 121 yes, 24 no and then 120
11 yes, 22 no. And then it says without 311 and 411, 119
12 yes, 24 no, 118 yes, 22 no.

13 Do you see that?

14 A. Yes.

15 Q. Do you have any reason to dispute the validity of
16 that?

17 A. Yes.

18 Q. And what's your basis?

19 A. It is that through legal counsel we have found
20 that there have been somewhere between six and ten votes
21 that weren't valid.

22 Q. And, again, you can't identify those as you sit
23 here today?

24 A. I cannot.

25 Q. And you don't have personal knowledge regarding

Page 113

1 who owned these properties as of 8-5 of '15?

2 MR. SEIDENSTICKER: Objection. Form.
3 Redundant.

4 BY MR. TRAFICANTE:

5 Q. You can answer.

6 A. Yeah, we have seen the deeds.

7 Q. You have seen the deeds personally?

8 A. Just on paper.

9 Q. You have seen the physical deeds you've said?

10 A. Not the physical deeds. The copies from the
11 deeds from Collier County.

12 Q. Okay. Because I thought when I asked you before
13 you had testified you hadn't seen the deeds.

14 A. Then I had misspoken.

15 Q. Okay. So you've actually seen the deeds --

16 A. Just copies of them. Just like I'm seeing a copy
17 here, I've seen copies that matched the case that there
18 were some illegal voting done.

19 Q. And that's because you believe the deeds showed
20 someone owning the unit that's not who signed the proxy?

21 A. That's correct.

22 Q. Okay. Do you need a break?

23 A. No. I'm good.

24 Q. Okay.

25 THE WITNESS: Does the court reporter need a

Page 114

1 break?

2 THE COURT REPORTER: I'm okay.

3 THE WITNESS: Okay.

4 THE COURT REPORTER: Thank you.

5 MR. TRAFICANTE: She's used to it.

6 MR. SEIDENSTICKER: The prior exhibit was 18; is

7 that right?

8 BY MR. TRAFICANTE:

9 Q. Yeah. I'm going to show you what's been marked

10 as Exhibit 19, which for Mr. Boyette is bates stamped

11 Mitchell 7.

12 Have you seen this document before --

13 A. Yes.

14 Q. -- Mrs. Mitchell?

15 A. Yes.

16 Q. And I apologize. Let me finish the question just

17 so the court reporter --

18 A. Okay.

19 Q. And is this the first 30-day notice that you were

20 testifying that was sent out by Bill Morris to The Club?

21 A. Yes.

22 Q. Okay. And it's dated November 21st of 2017?

23 A. Yes.

24 Q. And was Bill Morris your attorney at that time?

25 A. Yes.

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1 Q. And was Bill Morris authorized to send this

2 letter at that time?

3 A. Yes.

4 Q. Okay. And you will see it says on the second

5 paragraph: Please accept this as 30 days advance written

6 notice that the Mitchells have elected at their expense to

7 remove the tennis courts within the easement area and

8 construct four replacement tennis courts in the area

9 depicted on Exhibit D to the Tennis Court Easement and

10 Covenants.

11 Do you see that?

12 A. Yes.

13 Q. As of November 21st, 2017, had you applied for

14 permitting to relocate the tennis courts?

15 A. I didn't need to apply because I had 18 months to

16 do it. I had my permits -- or not my -- pardon me. Back

17 up. I had my bids with Mor-Sports done. I had my -- the

18 grading guys ready to roll. The graders guys couldn't get

19 in there because the construction zone at La Peninsula,

20 the relocation was used as a construction zone.

21 Q. So my question was a little different.

22 As of November 21st, 2017, had you applied --

23 A. No.

24 Q. -- for a permit with Collier County --

25 MR. SEIDENSTICKER: Let him finish the question.

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1 BY MR. TRAFICANTE:

2 Q. Let me finish.

3 Had you applied -- I know you anticipate where

4 I'm going, but just let me finish.

5 A. Sorry.

6 Q. As of November 21st, 2017, had you or anyone on

7 your behalf applied for a permit with Collier County to

8 remove and replace the tennis courts?

9 A. We had not applied for permit. We had only

10 gathered up the bids for what the cost was going to occur.

11 Q. Okay. And what bids had you received at that

12 time?

13 A. Mor-Sports. Rob Jones Construction who's -- has

14 heavy equipment to do grading.

15 Q. Anyone else?

16 A. Huh-uh.

17 Q. Okay. And Mor-Sports gave you a bid to do what?

18 A. To replace four tennis courts at the price of

19 \$235,000.

20 Q. Okay. And so you would agree in order to replace

21 the tennis courts, prior to doing that you would need

22 permitting from Collier County; is that right?

23 A. Oh, sure.

24 Q. Okay. And do you believe prior to grading and

25 clearing the site where the replacement courts were going

Page 117

1 that you would need permitting from Collier County?

2 A. Yes.

3 Q. Okay. And as of November 21st, 2017, you hadn't

4 applied for that permit?

5 A. No. I had only gathered the bids to take to the

6 county. You can't just go to the county and ask for a

7 permit without what you're up to.

8 Q. And then on Exhibit 19 Mr. Morris says that the

9 Mitchells will be coordinating engineering, survey and

10 permitting. They will contact you as the tennis court

11 project progresses -- or progress.

12 Do you see that?

13 A. Yes.

14 Q. Did that ever happen? Did you --

15 A. No.

16 Q. Let me just ask the question.

17 Did you coordinate engineering, surveying and

18 permitting with The Club?

19 A. No.

20 Q. Okay. And did you contact them as the tennis

21 court project progressed?

22 A. It never progressed.

23 Q. And it didn't progress because it's your position

24 that the relocation area had construction material?

25 A. Correct.

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1 Q. Okay. I want to show you what's been marked as
 2 Exhibit 20 to your deposition.
 3 And, David, this is part of La Pen's production.
 4 It was La Pen 1557 to 1558. It's also part of the
 5 Mitchells' production, but I don't have those bates
 6 stamped in front of me.
 7 And just let me know, Mrs. Mitchell, when you're
 8 done reviewing.
 9 A. Yes, I have read this.
 10 Q. Let me ask you just before we get to this, did
 11 you also get a quote for fencing or any of the bleachers
 12 or irrigation or electrical that was needed to relocate
 13 the tennis courts?
 14 A. Just the fencing.
 15 Q. Okay. And how much was the fencing quote?
 16 A. I can't recall.
 17 Q. Okay. But you never received a quote to redo the
 18 irrigation or the lighting?
 19 A. No.
 20 Q. Okay. Exhibit 20 is a letter dated December
 21 11th, 2017, from the law firm of Goede, Adamczyk, DeBoest
 22 & Cross to Bill Morris.
 23 Do you see that?
 24 A. Yes.
 25 Q. Have you ever seen this letter before?

Page 119

1 A. Just yesterday.
 2 Q. Okay. So this was a letter that you reviewed in
 3 preparation for your deposition?
 4 A. Yes.
 5 Q. Did Mr. Morris ever forward you this letter?
 6 A. No.
 7 Q. Okay. And you will see they're writing in
 8 receipt or in response to Exhibit 19, Mr. Morris's
 9 November 21st, 2017, 30-day notice?
 10 A. Yes.
 11 Q. So The Club did respond to the 30-day notice,
 12 correct?
 13 A. Yes.
 14 Q. Okay. And The Club says as part of this, if you
 15 go to the third paragraph that starts, "Next," the third
 16 paragraph on the first page, do you see the third sentence
 17 it says, "As part of the application, please include a
 18 copy of any permit applications, permit approvals,
 19 contractor information and insurance, surveys and
 20 drawings?"
 21 MR. SEIDENSTICKER: Objection.
 22 BY MR. TRAFICANTE:
 23 Q. Do you see that?
 24 MR. SEIDENSTICKER: Objection. Form.
 25 BY MR. TRAFICANTE:

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1 Q. Did I read that sentence correctly?
 2 A. Yes.
 3 MR. SEIDENSTICKER: Objection. Form.
 4 BY MR. TRAFICANTE:
 5 Q. Okay. Did you provide to The Club any of that
 6 information?
 7 A. No, because that -- I had 18 months to do it.
 8 Q. Okay.
 9 A. I was gathering up information. I was going to
 10 do -- you know, all we've tried to do is cooperate.
 11 Q. Okay. If you go to the second page of this
 12 exhibit which is La Pen 1558, do you see in the last
 13 paragraph Attorney Adamczyk writes, "Pursuant to the
 14 settlement between The Club and your client's predecessor
 15 in title, any owner of property on the Aircraft property
 16 shall be part of The Club and, as you and I have
 17 previously discussed, the Aircraft property is encumbered
 18 by The Club's declaration, including covenants to pay
 19 assessments?"
 20 Do you see that?
 21 A. I'm reading it.
 22 Q. You had never seen this until yesterday?
 23 A. (Witness nods head.)
 24 Q. Okay. Mr. Morris had never forwarded this to
 25 you?

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1 A. Not that I am aware of.
 2 Q. And so no response was ever provided to this
 3 letter that you are aware of?
 4 A. No.
 5 Q. Okay. But you disagree that you're responsible
 6 to pay any assessments or bound by The Club's declaration;
 7 is that correct?
 8 A. Yes. And I get that belief because Aircraft
 9 never had to pay it. Nobody prior to us had to pay any
 10 money to The Club. We would have never brought the --
 11 bought the property if we had any affiliation with The
 12 Club whatsoever.
 13 Q. And prior to this lawsuit, you recorded -- you
 14 and your husband recorded a Notice of Invalidity of
 15 Amendments to the Declaration of Covenants of La Pen.
 16 Do you recall that?
 17 A. No.
 18 Q. Okay. So you don't recall it as you sit here
 19 today?
 20 A. No.
 21 Q. I'm going to show you what we're marking as
 22 Exhibit 21, which for Mr. Boyette is bates stamped
 23 Mitchell 8.
 24 Have you seen this document before --
 25 A. I have.

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1 Q. -- Mrs. Mitchell?

2 Okay. And, again, let me just finish the

3 question just because it's difficult for the court

4 reporter.

5 Is this the second 30-day notice that Mr. Morris

6 provided on your behalf that you were testifying to?

7 A. Yes.

8 Q. And Mr. Morris had authority to send this notice

9 on your behalf, correct?

10 A. Yes.

11 Q. And you will see in the first paragraph

12 Mr. Morris says, "I wrote you a while back to provide 30

13 days notice of the Mitchells' election to relocate the

14 tennis courts on their property."

15 And, in fact, that was about two years prior,

16 correct?

17 A. Yes.

18 Q. And it says, "The Mitchells encountered delays in

19 tennis court relocation and construction."

20 Do you see that?

21 A. Yes.

22 Q. What delays did you encounter?

23 A. The delays at the recon- -- or the construction

24 site continuing to be -- have industrial equipment on it,

25 Port-a-Johns on it, dumpsters on it. We had no place to

Page 123

1 relocate the tennis courts to.

2 Q. Does this letter say anywhere that The Club

3 caused the delays?

4 A. No.

5 Q. Okay. Does this letter -- strike that.

6 And then you can see again it says that you're

7 providing another -- the second-to-last paragraph, you're

8 providing another 30-day advance notice. And then in the

9 last paragraph again it reiterates the same thing from the

10 prior notice, that the Mitchells will be coordinating

11 engineering, surveying and permitting, they will contact

12 you as the tennis court project progress, we anticipate

13 construction to start promptly after passage of the 30-day

14 notice period.

15 Do you see that?

16 A. Yes.

17 Q. Did you coordinate engineering, surveying and

18 permitting with The Club?

19 A. This is when I believe we started. And it's

20 like, okay, let's go ahead and get all the paperwork that

21 they're asking for. But it was kind of we felt like it

22 was a waste of money because there was so much

23 construction over in their relocation spot for us to do,

24 it was like we were just turning our wheels in the sand.

25 Q. So as of November 22nd of 2019, it's your

Page 124

1 testimony that there was still construction material in

2 the relocation area?

3 A. Some sort or another.

4 Q. And did you ask The Club to remove --

5 A. No.

6 Q. Okay. Let me finish the question.

7 Did you ask The Club to move that construction

8 material out of the relocation area?

9 A. No.

10 Q. Okay. And did you ever coordinate engineering,

11 surveying or permitting with The Club?

12 A. We started shortly therein or thereafter, yes.

13 Q. With The Club?

14 A. Not with The Club, no.

15 Q. Okay. Did you -- and it says that you anticipate

16 construction to start promptly after passage of the 30-day

17 notice period. So that would have been around December

18 21st or 22nd of 2019?

19 MR. SEIDENSTICKER: Objection. Form.

20 THE WITNESS: Yeah, I don't know.

21 BY MR. TRAFICANTE:

22 Q. Okay. Did you start within 30 -- promptly after

23 the passage of that 30-day notice period?

24 A. No.

25 Q. And did you have permitting --

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1 A. No.

2 Q. -- at that time?

3 A. Didn't need it.

4 Q. But did you have permitting at that time?

5 A. No.

6 Q. Okay. Do you recall The Club ever responding to

7 this notice?

8 A. No.

9 Q. I want to show you what we're marking as Exhibit

10 22 to your deposition, which for Mr. Boyette is bates

11 stamped Mitchell 240 through 241.

12 Have you seen this document before?

13 A. No.

14 Q. So prior to today's deposition, you have never

15 seen this document?

16 A. No.

17 Q. Okay. When Mr. Mitchell or Mr. -- strike that.

18 Mr. Morris was your attorney at this time,

19 correct?

20 A. Yes.

21 Q. And this is a letter that's written in response

22 to the second 30-day notice dated November 22nd of 2019;

23 is that correct?

24 A. Yes.

25 Q. And you will see in this letter that the attorney

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1 for The Club in the second paragraph advises Mr. Morris
 2 that they were unable to locate a county permit that would
 3 allow for this work. "Can you assist us in locating the
 4 permit?"
 5 Do you see that?
 6 A. Yes.
 7 Q. And did you -- did you ever respond to this
 8 letter?
 9 A. No. I have never seen this letter.
 10 Q. Did Mr. Morris ever respond to this letter as
 11 best as you know?
 12 A. I have no idea.
 13 Q. Okay. Did Mr. Morris ever respond to the letter
 14 saying that the relocation area had construction material
 15 in it that had to be moved?
 16 A. I have no idea.
 17 Q. And then you will see in the third paragraph it
 18 requests that the Mitchells advise The Club in writing of
 19 the timing of the stages and plan of development for the
 20 work set forth in the letter. Please share with us the
 21 referenced engineering, survey and permits at that time.
 22 We are hopeful the parties can have an open line of
 23 communication and work together so as to minimize
 24 disruptions, especially during the high season.
 25 Do you see that?

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1 A. Yes.
 2 Q. And you never provided any of that information to
 3 The Club, correct?
 4 A. No.
 5 Q. And I believe you testified you never had any
 6 communications with anyone at The Club about -- well, let
 7 me ask you, did you ever have communications with anyone
 8 at The Club at this time about relocation of the tennis
 9 courts?
 10 A. Nobody that lived in The Club.
 11 Q. So no members of The Club?
 12 A. No.
 13 Q. Okay. Did you ever have discussions with
 14 Ms. Petrik regarding it?
 15 A. I'm not sure who that even is.
 16 Q. Tina Petrik?
 17 A. Oh, Tina, yes. Yeah, but briefly.
 18 Q. Okay. Do you recall sending Ms. Petrik a text on
 19 December 3rd of 2019 that says: Keep in mind that the
 20 Tennis Courts 3 and 4 are coming out December 26th. The
 21 equipment arrives Christmas Eve.
 22 A. If it's there, I probably sent it to her.
 23 Q. Let me show you. I will show you what we are
 24 marking --
 25 A. I believe you.

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1 Q. -- as Exhibit 23 -- I will give that to
 2 Mr. Seidensticker -- Exhibit 23 to your deposition. And
 3 for Mr. Boyette, these are text messages bates stamped La
 4 Pen 1427 through 1436.
 5 And if you go to -- because it's a text chain,
 6 Ms. Mitchell, if you go to La Pen 1430. At the bottom you
 7 will see the bates stamp.
 8 Do you see on December 3rd, 2019, at 2:32 p.m.
 9 you write to Ms. Petrik: "Tina, I have to cancel the
 10 meeting tomorrow. I understand there's a" -- and if you
 11 go to the next page, it continues -- "a counter lawsuit
 12 come in, so I just need you to send me Twin Dolphins your
 13 attorney information."
 14 Do you see that?
 15 A. Yes.
 16 Q. And then the chain continues on the same date to
 17 La Pen 1433. And do you see where you write: "Tina, you
 18 had your meeting today. It's best if we just let the
 19 attorneys handle this. Keep in mind that the Tennis
 20 Courts 3 and 4! are coming out December 26th. The
 21 equipment arrives Christmas Eve."
 22 Do you see that?
 23 A. Yes.
 24 Q. Do you write -- have you ever written anywhere to
 25 Ms. Petrik that The Club needed to move the material off

Page 129

1 of the relocation area?
 2 A. No.
 3 Q. Why not?
 4 A. Well, to me that's common sense, giving you --
 5 giving you a 30-day notice that we are coming that you
 6 would get your car out of the way, if it's a car, or if
 7 it's a Port-a-John or if it's whatever it is.
 8 Q. But it was never important enough for you to
 9 advise them that they needed to move the equipment?
 10 A. No. Because I'm pretty sure this is the last
 11 communications during this time that I decided I wasn't
 12 speaking to any of them because they're not very
 13 cooperative.
 14 Q. And, again, at this time you didn't have
 15 permitting from Collier County to relocate the tennis
 16 courts?
 17 A. No. I had 18 months to get permitting.
 18 Q. And as part of this lawsuit, I will represent you
 19 didn't produce any text messages.
 20 Do you have text messages with anyone at The Club
 21 at La Peninsula?
 22 A. Friends, but not regarding what you're
 23 discussing. I even forgot that I even text -- this is
 24 very uncommon for me to do this.
 25 Q. Do you have text messages with Ms. Petrik still

Page 130

1 saved?

2 A. Oh, no. I don't even think I have her as a

3 contact anymore.

4 Q. When did you delete those text messages?

5 A. I didn't delete them. I just don't have her as a

6 contact anymore. I believe everything that's here, if

7 that's what you're saying.

8 Q. Well, so you would still have those text

9 messages, though, if you didn't delete them, correct?

10 A. I don't know.

11 Q. You don't know whether you have them as you sit

12 here today?

13 A. Yeah, I don't know.

14 MR. TRAFICANTE: Okay. We would just ask

15 Mr. Seidensticker that you look into that and produce

16 it because no text messages have been produced as

17 of --

18 MR. SEIDENSTICKER: Send me a written request so

19 I know what you're asking for.

20 MR. TRAFICANTE: Yeah.

21 BY MR. TRAFICANTE:

22 Q. As you sit here today, Ms. Mitchell, Dolphin

23 Point or you and your husband still do not have permitting

24 to relocate the tennis courts, correct?

25 A. It's ready to go. We just have to give them the

Page 131

1 go-ahead.

2 Q. Well, let me show you what we're marking --

3 Madam Court Reporter, I'm sorry. Do you know

4 what we ended on?

5 THE COURT REPORTER: 24 is next.

6 MR. TRAFICANTE: 24 is next?

7 THE COURT REPORTER: Yes.

8 BY MR. TRAFICANTE:

9 Q. Perfect.

10 -- what we're marking as Exhibit 24, which for

11 Mr. Boyette's knowledge is a printout of the Collier

12 County portal from January 4th of 2023.

13 Ms. Mitchell, this is I will represent to you a

14 printout from the Collier County portal pertaining to the

15 application to relocate the tennis courts, as well as

16 there's other applications in here. And I will take you

17 through it.

18 But I wanted to ask you, you will see on the

19 first page of this Exhibit 24 there's a section called

20 Code Enforcement Complaints?

21 A. Yes.

22 Q. Do you see that?

23 A. Yes.

24 Q. Do you recall there being a code enforcement

25 complaint for using the property for bandstand and

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1 bleachers used for activity not permitted --

2 A. Yes.

3 Q. -- use beyond scope of temporary use permits, and

4 it's dated December 8th of 2019?

5 A. Yes.

6 Q. Okay. Do you recall placing bandstand and

7 bleacher materials on the tennis courts at that time?

8 A. Yes.

9 Q. And it blocked certain of the courts from being

10 used?

11 MR. SEIDENSTICKER: Objection. Form.

12 THE WITNESS: It -- it was our start of what we

13 thought was getting ready to relocate the tennis

14 courts. We sent the 30-day notice. We're ready to

15 go. We'll go to permitting. We are getting our bids

16 in.

17 And then the complaint came in. And we said,

18 well, where are we going to move this stuff. And I

19 said are we going to use any of this equipment for the

20 construction of the new courts. I was advised, yeah,

21 we could maybe use some of the plywood.

22 BY MR. TRAFICANTE:

23 Q. But would you be using a bandstand and bleachers

24 for the construction of the new courts?

25 A. The bandstand, it was the plywood and the 2x4's.

Page 133

1 Q. And those are -- those are stuff that came --

2 actually, they were moved from 85 West Pelican Street to

3 the subject parcel, correct?

4 A. No.

5 Q. So it was moved from the subject parcel onto the

6 tennis courts?

7 A. Correct.

8 Q. And did it block the tennis courts at all while

9 it was on it?

10 A. Yes, Number 3 and Number 4.

11 Q. And how long was it on the tennis courts?

12 A. Seven to ten days.

13 Q. Okay. And you were advised by Collier County

14 Code Enforcement to remove the bandstand and the

15 bleachers; is that correct?

16 MR. SEIDENSTICKER: Objection. Form.

17 THE WITNESS: Only to remove them from Dolphin

18 Point, LLC.

19 BY MR. TRAFICANTE:

20 Q. What do you mean from Dolphin Point, LLC?

21 A. We were -- the code enforcement said you have to

22 remove the bandstand and the bleachers from our own

23 property, not Tennis Courts 3 and 4. We never got a code

24 enforcement from them.

25 Q. Okay. And that bandstand and bleachers were

Page 134

1 there because you had an event on the subject parcel; is
 2 that correct?
 3 A. We had a fundraiser.
 4 Q. Okay. And did you ultimately remove them then?
 5 A. Yes.
 6 Q. Okay. And if you go to page 2 of Exhibit 24, you
 7 will see there's a section called Planning Applications?
 8 A. Yes.
 9 Q. And do you see the first one, permit number --
 10 it's PL 2020000429?
 11 A. Yes.
 12 Q. Dealing with the tennis court relocation? Do you
 13 see that?
 14 A. Yes.
 15 Q. And is that the application that was filed to
 16 relocate the tennis courts on your behalf?
 17 A. What's the date on that?
 18 Q. Well, it doesn't -- it doesn't have the date. It
 19 just says site development plan. You can see name, tennis
 20 courts relocation for The Club at La Peninsula, comments,
 21 relocation of tennis courts after property sale.
 22 Do you see that?
 23 A. Yes.
 24 Q. And it's a 2020 permit. That's why it's 2020 is
 25 the first four numbers of that permit number?

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1 A. Yes.
 2 Q. And you can see the status as submitted, closed
 3 for uploads.
 4 Do you see that?
 5 A. I see closed for uploads on the last four digits
 6 of 1243.
 7 Q. Do you see on 429 status submitted, closed for
 8 uploads?
 9 A. Gotcha. Yes.
 10 Q. And it doesn't say approved or complete, correct?
 11 A. Correct.
 12 Q. As it does on other planning applications on
 13 this?
 14 A. Not familiar with that.
 15 Q. Do you see 1243 says approved?
 16 A. Yes.
 17 Q. And do you see down here for special events it
 18 says complete?
 19 A. Yes.
 20 Q. So it doesn't say approved or complete for the
 21 tennis court relocation application, correct?
 22 A. I've never seen this paper, but yes. Okay.
 23 Q. I want to show --
 24 A. Oh, this is permitting not for the relocation.
 25 This is permitting for events, a fundraiser.

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1 Q. So you believe that first one that we were just
 2 looking at -- because there is a section for events. If
 3 you look at the bottom of page 2, you can see there's a
 4 special events, zoning certificates, temporary use,
 5 short-term vacation rental registration, RV and garage
 6 sale permit applications.
 7 Do you see that at the bottom?
 8 A. Oh, gotcha.
 9 Q. And you can see under that there's various, and
 10 it goes onto the next page, special events permits?
 11 A. Yes.
 12 Q. Okay. But on page 2 what we were looking at was
 13 the planning applications. And do you believe that that's
 14 not referring to your application for the tennis court
 15 relocations?
 16 A. That's what it reads.
 17 Q. And that's consistent with your understanding as
 18 you sit here, correct?
 19 A. Yes.
 20 Q. That permit hasn't been issued by Collier County?
 21 A. Correct.
 22 Q. I want to show you what we're marking as Exhibit
 23 25 which is bates stamped Mitchell 30. And I believe
 24 there's only one -- it got stapled with two, but it's
 25 really only one page on this one. But we can leave it.

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1 It's 30 and 31 is the Mitchell bates stamp.
 2 Have you seen this document before,
 3 Mrs. Mitchell?
 4 A. Yes.
 5 Q. And this is a letter that you sent, correct?
 6 A. Yes.
 7 Q. And who is Chris Scott?
 8 A. I don't know who Chris Scott is.
 9 Q. So you don't know who you were sending this
 10 letter to?
 11 A. No. He must have been on the board at that time.
 12 Q. The board of?
 13 A. The Club.
 14 Q. Okay. So you believe Chris Scott was a board
 15 member of The Club?
 16 A. Yeah. That doesn't sound right. I'm not sure
 17 probably because this happened back in 2018. So I don't
 18 know who Chris Scott is.
 19 Q. How can you tell when this occurred, when this
 20 letter was sent?
 21 A. Well, from the attachment from Weber Design Group
 22 who designed the new four tennis courts that was on April
 23 18th of 2018.
 24 Q. Correct. And you write --
 25 A. But I didn't sign this. There's no date on this.

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1 Q. Correct. So you don't know when you sent this?

2 A. No.

3 Q. Okay. And you write, "We purchased," the subject

4 parcel. And you say, "Per our purchase agreement, we're

5 required to give a 30-day notice to have the tennis courts

6 on said property to be relocated."

7 Do you see that?

8 A. Yes.

9 Q. And the purchase agreement that you're referring

10 to, is that the Tennis Court Easement?

11 A. Yes.

12 Q. Okay. And you say, "I have also included a copy

13 of page 15 of the agreement, Section 7. In this agreement

14 we've complied with our responsibility. In fact, we did a

15 30-day notice back in November 2017. Copy attached."

16 Do you see that?

17 A. Yes.

18 Q. So does that refresh your recollection as to when

19 you may have been sending this? Would it have been around

20 the time that Bill Morris sent out the second notice?

21 A. It looks like -- yes.

22 Q. Okay. And you say, We are at this time ready

23 with permission to relocate the tennis courts as the terms

24 require."

25 Do you see that?

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1 A. Yes.

2 Q. How were you ready with permission? Permission

3 from who?

4 A. Permission that the agreement from day one was

5 that we had 18 months to get this project completed. We

6 believe within that 18 months we could require our

7 permitting, our engineering.

8 Q. So the permission that you are referring to in

9 this sentence is permission because of the tennis court

10 easement?

11 A. Yes.

12 Q. Okay. And you say, "We have a site plan designed

13 by Weber Design Group," which is the second page; is that

14 correct?

15 A. That's correct.

16 Q. And you say, "And a bid from Mor-Sports to build

17 the new tennis courts."

18 A. Yes.

19 Q. And I believe that was produced last night by

20 your counsel, the Mor-Sports bid. I will mark it real

21 quick as Exhibit 26. It's bates stamped Mitchell 807

22 through 809. Keep that in front of you as well.

23 Is Exhibit 26 the Mor-Sports bid that you were

24 referring to in Exhibit 25?

25 A. Yes.

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1 Q. Okay. And did you ever provide the site design

2 plan from Weber Design Group or the bid from Mor-Sports to

3 The Club?

4 A. No.

5 Q. And then in Exhibit 25 you end with, "We were" --

6 "We are applying for your approval to move forward."

7 Whose approval were you applying to?

8 A. I don't know.

9 Q. So you don't know who this was going to?

10 A. Whoever Chris Scott was, and I don't know who he

11 is.

12 Q. Okay. And if you look at Exhibit 26, the

13 Mor-Sports bid, when did you receive this?

14 A. I'm trying to think that he wasn't our first bid.

15 Our first bid was a different tennis court company. So

16 this was our second bid. I can tell you that.

17 Q. Do you know when you received this bid?

18 A. I don't.

19 Q. Who was the first bid that you received the bid

20 from?

21 A. It started Ritzman Court, Ritzman Sports,

22 something like that.

23 Q. Okay. Did you ever provide the Ritzman Court bid

24 to The Club?

25 A. No. I don't normally give more than one bid.

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1 Q. Do you know why this wasn't produced until

2 yesterday, the Mor-Sports bid?

3 A. Excuse me?

4 Q. Do you know why this wasn't produced in this

5 lawsuit until yesterday by your counsel?

6 A. Because I had to go dig deep through some papers.

7 Q. Okay. So you hadn't located it until yesterday?

8 A. Yeah, yeah.

9 Q. So was this one of the documents that you

10 reviewed in preparation for your deposition?

11 A. I already was familiar with this document, yes,

12 prior to.

13 Q. Were you reviewing your doc- -- how did you

14 realize that you hadn't produced the Mor-Sports bid?

15 A. Because I forgot that I had a box of old

16 correspondence upstairs in my office. And I went up there

17 and went, Oh, here's these old bids.

18 Q. Was there --

19 A. So I was getting caught up.

20 Q. Was there anything else in that box that's

21 related to --

22 A. Just some other bids.

23 Q. Just some other bids?

24 A. Yeah.

25 Q. Okay.

<p style="text-align: right;">Page 142</p> <p>1 A. And some notes from membership for people 2 embarrassing apology -- apologetic to the Mitchells for 3 the way The Club had been behaving towards us. 4 Q. And did you produce those as part of this 5 lawsuit? 6 A. No. 7 Q. Okay. Why? 8 A. They're not dated. They're not signed, some of 9 them. There's just two of them. I just found it -- 10 Q. Who apologized to you? 11 A. Somebody at the Twin Dolphins and on their board 12 and then an individual who I have no idea who any of them 13 are. 14 Q. You don't recall the names? 15 A. No. I don't even know them. 16 MR. SEIDENSTICKER: Excuse me. We are after 17 11:30. How long do you expect to go? 18 MR. TRAFICANTE: It's going quicker than I 19 thought, candidly, Wayde. You know, if we need a 20 break, we can take a break real quick after this and 21 then let me go through and see how much more. 22 MR. SEIDENSTICKER: Let me -- I'm just trying to 23 plan if we are going to need to take a lunch break and 24 depends on how much -- David, how much time do you 25 anticipate?</p>	<p style="text-align: right;">Page 144</p> <p>1 real quick. We can take a quick break, Wayde, if you 2 want. 3 THE VIDEOGRAPHER: We're going off the record at 4 11:32 a.m. 5 (A short recess was taken.) 6 THE VIDEOGRAPHER: We're back on the record at 7 11:45 a.m. 8 BY MR. TRAFICANTE: 9 Q. Ms. Mitchell, if you look at Exhibit 17. And I 10 can help you because I don't want to get them out of order 11 for madam court reporter. 12 I know you testified you had never seen this 13 document before today, but do you have any knowledge of 14 whether Aircraft or anyone on behalf of Aircraft agreed to 15 this amendment? 16 A. I have no knowledge. 17 Q. Okay. And you and your husband obviously didn't 18 agree to it because you didn't own the subject parcel at 19 that time, correct, back in 2015? 20 A. We did or we did not? 21 Q. Did not. 22 A. Did not. Okay. Yes. 23 Q. Because you bought the parcel in 2017, correct? 24 A. Yes. 25 Q. Okay. I want to show you what we're marking as</p>
<p style="text-align: right;">Page 143</p> <p>1 MR. BOYETTE: You mean for my -- for me to ask 2 questions? 3 MR. SEIDENSTICKER: Yeah. 4 MR. BOYETTE: Oh, 15 minutes, 10 minutes. 5 MR. SEIDENSTICKER: Okay. 6 MR. BOYETTE: I will be short. 7 MR. SEIDENSTICKER: So you have an estimate of 8 how much -- how much longer? 9 MR. TRAFICANTE: Let's take a break after this 10 thing, and then let me regroup because there's still a 11 bunch of pleadings and stuff that I wanted to get 12 through. But we have already gone through a lot of 13 it, so it could shorten it up dramatically. 14 BY MR. TRAFICANTE: 15 Q. Ms. Mitchell, this bid, did this include grading 16 or -- 17 A. No. 18 Q. -- demolition? 19 A. No. 20 Q. Okay. And it didn't include necessarily 21 electrical work? 22 A. I don't think it did. There's the fencing. No. 23 Q. And it didn't include the necessary plumbing? 24 A. No. 25 MR. TRAFICANTE: Let's just go off the record</p>	<p style="text-align: right;">Page 145</p> <p>1 Exhibit 27 to your deposition. And this is bates stamped 2 for Mr. Boyette as La Pen 1678 through 1681. 3 Have you seen this document before -- 4 A. I have. 5 Q. -- Mrs. Mitchell? 6 And is this the letter from your attorney, Bill 7 -- William Morris, dated February 6, 2019, requesting that 8 The Club include the tennis court activities under the 9 public general liability policy and designate the 10 Mitchells as an additional insured under the policy? 11 A. Yes. 12 Q. So this is that -- this is the request that you 13 previously testified to? 14 A. Yes. 15 Q. Okay. And is this the first time that this was 16 requested on your behalf to The Club? 17 MR. SEIDENSTICKER: Objection to form. 18 THE WITNESS: On this issue? 19 BY MR. TRAFICANTE: 20 Q. On the insurance issue. 21 A. Oh, on the insurance issue. 22 No. I think we've requested insurance issues 23 more than once. 24 Q. Was this the first time that it was requested? 25 A. I'm not familiar with the sequence of dates.</p>

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1 Q. Okay. Do you believe there was a request made
 2 prior to February 6, 2019, on your behalf?
 3 A. Yes. Because we purchased it in 2017, correct?
 4 Q. Correct.
 5 A. Yeah, there should have been.
 6 Q. And who would have made that request?
 7 A. Bill Morris.
 8 Q. So you believe there's a letter where Bill Morris
 9 is making that request?
 10 A. I find it hard to believe this is his first
 11 request.
 12 Q. Okay. I will represent to you that this is the
 13 first letter where I have seen it that was produced by
 14 either party. So are you aware of another letter prior to
 15 February 6, 2019?
 16 A. No.
 17 Q. Okay. So you don't know whether a request was
 18 made actually prior to February 6 of 2019 for the
 19 insurance?
 20 A. Well, can I ask you, did Aircraft have to request
 21 for insurance?
 22 Q. So I can't answer any questions from you. But I
 23 guess my question is is do you have any knowledge as to
 24 whether a request was made on your behalf prior to
 25 February 6, 2019 --

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1 A. No.
 2 Q. -- to be included with the insurance?
 3 A. No.
 4 Q. Okay. Are you aware of any request prior to
 5 February 6, 2019, being made by Aircraft for that?
 6 A. No.
 7 Q. Okay.
 8 A. Nor am I aware that La Peninsula offered
 9 willingly to give us a copy of the insurance.
 10 Q. Well, you recall under the Tennis Court Easement
 11 that we looked at -- it's Exhibit 16 -- under Section
 12 12.12 it said that grantee, meaning The Club, will obtain
 13 such policies of public general liability insurance as may
 14 be reasonably requested by grantor?
 15 A. Okay.
 16 Q. Do you recall that language?
 17 A. Yes.
 18 Q. Okay. I'm going to show you what we are marking
 19 as Exhibit 28 to your deposition. And for Mr. Boyette,
 20 this is bates stamped Mitchell 806. This was one of the
 21 four pages that was produced last night.
 22 Have you seen this document before, Ms. Mitchell?
 23 A. Yes.
 24 Q. Okay. And is this a letter dated March 7th,
 25 2019, so about a month later from Bill Morris sent on your

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1 behalf?
 2 A. Yes.
 3 Q. Okay. And why was this not produced until
 4 yesterday? Was this in that box of documents that you
 5 located?
 6 A. Yes.
 7 Q. Okay. Was any other correspondence in that box
 8 of documents then?
 9 A. No.
 10 Q. And you will see Mr. Morris is writing again to
 11 request that the policy be provided to you?
 12 A. Yes.
 13 Q. And do you know whether The Club ever responded
 14 to Mr. Morris?
 15 A. No, I'm not. And I would like to add too that I
 16 don't know what -- at what time that Bill Morris was
 17 dismissed because The Club said he could no longer
 18 represent us because he represented a client in one of the
 19 buildings.
 20 Q. So when Bill Morris was sending these letters in
 21 February and March of 2019, was he still representing you
 22 and your husband?
 23 A. At March 7th, 2019. I'm just not sure of the
 24 date that The Club dismissed him and said that it was a
 25 conflict of interest because he was an attorney for one of

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1 the members of Building 3 or 4, whatever it was.
 2 Q. So in March of 2019, though, was he still
 3 representing you?
 4 A. It appears so.
 5 Q. Okay.
 6 A. That could be some of the breakdown we're having
 7 here.
 8 Q. And I want to show you what we marked as Exhibit
 9 29. And for Mr. Boyette's record, this is bates stamped
 10 La Pen 1682 through 1685.
 11 And you can see it's an e-mail chain,
 12 Mrs. Mitchell, as well as a copy of Certificate of
 13 Liability Insurance.
 14 A. Yes.
 15 Q. Have you seen this before?
 16 A. Yes.
 17 Q. Okay. And this is e-mails dated March 19th of
 18 2019 between a Candice Stapleton of Insurance and Risk
 19 Management Services, Inc., and William Morris, correct?
 20 A. Yes.
 21 Q. And Ms. Stapleton is forwarding to William Morris
 22 the certificate of insurance which includes the umbrella
 23 coverage. And it includes and shows both you and your
 24 husband as certificate holders, correct, on the bottom
 25 left?



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1 A. Yes.

2 Q. Okay. So you would agree as of March 19th of

3 2019 you had received the insurance from The Club at La

4 Pen showing you and your husband as certificate holders?

5 A. I don't know what a certificate holder is but

6 just the fact that we were covered liability-wise for

7 anybody to use our tennis courts.

8 Q. Do you know whether you were covered under The

9 Club's insurance prior to March 19th of 2019?

10 A. I'm not. I do not.

11 Q. Were any claims ever made for any actions that

12 occurred for use of the tennis courts?

13 A. No.

14 Q. Okay.

15 A. Well, not that I'm aware of because we never used

16 the tennis courts. If there were claims, they never

17 shared it with me.

18 Q. You are not aware of any claims, though, where

19 you and your husband are being sued --

20 A. No.

21 Q. -- because of La Pen's -- let me just finish --

22 because of The Club's use of the tennis court under the

23 Tennis Court Easement?

24 A. No.

25 Q. Okay. I'm going to show you what I am marking as

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1 Exhibit 30 to your deposition. This is a letter from

2 prior counsel for The Club, Robert Pritt, to Richard

3 Yovanovich on June 14th of 2019.

4 And, Mr. Boyette, it's bates stamped La Pen 1255

5 through 1256.

6 Have you seen this letter before, Mrs. Mitchell?

7 A. I have never seen this letter before.

8 Q. Okay. But Mr. Yovanovich was your attorney at

9 this time, correct?

10 A. Yes.

11 Q. So you don't dispute that this was provided to

12 Mr. Yovanovich?

13 A. No.

14 Q. And if you see on the second page, the

15 second-to-last paragraph, it says, "Last Thursday we were

16 made aware of a public statement that your client had

17 opened up the tennis courts to much of the community at

18 large as their guests."

19 Do you see that?

20 A. Uh-huh.

21 Q. Did you ever open up the tennis courts to the

22 community at large as your guests?

23 A. No.

24 Q. So you don't know what Attorney Pritt is

25 referring to there?

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1 A. I think he's referring to the youth program that

2 we started to start up that Bill Morris had sent asking

3 permission for after-hours for the youth program.

4 Q. And that was in the same letter where he

5 requested the insurance information, correct?

6 A. Yes.

7 Q. Okay. I'm going to show you what's been marked

8 as Exhibit 31 to your deposition.

9 And, David, I don't have the bates stamp numbers

10 on this; but I can send you a copy after the deposition

11 just so you have it. It's an e-mail. I believe it was

12 part of production, but it's an e-mail.

13 Do you know -- this is an e-mail, just for the

14 record, from Ann Hall. It's ahall7911@coconuttele.net.

15 And its subject is Capri Coconut Tele Updates June 6 of

16 2019.

17 Do you see that?

18 A. Yep.

19 Q. So it was around the same time as the prior

20 exhibit that Mr. Pritt was sending a letter to Attorney

21 Yovanovich, correct?

22 A. Correct.

23 Q. Do you know who Ann Hall is?

24 A. Yes.

25 Q. Who is Ann Hall?

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1 A. Ann Hall is a resident that puts together this

2 Coconut Tele mostly for garage sale items and kind of as a

3 gossip page and kind of is a cut-and-paste wannabe writer.

4 Q. Are you friends with Ms. Hall?

5 A. I wouldn't call us friends, no.

6 Q. Okay. Do you speak with Ms. Hall?

7 A. No.

8 Q. And she sends this to people that live on Isle of

9 Capri?

10 A. She has a database, yeah. Not everybody follows

11 her.

12 Q. And you will see on the second page, Number 3, it

13 says from Morris Tavlin.

14 Do you know who Morris Tavlin is?

15 A. Oh, let me think about that.

16 No, I have no idea who Morris Tavlin is.

17 Q. And he writes, "Hi, Ann, I'd like to put a call

18 out to all of the tennis players on the island, adults and

19 kids alike. Kim and Don Mitchell have generously invited

20 us to make use of the tennis courts located at the end of

21 West Pelican Street during the times they are not being

22 used by the La Peninsula residents."

23 Do you see that?

24 A. Uh-huh.

25 Q. Did you and your husband generously invite adults

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1 and kids alike to use the tennis courts?
 2 A. I did not.
 3 Q. Did your husband?
 4 A. I have no idea.
 5 Q. You don't know as you sit here today?
 6 A. No, I don't.
 7 Q. Have you ever had any conversations with Morris
 8 Tavlin?
 9 A. I don't -- I'm not sure who that is, no.
 10 Q. Okay.
 11 A. But he says here he's going to take the lead. I
 12 know who he is.
 13 Q. Who is Mr. Tavlin?
 14 A. He's a friend of a friend that was very excited
 15 about getting involved, but I think it's a little
 16 misleading. It wasn't the whole community. I think he
 17 was a organizer of if anybody wants to put a team
 18 together, just like we have bocce ball on the island.
 19 Q. But it wasn't limited to just kids, correct?
 20 A. No --
 21 Q. So you said --
 22 A. I think -- no, I think you're right. I think it
 23 wasn't limited to just kids. But nothing developed.
 24 Q. So it never occurred?
 25 A. No.

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1 Q. Okay. But did you -- were you the one who did
 2 the invite then?
 3 A. No. It appears that this Morris Tavlin and
 4 possibly Don. I didn't. All I -- my involvement was is
 5 with the youth program.
 6 Q. Okay. I want to show you what we're marking as
 7 Exhibit 32 to your deposition. And this is bates stamped
 8 La Pen 133 through 134.
 9 And you can see, Ms. Mitchell, this is an e-mail
 10 from Robert Pritt who was the attorney at the time for The
 11 Club to Francesca Passidomo, Richard Yovanovich. And
 12 there's a copy to jspring@resortgroupinc.com and Marc
 13 Huling.
 14 Do you see that?
 15 A. Yes.
 16 Q. Do you know who Jack Spring is?
 17 A. No.
 18 Q. Okay. And at this time Attorneys Passidomo and
 19 Yovanovich represented you; is that correct?
 20 A. Yes.
 21 Q. Have you ever seen a copy of this e-mail before
 22 today?
 23 A. No.
 24 Q. Okay. And you can see Attorney Pritt writes,
 25 "When we contacted Attorney Morris, he said to contact

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1 you."
 2 So I'm assuming by this time on January 6th of
 3 2020 Bill Morris was no longer your attorney?
 4 A. Yes.
 5 Q. Okay. And it says, "Meanwhile, I just got a
 6 report that someone was arrested by the sheriff at the
 7 tennis courts this morning. I don't yet know details. If
 8 that's connected with the ongoing tennis court dispute, it
 9 means that this is getting out of hand."
 10 Do you see that?
 11 A. Yes.
 12 Q. Did you have someone arrested at the tennis
 13 courts --
 14 A. No.
 15 Q. -- by the Collier County sheriff?
 16 A. Sorry. No. I called the police department.
 17 Q. Why did you call the police department?
 18 A. Because we were trying to move forward on
 19 relocating the bleachers and the stage onto 3 and 4, and
 20 they came out and threw a fit. When the sheriff's
 21 department showed up that day, they asked for everybody's
 22 ID that was playing on 3 and 4. Three of their members
 23 would not show proof of ID and kinda got a little out of
 24 hand verbally with the sheriff's department. He called
 25 for backup. And he said, "I'm going to arrest you right

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1 now." And they arrested him.
 2 Q. So you called the sheriff's office because there
 3 was people playing on the tennis courts?
 4 A. No. Because we were trying to close down 3 and 4
 5 to get ready to do our permitting, do everything that we
 6 needed to get through the county legally and start
 7 relocation of these tennis courts.
 8 Q. Have you ever called the tennis courts on anyone
 9 else --
 10 A. No.
 11 Q. Strike that.
 12 Have you ever called the police on anyone else
 13 using the tennis courts?
 14 A. No.
 15 Q. And you will see Mr. Pritt goes on, "Your
 16 client's maintenance person."
 17 Is that Ben Jones?
 18 A. No. No.
 19 Q. Who is Ben Jones?
 20 A. Ben Jones is a developer that has a grading
 21 company.
 22 Q. So was Ben Jones hired by you to come out and --
 23 A. No. He's retired. He's just a friend.
 24 Q. So why was Mr. Jones then out around January 6th
 25 of 2020 --

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1 A. Because he was ready -- his son now has taken
 2 over the business, and he is ready to move forward with
 3 the project. He said, How long do we have to wait to get
 4 these machines in here and get this project going?
 5 Q. Well, in fact, they started taking down the nets,
 6 the tennis courts nets, and they hammered the cleats,
 7 correct?
 8 A. That's correct.
 9 Q. And so did you authorize Mr. Jones and his son to
 10 do that?
 11 A. Not necessarily. But we had also with us two
 12 new, brand-new nets to put up. So their nets were aging,
 13 so I bought -- I said, okay, we will take down 3 and 4.
 14 Let's in good faith to the neighbors add and give them new
 15 nets put up. They took the new nets down.
 16 Q. Well, so let me just take it step by step real
 17 quick.
 18 A. Okay.
 19 Q. Mr. Jones and his son went out and removed some
 20 --
 21 A. The son was not there.
 22 Q. So Mr. Jones went out and removed some of the
 23 tennis court nets, correct?
 24 A. Yes.
 25 Q. And he hammered off some of the cleats, correct?

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1 A. Yes.
 2 Q. Did he do that at yours and your husband's
 3 urging, or did he do that on his own?
 4 A. I think we were all just trying to get to work
 5 because we're all workers. It's like, okay, let's get
 6 this done, let's get this moving, let's get this moved
 7 over here. It's that simple.
 8 Q. So you told Mr. Jones to go out and do that?
 9 A. I don't know that he told him to do it. But, you
 10 know, we all know how to work for a living. So we all
 11 knew that what's going to have -- we need to do.
 12 Q. Well, someone had to hire Mr. Jones to --
 13 A. No.
 14 Q. -- do some work?
 15 A. No, he was never paid.
 16 Q. Well, so then how did Mr. Jones know to even come
 17 out there?
 18 A. Well, because the whole community knew the
 19 sheriff's department was on the island, what was going on.
 20 And then I get text messages that says all I'm trying to
 21 do down here is move the bleachers and the stage and I --
 22 you know, so they came down to help.
 23 Q. So is it your testimony that Mr. Jones just came
 24 down on his own to help and took down the tennis courts?
 25 A. Uh-huh. Yes.

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1 Q. There was no conversations with you and your
 2 husband before then?
 3 A. No.
 4 Q. Okay. And do you know whether Mr. Jones
 5 described himself as the maintenance person?
 6 A. No. No. No, I don't know that.
 7 Q. You don't know? You weren't present for any of
 8 that?
 9 A. I mean, I was around. But I can't imagine he
 10 would have said that, but...
 11 Q. And as of January 6th of 2020, you still had not
 12 obtained a permit from Collier County, correct?
 13 A. No. I had 18 months to acquire it.
 14 Q. Okay. And it also references in this e-mail at
 15 the bottom of page -- the first page, it references moving
 16 the bleachers to the tennis courts --
 17 A. Correct.
 18 Q. -- rather than removing them as required by code
 19 enforcement?
 20 A. No. Code enforcement required me to move them
 21 from Dolphin Point.
 22 Q. From the subject parcel?
 23 A. Yes, from the subject parcel. So I met code, and
 24 I moved them. And I moved them onto Tennis Court 3 or 4
 25 because we were getting to relocate, and that was going to

Page 161

1 be our construction site. Just like they have a
 2 construction site, that's where we started our
 3 construction site.
 4 Q. And then you had to move them off of the tennis
 5 courts, correct?
 6 A. Yes.
 7 Q. In your complaint in this matter, you've alleged
 8 that The Club has made verbal threats to you and your
 9 husband at the subject parcel in an attempt to intimidate
 10 you for using or accessing the parcel?
 11 A. That's absolutely --
 12 Q. Are you aware of that?
 13 A. -- correct.
 14 Q. Who has made verbal threats to you?
 15 A. The same kid that was arrested and handcuffed the
 16 day for not providing to law enforcement his
 17 identification of who he was.
 18 Q. Did you know his name?
 19 A. No.
 20 Q. Okay. And what -- so that would have occurred
 21 around the January of 2020 date?
 22 A. I'm not familiar with the date.
 23 Q. Do you recall what he said?
 24 A. There's a police report on it.
 25 Q. Do you recall what he said to you?

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1 A. "You're gonna die."
 2 Q. That's what he said to you?
 3 A. (Witness nods head.)
 4 Q. Oh, I'm sorry. I thought you meant like I was
 5 gonna die once I hear. I apologize.
 6 A. No.
 7 Q. Okay. So he said to you that you were going to
 8 die?
 9 A. Uh-huh.
 10 Q. Okay. And then you called the police on him?
 11 A. No.
 12 Q. So the police had already been called?
 13 A. This was -- this was after he had already been
 14 handcuffed --
 15 Q. Oh, okay.
 16 A. -- and put in the cruiser. Then the second
 17 occurrence was that we have our golf cart on our property,
 18 and he -- I didn't even recognize him, to tell you the
 19 truth. But he saw that it was Don and I, and he said that
 20 we were gonna die.
 21 Q. So was that at a later time?
 22 A. Yes.
 23 Q. Okay. But it was the same person?
 24 A. Yes.
 25 Q. Has anyone else on behalf of The Club made verbal

Page 163

1 threats to you as alleged in your complaint?
 2 A. No.
 3 Q. Okay. And this individual, do you know whether
 4 he is a board member of The Club?
 5 A. He's not.
 6 Q. Is he an officer of The Club?
 7 A. No.
 8 Q. Okay.
 9 A. I believe that he is not even an American
 10 citizen. I think he may be French Canadian, but I'm not
 11 sure.
 12 Q. Okay. You have also alleged that The Club
 13 damaged landscaping on the subject parcel?
 14 A. Yeah. There -- the Mitchells have an easement
 15 from the entrance to their security code to punch in for
 16 their gate to open. To the right of there is a bar that
 17 swings down. They have continuously locked that in not
 18 allowing us to come through our own property.
 19 Q. How have they locked that?
 20 A. With the chain and an old-fashioned lock.
 21 Q. And do you know it was The Club that locked it?
 22 A. Or it could have been their management company.
 23 Q. Did you see anyone put the lock on or take it
 24 off?
 25 A. No. But it's always there.

Page 164

1 Q. Okay. So you don't know -- you don't know who
 2 actually put that on?
 3 A. No.
 4 Q. Okay. But, again, my question was you've alleged
 5 that The Club damaged landscaping on the subject parcel?
 6 A. Okay. So in that same subject area on that
 7 property is they are using our land as a storage unit for
 8 their rollers, their -- anything that has to do with the
 9 tennis court equipment --
 10 Q. Okay. So for the maintenance of the tennis
 11 courts?
 12 A. Yeah. Yeah, they are using our land to store.
 13 Q. And where is that being stored then? Could you
 14 just --
 15 A. Close by the bar that moves up and down, close to
 16 their -- their shed where they -- their maintenance shed.
 17 Q. Okay.
 18 A. Along with that, they used the Mitchell land to
 19 cut their debris, be it grass or twigs or whatnot. They
 20 are using our land as part of like they own it, like it's
 21 part of theirs that they can do and put whatever debris on
 22 it they want.
 23 Q. Meaning their landscape -- the landscapers for
 24 The Club have put debris on your property?
 25 A. Yes.

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1 Q. Okay.
 2 A. Same pile.
 3 Q. Have you ever asked The Club to remove this
 4 maintenance equipment?
 5 A. I have, the maintenance guy.
 6 Q. The maintenance guy.
 7 A. Uh-huh.
 8 Q. Who is the maintenance guy?
 9 A. I don't know.
 10 Q. Okay. When did you ask him?
 11 A. From the moment I saw it. You don't see him very
 12 often. So when you do see him it's like can you find
 13 someplace else because, you know, this is ours.
 14 Q. And it still hasn't been moved?
 15 A. Oh, I don't know. I haven't been over there. I
 16 just got back a couple weeks ago.
 17 Q. Okay. And the debris from the landscapers, have
 18 you asked The Club to stop putting debris from landscaping
 19 on your property?
 20 A. I don't speak to The Club.
 21 Q. Okay. So you haven't asked?
 22 A. No.
 23 Q. Okay. You've also alleged that The Club
 24 prevented or impaired you from maintaining and landscaping
 25 the parcel. Is that because of the gate and the locking

Page 166

1 on the gate? Is that what you're referring to?

2 A. I don't remember that statement at all.

3 Q. So you've alleged in the complaint that The Club

4 has prevented or impaired maintenance and landscaping of

5 the subject parcel.

6 A. It must be referring to that same territory then.

7 Q. Okay. Anything else? Any other factual support

8 for that allegation?

9 A. No.

10 Q. You've alleged also that The Club has demanded

11 that the Mitchells get The Club's consent to landscape and

12 prevented the Mitchells' use or access to the tennis

13 courts on the subject parcel.

14 How has The Club -- or strike that?

15 Who from The Club demanded that you get The

16 Club's consent to landscape?

17 A. It could have been Twin Dolphins' board. I'm not

18 sure.

19 Q. Okay. So you don't know?

20 A. Well, because part of that landscaping, when we

21 went in there we started cleaning things up because it had

22 been neglected for years. So I got a little carried away

23 and took out more than I should.

24 Q. So is this referring to what you had testified to

25 previously that you had taken out some landscaping and had

Page 167

1 to put it back in?

2 A. It's the same issue, yes.

3 Q. Okay. But as you sit here today, you're not

4 aware of anyone on behalf of The Club demanding that you

5 get The Club's consent for landscape?

6 A. I don't know that the consent is the correct

7 word, but we wanted to go ahead and start cleaning up that

8 area behind the tennis courts between what the Mitchells

9 owned and what The Club owned. Because we own a quarter,

10 sliver of their clubhouse. And between that area, that

11 debris or landscaping is so old that now after this

12 hurricane it's all dead.

13 Q. So did you ask The Club to landscape that area?

14 A. No. We were just going to -- it's on our land.

15 We were just going to take it out.

16 Q. And did The Club demand that you not do that?

17 A. I'm not sure what stopped the progress.

18 Q. Okay. You're not aware of any demand by The Club

19 not to do that?

20 A. No. Just from the reaction the last time I got

21 carried away.

22 Q. Okay. You've alleged also that The Club

23 prevented you -- your use or access to the tennis courts?

24 A. That's correct.

25 Q. How has The Club prevented your use and access

Page 168

1 from the tennis courts?

2 A. They won't even let us go on our own land.

3 Q. So have you ever tried to go on the tennis court

4 and they have told you to get off?

5 A. I have stepped on those tennis courts a couple of

6 times. And, no -- no, they have never said, Get off. But

7 I have no interest. I'm not a tennis player.

8 Q. So you don't have any interest to play tennis

9 anyway?

10 A. No.

11 Q. Okay. You've also alleged that The Club filed a

12 code enforcement complaint regarding your use and

13 occupancy of the parcel.

14 Is that the code complaint that we talked about

15 with the band shell and the bleachers or the bandstand and

16 the bleachers?

17 A. Yeah, it would have to be because everything else

18 has been permitted through Collier County.

19 Q. Okay. So you're not aware of any other code

20 enforcement complaint?

21 A. Just the -- not that I'm aware of.

22 Q. Okay. You've alleged also that The Club failed

23 and refused to acknowledge written notice of intent sent

24 on behalf of the Plaintiffs to start the removal and

25 replacement of the tennis courts process.

Page 169

1 Is that the two letters that we've already looked

2 at from --

3 A. Yes.

4 Q. -- Bill Morris?

5 Okay. And your basis for the statement that they

6 failed and refused to acknowledge written notice of intent

7 is because they had construction material in the

8 relocation area; is that correct?

9 A. Yes.

10 Q. Okay. But you've seen today that they actually

11 responded to both of Bill Morris's letters; is that

12 correct?

13 A. Yes.

14 Q. Okay. You've also alleged that The Club has

15 failed to cooperate with your efforts to begin the

16 relocation process.

17 A. I think that they've -- they absolutely have

18 tried to stop us every step of the way.

19 Q. And how have they tried to stop you?

20 A. By not cleaning up their -- their -- the

21 relocation construction site.

22 Q. Okay. Anything else?

23 MR. SEIDENSTICKER: Objection. Form.

24 BY MR. TRAFICANTE:

25 Q. You can answer.

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1 MR. SEIDENSTICKER: You can answer.
 2 THE WITNESS: I'm just trying to think what else
 3 they have done. Just the negativity, you know. Just
 4 the fact that I think they are resentful that they
 5 couldn't get the deal done and to buy it themselves,
 6 so they are being as nasty as they possibly can to
 7 stop us.
 8 BY MR. TRAFICANTE:
 9 Q. But, again, you've testified multiple times today
 10 that you don't speak with anyone on behalf of The Club?
 11 A. No.
 12 Q. Correct?
 13 A. But they're just -- yeah. But I see them on the
 14 golf cart, almost got hit the other day by somebody. I
 15 see them when I walk my dog on my own property that I get
 16 snarled at.
 17 Q. Okay. You also allege in your complaint that The
 18 Club has failed and refused to approve or otherwise
 19 cooperate in good faith with your efforts to remove and
 20 relocate the tennis courts?
 21 A. That's correct.
 22 Q. Again, is that referring to the staging of
 23 material in the construction area?
 24 A. Yeah. It's like they almost do it on purpose. A
 25 letter comes out and, all of a sudden, here comes more

Page 171

1 material or here comes another hurricane or whatnot.
 2 Q. You have also alleged in your second or your
 3 amended complaint that The Club has failed and refused to
 4 recognize the Plaintiff's vested developer and successor
 5 declarant rights associated with the subject parcel.
 6 A. Can you ask me that again?
 7 Q. Correct. Yeah, I will read it to you.
 8 The Club has failed and refused to recognize
 9 Plaintiff's vested developer and successor declarant
 10 rights associated with the subject parcel.
 11 A. That's correct.
 12 Q. And is that again based on the fact that they
 13 have -- your belief is they haven't complied with the
 14 Tennis Court Easement because they have kept construction
 15 material in the relocation area?
 16 MR. SEIDENSTICKER: Objection. Form. You can
 17 answer.
 18 THE WITNESS: That's part of it.
 19 BY MR. TRAFICANTE:
 20 Q. What's the other part of it?
 21 A. I think that their illegal voting. I think the
 22 fact that the Aircraft -- that they backtrack on an
 23 Aircraft deal.
 24 Q. So let's -- anything else?
 25 A. No.

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1 Q. Okay. So the illegal voting, again, as you
 2 testified today, you can't -- you can't point out who the
 3 illegal voting was on behalf of; is that correct?
 4 A. I'm happy to provide you with that later.
 5 Q. Well, I'm entitled to know your knowledge now.
 6 A. Yeah. I just don't know their names. I just
 7 know what the count amount was.
 8 Q. And that's because you believe that the owner of
 9 the property, the person who ex- -- strike that.
 10 That's because you believe the person who
 11 executed the proxy did not own the property?
 12 A. That's one of them.
 13 Q. What's the other?
 14 A. That they voted out of -- out of a timely manner.
 15 Q. Okay. Anything else?
 16 A. I want to make it clear that the Mitchells have
 17 the right to withdraw just like Aircraft has had the right
 18 to withdraw. We could either build 37 units or we can
 19 withdraw and be no part of The Club which is our intent to
 20 begin with. So we were only following just what Aircraft
 21 had done in 2015 which we believe was not -- you know, was
 22 not correct either.
 23 Q. You mention also The Club backing out of an
 24 Aircraft agreement. What Aircraft agreement are you
 25 referring to?

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1 A. No, not backing out of, that they reverse it.
 2 There was a lawsuit prior to that, and then Aircraft got
 3 it settled. Aircraft also didn't want to be part of La
 4 Peninsula --
 5 Q. Is that the Memorandum of Settlement?
 6 MR. SEIDENSTICKER: Would you let her finish her
 7 response? You keep -- you cut her off. I think the
 8 video and the transcript will reflect that.
 9 Please finish your question -- or your response
 10 to his question if you can recall where you were.
 11 THE WITNESS: That the Mitchells from day one
 12 always thought that they had the right to either build
 13 37 units or withdraw from The Club. Our stance from
 14 day one was that we wanted to withdraw. Now we have
 15 proof of why we needed to withdraw because of the
 16 illegal votes and...
 17 BY MR. TRAFICANTE:
 18 Q. You referred to the agreement.
 19 Is that the 2013 Memorandum of Settlement that
 20 was --
 21 A. With Aircraft, that Aircraft --
 22 Q. Right, that we previously looked at.
 23 A. Yes.
 24 Q. Okay. Which I believe you testified you hadn't
 25 seen prior to today?

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1 A. No. But -- yes.

2 Q. Okay. And why do you believe you have the right

3 to withdraw from The Club?

4 A. Because Aircraft in 2013 had made that same

5 argument and was approved.

6 Q. Didn't the Memorandum of Settlement say that the

7 37 units would be part of The Club at La Peninsula?

8 MR. SEIDENSTICKER: Objection. Form. You can

9 answer.

10 THE WITNESS: There's either-or is what -- under

11 what -- the way I understood it. The Mitchells can

12 build 37 units. Aircraft could have built 37 units.

13 Aircraft could have withdrew, and so could the

14 Mitchells withdraw.

15 BY MR. TRAFICANTE:

16 Q. And you are basing your understanding off of

17 that --

18 A. Same deal --

19 Q. -- Memorandum of Settlement?

20 A. Yes.

21 Q. Okay. As part of this lawsuit, I had mentioned

22 you have been served -- you, your husband and Dolphin

23 Point have been served with various requests for

24 production of documents. There was a first request for

25 production on you and your husband, a second request for

Page 175

1 production on you and your husband and a first request for

2 production on behalf of Dolphin Point.

3 Have you seen any of those before?

4 A. What are you -- no. Who did you send them to?

5 Q. Well, they are served as part of this lawsuit.

6 A. Oh, okay.

7 Q. So they are served on your counsel. But have you

8 seen any of these requests?

9 I'll mark them --

10 A. Okay.

11 Q. -- just so that there's no confusion. So I'm

12 going to mark as 33 just for David Boyette's edification

13 the first request for production to you and your husband.

14 I'm going to mark as 34 the second request for production

15 to you and your husband. And I will mark as 35 the first

16 request for production to Dolphin Point.

17 And I don't -- I'm not going to take you through

18 these one by one. My only question is have you seen these

19 before?

20 A. I'm not familiar with Exhibit 33.

21 Q. Okay. What about 34 and 35?

22 A. Yeah, this one, I have to tell you vaguely this

23 thirty --

24 Q. Three?

25 A. -- three, 34 probably are. I mean, I was in the

Page 176

1 midst of putting my husband in memory care. So I may have

2 read them. These are some signed and submitted by my

3 attorney who I trust thoroughly. So I'm going to say that

4 whatever -- ask your question.

5 Q. Your husband was put in memory care in April --

6 A. April.

7 Q. -- of this past year, correct?

8 A. Yeah. But that doesn't mean he wasn't sick

9 before.

10 Q. No. Understood completely. And I don't want to

11 get into your husband's health at all.

12 My only question is you and your husband and

13 Dolphin Point have produced documents as part of this

14 case, correct?

15 A. Yes.

16 Q. How did you go through and review your documents

17 and determine what to produce or not to produce if you had

18 never received these?

19 A. With the trust of legal counsel.

20 Q. So if it was conversations with legal counsel,

21 you can say that and I will move on.

22 A. Okay.

23 Q. Is that what it was?

24 A. Yes.

25 Q. Okay. Do you recall executing interrogatory

Page 177

1 responses in this case on behalf of yourself and Dolphin

2 Point?

3 A. No.

4 Q. You don't recall that?

5 A. Would you like to show it to me?

6 Q. I am more than happy to mark it.

7 What did we end on, Madam Court Reporter?

8 THE COURT REPORTER: Next is 36.

9 BY MR. TRAFICANTE:

10 Q. Exhibit 36 is the interrogatory responses

11 provided by you, Mrs. Mitchell, to The Club's second set

12 of interrogatories. There was also a first set of

13 interrogatories. And you can see -- I'll help you. If

14 you go to the last page of this exhibit, you can see who

15 signed this; is that correct?

16 A. That's correct.

17 Q. So you would have reviewed and approved these?

18 A. Yes.

19 Q. Okay. I just have a quick question if you turn

20 to page 6 of these. At the top you can see in response to

21 an interrogatory you say, "Moreover, The Club's board

22 members approached my husband and me and made threatening

23 and intimidating statements and threats to us after The

24 Club was notified that we intended to proceed with

25 developing the subject parcel."

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1 Do you see that?

2 A. No, I don't. Number 3?

3 Q. I will show it to you. Do you see this sentence

4 that starts, "Moreover"?

5 A. Yes. Okay.

6 Q. So it says, "Moreover, The Club's board members

7 approached my husband and me and made threatening and

8 intimidating statements and threats to us after The Club

9 was notified that we intended to proceed with developing

10 the subject parcel."

11 Do you see that?

12 A. Yes.

13 Q. Which board member made threatening and

14 intimidating statements and threats to you and your

15 husband?

16 A. I think his name's Cliff.

17 Q. Cliff?

18 A. I think his name's Cliff.

19 Q. Okay. Because before I know you had testified

20 about the one gentleman who's not a board member who told

21 you you would die.

22 A. Yeah. He --

23 Q. So was there someone else who also made

24 threatening and intimidating statements?

25 A. Well, I mean, I think that there was a heated

Page 179

1 comment at that time regarding when that kid was arrested.

2 Q. So this is all related to that one incident?

3 A. Yes.

4 Q. And do you recall which board member then

5 approached you?

6 A. I think his name's Cliff, but I'm not sure. But,

7 you know, along with this, what is missing which was

8 missing prior to my statement is they have made fun of our

9 religion. They have made fun of our American flag. They

10 have made fun of my husband being ill. And they have

11 threatened our lives.

12 Q. So let's take it one by one.

13 Who has made fun of your religion?

14 A. This kid that was handcuffed.

15 Q. Okay. So it's the same person?

16 A. Yeah, for all.

17 Q. For all of those is it the same person?

18 A. Yes.

19 Q. Okay. Any -- have any Club's board members done

20 that?

21 A. Not -- nothing but just a business heated

22 conversation on what was happening that day.

23 Q. When that gentleman was arrested?

24 A. Yes.

25 Q. Okay. And you don't recall the name of that

Page 180

1 person?

2 A. There were two there, and I don't know. One I

3 thought his name was Cliff.

4 Q. You've made the allegation in your complaint that

5 the 2015 amended declaration for The Club impairs or

6 prejudices the rights or priorities of the declarant under

7 the original declaration.

8 Are you familiar with that allegation?

9 A. Yes.

10 Q. How did the 2015 amended declaration impair or

11 prejudice those rights?

12 A. I think that the La Peninsula backtracked on what

13 they had prior -- what had priorly been determined that

14 Aircraft had the choice to withdraw or join. Aircraft

15 chose to withdraw.

16 Q. When did Aircraft -- Aircraft choose to withdraw?

17 A. In 2013, I believe.

18 Q. How did they do that?

19 A. Through legal documentation.

20 Q. Through you believe the Memorandum of Settlement?

21 A. Yeah.

22 Q. Okay. Anything else that you believed the 2015

23 impaired or prejudiced the rights or priorities of the

24 declarant?

25 A. Not that I can recall.

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1 Q. Okay. Do you have personal knowledge of Aircraft

2 withdrawing from The Club in 2013?

3 A. Just from the paper or the legal work.

4 Q. Okay. So just from that Memorandum of

5 Settlement?

6 A. Yeah.

7 MR. TRAFICANTE: Okay. And, Madam Court

8 Reporter, I apologize. This is the last exhibit.

9 THE COURT REPORTER: 37.

10 BY MR. TRAFICANTE:

11 Q. I want to show you what we are marking as Exhibit

12 37 to your deposition, which for Mr. Boyette is your

13 Disclosure of Fact and Expert Witness List.

14 Have you seen this document before,

15 Mrs. Mitchell?

16 A. Yes.

17 Q. Okay. And this is a document disclosing those

18 parties that you believe are fact witnesses in this

19 case --

20 A. Yes.

21 Q. -- is that correct?

22 And you will see on page 2 -- I just want to ask

23 you about a few of these. For Number 8, you talk about

24 current and former members of The Club at La Peninsula and

25 past board of directors, including, but not limited to,

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1 and you list about nine.
 2 Do you see that?
 3 A. I'm sorry. I was reading the numbers of eight.
 4 What's your question?
 5 Q. My question is is for Number 8 --
 6 A. Okay.
 7 Q. -- what do you believe these parties have
 8 knowledge concerning relevant to this lawsuit?
 9 A. I think these were past and present board members
 10 not only on the master board but all -- I think there's
 11 seven buildings, that each of them had possibly their own
 12 personal agenda. I think this group here is possibly the
 13 ones that were doing a backdoor deal trying to buy the
 14 property themselves that had gone to the bank. And that's
 15 why they're there.
 16 Q. Okay.
 17 A. Because I don't know who this Robert guy is but
 18 -- in some of them. But these were the -- some of the
 19 players of the game at the very beginning.
 20 Q. You know -- you had the one interaction with
 21 Clayton Keeler that we talked about, correct?
 22 A. Yes.
 23 Q. And do you -- I can't recall. Do you know Jay
 24 Benedetti?
 25 A. No.

Page 183

1 Q. Okay. Do you know any of these other board of
 2 directors?
 3 A. I may know of -- I have seen Jay. But I think
 4 the only one I really know to recognize would be Clayton.
 5 Q. Okay.
 6 A. No. Robert White I know just because the people
 7 in the community have no respect for him and don't trust
 8 him. And we were warned by different people that lived in
 9 La Peninsula, acquaintances, that he's a tough guy to deal
 10 with and that I think he had some other legal issues.
 11 Q. Okay. Who from La Pen had advised you of that?
 12 A. Oh, just in social groups.
 13 Q. Do you remember who?
 14 A. No.
 15 Q. Okay. You have also listed under Number 9 Steven
 16 Adamczyk. Why have you included Attorney Adamczyk?
 17 A. Well, I think he was involved with the first --
 18 he was one of their first attorneys, wasn't he?
 19 Q. So I can't answer your questions.
 20 A. Oh, sorry. He was one of their attorneys down
 21 the line, and I don't know where he is anymore. But I
 22 think he may have been in cahoots or supporting of that.
 23 Q. Okay. Number 10 you listed another attorney,
 24 Richard DeBoest.
 25 Do you know why he is included?

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1 A. I think this might have been the second attorney
 2 that may have knowledge of what was going on.
 3 Q. Regarding what?
 4 A. That backdoor deal.
 5 Q. Okay. And anything else?
 6 A. Not that I can think of.
 7 Q. Okay. And on Number 11, you listed Attorney Greg
 8 Woods. Why did you list him?
 9 A. He's another --
 10 MR. SEIDENSTICKER: Hang on just a second. The
 11 reason she listed him --
 12 MR. TRAFICANTE: I'm not asking for your
 13 testimony.
 14 MR. SEIDENSTICKER: Hang on a second.
 15 MR. TRAFICANTE: But I'm not asking for your
 16 testimony.
 17 MR. SEIDENSTICKER: But it's invasive -- hang on.
 18 It's invasive of work product and attorney-client
 19 privilege determining who's going to be listed on the
 20 list. You asked her if she -- if she thinks if she
 21 knows of any reason.
 22 MR. TRAFICANTE: No, you're right --
 23 MR. SEIDENSTICKER: But I think that you are also
 24 invading --
 25 MR. TRAFICANTE: No --

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1 MR. SEIDENSTICKER: -- the way the question is
 2 asked.
 3 MR. TRAFICANTE: I don't disagree with you.
 4 BY MR. TRAFICANTE:
 5 Q. So let me ask you what facts do you believe
 6 Attorney Woods has knowledge concerning?
 7 A. Facts?
 8 Q. Correct.
 9 A. I don't have any facts. I just have what's
 10 occurred and how many attorneys have turned over, and now
 11 you're the last attorney -- the last attorney standing.
 12 Q. Lucky me.
 13 Do you know who -- do you know who Attorney Woods
 14 is?
 15 A. Just the name.
 16 Q. And do you know who he represented?
 17 A. La Peninsula --
 18 Q. Okay.
 19 A. -- Club.
 20 Q. You have also listed under Number 13 Mark
 21 Woodward, Esquire.
 22 What facts do you believe Attorney Woodward has
 23 that are relevant to this case?
 24 A. Woodward's -- he's a Marco Island attorney. I
 25 think he either has a client that may be with this voting

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1 issue. I'm not sure. It just could be that he was just
 2 another one of the many attorneys that La Peninsula has
 3 had.
 4 Q. And Number 16 you have listed S. Charles Bennett,
 5 III.
 6 I believe you testified before you didn't know
 7 who Charlie Bennett was; is that correct?
 8 A. I don't. But it appears here he is a
 9 representative of Resort Management. So he would have
 10 knowledge of the -- the no trespassing. He would have
 11 knowledge of where they have locked us out of our own
 12 property.
 13 Q. So you believe Charlie Bennett is a
 14 representative of Resort Management?
 15 A. It's what it says here, yes.
 16 Q. Under --
 17 A. And I believe that he may not even be Resort
 18 Management -- La Peninsula's Resort Management now because
 19 they have gone through two or three of those too, so I'm
 20 not sure.
 21 Q. Are we looking at the same number? I just want
 22 to make sure. I'm looking at Number --
 23 A. Number 14?
 24 Q. No, Number 16.
 25 A. Oh, sorry.

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1 Q. So I'm asking you do you know who S. Charles
 2 Bennett, III is?
 3 A. I think he was a past board member.
 4 Q. Okay. But you don't know as you sit here today?
 5 A. I believe he was a past board member.
 6 Q. If you go to the next page; for Number 19 you've
 7 listed Heidi Mayerhofer, also known as Heidi Donato?
 8 A. Yes.
 9 Q. Are you familiar with Mrs. Mayerhofer?
 10 A. Uh-huh.
 11 Q. Is she a friend of yours?
 12 A. She is. And she is one that they -- I think they
 13 voted in favor, and there was something strange about
 14 their vote in the fact that where the title was held at
 15 that time and if they were married and who got to vote and
 16 who didn't get to vote.
 17 Q. Do you know whether they were married at the time
 18 of that vote?
 19 A. I believe they were not.
 20 Q. Would it surprise you if they were married at the
 21 time of that vote?
 22 A. No, because they have been together for years.
 23 Q. And if they were married, you would agree that
 24 Ms. Mayerhofer had authority to give that vote, correct?
 25 MR. SEIDENSTICKER: Objection. Form.

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1 BY MR. TRAFICANTE:
 2 Q. You can answer.
 3 MR. SEIDENSTICKER: Objection. Form.
 4 THE WITNESS: Not necessarily.
 5 BY MR. TRAFICANTE:
 6 Q. Why not?
 7 A. I don't know that -- Heidi and Jeff are friends
 8 of mine. I'm not sure that they even knew that there was
 9 a vote going on. When she got called for -- in for -- I
 10 don't know if it was a deposition -- but on the record she
 11 had no idea what they were even talking about.
 12 Q. Do you know whether Ms. Mayerhofer executed a
 13 proxy voting in favor of the amendment?
 14 A. I think there's paperwork proving that she did,
 15 but there's question that she actually did it herself.
 16 Q. You have questions or she has questions?
 17 A. No. I'm just saying there are questions. I
 18 think that's why she got called.
 19 Q. Okay. But you don't have any evidence that
 20 Ms. Mayerhofer didn't execute the proxy as you sit here
 21 today?
 22 A. I don't.
 23 Q. Okay.
 24 A. Not saying that the legal team doesn't.
 25 Q. I can only ask you your knowledge.

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1 Do you have any -- do you have any knowledge as
 2 you sit here today?
 3 A. I do not.
 4 Q. Okay. Why is Laura Sonntag listed?
 5 A. There's a conflict with Laura. This is the vote
 6 that may be an illegal vote -- I believe I recognize her
 7 last name now -- that husband, wife, son. And there was a
 8 deed transfer that Laura and her husband didn't have the
 9 right to vote, I believe, that it had to go down to the
 10 son, that they didn't actually own the property when they
 11 voted.
 12 Q. And what personal knowledge do you have on that?
 13 A. I just have from what the information I read
 14 yesterday that the vote was on a certain day and they
 15 voted on a separate date.
 16 Q. Do you know whether Ms. Sonntag had authority to
 17 execute that proxy?
 18 A. It's unclear.
 19 Q. Do you have any evidence that she didn't have the
 20 authority to execute that proxy?
 21 A. No.
 22 Q. You've also listed under 24 Henry Vandeelelen.
 23 Do you know who Henry is?
 24 A. No. But he's another one that there is question
 25 on his voting.

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1 Q. And what's the question on his voting?

2 A. This one's confusing. I think it's him and his

3 wife. They're from Michigan. I can't answer that

4 question.

5 Q. You don't know as you sit here today?

6 A. I mean, I read it yesterday. But I didn't quite

7 understand it. But there's an issue there.

8 Q. But you don't know what that issue is?

9 A. No.

10 Q. Okay.

11 A. I couldn't understand it.

12 Q. You've listed Mr. Kabcenell and Ms. Costa.

13 Have you had any conversations with Ms. Kabcenell

14 or -- Mr. Kabcenell or Ms. Costa?

15 A. No.

16 Q. Okay. If you go to the next page, 29, you've

17 listed -- you've listed the corporate representative of

18 Welch Tennis Courts, Inc.

19 Who's Welch Tennis Courts?

20 A. Oh, wow. I haven't seen that name for a while.

21 I'm thinking that they're one of the tennis courts that

22 did a bid earlier.

23 Q. Okay. And do you recall what that bid was for?

24 A. Tennis courts.

25 Q. Do you recall what the amount was?

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1 A. No. But they all were around 230 -- they were

2 all competitive, 235,000.

3 Q. We've talked about Ritzman Courts, correct,

4 Number 30?

5 A. Yep.

6 Q. American Engineering Consultants of Marco Island,

7 is that the engineer that you've hired --

8 A. Yes.

9 Q. -- for the relocation of the tennis courts?

10 A. Yes.

11 Q. Okay. You have also listed Raymond Bellows with

12 Collier County Zoning.

13 What facts do you believe Mr. Bellow has?

14 A. I think that -- that's interesting. I think that

15 when we first purchased that land we went in with a \$500

16 check and started to start the process of rezoning

17 immediately. And then things -- for some reason that

18 process stopped, and we lost our \$500 and went back to the

19 drawing board again.

20 Q. Okay. And you've also listed Paula McMichael

21 with Hole Montes.

22 What facts do you believe Ms. McMichael has that

23 are relevant to this case?

24 A. I think that the Mitchells have spent close to

25 just on these guys alone somewhere 35, 40 thousand dollars

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1 to get where we're at today.

2 Q. You are talking about as to the rezoning process?

3 A. Uh-huh.

4 Q. Or are you referring --

5 MR. SEIDENSTICKER: You have to answer yes or no.

6 BY MR. TRAFICANTE:

7 Q. Oh, yeah. Sorry. You have to answer yes or no

8 verbally.

9 A. Ask me the question.

10 Q. Are you referring to -- let me -- let me ask it a

11 different way.

12 Are you referring to the relocation of the tennis

13 courts, or are you referring to the rezoning that's a

14 separate application?

15 A. The rezoning and the surveying.

16 Q. Okay. You've also listed Beau Middlebrook with

17 Southwest Florida Realty.

18 What facts do you believe Mr. Middlebrook has

19 that are relevant to this lawsuit?

20 A. Beau and my husband, Don Mitchell, at the

21 beginning when we purchased that land had made an offer to

22 La Peninsula for \$200,000 that Don said he would just sell

23 them the tennis courts and that it could be theirs. They

24 would not agree to the deal.

25 Q. So this is after you purchased the property?

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1 A. Uh-huh.

2 Q. Okay. So Beau Middlebrook made an offer to La

3 Pen on your behalf to purchase the subject parcel?

4 A. For The Club to purchase.

5 Q. Okay. And then have you retained any experts in

6 this matter?

7 A. Regarding?

8 Q. This case.

9 MR. SEIDENSTICKER: Objection. Form.

10 BY MR. TRAFICANTE:

11 Q. It says under Number 47 I can tell you that no

12 experts witness -- no expert witnesses have been retained.

13 A. Oh, I thought you said --

14 Q. No. So I just want to make sure.

15 Have you retained any expert witnesses in this

16 matter --

17 A. No.

18 Q. -- to testify?

19 Okay.

20 A. Not that I'm aware of.

21 MR. TRAFICANTE: I may be done. Why don't we

22 just take a -- you want to take a five-minute break?

23 Is that easier for you?

24 MR. SEIDENSTICKER: Yeah, let's make it ten so I

25 can give Mr. Boyette a call and see what he will have.

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1 MR. TRAFICANTE: No problem.
 2 THE VIDEOGRAPHER: We're going off the record at
 3 12:37 p.m.
 4 (A short recess was taken.)
 5 THE VIDEOGRAPHER: We're back on the record at
 6 12:58 p.m.
 7 BY MR. TRAFICANTE:
 8 Q. Mrs. Mitchell, I want to show you what was marked
 9 as Exhibit 15. And I don't want to lose the order.
 10 This is the memorandum, the 2013 Memorandum of
 11 Settlement that we previously talked about; do you recall?
 12 A. Yes.
 13 Q. Do you recall that exhibit?
 14 A. Yes.
 15 Q. And I believe you testified that you understood
 16 that Aircraft had left The Club pursuant to that document;
 17 is that correct?
 18 A. Yes.
 19 MR. SEIDENSTICKER: Objection. Form.
 20 BY MR. TRAFICANTE:
 21 Q. Where in that document does it say that Aircraft
 22 is not part of The Club?
 23 A. Maybe it's not in this document, but there is a
 24 document that claims that the La -- or Aircraft has two
 25 options. They can build 37 units or they can withdraw.

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1 Q. What document do you believe that's in?
 2 A. Right here, this one right here.
 3 Q. So that says -- I'm just going to come close
 4 because I don't have another copy. Actually, I think I
 5 can pull it up here. I can.
 6 That says under paragraph -- you're looking at
 7 paragraph 4(B), correct?
 8 A. Correct.
 9 Q. And it says that The Club agrees to approve
 10 construction of up to a 37-unit condominium on the
 11 development parcel that will be part of The Club at La
 12 Peninsula?
 13 A. That's correct.
 14 Q. Where does it say that Aircraft and the subject
 15 parcel are not part of La Peninsula?
 16 A. I don't know where it says it. But they have --
 17 Aircraft had two options. One was to build 37 units or
 18 one was to withdraw.
 19 Q. And what is your understanding based on for that?
 20 A. From some document in here.
 21 Q. Was it from that document?
 22 A. Oh, it was from 2013 document. So is this 2013?
 23 Yeah, maybe it's in here then.
 24 MR. TRAFICANTE: Okay. No further questions for
 25 right now. So we can put that right here --

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1 THE WITNESS: Okay.
 2 MR. TRAFICANTE: -- just so we're not getting
 3 them out of order.
 4 THE WITNESS: Thank you.
 5 MR. TRAFICANTE: And then we will do it that way
 6 for you.
 7 David, I believe you're -- you're up.
 8 MR. BOYETTE: Okay. Very good.
 9 MR. TRAFICANTE: And if you just tell me, David,
 10 which one you want from the Plaintiff's exhibits, I
 11 can blow it up for Mrs. Mitchell.
 12 MR. BOYETTE: Yeah. If you could show her
 13 Plaintiff's 15.
 14 MR. SEIDENSTICKER: Plaintiff's 15, 1-5?
 15 MR. BOYETTE: Yes, 1-5.
 16 MR. TRAFICANTE: It's his prior markings.
 17 Ms. Mitchell, can you see that? I am going to
 18 get it closer to you.
 19 MR. SEIDENSTICKER: That was Plaintiff's 15 to
 20 Dr. Petrella's deposition?
 21 MR. BOYETTE: Correct.
 22 MR. TRAFICANTE: You can keep it in front of you.
 23 THE WITNESS: Okay.
 24 MR. TRAFICANTE: If you need me to move it, just
 25 let me know.

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1 THE WITNESS: Okay.
 2 - - -
 3 CROSS-EXAMINATION
 4 BY MR. BOYETTE:
 5 Q. Okay. Do you see in the lower right-hand corner
 6 where it says La Pen 001820?
 7 MR. TRAFICANTE: I've got to -- I've got to
 8 scroll down real quick just because it's on my iPad.
 9 There you go.
 10 THE WITNESS: La Pen 001820.
 11 BY MR. BOYETTE:
 12 Q. Okay. Good. I'm just confirming we're looking
 13 at the same thing.
 14 Do you see at the top where it says The Club at
 15 La Peninsula Association Special Unit Owners Minutes?
 16 MR. TRAFICANTE: Hold on one sec, David. We just
 17 got to go back to it. It's temperamental because it's
 18 an iPad.
 19 THE WITNESS: Can you repeat the question,
 20 please, David?
 21 BY MR. BOYETTE:
 22 Q. Do you see at the top where it says The Club at
 23 La Peninsula Association Special Unit Owners Minutes?
 24 A. Yes.
 25 Q. Is this document a copy of unit owner meeting

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1 minutes from an August 18, 2015, meeting?
 2 A. Yes.
 3 MR. TRAFICANTE: Object to form.
 4 BY MR. BOYETTE:
 5 Q. Was this document produced by The Club in
 6 discovery in this case?
 7 A. Yes.
 8 Q. And does this document indicate that Proposed
 9 Amended and Restated Declaration of Covenants passed by a
 10 vote of 119 in favor and 24 opposed?
 11 A. Yes.
 12 Q. Let me direct you to Exhibit -- Plaintiff's
 13 Exhibit 16.
 14 MR. TRAFICANTE: Just bear with us one second.
 15 THE WITNESS: Okay.
 16 BY MR. BOYETTE:
 17 Q. Is this a copy of a letter produced by The Club
 18 at La Peninsula in discovery in this lawsuit, a letter
 19 dated May 6, 2015, that indicates it's from Bob White,
 20 president of The Club, to the La Peninsula owners?
 21 A. Yes.
 22 Q. And do you see in the third paragraph it states
 23 that passage of amendments to the governing documents
 24 requires a two-thirds vote of the owners which would be
 25 118 owners?

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1 A. Yes.
 2 Q. And let me direct you to Plaintiff's Exhibit 17.
 3 MR. TRAFICANTE: So this one we have, David, the
 4 hard copy. It was Defendant's Exhibit 18. So we
 5 actually have the hard copy in front of Mrs. Mitchell.
 6 BY MR. BOYETTE:
 7 Q. Okay. Then we are going to mark it as
 8 Plaintiff's 15. On the copy that I sent to the court
 9 reporter, at the bottom it says Depo Exhibit 17. And then
 10 it says page 1 of 15 all the way through page 15 of 15.
 11 My question is --
 12 MR. SEIDENSTICKER: Hang on -- hang on a second,
 13 David, just because it's only marked Exhibit 18 just
 14 for purposes of the record. So we know that you're
 15 also referring to what was previously marked as
 16 Plaintiff's Exhibit 16 to the Petrella depo.
 17 MR. TRAFICANTE: It was Exhibit 17 to the
 18 Petrella.
 19 MR. SEIDENSTICKER: Excuse me. 17. I misspoke.
 20 Just to add confusion to it.
 21 MR. BOYETTE: Yeah, I e-mailed the court reporter
 22 the exhibits that I'm using. They are the 30 -- they
 23 are among the 36 that were used for the Petrella
 24 deposition.
 25 MR. TRAFICANTE: It was -- it was 17, David. You

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1 just had said 15. I think you misspoke. But it was
 2 Plaintiff's Exhibit 17.
 3 BY MR. BOYETTE:
 4 Q. Correct. And I said it was 15 pages. And I just
 5 want to just note for the record the court reporter is
 6 going to add to the transcript the exhibits I referenced
 7 which are among the 36 that I sent her. And this one we
 8 are talking about now is marked as Depo Exhibit 17.
 9 And my question is is this a vote tally sheet
 10 that was produced by The Club at La Peninsula in discovery
 11 in this lawsuit?
 12 A. Yes.
 13 Q. Let me direct you to Exhibit 18.
 14 MR. TRAFICANTE: I'm just going to put this back.
 15 He is referring to Plaintiff's Exhibit 18, so let me
 16 give you back my iPad for a second. Let me just
 17 scroll it down for you. There you go.
 18 BY MR. BOYETTE:
 19 Q. Is this document marked as Depo Exhibit 17 a
 20 proxy sheet produced by The Club in discovery in this
 21 lawsuit for Unit 203 of Building 700?
 22 MR. TRAFICANTE: I think, David, it's Exhibit 18.
 23 MR. SEIDENSTICKER: Right.
 24 MR. BOYETTE: If I didn't say 18, that's what I
 25 meant to say.

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1 MR. SEIDENSTICKER: It's Plaintiff's Exhibit 18
 2 to be clear.
 3 BY MR. BOYETTE:
 4 Q. Correct. Do you understand the question?
 5 A. I do. And, yes. It's Owner's Unit 203 located
 6 in Building 700.
 7 Q. Okay. And does this proxy sheet which was
 8 produced by The Club in discovery show that the vote for
 9 this unit was against or a no vote on both of the
 10 proposals?
 11 A. Yes.
 12 Q. And it shows as far as on the signature line the
 13 printed name is Virginia Aversano; is that correct?
 14 A. Yes.
 15 Q. And let me direct you back to Plaintiff's 17 on
 16 page 12 of 15.
 17 A. Okay.
 18 Q. Do you see where the vote tally sheet has
 19 recorded the vote for Unit 7 -- Unit 203 in Building 700?
 20 A. What was the unit number?
 21 Q. 203.
 22 A. Got it.
 23 Q. Do you see where it says Sal and Virginia
 24 Aversano for that unit?
 25 A. Yes.

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1 Q. And am I correct that the vote tally sheet shows
 2 a yes vote on both proposals for this unit?
 3 A. Yes.
 4 Q. And do you know why The Club tallied this unit as
 5 voting yes when the proxy sheet shows that the unit owner
 6 voted no?
 7 MR. TRAFICANTE: Object to form.
 8 THE WITNESS: No, I have no idea.
 9 BY MR. BOYETTE:
 10 Q. Okay. Let's go to Exhibit 23.
 11 MR. SEIDENSTICKER: And this is, again,
 12 Plaintiff's Exhibit 23, right, David?
 13 MR. BOYETTE: Correct.
 14 MR. SEIDENSTICKER: To the Petrella depo. Okay.
 15 BY MR. BOYETTE:
 16 Q. Is this a Warranty Deed dated November 13 of 2002
 17 which was recorded in the Collier County public records?
 18 A. Yes.
 19 Q. And this deed shows that Ralph and Laura Sonntag
 20 bought Unit 624 of Building 600 on November 13 of 2002; is
 21 that correct?
 22 MR. SEIDENSTICKER: He is still asking you about
 23 this.
 24 MR. TRAFICANTE: Yeah.
 25 THE WITNESS: Yes.

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1 BY MR. BOYETTE:
 2 Q. And then go to page 3 of 9 of Exhibit 23,
 3 Plaintiff's 23. Let me know when you have got that in
 4 front of you.
 5 MR. TRAFICANTE: It's up.
 6 MR. BOYETTE: Okay.
 7 THE WITNESS: Oh, it's the same one?
 8 MR. TRAFICANTE: No, it's a different one,
 9 different page.
 10 BY MR. BOYETTE:
 11 Q. Is this a copy of a Warranty Deed to Ralph and
 12 Laura Sonntag dated April 1 of 2003 for Unit 633 of
 13 Building 600?
 14 A. Yes.
 15 Q. Okay. And then go to page 4 of 9 and 5 of 9 of
 16 Exhibit -- of Plaintiff's Exhibit 23, please.
 17 MR. TRAFICANTE: This is 4.
 18 THE WITNESS: Okay.
 19 MR. TRAFICANTE: We are on page 4, David.
 20 MR. BOYETTE: Thank you. Appreciate it.
 21 BY MR. BOYETTE:
 22 Q. Is this a copy of a Warranty Deed dated April 29
 23 of 2005 which is recorded in the public records of Collier
 24 County, Florida?
 25 A. Yes.

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1 Q. And does this deed show that Ralph and Laura
 2 Sonntag transferred Units 624 and 633 to James Keay as
 3 trustee of the Ralph Sonntag irrevocable trust?
 4 A. Yes.
 5 Q. All right. Let's go to page 6 of 9.
 6 MR. TRAFICANTE: She's there, David.
 7 BY MR. BOYETTE:
 8 Q. Is this a Warranty Deed dated March 29, 2016,
 9 which is recorded in the public records of Collier County,
 10 Florida?
 11 A. Yes.
 12 Q. And does this deed show that James Keay has
 13 individually, and as trustee of the Ralph Sonntag
 14 irrevocable trust, conveyed Unit 624 to parties named
 15 Mulligan?
 16 A. Yes.
 17 Q. And let's go to page 8 of 9 and 9 of 9 of
 18 Plaintiff's Exhibit 23.
 19 MR. TRAFICANTE: She's there, David.
 20 BY MR. BOYETTE:
 21 Q. Is this a copy of a July 27, 2016, Warranty Deed
 22 recorded in the public records of Collier County, Florida?
 23 A. Yes.
 24 Q. And does this deed show that James Keay
 25 individually, and as trustee of the Ralph Sonntag

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1 irrevocable trust, conveyed Unit 633 on July 27, '16, to
 2 an entity called Trekker Enterprises?
 3 A. Yes.
 4 Q. All right. Let's go to Exhibit 22.
 5 MR. SEIDENSTICKER: And Plaintiff's --
 6 Plaintiff's Exhibit 22?
 7 BY MR. BOYETTE:
 8 Q. Correct. And I want you to look at page 1 of 4
 9 and 2 of 4.
 10 MR. TRAFICANTE: So we can only do one at a time
 11 just because it's on my iPad. So we're on page 1.
 12 MR. SEIDENSTICKER: What else do you want? 1 of
 13 4 and which?
 14 MR. TRAFICANTE: 2. 2 of 4.
 15 MR. BOYETTE: 2 of 4.
 16 MR. SEIDENSTICKER: And 2 of 4. I can pull that
 17 one up.
 18 BY MR. BOYETTE:
 19 Q. And my question is is this a proxy document which
 20 was produced by The Club at La Peninsula in discovery in
 21 this lawsuit?
 22 A. Yes.
 23 Q. And does this show that Laura Sonntag is the
 24 printed name as the person signing this proxy for Unit 624
 25 in Building 600?

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1 A. Yes.

2 Q. And let me have you look at pages 3 of 4 and 4 of

3 4 of Plaintiff's Exhibit 22.

4 A. Yes. I have it.

5 Q. Is this a proxy document produced by The Club in

6 discovery in this lawsuit for Unit 603 in Building 600?

7 A. 633?

8 Q. Yes.

9 A. Yes.

10 Q. And does this proxy show that the vote for this

11 unit was cast by Laura Sonntag?

12 A. Yes.

13 Q. And the deeds that we looked at under Exhibit

14 23 -- there were several, multiple of them -- did they

15 show that Laura Sonntag did not own Unit 624 or Unit 623

16 on the date that she cast the votes for these two units?

17 MR. TRAFICANTE: Object to form.

18 THE WITNESS: That's correct.

19 BY MR. BOYETTE:

20 Q. And did the deed show that these two units were

21 owned by James Keay as trustee on the date that these two

22 votes were cast?

23 MR. TRAFICANTE: Object to form.

24 THE WITNESS: I don't see James' name. Can you

25 scroll down?

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1 MR. TRAFICANTE: Yeah. Mine is a little tougher

2 because it doesn't go by hand. Wayde, do you want to

3 bring it up? It might be easier.

4 MR. SEIDENSTICKER: Exhibit 22. What page,

5 David?

6 MR. TRAFICANTE: 23.

7 MR. SEIDENSTICKER: Or 23.

8 BY MR. BOYETTE:

9 Q. My question -- did you follow the question?

10 A. Yes. I'm just looking to see the facts. I'm

11 looking for the name James.

12 Q. I can walk you through it if I need to.

13 A. I'm just having a hard time finding the new

14 owner's name.

15 MR. SEIDENSTICKER: Are you talking about --

16 BY MR. BOYETTE:

17 Q. Let me -- let me -- let me -- let's go through it

18 just one step at a time. We will make it simple.

19 Go to Exhibit 22.

20 Is it true that pages 1 of 4 and 2 of 4 show that

21 Laura Sonntag cast the vote for Unit 624 and she dated

22 that proxy June 21 of 2015?

23 A. Yes.

24 Q. All right. And pages 3 of 4 and 4 of 4 shows

25 that Laura Sonntag dated that proxy August 3 of 2015?

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1 A. Yes.

2 Q. And if we go to Exhibit 23, page 4 and 5 of 9

3 shows that Ralph and Laura Sonntag conveyed those two

4 units to James Keay as trustee on April 29 of 2005,

5 correct?

6 A. Yes.

7 Q. And if we go to pages 6 through 9 of Plaintiff's

8 Exhibit 23, it shows that James Keay conveyed away those

9 units in 2016, correct?

10 A. That's 2005 -- oh, pardon me. Yes.

11 Q. Okay. So the deeds indicate that James Keay as

12 trustee owned these units on the dates that Laura Sonntag

13 signed the proxies?

14 MR. TRAFICANTE: Object to form.

15 BY MR. BOYETTE:

16 Q. Correct?

17 A. That's correct.

18 Q. Do you know why The Club did not have Mr. Keay as

19 trustee sign the proxy for these -- for the votes for

20 these two units?

21 MR. TRAFICANTE: Object to form.

22 THE WITNESS: That's a good question. No, I do

23 not.

24 BY MR. BOYETTE:

25 Q. And if you go to Exhibit 17, Plaintiff's Exhibit

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1 17 again.

2 MR. TRAFICANTE: This is the same one.

3 THE WITNESS: What page? 17?

4 MR. TRAFICANTE: What page do you want on that

5 exhibit, Dave?

6 MR. BOYETTE: Page 11 of 15.

7 THE WITNESS: Page 10, right?

8 MR. TRAFICANTE: 11.

9 MR. SEIDENSTICKER: 11.

10 THE WITNESS: 11. Okay.

11 BY MR. BOYETTE:

12 Q. Do you see Units 624 and 633 where they have the

13 name James Keay Trust --

14 A. Yes.

15 Q. -- listed?

16 And you see that the vote tally sheet indicates

17 yes votes for these two units?

18 A. Yes.

19 Q. All right. Let's go to Exhibit 24.

20 Is this a proxy document produced by The Club in

21 this lawsuit for Unit 101 in Building 100?

22 A. Yes.

23 Q. And it shows -- it shows that the vote was cast

24 by an Allen Langdon for this unit?

25 A. Yes.

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1 Q. And let's go to Exhibit 25, pages -- Plaintiff's
 2 25, pages 1 and 2 of 6.
 3 MR. SEIDENSTICKER: Hang on. I'm waiting for it
 4 to load up, Dave.
 5 MR. BOYETTE: Yep.
 6 MR. SEIDENSTICKER: For whatever reason, it's not
 7 loading up on mine. Can you show her 25 on yours?
 8 MR. TRAFICANTE: Yep.
 9 We are on page 1 of 25.
 10 BY MR. BOYETTE:
 11 Q. Is this a copy of a Special Warranty Deed
 12 recorded in the public records of Collier County?
 13 A. Yes.
 14 Q. And does this deed show that Unit 101 in Building
 15 100 was deeded to Gregory Langdon as to a half interest
 16 and Allen and Marsha Langdon as to -- also to a half
 17 interest?
 18 A. Yes.
 19 Q. And pages 3 and 4 of 6 of Exhibit 25, do you have
 20 those?
 21 MR. TRAFICANTE: We do now.
 22 BY MR. BOYETTE:
 23 Q. Is this a copy of a Special Warranty Deed dated
 24 January 3 of 2022 which is recorded in the public records
 25 of Collier County?

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1 A. Yes.
 2 Q. And this deed shows a Gregory Langdon as grantor
 3 to Unit 111 in Building 100 and Allen and Marsha Langdon
 4 as the grantees; is that right?
 5 A. Yes.
 6 Q. And let's go to pages 5 and 6 of 6 of Plaintiff's
 7 Exhibit 25, please.
 8 MR. TRAFICANTE: We're there.
 9 BY MR. BOYETTE:
 10 Q. Is this a copy of a Warranty Deed dated January
 11 11, 2022, which is recorded in the public records of
 12 Collier County?
 13 A. Yes.
 14 Q. And this deed shows that Allen Langdon and Marsha
 15 Langdon continued to own Unit 111 in Building 100 until
 16 January 11 of 2022; is that right?
 17 A. Yes.
 18 Q. All right. Let's go to Exhibit 26.
 19 Plaintiff's Exhibit 26, is this a proxy for Unit
 20 211 in Building Number 2 produced by The Club in discovery
 21 in this lawsuit?
 22 A. Yes.
 23 Q. And this proxy shows yes votes for this unit cast
 24 by a Kenneth Walter, Jr.; is that correct?
 25 A. Yes.

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1 Q. Let's go to Exhibit 27.
 2 MR. TRAFICANTE: We're there.
 3 BY MR. BOYETTE:
 4 Q. Is this a Warranty Deed dated December 21, 1987,
 5 which is recorded in the Collier County public records?
 6 A. Yes.
 7 Q. And this deed shows Unit 211 was purchased by
 8 Kenneth Walter, Jr.; Robert D. Walter; and Kenneth Walter,
 9 Sr., correct?
 10 A. I don't see their names. I see the 211.
 11 Yes.
 12 Q. And on pages 3 and 4 of Exhibit -- Plaintiff's
 13 Exhibit 27, is this a copy of a Warranty Deed dated May 15
 14 of 2016 for Unit 211, Building 200, which is recorded in
 15 the public records of Collier County?
 16 A. Yes.
 17 Q. And I notice that the proxy cast by Mr. Walter,
 18 Ken Walter, Jr., which was Exhibit 26, it says Building 2.
 19 The deeds say Building 200.
 20 Do you know why -- why they're different?
 21 A. I do not.
 22 Q. Do you know if there is a Building 2?
 23 A. Honestly, I don't. I believe so.
 24 Q. Do you know if there's a Building 200?
 25 A. There's a Building 200.

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1 Q. Okay. All right. Let's go to Exhibit 20 --
 2 Plaintiff's Exhibit 28.
 3 Is this a Warranty Deed dated June 30 of 2015 to
 4 Paul Wickberg and Kathleen Pitra which is recorded in the
 5 public records of Collier County?
 6 A. Yes.
 7 Q. This deed indicates that Paul Wickberg was a
 8 single man, and it states Kathleen Pitra is a single
 9 woman.
 10 Do you see that?
 11 A. I do, yes.
 12 Q. Page 3 of 6 of Exhibit 28, is this a Quitclaim
 13 Deed from May of 2017 which is recorded in the public
 14 records of Collier County?
 15 A. Yes.
 16 Q. And this deed indicates that Paul Wickberg, a
 17 single man, and Kathleen Pitra, a single woman, are
 18 conveying to Paul Wickberg, a single man; is that right?
 19 A. Yes.
 20 Q. Let's go to Exhibit 29.
 21 Is this a proxy for Unit 307 in Building 300 that
 22 was produced by The Club in discovery in this case?
 23 A. Yes.
 24 MR. BOYETTE: I don't have any other questions.
 25 MR. SEIDENSTICKER: I'm going to have a few.

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1 Michael, can you confirm what exhibit was the
 2 Declarant Amendment to the Declaration of Covenants
 3 marked?
 4 MR. TRAFICANTE: What's the date on that, Wayde?
 5 MR. SEIDENSTICKER: It's recording February 14,
 6 2013.
 7 MR. TRAFICANTE: It is Exhibit 14. Exhibit 14.
 8 MR. SEIDENSTICKER: Exhibit 14? Defendant's
 9 Exhibit 14?
 10 MR. TRAFICANTE: Correct.
 11 MR. SEIDENSTICKER: David, the last exhibit in
 12 Plaintiff's exhibit numbers were what?
 13 MR. TRAFICANTE: 36.
 14 MR. SEIDENSTICKER: It was up through 36?
 15 MR. BOYETTE: Correct. And the Declarant
 16 Amendment from February 12 of 2013 is Number 5 in the
 17 package of Plaintiff's exhibits.
 18 MR. SEIDENSTICKER: Okay. Can you provide her,
 19 Michael, with Exhibit 14.
 20 MR. TRAFICANTE: She has it right in front of
 21 her.
 22 MR. SEIDENSTICKER: She's got it?
 23 MR. TRAFICANTE: Yep.
 24 MR. SEIDENSTICKER: Great.
 25 - - -

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1 CROSS-EXAMINATION
 2 BY MR. SEIDENSTICKER:
 3 Q. You were asked about Defendant's Exhibit 14
 4 earlier, Ms. Mitchell.
 5 Do you have that in front of you?
 6 A. I do.
 7 Q. All right. And that's Declarant Amendment to
 8 Declaration of Covenants and Conditions and Restrictions
 9 that was recorded in the Collier County public records?
 10 A. Correct.
 11 Q. All right. And was that Exhibit Number 14
 12 executed by James Kabcenell, manager of Aircraft
 13 Investment?
 14 A. Yes.
 15 Q. And was that executed by him on February 12th,
 16 2013?
 17 MR. TRAFICANTE: I'm going to object to the form
 18 of the last two questions, but you can answer.
 19 THE WITNESS: Yes.
 20 BY MR. SEIDENSTICKER:
 21 Q. And does the Declarant Amendment to Declaration
 22 of Covenants, Conditions and Restrictions indicate that it
 23 was recorded by Aircraft Investment, LLC as the declarant?
 24 A. Yes.
 25 Q. And on paragraph 3 of page 2 of that exhibit does

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1 it indicate that Aircraft as the holder of the declarant
 2 rights was recording the amendment to assert, confirm,
 3 ratify that the vested rights of the declarant expressly
 4 contained in the declaration which include, but are not
 5 limited to, collectively vested rights?
 6 A. Yes.
 7 Q. And do the vested rights that it indicates it was
 8 recording to -- it was memorializing, did that include the
 9 right of the declarant to modify the site plan for La
 10 Peninsula which includes, without limitation, the right to
 11 add to, subtract from or make changes in the site plan?
 12 A. Yes.
 13 Q. Also include the right of the declarant to
 14 withdraw the property from the terms and conditions of the
 15 declaration in connection with the same?
 16 A. Yes.
 17 Q. Did it also include the right to develop any
 18 undeveloped property subject to the declaration in any
 19 manner allowable under, and as permitted by law, including
 20 without limitation, to develop the undeveloped property as
 21 another condominium or another type of residential
 22 non-condominium development, including townhomes, carriage
 23 homes or single-family residences?
 24 A. Yes.
 25 Q. Did it also include the right of the declarant to

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1 be exempt from architectural review mechanisms and
 2 provisions of the declaration, including those described
 3 in Article 9 thereof?
 4 A. Yes.
 5 Q. Did it also include the right of the declarant to
 6 amend any provisions of the declaration without the
 7 consent of the members provided the declarant still owns
 8 property or units in La Peninsula?
 9 A. Yes.
 10 Q. And the right -- the easement rights described in
 11 Sections 6.2 and 6.3 which include, without limitation,
 12 the right to utilize common property for sales and
 13 marketing activities?
 14 A. Yes.
 15 Q. Okay. And with regard to Exhibit 15, Defendant's
 16 Exhibit 15 which was marked earlier which is the
 17 Memorandum of Settlement that was entered into between The
 18 Club and Aircraft under paragraph 4(C), did The Club at La
 19 Peninsula in that Memorandum of Settlement as Plaintiff
 20 agree to recognize the rights of the owner of the
 21 development parcel as declarant subject to a partial
 22 assignment of architectural control rights to The Club as
 23 to all other areas other than the development parcel?
 24 A. Yes.
 25 Q. And so we're clear, the development parcel, is

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1 that the parcel that you and your husband, Donnie
 2 Mitchell, acquired in October of 2017?
 3 A. Yes.
 4 Q. And that's one and the same parcel that you and
 5 your husband, Donnie Mitchell, conveyed to your LLC which
 6 you now own through your LLC, Dolphin Point, LLC?
 7 A. Yes.
 8 Q. Okay. And I'm going to show you what's being
 9 marked for this deposition as -- could I have a sticker?
 10 And we will call it Plaintiff's Exhibit 37 just
 11 to keep it in line with the deposition exhibit numbering
 12 from the Petrella deposition.
 13 Okay. Showing you what's --
 14 MR. TRAFICANTE: Do you have an extra?
 15 MR. SEIDENSTICKER: Yes. I'm sorry.
 16 BY MR. SEIDENSTICKER:
 17 Q. Showing you what's been marked as Plaintiff's
 18 Exhibit 37, is that a document that was recorded in the
 19 public records of Collier County?
 20 A. Yes.
 21 Q. And is that document titled Notice of Invalidation
 22 of Amendments to Declaration of Covenants, Conditions and
 23 Restrictions of La Peninsula?
 24 A. Yes.
 25 Q. And was that document recorded in the public

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1 records of Collier County on February 23rd, 2018?
 2 A. Yes.
 3 Q. All right. And if you would, turn to the last
 4 page of that document.
 5 Do you recognize the signatures --
 6 A. I do.
 7 Q. -- on Exhibit 37, this Notice of Invalidation?
 8 And whose signatures are those?
 9 A. Donnie Gene Mitchell and Kimberly Ann Schnell
 10 Mitchell.
 11 Q. Okay. And on page 2 of that document, the Notice
 12 of Inva- -- to be clear, the Notice of Invalidation signed
 13 by you and Donnie was based on what's stated in paragraph
 14 -- the first full paragraph starting as whereas; is that
 15 right?
 16 A. Yes.
 17 MR. TRAFICANTE: Object to form.
 18 BY MR. SEIDENSTICKER:
 19 Q. In the whereas paragraph on page 2 of this
 20 document, does it state that the claimed amendment
 21 purports to remove, delete many provisions which granted
 22 rights or privileges favorable to the declarant or
 23 developer including, but not limited to, Section 2.2 which
 24 reserved the declarant right to change the development
 25 plan, add to, subtract from or make changes to the site

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1 plan?
 2 A. Yes.
 3 Q. Does it also state that the claimed amendment
 4 under (B), Section 6.3, reserved to the declarant a
 5 perpetual easement?
 6 A. Yes.
 7 Q. Does it also state that 11.3, granting the
 8 declarant the unilateral right to amend the declaration in
 9 9.2, exempting the declarant from architectural review or
 10 control by The Club and various additional provisions
 11 favorable to the declarant or development such as
 12 concerning assessments and financial obligations?
 13 A. Yes.
 14 Q. Does it state that neither Aircraft nor Mitchell
 15 provided written approval of the claimed amendment?
 16 A. Yes.
 17 Q. And the claimed amendment was the 2015 amendment
 18 that we were talking about with regard to the improper
 19 votes; is that correct?
 20 A. Yes.
 21 Q. And is it your position that, at a minimum, to
 22 the extent that the claimed amendment purports to
 23 eliminate, restrict or reduce rights, privileges and
 24 immunities of the declarant under the declaration, the
 25 amendment was void?

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1 MR. TRAFICANTE: Object to form.
 2 THE WITNESS: Yes.
 3 BY MR. SEIDENSTICKER:
 4 Q. Is it also your position under paragraph 3 of
 5 Plaintiff's Exhibit 37 that the claimed amendment, 2015
 6 claimed amendment by The Club was not properly adopted and
 7 ineffective and void to the extent that it has any
 8 validity; and to the extent it has any validity, the
 9 claimed amendment is deemed amended to include all
 10 provisions of the declaration providing rights or
 11 privileges to the declarant which the claimed amendment
 12 omitted, deleted or removed?
 13 A. We are going to have to do that again. I think
 14 I'm on the wrong page.
 15 Q. Sure. Paragraph 3.
 16 A. Right here. Okay. Thank you.
 17 Q. I will give you a moment to read that.
 18 A. Okay.
 19 Q. Is it also your position that the 2015 claimed
 20 amendment was not only not properly adopted and,
 21 therefore, ineffective and void, but also, to the extent
 22 that it has any validity, it should be deemed amended to
 23 include the provisions of the declaration providing rights
 24 or privileges to the declarant which the 2015 claimed
 25 amendment omitted, deleted or removed?

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1 MR. TRAFICANTE: Object to form.
 2 THE WITNESS: Absolutely. Absolutely.
 3 MR. SEIDENSTICKER: That's all I have.
 4 MR. TRAFICANTE: I just have a few. And you can
 5 keep those in front of you because that'll probably be
 6 easier.
 7 THE WITNESS: Okay.
 8 MR. TRAFICANTE: I want to -- this one?
 9 - - -
 10 REDIRECT EXAMINATION
 11 BY MR. TRAFICANTE:
 12 Q. You were asked some questions, Mrs. Mitchell, by
 13 Attorney Boyette regarding some proxies that Mr. Boyette
 14 had shown you and some deeds.
 15 Do you recall that?
 16 A. Yes.
 17 Q. And if you look at -- I'm going to put back in
 18 front of you, and then we can get these all back in order
 19 after. I am going to give you Exhibit -- what was
 20 previously marked as Defendant's Exhibit 18, correct?
 21 A. Okay.
 22 Q. If you turn to the last page of that, it shows a
 23 vote in favor of 121 and no of 24. And then if you don't
 24 include 31 -- 311 and 411, it's a vote in favor of 119 and
 25 a vote against of 24; is that correct?

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1 A. That's what this paperwork says.
 2 Q. So if the Aversano proxy that you were asked
 3 about was mistakenly taken down as a yes instead of a no,
 4 it would just lower those numbers by one vote, correct?
 5 A. Yes.
 6 Q. So there would still be 118 votes in favor?
 7 MR. SEIDENSTICKER: Objection. Form.
 8 BY MR. TRAFICANTE:
 9 Q. Correct?
 10 MR. SEIDENSTICKER: Same objection. Form.
 11 BY MR. TRAFICANTE:
 12 Q. You can answer.
 13 A. On just -- on the one vote, yes.
 14 Q. And that's the vote that's on the 2015 amended
 15 declaration; is that correct?
 16 A. Yes.
 17 Q. Okay. You were also asked questions about
 18 Mrs. Sonntag and her proxy. Do you recall that?
 19 A. Yes.
 20 Q. Do you have any personal knowledge as to whether
 21 Mrs. Sonntag had authority to execute those proxies on
 22 behalf of those units?
 23 A. Well, to clarify, was she the owner at that time?
 24 Q. I can't answer the question.
 25 A. Oh.

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1 Q. But do you have any personal knowledge regarding
 2 whether Mrs. Sonntag had authority to execute those
 3 proxies on behalf of those units?
 4 A. I do not.
 5 Q. Okay. Do you have any personal knowledge as to
 6 whether Mr. Langdon had authority to execute the proxy on
 7 behalf of his unit?
 8 A. I do not.
 9 Q. And, in fact, Mr. Langdon who executed the proxy
 10 was one of the owners of that unit, correct?
 11 A. I can't clarify that he was the owner.
 12 Q. Well, I will show you the deed that was shown to
 13 you. It's Plaintiff's Exhibit 25.
 14 A. Okay.
 15 Q. Do you see on Plaintiff's Exhibit 25 it's deeded
 16 to -- well, let me show you the proxy first which is
 17 Plaintiff's Exhibit 24. So Plaintiff's Exhibit 24 you can
 18 see the proxy is signed by Allen E. Langdon.
 19 A. Correct.
 20 Q. Do you see that?
 21 And on Plaintiff's Exhibit 25, do you see that
 22 the property was deeded to Gregory Langdon as to an
 23 undivided one-half interest and Allen E. Langdon and
 24 Marsha A. Langdon, husband and wife, as to an undivided
 25 one-half interest?

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1 A. Yes.
 2 Q. So you would agree that Allen E. Langdon was an
 3 owner of that property at the time the proxy was cast,
 4 correct?
 5 A. It looks like there were three owners.
 6 Q. And Mr. Allen E. Langdon was one of them?
 7 A. One of three, yes.
 8 Q. Okay. And do you have any personal knowledge as
 9 to whether Allen E. Langdon had authority to execute that
 10 proxy on behalf of the unit?
 11 A. No.
 12 Q. Okay. You were also asked questions -- I
 13 apologize.
 14 A. It's okay.
 15 Q. You were asked questions about the Walter proxy
 16 which is Plaintiff's Exhibit 26. Do you see that?
 17 A. Okay.
 18 Q. Do you see that?
 19 A. Yes.
 20 Q. And you see it's executed by Kenneth E. Walter,
 21 Jr.?
 22 A. Yes.
 23 Q. Okay. And if you go to the deeds which is
 24 Plaintiff's Exhibit 27, is Kenneth E. Walter, Jr. one of
 25 the owners of that unit?

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1 A. You're going to have to point that out which
 2 shows the ownership.
 3 Q. Sure. Do you see it's between Barclays as
 4 grantor and Kenneth E. Walter, Jr., a married person, and
 5 Robert D. Walter, a married person, and Kenneth E. Walter,
 6 Sr., a married person, as grantee?
 7 A. Yes.
 8 Q. So Kenneth E. Walter, Jr., was one of the owners
 9 of this unit, correct?
 10 A. One of three.
 11 Q. Okay. And do you have any personal knowledge as
 12 to whether Kenneth E. Walter, Jr., had authority to
 13 execute the proxy that we looked at as Plaintiff Exhibit
 14 26 on behalf of the unit?
 15 A. I do not.
 16 Q. Okay. Then you were also shown the unit that's
 17 owned by Paul Wickberg and Kathleen Pitra.
 18 Do you recall that?
 19 A. Yes.
 20 Q. And it was -- the proxy is at Plaintiff's Exhibit
 21 29. Do you see that that proxy is executed by Paul
 22 Wickberg?
 23 A. Yes.
 24 Q. And Paul Wickberg was one of the owners of this
 25 unit at that time; is that correct?

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1 I'll take you back to Plaintiff's Exhibit 28.
 2 Here are the deeds.
 3 A. It looks like there's a trustee.
 4 Q. Well, it's deeded from Nicholas G. Carey
 5 individually, and as trustee of the Nicholas G. Carey
 6 revocable trust, to Paul Wickberg, a single man, and
 7 Kathleen Pitra, a single woman.
 8 Do you see that?
 9 A. Yes.
 10 Q. So as of the date of the proxy, Paul Wickberg was
 11 one of the owners of this unit, correct?
 12 A. Yes.
 13 Q. And do you have any personal knowledge regarding
 14 whether Mr. Wickberg had authority to execute that proxy
 15 on behalf of that unit?
 16 A. I do not.
 17 Q. Okay. I want to show you -- let me just get this
 18 out of your way so we're not getting it mixed up.
 19 You were asked questions regarding Exhibit 14,
 20 the Declarant Amendment, by Mr. Seidensticker.
 21 Do you recall that?
 22 A. Yes.
 23 Q. Okay. And bear with me. I'm just pulling it up
 24 on my computer.
 25 You were asked questions about whether Aircraft

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1 had the right to withdraw property from The Club at La
 2 Pen.
 3 Do you recall the questioning?
 4 A. Yes.
 5 Q. Do you have any knowledge as to whether Aircraft
 6 withdrew property from The Club at La Pen?
 7 A. No knowledge.
 8 Q. And --
 9 A. But they had the option to.
 10 Q. Okay. But you don't have knowledge as to whether
 11 they did that or not, correct?
 12 A. No. That was back in 2013.
 13 Q. And let me show you what was marked as
 14 Defendant's Exhibit 13, and I want to take you to Section
 15 11.3.
 16 This is the original declaration for The Club at
 17 La Peninsula, correct, which I believe you testified you
 18 hadn't seen until today?
 19 A. Yeah, Declaration of Covenants, Conditions and
 20 Restrictions.
 21 Q. And you had never seen this document prior to
 22 today?
 23 A. I had not seen all of it. That's correct.
 24 Q. And you see under 11.3 it says Amendment by
 25 Declarant: Not withstanding anything herein to the

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1 contrary, the declarant may amend this declaration for any
 2 purpose without the consent of the members so long as it
 3 owns any property or units in La Peninsula and provided
 4 such amendment doesn't materially and adversely affect the
 5 plan of development for La Peninsula.
 6 Do you see that?
 7 A. I see it.
 8 Q. So you would agree that the declarant could only
 9 amend the declaration so long as it owned any property or
 10 units within La Peninsula, correct?
 11 A. Well, correct me if I'm wrong, but is this saying
 12 that you own -- that someone -- that anybody owns a unit
 13 in La Peninsula?
 14 Q. Well, doesn't this say that the declarant must
 15 own any property or units in La Peninsula?
 16 A. Oh, I missed it. Okay.
 17 I don't know about Aircraft, but the Mitchells
 18 have never owned a unit within La Peninsula.
 19 Q. So you would not have the right then to
 20 unilaterally amend because you don't own any property or
 21 units in La Peninsula, correct?
 22 MR. SEIDENSTICKER: Objection. Form.
 23 BY MR. TRAFICANTE:
 24 Q. You can answer.
 25 A. I'd seek legal advice on that. I don't know.

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1 Q. You don't know one way or the other?

2 A. Yeah.

3 Q. Well, the language here says that the declarant

4 may amend this declaration for any purpose without the

5 consent of the members so long as it owns any property or

6 units in La Peninsula.

7 Do you see that?

8 A. I do.

9 Q. So you would agree that as long as the declarant

10 owns property or units in La Peninsula it can amend the

11 declaration without the consent of the members, correct?

12 A. That's what this says, yes.

13 Q. Okay. So if the declarant doesn't own property

14 or units in La Peninsula, it wouldn't be able to amend the

15 declaration without the consent of the members, correct?

16 A. Well, that's what it says. But I don't agree.

17 Q. Why don't you agree with it?

18 A. Because I would never own a unit in La Peninsula.

19 Q. Understood.

20 But that's what this document says, correct?

21 A. Okay.

22 Q. Is that what this says?

23 A. That's what we're reading, yes.

24 Q. And it also says, there's a second condition for

25 this that provided the amendment also doesn't materially

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1 and adversely affect the plan of development for La

2 Peninsula.

3 Do you see that?

4 A. Yes.

5 Q. Okay. And, again, you don't own any units or

6 property within La Peninsula; is that correct?

7 MR. SEIDENSTICKER: Objection to form.

8 BY MR. TRAFICANTE:

9 Q. You can answer.

10 A. No.

11 Q. Okay. I'm just going to get this one out of your

12 way so we don't get it mixed up.

13 And I just want to ask you, you were asked

14 questions about what was previously marked as Defendant's

15 Exhibit 15 which is the 2013 Memorandum of Settlement.

16 Do you recall that?

17 A. Yes.

18 Q. And in this you were asked questions about

19 paragraph 4(C); is that correct?

20 A. Yes.

21 Q. You have no personal knowledge regarding this

22 memorandum; is that correct? You weren't involved in the

23 negotiation of it?

24 A. No. This was dated March 14th, 2013.

25 Q. And you weren't involved in the execution of it?

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1 A. No.

2 Q. Okay. So you don't know whether the people who

3 executed it had authority to do it?

4 A. No.

5 Q. Okay. And under paragraph 4(C), you were asked

6 questions by Mr. Seidensticker. Paragraph 4(C) says that

7 The Club agrees to recognize the rights of the owner of

8 the development parcel as declarant.

9 Do you see that?

10 A. Yes.

11 Q. And that would be as to the subject parcel,

12 correct? Is that how you understand it?

13 A. Yes.

14 Q. Okay. Not as to The Club property?

15 A. Correct.

16 Q. Because you don't -- you've testified you don't

17 control The Club property; is that correct?

18 A. That's correct.

19 Q. Okay. And then you were also asked questions

20 about Plaintiff's Exhibit 37. This is the Notice of

21 Invalidity that you and your husband recorded?

22 A. Yes.

23 Q. Who prepared this document?

24 A. Well, I'm going to guess my attorney.

25 Q. Do you know as you sit here today?

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1 A. Oh, it was notarized by Grace. So that's William

2 Morris. Grace, that's his notary.

3 Q. Okay. So you believe this was prepared by

4 William Morris on your behalf?

5 A. I'm guessing so because that's his personal

6 notary who works for him.

7 Q. But do you know as you sit here today?

8 A. Yes.

9 Q. Okay.

10 A. I'm confident.

11 Q. Just wanted to make sure.

12 If you look on page 1 of Plaintiff's Exhibit 37,

13 you were asked questions by Mr. Seidensticker about the --

14 about this document. And there's an indentation you see

15 under the fourth whereas clause? It talks about a new

16 Section 11.12?

17 A. Okay.

18 Q. Do you see that Amendments to Declaration?

19 A. You're talking right here?

20 Q. Yeah, the single-spaced, indented quote portion

21 of it?

22 A. Okay.

23 Q. Do you see that?

24 A. Uh-huh.

25 Q. And does that also say that the declarant --

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1 let's just read it. It says: Notwithstanding anything to
 2 the contrary herein contained, no amendment of this
 3 declaration shall be effective which shall impair or
 4 prejudice the rights or priorities of declarant under the
 5 declaration, the organizational documents of the
 6 association and/or any rules and regulations promulgated
 7 thereunder, without the specific written approval of
 8 declarant, so long as declarant owns any property or units
 9 subject to the declaration.

10 Q. Do you see that?

11 A. Yes.

12 Q. And, again, it requires that so long as declarant
 13 owns any property or units subject to the declaration; is
 14 that correct?

15 A. Yes.

16 Q. What did the 2015 amendment, what rights --
 17 strike that.

18 How did the 2015 declaration amendment to The
 19 Club's declaration impair or prejudice the rights or
 20 priorities of the declarant?

21 A. My recall is that that was a bogus 2015 vote and
 22 that at any time the Mitchells could withdraw or build 37
 23 units and join.

24 Q. So the same reasoning that you testified
 25 previously?

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1 A. Yes.

2 Q. And are you governed by the rules and regulations
 3 of The Club --

4 A. No.

5 Q. -- Mrs. Mitchell?

6 Is the subject parcel governed by the rules and
 7 regulations of The Club?

8 A. No.

9 Q. Okay. If you go to the second page, you were
 10 asked questions by Mr. Seidensticker as to the first
 11 whereas clause.

12 Do you recall that?

13 A. Which paragraph?

14 Q. The first --

15 A. Whereas?

16 Q. Yes, the first whereas clause.

17 And (A) says: Section 2.2 which reserved to
 18 declarant right to change development plan, add to,
 19 subtract from or made changes to the site plan.

20 Do you see that?

21 A. Yes.

22 Q. And you would agree we just looked at the
 23 language, and the declarant only had that right to amend
 24 the declaration so long as they owned property or units
 25 within La Pen, correct?

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1 A. Yes.

2 Q. Okay. And then Section 6.3, reserving to
 3 declarant a perpetual easement, do you see that?

4 A. Yes.

5 Q. What perpetual easement was provided to the
 6 declarant?

7 A. I have no idea.

8 Q. You don't know as you sit here today?

9 A. (Witness shakes head.)

10 Q. So you don't know whether you still have those
 11 easement rights or not?

12 A. I just know that we have 16 easements.

13 Q. And they're still all in existence, correct?

14 A. Correct.

15 Q. Okay. And then (C) says, Section 11.3, which we
 16 just looked at in the original declaration, granting to
 17 declarant the unilateral right to amend the declaration
 18 and, Section 9.2, exempting declarant from architectural
 19 review or control by The Club.

20 You would agree your property, the subject
 21 parcel, is exempt from architectural review or control by
 22 The Club, correct?

23 A. Yes.

24 Q. And The Club hasn't tried to exercise
 25 architectural review or control over the subject parcel,

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1 have they?

2 MR. SEIDENSTICKER: Objection. Form.

3 THE WITNESS: I think they actually have
 4 regarding the tennis courts architectural plans.

5 BY MR. TRAFICANTE:

6 Q. How? How have they --

7 A. Well, you had asked earlier have I provided to
 8 them. I said no. So they obviously were asking for them.
 9 On more than one occasion you asked me that today.

10 Q. Correct. And Mr. Morris's letters all said you
 11 were going to provide them with engineering, surveying and
 12 the plans, correct?

13 A. The survey's been done three times. The
 14 Mitchells have paid for surveys three times. They keep
 15 pulling out the posts. And we have more than one -- we
 16 have Weber Design Group and we have -- not Mor-Sports but
 17 one of the other sporting companies that have drawn out
 18 the plans for the new tennis courts.

19 Q. Have any of those been provided to The Club?

20 A. No.

21 Q. And the letters from Mr. Morris --

22 A. But you're saying here that have they ever asked.

23 Q. Well, let me ask the question and I will try to
 24 clarify. The letters from Mr. Morris said that the
 25 Mitchells will be coordinating engineering, surveying and

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1 permitting; they will contact you as the tennis court
 2 progress.
 3 Do you recall that?
 4 A. Yes. Within the 18 months that we have to
 5 rebuild the tennis courts.
 6 Q. Right.
 7 A. I agree.
 8 Q. So my question was has The Club ever attempted to
 9 exercise architectural review or control over the subject
 10 parcel?
 11 A. I believe they have.
 12 Q. And how have they done that?
 13 A. With asking -- just asking the question.
 14 Q. So just asking for the architectural plans for
 15 the relocation of the tennis court?
 16 A. Right.
 17 Q. Okay.
 18 A. I mean, we have to meet code. We're going to
 19 follow the code. We're going to rebuild the four tennis
 20 courts according to the agreement, 18 months, four tennis
 21 courts, one drinking fountain, one shade and lights at
 22 night.
 23 Q. And --
 24 A. And four tennis courts.
 25 Q. So my question is, again, other than asking for

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1 the architectural plans, how has The Club attempted to
 2 exercise architectural review or control over the subject
 3 parcel?
 4 A. That's the only thing that comes to mind.
 5 Q. Do you think it's unreasonable for The Club to
 6 ask for the architectural plans?
 7 A. No. But I don't think that they have the -- as
 8 long as I follow county code, they don't have the right to
 9 take away or add to.
 10 Q. Have they tried to do that?
 11 A. No.
 12 Q. You were also asked in the next whereas clause --
 13 and we went over it before, but I want to make sure the
 14 record's correct -- you have no personal knowledge as to
 15 whether Aircraft ever provided any approval for the 2015
 16 amendment, correct?
 17 A. Ask me that again.
 18 Q. Yes. Do you have any personal knowledge as to
 19 whether Aircraft provided approval of the 2015 amendment
 20 to The Club's declaration?
 21 A. Just from what I have read.
 22 Q. What have you read?
 23 A. Just in the documents today that we have talked
 24 about. Aircraft stood their ground that they either were
 25 going to build 37 units or they were going to withdraw.

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1 Q. So that's the 2013 Memorandum of Settlement,
 2 correct?
 3 A. Yes.
 4 Q. I'm talking about the 2015 amendment to The
 5 Club's declaration. Do you have any personal knowledge as
 6 to whether Aircraft provided approval of that 2015
 7 amendment?
 8 A. Did Aircraft own it in 2015?
 9 Q. I can't answer questions but --
 10 A. Oh.
 11 Q. Well, Aircraft owned the subject parcel --
 12 A. I'm just going to tell you I don't know.
 13 Q. Okay. And Aircraft owned the subject
 14 parcel until you bought it --
 15 A. Right.
 16 Q. -- from them in 2017, correct?
 17 A. Okay.
 18 Q. Is that right?
 19 A. That's -- yeah. Yes.
 20 Q. And you were asked questions about Number 3. You
 21 don't believe that you have the right to control The Club,
 22 correct?
 23 MR. SEIDENSTICKER: Objection. Form.
 24 THE WITNESS: We do not want anything to do with
 25 The Club, control it, go to their meetings, want

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1 nothing.
 2 BY MR. TRAFICANTE:
 3 Q. So are you attempting to invalidate the 2015
 4 amended declaration in its entirety?
 5 A. What I'm trying to do since day one has always
 6 been is continue with Aircraft's decision to either build
 7 37 units which we're happy to do or we'll withdraw.
 8 Q. But you would agree that in this lawsuit you are
 9 trying to void the 2015 amended declaration of The Club in
 10 its entirety, correct?
 11 A. Yes.
 12 MR. TRAFICANTE: No further questions.
 13 MR. SEIDENSTICKER: Do you have more, David?
 14 MR. BOYETTE: I don't have any questions. But
 15 the very last question I was going to object to form,
 16 but the answer was really fast. So I'm just going to
 17 state for the record that I object to the form of the
 18 last question.
 19 MR. TRAFICANTE: No problem, David.
 20 MR. BOYETTE: All right.
 21 - - -
 22 RECROSS-EXAMINATION
 23 BY MR. SEIDENSTICKER:
 24 Q. I have a couple follow-up. Can we get Exhibit
 25 12, Defendant's Exhibit 12, Defendant's Exhibit 10? I

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1 will get to those in a minute, but a couple follow-up
 2 questions.
 3 Q. You testified a few minutes ago that you had
 4 problems with The Club pulling up the posts. Did I
 5 understand you to mean survey stakes?
 6 A. Yes.
 7 Q. Okay. Were the survey stakes in furtherance of
 8 your efforts either individually while you and Donnie
 9 owned the property or while Dolphin Point owned the -- or
 10 since you have conveyed it to -- since you have conveyed
 11 the subject property to your LLC, Dolphin Point, in
 12 furtherance of your efforts to do the engineering and
 13 development of that property?
 14 A. We've actually done three surveys. The first two
 15 they pulled the posts out because I had to -- after it was
 16 -- the survey posts came in, they were just little pieces
 17 of wood with little plastic -- pink plastic flags. By the
 18 third time it came around, we went to steel posts. And we
 19 had to put those in the ground because they kept pulling
 20 them out. So when I had people coming to look at it to
 21 develop it, to buy it, to whatnot, I couldn't even show
 22 them where the property grounds were because they kept
 23 pulling our posts out.
 24 Q. And is it your contention that the reason that
 25 they were pulling out the posts were to frustrate or

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1 impede your ability to develop the property?
 2 MR. TRAFICANTE: Object to form.
 3 THE WITNESS: Absolutely.
 4 BY MR. SEIDENSTICKER:
 5 Q. Okay. And does that stem back to the time that
 6 you purchased the property when they missed out on the
 7 opportunity to purchase the property?
 8 A. Yes.
 9 MR. TRAFICANTE: Object to form.
 10 BY MR. SEIDENSTICKER:
 11 Q. When you purchased the property, when you and
 12 your husband purchased the property -- I believe you were
 13 asked earlier about Exhibit 10 -- is Exhibit 10 the
 14 Assignment and Assumption of Development Rights, Permits,
 15 Contracts, Declarant Rights and Other Intangible Rights
 16 that you received from Aircraft in connection with the
 17 subject property?
 18 A. Yes.
 19 Q. And do you have any reason to believe that
 20 Aircraft didn't have full authority to convey those rights
 21 to you and your husband at the time?
 22 A. No.
 23 Q. And, subsequently, if we look at Exhibit 12, did
 24 you and your husband then assign those same declarant
 25 development rights to the LLC that you and he owned,

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1 Dolphin Point?
 2 A. Yes.
 3 Q. And that's reflected in Exhibit 12, also a
 4 recorded document?
 5 A. Yes.
 6 Q. All right. So to the extent -- or is it your
 7 understanding that The Club has filed a counterclaim
 8 against you in this lawsuit?
 9 A. Yes.
 10 Q. Is it also your understanding that the
 11 counterclaim that they have filed under which they have
 12 filed contends that just by virtue of ownership of the
 13 subject parcel that you or now Dolphin Point should have
 14 to pay assessments?
 15 A. That's what they're claiming.
 16 Q. Okay. You disagree with that contention,
 17 correct?
 18 A. I do.
 19 Q. Have you ever owned a unit in La Peninsula?
 20 A. No way.
 21 Q. Okay. To the extent that the subject parcel is
 22 located within what was originally the site plan
 23 development for the condominium, is it your contention
 24 that you have the right to withdraw the property through
 25 the proper submissions to the county?

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1 A. Absolutely.
 2 MR. TRAFICANTE: Object to form.
 3 BY MR. SEIDENSTICKER:
 4 Q. So is it your contention pursuant to the
 5 settlement agreement, Memorandum of Settlement that was
 6 marked as Exhibit 15, that you have the option of either
 7 constructing up to 37 -- a 37-unit condominium on the
 8 development parcel that would be a part of the La
 9 Peninsula?
 10 A. Yes.
 11 Q. Okay. Is it also your contention that the other
 12 alternative that you have with regard to the development
 13 of the property is consistent with the declarant amendment
 14 that was executed and recorded by Aircraft that we have
 15 marked as Defendant's Exhibit 14?
 16 MR. TRAFICANTE: And I am going to object to form
 17 to the last two questions. I am just going to get in.
 18 You can answer, though.
 19 THE WITNESS: Yes.
 20 BY MR. SEIDENSTICKER:
 21 Q. And, in fact, under the Memorandum of Settlement
 22 that was marked as Exhibit 15 under 4(C), the Plaintiff in
 23 that lawsuit, The Club at La Peninsula, expressly entered
 24 into a settlement agreement agreeing to recognize the
 25 rights of the owner of the development parcel as a

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1 declarant, didn't they?
 2 A. Yes.
 3 MR. TRAFICANTE: Object to form.
 4 BY MR. SEIDENSTICKER:
 5 Q. And that's the same declarant rights that you
 6 received from Aircraft, correct?
 7 A. Yes.
 8 MR. TRAFICANTE: Same objection.
 9 BY MR. SEIDENSTICKER:
 10 Q. And the same declarant rights that you then
 11 assigned to --
 12 A. Dolphin Point.
 13 Q. -- Dolphin Point, LLC?
 14 A. Yes.
 15 MR. TRAFICANTE: Same objection.
 16 MR. SEIDENSTICKER: What's the basis?
 17 MR. TRAFICANTE: You are asking her for a legal
 18 conclusion.
 19 MR. SEIDENSTICKER: Okay.
 20 MR. TRAFICANTE: And it's asked and answered
 21 but...
 22 BY MR. SEIDENSTICKER:
 23 Q. Okay. What is Donnie's age currently?
 24 A. 76.
 25 Q. I hate to ask this question too. What is your

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1 age?
 2 A. 65. I will be 66 next month.
 3 Q. Okay.
 4 A. There's 11 years between us.
 5 MR. SEIDENSTICKER: All right. That's all I have
 6 right now.
 7 - - -
 8 FURTHER REDIRECT EXAMINATION
 9 BY MR. TRAFICANTE:
 10 Q. You were asked questions about the survey stakes.
 11 Do you know who pulled up the survey stakes?
 12 A. No. My guess would be either the management
 13 company and/or some hostile tennis players.
 14 Q. But, again, you have no personal knowledge? You
 15 didn't see anyone?
 16 A. They just disappeared.
 17 Q. Okay. And you were asked questions about
 18 withdrawing your property from The Club through
 19 submissions to the county. Have you made any such
 20 submissions?
 21 A. Not yet.
 22 Q. But you don't believe the subject parcel is part
 23 of The Club, correct?
 24 A. Yes. From day one we never thought we were. But
 25 it doesn't mean that we won't build 37 units.

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*1 MR. TRAFICANTE: No further questions.
 2 MR. BOYETTE: I don't have anything.
 3 THE VIDEOGRAPHER: We're going --
 4 MR. TRAFICANTE: Well, let's get on the record,
 5 though --
 6 THE COURT REPORTER: Does she want to read or
 7 waive?
 8 MR. TRAFICANTE: -- if she's going to read.
 9 MR. SEIDENSTICKER: She's reserving --
 10 MR. BOYETTE: She'll read.
 11 MR. TRAFICANTE: And we are going to order. We
 12 would order on an expedited basis.
 13 THE COURT REPORTER: Okay. Do you want a copy?
 14 THE WITNESS: What did she put on the record,
 15 that I can read?
 16 MR. SEIDENSTICKER: Ask Mr. Boyette.
 17 THE COURT REPORTER: Mr. Boyette, do you want a
 18 copy?
 19 MR. BOYETTE: I want to confirm for the record
 20 that Ms. Mitchell will read and that I am ordering a
 21 copy.
 22 THE COURT REPORTER: Thank you.
 23 MR. BOYETTE: We'll explain -- Kim, we'll explain
 24 reading and waiving when we're done. Okay? So don't
 25 worry about it.

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1 THE WITNESS: Okay. Thank you.
 2 MR. TRAFICANTE: And we'll also order a copy of
 3 the video.
 4 MR. BOYETTE: It's your right to read the
 5 transcript.
 6 THE VIDEOGRAPHER: We're going off the record at
 7 2:08 p.m.
 8 (Deposition concluded at 2:08 p.m.)
 9
 10
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Page 250

1 CERTIFICATE OF OATH

2

3 STATE OF FLORIDA)

4 COUNTY OF LEE)

5

6 I, the undersigned authority, certify that

7 KIMBERLY MITCHELL personally appeared before me and was

8 duly sworn.

9

10 WITNESS my hand and official seal this 16th day

11 of January, 2023.

12

13 Susan C. Baker

14 Susan C. Baker

15 Notary Public - State of Florida

16 My Commission No.: HH 105160

17 Expires: March 16, 2025

18

19

20

21

22

23

24

25

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1 RE: KIMBERLY MITCHELL, ET AL. V. THE CLUB AT LA PENINSULA

2 DEPO OF: KIMBERLY MITCHELL

3 TAKEN: JANUARY 11, 2023

4

5 EXCEPT FOR ANY CORRECTIONS

6 MADE ON THE ERRATA SHEET BY

7 ME, I CERTIFY THIS IS A TRUE

8 AND ACCURATE TRANSCRIPT.

9 FURTHER DEPONENT SAITH NOT.

10

11 _____

12 KIMBERLY MITCHELL

13

14 STATE OF FLORIDA)

15) SS:

16 COUNTY OF COLLIER)

17

18 Sworn and subscribed to before me this _____ day of

19 _____, 2023.

20 PERSONALLY KNOWN _____ or D.D. _____

21

22 _____

23 Notary Public in and for the

24 State of Florida at Large.

25

My commission expires:

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1 REPORTER'S DEPOSITION CERTIFICATE

2

3 STATE OF FLORIDA)

4 COUNTY OF LEE)

5

6 I, Susan C. Baker, Certified Realtime Reporter,

7 Registered Merit Reporter, and Notary Public in and for

8 the State of Florida at Large, certify that I was

9 authorized to and did stenographically report the

10 deposition of KIMBERLY MITCHELL, that a review of the

11 transcript was requested, and that the transcript is a

12 true and complete record of my stencographic notes.

13

14 I further certify that I am not a relative,

15 employee, attorney, or counsel of any of the parties; nor

16 am I a relative or employee of any of the parties'

17 attorney or counsel connected with the action; nor am I

18 financially interested in the action.

19

20 DATED this 16th day of January, 2023.

21

22 Susan C. Baker

23 Susan C. Baker, RMR, CRR

24

25

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1 E R R A T A S H E E T

2 RE: KIMBERLY MITCHELL, ET AL. V. THE CLUB AT LA PENINSULA

3 DO NOT WRITE ON TRANSCRIPT -- ENTER CHANGES HERE:

Page #	Line #	Change	Reason
4	/	/	/
5	/	/	/
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22 Under penalties of perjury, I declare that I have read

23 my deposition held JANUARY 11, 2023, and that it is true

24 and correct subject to any changes in form or substance

entered here.

KIMBERLY MITCHELL DATE

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR COLLIER COUNTY, FLORIDA
CIVIL ACTION

KIMBERLY ANN SCHNELL MITCHELL
and DONNIE GENE MITCHELL, and
DOLPHIN POINT, LLC, a Florida limited
liability company,

Plaintiff,

vs.

CASE NO. 2019-CA-3254

THE CLUB AT LA PENINSULA, INC., a
Florida corporation,

Defendant.

**AMENDED NOTICE OF TAKING VIDEOTAPED DEPOSITION OF KIMBERLY
MITCHELL, INDIVIDUALLY, AND AS CORPORATE REPRESENTATIVE OF
DOLPHIN POINT, LLC**

(As to the year of the deposition date only)

PLEASE TAKE NOTICE that the undersigned counsel will take the videotaped deposition of Plaintiff, Kimberly Mitchell, individually and as Corporate Representative of Dolphin Point, LLC pursuant to *Florida Rule of Civil Procedure* 1.310(b)(6), and that such deposition will commence on the following date at the following time and location:

DATE: January 11th, 2023

TIME: 9:00 a.m.

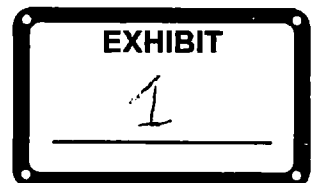
LOCATION: Seidensticker & San Filippo, LLC

791 10th Street South, Suite 202

Naples, FL 34102

The matters upon which examination will be taken include the following:

1. All communications between Plaintiffs and Aircraft Investment LLC.
2. The ownership of the "Subject Parcel", as such term is defined in Plaintiffs'



Amended Complaint, and its inclusion within The Club at La Peninsula.

3. Prior assignments of alleged "Declarant" rights under the Declaration of Covenants, Conditions and Restrictions of La Peninsula dated August 15, 1986, as amended (the "Declaration"), including, but not limited to, to Plaintiffs.
4. All contracts and assignments between Plaintiffs and Aircraft Investment LLC.
5. All claims made by Plaintiffs against any title company since their purchase of the "Subject Parcel", including all correspondence and communications between Plaintiffs and the title company.
6. The rights and obligations of the parties under the Declaration.
7. Turnover or transfer of control of The Club at La Peninsula, Inc. (the "Club") from the "developer" or "declarant" to the members thereof.
8. The rights and obligations of the parties under the March 14, 2013 Settlement Agreement in Case No. 2012-CA-1775.
9. The rights and obligations of the parties under the Tennis Court Easement and Covenants dated May 8, 2013, as recorded at OR Book 4929, Page 3536, Public Records of Collier County, Florida.
10. The passage of the February 14, 2013 "Declarant Amendment to the La Peninsula Declaration", as recorded at OR Book 4886, Page 1681, *et seq.*, Public Records of Collier County, Florida (the "Aircraft Amendment").
11. The rights and obligations of the parties under the Aircraft Amendment.
12. The passage of the "Amended and Restated Declaration of Covenants, Conditions and Restrictions of La Peninsula and Certificate of Amendment" on September 18,

2015, as recorded at OR Book 5195, Page 3784 *et seq.*, Public Records of Collier County, Florida (the "2015 Amended Declaration").

13. The rights and obligations of the parties under the 2015 Amended Declaration.
14. The "Notice of Invalidity of Amendments to Declaration of Covenants, Conditions and Restrictions of La Peninsula", as recorded by the Mitchells at OR Book 5480, Page 2325, Public Records of Collier County, Florida.
15. Written notices provided on November 21, 2017 and November 22, 2019 on behalf of the Mitchells as to the tennis court removal and relocation, as well as The Club's response thereto (including, but not limited to, that certain letter from prior counsel for the Club dated December 13, 2019).
16. All permitting and permitting applications filed by Plaintiffs as to the tennis court demolition and relocation, as well as to the development of the "Subject Parcel".
17. All communications between the Club and the Plaintiffs.
18. The facts and claims alleged in the Plaintiffs' Amended Complaint.
19. The facts and claims alleged in the Club's Second Amended Counterclaim.
20. The facts alleged in the affirmative defenses filed by the Plaintiffs in response to the Club's Second Amended Counterclaim.
21. The documents produced in discovery by the Plaintiffs and discovery responses provided by Plaintiffs in this lawsuit.

This videotaped deposition will continue day-to-day until completed unless otherwise agreed upon by counsel for the parties to this action. This deposition will be upon oral examination before Naples Court Reporting & Legal Services 2315 Stanford Ct, Suite 301, Naples, FL 34112, or before some other officer or Notary Public authorized by law to take such depositions, and will

be videotaped by an authorized representative of Naples Court Reporting & Legal Services.

The deposition is being taken for the purpose of discovery, for use at trial, or for such other purposes as are permitted under law.

Respectfully submitted,

GRANT FRIDKIN PEARSON, P.A.

BY: /s/ Michael T. Traficante

Jeffrey D. Fridkin
Florida Bar No. 0490245
Michael T. Traficante
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(239) 514-1000
(239) 514-0377 (fax)

Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, pursuant to Fla. R. Civ. P. 1.080 and Fla. R. Jud. Adm. 2.516,

a true and correct copy of the foregoing was sent via e-mail to:

Wayde P. Seidensticker, Jr., Esq.
Seidensticker & San Filippo, LLC
791 10th Street South, Suite 202
Naples, FL 34102
wps@sandslawoffices.com
wserve@sandslawoffices.com
psf@sandslawoffices.com
(239) 403-0611
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Counsel for Plaintiffs

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Sarasota, FL 34230
david.boyette@arlaw.com
helen.martin@arlaw.com
(941) 316-7600
(941) 316-7676 (fax)
Co-counsel for Plaintiffs

on this 22nd day of December, 2022.

/s/ Michael T. Traficante
Michael T. Traficante

2321295 OR: 2421 PG: 1073

RECORDED IN OFFICIAL RECORDS OF COLLIER COUNTY, FL
05/19/98 at 09:33AM DWIGHT H. BROCK, CLERK

COMB 3950000.00
REC FEE 19.50
DOC-.70 27650.00

Return To:

Kevin A. Deast, Esquire
Buckingham, Doolittle & Burroughs
5551 Ridgewood Drive
Suite 201
Naples, Florida 34108

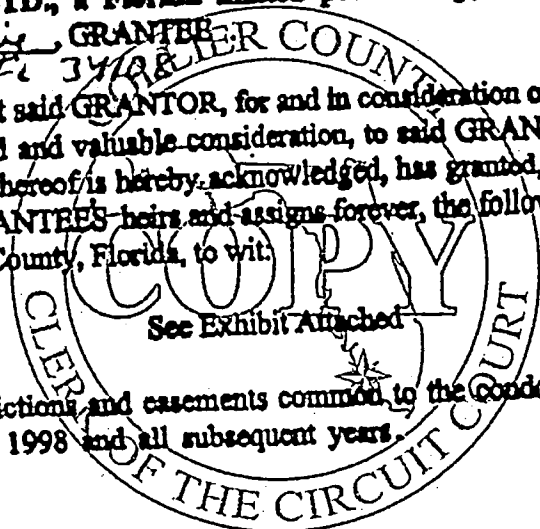
Re: ANNIS MITCHELL ET AL
PICK UP

Original IDN No. _____

WARRANTY DEED

THIS INDENTURE, made this 14th day of May, 1998 by and between ISLE OF CAPRI ASSOCIATES, INC., a Florida corporation, GRANTOR, and TWIN DOLPHINS EQUITY PARTNERS, LTD., a Florida limited partnership, whose post office address is 800 Laurel Oak Drive, Suite 600 Naples Fl 34108, GRANTEE

WITNESSETH, that said GRANTOR, for and in consideration of the sum of TEN (\$10.00) DOLLARS, and other good and valuable consideration, to said GRANTOR in hand paid by said GRANTEE, the receipt whereof is hereby acknowledged, has granted, bargained, and sold to the said GRANTEE, and GRANTEE'S heirs and assigns forever, the following described land situate, lying and being in Collier County, Florida, to wit:



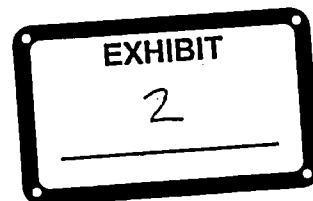
SUBJECT to restrictions and easements common to the condominium, real estate taxes for the year 1998 and all subsequent years.

TOGETHER with all the tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining.

GRANTOR does hereby fully warrant the title to said land and will defend the same against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, GRANTOR has hereunto set GRANTOR'S hand and seal the day and year first above written.

RECORD & RETURN TO:
ANNIS, MITCHELL, COOK, SPANGLER & ROBINSON
8889 Pelican Bay Blvd., Suite 200
Naples, Florida 34108



MITCHELL/DP-000249

Signed, sealed and delivered
in the presence of:

WITNESSES:

ISLE OF CAPRI ASSOCIATES, INC., a
Florida corporation

[Signature]

By: [Signature]

Witness #1

GEORGE W. HEATON, President
215 Fifth St., Suite 108
West Palm Beach, Florida 33401

Print Name/Address Below:

Dennis P. McGann
917 N. Florida St.
West Palm Beach FL 33401

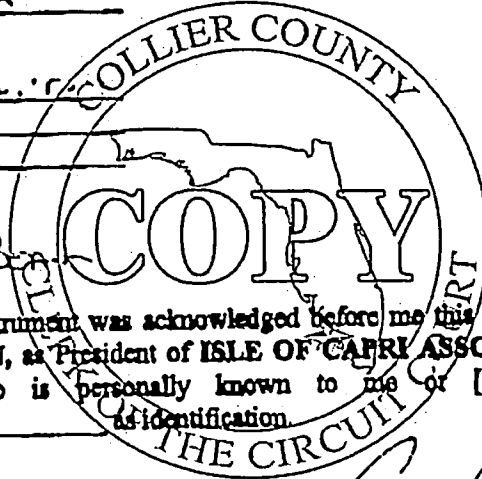
[Signature]

Witness #2

Print Name/Address Below:

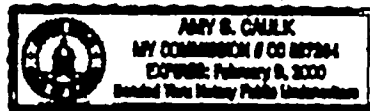
Deanna Pauline
215 5th St
W. Palm Beach

STATE OF FLORIDA
COUNTY OF Palm Beach



The foregoing instrument was acknowledged before me this 14th day of May, 1998 by
GEORGE W. HEATON, as President of ISLE OF CAPRI ASSOCIATES, INC., a Florida
corporation who is personally known to me or who has produced
identification.

[Signature]
NOTARY PUBLIC



Amy S. Calk
Typed or printed name of Notary
MY COMMISSION EXPIRES:

OR: 2421 PG: 1075

EXHIBIT "A-1"

PARCEL ONE

Being all the following described real property located and situated in Collier County, Florida, as more particularly described as follows:

From a point of beginning at the Northeast corner of said Section 6, Township 52 South, Range 26 East, Collier County, Florida, run South 1°11'25" West, along the East line of said Section 5, 261.67 feet to a point of beginning of a certain Bulkhead Line, as recorded in Bulkhead Plat Book 1, Page 8, of the Public Records of Collier County, Florida; thence run the following courses along the said Bulkhead Line; South 69°27'16" West for 743.57 feet; South 74°20'53" West for 900.00 feet to a point of curvature; run 496.98 feet along the arc of a curve, concave to the Northeast, have a radius of 185.00 feet and subtended by a chord having a bearing of North 28°41'32.5" West and a length of 360.46 feet to a point of tangency; thence North 48°16'02" East for 712.63 feet to the end of the Bulkhead Line; thence run South 88°48'27" East along the North line of said Section 6, 1209.85 feet to the point of beginning.

LESS AND EXCEPT THE FOLLOWING:

Beginning from the Northeast corner of Section 6, Township 52 South, Range 26 East, Collier County, Florida, run South 1°11'25" West, along the East line of said Section 6, for 30.0 feet to the point of beginning; thence continue to run South 1°11'25" West along said East line for 231.67 feet to a point of the Bulkhead Line as recorded in Bulkhead Line Plat Book 1, Page 8 Public Records of Collier County, Florida; thence run South 69°27'16" West, along said Bulkhead Line 300.52 feet; thence run North 20°32'44" West for 272.34 feet; thence run North 1°11'35" East for 90.0 feet to a point 30.0 feet South of the North line of said Section 6; thence run South 88°48'27" East along a line parallel with and 30.00 feet as measured at right angles from said North line of section 6 for 380.0 feet to the point of beginning, Collier County, Florida.

100 LA PENINSULA, A CONDOMINIUM, in accordance with and subject to the Declaration of Condominium of 100 La Peninsula, a Condominium, recorded in Official Records Book 1268, Pages 1553 thru 1621, inclusive, as amended by Amendment to Declaration of Condominium of 100 La Peninsula, a Condominium recorded in Official Records Book 1288, Pages 1569 thru 1571, inclusive, of the Public Records of Collier County, Florida.

MITCHELL/DP-000251

EXHIBIT "A-1" continued

200 LA PENINSULA, A CONDOMINIUM, in accordance with and subject to the Declaration of Condominium of 200 La Peninsula, a Condominium, recorded in Official Records Book 1309, Pages 1559 thru 1626, inclusive, as amended by Amendment to Declaration of Condominium of 200 La Peninsula a condominium recorded in Official Records Book 1340, Pages 1651 thru 1653-A, inclusive, of the Public Records of Collier County, Florida.

LA PENINSULA, A CONDOMINIUM, in accordance with and subject to the Declaration of Condominium of La Peninsula, a Condominium, recorded in Official Records Book 1213, Pages 786 thru 858, inclusive, of the Public Records of Collier County, Florida.

600 LA PENINSULA, A CONDOMINIUM, in accordance with and subject to the Declaration of Condominium of 600 La Peninsula a Condominium, recorded in Official Records Book 1337, Pages 1984 thru 2050, inclusive, as amended by Amendment to Declaration of Condominium of 600 La Peninsula, a Condominium recorded in Official Records Book 1360, Pages 733 thru 736, inclusive, of the Public Records of Collier County, Florida.

500 LA PENINSULA, A CONDOMINIUM, in accordance with and subject to the Declaration of Condominium of 500 La Peninsula, a Condominium, recorded in Official Records Book 1374, Page 1407, of the Public Records of Collier County, Florida.

400 LA PENINSULA, A CONDOMINIUM, in accordance with and subject to the Declaration of Condominium of 400 La Peninsula, a Condominium, recorded in Official Records Book 2140, Page 856, of the Public Records of Collier County, Florida.

3345398 OR: 3502 PG: 2276

RECORDED in OFFICIAL RECORDS of COLLIER COUNTY, FL
02/17/2004 at 03:17PM DWIGHT E. BROCK, CLERK

REC FEE 24.00
DOC-.70 .70

This Instrument Prepared
Without Opinion of Title By:
Carrie E. Lademan, Esquire
Woodward, Pires & Lombardo, P.A.
3200 Tamiami Trail North, Suite 200
Naples, Florida 34103
(239) 649-6555

Retn:
SEMOUCH MURRELL BY AL
800 LAUREL OAK DR #300
NAPLES FL 34108

L24

This Quit-Claim Deed, executed this 4th day of February, 2004, by TWIN DOLPHINS EQUITY PARTNERS, LTD., a Florida limited partnership, as first party, and The Club at La Peninsula, Inc., a Florida not-for-profit corporation, whose Post Office address is: c/o Robert Murrell, Esquire, at 800 Laurel Oak Drive, Suite 300, Naples, Florida 34108, as second party.

(Wherever used herein the terms "first party" and "second party" shall include singular and plural heirs, legal representatives, and assigns of individuals, and the successors and assigns of corporations, wherever the context so admits or requires.)

Witnesseth, That the said first party, for and in consideration of the sum of \$10.00, in hand paid by the said second party, the receipt whereof is hereby acknowledged, does hereby remise, release and quit-claim unto the said second party forever, all the right, title, interest, claim and demand which the said first party has in and to the following described lots, pieces or parcels of land, situate, lying and being in the County of Collier, State of Florida, to-wit:

See Exhibit "A" attached hereto and incorporated herein by reference

To Have and to Hold, the same together with all and singular the appurtenances thereto belonging or in anywise appertaining, and ~~all the estate right~~ title, interest, lien, equity and claim whatsoever of the said first party, either in law or equity, to the ~~wholly~~ proper use, benefit and behoof of the said second party forever.

The subject property is not the homestead of the first party.

In Witness Whereof, the said first party has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in the presence of:

C. Lademan
Print Name: Carrie Lademan

Mark J. Woodward
Print Name: Mark J. Woodward

TWIN DOLPHINS EQUITY PARTNERS, LTD., a Florida limited partnership

By S. Charles Bennett III, its general partner

S. Charles Bennett III, President

(CORPORATE SEAL)

STATE OF FLORIDA
COUNTY OF COLLIER

The foregoing instrument was acknowledged before this 4th day of February, 2004, by S. CHARLES BENNETT III, President of Equity IV Investments & Development, Inc., a Florida corporation, on behalf of said corporation, as sole general partner of Twin Dolphins Equity Partners, Ltd., a Florida limited partnership, on behalf of said partnership. He is personally known to me, or has produced a driver's license (# _____) as identification.

Mark J. Woodward
Print Name: Mark J. Woodward
Notary Public
Commission No. _____
My Commission Expires May 08, 2005

PREPARATION OF DEED ONLY WITHOUT OPINION OF TITLE

FAUSERS\CARRIE\REAL-EST\TwinDolphins QCD.wpd

MITCHELL/DP-000575

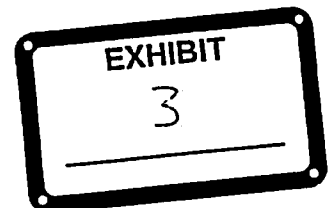


Exhibit "A"
Page 1 of 4

LEGAL DESCRIPTION

**THE CLUB AT LA PENINSULA
CLUBHOUSE and POOL AREA**

A parcel of land lying in Government Lot 1 in Section 6, Township 52 South, Range 26 East, Collier County, Florida, being more particularly described as follows:

Commencing at the Northeast Corner of said Section 6, Township 52 South, Range 26 East, Collier County, Florida, run N88°48'27"W along the North line of said Section 6 for 380.00 feet to the Northeast Corner of the parent parcel; thence continue N88°48'27"W for 638.62 feet; thence run S01°11'33"W for 197.88 feet to the Point of Beginning; thence run S63°02'39"W for 39.95 feet; thence run S01°25'47"W for 21.20 feet; thence run S60°31'10"E for 39.78 feet; thence run S88°43'13"E for 9.16 feet; thence run S01°27'45"W for 51.98 feet; thence run S43°04'22"E for 19.26 feet; thence run S88°25'38"E for 88.91 feet; thence run N46°52'32"E for 44.27 feet; thence run N01°21'16"E for 43.70 feet; thence run N48°51'43"W for 18.46 feet; thence run N89°32'03"W for 21.43 feet; thence run N00°27'57"E for 26.74 feet; thence run N75°35'07"W for 52.92 feet; thence run N88°34'13"W for 55.35 feet to the Point of Beginning, subject to easements, restrictions and reservations of record, containing 16295 square feet more or less.

Prepared by;

Carol E. Nelson, P.L.S.
Florida Reg. No. 5013
June 1, 1999

Exhibit "A"
Page 3 of 4

LEGAL DESCRIPTION

Being a Part of the Northeast Quarter of Section 6, Township 52 South, Range 26 East, Collier County, Florida, more particularly described as follows:

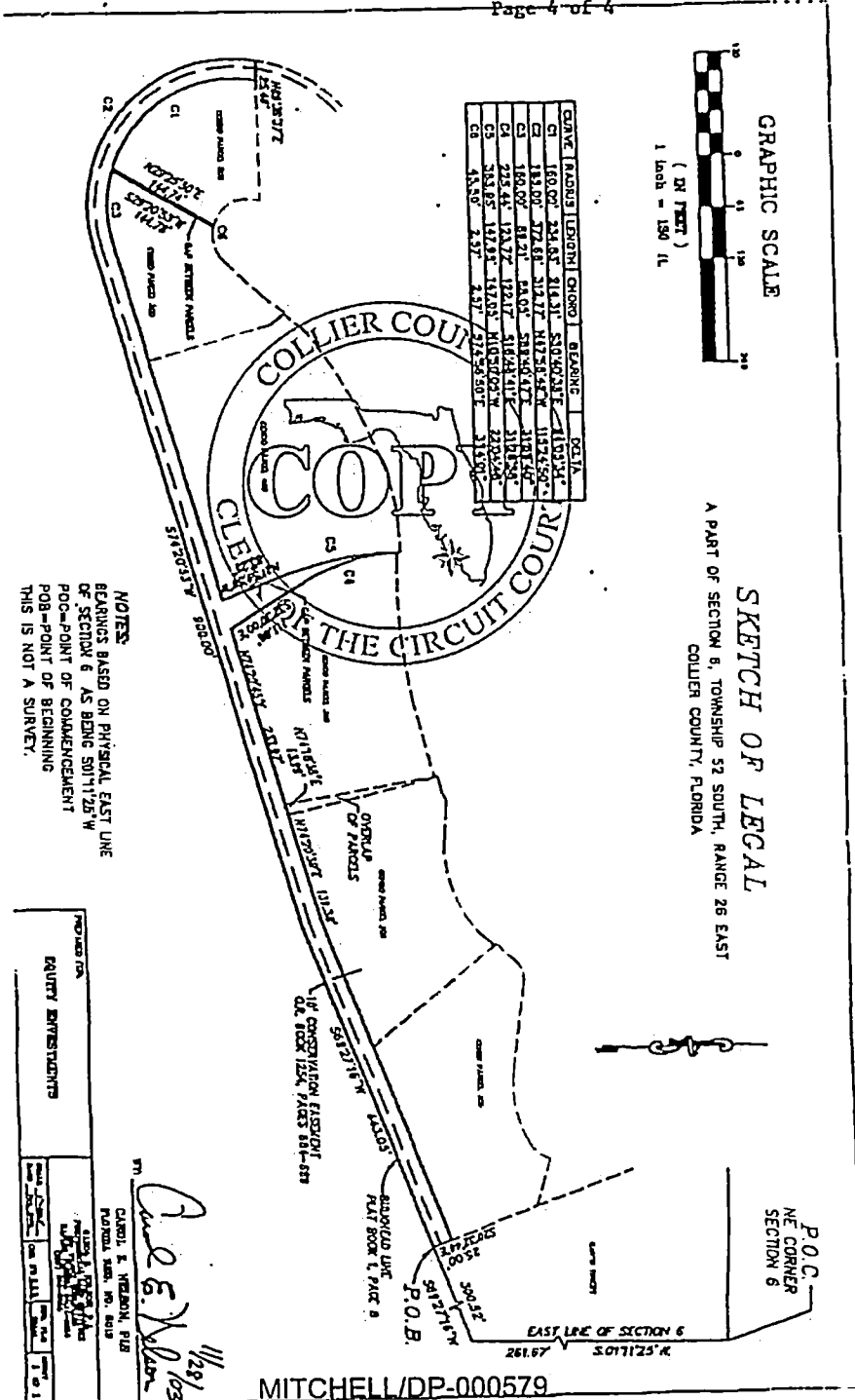
Commencing at the Northeast corner of Section 6, Township 52 South, Range 26 East, Collier County, Florida and run S01°10'25"W for 261.67 feet; thence run S69°27'16"W for 300.52 feet to the POINT OF BEGINNING; thence continue S69°27'16"W for 443.05 feet; thence run S74°20'53"W for 900.0 feet to a point of curvature of a curve concave to the Northeast; thence run 372.66 feet along the arc of said curve having a radius of 185.0 feet, a central angle of 115°24'50", a chord of 312.77 feet and a chord bearing of N47°56'42"W to a point of cusp of said curve; thence run N89°16'37"E for 25.46 feet to a point of cusp of curve concave to the Northeast; thence run 234.83 feet along the arc of said curve having a radius of 160.0 feet, a central angle of 84°05'34", a chord of 214.31 feet and a chord bearing of S30°40'38"E to a point of cusp of said curve; thence run N29°25'30"E for 184.74 feet to a point of cusp of a curve concave to the Northeast; thence run 257 feet along the arc of said curve having a radius of 45.50 feet, a central angle of 3°14'01", a chord of 2.57 feet and a chord bearing of S74°56'50"E to a point of cusp of said curve; thence run S29°26'53"W for 144.78 feet to a point of cusp of curve concave to the Northeast; thence run 89.21 feet along the arc of said curve having a radius of 160.0 feet, a central angle of 31°56'40", a chord of 88.05 feet and a chord bearing of S89°40'47"E to a point of tangency; thence run N74°20'53"E for 473.48 feet; thence run N21°59'58"W for 83.25 feet to a point of curvature of a curve concave to the Northeast; thence run 147.96 feet along the arc of said curve having a radius of 383.95 feet, a center angle of 22°04'48", a chord of 147.05 feet and a chord bearing of N10°50'05"W to a point of cusp of said curve; thence run S89°47'41"E for 0.14 feet to a point of cusp of curve concave to the Northeast; thence run 123.72 feet along the arc of said curve having a radius of 225.44 feet, a central angle of 31°26'38", a chord of 122.17 feet and a chord bearing of S16°46'41"E to a point of tangency; thence run S32°30'00"E for 111.88 feet; thence run N74°20'45"E for 233.97 feet; thence run N74°18'36"E for 13.99 feet; thence run N74°20'39"E for 139.38 feet; thence run N69°27'16"E for 441.98 feet; thence run S20°32'44"E for 25.0 feet; the Point of Beginning, subject to easements, restrictions and reservations of record, containing 46,395 square feet more or less.

Prepared by:

Carol E. Nelson

Carol E. Nelson, PLS
330 Wilson Boulevard
Naples, Florida 34117-9364
Date: Nov. 28, 2003

Exhibit "A"
Page 4 of 4



3987002 OR: 4197 PG: 0062

RECORDED in OFFICIAL RECORDS of COLLIER COUNTY, FL
03/14/2007 at 11:29AM DWIGHT B. BROCK, CLERK

CONS 12921786.00
REC FEE 35.50
DOC-.70 90452.60

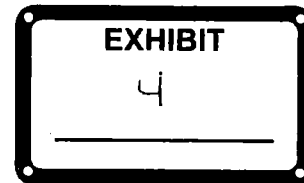
13

THIS INSTRUMENT PREPARED BY
AND AFTER RECORDING, RETURN TO:
Steven R. Parson, Esq.
Ruden, McClosky, Smith, Schuster & Russell, P.A.
222 Lakeview Avenue, Suite 800
West Palm Beach, FL 33401
(561) 838-4500

Retn:
RUDEN MCCLOSKY
222 LAKEVIEW AVE #800
WEST PALM BEACH FL 33401

Property Appraiser's Parcel

Identification Numbers: 01050000004; 78539000024;
78539000040; 78539000066;
78539000121; 78539000189;
78539000325; 78539000341;
78539000529; 78539000642



WARRANTY DEED

THIS WARRANTY DEED is made effective as of the 8th day of March, 2007, by TWIN DOLPHINS EQUITY PARTNERS, LTD., a Florida limited partnership, the address for which is 222 Lakeview Avenue, Suite 800, West Palm Beach, Florida 33401 ("Grantor"), in favor of AIRCRAFT INVESTMENT LLC, a Florida limited liability company, the address for which is 222 Lakeview Avenue, Suite 800, West Palm Beach, Florida 33401 ("Grantee").

WITNESSETH, that Grantor, for and in consideration of the sum of TEN DOLLARS (\$10.00) in hand paid by Grantee and other valuable considerations, the receipt and sufficiency of which are acknowledged, hereby grants, bargains and sells to Grantee and to Grantee's successors and assigns, forever, all of Grantor's rights, title and interest in and to the real property in the County of Collier, State of Florida, legally described in Exhibit "A" hereto, and all improvements and fixtures thereon (the "Property").

TOGETHER WITH all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

SUBJECT TO:

1. The mortgage, other collateral documents and instruments described on Exhibit "B" hereto (the "Security Documents");
2. Mortgage in favor of Wachovia Bank, National Association recorded in Official Records Book 2679, Page 3225, as amended, of the Public Records of Collier County, Florida; and
3. Conditions, limitations, restrictions, reservations, easements, and rights-of-way of record, if any; provided, however, that nothing contained herein shall operate to reimpose any of the foregoing; taxes for the year 2006 and subsequent years; and applicable zoning ordinances.

TO HAVE AND TO HOLD, the same in fee simple forever.

This Deed is an absolute conveyance of the Property, in form as well as substance, from Grantor to Grantee and is not intended as additional security for any sums secured by the Security Documents, or for any other sums whatsoever. It is the intent of Grantor and Grantee that (i) the lien, operation, effect

WPB:279068:2

and dignity of the Security Documents to which this conveyance is expressly made subject shall remain unimpaired and unaffected by the conveyance herein to Grantee, and (ii) there shall be no merger of the fee title conveyed hereby with any interest of the Grantee or any other party under any of the Security Documents.

AND GRANTOR covenants that except as noted above, the Property is free from all encumbrances made by Grantor, and that Grantor will warrant and defend the Property hereby conveyed against the lawful claims and demands of all persons whomsoever.

WITNESSES:

GRANTOR:

TWIN DOLPHINS EQUITY PARTNERS, LTD.,
a Florida limited partnership

By: **TWIN DOLPHINS ENTERPRISES LLC,**
a Florida limited liability company,
its sole general partner

By: _____
James H. Kabcenell, Manager

[Handwritten Signature]
Name: DOLPHIN COSY
[Handwritten Signature]
Name: Robert B. Clark

STATE OF FLORIDA)
) SS:
COUNTY OF COLLIER)

The foregoing instrument was acknowledged before me this 8th day of March, 2007, by JAMES H. KABCENELL, as Manager of TWIN DOLPHINS ENTERPRISES LLC, a Florida limited liability company, on behalf of said company, as the sole general partner on behalf of TWIN DOLPHINS EQUITY PARTNERS, LTD., a Florida limited partnership. He personally appeared before me, is personally known to me X, or produced _____ as identification.

[NOTARIAL SEAL]

[Handwritten Signature]
Notary _____
Print Name: Maesha L Bennett
Notary Public, State of Florida
My commission expires: 1/21/09

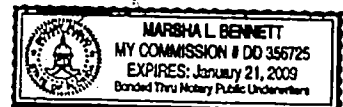


EXHIBIT "A"
LEGAL DESCRIPTION

PARCEL NO. 1: (Twin Dolphins, a Condominium Phase II)

A parcel of land lying in Government Lot 1 in Section 6, Township 52 South, Range 26 East, Collier County, Florida, being more particularly described as follows:

Commencing at the Northeast corner of said Section 6, Township 52 South, Range 26 East, Collier County, Florida, run N 88°48'27" W along the North line of said Section 6 for 380.00 feet to the Northeast corner of the parent parcel; thence continue N 88°48'27" W for 526.47 feet to the Point of Beginning; thence run S 43°48'27" E for 166.37 feet; thence run S 13°52'39" W for 108.12 feet; thence run S 80°29'49" W for 56.28 feet; thence run N 59°39'57" W for 51.25 feet; thence run N 71°03'47" W for 120.50 feet; thence run S 65°28'35" W for 118.12 feet; thence S 05°36'19" E for 112.94 feet; thence run S 84°23'41" W for 45.00 feet; thence run N 05°36'19" W for 97.99 feet; thence run N 43°39'43" W for 190.50 feet; thence N 48°16'02" E for 158.63 feet; thence run S 88°48'27" E for 288.70 feet to the Point of Beginning.

PARCEL NO. 2:

Units 206, 306, C-1, C-2, C-3, C-6, C-9, C-16, and C-17, TWIN DOLPHINS I AT LA PENINSULA, a Condominium, according to the Declaration of Condominium thereof, recorded in Official Records Book 3151, Page 885, Public Records of Collier County, Florida.

Together with:

TRACT A

A parcel of land lying in Government Lot 1 in Section 6, Township 52 South, Range 26 East, Collier County, Florida, being more particularly described as follows:

Commencing at the Northeast Corner of said Section 6, Township 52 South, Range 26 East, Collier County, Florida, run N88°48'27" W along the North line of said Section 6 for 380.00 feet to the Northeast Corner of the parent parcel; thence continue N88°48'27" W for 815.17 feet; thence run S48°16'02" W for 723.38 feet to a point of curvature of a curve concave to the Southeast; thence run 69.00 feet along the arc of said curve having a radius of 167.89 feet, a central angle of 23°32'58", a chord of 68.52 feet and a chord bearing of S36°47'37" W to the Point of Beginning; thence continue along a curve concave to the Southeast; thence run 46.44 feet along the arc of said curve having a radius of 167.89 feet, a central angle of 15°50'58", a chord of 46.29 feet and a chord bearing of S17°05'39" W to a non-tangential point; thence run N89°36'37" W for 165.12 feet; thence run N33°28'29" E for 39.08 feet; thence run N86°31'09" W for 173.38 feet to the Point of Beginning, containing 0.15 acres more or less.

AND

TRACT B

A parcel of land lying in Government Lot 1 in Section 6, Township 52 South, Range 26 East, Collier County, Florida, being more particularly described as follows:

Commencing at the Northeast Corner of said Section 6, Township 52 South, Range 26 East, Collier County, Florida, run N88°48'27" W along the North line of said Section 6 for 380.00 feet to the Northeast Corner of the parent parcel; thence continue N88°48'27" W for 815.17 feet; thence run S48°16'02" W for 158.63 feet to the Point of Beginning; thence run S43°39'43" E for 190.50 feet; thence run S05°36'19" E for 135.09 feet to a point of cusp of a curve concave to the Southeast; thence run 80.63 feet along the arc of said curve having a radius of 690.70 feet, a central angle of 6°41'20", a chord of 80.59 feet and a chord bearing of S77°28'25" W to a point; thence run N05°36'19" W for 183.65 feet; thence run N86°43'57" W for 158.65 feet; thence run N48°16'02" E for 147.47 feet to the Point of Beginning, containing 0.57 acres more or less.

WPB:279068:2

EXHIBIT "B"

SECURITY DOCUMENTS

1. That certain mortgage from Twin Dolphins Equity Partners, Ltd., a Florida limited partnership, to Aircraft Investment Associates Limited Partnership, a Michigan limited partnership, filed of record May 19, 1998 in Official Records Book 2421, Page 1084, in the original principal amount of \$7,340,000.00, as modified in Official Records Book 3609, Page 406, and in Official Records Book 3657, Page 3057, together with Notice of Future Advance Receipt and Consolidation Agreement in Official Records Book 3747, Page 722, as assigned to Aircraft Investment LLC, a Florida limited liability company, by Assignment of Mortgage and Loan Documents dated March 7, 2007, recorded in the Public Records of Collier County, Florida.
2. Financing Statement recorded in Official Records Book 2421, Page 1139, as continued in Official Records Book 3309, Page 1086, as assigned to Aircraft Investment LLC, a Florida limited liability company, by Assignment of Mortgage and Loan Documents dated March 7, 2007, recorded in the Public Records of Collier County, Florida.

All recording references above are to the Public Records of Collier County, Florida.

WPB:279068:2

BILL OF SALE AND ASSIGNMENT

KNOW ALL MEN BY THESE PRESENTS, that TWIN DOLPHINS EQUITY PARTNERS, LTD., a Florida limited partnership ("Twin Dolphins"), for and in consideration of the payment of TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby assign, transfer and convey to AIRCRAFT INVESTMENT LLC, a Florida limited liability company ("Aircraft Investment"), all of Twin Dolphins' right, title and interest in and to all fixtures, furniture, appliances, equipment, inventory, materials and all other types of tangible and intangible personal property owned by Twin Dolphins and located on or about, or used in connection with or related to the development of the real property described on Exhibit "A" attached hereto and made a part hereof, which is located in Collier County, Florida (the "Project"), including, without limitation, the following property:

- A. All plans, blueprints, specifications, drawings, surveys, engineering reports and other similar documents, data and information which pertain to the Project;
- B. All governmental licenses, permits, privileges and approvals by governmental agencies and bodies having jurisdiction over the planning, development and construction, and operation of, or the provision of public utility services to, the Project;
- C. All rights of Twin Dolphins as "developer" or "declarant" under any Declaration of Covenants, Conditions and Restrictions or any Declaration of Condominium relating to the Project, but without an assumption of obligations thereunder by Aircraft Investment;
- D. All insurance and condemnation claims, awards and proceeds relating to the Project;
- E. All books and records relating to the Project;
- F. All guaranties and warranties pertaining to the Project;
- G. All names by which the Project is or has been known, including "Twin Dolphins I at La Peninsula" and "Twin Dolphins II at La Peninsula";
- H. All utility deposits, prepaid impact fees and impact fee credits relating to the Project;
- I. All contracts and leases relating to the Project, but without an assumption of obligations thereunder by Aircraft Investment; and
- J. All condominium unit sale and purchase agreements and reservation deposit agreements, if any, relating to the Project, and all deposits made pursuant to such agreements.

WPB:279057:2

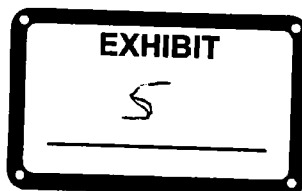


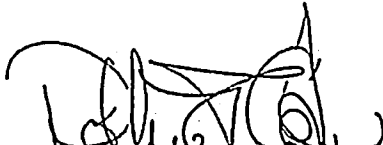
Exhibit B
to Plaintiffs' Amended Complaint

IN WITNESS WHEREOF, this Bill of Sale and Assignment has been executed by Twin Dolphins this 8th day of March, 2007.

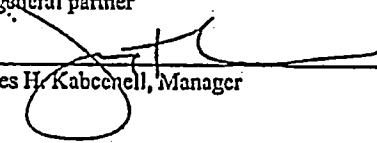
WITNESSES:

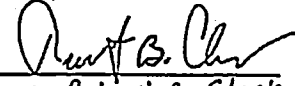
BORROWER:

TWIN DOLPHINS EQUITY PARTNERS, LTD.,
a Florida limited partnership


Name: Dolie A. Costa

By: **TWIN DOLPHINS ENTERPRISES LLC,**
a Florida limited liability company,
its sole general partner

By: 
James H. Kabcenell, Manager


Name: Robert B. Clark

STATE OF FLORIDA)
) SS:
COUNTY OF COLLIER)

The foregoing instrument was acknowledged before me this 8th day of March, 2007, by JAMES H. KABCENELL, as Manager of TWIN DOLPHINS ENTERPRISES LLC, a Florida limited liability company, on behalf of said company, as the sole general partner on behalf of TWIN DOLPHINS EQUITY PARTNERS, LTD., a Florida limited partnership. He personally appeared before me, is personally known to me X, or produced _____ as identification.

[NOTARIAL SEAL]

Notary: Marsha L Bennett
Print Name: Marsha L Bennett
Notary Public, State of Florida
My commission expires: 1/21/09



EXHIBIT "A"
LEGAL DESCRIPTION

PARCEL NO. 1: (Twin Dolphins, a Condominium Phase II)

A parcel of land lying in Government Lot 1 in Section 6, Township 52 South, Range 26 East, Collier County, Florida, being more particularly described as follows:

Commencing at the Northeast corner of said Section 6, Township 52 South, Range 26 East, Collier County, Florida, run N 88°48'27" W along the North line of said Section 6 for 380.00 feet to the Northeast corner of the parent parcel; thence continue N 88°48'27" W for 526.47 feet to the Point of Beginning; thence run S 43°48'27" E for 166.37 feet; thence run S 13°52'39" W for 108.12 feet; thence run S 80°29'49" W for 56.28 feet; thence run N 59°39'57" W for 51.25 feet; thence run N 71°03'47" W for 120.50 feet; thence run S 65°28'35" W for 118.12 feet; thence S 05°36'19" E for 112.94 feet; thence run S 84°23'41" W for 45.00 feet; thence run N 05°36'19" W for 97.99 feet; thence run N 43°39'43" W for 190.50 feet; thence N 48°16'02" E for 158.63 feet; thence run S 88°48'27" E for 288.70 feet to the Point of Beginning.

PARCEL NO. 2:

Units 206, 306, C-1, C-2, C-3, C-6, C-9, C-16, and C-17, TWIN DOLPHINS I AT LA PENINSULA, a Condominium, according to the Declaration of Condominium thereof, recorded in Official Records Book 3151, Page 885, Public Records of Collier County, Florida.

Together with:

TRACT A

A parcel of land lying in Government Lot 1 in Section 6, Township 52 South, Range 26 East, Collier County, Florida, being more particularly described as follows:

Commencing at the Northeast Corner of said Section 6, Township 52 South, Range 26 East, Collier County, Florida, run N88°48'27"W along the North line of said Section 6 for 380.00 feet to the Northeast Corner of the parent parcel; thence continue N88°48'27"W for 815.17 feet; thence run S48°16'02"W for 723.38 feet to a point of curvature of a curve concave to the Southeast; thence run 69.00 feet along the arc of said curve having a radius of 167.89 feet, a central angle of 23°32'58", a chord of 68.52 feet and a chord bearing of S36°47'37"W to the Point of Beginning; thence continue along a curve concave to the Southeast; thence run 46.44 feet along the arc of said curve having a radius of 167.89 feet, a central angle of 13°50'58", a chord of 46.29 feet and a chord bearing of S17°05'39"W to a non-lanceacial point; thence run N89°36'37"W for 165.12 feet; thence run N33°28'29"E for 39.08 feet; thence run N86°31'09"W for 173.38 feet to the Point of Beginning, containing .015 acres more or less.

AND

TRACT B

A parcel of land lying in Government Lot 1 in Section 6, Township 52 South, Range 26 East, Collier County, Florida, being more particularly described as follows:

Commencing at the Northeast Corner of said Section 6, Township 52 South, Range 26 East, Collier County, Florida, run N88°48'27"W along the North line of said Section 6 for 380.00 feet to the Northeast Corner of the parent parcel; thence continue N88°48'27"W for 815.17 feet; thence run S48°16'02"W for 158.63 feet to the Point of Beginning; thence run S43°39'43"E for 190.50 feet; thence run S05°36'19"E for 135.09 feet to a point of cusp of a curve concave to the Southeast; thence run 80.63 feet along the arc of said curve having a radius of 690.70 feet, a central angle of 6°41'20", a chord of 80.59 feet and a chord bearing of S77°28'25"W to a point; thence run N05°36'19"W for 183.65 feet; thence run N86°43'57"W for 158.65 feet; thence run N48°16'02"E for 147.47 feet to the Point of Beginning, containing 0.57 acres more or less.

WPB:279067:2

3

Exhibit B
to Plaintiffs' Amended Complaint

13

4007901 OR: 4218 PG: 2567

RECORDED IN OFFICIAL RECORDS OF COLLIER COUNTY, FL
04/24/2007 at 11:23PM DWIGHT H. BROCK, CLERK

RHC FEE 27.00
DGC-.70

THIS INSTRUMENT PREPARED BY
AND AFTER RECORDING, RETURN TO:
Steven R. Parson, Esq.
Ruden, McClosky, Smith, Schuster & Russell, P.A.
222 Lakeview Avenue, Suite 800
West Palm Beach, FL 33401
(561) 838-4500

Retn:
RODIN MCCLOSKEY BY AL
222 LAKEVIEW AVE #800
WEST PALM BEACH FL 33401

Property Appraiser's Parcel
Identification Numbers: 01050000004; 78539000024;
78539000040; 78539000066;
78539000121; 78539000189;
78539000325; 78539000341;
78539000529; 78539000642

CORRECTIVE QUIT CLAIM DEED

THIS CORRECTIVE QUIT CLAIM DEED is made effective as of the 8th day of March, 2007, by TWIN DOLPHINS EQUITY PARTNERS, LTD., a Florida limited partnership, the address for which is 222 Lakeview Avenue, Suite 800, West Palm Beach, Florida 33401 ("Grantor"), in favor of AIRCRAFT INVESTMENT LLC, a Florida limited liability company, the address for which is 222 Lakeview Avenue, Suite 800, West Palm Beach, Florida 33401 ("Grantee").

WITNESSETH, that Grantor, for and in consideration of the sum of TEN DOLLARS (\$10.00) in hand paid by Grantee and other valuable considerations, the receipt and sufficiency of which are acknowledged, hereby grants, bargains and sells and full claim to Grantee its successors and assigns, all of Grantor's rights, title and interest in and to the real property in the County of Collier, State of Florida, legally described in Exhibit "A" hereto (the "Property").

TOGETHER WITH all appurtenances, hereditaments and appurtenances thereto belonging or in anywise appertaining, and the reversion and reversions, remainders and remainders, rents, issues and profits thereof.

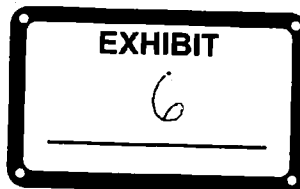
SUBJECT TO all conditions, limitations, restrictions, reservations, easements, and rights-of-way of record, if any; provided, however, that nothing contained herein shall operate to reimpose any of the foregoing; taxes for the year 2006 and subsequent years; and applicable zoning ordinances.

TO HAVE AND TO HOLD, the same in fee simple forever.

THIS CORRECTIVE QUIT CLAIM DEED IS BEING GIVEN FOR THE PURPOSE OF CORRECTING A SCRIVENER'S ERROR IN THE LEGAL DESCRIPTION FOR TRACT "A" AS CONTAINED IN THE WARRANTY DEED GIVEN BY GRANTOR, IN FAVOR OF GRANTEE, AS RECORDED ON MARCH 14, 2007 IN OFFICIAL RECORDS BOOK 4197, PAGE 62, OF THE PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA. THE CORRECTED LEGAL DESCRIPTION IS ATTACHED HERETO AS EXHIBIT "A".

WPB 304516 1

MITCHELL/DP-000271



WITNESSES:

GRANTOR:

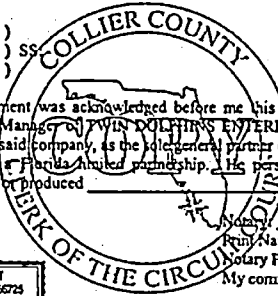
TWIN DOLPHINS EQUITY PARTNERS, LTD.,
a Florida limited partnership

By: **TWIN DOLPHINS ENTERPRISES LLC,**
a Florida limited liability company,
its sole general partner

By: _____
James H. Kabcenell, Manager

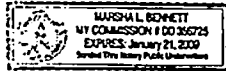
[Signature]
Name: Daniel M. Costa
[Signature]
Name: Edward G. Heath

STATE OF FLORIDA)
COUNTY OF COLLIER)



The foregoing instrument was acknowledged before me this 19th day of April, 2007, by JAMES H. KABCENELL, as Manager of TWIN DOLPHINS ENTERPRISES LLC, a Florida limited liability company, on behalf of said company, as the sole general partner on behalf of TWIN DOLPHINS EQUITY PARTNERS, LTD., a Florida limited partnership. He personally appeared before me, is personally known to me X, or produced _____ as identification.

[NOTARIAL SEAL]



[Signature]
Name: Marsha L Bennett
Notary Public, State of Florida
My commission expires: 1/21/09

EXHIBIT "A"
LEGAL DESCRIPTION

PARCEL NO. 1: (Twin Dolphins, a Condominium Phase II)

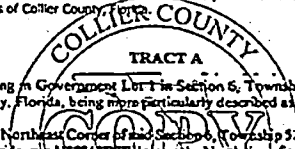
A parcel of land lying in Government Lot 1 in Section 6, Township 52 South, Range 26 East, Collier County, Florida, being more particularly described as follows:

Commencing at the Northeast corner of said Section 6, Township 52 South, Range 26 East, Collier County, Florida, run N 88°48'27" W along the North line of said Section 6 for 380.00 feet to the Northeast corner of the parent parcel; thence continue N 88°48'27" W for 526.47 feet to the Point of Beginning; thence run S 43°48'27" E for 166.37 feet; thence run S 13°52'39" W for 108.12 feet; thence run S 80°29'49" W for 56.28 feet; thence run N 59°39'57" W for 51.25 feet; thence run N 71°03'47" W for 120.50 feet; thence run S 65°28'35" W for 118.12 feet; thence S 05°36'19" E for 112.94 feet; thence run S 84°23'41" W for 45.00 feet; thence run N 05°35'19" W for 97.59 feet; thence run N 43°39'43" W for 190.50 feet; thence N 48°16'02" E for 158.63 feet; thence run S 88°48'27" E for 288.70 feet to the Point of Beginning.

PARCEL NO. 2:

Units 205, 306, C-1, C-2, C-3, C-6, C-9, C-16, and C-17, TWIN DOLPHINS I AT LA PENINSULA, a Condominium, according to the Declaration of Condominium thereof, recorded in Official Records Book 3151, Page 885, Public Records of Collier County, Florida.

Together with:



A parcel of land lying in Government Lot 1 in Section 6, Township 52 South, Range 26 East, Collier County, Florida, being more particularly described as follows:

Commencing at the Northeast Corner of said Section 6, Township 52 South, Range 26 East, Collier County, Florida, run N 88°48'27" W along the North line of said Section 6 for 380.00 feet to the Northeast Corner of the parent parcel; thence continue N 88°48'27" W for 815.17 feet; thence run S 48°16'02" W for 158.63 feet to a point of curvature of a curve concave to the Southeast; thence run 69.00 feet along the arc of said curve having a radius of 167.89 feet, a central angle of 23°41'20", a chord of 68.52 feet and a chord bearing of S16°47'37" W to the Point of Beginning; thence continue along a curve concave to the Southeast, thence run 46.44 feet along the arc of said curve having a radius of 167.89 feet, a central angle of 15°50'58", a chord of 46.29 feet and a chord bearing of S17°03'39" W to a non-tangential point; thence run S 89°16'37" E for 104.12 feet; thence run N 03°28'29" E for 39.08 feet; thence run N 86°31'09" W for 173.38 feet to the Point of Beginning, containing 0.15 acres more or less.

AND

TRACT B

A parcel of land lying in Government Lot 1 in Section 6, Township 52 South, Range 26 East, Collier County, Florida, being more particularly described as follows:

Commencing at the Northeast Corner of said Section 6, Township 52 South, Range 26 East, Collier County, Florida, run N 88°48'27" W along the North line of said Section 6 for 380.00 feet to the Northeast Corner of the parent parcel; thence continue N 88°48'27" W for 815.17 feet; thence run S 48°16'02" W for 158.63 feet to the Point of Beginning; thence run S 43°39'43" E for 190.50 feet; thence run S 05°36'19" E for 135.09 feet to a point of cusp of a curve concave to the Southeast; thence run 80.63 feet along the arc of said curve having a radius of 690.70 feet, a central angle of 6°41'20", a chord of 80.59 feet and a chord bearing of S 77°28'25" W to a point; thence run N 05°36'19" W for 183.65 feet; thence run N 86°43'57" W for 158.65 feet; thence run N 48°16'02" E for 147.47 feet to the Point of Beginning, containing 0.57 acres more or less.

WPB 304516 1

MITCHELL/DP-000273

RECORDED in OFFICIAL RECORDS of COLLIER COUNTY, FL
10/17/2007 at 12:11PM DWIGHT E. BROCK, CLERK
CONS 10.00
REC FEE 44.00
DOC-.70 .70

THIS INSTRUMENT PREPARED BY
AND AFTER RECORDING, RETURN TO:
Steven R. Parson, Esq.
Ruden, McClosky, Smith, Schuster & Russell, P.A.
222 Lakeview Avenue, Suite 800
West Palm Beach, FL 33401
(561) 838-4500

Retn:
RUDEN MCCLOSKY
PO BOX 1900
FT LAUDERDALE FL 33302 9930

Property Appraiser's Parcel
Identification Number: 0105000004

WARRANTY DEED

THIS WARRANTY DEED is made effective as of the 4th day of October, 2007, by TWIN DOLPHINS EQUITY PARTNERS, LLLP, a Florida limited liability limited partnership, the address for which is 222 Lakeview Avenue, Suite 800, West Palm Beach, Florida 33401 ("Grantor"), in favor of AIRCRAFT INVESTMENT LLC, a Florida limited liability company, the address for which is 222 Lakeview Avenue, Suite 800, West Palm Beach, Florida 33401 ("Grantee").

WITNESSETH, that Grantor, for and in consideration of the sum of TEN DOLLARS (\$10.00) in hand paid by Grantee and other valuable considerations, the receipt and sufficiency of which are acknowledged, hereby grants, bargains and sells to Grantee and to Grantee's successors and assigns, forever, all of Grantor's rights, title and interest in and to the real property in the County of Collier, State of Florida, legally described in Exhibit "A" hereto, and all improvements and fixtures thereon (the "Property").

TOGETHER WITH all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

SUBJECT TO:

1. The mortgage, other collateral documents and instruments described on Exhibit "B" hereto (the "Security Documents"); and
2. Conditions, limitations, restrictions, reservations, easements, and rights-of-way of record, if any; provided, however, that nothing contained herein shall operate to reimpose any of the foregoing; taxes for the year 2006 and subsequent years; and applicable zoning ordinances.

TO HAVE AND TO HOLD, the same in fee simple forever.

This Deed is an absolute conveyance of the Property, in form as well as substance, from Grantor to Grantee and is not intended as additional security for any sums secured by the Security Documents, or for any other sums whatsoever. It is the intent of Grantor and Grantee that (i) the lien, operation, effect and dignity of the Security Documents to which this conveyance is expressly made subject shall remain unimpaired and unaffected by the conveyance herein to Grantee, and (ii) there shall be no merger of the fee title conveyed hereby with any interest of the Grantee or any other party under any of the Security Documents.

THIS DEED CONVEYS TO GRANTEE THE REMAINING REAL PROPERTY ENCUMBERED BY THE SECURITY DOCUMENTS, WHICH WAS INADVERTENTLY OMITTED FROM THE DEED TAKEN IN LIEU OF FORECLOSURE FROM GRANTOR, AS BORROWER, TO GRANTEE, AS LENDER'S NOMINEE, RECORDED IN OFFICIAL RECORDS BOOK 4197, PAGE 62, OF THE PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA (THE "DEED IN LIEU"). CONSIDERATION FOR THE CONVEYANCE OF ALL PROPERTY ENCUMBERED BY THE SECURITY DOCUMENTS WAS RECEIVED BY GRANTOR ON MARCH 8, 2007, AND FLORIDA DOCUMENTARY STAMP TAX WAS PAID IN FULL UPON THE RECORDING OF THE DEED IN LIEU.

WPB:336856:1

MITCHELL/DP-000274



AND GRANTOR covenants that except as noted above, the Property is free from all encumbrances made by Grantor, and that Grantor will warrant and defend the Property hereby conveyed against the lawful claims and demands of all persons whomsoever.

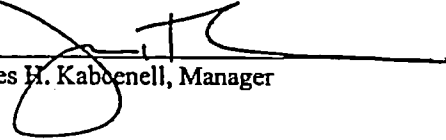
WITNESSES:

GRANTOR:

TWIN DOLPHINS EQUITY PARTNERS, LLLP,
a Florida limited liability limited partnership

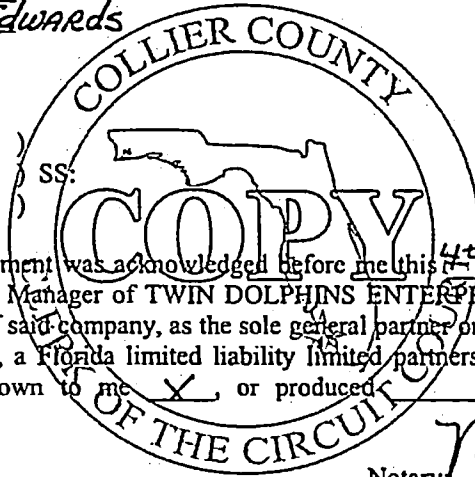
By: **TWIN DOLPHINS ENTERPRISES LLC,**
a Florida limited liability company,
its sole general partner


Name: Dolore M. Costa

By: 
James H. Kabcenell, Manager

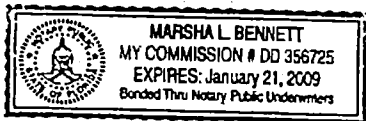

Name: Virginia P. Edwards

STATE OF FLORIDA
COUNTY OF COLLIER



The foregoing instrument was acknowledged before me this 4th day of October, 2007, by JAMES H. KABCENELL, as Manager of TWIN DOLPHINS ENTERPRISES LLC, a Florida limited liability company, on behalf of said company, as the sole general partner on behalf of TWIN DOLPHINS EQUITY PARTNERS, LLLP, a Florida limited liability limited partnership. He personally appeared before me, is personally known to me X, or produced _____ as identification.

[NOTARIAL SEAL]



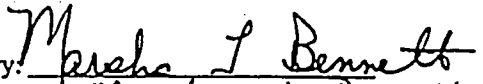
Notary: 
Print Name: Marsha L Bennett
Notary Public, State of Florida
My commission expires: 1/21/09

EXHIBIT "A"

Being all the following described real property located and situated in Collier County, Florida, as more particularly described as follows:

From a point of beginning at the Northeast corner of said Section 6, Township 52 South, Range 26 East, Collier County, Florida, run South $1^{\circ}11'25''$ West, along the East line of said Section 5, 261.67 feet to a point of beginning of a certain Bulkhead Line, as recorded in Bulkhead Plat Book 1, Page 8, of the Public Records of Collier County, Florida; thence run the following courses along the said Bulkhead Line; South $69^{\circ}27'16''$ West for 743.57 feet; South $74^{\circ}20'53''$ West for 900.00 feet; to a point of curvature; run 496.98 feet along the arc of a curve, concave to the Northeast, have a radius of 185.00 feet and subtended by a chord having a bearing of North $28^{\circ}41'32.5''$ West and a length of 360.46 feet to a point of tangency; thence North $48^{\circ}16'02''$ East for 712.63 feet to a point of the Bulkhead Line; thence run South $88^{\circ}48'27''$ East along the North line of said Section 6, 1209.85 feet to the point of beginning.

LESS AND EXCEPT THE FOLLOWING:

Beginning from the Northeast corner of Section 6, Township 52 South, Range 26 East, Collier County, Florida, run South $1^{\circ}11'25''$ West, along the East line of said Section 6, for 30.0 feet to the point of beginning; thence continue to run South $1^{\circ}11'25''$ West along said East line for 281.67 feet to a point of the Bulkhead Line as recorded in Bulkhead Line Plat Book 1, Page 8 Public Records of Collier County, Florida; thence run South $69^{\circ}27'16''$ West, along said Bulkhead Line 300.52 feet; thence run North $20^{\circ}32'44''$ West for 272.34 feet; thence run North $01^{\circ}11'35''$ East for 90.0 feet to a point 10.0 feet South of the North line of said Section 6; thence run South $88^{\circ}48'27''$ East along a line parallel with and 10.00 feet as measured at right angles from said North line of section 6 for 380.0 feet to the point of beginning, Collier County, Florida.

100 LA PENINSULA, A CONDOMINIUM, in accordance with and subject to the Declaration of Condominium of 100 La Peninsula, a Condominium, recorded in Official Records Book 1268, Pages 1553 thru 1621, inclusive, as amended by Amendment to Declaration of Condominium of 100 La Peninsula, a Condominium recorded in Official Records Book 1288, Pages 1569 thru 1571, inclusive, of the Public Records of Collier County, Florida.

200 LA PENINSULA, A CONDOMINIUM, in accordance with and subject to the Declaration of Condominium of 200 La Peninsula, a Condominium, recorded in Official Records Book 1309, Pages 1559 thru 1626, inclusive, as amended by Amendment to Declaration of Condominium of 200 La Peninsula a condominium recorded in Official Records Book 1340, Pages 1651 thru 1653-A, inclusive, of the Public Records of Collier County, Florida.

LA PENINSULA, A CONDOMINIUM, in accordance with and subject to the Declaration of Condominium of La Peninsula, a Condominium, recorded in Official Records Book 1213, Pages 786 thou 858, inclusive, of the Public Records of Collier County, Florida.

600 LA PENINSULA, A CONDOMINIUM, in accordance with and subject to the Declaration of Condominium of 600 La Peninsula a Condominium, recorded in Official Records Book 1337, Pages 1984 thou 2050, inclusive, as amended by Amendment to Declaration of Condominium of 600 La Peninsula, a Condominium recorded in Official Records Book 1360, Pages 733 thou 736, inclusive, of the Public Records of Collier County, Florida.

500 LA PENINSULA, A CONDOMINIUM, in accordance with and subject to the Declaration of Condominium of 500 La Peninsula, a Condominium, recorded in Official Records Book 1374, Page 1407, of the Public Records of Collier County, Florida.

400 LA PENINSULA, A CONDOMINIUM, in accordance with and subject to the Declaration of Condominium of 400 La Peninsula, a Condominium, recorded in Official Records Book 2140, Page 856, of the Public Records of Collier County, Florida.

Those properties conveyed to the Club at La Peninsula, Inc., a not-for-profit corporation by Quit-Claim Deed dated February 4, 2004, and recorded in O. R. Book 3502, Page 2276, Public Records of Collier County, Florida.

Those properties conveyed to Aircraft Investment LLC, a Florida limited liability company, by Warranty Deed dated as of March 8, 2007 and recorded on March 14, 2007 in Official Records Book 4197, Page 62, as corrected by Corrective Quit Claim Deed dated as of March 8, 2007 and recorded on April 23, 2007 in Official Records Book 4218, Page 2567, of the Public Records of Collier County, Florida.

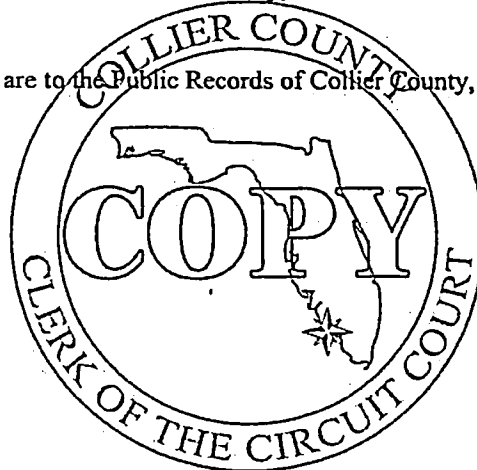
Also less and except the remaining portion of the property within TWIN DOLPHINS I, A CONDOMINIUM, in accordance with and subject to the Declaration of Condominium of Twin Dolphins I, a Condominium, recorded in Official Records Book 3151, Page 885, of the Public Records of Collier County, Florida.

EXHIBIT "B"

SECURITY DOCUMENTS

1. That certain mortgage from Twin Dolphins Equity Partners, Ltd., a Florida limited partnership, to Aircraft Investment Associates Limited Partnership, a Michigan limited partnership, filed of record May 19, 1998 in Official Records Book 2421, Page 1084, in the original principal amount of \$7,340,000.00, as modified in Official Records Book 3609, Page 406, and in Official Records Book 3657, Page 3057, together with Notice of Future Advance Receipt and Consolidation Agreement in Official Records Book 3747, Page 722, as assigned to Aircraft Investment LLC, a Florida limited liability company, by Assignment of Mortgage and Loan Documents dated March 7, 2007, recorded in the Public Records of Collier County, Florida.
2. Financing Statement recorded in Official Records Book 2421, Page 1139, as continued in Official Records Book 3309, Page 1086, as assigned to Aircraft Investment LLC, a Florida limited liability company, by Assignment of Mortgage and Loan Documents dated March 7, 2007, recorded in the Public Records of Collier County, Florida.

All recording references above are to the Public Records of Collier County, Florida.



PREPARED BY AND RETURN TO:

Steven R. Parson, Esquire
RUDEN McCLOSKEY P.A.
222 Lakeview Avenue, Suite 800
West Palm Beach, FL 33401

Parcel Number: A portion of 01050000004

SPECIAL WARRANTY DEED

THIS DEED is made this 16th day of April, 2010, by AIRCRAFT INVESTMENT LLC, a Florida limited liability company, whose address is 868 102nd Avenue North, Naples, Florida 34108 ("Grantor"), and THE CLUB AT LA PENINSULA, INC., a Florida non-profit corporation, whose address is c/o R & P Property Management, 265 Airport Road South, Naples, Florida 34101 ("Grantee").

WITNESSETH:

That the Grantor, for and in consideration of the sum of TEN and NO/100 (\$10.00) DOLLARS and other good and valuable consideration to it in hand paid by the Grantee, the receipt of which is hereby acknowledged, hereby grants, bargains and sells to Grantee, and Grantee's heirs, successors and assigns forever, the following described real property lying and being in Collier County, Florida:

See Exhibit "A" attached hereto and made a part hereof (the "Property").

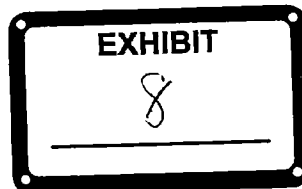
SUBJECT, however, to real property taxes for the year 2010 and subsequent years; zoning and other regulatory laws and ordinances; and all other conditions, limitations, restrictions, reservations, easements, and rights-of-way of record; provided, however, that nothing herein shall be deemed to reimpose any of the foregoing.

FURTHER SUBJECT TO those reserved easements, agreements and rights as set forth in Exhibit "B" attached hereto and made a part hereof, which reserved easements, agreements and rights are retained by Grantor for the benefit of the real property legally described in Exhibit "C" attached hereto and made a part hereof.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any way appertaining.

TO HAVE AND TO HOLD the same in fee simple forever.

Grantor does hereby covenant with Grantee that Grantor is lawfully seized of the Property in fee simple; that Grantor has good right and lawful authority to sell and convey the Property, and that Grantor hereby warrants the title to the Property and will defend the same against the lawful claims of all persons claiming by, through or under Grantor.



RM:613552:2

MITCHELL/DP-000253

IN WITNESS WHEREOF, Grantor has caused this Special Warranty Deed to be executed as of the date first written above.

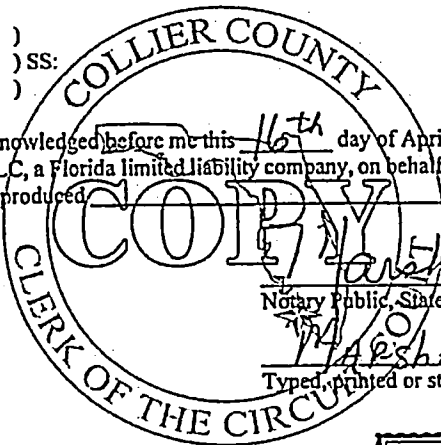
Signed, sealed and delivered in the presence of:

[Signature]
Print Name: Dolice M. Costa
[Signature]
Print Name: Robert Clark

AIRCRAFT INVESTMENT LLC,
a Florida limited liability company

By: [Signature]
James H. Kabcenell, Manager

STATE OF FLORIDA)
) SS:
COUNTY OF COLLIER)



The foregoing instrument was acknowledged before me this 16th day of April, 2010, by James H. Kabcenell, as Manager of Aircraft Investment LLC, a Florida limited liability company, on behalf of the company. He is personally known to me X or has produced _____ as identification.

My Commission Expires:

[Signature]
Notary Public, State of Florida at Large
Marsha L Bennett
Typed, printed or stamped name of Notary Public



EXHIBIT "A"
LEGAL DESCRIPTION



950 Encore Way • Naples, Florida 34110 • Phone: 239.254.2000 • Fax: 239.254.2075

HM PROJECT #1998105
4/21/2010
REF. DWG. #B-8828
Page 1 of 2

LEGAL DESCRIPTION:

A PARCEL OF LAND LOCATED IN A PORTION OF SECTION 6, TOWNSHIP 52 SOUTH, RANGE 26 EAST, COLLIER COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF SECTION 6, TOWNSHIP 52 SOUTH, RANGE 26 EAST, COLLIER COUNTY FLORIDA; THENCE RUN N.89°48'27"W., FOR A DISTANCE OF 380.00 FEET TO THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN DESCRIBED; THENCE RUN S.01°11'35"W., FOR A DISTANCE OF 120.00 FEET; THENCE RUN S.20°32'44"E., FOR A DISTANCE OF 129.20 FEET; THENCE RUN N.73°00'00"W., FOR A DISTANCE OF 63.04 FEET, TO A POINT ON A CIRCULAR CURVE, CONCAVE NORTHWESTERLY, WHOSE RADIUS POINT BEARS N.73°00'00"W., THEREFROM; THENCE RUN SOUTHWESTERLY, ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 43.00 FEET, THROUGH A CENTRAL ANGLE OF 43°00'00", SUBTENDED BY A CHORD OF 32.93 FEET AT A BEARING OF S.38°30'00"W., FOR A DISTANCE OF 33.77 FEET TO A POINT OF COMPOUND CURVE CONCAVE NORTHERLY; THENCE RUN WESTERLY, ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 141.90 FEET, THROUGH A CENTRAL ANGLE OF 37°59'27", SUBTENDED BY A CHORD OF 92.37 FEET AT A BEARING OF S.78°59'53"W., FOR A DISTANCE OF 94.09 FEET TO THE END OF SAID CURVE; THENCE RUN N.82°00'00"W., FOR A DISTANCE OF 115.78 FEET, TO THE BEGINNING OF A TANGENTIAL CIRCULAR CURVE, CONCAVE SOUTHERLY; THENCE RUN WESTERLY, ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 32.18 FEET, THROUGH A CENTRAL ANGLE OF 54°59'48", SUBTENDED BY A CHORD OF 29.72 FEET AT A BEARING OF S.70°30'00"W., FOR A DISTANCE OF 30.89 FEET TO THE END OF SAID CURVE; THENCE RUN S.43°00'00"W., FOR A DISTANCE OF 33.16 FEET; THENCE RUN S.38°46'41"E., FOR A DISTANCE OF 2.65 FEET; THENCE RUN S.38°11'14"W., FOR A DISTANCE OF 13.92 FEET; TO A POINT ON A CIRCULAR CURVE, CONCAVE NORTHERLY, WHOSE RADIUS POINT BEARS N.47°00'02"W., THEREFROM; THENCE RUN WESTERLY, ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 159.99 FEET, THROUGH A CENTRAL ANGLE OF 51°00'05", SUBTENDED BY A CHORD OF 137.76 FEET AT A BEARING OF S.68°30'00"W., FOR A DISTANCE OF 142.42 FEET TO THE END OF SAID CURVE; THENCE RUN N.86°00'00"W., FOR A DISTANCE OF 45.29 FEET, TO A POINT ON A CIRCULAR CURVE, CONCAVE SOUTHERLY; WHOSE RADIUS POINT BEARS S.03°58'55"W., THEREFROM; THENCE RUN WESTERLY, ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 20.02 FEET, THROUGH A CENTRAL ANGLE OF 47°45'53", SUBTENDED BY A CHORD OF 18.21 FEET AT A BEARING OF S.70°05'38"W., FOR A DISTANCE OF 16.69 FEET TO THE END OF SAID CURVE; THENCE RUN S.75°30'00"W., FOR A DISTANCE OF 117.72 FEET, TO THE BEGINNING OF A TANGENTIAL CIRCULAR CURVE, CONCAVE NORTHERLY; THENCE RUN WESTERLY, ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 581.00 FEET, THROUGH A CENTRAL ANGLE OF 18°29'59", SUBTENDED BY A CHORD OF 188.78 FEET AT A BEARING OF S.84°45'00"W., FOR A DISTANCE OF 187.59 FEET TO THE END OF SAID CURVE; THENCE RUN N.86°00'00"W., FOR A DISTANCE OF 8.40 FEET; THENCE RUN S.86°55'21"W., FOR A DISTANCE OF 33.21 FEET, TO A POINT ON A CIRCULAR CURVE, CONCAVE SOUTHERLY, WHOSE RADIUS POINT BEARS S.03°16'50"E., THEREFROM; THENCE RUN WESTERLY, ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 254.83 FEET, THROUGH A CENTRAL ANGLE OF 19°50'32", SUBTENDED BY A CHORD OF 87.81 FEET AT A BEARING OF S.76°47'54"W., FOR A DISTANCE OF 88.25 FEET TO THE END OF SAID CURVE; THENCE RUN S.66°00'16"W., FOR A DISTANCE OF 60.56 FEET, TO A POINT ON A CIRCULAR CURVE, CONCAVE SOUTHEASTERLY, WHOSE RADIUS POINT BEARS S.24°36'07"E., THEREFROM; THENCE RUN SOUTHWESTERLY, ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 458.38 FEET, THROUGH A CENTRAL ANGLE OF 16°33'30", SUBTENDED BY A CHORD OF 132.01 FEET AT A BEARING OF S.57°07'08"W., FOR A DISTANCE OF 132.47 FEET TO THE END OF SAID CURVE; THENCE RUN S.40°59'21"W., FOR A DISTANCE OF 29.37 FEET; THENCE RUN N.41°00'00"W., FOR A DISTANCE OF 1.60 FEET; THENCE RUN S.38°16'10"W., FOR A DISTANCE OF 34.64 FEET; THENCE RUN S.43°00'00"W., FOR A DISTANCE OF 64.48 FEET, TO THE BEGINNING OF A TANGENTIAL CIRCULAR CURVE, CONCAVE NORTHEASTERLY; THENCE RUN NORTHWESTERLY, ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 45.50 FEET, THROUGH A CENTRAL ANGLE OF 157°02'45", SUBTENDED BY A CHORD OF 89.18 FEET AT A BEARING OF N.58°28'40"W., FOR A DISTANCE OF 124.71 FEET TO THE END OF SAID CURVE; THENCE RUN N.33°28'29"E., FOR A DISTANCE OF 38.98 FEET; THENCE RUN

A-1

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S.86°31'09"E, FOR A DISTANCE OF 41.64 FEET; THENCE RUN N.76°40'53"E, FOR A DISTANCE OF 41.47 FEET, TO THE BEGINNING OF A TANGENTIAL CIRCULAR CURVE, CONCAVE NORTHERLY; THENCE RUN NORTHEASTERLY, ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 50.00 FEET, THROUGH A CENTRAL ANGLE OF 26°31'36", SUBTENDED BY A CHORD OF 22.94 FEET AT A BEARING OF N.63°25'05"E, FOR A DISTANCE OF 23.15 FEET TO A POINT OF REVERSE CURVE CONCAVE SOUTHEASTERLY; THENCE RUN NORTHEASTERLY, ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 690.70 FEET, THROUGH A CENTRAL ANGLE OF 30°38'35", SUBTENDED BY A CHORD OF 365.01 FEET AT A BEARING OF N.65°28'34"E, FOR A DISTANCE OF 369.40 FEET TO THE END OF SAID CURVE; THENCE RUN N.05°36'19"W, FOR A DISTANCE OF 37.35 FEET; THENCE RUN N.84°23'41"E, FOR A DISTANCE OF 45.00 FEET; THENCE RUN N.05°36'19"W, FOR A DISTANCE OF 112.84 FEET; THENCE RUN N.65°28'35"E, FOR A DISTANCE OF 118.12 FEET; THENCE RUN S.71°03'47"E, FOR A DISTANCE OF 120.50 FEET; THENCE RUN S.57°39'57"E, FOR A DISTANCE OF 51.25 FEET; THENCE RUN N.80°29'49"E, FOR A DISTANCE OF 58.28 FEET; THENCE RUN N.43°52'39"E, FOR A DISTANCE OF 108.12 FEET; THENCE RUN N.43°48'27"W, FOR A DISTANCE OF 166.37 FEET; THENCE RUN S.88°48'27"E, FOR A DISTANCE OF 526.47 FEET, TO THE POINT OF BEGINNING; CONTAINING 4.778 ACRES, MORE OR LESS.

LESS AND EXCEPT

THAT PARCEL OF LAND DESCRIBED AS CLUBHOUSE AND POOL AREA IN QUIT CLAIM DEED, AS RECORDED IN O.R. BOOK 3502 AT PAGE 2278 OF THE PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A PARCEL OF LAND LYING IN GOVERNMENT LOT 1 IN SECTION 6, TOWNSHIP 52 SOUTH, RANGE 26 EAST, COLLIER COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 6, TOWNSHIP 52 SOUTH, RANGE 26 EAST, COLLIER COUNTY, FLORIDA, RUN N88°48'27"W ALONG THE NORTH LINE OF SAID SECTION 6 FOR 380.00 FEET TO THE NORTHEAST CORNER OF THE PARENT PARCEL, THENCE CONTINUE N88°48'27"W FOR 638.62 FEET; THENCE RUN S01°11'33"W FOR 187.88 FEET TO THE POINT OF BEGINNING; THENCE RUN S63°02'39"W FOR 39.95 FEET; THENCE RUN S01°29'47"W FOR 21.20 FEET; THENCE RUN S60°31'10"E FOR 39.78 FEET; THENCE RUN S88°43'13"E FOR 8.18 FEET; THENCE RUN S01°27'45"W FOR 51.88 FEET; THENCE RUN S43°04'22"E FOR 19.26 FEET; THENCE S88°25'38"E FOR 88.91 FEET; THENCE RUN N46°52'32"E FOR 44.27 FEET; THENCE RUN N01°21'16"E FOR 43.70 FEET; THENCE RUN N48°51'43"W FOR 18.46 FEET; THENCE RUN N89°32'03"W FOR 21.43 FEET; THENCE RUN N00°27'67"E FOR 28.74 FEET; THENCE RUN N75°35'07"W FOR 52.92 FEET; THENCE RUN N88°34'13"W FOR 55.35 FEET TO THE POINT OF BEGINNING, SUBJECT TO EASEMENTS, RESTRICTIONS AND RESERVATIONS OF RECORD, CONTAINING 16295 SQUARE FEET MORE OR LESS.

THIS PROPERTY SUBJECT TO EASEMENTS, RESERVATIONS OR RESTRICTIONS OF RECORD.

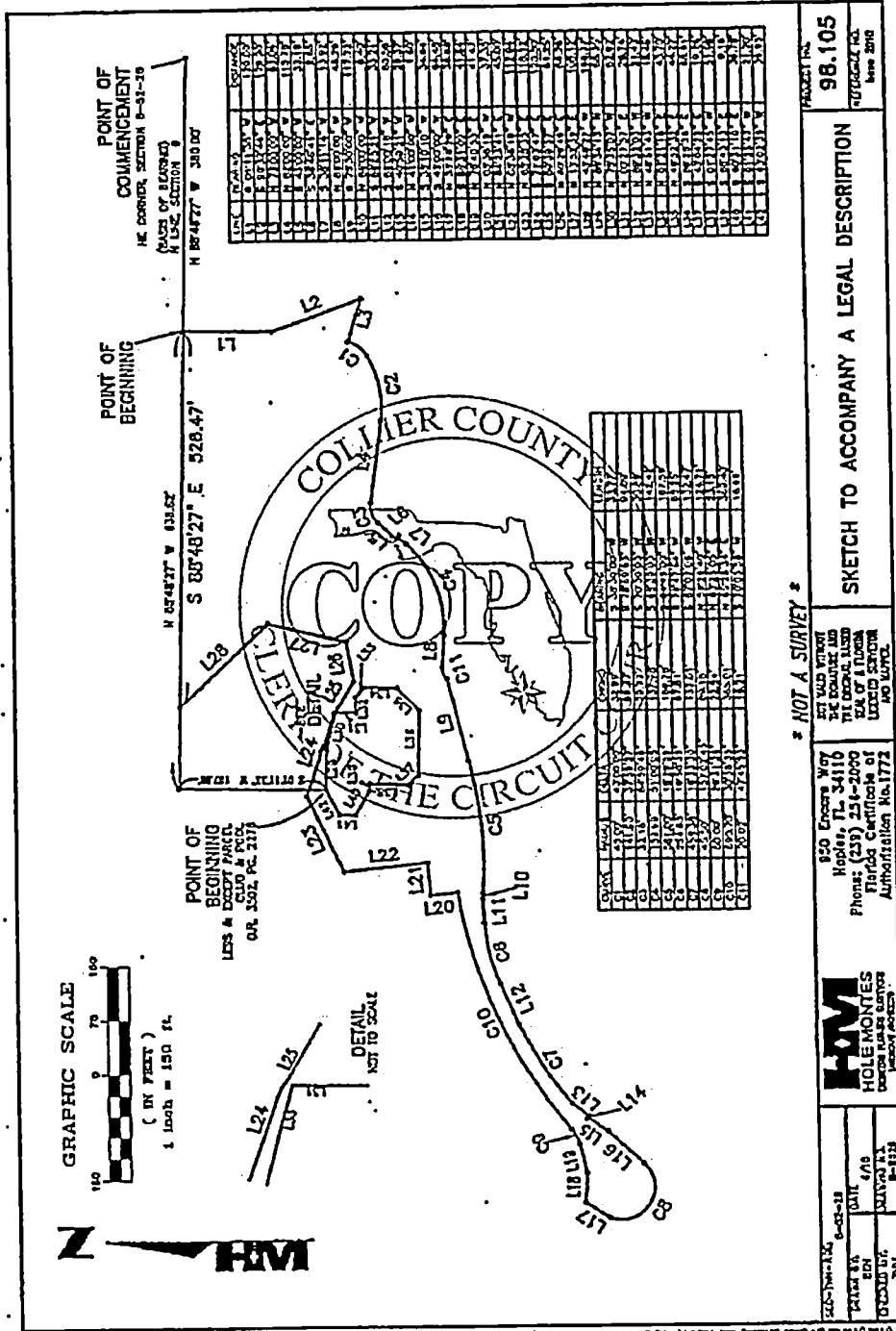
BEARINGS SHOWN HEREON REFER TO THE NORTH LINE OF SECTION 6, TOWNSHIP 52 SOUTH, RANGE 26 EAST, COLLIER COUNTY, FLORIDA AS BEING S.88°48'27"E.

HOLE MONTES, INC.
CERTIFICATE OF AUTHORIZATION LB #1772

BY Thomas M. Murphy
THOMAS M. MURPHY

P.S.M. #5628
STATE OF FLORIDA

POOR QUALITY ORIGINAL





950 Encore Way • Naples, Florida 34110 • Phone: 239.254.2000 • Fax: 239.254.2075

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4/13/2010
REF. DWG. #B-6528
Page 1 of 1

LEGAL DESCRIPTION:

A PARCEL OF LAND LOCATED LYING IN GOVERNMENT LOT 1 IN SECTION 6, TOWNSHIP 52 SOUTH, RANGE 26 EAST, COLLIER COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 6, TOWNSHIP 52 SOUTH, RANGE 26 EAST, COLLIER COUNTY, FLORIDA, RUN N88°48'27"W ALONG THE NORTH LINE OF SAID SECTION 6 FOR 380.00 FEET TO THE NORTHEAST CORNER OF THE PARENT PARCEL; THENCE CONTINUE N88°48'27"W FOR 815.17 FEET; THENCE RUN S48°16'02"W FOR 723.38 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE TO THE SOUTHEAST; THENCE RUN 69.00 FEET ALONG THE ARC OF SAID CURVE HAVING A RADIUS OF 167.89 FEET, A CENTRAL ANGLE OF 23°32'58", A CHORD OF 63.52 FEET AND A CHORD BEARING OF S38°47'37"W TO THE POINT OF BEGINNING; THENCE CONTINUE ALONG A CURVE CONCAVE TO THE SOUTHEAST; THENCE RUN 68.44 FEET ALONG THE ARC OF SAID CURVE HAVING A RADIUS OF 167.89 FEET, A CENTRAL ANGLE OF 15°50'58", A CHORD OF 46.29 FEET AND A CHORD BEARING OF S17°05'39"W TO A NON-TANGENTIAL POINT; THENCE RUN N89°36'37"E FOR 165.12 FEET; THENCE RUN N33°28'29"E FOR 39.65 FEET; THENCE RUN N20°14'05"W FOR 173.38 FEET TO THE POINT OF BEGINNING, CONTAINING 0.16 ACRE MORE OR LESS.

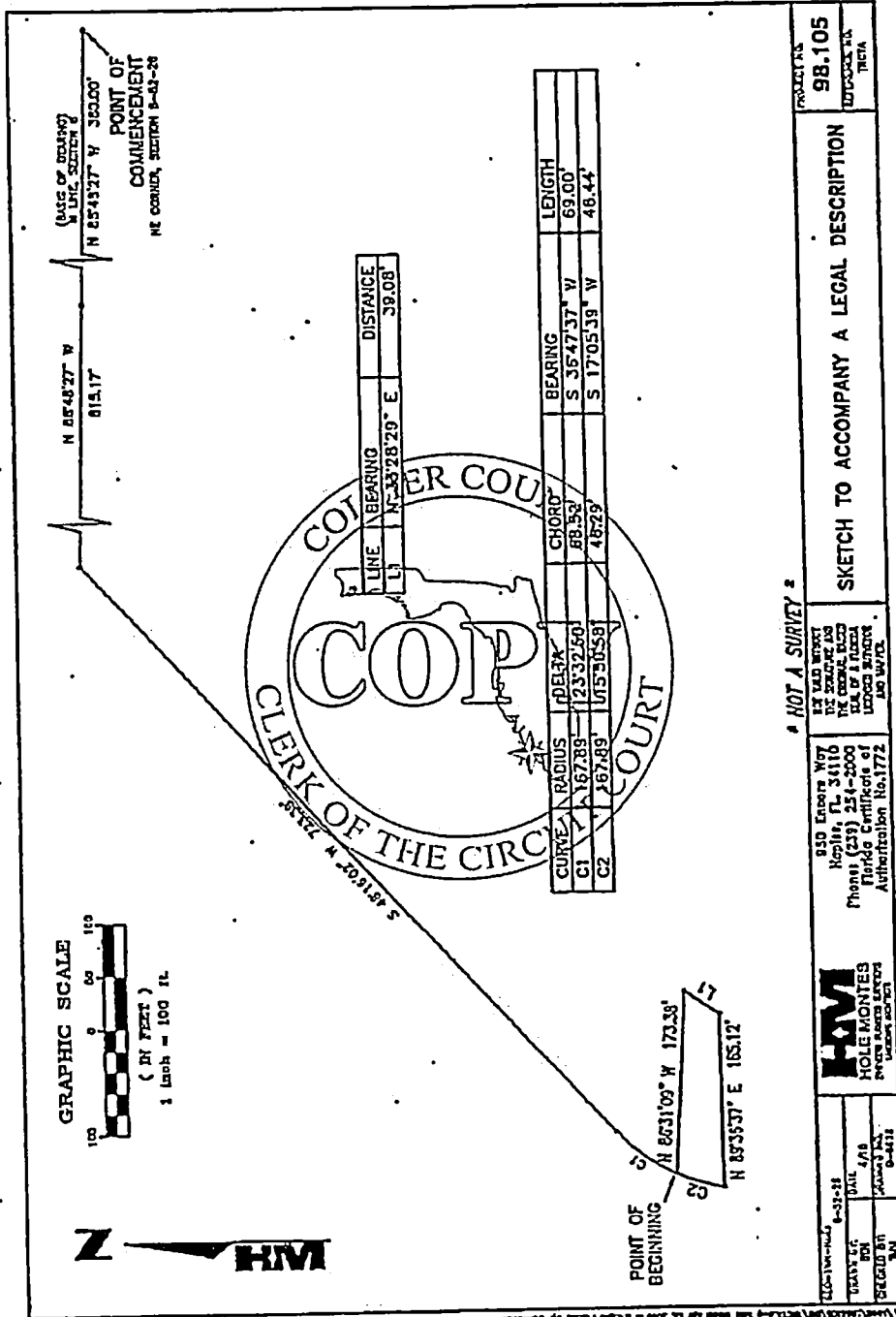
THIS PROPERTY SUBJECT TO EASEMENTS, RESERVATIONS OR RESTRICTIONS OF RECORD.

BEARINGS SHOWN HEREIN REFER TO THE NORTH LINE OF SECTION 6, TOWNSHIP 52 SOUTH, RANGE 26 EAST, COLLIER COUNTY, FLORIDA AS BEING S.88°48'27"E.

THIS PROPERTY WAS ORIGINALLY DESCRIBED WITH WARRANTY DEED RECORDED AT O.R. BOOK 4197 AT PAGE 62 WITH A SCRIVENER'S ERROR. THE CORRECTIVE QUIT CLAIM DEED RECORDED AT O.R. BOOK 4218 AT PAGE 2567 CHANGES ONE CALL FROM N.89°36'37"E TO S.89°36'37"E. THIS CHANGE STILL REFLECTS A LACK OF CLOSURE FOR THE PARCEL. THE CORRECT CALL FOR CLOSURE IS N.89°36'37"E.

HOLE MONTES, INC.
CERTIFICATE OF AUTHORIZATION LB #1772

BY Thomas M. Murphy P.S.M. #5628
THOMAS M. MURPHY STATE OF FLORIDA





950 Encore Way • Naples, Florida 34110 • Phone: 239.254.2000 • Fax: 239.254.2075

HM PROJECT #1998105
4/13/2010
REF. DWG. #B-6627
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LEGAL DESCRIPTION:

A PARCEL OF LAND LOCATED IN A PORTION OF SECTION 6, TOWNSHIP 52 SOUTH, RANGE 26 EAST, COLLIER COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF SECTION 6, TOWNSHIP 52 SOUTH, RANGE 26 EAST, COLLIER COUNTY FLORIDA; THENCE RUN N.88°48'27"W., ALONG THE NORTH LINE OF SAID SECTION 6 FOR A DISTANCE OF 1209.85 FEET; THENCE RUN S.48°16'02"W. FOR A DISTANCE OF 148.22 FEET TO THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN DESCRIBED; THENCE RUN S.43°39'43"E., FOR A DISTANCE OF 10.33 FEET; THENCE RUN S.48°16'02"W., FOR A DISTANCE OF 564.70 FEET, TO A POINT ON A CIRCULAR CURVE, CONCAVE SOUTHEASTERLY, WHOSE RADIUS POINT BEARS S.41°24'50"E., THEREFROM; THENCE RUN SOUTHWESTERLY, ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 187.89 FEET, THROUGH A CENTRAL ANGLE OF 39°25'01", SUBTENDED BY A CHORD OF 113.24 FEET AT A BEARING OF S.28°52'40"W., FOR A DISTANCE OF 115.50 FEET TO THE END OF SAID CURVE; THENCE RUN S.69°35'37"W., FOR A DISTANCE OF 11.44 FEET, TO A POINT ON A CIRCULAR CURVE, CONCAVE SOUTHEASTERLY, WHOSE RADIUS POINT BEARS S.80°18'05"E., THEREFROM; THENCE RUN NORTHEASTERLY, ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 185.00 FEET, THROUGH A CENTRAL ANGLE OF 35°34'13", SUBTENDED BY A CHORD OF 122.20 FEET AT A BEARING OF N.28°59'00"E., FOR A DISTANCE OF 124.54 FEET TO THE END OF SAID CURVE; THENCE RUN N.48°16'02"E., FOR A DISTANCE OF 564.41 FEET TO THE POINT OF BEGINNING; CONTAINING 0.163 ACRES MORE OR LESS.

THIS PROPERTY SUBJECT TO EASEMENTS, RESERVATIONS OR RESTRICTIONS OF RECORD.

BEARINGS SHOWN HEREON REFER TO THE NORTH LINE OF SECTION 6, TOWNSHIP 52 SOUTH, RANGE 26 EAST, COLLIER COUNTY, FLORIDA, AS BEING N.88°48'27"W.

HOLE MONTES, INC.
CERTIFICATE OF AUTHORIZATION LB #1772

BY Thomas M. Murphy S.M. #5828
THOMAS M. MURPHY STATE OF FLORIDA

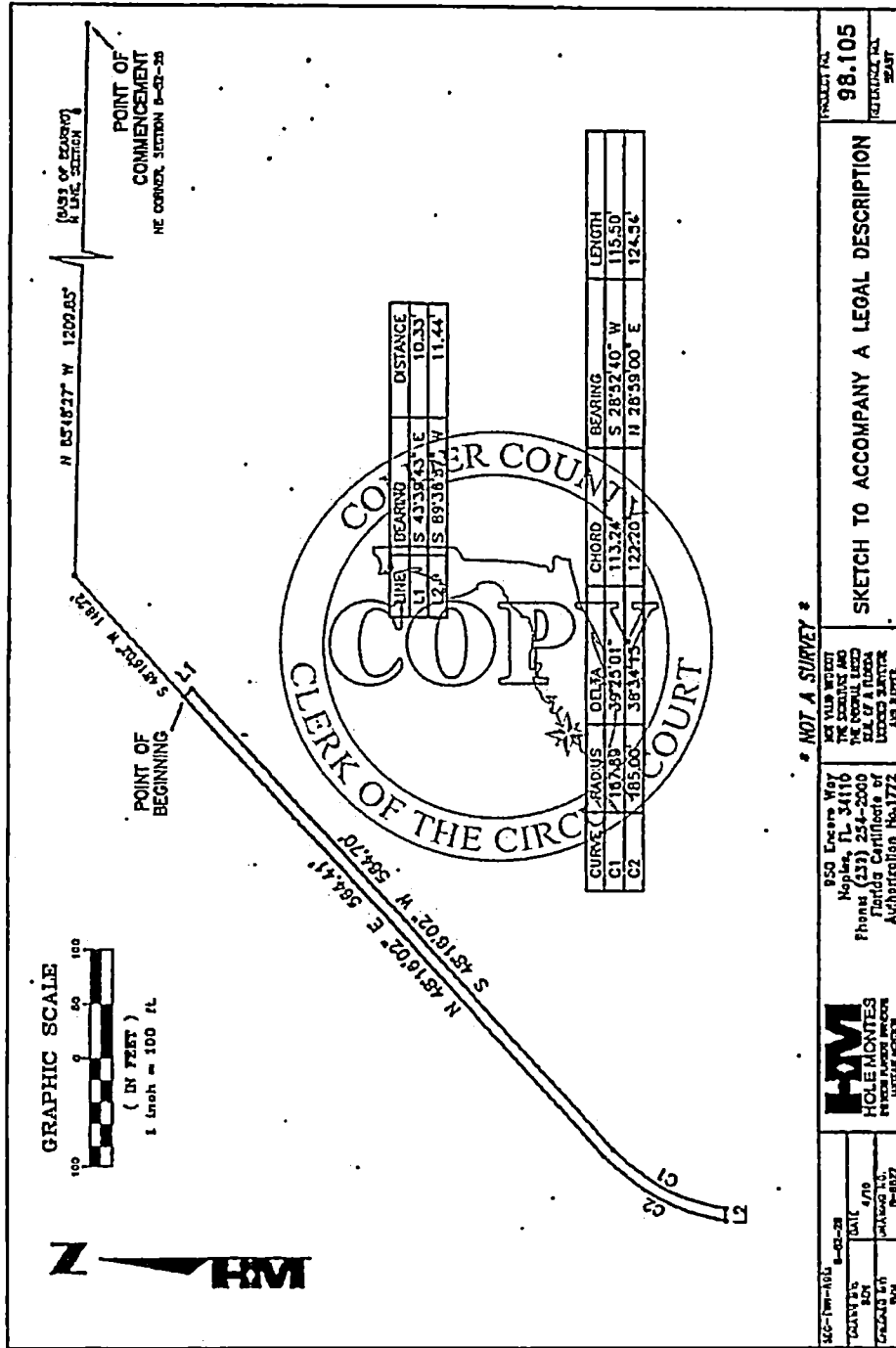


EXHIBIT "B"
RESERVED EASEMENTS, AGREEMENTS AND RIGHTS

Grantor hereby declares and establishes that all of the real property conveyed by this deed and legally described in Exhibit "A" hereof (the "Conveyed Property") shall be owned, held, used and conveyed subject to the reserved easements, agreements and rights hereinafter set forth, each of which shall burden the Conveyed Property and benefit the real property retained by Grantor and legally described in Exhibit "C" hereof (the "Retained Property"):

1. **Ingress and Egress.** Grantor hereby reserves non-exclusive, perpetual easements for ingress and egress on, over and across the Conveyed Property for vehicular and pedestrian traffic as follows (a) on, over, through and across all roadways, driveways and drive aisles, sidewalks and walkways, and other access improvements now existing on the Conveyed Property (collectively, "**Existing Access Improvements**"), and (b) on, over, through and across any and all roadways, driveways and drive aisles, sidewalks and walkways and other access improvements hereafter constructed, installed or placed on the Conveyed Property (collectively, "**Future Access Improvements**") (the Existing Access Improvements and Future Access Improvements hereinafter collectively referred to as "**Access Improvements**"), which easements shall include unlimited ingress and egress for such purposes and shall benefit and be enforceable by Grantor, its successors and assigns (including, but not limited to, any future owner of all or any part of the Retained Property), and their respective successors, assigns, heirs, representatives, agents, tenants, licensees, contractors, and invitees. Such easements shall at all times be sufficient for and permit the free flow of vehicular and pedestrian traffic to, from and between the Retained Property and Pelican Street and any other roadways, driveways and drive aisles, sidewalks and walkways, and other access improvements now or hereafter abutting any Access Improvements, including, but not limited to, for the development, construction, installation, alteration, or demolition of all or any part of any buildings, structures or other improvements on the Retained Property, and the sale and management, and use, enjoyment, occupancy and operation thereof (and the exercise of the easements and other rights reserved herein) by Grantor, its successors and assigns (including, but not limited to, any future owner of all or any part of the Retained Property), and their respective successors, assigns, heirs, representatives, agents, tenants, licensees, contractors, and invitees. There shall be no barriers or signs located on or near the outer perimeter of the Access Easements so as to preclude the free flow of such traffic or block or impair the visibility of the Retained Property from any Access Improvements.

2. **Construction and Construction Staging on Conveyed Property.** Grantor hereby reserves non-exclusive easements in, on and across the portion of the Conveyed Property not now improved with Existing Access Improvements or recreational or clubhouse facilities for (a) constructing, altering and replacing tennis courts and related or other improvements thereon, and (b) delivering, staging, assembling, fencing, screening and storing of vehicles, equipment, supplies and materials for purposes of (i) clause (a) of this paragraph, or (ii) developing, constructing, altering, maintaining, repairing and replacing any buildings, structures or other improvements on any Retained Property, and the sale and management, and use, enjoyment, occupancy and operation thereof, which easements shall include unlimited ingress and egress for such purposes and benefit and be enforceable by Grantor, its successors and assigns (including, but not limited to, any future

owner of all or any part of the Retained Property), and their respective successors, assigns, heirs, representatives, agents, tenants, licensees, contractors, and invitees.

3. **Utilities.** Grantor hereby reserves non-exclusive, perpetual easements in, on, over, through, across, and under the Conveyed Property for developing, constructing, installing, altering, connecting, using, operating, maintaining, repairing and replacing potable water, sanitary and storm sewer, electricity, gas, cable, telephone, telecommunications, internet, data, audio and visual signals, drainage, irrigation and other utilities and services for the needs, operation and uses of the Retained Property, and the sale and management, and use, enjoyment, occupancy and operation thereof, including, but not limited to, any and all pipes, lines, conduits, wires, and other facilities, structures, systems, equipment and improvements furnishing or otherwise relating to any of the foregoing, which easements shall include unlimited ingress and egress for such purposes and benefit and be enforceable by Grantor, its successors and assigns (including, but not limited to, any future owner of all or any part of the Retained Property), and their respective successors, assigns, heirs, representatives, agents, tenants, licensees, contractors, and invitees.

4. **Signage.** Grantor hereby reserves non-exclusive, perpetual easements in, on, over, through, across, and under the Conveyed Property for signage for the Retained Property, including, but not limited to, fixed or temporary advertising and directional signs, banners, flags or other observable media and all related lighting, display and other facilities, structures, systems and improvements incidental to constructing any buildings, structures or other improvements on any Retained Property, and the sale and management, use and operation thereof, which easements shall benefit and be enforceable by Grantor, its successors and assigns (including, but not limited to, any future owner of all or any part of the Retained Property), and their respective successors, assigns, heirs, representatives, agents, tenants, licensees, contractors, and invitees.

5. **Drainage.** Grantor hereby reserves non-exclusive, perpetual easements in, on, over, through, across, and under the Conveyed Property for the drainage of surface and subsurface water from the Retained Property, which easements shall include unlimited ingress and egress for such purposes and benefit and be enforceable by Grantor, its successors and assigns (including, but not limited to, any future owner of all or any part of the Retained Property), and their respective successors, assigns, heirs, representatives, agents, tenants, licensees, contractors, and invitees.

6. **Easements and Covenants Run With the Land; No Third Party Beneficiary.** All of the foregoing easements and agreements constitute covenants running with the land pursuant to Florida law, and shall bind Grantee and benefit Grantor, and bind Grantee's and benefit Grantor's respective successors (by merger, consolidation or otherwise) and assigns (including, without limitation, all future owners of the Conveyed Property or Retained Property, and all lessees and other persons acquiring any interest in the Conveyed Property or Retained Property, or any portion thereof), and are for their exclusive benefit and not for the benefit of any third person. Nothing herein contained shall be deemed to be a gift or dedication to or for the general public or for any public purposes whatever. Grantee, and its successors and assigns, acknowledge and agree that Grantor, or its successors and assigns, may at any time, and from time to time, transfer and assign all or any part of the rights reserved, created or granted hereunder to a subsequent owner of the Retained Property without the consent of the Grantee or its successors or assigns or any other person.

7. Duration; Termination and Amendment. Unless otherwise expressly provided above, the foregoing easements and agreements shall be perpetual and may be terminated or modified in whole or in part only to the extent set forth in a written instrument executed by Grantee and either Grantor or a condominium association formed in connection with a condominium created upon the Retained Property.

8. Litigation Expenses; Payment to Prevailing Party. In any suit, action or other proceeding with respect to any of the foregoing easements or agreements (including, but not limited to, pertaining to any actual or alleged breach or violation, or any enforcement or interpretation, thereof) or any other matter with respect thereto, the prevailing party shall be entitled to recover its costs and expenses of suit, including, but not limited to, reasonable attorneys' fees and paralegal fees, from the other.

9. Governing Law. The foregoing easements and agreements shall be construed and enforced in accordance with the laws of the State of Florida.

10. Injunctive Relief; No Waiver. The owner of the Retained Property shall have the right to enjoin any violation or threatened violation of any of the foregoing easements and agreements in a court of competent jurisdiction. The right of injunction shall be in addition to damages and all other remedies set forth herein or provided by law or in equity. The failure of Grantor, its successors and assigns, to enforce any of the foregoing easements and agreements, or any right or obligation with respect thereto, shall in no event be deemed a waiver thereof or of the right to thereafter seek, demand and obtain such enforcement.

11. Entire Agreement; and Construction. This instrument constitutes the entire agreement and understanding between Grantor and Grantee with respect to the subject matter hereof, and has been negotiated with counsel of their own choosing and no provision hereof shall be construed against the draftsman or in favor of either party. Neither Grantor nor Grantee has relied upon any statement, promise or representation not expressed herein.

EXHIBIT "C"
RETAINED PROPERTY



650 Encore Way • Naples, Florida 34110 • Phone: 239.254.2000 • Fax: 239.254.2075

HM PROJECT #1998105
4/21/2010
REF. DWG. #B-6627
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LEGAL DESCRIPTION:

A PARCEL OF LAND LOCATED IN A PORTION OF SECTION 6, TOWNSHIP 52 SOUTH, RANGE 26 EAST, COLLIER COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF SECTION 6, TOWNSHIP 52 SOUTH, RANGE 26 EAST, COLLIER COUNTY, FLORIDA; THENCE RUN N.88°48'27"W., ALONG THE NORTH LINE OF SAID SECTION 6 FOR A DISTANCE OF 908.47 FEET TO THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN DESCRIBED; THENCE RUN S.43°48'27"E., FOR A DISTANCE OF 166.37 FEET; THENCE RUN S.19°52'39"W., FOR A DISTANCE OF 108.12 FEET; THENCE RUN S.80°29'49"W., FOR A DISTANCE OF 58.28 FEET; THENCE RUN N.59°39'57"W., FOR A DISTANCE OF 51.26 FEET; THENCE RUN W.71°03'47"W., FOR A DISTANCE OF 120.50 FEET; THENCE RUN S.65°28'35"W., FOR A DISTANCE OF 118.12 FEET; THENCE RUN S.05°36'19"E., FOR A DISTANCE OF 112.94 FEET; THENCE RUN S.84°23'41"W., FOR A DISTANCE OF 45.00 FEET; THENCE RUN S.05°36'19"E., FOR A DISTANCE OF 37.35 FEET, TO A POINT ON A CIRCULAR CURVE, CONCAVE SOUTHERLY, WHOSE RADIUS POINT BEARS S.09°12'09"E., THEREFROM; THENCE RUN WESTERLY, ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 690.70 FEET, THROUGH A CENTRAL ANGLE OF 6°40'08", SUBTENDED BY A CHORD OF 80.34 FEET AT A BEARING OF S.77°27'48"W., FOR A DISTANCE OF 80.34 FEET TO THE END OF SAID CURVE; THENCE RUN N.05°36'19"W., FOR A DISTANCE OF 183.65 FEET; THENCE RUN N.86°43'57"W., FOR A DISTANCE OF 158.65 FEET; THENCE RUN N.48°16'02"E., FOR A DISTANCE OF 147.42 FEET; THENCE RUN N.43°39'43"W., FOR A DISTANCE OF 10.33 FEET; THENCE RUN N.48°16'02"E., FOR A DISTANCE OF 148.22 FEET TO A POINT ON THE NORTH LINE OF SAID SECTION 6; THENCE RUN S.88°48'27"E., ALONG THE NORTH LINE OF SAID SECTION 6 FOR A DISTANCE OF 303.38 FEET, TO THE POINT OF BEGINNING; CONTAINING 2.773 ACRES, MORE OR LESS.

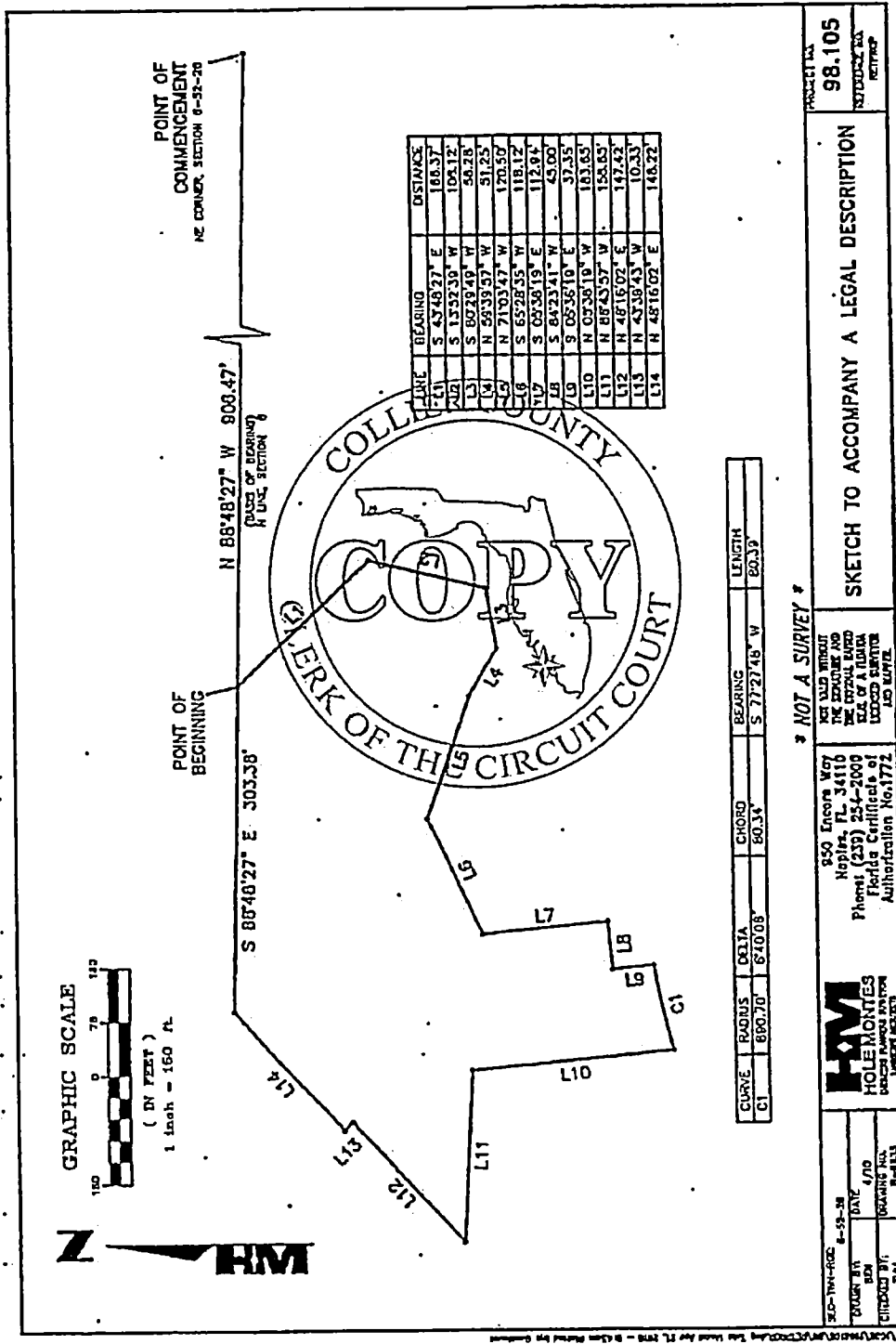
THIS PROPERTY SUBJECT TO EASEMENTS, RESERVATIONS OR RESTRICTIONS OF RECORD.

BEARINGS SHOWN HEREON REFER TO THE NORTH LINE OF SECTION 6, TOWNSHIP 52 SOUTH, RANGE 26 EAST, COLLIER COUNTY, FLORIDA AS BEING N.88°48'27"W.

HOLE MONTES, INC.
CERTIFICATE OF AUTHORIZATION LB #1772

BY *Thomas M. Murphy*
THOMAS M. MURPHY

P.S.M. #5628
STATE OF FLORIDA



Prepared by and Return to:

Steven R. Parson, Esq.
Shutts & Bowen LLP
525 Okeechobee Blvd., Suite 1100
West Palm Beach, FL 33401

Tax Folio No.:

01050082802

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED, is made and entered into as of the 31 day of October, 2017, by **AIRCRAFT INVESTMENT LLC**, a Florida limited liability company, whose address is 868 102nd Avenue Nq., #302, Naples, FL 34108 (hereinafter referred to as "**Grantor**"), and **DONNIE GENE MITCHELL** and **KIMBERLY ANN SCHNELL MITCHELL**, husband and wife, whose address is 85 West Pelican Street, Marco Island, FL 34145 (hereinafter referred to as "**Grantee**").

WITNESSETH:

That Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, to it in hand paid, the receipt whereof is hereby acknowledged, by these presents does grant, bargain, sell, alien, remise, release, convey and confirm unto the Grantee, its successors and assigns forever, that parcel of land lying and being in the County of Collier, State of Florida, as more particularly described in the Exhibit "A" attached hereto and by this reference made a part hereof (the "**Property**").

TOGETHER WITH all the improvements, tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining and together with all rights and easements of record.

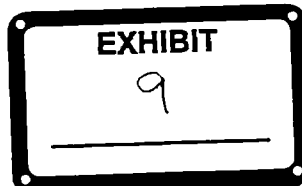
SUBJECT TO taxes for the year 2017 and subsequent years, and applicable zoning ordinances and those matters of record, rights of way, restrictions, reservations, covenants, conditions, and easements, without reimposing the same.

TO HAVE AND TO HOLD the same in fee simple forever.

And Grantor hereby covenants with Grantee that Grantor, at the time of delivery of this deed, is lawfully seized of the Property in fee simple, that Grantor has good right, full power, and lawful authority to grant, bargain, sell, and convey the same, and that Grantor hereby warrants the title to the Property and will defend the same against the lawful claims of all persons claiming by, through or under the Grantor, but against no others.

IN WITNESS WHEREOF, the Grantor has caused these presents to be duly executed in its name, as of the date first set forth above.

WPBDOCS 9378254 1



Signed, sealed and delivered in the presence of: GRANTOR:

Robert G. Clark
Printed Name: Robert G. Clark

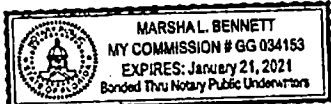
Mark Penn
Printed Name: Mark Penn

AIRCRAFT INVESTMENT LLC, a Florida limited liability company

By: Dollie M. Costa
Dollie M. Costa, Manager

STATE OF FLORIDA
COUNTY OF COLLIER

The foregoing instrument was acknowledged before me this 30th day of October, 2017, by Dollie M. Costa, as Manager of Aircraft Investment LLC, a Florida limited liability company, on behalf of the company. She is personally known to me / or has produced / as identification.



(Notarial Seal)

Marsha L. Bennett
Marsha L. Bennett

Printed Name:
NOTARY PUBLIC
State of Florida

My Commission Expires: 1/21/21

COPIES

EXHIBIT "A"

LEGAL DESCRIPTION

A parcel of land located in a portion of Section 6, Township 52 South, Range 26 East, Collier County, Florida being more particularly described as follows:

Commence at the Northeast corner of Section 6, Township 52 South, Range 26 East, Collier County Florida; thence Run N.88°48'27"W., along the North line of said Section 6 for a distance of 906.47 feet to the Point of Beginning of the parcel of land herein described; thence run S.43°48'27"E., for a distance of 166.37 feet; thence run S.13°52'39"W., for a distance of 108.12 feet; thence run S.80°29'49"W., for a distance of 56.28 feet; thence run N.59°39'57"W., for a distance of 51.25 feet; thence run N.71°03'47"W., for a distance of 120.50 feet; thence run S.65°28'35"W., for a distance of 118.12 feet; thence run S.05°36'19"E., for a distance of 112.94 feet; thence run S.84°23'41"W., for a distance of 45.00 feet; thence run S.05°36'19"E., for a distance of 37.35 feet, to a point on a circular curve, concave Southerly, whose radius point bears S.09°12'09"E., therefrom; thence run Westerly, along the arc of said curve to the left, having a radius of 690.70 feet, through a central angle of 6°40'06", subtended by a chord of 80.34 feet at a bearing of S.77°27'48"W., for a distance of 80.39 feet to the end of said curve; thence run N.05°36'19"W., for a distance of 183.65 feet; thence run N.86°43'57"W., for a distance of 158.65 feet; thence run N.48°16'02"E., for a distance of 147.42 feet; thence run N.43°39'43"W., for a distance of 10.33 feet; thence run N.48°16'02"E., for a distance of 148.22 feet to a point on the North line of said Section 6; thence run S.88°48'27"E., along the North line of said Section 6 for a distance of 303.38 feet, to the Point of Beginning.

Less and Except:

Tract B

A parcel of land lying in Government Lot-1 in Section 6, Township 52 South, Range 26 East, Collier County, Florida, being more particularly described as follows:

Commencing at the Northeast corner of said Section 6, Township 52 South, Range 26 East, Collier County, Florida, run North 88° 48' 27" West, along the North line of said Section 6 for 380.00 feet to the Northeast corner of the parent parcel; thence continue North 88° 48' 27" West, for 815.17 feet; thence run South 48° 16' 02" West for 158.63 feet to the Point of Beginning; thence run South 43° 39' 43" East for 190.50 feet; thence run South 05° 36' 19" East, for 135.09 feet to a point of cusp of a curve concave to the Southeast; thence run 80.63 feet along the arc of said curve having a radius of 690.70 feet, a central angle of 6° 41' 20", a chord of 80.59 feet and a chord bearing of South 77° 28' 25" West to a point; thence run North 05° 36' 19" West for 183.65 feet; thence run North 86° 43' 57" West for 158.65 feet; thence run North 48° 16' 02" East for 147.47 feet to the Point of Beginning.

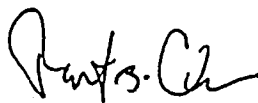
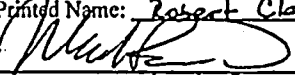
ALL OF THE PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA.

**ASSIGNMENT AND ASSUMPTION OF DEVELOPMENT RIGHTS,
PERMITS, CONTRACTS, DECLARANT'S RIGHTS,
AND OTHER INTANGIBLE RIGHTS**

For value received, AIRCRAFT INVESTMENT LLC a Florida limited liability company (herein "Assignor"), owner of real property located in Collier County, Florida, which real property is legally described on Exhibit "A" attached hereto and made a part hereof (the "Property"), hereby assigns to DONNIE GENE MITCHELL and KIMBERLY ANN SCHNELL MITCHELL, husband and wife (herein "Assignee"), as of October 30, 2017 (the "Effective Date"), all of Assignor's right, title and interest, in and to (i) all development rights and entitlements for the development of the Property (collectively, the "Development Rights"), and (ii) all permits, approvals, contract rights, prepaid impact fees, utility prepayments or reservation fees, if any, and all other intangible property relating to the ownership and development of the Property, including any rights of Assignor, as Successor Declarant or Developer under Declaration of Covenants, Conditions and Restrictions of La Peninsula recorded in O.R. Book 1213, Page 770, of the Public Records of Collier County, Florida, to the extent any such rights may be held by Assignor (collectively, the "Intangible Rights"), without representation or warranty of any kind.

Assignee hereby accepts such assignment of Development Rights and Intangible Rights and assumes all obligations under the Development Rights and Intangible Rights arising on and after the Effective Date.

WITNESSES:

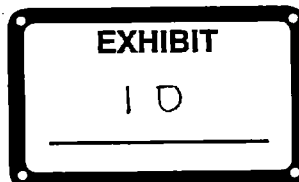

Printed Name: Robert Clark

Printed Name: Mark Kern

ASSIGNOR:

AIRCRAFT INVESTMENT LLC, a Florida
limited liability company


By: _____
Dollie M. Costa, Manager

Date: December 18, 2017



STATE OF FLORIDA)
)ss:
COUNTY OF COLLIER)

The foregoing instrument was acknowledged before me this 18th day of December, 2017, by Dollie M. Costa, as Manager of Aircraft Investment LLC, a Florida limited liability company, on behalf of the company. She is personally known to me _____ or has produced _____ as identification.



Marsha L Bennett
Printed Name: Marsha L Bennett
NOTARY PUBLIC, State of Florida
My Commission Expires: 1/21/21

CERTIFIED COPY

WITNESSES:

ASSIGNEE:

Pegilee H Morris
 Printed Name: PEGILEE H MORRIS
SS
 Printed Name: Sarah Smith

Donnie Gene Mitchell
 DONNIE GENE MITCHELL
Kimberly Ann Schnell Mitchell
 KIMBERLY ANN SCHNELL MITCHELL
 Date: December 30, 2017

STATE OF FLORIDA)

COUNTY OF COLLIER)

The foregoing instrument was acknowledged before me this 30 day of December, 2017, by Donnie Gene Mitchell and Kimberly Ann Schnell Mitchell. They are personally known to me X or have produced _____ as identification.

PEGILEE H. MORRIS
 Commission # GG 207403
 Expires July 17, 2022
 Notary Public - Budget Notary Services

(Notarial Seal)

Pegilee H Morris
 Printed Name: PEGILEE H MORRIS
 NOTARY PUBLIC, State of Florida
 My Commission Expires: July 17 2022

EXHIBIT "A"
LEGAL DESCRIPTION

A parcel of land located in a portion of Section 6, Township 52 South, Range 26 East, Collier County, Florida being more particularly described as follows:

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Less and Except:

Tract B

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ALL OF THE PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA.

Prepared by and when recorded return to:

WILLIAM G MORRIS, P.A.
247 N. Collier Blvd., Ste 202
MARCO ISLAND, Florida 34145

Property Appraiser's Parcel Identification
No. 01050082802

(Space above this line reserved for recording office use only)

WARRANTY DEED

THIS INDENTURE made on DECEMBER 3, 2019, between DONNIE GENE MITCHELL and KIMBERLY ANN SCHNELL MITCHELL, husband and wife (hereinafter referred to as "Grantor"), whose post office address is 85 West Pelican Street, Naples, Florida 34113, hereby GRANT, CONVEY and WARRANT unto by DOLPHIN POINT, LLC, a Florida limited liability company (hereinafter referred to as "Grantee"), such Grantee whose post office address is 85 West Pelican Street, Naples, Florida 34113, all of Grantor's interest in and to the following described real estate in the County of Collier and State of Florida:

Legal Description particularly described in the Exhibit "A" attached hereto.

This deed was prepared without the benefit of title insurance.

TO HAVE AND TO HOLD the property, to the extent conveyed hereby, in fee simple forever, subject to the terms and provisions contained herein, together with each and every right, privilege, hereditament and appurtenance in anywise incident or appertaining to the property.

The conveyance made hereby, and the warranties made hereunder, are made by Grantor and accepted by Grantee subject to the following matters, to the extent same are in effect at this time: any and all restrictions, covenants, conditions, liens, encumbrances, reservations, easements, and other exceptions to title, if any, relating to the property, but only to the extent they are still in force and effect and shown of record in Collier County, Florida, and to all zoning laws, regulations and ordinances of municipal and/or other governmental or quasi-governmental authorities, if any, relating to the property and to all matters which would be revealed by an inspection and/or a current survey of the property.

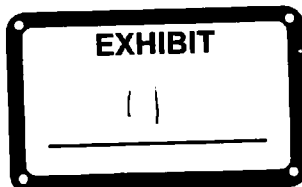
Grantor does hereby bind Grantor and Grantor's heirs, personal representatives, executors, administrators, successors and assigns to warrant and forever defend all and singular the property, to the extent conveyed hereby, unto Grantee and Grantee's heirs, personal representatives, executors, administrators, successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Taxes for the current year are assumed by Grantee.

Grantor warrants that at the time of this conveyance, the subject property is not the Grantor's homestead within the meaning set forth in the constitution of the state of Florida, nor is it contiguous to or a part of homestead property.

No change in beneficial ownership and no mortgage. Dolphin Point, LLC is owned by Grantor and no consideration, so no documentary stamps are due.

1



IN WITNESS WHEREOF, the Grantor has executed this Warranty Deed on the day and year first above written.

Signed, Sealed and Delivered in presence of

Pegilee Morris
Witness

Donnie Gene Mitchell
DONNIE GENE MITCHELL

PEGILEE MORRIS
(Printed Name)

Marie Gene Magno Smith
Witness

Kimberly Ann Schnell Mitchell
KIMBERLY ANN SCHNELL MITCHELL

MARIE ANNE MAGNO SMITH
(Printed Name)

STATE OF FLORIDA
COUNTY OF COLLIER

The foregoing instrument was acknowledged before me, the undersigned authority, by DONNIE GENE MITCHELL, Grantor, who produced a driver's license issued by Florida that contained his photograph and signature as identification thereby proving him to be the person whose name is subscribed to the foregoing instrument as Grantor, and by KIMBERLY ANN SCHNELL MITCHELL, Grantor, who produced a driver's license issued by Florida that contained her photograph and signature as identification thereby proving her to be the person whose name is subscribed to the foregoing instrument as Grantor, both of whom identified this instrument as a Deed and signed such instrument willingly as Grantor for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, on DECEMBER 3, 2019.



MARIE GRACE MAGNO-SMITH
Commission # GG 207395
Expires May 14, 2022
Bonded One Notary Public Service

Marie Gene Magno Smith

NOTARY PUBLIC
Printed Name: MARIE GRACE MAGNO-SMITH

{SEAL}

EXHIBIT "A"

LEGAL DESCRIPTION

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Less and Except:

Tract B

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ALL OF THE PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA.

This instrument prepared without
opinion of title by:

Francesca Passidomo, Esq.
Coleman, Yovanovich & Koester, PA
4001 Tamiami Trail, Suite 300
Naples, FL 34103

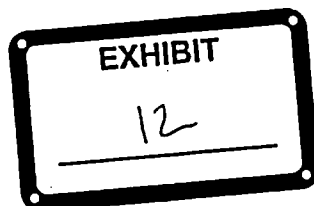
ASSIGNMENT AND ASSUMPTION OF DEVELOPMENT RIGHTS

This Assignment and Assumption of Development Rights ("Assignment") is made this 14 day of Aug, 2020, by DONNIE GENE MITCHELL and KIMBERLY ANN SCHNELL MITCHELL, husband and wife ("Assignor") to DOLPHIN POINT, LLC, a Florida limited liability company ("Assignee").

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained in this Assignment, Ten Dollars (\$10.00), and other good and valuable consideration, the receipt and legal sufficiency of which are acknowledged by the parties hereto, the parties hereto hereby covenant and agree as follows:

1. Assignment and Assumption. Pursuant to that certain Warranty Deed recorded in Official Records Book 5708, Page 3362, of the Public Records of Collier County, Florida, Assignor conveyed that certain real property situated in Collier County, Florida, more particularly described in Exhibit "A", attached hereto and incorporated herein by reference (the "Property"), to Assignee. In connection therewith, Assignor hereby sells, transfers, assigns, delivers and conveys to the Assignee all of Assignor's right, title, entitlements and interest in and to the Property, including, but not limited to, Assignor's "Development Rights" and "Intangible Rights" under that certain Assignment and Assumption of Development Rights, Permits, Contracts, Declarant's Rights, and Other Intangible Rights recorded in Official Records Book 5543, Page 3395, of the Public Records of Collier County, Florida (collectively, the "Assigned Rights"). Assignee accepts the foregoing assignment and agrees to assume all of the Assigned Rights from and after the date hereof.

2. Severability. If any term or provision of this Assignment or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Assignment or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Assignment shall be valid and enforced to the fullest extent permitted by law.



3. Binding Effect. This Assignment shall be binding on and shall inure to the benefit of each of the parties and their respective successors and assigns.

(Signatures appear on the following pages.)

NOT A CERTIFIED COPY

The parties have executed this Assignment as of the date first above written.

WITNESSES:
(as to both)

ASSIGNOR:

David E Kelch
Signature

Kimberly Ann Schnell Mitchell
Kimberly Ann Schnell Mitchell

David E Kelch
Printed Name

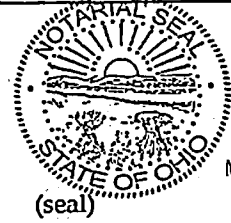
Rebecca Coiner
Signature

Donnie Gene Mitchell
Donnie Gene Mitchell

Rebecca Coiner
Printed Name

STATE OF: Ohio)
COUNTY OF: Auglaize)ss:

THE FOREGOING INSTRUMENT was acknowledged before me by means of physical presence or online notarization on this 14 day of August, 2020, by Kimberly Ann Schnell Mitchell and Donnie Gene Mitchell, as Assignor, who (check one) is personally known to me or produced as identification: Florida Drivers License (ID).



DAVID E. KELCH
NOTARY PUBLIC
STATE OF OHIO
Recorded In
Auglaize County
My Comm. Exp 1/2/2021

D. Kelch
Notary Public

My Commission Expires: _____

WITNESSES:

ASSIGNEE:

DOLPHIN POINT, LLC, a Florida
Limited liability company

[Signature]
Signature

Kimberly Ann Schnell Mitchell
Kimberly Ann Schnell Mitchell,
Authorized Member

David E. Kelch
Printed Name

Rebecca Coiner
Signature

Rebecca Coiner
Printed Name

STATE OF: Ohio
COUNTY OF: Auglaize)ss:

THE FOREGOING INSTRUMENT was acknowledged before me by means of physical presence or online notarization on this 14th day of August 2020, by Kimberly Ann Schnell Mitchell, as Authorized Member of Dolphin Point, LLC, the Assignee, who (check one) is personally known to me or produced as identification: Florida Driver License / ID



DAVID E. KELCH
NOTARY PUBLIC
STATE OF OHIO
Recorded in
Auglaize County
My Comm. Exp 1/2/2021

[Signature]
Notary Public

My Commission Expires: _____

EXHIBIT "A"
LEGAL DESCRIPTION

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Less and Except:

Tract B

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ALL OF THE PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA.

EXHIBIT "A"

01025277

086 AUG 19 PM 1:56

COLLIER COUNTY

RECORDED

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
LA PENINSULA

REC-1500
DOC.
INT.

This Declaration of Covenants, Conditions and Restrictions made this 15th day of August, 1986 by BARCLAYS CAPRI POINT PARTNERSHIP hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, the Declarant on the date hereof is the owner of certain real property located in Collier County, Florida, described as follows:

See Exhibit "A" attached hereto; and

WHEREAS, Declarant deems it desirable for the preservation, protection and enhancement of the value and amenities to subject the real property described in Exhibit "A", attached hereto to this Declaration of Covenants, Conditions and Restrictions;

WHEREAS, Declarant intends to develop the real property described in Exhibit "A" attached hereto, by constructing thereon approximately two hundred and thirteen (213) condominium units located in various condominiums together with certain recreational facilities and other improvements, all as more particularly identified and shown on the site plan of LA PENINSULA, attached hereto as Exhibit "B" and as revised hereafter (hereinafter referred to as "Site Plan").

NOW, THEREFORE, Declarant hereby declares that all of the real property described in Exhibit "A", attached hereto, shall be held, sold, conveyed, leased, mortgaged and otherwise dealt with subject to those easements, covenants, conditions, restrictions, reservations, liens and charges (collectively referred to hereafter as the "Conditions") as hereinafter set forth, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of said real property and subject to conditions, restrictions and easements of record. These Conditions shall run with the real property described in Exhibit "A" and shall be binding upon all parties having and/or acquiring any right, title or interest in real property described therein or any part thereof, and shall inure to the benefit of each and every person or entity, from time to time, owning or holding an interest in said real property.

RETURN TO ARTHUR V. WOODWARD, P.A.

Declarant hereby declares as follows:

ARTICLE I

DEFINITIONS

1.1 The following words and terms when used in this Declaration or any Supplemental Condominium Declaration (unless the context shall clearly indicate otherwise) shall have the following meanings:

A. "Assessments" means a share of the funds required for the payment of Common Expenses which from time to time are assessed against any Unit Owner.

B. "Condominium Association" or "Association" as used in a Declaration of Condominium or its related exhibits means the non-profit Florida corporation responsible for the operation of the Condominium and other Condominiums located upon a parcel of land, Collier County, Florida more particularly described in Exhibit "A" hereto.

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C. "Board" means the Board of Directors or other representative body responsible for the administration of the Association.

D. "Articles" and "By-Laws" as used in any Declaration of Condominium or its related exhibits means the Articles of Incorporation and the By-Laws of the Condominium Association as they exist from time to time. "Articles" "Master Articles" and "By-Laws" as used in the Declaration of Covenants, Conditions and Restrictions of La Peninsula means the Articles of Incorporation and By-Laws of the Club at La Peninsula.

E. "Common Elements" means that portion of the Condominium Property not included in the Units. Common Elements shall include the tangible personal property required for the maintenance of the Common Elements and the tangible personal property which is owned by the Condominium Association and the Limited Common Elements whether owned by the Association or not.

F. "Common Expenses" means the expenses of administration, maintenance, operation, repair and replacement of the Condominium Property, assessments due to The Club at La Peninsula, Inc., other expenses declared by the Association, the Declaration and these By-Laws to be Common Expenses and any other valid expenses or debts of the Condominium as a whole or the Association which are assessed against the Unit Owners.

G. "Common Surplus" means the excess of all receipts of the Association, including but not limited to assessments, rents, profits and revenues on account of the Common Elements, over the amount of the Common Expenses.

H. "Condominium" is that form of ownership of Condominium Property under which Units are subject to private ownership and there is appurtenant to each Unit as part thereof an undivided share in the Common Elements.

I. "Condominium Building" means a residential structure which comprises a portion of the Condominium Property within which Units are located.

J. "Condominium Property" means and includes all lands that are subjected to condominium ownership, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with the Condominium.

K. "Declaration" or "Declaration of Condominium" means the instrument by which the Condominium Property is submitted to condominium ownership pursuant to the provisions of the Florida Condominium Act.

L. "Developer" and "Declarant" means Barclays Capri Point Partnership and its successors and assigns, the creator of the Condominium, which is offering Condominium Units in the Condominium for sale in its ordinary course of business pursuant to the Florida Condominium Act.

M. "Limited Common Elements" means and includes those Common Elements which are reserved for the use of a certain Unit or Units to the exclusion of other Units.

N. "Master Association" shall mean The Club at La Peninsula, a Florida non-profit corporation responsible for the operation of the Club House and other amenities at La Peninsula.

O. "Mortgagee" means a bank, savings and loan association, insurance company, mortgage company, real estate investment trust, recognized institutional type lender or its loan correspondent, Federal National Mortgage Association (FNMA), or agency of the United States Government, which owns or holds a mortgage encumbering a Condominium Parcel.

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F. "Operating Budget" means the allocation of costs and expenses for the operation, administration and management of the Condominium.

G. "Operating" or "Operation of the Condominium" means and includes the operation, administration and management of the Condominium Property.

H. "Owner" means the person or persons whose estates or interests, individually or collectively, aggregate fee simple absolute ownership of a Unit. Unless otherwise specifically provided herein, the word "Owner" shall include any beneficiary of a trust, shareholder of a corporation, or partner of a partnership holding legal title to a Unit.

I. "Special Assessment" means any assessment levied against Unit Owners other than an assessment required by a budget adopted annually.

J. "Turnover Meeting" refers to the meeting which shall take place at such time as the Unit Owners, other than the Developer are entitled to elect a majority of the Board of Directors.

K. "Unit" means a part of the Condominium Property which is to be subject to private ownership, as designated in the Declaration of Condominium(s).

L. "Utility Service" as used in the Condominium Act, construed with reference to the Condominium(s), and as used in the Declaration(s), the Articles of Incorporation and the By-Laws, shall include, but not limited to, gas, hot and cold water, trash and sewage disposal.

M. "Voting Interest" means the voting rights distributed to the Association members pursuant to the By-Laws of La Peninsula Condominium Association, Inc.

ARTICLE II

PROPERTY SUBJECT TO DECLARATION

2.1 La Peninsula. The real property which shall be held, transferred, sold, conveyed, given, donated, leased and/or occupied subject to this Declaration shall include the real property described in Exhibit "A", attached hereto, together with any and all other real property which may be subjected in the future to the conditions of this Declaration. The Declarant intends to develop La Peninsula in accordance with the Site Plan, but hereby reserves the right to review and modify the Site Plan from time to time in its sole discretion and as permitted by law.

2.2 Change in Development Plan. The Declarant shall not be required to follow any predetermined sequence or order of improvement and development, and it may bring within this Declaration additional lands, and develop them before completing the development of the real property described in Exhibit "A". The Declarant shall have the full power to add to, subtract from or make changes in the Site Plan regardless of the fact that such actions may alter the relative voting strength of the various types of membership in the Association.

ARTICLE III

MASTER ASSOCIATION

3.1 Membership. Subject to the other Sections of this Article III every Owner shall be a Member of the Master Association, (The Club at La Peninsula, Inc.) and by acceptance of a deed or other

Instrument evidencing his ownership interest, each Owner accepts his membership in the Association, acknowledges the authority of the Master Association as herein stated, and agrees to abide by and be bound by the provisions of this or any Supplementary Declaration, the Articles of Incorporation, the By-Laws and other rules and regulations of the Master Association. The Declarant shall also be a Member of the Master Association.

3.2 Change of Membership. Change of membership shall be established by recording in the Public Records of Collier County, Florida, a deed or other instrument conveying record fee title to any Condominium Unit. The Owner designated by such instrument thus becomes a Member of the Master Association, and the membership of the prior Owner shall be terminated. In the event that a certified copy of said instrument is not delivered to the Master Association, said Owner shall become a Member, but shall not be entitled to voting privileges enjoyed by his predecessor in interest. The foregoing shall not, however, limit the Master Association's powers or privileges. The interest, if any, of a Member in the funds and assets of the Master Association shall not be assigned, hypothecated or transferred in any manner except as an appurtenance to his real property. Membership in the Master Association by all Owners shall be compulsory and shall continue until such time as the Owner transfers or conveys of record his interest in the real property upon which his membership is based or until said interest is transferred or conveyed by operation of law, at which time the membership shall automatically be conferred upon the transferee. Membership shall be appurtenant to, run with, and shall not be separated from the real property interest upon which membership is based.

3.3 Voting Rights. The number of votes which may be cast on all matters on which the membership is entitled to vote shall be determined as follows:

A. Each Member shall be entitled to cast one (1) vote for each Condominium Unit owned by said Member.

B. When any property entitling the Owner to membership in the Master Association is owned of record in the name of two (2) or more persons or entities, whether fiduciaries, joint tenants, tenants in common, tenants in partnership or in any other manner of joint or common ownership, or if two (2) or more persons or entities have the same fiduciary relationship respecting the same property, then the vote for such membership shall be cast by the person designated in a Voting Certificate signed by all of the Owners (or the proper corporate officer) of said property, filed with the Secretary of the Master Association. In the absence of such a writing, such vote shall not be counted except that a Voting Certificate shall not be required when a Condominium Unit is owned by a husband and his wife only.

C. The voting rights of any Owner may be assigned by an Owner to his lessee who has entered into a lease with a term of one (1) year or more; provided, however, that the Owner may not assign to such lessee any vote or votes not attributable to the property actually leased by such lessee.

3.4 Board of Directors. The Association shall be governed by a Board of Directors as provided in the Articles of Incorporation of the Master Association.

3.5 Quorum Required for Any Action Authorized at Regular or Special Meetings of the Association. The quorum required for any action which is subject to a vote of the Members at any meeting of the Master Association shall be as is provided in the Articles or By-Laws of the Master Association except as is specifically provided in this Declaration.

3.6 Proxies. All Members of the Association may vote and transact business at any meeting of the Association by Proxy as provided in the By-Laws of the Association.

ARTICLE IV

FUNCTIONS OF MASTER ASSOCIATION

4.1 Required Services. The Association shall provide the following services:

A. Maintenance and operation of all Common Property in accordance with the rules, regulations and standards adopted by the Association from time to time. The Master Association shall adopt standards of cleanup, landscaping, maintenance and operation required by this and other subsections within this Section which are, at the very least, as stringent as those adopted and/or followed by other developments similar to La Peninsula, and located in the State of Florida.

B. The purchase and maintenance of general liability and hazard insurance covering improvements and activities on the Common Property, including coverage against loss or damage by fire, sprinkler damage, vandalism, windstorm or water, comprehensive public liability insurance, flood insurance, fidelity insurance against acts on the part of officers, directors and employees of the Master Association. Subject to the foregoing coverage, the Board of Directors shall determine the insurers, the policy limits, and the coverage and substantive provisions of such policies.

C. To establish the Architectural Review (as hereinafter defined).

4.2. Authorized Services. The Master Association is empowered, in its discretion, but not required, to provide or hire professionals or other persons to provide any other service reasonably related to the duties of the Association as set forth in this Declaration and in the Articles and By-Laws.

4.3. Obligation of the Association. The Master Association shall only be obligated to carry out the functions and services specified in this Article to the extent such maintenance and services can be provided with the proceeds first from annual assessments and then, if necessary, from special assessments.

4.4. Mortgage and Pledge. The Board of Directors of the Association shall have the power and authority to mortgage the property of the Master Association and to pledge the revenues of the Association as security for loans made to the Master Association which loans shall be used by the Master Association in performing its functions.

4.5. Condominium Documents. All documents in connection with the establishment or operation of a condominium or Condominium Association, including but not limited to the Declaration of Condominium, bylaws and articles of incorporation of the Condominium Association, and rules and regulations of the Condominium Association, shall be subject to the terms of this Declaration and any documents in connection herewith. Each and every such declaration of condominium shall incorporate into it this Declaration.

Section 6. The following rules and standards shall apply to La Peninsula and shall be enforced by the Master Association pursuant to Article XI, Section 5 hereof:

(a) Antennas. No television or other antenna is permitted unless specific approval for such is granted in writing by the Board of Directors.

(b) Underground Wires. All telephone, electric and other wires of all kinds must be underground from the poles or the under-

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ground transmission cables located within the platted utility easements to the building or use connection.

(c) Pets. Dogs and cats, (maximum of three (3)) provided they are not kept, bred or maintained for any commercial purpose, may be kept upon the property. No other animals, livestock, poultry of any kind shall be kept, raised or bred on any part of La Peninsula.

(d) General Appearance.

(i) Clotheslines or drying yards shall be so located as not to be visible from the streets, or adjoining properties.

(ii) No weeds, underbrush (other than indigenous growth), or other unsightly growths shall be permitted to grow or remain upon any part of the premises and no refuse pile or unsightly objects shall be allowed to be placed or remain anywhere thereon.

(iii) No noxious or offensive activity shall be carried on upon La Peninsula, or upon any part, portion or tract thereof, nor shall anything be done thereof which may be or become a nuisance or an annoyance to the neighborhood.

(iv) No commercial vehicles, recreational vehicles, trucks, trailers, boats or boat trailers, shall be parked overnight on any part of La Peninsula unless with prior written approval of the Board of Directors.

ARTICLE V

DECLARANT CONTROL OF MASTER ASSOCIATION

Notwithstanding anything herein to the contrary, until a cumulative total of two hundred (200) residential Condominium Units are conveyed by Declarant to individual purchasers in the ordinary course of business (the Control Period), the declarant shall have a total number of votes equal to the number of votes cumulatively held by all other Members, plus one (1), providing it with a majority of the vote of the membership. Upon expiration of the Control Period, the Declarant shall possess voting rights incident to ownership as described in Article III hereinabove. Notwithstanding anything herein contained to the contrary, the Declarant shall have the right to appoint all the Directors of the Master Association until the first meeting of the Members. There shall be no requirement for a meeting of Members until the third Tuesday of the month following the month in which the Control Period terminates. At the initial annual meeting of the Members and at the annual meeting of Members thereafter, the Directors shall be elected pursuant to the terms of the Articles and By-Laws.

ARTICLE VI

EASEMENTS

6.1 Appurtenant Easements. Declarant hereby grants to the Owner of each Condominium Unit, their guests, lessees and invitees, as an appurtenance to the ownership of fee title interests to same and subject to this Declaration, the Articles and By-Laws of the Association and the rules and regulations promulgated by the Association, a perpetual nonexclusive easement for ingress and egress over, across and through and for the use and enjoyment of all recreational facilities, such use and enjoyment to be shared in common with the other Owners of Condominium Units, their guests, lessees and invitees, as well as guests, lessees and invitees of the Declarant. Declarant further grants to all Owners, their guests, lessees and invitees, as an appurtenance to the ownership of fee title interest to a Condominium Unit within La Peninsula and subject to this Declaration, the Articles and By-Laws of the Association, a perpetual nonexclusive easement for ingress and egress over, across and through and for the use and enjoyment of all Common Property,

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such use and enjoyment to be shared in common with the other Owners, their guests, lessees and invitees as well as the guests, lessees and invitees of the Declarant.

6.2. Utility Easement. The Declarant reserves to itself, its successors or assigns, a perpetual easement upon, over, under and across La Peninsula for the purpose of maintaining, installing, repairing, altering and operating sewer lines, water lines, water-works, sewer works, force mains, lift stations, water mains, sewer mains, water distribution systems, sewage disposal system, effluent disposal system, pipes, valves, gates, pipelines, cable television and all machinery and apparatus appurtenant thereto as may be necessary for the installation and maintenance of utilities servicing all Owners of Condominium Units and servicing the Common Property, all such easements to be of a size, width and location as Declarant, in its discretion, deems best but selected in a location so as to minimize and not unreasonably interfere with the use of any improvements which are now, or will be, located upon said property.

6.3. Declarant's Easement. The Declarant hereby reserves to itself, its successors and assigns, a perpetual easement, privilege and right in and to, over, under, on and across the Common Property for ingress and egress, as required by its officers, directors, employees, agents and/or independent contractors and invitees in order to show said properties and facilities to prospective purchasers and other invited guests and otherwise conduct its business to have models for the purpose of sales promotion and to place signs for sales and directional purposes at locations that it deems appropriate, provided, however, that such access models and signs do not unnecessarily interfere with the reasonable use and enjoyment of these properties and facilities by the Owners.

6.4. Service Easement. Declarant hereby grants to delivery, pickup and fire protection services, police and other authorities of the law, United States mail carriers, representatives of electrical, telephone, cable television and other utilities authorized by the Declarant, its successors or assigns to service La Peninsula, and to such other persons as the Declarant from time to time may designate, the nonexclusive, perpetual right of ingress and egress over and across the Common Property for the purpose of performing their authorized services and investigation.

6.5. Extent of Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

A. The right of the Declarant or the Master Association, in accordance with its By-Laws, to borrow money from the Declarant or any other lender for the purpose of improving and/or maintaining the Common Property and providing the services authorized herein, and, in aid thereof, to mortgage said properties;

B. The right of the Master Association, as provided in its By-Laws, to suspend the rights and easements of enjoyment of any Member or any tenant of any Member for any period during which any assessment remains unpaid, and for any period, for any infraction of its published rules and regulations, it being understood that any suspension for either non-payment of any assessment or breach of any rules and regulations of the Master Association shall not constitute a waiver or discharge of the Member's obligation to pay the assessment, provided, however, that the Master Association shall not suspend the right to use any roads belonging to the Master Association subject, however, to the rules and regulations of the Master Association for such use, and provided further that the Master Association may not suspend any rights and easements reserved herein by the Declarant;

C. The right of the Master Association to charge reasonable admission and other fees for the use of the recreational facilities;

D. The grantee of each interest in real property which is subject to this Declaration is conveyed only a limited and restricted

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right of access, ingress and egress to such real property. The Board of Directors of the Master Association shall have the power to place any reasonable restrictions upon the use of any roadways owned by the Association including, but not limited to, the maximum and minimum speeds of vehicles using said roads, all other necessary traffic and parking regulations, and the maximum noise levels of vehicles using said roads. The fact that such restrictions on the use of such roads shall be more restrictive than the laws of any state or local government having jurisdiction over La Peninsula shall not make such restrictions unreasonable.

ARTICLE VII

CONVEYANCE TO MASTER ASSOCIATION

No later than thirty (30) days following the termination of the Control Period the Declarant shall by quit-claim deed or deeds convey to the Master Association the fee simple ownership of the Common Property. The conveyance shall be subject to this Declaration, other easements and restrictions of record, applicable zoning and taxes for the year in which the conveyances are made and subsequent years.

ARTICLE VIII

ASSESSMENTS

8.1 Creation of the Lien and Personal Obligations of Assessments. The Declarant covenants, and each Owner of any Condominium Unit shall be deemed to covenant and agree to all the terms and provisions of this Declaration and to pay to the Association: (1) quarterly assessments (2) special assessments and (3) individual assessments, all fixed, established and collected from time to time as hereinafter provided. The quarterly, special and individual assessments together with such interest thereon and costs of collection therefor shall be a charge and continuing lien on the real property and improvements thereon against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection, shall also be the personal obligation of the person who was the Owner of such real property at the time when the assessment first became due and payable. The liability for assessments may not be avoided by waiver of the use or enjoyment of any Common Property or by the abandonment of the property against which the assessment was made. In the case of co-ownership of a Condominium Unit, all of such co-Owners shall be jointly and severally liable for the entire amount of the assessment. Notwithstanding anything herein to the contrary, the Declarant shall be exempt from the payment of any assessments until the termination of the Control Period.

8.2 Purpose of Quarterly Assessments. The quarterly assessments levied by the Master Association shall be used exclusively for the improvement, maintenance, enhancement and operation of the Common Property and to provide services which the Master Association is authorized or required to provide including, but not limited to, the payment of taxes and insurance thereon, construction of improvements, repair, replacement, payment of the costs to acquire labor, equipment, materials, management and supervision, necessary to carry out its authorized functions, and for the payment of principal, interest and any other charges connected with loans made to or assumed by the Master Association for the purpose of enabling the Master Association to perform its authorized or required functions and for any other proper expense of the Master Association. The Master Association may establish reserve funds from its annual assessments to be held in reserve in an interest-drawing account or investments as a reserve for (a) renovation or major repairs to the Common Property, and (b) for emergency and other repairs required as a result of storm, fire, natural disaster or other casualty loss.

8.3 Annual Budget. The Master Association shall prepare an annual budget not less than thirty (30) days in advance of the com-

assessment of each fiscal year which shall project the estimated general expenditure for the services set forth in Section 2 above for the forthcoming year. The Master Association shall, at the same time as it prepares the annual budget, prepare a schedule which sets forth the amount of the quarterly assessment for each Owner.

8.4 Proportion and Amount of Quarterly Assessments. Quarterly and special assessments for property Owners shall be determined as follows:

The amount of each quarterly and special assessment payable by each Owner shall be determined by multiplying the budget or expenditure amount by a fraction, the numerator of which is equal to the number of Condominium Units owned by such Owner, and the denominator of which is equal to the total number of all Condominium Units owned by all Owners. Such assessment shall be due and payable in quarterly installments, on January 1st and the first day of each calendar quarter in the year for which the assessments are made. Payments for assessments shall commence at the time when each Owner first becomes an Owner.

8.5 Purpose of Special Assessments. In addition to the quarterly assessments authorized by Section 4 hereof, the Master Association may levy special assessments for the acquisition of any Common Property, including the payment of any mortgages thereon. The Master Association may also levy a special assessment, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of capital improvement upon the Common Property including the necessary fixtures and personal property related thereto, or to provide for the necessary facilities and equipment to offer the services authorized in ARTICLE IV, and to repay any loan made to the Master Association to enable it to perform the duties and functions authorized herein. To the extent that quarterly assessments are insufficient to fund the required services set forth in ARTICLE IV, Section 1 of this Declaration, the Master Association may levy a special assessment to cover the cost thereof.

8.6 Individual Assessments. Each owner of a Condominium Unit or Residential Lot is required to maintain his property, in a state of good repair at all times. Such Owners are further required to maintain their property in accordance with any other covenants, conditions and restrictions to which their deeds or other instruments of conveyance make reference. In the event of the failure of such Owner(s) to maintain their property as required herein, the Master Association, after first giving thirty (30) days' notice to such Owners, may take such steps as are necessary to remedy any defective and/or unsightly conditions or comply with requirements imposed herein, and such Owner(s) of said property shall be assessed for the expense of same. Entry upon such Owners' Property for such purposes shall not constitute a trespass. Assessments may also be levied against such Owners for any damage to Common Property which may be caused by such Owners, their families, lessees, guests or invitees.

8.7 Effect of Non-Payment of Assessment; Lien. If the assessment is not paid on or before the due date specified in Section 4 hereof, then such assessment shall become delinquent and shall, together with interest thereon at the rate of eighteen percent (18%) per annum or the highest rate permitted by law, whichever is lower, from the due date and cost of collection thereof as hereinafter provided, thereupon become a charge and continuing lien on the land and all improvements thereon, against which each such assessment is made, in the hands of the then Owner, his heirs, devisees, personal representatives, successors and assigns. The personal obligation of the Owner at the time when the assessment first became due and payable to pay such assessment, however shall remain his personal obligation and

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shall not pass as a personal obligation to ~~FACE~~ successors in title unless expressly assumed by them.

8.8 Remedies. If the assessment is not paid within thirty (30) days, the Master Association may bring an action at law against the owner personally obligated to pay the same or to foreclose the lien against the property, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the court together with the costs of the action.

8.9 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages of any Institutional Lender now or hereafter placed upon the properties subject to assessment.

8.10 Exempt Property. The following property, individuals, partnerships or corporations, subject to Declaration shall be exempted from liability for the assessment, charge and lien created herein:

- A. The grantees in conveyances made for the purpose of granting utility easements;
- B. All Common Property;
- C. Property which is used for the purpose of maintenance and service of facilities within La Peninsula.

ARTICLE IX

ARCHITECTURAL CONTROL

9.1 Architectural Review. There is hereby established Architectural Review controlled by the Declarant as set forth below, whose duties, powers and responsibilities shall be as hereinafter set forth:

A. Initially, Review shall be made by the Declarant. At such time as Declarant no longer owns any property within La Peninsula or at an earlier time if it so elects, the Declarant shall assign to the Master Association all rights and control of Architectural Review.

B. The Declarant shall have the right of specific approval of all architectural and landscaping aspects of any improvement or development of buildings as well as the general plan for development of La Peninsula.

C. No building, sign, outside lighting, fence, hedge, wall, walk, dock or other structure or planting shall be commenced, erected, planted or maintained nor shall any addition to or any change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, floor plans, color scheme and the location of same shall have been submitted to and approved in writing by the Declarant.

D. The Declarant shall have the right to refuse to approve any plans and specifications which are not suitable or desirable, in its sole discretion, for aesthetic or any other reasons, provided such approval is not unreasonably withheld. In approving or disapproving such plans and applications, the Declarant shall consider the suitability of the proposed building, improvements, structure or landscaping and materials of which the same are to be built, the site upon which it is proposed to be erected, the harmony thereof with the surrounding area and the effect thereof on adjacent or neighboring property.

9.2 Notwithstanding anything in this Declaration to the contrary, any improvements constructed by Declarant, including sales

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offices and signs, shall be exempt from the provisions of this ARTICLE IX.

ARTICLE X

INSTRUMENT OF CONVEYANCE

Subsequent to the recording of this Declaration in the Public Records of Collier County, Florida, each and every deed (or other conveyance document) conveying the said lands or any part thereof shall, upon its face, expressly recite that said deed (or other conveyance documents) and conveyance is subject to the herein contained covenants, conditions and restrictions and shall recite the Official Records Book and page numbers wherein this Declaration is recorded in the Public Records of Collier County, Florida. These conditions shall be covenants running with the land, be a part thereof, and be binding upon the land and the owners thereof and their successors, successors-in-title, designees, grantees and assigns.

ARTICLE XI

GENERAL PROVISIONS

11.1 Duration. The conditions of this Declaration shall run with and bind La Peninsula, and shall inure to the benefit of and be enforceable by the Master Association, the Declarant or the Owner of any real property subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a period of thirty (30) years from the date this declaration is recorded. Upon the expiration of said thirty (30) year period this Declaration shall be automatically renewed and extended for successive ten (10) year periods. The number of ten (10) year renewal periods hereunder shall be unlimited with this Declaration being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period, provided, however, and subject to existing laws and ordinances, that there shall be no renewal or extension of this Declaration if during the last year of the initial thirty (30) year period, or during the last year of any subsequent ten (10) year renewal period, three-fourths (3/4) of the votes cast at a duly held meeting of Members of the Master Association vote in favor of terminating this Declaration at the end of its then current term. It shall be required that written notice of any meeting at which such proposal to terminate this Declaration is to be considered, setting forth the fact that such a proposal will be considered, shall be given at least forty-five (45) days in advance of said meeting. In the event that the Master Association votes to terminate this Declaration, the President and Secretary of the Master Association shall execute a certificate which shall set forth the resolution of termination adopted by the Master Association, the date of the meeting of the Master Association at which such resolution was adopted, the date that notice of such meeting was given, the total number of votes of Members of the Master Association, the total number of votes required to constitute a quorum at a meeting of the Master Association, the number of votes necessary to adopt a resolution terminating this Declaration, the total number of votes cast against such resolution. Said certificate shall be recorded in the Official Records of Collier County, Florida, and may be relied upon for the correctness of the facts contained therein as they relate to the termination of this Declaration.

11.2 Amendments by Members. This Declaration may be amended at any time provided that Members of the Master Association holding two-thirds (2/3) of the total vote of the Master Association, Notice shall be given at least forty-five (45) days prior to the date of the meeting at which such proposed amendment is to be considered. If any proposed amendment to this Declaration is approved by the Members as set forth above, President and Secretary of the Master Association shall execute an Amendment to this Declaration which shall set forth the amendment, the effective date of the amendment which in no event shall be less than sixty (60) days after the date of recording the

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amendment, the date of the meeting of the Master Association at which such amendment was adopted, the date that notice of such meeting was given, the total number of votes of Members of the Master Association, the total number of votes required to constitute a quorum at a meeting of the Association, the number of votes necessary to adopt the amendment, and the total number of votes cast against the amendment. Such amendment shall be recorded in the Official Records of Collier County, Florida.

11.3 Amendments by Declarant. Notwithstanding anything herein to the contrary, the Declarant may amend this Declaration for any purpose without the consent of the Members so long as it owns any property or units in La Peninsula and provided such amendment doesn't materially and adversely effect the plan of development for La Peninsula.

11.4 Notices. Any notice required to be sent to any Member or Owner under the provisions of the Declaration shall be deemed to have been properly sent, and notice thereby given, when mailed, with the proper postage affixed to the last known address of the person or entity who appears as Owner in the Public Records of Collier County, Florida, on the first day of the calendar month in which said notice is mailed. Notice to one of two or more co-Owners of a Condominium Unit, shall constitute notice to all co-Owners. It shall be the obligation of every Member to immediately notify the Secretary of the Master Association in writing of any change of address. Any person who becomes an Owner and Member following the first day in the calendar month in which said notice is mailed shall be deemed to have been given notice, if notice was given to his predecessor in title.

11.5 Enforcement. Enforcement of these covenants, conditions and restrictions shall be by any proceeding at law or in equity and may be instituted by the Declarant, its successors or assigns, the Master Association, its successors or assigns, or any Owner against any person or persons violating or attempting to violate or circumvent any covenant, condition or restriction, either to restrain violation or to recover damages, and against the land and to enforce any lien created by these covenants, and failure by the Master Association or any Owner or the Declarant to enforce any covenant, condition or restriction herein contained for any period of time shall in no event be deemed a waiver or estoppel of the right to enforce same thereafter.

11.6 Severability. Should any covenant, condition or restriction herein contained, or any Article, Section, Subsection, sentence, clause, phrase or term of this Declaration be declared to be void, invalid, illegal, or unenforceable, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no way affect the other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect.

11.7 Interpretation. The Board of Directors shall have the right except as limited by any other provisions of this document or the By-Laws to determine all questions arising in connection with this Declaration and to construe and interpret its provisions, and its good faith determination, construction or interpretation shall be final and binding. In all cases, the provisions of this Declaration shall be given that interpretation or construction that will best tend toward the consummation of the general plan of improvements.

11.8 Execution of Documents. The execution of certain documents may be required from time to time by officials of Collier County. To the extent that said documents require the joinder of Owners, the Declarant by its duly authorized officers may, as the agent or the attorney-in-fact for the Owners, execute, acknowledge and deliver such documents and the Owners, by virtue of their acceptance of deeds, irrevocably nominate, constitute and appoint the Declarant, through its duly authorized officers, as their proper and

legal attorneys-in-fact for such purpose. Said appointment is coupled with an interest and is therefore irrevocable. Any such documents executed pursuant to this Section shall recite that it is made pursuant to this Section.

11.9. Non-Profit and Tax Exempt Status. Notwithstanding anything contained herein to the contrary, the Master Association will perform no act nor undertake any activity which will violate its non-profit or tax-exempt status under applicable state or federal law.

11.10. Use of Singular and Plural and Gender. Whenever the context so permits, the use of the singular shall include the plural and the plural shall include the singular, and the use of any gender shall be deemed to include all genders.

11.11. Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of La Peninsula.

IN WITNESS WHEREOF, Barclays Capri Point Partnership have caused this Declaration to be duly executed this 15 day of August, 1986.

Signed, sealed and delivered in the presence of:

BARCLAYS CAPRI POINT PARTNERSHIP

Stephanie K. Rainey

By: George O. Rethati
George O. Rethati

STATE OF FLORIDA)
) SS.
COUNTY OF COLLIER)

BEFORE ME, the undersigned authority, a notary public in and for the State of Florida at Large, personally appeared George O. Rethati, General Partner of Barclays Capri Point Partnership, known to me to be the person referred to in the foregoing instrument and who acknowledged before me that he executed the foregoing Declaration of Covenants, Conditions and Restrictions, as General Partner of the Partnership, and did so as the act and deed of said Partnership.

Witness my hand and official seal at Marco Island, Florida, this 15th day of August, 1986.



J. Wood
Notary Public
State of Florida at Large
My Commission Expires:

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP. MAY 1, 1988
REC'D FROM ORANGE 143, 420

D-13

EXHIBIT "A" to Declaration of Covenants, Conditions and Restrictions
of La Peninsula

LEGAL DESCRIPTION
Entire Parcel La Peninsula

From a point of Beginning at the northeast corner of said Section 6, Township 52 South, Range 26 East, Collier County, Florida, run South 1 degree 11 minutes 25 seconds West, along the east line of said Section 6, 261.67 feet to a point of beginning of a certain Bulkhead Line, as recorded in Bulkhead Plat Book 1, Page 8 of the Public Records of Collier County, Florida; thence run the following courses, along the said Bulkhead Line: South 69 degrees 27 minutes 16 seconds West, for 743.57 feet; South 74 degrees 20 minutes 53 seconds West, for 900.00 feet, to a point of curvature; run 496.98 feet along the arc of a curve, concave to the northeast, having a radius of 185.00 feet, and subtended by a chord having a bearing of North 28 degrees 41 minutes 32.5 seconds West and a length of 360.46 feet, to a point of tangency; thence North 48 degrees 16 minutes 02 seconds East, for 712.63 feet, to the end of the Bulkhead Line; thence run South 88 degrees 48 minutes 27 seconds East, along the North line of said Section 6, 1209.85 feet, to the Point of Beginning; containing 20.13 acres, more or less, excepting from the above the following:

Beginning from the Northeast corner of Section 6, Township 52 South, Range 26 East, Collier County, Florida, run South 1 degree 11 minutes 25 seconds West, along the East line of said Section 6, for 30.0 feet, to the Point of Beginning; thence continue to run South 1 degree 11 minutes 25 seconds West, along said East line, for 231.67 feet, to a point on the Bulkhead Line as recorded in Bulkhead Line Plat book 1, Page 8, Public Records of Collier County, Florida; thence run South 69 degrees 27 minutes 16 seconds West, along said Bulkhead Line, 300.52 feet; thence run North 20 degrees 32 minutes 44 seconds West for 272.34 feet; thence run North 1 degree 11 minutes 33 seconds East, for 90.0 feet to a point 30.0 feet South of the North line of said Section 6, thence run South 88 degrees 48 minutes 27 seconds East along a line parallel with and 30.0 feet, as measured at right angles from said North line of Section 6, for 380.00 feet to the Point of Beginning, containing 2.34 acres, more or less; Collier County, Florida.

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CONSENT AND JOINDER OF MORTGAGEE
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
LA PENINSOLA

PIMA FINANCIAL SERVICE CORPORATION, an Arizona corporation, the mortgagee and holder of the following mortgages and security instruments:

<u>Date of Record</u>	<u>Recorded in Collier County, Florida</u>
June 7, 1984	OR 1086, Page 896
June 7, 1984	OR 1086, Page 923
December 27, 1985	OR 1170, Page 2099
December 27, 1985	OR 1170, Page 2118
June 13, 1986	OR 1200, Page 1798
June 13, 1986	OR 1200, Page 1818

hereby consents and joins in the recording of the Declaration of Covenants, Conditions and Restrictions of La Peninsula, executed by Barclays-Capri Point, a California general partnership on August 15, 1986, which encumbers the following described real property located in Collier County, Florida, to wit:

See Attached Exhibit "A"

This Consent and Joinder shall be binding upon the undersigned and their successors and assigns.

Signed, sealed and delivered in the presence of:

[Handwritten signatures]

PIMA FINANCIAL SERVICE CORPORATION,
an Arizona Corporation

By: *[Signature]*
Its



STATE OF *Arizona*
COUNTY OF *Pima*

I HEREBY CERTIFY that on this day, before me, an officer and duly authorized in the State and County aforesaid to take acknowledgements, personally appeared *[Signature]*, well known to me to be the *[Signature]* of PIMA FINANCIAL SERVICE CORPORATION, an Arizona corporation, and that he acknowledged executing the foregoing instrument in the presence of two subscribing witnesses, freely and voluntarily under authority duly vested in him by said corporation and that the seal affixed thereto is the true corporate seal of said corporation.

WITNESS my signature and official seal at *[Signature]* in the County and State aforesaid, this *15th* day of *August*, 1986.



[Signature]
Notary Public
My Commission Expires:

My Commission Expires Sept. 20, 1988

NOT

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OR BOOK
EXHIBIT "A"

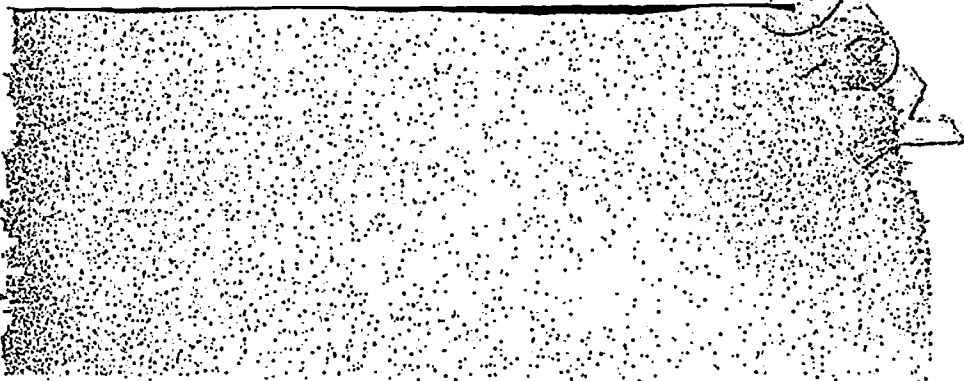
PAGE

LEGAL DESCRIPTION
Entire Parcel La Peninsula

From a point of Beginning at the northeast corner of said Section 6, Township 52 South, Range 26 East, Collier County, Florida, run South 1 degree 11 minutes 25 seconds West, along the east line of said Section 6, 261.67 feet to a point of beginning of a certain Bulkhead Line, as recorded in Bulkhead Plat Book 1, Page 8 of the Public Records of Collier County, Florida; thence run the following courses, along the said Bulkhead Line: South 69 degrees 27 minutes 16 seconds West, for 743.57 feet; South 74 degrees 20 minutes 53 seconds West, for 900.00 feet, to a point of curvature; run 496.98 feet along the arc of a curve, concave to the northeast, having a radius of 185.00 feet, and subtended by a chord having a bearing of North 28 degrees 41 minutes 32.5 seconds West and a length of 360.46 feet, to a point of tangency; thence North 48 degrees 16 minutes 02 seconds East, for 712.63 feet, to the end of the Bulkhead Line; thence run South 88 degrees 48 minutes 27 seconds East, along the North line of said Section 6, 1209.85 feet, to the Point of Beginning; containing 20.13 acres, more or less, excepting from the above the following:

Beginning from the Northeast corner of Section 6, Township 52 South, Range 26 East, Collier County, Florida, run South 1 degree 11 minutes 25 seconds West, along the East line of said Section 6, for 30.0 feet, to the Point of Beginning; thence continue to run South 1 degree 11 minutes 25 seconds West, along said East line, for 231.67 feet, to a point on the Bulkhead Line as recorded in Bulkhead Line Plat book 1, Page 8, Public Records of Collier County, Florida; thence run South 69 degrees 27 minutes 16 seconds West, along said Bulkhead Line, 300.52 feet; thence run North 20 degrees 32 minutes 44 seconds West for 272.34 feet; thence run North 1 degree 11 minutes 33 seconds East, for 90.0 feet to a point 30.0 feet South of the North line of said Section 6, thence run South 88 degrees 48 minutes 27 seconds East along a line parallel with and 30.0 feet, as measured at right angles from said North line of Section 6, for 380.00 feet to the Point of Beginning, containing 2.34 acres, more or less; Collier County, Florida.

Printed and Bound
by
WILLIAM W. GIBSON, JR.
Collier County, Florida



This instrument prepared by and return to:

Sandra E. Krumbein, Esq.
Shutts & Bowen LLP
200 East Broward Boulevard, Suite 2100
Fort Lauderdale, Florida 33301

*Cross Reference to Declaration of Covenants, Conditions and
Restrictions recorded in Official Records Book 1213, Page 0770, of the
Public Records of Collier County, Florida*

SPACE ABOVE THIS LINE FOR PROCESSING DATA

SPACE ABOVE THIS LINE FOR PROCESSING DATA

**DECLARANT AMENDMENT TO DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS**

THIS DECLARANT AMENDMENT (this "Amendment") is executed as of the 12th day of February, 2013 by AIRCRAFT INVESTMENT LLC, a Florida limited liability company ("Aircraft").

WHEREAS, Barclays Capri Point Partnership (the "Creating Declarant") executed that certain Declaration of Covenants, Conditions and Restrictions of La Peninsula which was recorded on August 19, 1986, in Official Records Book 1213, Page 0770, *et seq.*, of the Public Records of Collier County ("County"), Florida ("Declaration");

WHEREAS, in connection with its acquisition of a portion of real property subject to the Declaration and pursuant to that certain Bill of Sale and Assignment ("Assignment") dated March 8, 2007, the rights, title and interest of the "Declarant" and/or "Developer" under the Declaration were assigned to Aircraft;

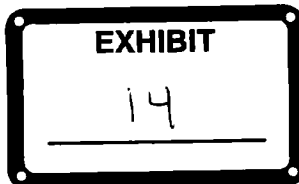
WHEREAS, pursuant to the Assignment, Aircraft is irrevocably entitled to exercise the rights of the "Declarant" and/or "Developer" under the Declaration (hereinafter, the "Declarant Rights");

WHEREAS, it has come to the attention of Aircraft that The Club at La Peninsula, Inc. ("Association") is proposing an amendment and restatement of the Declaration which not only unreasonably materially and adversely destroys the general plan of development of "La Peninsula" (as such term is defined in the Declaration), but which amendment also serves to eliminate Aircraft's "Vested Rights" (as hereinafter defined) under the Declaration with respect to its undeveloped parcel and its development rights applicable thereto;

WHEREAS, Section 11.3 of the Declaration provides that so long as Declarant owns any property or units in La Peninsula and provided such amendment does not materially and adversely affect the plan of development for La Peninsula, Declarant may, without the consent of the "Members" (as such term is defined in the Declaration), amend the Declaration;

WHEREAS, Aircraft, as holder of the Declarant Rights, still owns undeveloped property within La Peninsula;

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WHEREAS, this Amendment does not materially and adversely affect the plan of Development for La Peninsula; rather, this Amendment serves to maintain and protect such plan of development for La Peninsula and confirms that the rights and privileges granted to the "Developer" and/or "Declarant" in the Declaration are Vested Rights which remain and are not and have not been relinquished by Declarant; and

NOW, THEREFORE, Aircraft, pursuant to its Declarant Rights, hereby declares that the Declaration is amended as follows:

1. The recitations set forth herein are true and correct and are incorporated herein by reference.

2. Unless otherwise defined herein, each term defined in the Declaration and used herein shall have its meaning as defined in the Declaration.

3. Aircraft, as the holder of Declarant Rights, is hereby recording this Amendment to assert, confirm and ratify that the vested rights of the Declarant, as expressly contained in the Declaration, which include, but are not limited to (collectively, the "Vested Rights"): (i) the right of the Declarant to modify the Site Plan for La Peninsula, which includes, without limitation, the right to add to, subtract from or make changes in the Site Plan, withdraw property from the terms and conditions of the Declaration in connection with same, and to develop any undeveloped property subject to the Declaration in any manner allowable under and as permitted by law, including without limitation, to develop the undeveloped property as another condominium or another type of residential non-condominium development (including townhomes, carriage homes and/or single family residences); (ii) the right of the Declarant to be exempt from the architectural review mechanisms and provisions of the Declaration, including those described in Article IX thereof; (iii) the right of the Declarant to amend any of the provisions of the Declaration without the consent of the Members, provided the Declarant still owns property or units in La Peninsula; and, (iv) the easement rights described in Sections 6.2 and 6.3 of the Declaration, which include, without limitation, the right to utilize the Common Property for its sales and marketing activities.

4. A new Section 11.12 is hereby added to the Declaration as follows:

"11.12 Amendments to Declaration. Notwithstanding anything to the contrary herein contained, no amendment to this Declaration shall be effective which shall impair or prejudice the rights or priorities of Declarant, under the Declaration, the organizational documents of the Association and/or any rules and regulations promulgated thereunder, without the specific written approval of Declarant so long as Declarant owns any property or units subject to the Declaration. In addition and notwithstanding anything to the contrary contained herein, no amendment to this Declaration shall be effective which shall eliminate or modify the provisions of this Section 11.12 and any such amendment shall be deemed to impair and prejudice the rights of Declarant."

5. This Amendment shall become effective upon recording amongst the Public Records of the County.

IN THE CIRCUIT COURT FOR THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR COLLIER COUNTY, FLORIDA
CIVIL DIVISION

Plaintiff THE CLUB AT LA PENINSULA, INC.
vs.
Defendant AIRCRAFT INVESTMENT, LLC

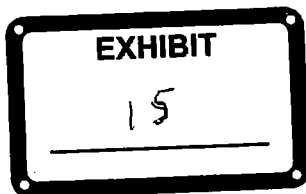
Case No.: 2012-CA-1775
Date of Mediation: March 14, 2013
Mediator: David Prolman

MEMORANDUM OF SETTLEMENT

PURSUANT TO the Court's Order, Mediation was conducted on the date above and the Parties have reached a settlement, as set forth in the Memorandum outlined below.

The essential terms of the Settlement are as follows:

1. This action has been fully and amicably resolved and both the complaint and counterclaim shall be dismissed with prejudice upon the completion and execution of all documents necessary to effectuate the terms of this Settlement.
2. The parties will provide broad, general releases of all claims, known or unknown, that they have against each other and all related entities, up to and including the date of this agreement, with the exception of any and all claims that Defendant has or may have under the reservation of rights attached to the common area deeds.
3. Defendant agrees to:
 - a. Provide Plaintiff with a Tennis Court Easement and Covenants, substantially in the form as the document attached as Exhibit A.
 - b. Within thirty (30) days of the execution of all necessary settlement documents, pay Plaintiff \$7,000 to repair a portion of the seawall cap.
4. Plaintiff agrees to:
 - a. Take whatever steps necessary to cancel/remove/discharge/dissolve from the public records the Memorandum of Agreement, recorded under Instrument Number 4679452 in the Public Records of Collier County, Florida.
 - b. Approve construction of up to a thirty-seven (37) unit condominium on the Development Parcel that will be part of the Club at La Peninsula.
 - c. Recognize the rights of the owner of the Development Parcel as Declarant, subject to a partial assignment of architectural control rights to the Club at La Peninsula as to all areas other than the Development Parcel.



Handwritten signature/initials

MITCHELL/DP-000760

Composite Exhibit H
to Plaintiffs' Amended Complaint

- d. Recognize that the May 15, 1998 Agreement is of no further force and effect.
5. The parties agree that each side shall bear their own attorney's fees and costs.
6. The prevailing party in any suit to enforce or construe this agreement shall be entitled to its attorney's fees and costs.

The Club de La Penitenc, Inc., by

Richard Van Dusen
PLAINTIFF President

Gary Wood
ATTORNEY FOR PLAINTIFF

Aircraft Investment LLC

By: [Signature]
DEFENDANT James H. Kabcenell, Manager

[Signature] Robert W. Davis
ATTORNEY FOR DEFENDANT

Dated: 3/14/13

GENERAL MUTUAL RELEASE

This General Mutual Release ("Release") is made and entered into by The Club at La Peninsula, Inc. ("The Club") and Aircraft Investment, LLC ("Aircraft"), in connection with the Collier County lawsuit pending between The Club and Aircraft commenced on or about May 10, 2012, styled *The Club at La Peninsula, Inc. v. Aircraft Investment, LLC*, Case No. 12-CA-1775. At the mediation that occurred on March 14, 2013, The Club and Aircraft settled all claims between them and executed the Memorandum of Settlement attached hereto as Exhibit 1. The Club and Aircraft are providing this broad, general mutual release pursuant to the terms of the Memorandum of Settlement. This Release does not release the parties' rights and obligations under the Memorandum of Settlement.

1. The Club, on behalf of itself, its sub-associations, its directors, its officers, its members, and its unit owners, hereby does fully, finally and unconditionally release, acquit, remise, satisfy and forever discharge Aircraft and all related Aircraft entities, their affiliates, their members, their former members, their shareholders, their former shareholders, their partners, their former partners, their managers, their former managers, their officers, their former officers, their employees, their former employees, their attorneys, their former attorneys, their agents, their former agents, their representatives, their former representatives, their insurers, their former insurers, their sureties, their former sureties, and their successors and assigns from any and all manner of action or actions, cause or causes of action, suits, debts, dues, sums of money, accounts, reckonings, covenants, charges, damages, attorney's fees, contracts, whether oral or written, controversies, promises, judgments, executions, complaints, claims and demands whatsoever, in law or in equity, whether known or unknown, based upon any facts existing up to and through the date of this Release.

27767512-1

2. Aircraft, on behalf of itself, its affiliates, its managers, and its owners, hereby does fully, finally and unconditionally release, acquit, remise, satisfy and forever discharge The Club, its sub-associations, its directors, its former directors, its officers, its former officers, its members, its former members, its employees, its former employees, its attorneys, its former attorneys, its agents, its former agents, its representatives, its former representatives, its insurers, its former insurers, its sureties, its former sureties, and its successors and assigns from any and all manner of action or actions, cause or causes of action, suits, debts, dues, sums of money, accounts, reckonings, covenants, charges, damages, attorney's fees, contracts, whether oral or written, controversies, promises, judgments, executions, complaints, claims and demands whatsoever, in law or in equity, whether known or unknown, based upon any facts existing up to and through the date of this Release, **with the exception of any and all claims that Aircraft, its affiliates, or any of its successors or assigns, has or may have under the reserved easements, agreements and rights as set forth in the April 16, 2010 Special Warranty Deed recorded under Instrument Number 4423293, Official Records Book 4560, Page 3150, Public Records of Collier County, Florida and the December 16, 2011 Special Warranty Deed recorded under Instrument Number 4639537, Official Records Book 4748, Page 714, Public Records of Collier County, Florida.**

3. This Release shall be fully and completely effective upon its execution by all parties. This Release may be executed in one or more counterparts, each of which shall be deemed an original. Said counterparts shall constitute one and the same instrument and shall be binding upon each of the undersigned individually as fully and completely as if it had signed but one instrument so that the liability of each of the undersigned shall be unaffected by the failure of any of the undersigned to execute any or all of said counterparts.

WITNESS 1:

[Signature]
Sign Name

Sonia Rivas
Print Name

The Club at La Peninsula, Inc.

By: Henry R. Vanden

Its: President

Date: April 2, 2013

WITNESS 2:

[Signature]
Sign Name

Misty DiPalma
Print Name

STATE OF FLORIDA)
) SS:
COUNTY OF COLLIER)

I HEREBY CERTIFY that on this 2 day of April, 2013, the foregoing instrument was acknowledged before me by Henry R. Vanden the President of The Club at La Peninsula, Inc., a Florida non-profit corporation, on behalf of the corporation. He/she is personally known to me or has produced Drivers License as identification.

[Signature]
Notary Public

My Commission Expires:

Typed, printed or stamped name of Notary Public

27767512-1



WITNESS 1:
[Signature]
Sign Name

Dolce M. Costa
Print Name

Aircraft Investment, LLC

By: [Signature]

Its: Manager

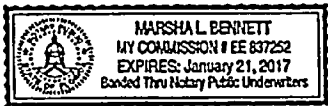
Date: April 29, 2013

WITNESS 2:
[Signature]
Sign Name

Rob Clark
Print Name

STATE OF FLORIDA)
) SS:
COUNTY OF COLLIER)

I HEREBY CERTIFY that on this 29th day of April, 2013, the foregoing instrument was acknowledged before me by James H. Kabcenell, as Manager of Aircraft Investment, LLC, a Florida limited liability company, on behalf of the company. He is personally known to me or has produced _____ as identification.



Marsha L Bennett
Notary Public

MARSHA L. Bennett
Typed, printed or stamped name of Notary Public

My Commission Expires:
1/21/2017

EXHIBIT A

PREPARED BY AND RETURN TO:
Steven R. Parson, Esq.
Ruden, McClosky, Smith, Schuster & Russell, P.A.
222 Lakeview Avenue, Suite 800
West Palm Beach, FL 33401
(561) 838-4524

Needs
Sketches
Legal
Assessments
attached

TENNIS COURT EASEMENT AND COVENANTS

THIS TENNIS COURT EASEMENT AND COVENANTS (this "Agreement") is made and entered into as of the ____ day of _____, 2009, by and between AIRCRAFT INVESTMENT LLC, a Florida limited liability company ("Grantor"), and THE CLUB AT LA PENINSULA, INC., a Florida non-profit corporation ("Grantee").

RECITALS:

WHEREAS, Grantor currently owns certain undeveloped real property located in Collier County, Florida, and legally described in Exhibit "A" attached hereto and made a part hereof (the "Grantor Property").

WHEREAS, Grantee currently owns the real property located adjacent to the Grantor Property in Collier County, Florida, and legally described in Exhibit "B" attached hereto and made a part hereof (the "Grantee Property").

WHEREAS, Grantor desires to grant to Grantee for the benefit of the Grantee Property a temporary access easement over the Grantor Property to access and use the existing tennis courts as shown on Exhibit "C" attached hereto and made a part hereof (the "Easement Area").

WHEREAS, Grantor and Grantee desire to provide herein for certain additional covenants concerning the relocation of the tennis courts and the rights of Grantor and the development of the Grantor Property.

WHEREAS the parties agree to this Tennis Court Easement

NOW, THEREFORE, in consideration of the agreements herein set forth, the purchase and conveyance of the Grantee Property, and for \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the parties agree as follows:

1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

RM:613458:2

and
Covenants
shall
be
recorded
as per
Grantee's
papers

2. Grantor's Representations and Warranties. Grantor hereby represents and warrants to Grantee as follows:

2.1 Grantor's Existence. Grantor is a Florida limited liability company in good standing and has full power and authority to comply with the terms of this Agreement.

2.2 Authority. The execution and delivery of this Agreement by Grantor are within Grantor's capacity, and all requisite action has been taken to make this Agreement valid and binding on Grantor in accordance with its terms.

3. Grantee's Representations and Warranties. Grantee hereby represents and warrants to Grantor as follows:

3.1 Grantee's Existence. Grantee is a Florida non-profit corporation in good standing and has full power and authority to comply with the terms of this Agreement.

3.2 Authority. The execution and delivery of this Agreement by Grantee are within Grantee's capacity, and all requisite action has been taken to make this Agreement valid and binding on Grantee in accordance with its terms.

4. Grant of Easement.

4.1 Grantor hereby grants and conveys to Grantee and its Authorized Users (as hereinafter defined), a temporary, non-exclusive appurtenant easement (the "Easement") over and across the Easement Area, for the purposes of accessing and using the existing tennis courts located thereon. As used in this Agreement, "Authorized Users" shall mean all Owners and Members, as those terms are defined in the Declaration of Covenants, Conditions and Restrictions of La Peninsula recorded in Official Records Book 1213, Page 770 in the Public Records of Collier County, Florida, as amended (the "Declaration"). Any conveyance of all or any part of the Grantor Property containing any portion of the Easement Area shall include, and by this Agreement is deemed to include, the Easement as an appurtenance for the benefit of the Grantee Property and its Authorized Users.

4.2 Notwithstanding anything contained in this Agreement to the contrary, this Agreement shall not be construed as granting access rights to use Grantor's Property for any other purposes.

4.3 Grantor reserves unto itself the right and privilege to use and occupy and to grant to others the right to use and occupy the surface and sub-surface of the Easement Area, for such uses and purposes which shall not be inconsistent with the Easement as described in this instrument. In the event that Grantee or its Authorized Users in any manner disrupts, interferes with, or causes any damage to any landscaping,

RM:613458:2

RVP
JR

personal property, or improvements on or to the Grantor Property, then Grantee shall replace or repair such landscaping, personal property, or improvements within twenty (20) days of the date such damage occurred, provided that if such replacement or repair cannot be completed within a period of twenty (20) days, Grantee shall commence performance within said twenty (20) day period and continuously prosecute same to completion with reasonable diligence. Should Grantee fail to comply with its obligations to replace or repair in the time periods and as otherwise set forth above, Grantor may make such replacements or repairs and Grantee shall promptly reimburse Grantor for all reasonable costs and expenses incurred in connection therewith.

4.4 The rights granted herein shall be exercised by Grantee and its Authorized Users at all times in a reasonable manner and without undue interference with the use and occupancy of the lands abutting the tennis courts within the Easement Area.

and shall be ~~4.5 The Easement granted herein shall be temporary and shall automatically terminate and be released at such time as the existing tennis courts are relocated by Grantor, its successors or assigns, to the Relocation Area as defined in Section 7 herein.~~ *also constructed* *replaced* *replaced*

5. Maintenance. Grantee, at its expense, shall maintain, repair, and replace, as may be appropriate, the tennis court facilities (including any lighting thereof) within the Easement Area so that they remain in a good and safe condition.

Grantor's Self-Help Remedies. If Grantee fails to perform any of Grantor's repair and maintenance obligations under this Agreement, within thirty (30) days after the date of Grantor's written notice to Grantee of such failure, then Grantor shall have the right, but not the obligation, to cure the default, or in the case of a default which by its nature cannot be cured within that thirty (30) day period, to commence the curing of the default within that thirty (30) day period and thereafter diligently prosecute the curing of the default to completion, to take such action as shall be necessary to cure the default, all in the name of Grantee and for the account of Grantee. If Grantor expends sums for the performance of any obligations of Grantee pursuant to Grantor's exercise of any self-help remedies under this Agreement, Grantee shall reimburse Grantor for the cost of that performance within fifteen (15) days after receipt of a statement therefor along with any documentation reasonably requested by Grantee substantiating the costs incurred by Grantor. Thereafter, interest shall accrue upon any unpaid amounts at a rate of twelve percent (12%) per annum.

The final two courts will be built within 18 months of commencement of construction. can be done during construction and

7. Covenant of Grantor to Relocate Tennis Courts.

upon 30 days written notice
Grantor may ~~at any time~~ elect, at its expense, to relocate the tennis courts within the Easement Area to an area adjacent to the Grantor Property, as depicted on the sketch attached hereto as Exhibit "D" (the "Relocation Area"). However, Grantor shall be obligated to relocate the tennis courts to the Relocation Area at such time as it elects to develop the Easement Area. The relocated tennis courts shall be of equivalent size and quality to the existing tennis courts and related improvements. All relocation work shall

replaced
~~or at such time as it sells, assigns or transfers the Grantor Property and/or any membership interest in Grantor.~~
3
replaced

ROP
JR

"like kind and quality" in new condition as the existing County fees are subject to this Easement, ~~in writing, but not limited to~~ lighting, drainage, water, ~~covered sitting areas~~ for players

be performed in a good and workmanlike manner at Grantor's expense. This covenant shall be binding upon Grantor, its successors and assigns, and shall run with the land for the benefit of Grantee. Grantee hereby grants to Grantor, its successors and assigns, a construction easement to and over the Relocation Area for the purposes of relocating and constructing the tennis courts and related improvements.

clay irrigated

General
Special
this is not
the
construction
of
the
courts
and
related
as
Exhibit
"A"

8. Covenants and Agreements of Grantee.

Notwithstanding any provision herein to the contrary, until Grantor, its successors or assigns, has completed, sold and conveyed all of the units to be developed within the Grantor Property, Grantee, and its directors, officers, employees, agents and members covenant and agree not to unreasonably interfere with the completion of the contemplated improvements and the sale of units or any other sales activities of Grantor, its successors or assigns. Grantor, its successors and assigns, may make such use of the unsold units and the Common Areas within the Grantor Property as may facilitate such completion and sale, including, but not limited to, the maintaining of sales offices, construction trailers, model homes, and/or parking lots for the showing of the Grantor Property, and the display of signs, billboards, flags, placecards and visual promotional materials.

replace

9. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto, shall be an easement burdening and running with the Grantor Property, and shall be appurtenant to, for the benefit of, and running with the Grantee Property.

Upon Grantor's conveyance of the Grantor Property, Grantor shall be released from its

10. Assignability. This Agreement may not be assigned except to Grantor's successors in interest or to its successors in title to the Grantor Property, and any other purported assignment of this Agreement or any interest therein shall be void and of no force and effect.

obligation
under
this
Agreement

11. Notices. Any notice, request, demand, instruction or other communication to be given to either party hereunder, shall be in writing and shall either be (i) hand-delivered, (ii) sent by Federal Express or a comparable overnight mail service, or (iii) mailed by U.S. certified mail, return receipt requested, postage prepaid, to Grantor at 868 102nd Avenue North, Naples, Florida 34108 Attention: James H. Kabcenell, and to Grantee at 601 La Peninsula Boulevard, Naples, Florida 34113 Attention: President. Notice shall be deemed to have been given upon receipt or refusal of delivery of said notice. The addressees and addresses for the purpose of this paragraph may be changed by giving notice. Unless and until such written notice is received, the last addressee and address stated herein shall be deemed to continue in effect for all purposes hereunder.

Handwritten signature

12. Miscellaneous.

12.1 Term. The term of this Agreement shall be perpetual and shall only be terminated by Grantee, its successors and/or assigns, by written instrument recorded in the Public Records of Collier County, Florida.

RM:613458.2
Lien. Grantee shall have a "Consensual Lien" by Grantor in the maximum amount of \$250,000.00 that will escalate over time to the actual cost of construction of the four new courts

12.2 Amendment. No modification or amendment of this Agreement shall be of any force or effect unless in writing executed by Grantee and Grantor and recorded in the Public Records of Collier County, Florida.

12.3 Attorneys' Fees. The parties hereto shall bear their respective costs and attorneys' fees in connection with the execution of this Agreement and the consummation of the transaction contemplated hereby. In the event of any dispute hereunder, the prevailing party shall be entitled to recover all costs and expenses incurred by it in connection with the enforcement of this Agreement, including all fees and expenses charged by an attorney for his/her services and the services of paralegals, legal assistants and/or law clerks (including but not limited to) fees and expenses charged for services rendered in connection with representation at the trial level, in all appeals and in any bankruptcy proceeding.

12.4 Construction of Agreement. Should any provision of this Agreement require interpretation in any judicial, administrative or other proceeding or circumstance, it is agreed that the court, administrative body, or other entity interpreting or construing the same shall not apply a presumption that the terms thereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who prepared the same, it being further agreed that all parties hereto have fully participated in the preparation of this Agreement.

12.5 Counterparts. This Agreement may be executed in any number of counterparts, any one or all of which shall constitute the agreement of the parties and each of which shall be deemed an original.

12.6 Entire Agreement. This Agreement sets forth the entire agreement between Grantee and Grantor relating to the subject matter herein, and supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral between the parties, and there are no agreements, understandings, warranties, representations amount the parties except as otherwise indicated herein.

12.7 Dedication. Nothing contained in this Agreement shall be deemed a gift or dedication of any portion of the Easement Area to the general public or for the general public or for any public purpose whatsoever.

12.8 Governing Law. This Agreement shall be interpreted in accordance with the internal laws of the State of Florida both substantive and remedial, regardless of the domicile of any party, and will be deemed for such purposes to have been made, executed and performed in the State of Florida.

12.9 Severability. Should any clause or provision of this Agreement be determined to be illegal, invalid or unenforceable under any present or future law by final judgment of a court of competent jurisdiction, the remainder of this Agreement will not be affected thereby. It is the intention of the parties that if any such provision is held to

RM:613458:2

be illegal, invalid or unenforceable, there will be added in lieu thereof a legal, valid and enforceable provision that is as similar as possible in terms to the illegal, invalid or unenforceable provision.

12.10 Time of the Essence. Time is of the essence in the performance of all obligations under this Agreement.

12.11 No Waiver, No Agency. No waiver of any default of any obligation by any party hereto shall be implied from any omission by the other party to take any action with respect to such default. Nothing in this Agreement shall be deemed or construed by either party or by any third person to create the relationship of principal and agent or of limited or general partners or of a joint venture or of any other association between the parties.

12.12 Indemnification. Grantee further agrees to indemnify, defend, and hold Grantor harmless from and against any and all claims, rights, causes of action, losses, or liabilities arising out of Grantee's exercise of Grantee's rights under this Agreement or the actions or omissions of Grantee, its Authorized Users, or Grantee's employees, agents, or contractors, in connection with this Agreement, including, but not limited to, Grantor's reasonable attorneys' fees and costs, whether or not suit be brought and through and including all post-judgment and appellate proceedings. Grantee will obtain such policies of public liability insurance as may be reasonably requested by Grantor in connection with the obligations created under this Section. All such public liability policies shall designate the Grantor as an additional insured and shall provide coverage in amounts not less than \$2,000,000.00 per occurrence for bodily injury or property damage and \$2,000,000.00 in the aggregate per year.

12.13 Waiver of Trial by Jury. GRANTEE AND GRANTOR HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM BASED ON THIS AGREEMENT OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT OR ANY DOCUMENT OR INSTRUMENT EXECUTED IN CONNECTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTION OF ANY PARTY HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR GRANTEE AND GRANTOR ENTERING INTO THE SUBJECT TRANSACTION.

RM:613458:2

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

WITNESSES:

Name:

Name:

GRANTOR:

~~AIRCRAFT INVESTORS~~ LLC,
a Florida limited liability company

By: _____
Name: James H. Kabcenell
Title: Manager

INVESTMENT

STATE OF FLORIDA)
) ss:
COUNTY OF COLLIER)

INVESTMENT

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by James H. Kabcenell, the Manager of AIRCRAFT ~~INVESTORS~~ LLC, a Florida limited liability company, freely and voluntarily under authority duly vested in him by said company. He is personally known to me _____ or who has produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this _____ day of _____, 2009.

Notary Public

Typed, printed or stamped name of Notary Public

My Commission Expires:

WITNESSES:

Name:

Name:

GRANTEE:

THE CLUB AT LA PENINSULA, INC.,
a Florida non-profit corporation

By: _____

Name: _____

Title: President

[CORPORATE SEAL]

STATE OF FLORIDA)
) ss:
COUNTY OF COLLIER)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by _____, the President of THE CLUB AT LA PENINSULA, INC., a Florida non-profit corporation, freely and voluntarily under authority duly vested in him by said corporation and that the seal affixed thereto is the true corporate seal of said corporation. He is personally known to me _____ or who has produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this _____ day of _____, 2009.

Notary Public

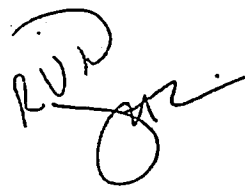
Typed, printed or stamped name of Notary Public

My Commission Expires:

RM:613458:2

SCHEDULE OF EXHIBITS

<u>Exhibit "A"</u>	Legal Description of Grantor Property
<u>Exhibit "B"</u>	Legal Description of Grantee Property
<u>Exhibit "C"</u>	Legal Description and Sketch of Easement Area
<u>Exhibit "D"</u>	Sketch of Relocation Area

RVD


RM:613458:2

PREPARED BY AND RETURN TO:
Steven R. Parson, Esq.
Shutts & Bowen LLP
525 Okeechobee Blvd., Suite 1100
West Palm Beach, FL 33401
(561) 650-8557

TENNIS COURT EASEMENT AND COVENANTS

THIS TENNIS COURT EASEMENT AND COVENANTS (this "Agreement") is made and entered into as of the 8th day of May, 2013, by and between AIRCRAFT INVESTMENT LLC, a Florida limited liability company ("Grantor"), and THE CLUB AT LA PENINSULA, INC., a Florida non-profit corporation ("Grantee").

RECITALS:

WHEREAS, Grantor currently owns certain undeveloped real property located in Collier County, Florida, and legally described in Exhibit "A" attached hereto and made a part hereof (the "Grantor Property").

WHEREAS, Grantee currently owns the real property located adjacent to the Grantor Property in Collier County, Florida, and legally described in Exhibit "B" attached hereto and made a part hereof (the "Grantee Property").

WHEREAS, Grantor desires to grant to Grantee for the benefit of the Grantee Property a temporary access easement over the Grantor Property to access and use the existing tennis courts as shown on Exhibit "C" attached hereto and made a part hereof (the "Easement Area").

WHEREAS, Grantor and Grantee desire to provide herein for certain additional covenants concerning the relocation of the tennis courts and the rights of Grantor and the development of the Grantor Property.

WHEREAS, Grantor and Grantee agree that this Agreement shall be recorded against the Grantor Property in the Collier County real property records.

NOW, THEREFORE, in consideration of the agreements herein set forth, the purchase and conveyance of the Grantee Property and for \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the parties agree as follows:

WPBDOCS 7898525 2
11/16/12

MITCHELL/DP-000032

EXHIBIT

16

1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

2. Grantor's Representations and Warranties. Grantor hereby represents and warrants to Grantee as follows:

2.1 Grantor's Existence. Grantor is a Florida limited liability company in good standing and has full power and authority to comply with the terms of this Agreement.

2.2 Authority. The execution and delivery of this Agreement by Grantor are within Grantor's capacity, and all requisite action has been taken to make this Agreement valid and binding on Grantor in accordance with its terms.

3. Grantee's Representations and Warranties. Grantee hereby represents and warrants to Grantor as follows:

3.1 Grantee's Existence. Grantee is a Florida non-profit corporation in good standing and has full power and authority to comply with the terms of this Agreement.

3.2 Authority. The execution and delivery of this Agreement by Grantee are within Grantee's capacity, and all requisite action has been taken to make this Agreement valid and binding on Grantee in accordance with its terms.

4. Grant of Easement.

4.1 Grantor hereby grants and conveys to Grantee and its Authorized Users (as hereinafter defined), a temporary, non-exclusive appurtenant easement (the "Easement") over and across the Easement Area, for the purposes of accessing and using the existing tennis courts located thereon. As used in this Agreement, "Authorized Users" shall mean all Owners and Members, as those terms are defined in the Declaration of Covenants, Conditions and Restrictions of La Peninsula recorded in Official Records Book 1213, Page 770 in the Public Records of Collier County, Florida, as amended (the "Declaration"), and their guests, lessees and invitees. Any conveyance of all or any part of the Grantor Property containing any portion of the Easement Area shall include, and by this Agreement is deemed to include, the Easement as an appurtenance for the benefit of the Grantee Property and its Authorized Users.

4.2 Notwithstanding anything contained in this Agreement to the contrary, this Agreement shall not be construed as granting access rights to use Grantor's Property for any other purposes.

4.3 Grantor reserves unto itself the right and privilege to use and occupy and to grant to others the right to use and occupy the surface and sub-surface of

the Easement Area, for such uses and purposes which shall not be inconsistent with the Easement as described in this instrument. In the event that Grantee or its Authorized Users in any manner disrupts, interferes with, or causes any damage to any landscaping, personal property, or improvements on or to the Grantor Property, then Grantee shall replace or repair such landscaping, personal property, or improvements within twenty (20) days of the date Grantor provides Grantee notice that such damage occurred, provided that if such replacement or repair cannot be completed within a period of twenty (20) days, Grantee shall commence performance within said twenty (20) day period and continuously prosecute same to completion with reasonable diligence. Should Grantee fail to comply with its obligations to replace or repair in the time periods and as otherwise set forth above, Grantor may make such replacements or repairs and Grantee shall promptly reimburse Grantor for all reasonable costs and expenses incurred in connection therewith.

4.4 The rights granted herein shall be exercised by Grantee and its Authorized Users at all times in a reasonable manner and without undue interference with the use and occupancy of the lands abutting the tennis courts within the Easement Area.

4.5 Grantee shall execute and record a termination and release of the Easement granted herein at such time as the existing tennis courts have been replaced in accordance with Section 7 herein to the reasonable satisfaction of Grantee.

5. Maintenance. Grantee, at its expense, shall maintain, repair, and replace, as may be appropriate, the tennis court facilities (including any lighting thereof) within the Easement Area so that they remain in a good and safe condition.

6. Grantor's Self-Help Remedies. If Grantee fails to perform any of Grantee's repair and maintenance obligations under this Agreement, within thirty (30) days after the date of Grantor's written notice to Grantee of such failure, then Grantor shall have the right, but not the obligation, to cure the default, or in the case of a default which by its nature cannot be cured within that thirty (30) day period, to commence the curing of the default within that thirty (30) day period and thereafter diligently prosecute the curing of the default to completion, to take such action as shall be necessary to cure the default, all in the name of Grantee and for the account of Grantee. If Grantor expends sums for the performance of any obligations of Grantee pursuant to Grantor's exercise of any self-help remedies under this Agreement, Grantee shall reimburse Grantor for the cost of that performance within fifteen (15) days after receipt of a statement therefor along with any documentation reasonably requested by Grantee substantiating the costs incurred by Grantor. Thereafter, interest shall accrue upon any unpaid amounts at a rate of twelve percent (12%) per annum.

7. Covenant of Grantor to Relocate Tennis Courts.

Grantor may at any time upon 30 days advance written notice elect, at its expense, to remove the tennis courts within the Easement Area and construct four replacement tennis courts (the "Replacement Tennis Courts") in an area adjacent to the Grantor Property, as depicted on the sketch attached hereto as Exhibit "D" (the "Relocation Area"). However, Grantor shall be obligated to construct the Replacement Tennis Courts in the Relocation Area at such time as it elects to develop the Easement Area. The Replacement Tennis Courts shall be new and of equivalent size and of like kind and quality to the existing tennis courts and related improvements, including clay construction and irrigation. In addition, the Replacement Tennis Courts shall have lighting, available drinking water and a covered sitting area for players. All work performed in the construction of the Replacement Tennis Courts shall be performed in a good and workmanlike manner at Grantor's expense. Grantor shall conduct the removal and replacement of the tennis courts so as to provide four tennis courts available for play at all times; except that for a period of up eighteen (18) months Grantor may provide only two tennis courts available for play in order to leave space in the Easement Area and/or Relocation Area for staging construction materials and equipment. This covenant shall be binding upon Grantor, its successors and assigns, and shall run with the land for the benefit of Grantee. Grantee hereby grants to Grantor, its successors and assigns, a construction easement to and over the Relocation Area for the purposes of constructing the Replacement Tennis Courts and related improvements.

8. Covenants and Agreements of Grantee.

Notwithstanding any provision herein to the contrary, until Grantor, its successors or assigns, has completed, sold and conveyed all of the units to be developed within the Grantor Property, Grantee, and its directors, officers, employees, agents and members covenant and agree not to unreasonably interfere with the completion of the contemplated improvements and the sale of units or any other sales activities of Grantor, its successors or assigns.

9. Successors and Assigns. Upon Grantor's conveyance of the Grantor Property, Grantor shall be released from its obligations under this Agreement. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto, shall be an easement burdening and running with the Grantor Property, and shall be appurtenant to, for the benefit of, and running with the Grantee Property.

10. Assignability. This Agreement may not be assigned except to Grantor's successors in interest or to its successors in title to the Grantor Property, and any other purported assignment of this Agreement or any interest therein shall be void and of no force and effect. Any assignment that purports to assign only the rights found under this Agreement shall be void and of no force and effect.

11. Notices. Any notice, request, demand, instruction or other communication to be given to either party hereunder, shall be in writing and shall either

be (i) hand-delivered, (ii) sent by Federal Express or a comparable overnight mail service, or (iii) mailed by U.S. certified mail, return receipt requested, postage prepaid, to Grantor at 868 102nd Avenue North, Naples, Florida 34108 Attention: James H. Kabcenell, and to Grantee at 601 La Peninsula Boulevard, Naples, Florida 34113 Attention: President. Notice shall be deemed to have been given upon receipt or refusal of delivery of said notice. The addressees and addresses for the purpose of this paragraph may be changed by giving notice. Unless and until such written notice is received, the last addressee and address stated herein shall be deemed to continue in effect for all purposes hereunder.

12. Miscellaneous.

12.1 Term. The term of this Agreement shall be perpetual and shall only be terminated by Grantee, its successors and/or assigns, by written instrument recorded in the Public Records of Collier County, Florida.

12.2 Amendment. No modification or amendment of this Agreement shall be of any force or effect unless in writing executed by Grantee and Grantor and recorded in the Public Records of Collier County, Florida.

12.3 Attorneys' Fees. The parties hereto shall bear their respective costs and attorneys' fees in connection with the execution of this Agreement and the consummation of the transaction contemplated hereby. In the event of any dispute hereunder, the prevailing party shall be entitled to recover all costs and expenses incurred by it in connection with the enforcement of this Agreement, including all fees and expenses charged by an attorney for his/her services and the services of paralegals, legal assistants and/or law clerks (including but not limited to) fees and expenses charged for services rendered in connection with representation at the trial level, in all appeals and in any bankruptcy proceeding.

12.4 Construction of Agreement. Should any provision of this Agreement require interpretation in any judicial, administrative or other proceeding or circumstance, it is agreed that the court, administrative body, or other entity interpreting or construing the same shall not apply a presumption that the terms thereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who prepared the same, it being further agreed that all parties hereto have fully participated in the preparation of this Agreement.

12.5 Counterparts. This Agreement may be executed in any number of counterparts, any one or all of which shall constitute the agreement of the parties and each of which shall be deemed an original.

12.6 Entire Agreement. This Agreement sets forth the entire agreement between Grantee and Grantor relating to the subject matter herein, and supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral

between the parties, and there are no agreements, understandings, warranties, representations amount the parties except as otherwise indicated herein.

12.7 Dedication. Nothing contained in this Agreement shall be deemed a gift or dedication of any portion of the Easement Area to the general public or for the general public or for any public purpose whatsoever.

12.8 Governing Law. This Agreement shall be interpreted in accordance with the internal laws of the State of Florida both substantive and remedial, regardless of the domicile of any party, and will be deemed for such purposes to have been made, executed and performed in the State of Florida.

12.9 Severability. Should any clause or provision of this Agreement be determined to be illegal, invalid or unenforceable under any present or future law by final judgment of a court of competent jurisdiction, the remainder of this Agreement will not be affected thereby. It is the intention of the parties that if any such provision is held to be illegal, invalid or unenforceable, there will be added in lieu thereof a legal, valid and enforceable provision that is as similar as possible in terms to the illegal, invalid or unenforceable provision.

12.10 Time of the Essence. Time is of the essence in the performance of all obligations under this Agreement.

12.11 No Waiver; No Agency. No waiver of any default of any obligation by any party hereto shall be implied from any omission by the other party to take any action with respect to such default. Nothing in this Agreement shall be deemed or construed by either party or by any third person to create the relationship of principal and agent or of limited or general partners or of a joint venture or of any other association between the parties.


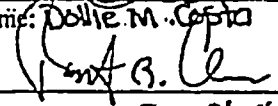
12.12 Indemnification. Grantee further agrees to indemnify, defend, and hold Grantor harmless from and against any and all claims, rights, causes of action, losses, or liabilities arising out of Grantee's exercise of Grantee's rights under this Agreement or the actions or omissions of Grantee, its Authorized Users, or Grantee's employees, agents, or contractors, in connection with this Agreement, including, but not limited to, Grantor's reasonable attorneys' fees and costs, whether or not suit be brought and through and including all post-judgment and appellate proceedings. Grantee will obtain such policies of public general liability insurance as may be reasonably requested by Grantor in connection with the obligations created under this Section. All such public general liability policies shall designate the Grantor as an additional insured and shall provide coverage in amounts not less than \$2,000,000.00 per occurrence for bodily injury or property damage and \$2,000,000.00 in the aggregate per year.

12.13 Waiver of Trial by Jury. GRANTEE AND GRANTOR HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS TO A TRIAL BY JURY IN RESPECT OF ANY ACTION,

PROCEEDING OR COUNTERCLAIM BASED ON THIS AGREEMENT OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT OR ANY DOCUMENT OR INSTRUMENT EXECUTED IN CONNECTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTION OF ANY PARTY HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR GRANTEE AND GRANTOR ENTERING INTO THE SUBJECT TRANSACTION.

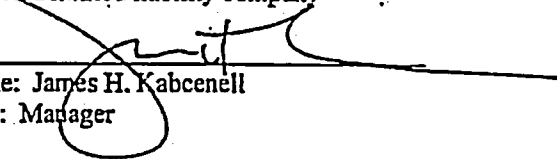
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

WITNESSES:


 Name: Dolie M. Costa

 Name: Rob Clark

GRANTOR:

AIRCRAFT INVESTMENT LLC,
a Florida limited liability company

By: 
 Name: James H. Kabcenell
 Title: Manager

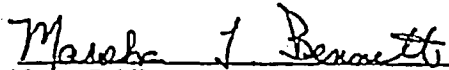
STATE OF FLORIDA)
) ss:
 COUNTY OF COLLIER)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by James H. Kabcenell, the Manager of AIRCRAFT INVESTMENT LLC, a Florida limited liability company, freely and voluntarily under authority duly vested in him by said company. He is personally known to me or who has produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this 29th day of April, 2013.



My Commission Expires: 1/21/2017


 Notary Public
MARSHA L. Bennett
 Typed, printed or stamped name of Notary Public

WITNESSES:

Gregory M. Woods
Name: Gregory M. Woods
Mary Lou Breaz
Name: Mary Lou Breaz

GRANTEE:

THE CLUB AT LA PENINSULA, INC.,
a Florida non-profit corporation

By: Richard Van Daele
Name: RICHARD VAN DAELE
Title: President

[CORPORATE SEAL]

STATE OF FLORIDA)
) SS:
COUNTY OF COLLIER)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by Richard Vandeelen, the President of **THE CLUB AT LA PENINSULA, INC.**, a Florida non-profit corporation, freely and voluntarily under authority duly vested in him by said corporation and that the seal affixed thereto is the true corporate seal of said corporation. He is personally known to me or who has produced FL Drivers License as identification.

WITNESS my hand and official seal in the County and State last aforesaid this 8 day of May, 2013.

Mary Lou Breaz
Notary Public
Mary Lou Breaz
Typed, printed or stamped name of Notary Public

My Commission Expires:



SCHEDULE OF EXHIBITS

<u>Exhibit "A"</u>	Legal Description of Grantor Property
<u>Exhibit "B"</u>	Legal Description of Grantee Property
<u>Exhibit "C"</u>	Sketch of Easement Area
<u>Exhibit "D"</u>	Sketch of Relocation Area

RM:613458:2
WPBDOCS 78985252
11/16/12

MITCHELL/DP-000041

EXHIBIT "A"
GRANTOR PROPERTY

LEGAL DESCRIPTION:

A PARCEL OF LAND LOCATED IN A PORTION OF SECTION 6, TOWNSHIP 52 SOUTH, RANGE 28 EAST, COLLIER COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF SECTION 6, TOWNSHIP 52 SOUTH, RANGE 28 EAST, COLLIER COUNTY FLORIDA; THENCE RUN N 83° 48' 27" W, ALONG THE NORTH LINE OF SAID SECTION 6 FOR A DISTANCE OF 808.47 FEET TO THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN DESCRIBED; THENCE RUN S 43° 48' 27" E, FOR A DISTANCE OF 108.37 FEET; THENCE RUN S 13° 52' 19" W, FOR A DISTANCE OF 108.12 FEET; THENCE RUN S 65° 29' 47" W, FOR A DISTANCE OF 58.23 FEET; THENCE RUN N 57° 37' 57" W, FOR A DISTANCE OF 81.25 FEET; THENCE RUN N 71° 03' 47" W, FOR A DISTANCE OF 120.50 FEET; THENCE RUN S 65° 25' 35" W, FOR A DISTANCE OF 118.12 FEET; THENCE RUN S 05° 36' 19" E, FOR A DISTANCE OF 112.84 FEET; THENCE RUN S 84° 22' 41" W, FOR A DISTANCE OF 43.00 FEET; THENCE RUN S 05° 36' 19" E, FOR A DISTANCE OF 57.35 FEET, TO A POINT ON A CIRCULAR CURVE, CONCAVE SOUTHERLY, WHOSE RADIUS POINT BEARS S 05° 12' 09" E, THEREFROM; THENCE RUN WESTERLY, ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 690.70 FEET, THROUGH A CENTRAL ANGLE OF 6° 41' 20", SUBTENDED BY A CHORD OF 80.59 FEET AT A BEARING OF S 77° 28' 25" W, FOR A DISTANCE OF 80.59 FEET TO THE END OF SAID CURVE; THENCE RUN N 05° 36' 19" W, FOR A DISTANCE OF 183.65 FEET; THENCE RUN N 65° 43' 57" W, FOR A DISTANCE OF 158.65 FEET; THENCE RUN N 48° 16' 02" E, FOR A DISTANCE OF 147.42 FEET; THENCE RUN N 43° 39' 43" W, FOR A DISTANCE OF 103.33 FEET; THENCE RUN N 48° 16' 02" E, FOR A DISTANCE OF 148.22 FEET TO A POINT ON THE NORTH LINE OF SAID SECTION 6; THENCE RUN S 83° 48' 27" E, ALONG THE NORTH LINE OF SAID SECTION 6 FOR A DISTANCE OF 303.38 FEET, TO THE POINT OF BEGINNING; CONTAINING 2.773 ACRES, MORE OR LESS.

LESS AND EXCEPT:

TRACT B

A parcel of land lying in Government Lot-1 in Section 6, Township 52 South, Range 26 East, Collier County, Florida, being more particularly described as follows:

Commencing at the Northeast corner of said Section 6, Township 52 South, Range 26 East, Collier County, Florida, run North 88° 48' 27" West, along the North line of said Section 6 for 380.00 feet to the Northeast corner of the parent parcel; thence continue North 88° 48' 27" West, for 815.17 feet; thence run South 48° 16' 02" West for 158.63 feet to the Point of Beginning; thence run South 43° 39' 43" East for 190.50 feet; thence run South 05° 36' 19" East, for 135.09 feet to a point of cusp of a curve concave to the Southeast; thence run 80.63 feet along the arc of said curve having a radius of 690.70 feet, a central angle of 6° 41' 20", a chord of 80.59 feet and a chord bearing of South 77° 28' 25" West to a point; thence run North 05° 36' 19" West for 183.65 feet; thence run North 86° 43' 57" West for 158.65 feet; thence run North 48° 16' 02" East for 147.47 feet to the Point of Beginning.

EXHIBIT "B"



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LEGAL DESCRIPTION:

A PARCEL OF LAND LOCATED IN A PORTION OF SECTION 8, TOWNSHIP 52 SOUTH, RANGE 25 EAST, COLLIER COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF SECTION 8, TOWNSHIP 52 SOUTH, RANGE 25 EAST, COLLIER COUNTY FLORIDA; THENCE RUN N.85°45'27"W, FOR A DISTANCE OF 380.00 FEET TO THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN DESCRIBED; THENCE RUN 8.01°11'35"W, FOR A DISTANCE OF 120.00 FEET; THENCE RUN 8.20°32'44"E, FOR A DISTANCE OF 129.20 FEET; THENCE RUN N.73°00'00"W, FOR A DISTANCE OF 63.04 FEET, TO A POINT ON A CIRCULAR CURVE, CONCAVE NORTH/WESTERLY, WHOSE RADIUS POINT BEARS N.73°00'00"W, THEREFROM; THENCE RUN SOUTH/WESTERLY, ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 45.00 FEET, THROUGH A CENTRAL ANGLE OF 43°00'00", SUBTENDED BY A CHORD OF 32.89 FEET AT A BEARING OF 8.35°30'00"W, FOR A DISTANCE OF 33.77 FEET TO A POINT OF COMPOUND CURVE CONCAVE NORTHERLY; THENCE RUN WESTERLY, ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 141.90 FEET, THROUGH A CENTRAL ANGLE OF 37°57'17", SUBTENDED BY A CHORD OF 92.37 FEET AT A BEARING OF 8.76°59'53"W, FOR A DISTANCE OF 84.09 FEET TO THE END OF SAID CURVE; THENCE RUN N.82°00'00"W, FOR A DISTANCE OF 116.78 FEET, TO THE BEGINNING OF A TANGENTIAL CIRCULAR CURVE, CONCAVE SOUTHERLY; THENCE RUN WESTERLY, ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 32.18 FEET, THROUGH A CENTRAL ANGLE OF 64°59'45", SUBTENDED BY A CHORD OF 28.72 FEET AT A BEARING OF 8.70°30'00"W, FOR A DISTANCE OF 30.69 FEET TO THE END OF SAID CURVE; THENCE RUN 5.43°00'00"W, FOR A DISTANCE OF 33.16 FEET; THENCE RUN 8.35°46'41"E, FOR A DISTANCE OF 2.65 FEET; THENCE RUN 8.38°11'14"W, FOR A DISTANCE OF 13.92 FEET; TO A POINT ON A CIRCULAR CURVE, CONCAVE NORTHERLY, WHOSE RADIUS POINT BEARS N.47°00'00"W; THEREFROM; THENCE RUN WESTERLY, ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 169.89 FEET, THROUGH A CENTRAL ANGLE OF 51°00'00", SUBTENDED BY A CHORD OF 137.76 FEET AT A BEARING OF 5.68°30'00"W, FOR A DISTANCE OF 142.42 FEET TO THE END OF SAID CURVE; THENCE RUN N.65°00'00"W, FOR A DISTANCE OF 45.29 FEET, TO A POINT ON A CIRCULAR CURVE, CONCAVE SOUTHERLY; WHOSE RADIUS POINT BEARS 5.03°59'65"W, THEREFROM; THENCE RUN WESTERLY, ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 20.02 FEET, THROUGH A CENTRAL ANGLE OF 47°45'63", SUBTENDED BY A CHORD OF 18.21 FEET AT A BEARING OF 5.70°05'53"W, FOR A DISTANCE OF 18.69 FEET TO THE END OF SAID CURVE; THENCE RUN 8.76°32'00"W, FOR A DISTANCE OF 117.72 FEET, TO THE BEGINNING OF A TANGENTIAL CIRCULAR CURVE, CONCAVE NORTHERLY; THENCE RUN WESTERLY, ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 581.00 FEET, THROUGH A CENTRAL ANGLE OF 18°29'59", SUBTENDED BY A CHORD OF 188.78 FEET AT A BEARING OF 5.84°45'00"W, FOR A DISTANCE OF 187.59 FEET TO THE END OF SAID CURVE; THENCE RUN N.65°00'00"W, FOR A DISTANCE OF 6.40 FEET; THENCE RUN 5.85°55'21"W, FOR A DISTANCE OF 33.21 FEET, TO A POINT ON A CIRCULAR CURVE, CONCAVE SOUTHERLY, WHOSE RADIUS POINT BEARS 5.03°18'50"E, THEREFROM; THENCE RUN WESTERLY, ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 254.83 FEET, THROUGH A CENTRAL ANGLE OF 19°50'32", SUBTENDED BY A CHORD OF 67.81 FEET AT A BEARING OF 5.76°47'54"W, FOR A DISTANCE OF 68.25 FEET TO THE END OF SAID CURVE; THENCE RUN 5.65°00'15"W, FOR A DISTANCE OF 80.66 FEET, TO A POINT ON A CIRCULAR CURVE, CONCAVE SOUTHEASTERLY, WHOSE RADIUS POINT BEARS S.24°35'07"E, THEREFROM; THENCE RUN SOUTH/WESTERLY, ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 458.58 FEET, THROUGH A CENTRAL ANGLE OF 16°33'30", SUBTENDED BY A CHORD OF 132.01 FEET AT A BEARING OF 8.57°07'05"W, FOR A DISTANCE OF 132.47 FEET TO THE END OF SAID CURVE; THENCE RUN S.40°59'21"W, FOR A DISTANCE OF 29.37 FEET; THENCE RUN N.41°00'00"W, FOR A DISTANCE OF 1.80 FEET; THENCE RUN 8.35°18'10"W, FOR A DISTANCE OF 34.64 FEET; THENCE RUN 5.43°00'00"W, FOR A DISTANCE OF 64.48 FEET, TO THE BEGINNING OF A TANGENTIAL CIRCULAR CURVE, CONCAVE NORTHEASTERLY; THENCE RUN NORTH/WESTERLY, ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 45.50 FEET, THROUGH A CENTRAL ANGLE OF 157°02'45", SUBTENDED BY A CHORD OF 69.18 FEET AT A BEARING OF N.58°28'40"W, FOR A DISTANCE OF 124.71 FEET TO THE END OF SAID CURVE; THENCE RUN N.33°28'27"E, FOR A DISTANCE OF 38.68 FEET; THENCE RUN

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S.86°31'09"E, FOR A DISTANCE OF 41.64 FEET; THENCE RUN N.76°40'51"E, FOR A DISTANCE OF 41.47 FEET, TO THE BEGINNING OF A TANGENTIAL CIRCULAR CURVE, CONCAVE NORTHERLY; THENCE RUN NORTHEASTERLY, ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 50.00 FEET, THROUGH A CENTRAL ANGLE OF 25°31'38", SUBTENDED BY A CHORD OF 22.94 FEET AT A BEARING OF N.63°25'05"E, FOR A DISTANCE OF 23.15 FEET TO A POINT OF REVERSE CURVE CONCAVE SOUTHEASTERLY; THENCE RUN NORTHEASTERLY, ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 690.70 FEET, THROUGH A CENTRAL ANGLE OF 30°39'35", SUBTENDED BY A CHORD OF 365.01 FEET AT A BEARING OF N.65°26'34"E, FOR A DISTANCE OF 369.40 FEET TO THE END OF SAID CURVE; THENCE RUN N.05°36'10"W, FOR A DISTANCE OF 37.36 FEET; THENCE RUN N.64°23'41"E, FOR A DISTANCE OF 45.00 FEET; THENCE RUN N.05°36'18"W, FOR A DISTANCE OF 112.04 FEET; THENCE RUN N.65°28'35"E, FOR A DISTANCE OF 118.12 FEET; THENCE RUN S.71°03'47"E, FOR A DISTANCE OF 120.50 FEET; THENCE RUN S.69°39'57"E, FOR A DISTANCE OF 51.25 FEET; THENCE RUN N.82°29'49"E, FOR A DISTANCE OF 56.28 FEET; THENCE RUN N.13°52'39"E, FOR A DISTANCE OF 109.12 FEET; THENCE RUN N.43°46'27"W, FOR A DISTANCE OF 169.37 FEET; THENCE RUN S.65°48'27"E, FOR A DISTANCE OF 520.47 FEET, TO THE POINT OF BEGINNING; CONTAINING 4.779 ACRES, MORE OR LESS.

LESS AND EXCEPT

THAT PARCEL OF LAND DESCRIBED AS CLUBHOUSE AND POOL AREA IN QUIT CLAIM DEED, AS RECORDED IN O.R. BOOK 3502 AT PAGE 2276 OF THE PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A PARCEL OF LAND LYING IN GOVERNMENT LOT 1 IN SECTION 6, TOWNSHIP 52 SOUTH, RANGE 28 EAST, COLLIER COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

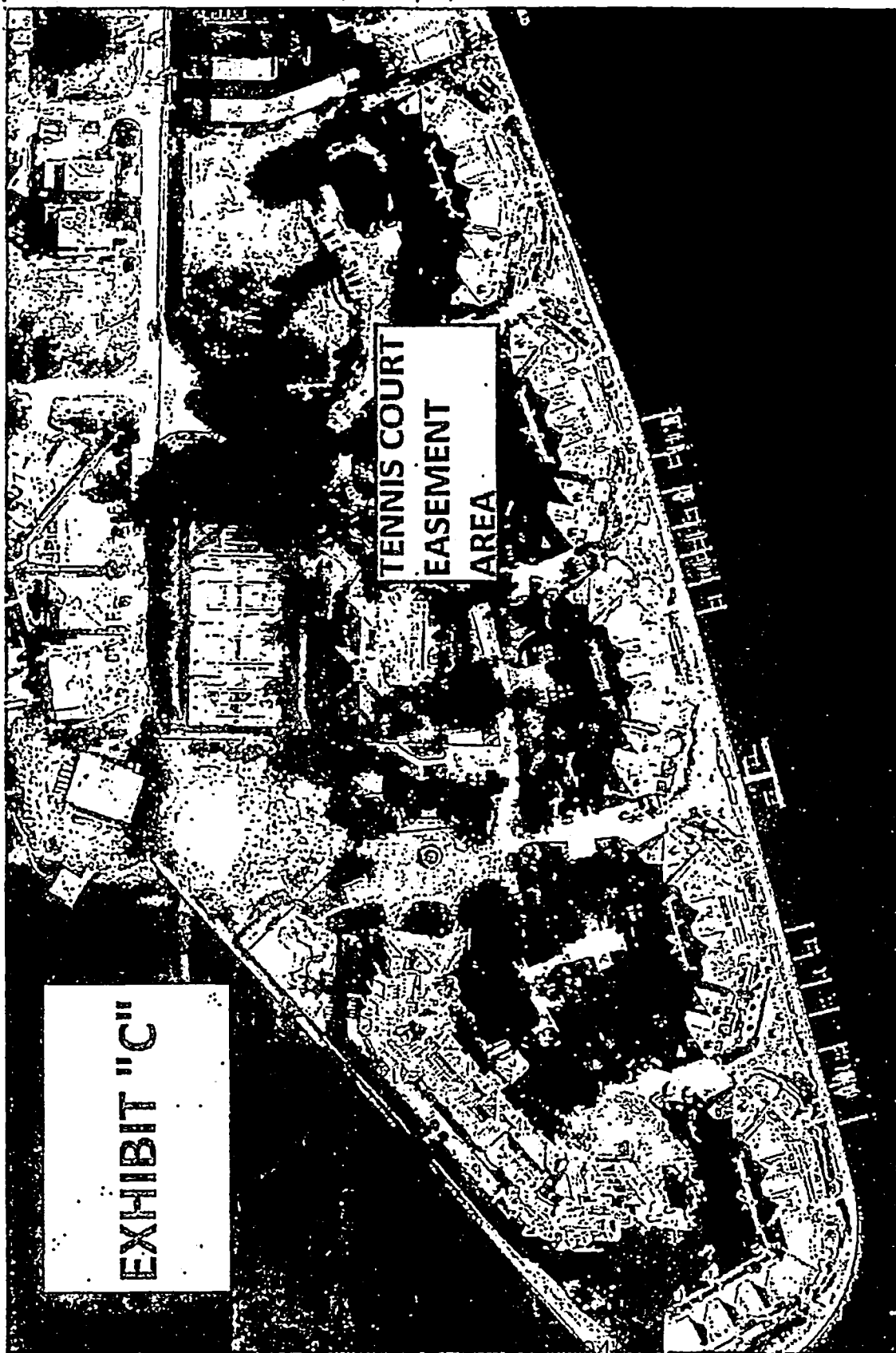
COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 6, TOWNSHIP 52 SOUTH, RANGE 28 EAST, COLLIER COUNTY, FLORIDA, RUN N85°48'27"W ALONG THE NORTH LINE OF SAID SECTION 6 FOR 380.00 FEET TO THE NORTHEAST CORNER OF THE PARENT PARCEL; THENCE CONTINUE N88°45'27"W FOR 638.62 FEET; THENCE RUN S01°11'33"W FOR 197.88 FEET TO THE POINT OF BEGINNING; THENCE RUN S33°02'39"W FOR 39.95 FEET; THENCE RUN S01°25'47"W FOR 21.20 FEET; THENCE RUN S00°31'10"E FOR 39.78 FEET; THENCE RUN S23°43'15"E FOR 8.18 FEET; THENCE RUN S01°27'45"W FOR 51.96 FEET; THENCE RUN S43°04'22"E FOR 19.28 FEET; THENCE S88°25'38"E FOR 88.81 FEET; THENCE RUN N49°52'32"E FOR 44.27 FEET; THENCE RUN N01°21'16"E FOR 43.70 FEET; THENCE RUN N45°51'43"W FOR 18.46 FEET; THENCE RUN N89°32'03"W FOR 21.43 FEET; THENCE RUN N00°27'57"E FOR 26.74 FEET; THENCE RUN N75°35'07"W FOR 52.92 FEET; THENCE RUN N65°34'13"W FOR 55.25 FEET TO THE POINT OF BEGINNING, SUBJECT TO EASEMENTS, RESTRICTIONS AND RESERVATIONS OF RECORD, CONTAINING 16295 SQUARE FEET MORE OR LESS.

THIS PROPERTY SUBJECT TO EASEMENTS, RESERVATIONS OR RESTRICTIONS OF RECORD.

BEARINGS SHOWN HEREON REFER TO THE NORTH LINE OF SECTION 6, TOWNSHIP 52 SOUTH, RANGE 28 EAST, COLLIER COUNTY, FLORIDA AS BEING S.28°45'27"E.

HOLE MONTES, INC.
CERTIFICATE OF AUTHORIZATION LB #1172

BY Thomas L. Murphy P.S.M. #5528
THOMAS L. MURPHY STATE OF FLORIDA



Best Available Image



Best Available Image

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