

In The Matter Of:
Kimberly Ann Schnell Michell, et al. v.
The Club at La Peninsula, Inc.

Laura K. Sonntag
October 21, 2022



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

4 CASE NO.: 2019-CA-3254

5 KIMBERLY ANN SCHNELL MITCHELL,
6 and DONNIE GENE MITCHELL, and
7 DOLPHIN POINT, LLC, A Florida
8 limited liability company,
9 Plaintiffs,
10 vs.
11 THE CLUB AT LA PENINSULA, INC.,
12 a Florida Corporation
13 Defendant.

14 -----/
15 VIRTUAL DEPOSITION OF
16 LAURA SONNTAG
17 Taken on Behalf of the Plaintiffs

18 DATE TAKEN: Friday, October 21st, 2022
19 TIME: Commencing at 1:30 p.m.
20 PLACE: All parties appeared via
21 video teleconference

22

23 Examination of the witness taken before:
24 Olivia Cristantiello, CSR
25 Certified Shorthand Reporter

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1 APPEARANCES FOR THE PLAINTIFFS

2 DAVID BOYETTE, ESQ.
3 Adams and Reese LLP
4 1515 Ringling Boulevard, Suite 700
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7 david.boyette@arlaw.com

8 APPEARANCES FOR THE DEFENDANT

9 MICHAEL TRAFICANTE, ESQ.
10 Grant Fridkin Pearson PA
11 5551 Ridgewood Drive, Suite 501
12 Naples, Florida 34108
13 (239) 514-1000
14 mtraficante@gfpac.com

15

16 ALSO PRESENT

17 David Petrella

18 * * *

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2 Deposition of LAURA SONNTAG Page No.

3

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5 Cross-Examination by MR. TRAFICANTE 14

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12 * * *

13 PLAINTIFFS' EXHIBITS

14 No. Description Page No.

15 22 Proxy 9

16 23 Warranty deed 5

17

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20

21

22

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24

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1 WHEREUPON,
2 LAURA SONNTAG
3 acknowledged having been duly sworn to tell the truth and
4 testified upon her oath as follows:
5 THE WITNESS: Yes.
6 DIRECT EXAMINATION
7 BY MR. BOYETTE
8 Q. My name is David Boyette. I represent the
9 Mitchell's and Dolphin Point, LLC. This won't take much
10 of your time. I've just got a few questions for you. If
11 you don't understand any of the questions, just let me
12 know and I'll rephrase it. Okay?
13 A. Okay.
14 Q. What is your full name?
15 A. Laura, middle name Kay, Sonntag.
16 Q. And your address?
17 A. [REDACTED]
18 [REDACTED].
19 Q. And what is your phone number?
20 A. Area code [REDACTED]
21 Q. Do you have an email address?
22 A. [REDACTED].
23 Q. It broke up. Can you do that again for me?
24 A. Yes. [REDACTED]
25 Q. On the computer screen, hopefully, you can see

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1 a document that says warranty deed at the top and then at
2 the bottom, it's got Depo Exhibit 23. Do you see that?
3 A. Yes.
4 Q. And then it says page one of nine?
5 A. Yes.
6 Q. And I'm scrolling to page two of nine.
7 A. Mm-hmm.
8 Q. All right. Very good. Can you confirm for me
9 that this is a copy of the deed from November of 2002
10 when you and Ralph Sonntag purchased unit 624 in
11 La Peninsula?
12 A. Yes.
13 Q. And I'm going to scroll down to page three of
14 nine and you'll see another document entitled warranty
15 deed.
16 A. Mm-hmm.
17 Q. Can you confirm for me that this is the deed
18 from the April 1st, 2003, purchase by you and Ralph
19 Sonntag of unit 633 at La Peninsula?
20 A. Yes.
21 Q. I'm going to scroll to page four of nine. Do
22 you see that?
23 A. Yes.
24 Q. Okay. And can you also see page five of nine?
25 A. Yes.

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1 really small on the screen.
2 THE WITNESS: Yeah. Okay. This is when James
3 and it's Keay, pronounced Keay.
4 BY MR. BOYETTE
5 Q. Let me see if I can make it bigger.
6 A. Yeah. Is the trustee, yes. And this is --
7 what are you asking me? This is being sold to -- oh,
8 this is on December 31st, 2015?
9 Q. No.
10 A. No. Sorry.
11 Q. Let me back up a second.
12 A. Okay.
13 Q. So in November of 2002 -- well, first of all,
14 are you still married to Ralph Sonntag?
15 A. I am.
16 Q. Okay. In November of 2002, you and he
17 purchased unit 624 in La Peninsula; right?
18 A. Right.
19 Q. And then in 2003, the two of you bought unit
20 633; correct?
21 A. Correct.
22 Q. And then in 2005, you transferred it -- both of
23 the units, you transferred them to a trust with James
24 Keay as trustee?
25 A. Yes.

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1 Q. And is that your signature on page five of
2 nine?
3 A. I don't see a signature on five of nine. Maybe
4 just scroll it a little more.
5 Q. A little higher?
6 A. A little higher. Five of nine -- still -- oh,
7 five of nine. Yes, that is my signature. Mm-hmm.
8 Q. Okay. I'm going to go -- I'm going back to
9 page four of nine.
10 A. Uh-uh.
11 Q. Can you confirm that this is the April 29,
12 2005, deed by which you and Ralph conveyed units 624 and
13 633 of La Peninsula to James Keay as trustee of the Ralph
14 E. Sonntag Irrevocable Trust?
15 A. Yes.
16 Q. And let's just go ahead and keep going through
17 these documents.
18 A. Mm-hmm.
19 Q. Can you see page six of nine and seven of nine?
20 A. Okay.
21 Q. Can you confirm that pages six and seven of
22 nine is a copy of the warranty deed from March 29 of
23 2016 when James Keay individually and his trustee
24 transferred or sold unit 624 of La Peninsula?
25 MR. TRAFICANTE: David, just so you know, it's

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1 Q. And do you recall that in 2016 James Keay sold
2 unit 624?
3 A. Yes.
4 Q. And is page six of nine the warranty deed that
5 he signed in connection with selling unit 624?
6 A. And this would be in 2016?
7 Q. Correct. It says it's dated March 29 of
8 '16. I'm pointing at it.
9 A. Yes. Yes.
10 Q. And then he also sold unit 633 in July of
11 '16; correct?
12 A. Correct.
13 Q. And then pages eight and nine is a copy of the
14 deed by which Mr. Keay as trustee sold unit 633; correct?
15 A. Correct.
16 Q. Have you ever been a trustee of the Ralph E.
17 Sonntag Irrevocable Trust?
18 A. No.
19 Q. Has your husband Ralph ever been a trustee of
20 that trust?
21 A. No.
22 Q. And what is your relationship with James
23 Keay?
24 A. He's my brother.
25 Q. Okay. Is he still the trustee of the Ralph E.

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1 --
2 A. Yes, he is. (crosstalk)
3 **Q. Sonntag Irrevocable Trust. He's the only**
4 **person that's ever been a trustee of that trust?**
5 A. Yes.
6 **Q. All right. All right. I made it as large as I**
7 **can on my screen. I've got Exhibit 22, page one of four.**
8 **Are you able to see that?**
9 A. Yes.
10 **Q. Is that your signature on this document?**
11 A. Yes.
12 **Q. And is it also your signature on page three of**
13 **four of Exhibit 22?**
14 A. Yes.
15 **Q. And on page two of four in Exhibit 22, did you**
16 **date your signature June 21 of 2015?**
17 A. I don't -- I don't --
18 **Q. Is that your handwriting?**
19 A. Yeah. Looks like it. Could be. I don't know.
20 **Q. Okay. And then on page four of four, somebody**
21 **dated it 8/3/2015; is that your handwriting?**
22 A. Could be. Not sure.
23 **Q. Okay. Do you recall -- let me put it this way:**
24 **Do you agree that you cast votes in a proposed amendment**
25 **proposed by the Club at La Peninsula and you cast the**

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1 James Keay or from the children who are the beneficiaries
2 of the trust to cast the votes for units 624 and 633 that
3 are shown in Exhibit 22?
4 A. Yes. I think -- I'm -- I'm -- I'm pretty sure
5 that what they said is that I needed something with a
6 proxy or something like that.
7 **Q. Who said that?**
8 A. Somebody at La Peninsula.
9 **Q. I see. Who at the Club at La Peninsula said**
10 **you needed a proxy?**
11 A. Well, I might be using the wrong -- I might be
12 using the wrong terminology.
13 **Q. Okay.**
14 A. But I -- my recollection is something that I
15 needed to get something. I needed to get a proxy.
16 **Q. So somebody with the Club at La Peninsula told**
17 **you you needed to get something in order to cast these**
18 **votes; is that what you're saying?**
19 A. Yes. Yes.
20 **Q. And do you remember what they told you you**
21 **needed to get?**
22 A. No. I think that it was just a form or
23 something like that to be signed.
24 **Q. Okay. To be signed by whom?**
25 A. Well, my presumption would be by Jim. My

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1 votes on behalf of units 624 and 633?
2 A. Yes. I do. Yes. Mm-hmm.
3 **Q. And on the date that you cast these votes,**
4 **these units were owned by James Keay as trustee of the**
5 **Ralph Sonntag Trust; correct?**
6 A. Correct.
7 **Q. Did you talk to James Keay about the casting of**
8 **either of these votes?**
9 A. I don't remember that.
10 **Q. Okay. Did you get anything in writing from**
11 **Mr. Keay authorizing you to cast the votes for these two**
12 **units?**
13 A. No.
14 **Q. And who were the beneficiaries of the Ralph**
15 **Sonntag trust when --**
16 A. My children.
17 **Q. -- when these votes were casted in 2015?**
18 A. The children. Our children.
19 **Q. Your children. Okay.**
20 A. Mm-hmm.
21 **Q. Did you talk with any of your children about**
22 **how these votes would be cast for these two units in**
23 **2015?**
24 A. No.
25 **Q. Did you get any sort of authorization from**

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1 brother.
2 **Q. Okay.**
3 A. Yes.
4 **Q. But you never did that?**
5 A. Not that I recall.
6 **Q. Did anybody at the Club at La Peninsula ever**
7 **tell you they couldn't count your vote because you didn't**
8 **get something in writing from James Keay?**
9 A. Yes, I think I was told that.
10 **Q. That your vote would not be counted?**
11 A. Yes.
12 **Q. Who told you that?**
13 A. I do not recall. I was so rarely at the place.
14 **Q. And do you know if the club counted your vote?**
15 A. I don't know that.
16 **Q. And how many people with the club did you talk**
17 **with about your vote? Do you remember if it was just one**
18 **person or if there was multiple people?**
19 A. You mean what the vote was about or what --
20 **Q. About what you needed to get from James**
21 **Keay in order to be able to vote for these two units?**
22 A. I think maybe just one person, but I --
23 **Q. You don't remember?**
24 A. But I can't recall, no, who it was.
25 **Q. And you definitely don't remember who it was?**

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1 A. No, I don't.
 2 **Q. And why did you cast the vote for these two**
 3 **units if you had not received something in writing from**
 4 **James Keay authorizing you to vote for the trust?**
 5 A. I thought that --
 6 **MR. TRAFICANTE:** Object to form.
 7 **THE WITNESS:** I thought that I was authorized
 8 to do so.
 9 BY MR. BOYETTE
 10 **Q. Why did you think that?**
 11 A. I guess because we threw various meetings and
 12 owned the condo for so many years.
 13 **Q. Did you bring any documents in response to the**
 14 **subpoena?**
 15 A. Yes.
 16 **Q. What did you bring?**
 17 A. I have a copy of the trust itself. It survived
 18 the flood and the fire.
 19 **Q. Did you bring anything else?**
 20 A. No.
 21 **Q. Would you be able to send me a copy of the**
 22 **trust?**
 23 A. I suppose so. Mail it to your address?
 24 **Q. Either mail or you can email it.**
 25 A. Okay.

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1 **Peninsula and the building association?**
 2 A. Well, we signed -- what kind of documents are
 3 you asking about?
 4 **Q. During that time period, did the Club at**
 5 **La Peninsula or the building association require any**
 6 **documents from you or your husband?**
 7 A. No.
 8 **Q. Who would have provided the Club at**
 9 **La Peninsula at or the building association with any**
 10 **information regarding the owners of this unit?**
 11 A. You know, I really can't answer that, you know,
 12 because we owned it ourselves first. I really have no
 13 recollection of actually handing over any documents or
 14 anything like that because --
 15 **Q. When you signed the proxies that you were shown**
 16 **that are right in front of you --**
 17 A. Uh-uh.
 18 **Q. -- did you have authority to sign those on**
 19 **behalf of the units?**
 20 **MR. BOYETTE:** Object to form.
 21 BY MR. TRAFICANTE
 22 **Q. Did you believe when you signed those that you**
 23 **had authority to execute those on behalf of the unit**
 24 **owners?**
 25 A. Yes.

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1 **MR. TRAFICANTE:** David, we would just ask for a
 2 copy, obviously.
 3 **MR. BOYETTE:** Sure. If there's any bank
 4 account information or dates of birth or Social
 5 Security numbers, feel free to redact those, black
 6 them out. I don't want to see anything like that.
 7 If you want to redact who gets what, that's private,
 8 I'm okay with you redacting that. I'm more
 9 interested in like the trustee provisions, like the
 10 legal fine print that probably you don't care about.
 11 Okay?
 12 **THE WITNESS:** Right. Well, that was my
 13 hesitation, the personal details.
 14 **MR. BOYETTE:** I understand. I respect that. I
 15 don't have any other questions for you.
 16 **MR. TRAFICANTE:** Ms. Sonntag, I just have a few
 17 couple. And Michael Traficante on behalf of the
 18 Club at La Peninsula.
 19 **THE WITNESS:** Yes.
 20 **CROSS EXAMINATION**
 21 BY MR. TRAFICANTE
 22 **Q. While you and your husband -- well, let's just**
 23 **say prior to 2016 when this unit was sold by the trust,**
 24 **did you and your husband and/or your husband sign all**
 25 **documents pertaining to this unit for the Club at La**

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1 **Q. And you said James Keay's your brother; is that**
 2 **correct?**
 3 A. I didn't hear that. I'm sorry.
 4 **Q. I'm sorry. You said James Keay is your**
 5 **brother; is that correct?**
 6 A. Correct.
 7 **Q. Okay. And did -- would James object to you**
 8 **signing this proxy on behalf of the units?**
 9 A. No.
 10 **Q. And would your children object to you signing**
 11 **this proxy on behalf of the units?**
 12 **MR. BOYETTE:** Object to form.
 13 **THE WITNESS:** No, definitely not. My children
 14 were way too young at that point in time to even
 15 talk to them about it.
 16 BY MR. TRAFICANTE
 17 **Q. And you were asked questions about**
 18 **conversations that you had or may have had with someone**
 19 **from the Club at La Peninsula by Mr. Boyette. Do you**
 20 **recall those questions?**
 21 A. Yes. He asked who it was that asked -- that
 22 told me that I needed the proxy.
 23 **Q. Are you sure you had that conversation with**
 24 **someone from the Club at La Peninsula and not another**
 25 **unit owner?**

1 A. Oh. It might have been another unit owner. I
 2 don't know. I don't recall. It's like a vague thing
 3 that in order to vote, you know, I needed this proxy.
 4 **Q. You don't know whether you spoke with a**
 5 **director or an officer of the Club at La Peninsula?**
 6 A. I cannot say that, no.
 7 **Q. Or the management company?**
 8 A. Might have been them, too.
 9 **Q. But you don't recall one way or the other?**
 10 A. No. Sorry. It was, what, seven years ago.
 11 **MR. TRAFICANTE:** Understood. I have no further
 12 questions.
 13 **MR. BOYETTE:** I just have a couple more for
 14 you.
 15 **THE WITNESS:** Mm-hmm.
 16 **REDIRECT EXAMINATION**
 17 **BY MR. BOYETTE**
 18 **Q. Exhibit 22, page three of four.**
 19 A. Mm-hmm.
 20 **Q. Under where it says one, it says amendment and**
 21 **restatement of declaration of condominium. It says**
 22 **enclosed herewith is a copy of a proposed amended and**
 23 **restated declaration of covenant.**
 24 A. Yes.
 25 **Q. Did you get a copy of a proposed amended and**

1 **restated declaration of covenant at the time you signed**
 2 **this document?**
 3 A. I don't remember that.
 4 **Q. Okay.**
 5 A. Okay.
 6 **Q. Did you discuss -- well, let me ask you this:**
 7 **Did you provide James Keay with a copy of a proposed**
 8 **amended and restated declaration of covenant around the**
 9 **time that this Exhibit 22 was signed by you?**
 10 A. No. I don't think I did.
 11 **Q. Okay. Did you have any discussions with**
 12 **Mr. Keay about proposed amended and restated declaration**
 13 **of covenant in 2015 at any time?**
 14 A. No. I don't think I did, no.
 15 **Q. So you didn't have any discussions with him**
 16 **about whether the vote for these two units should be vote**
 17 **in favor of or against the proposed amended and restated**
 18 **declaration?**
 19 A. Correct.
 20 **MR. BOYETTE:** Okay. Okay. I don't have any
 21 other questions for you.
 22 **MR. TRAFICANTE:** David, just one quick one, Ms.
 23 Sonntag, on that.
 24 **THE WITNESS:** Sure.
 25 **RE CROSS EXAMINATION**

1 **BY MR. TRAFICANTE**
 2 **Q. Would you have signed something or voted in**
 3 **favor of something if you had not received the document**
 4 **that you were voting in favor of?**
 5 A. No. I must -- we must have received it in
 6 order to -- and there was discussions at that time over
 7 the revised covenants and so on and so forth. And,
 8 obviously, my husband and I were in favor of what they
 9 were trying to do at that time.
 10 **MR. TRAFICANTE:** No further questions.
 11 **MR. BOYETTE:** I'm going to order this
 12 transcribed, Ms. Court Reporter.
 13 And Ms. Sonntag, you have a right to read the
 14 transcript to make sure that it's transcribed
 15 accurately. If you want to waive the right, you can
 16 do that.
 17 If you don't want to waive the right, the court
 18 reporter will contact you and provide you with the
 19 transcript so you can look at it and you'll get an
 20 errata sheet, which is a separate sheet of paper on
 21 which you can note any corrections that need to be
 22 made, the page and the line and how it needs to be
 23 fixed.
 24 So would you like to exercise that right to
 25 read or waive it?

1 **THE WITNESS:** I'd like to have it.
 2 **MR. BOYETTE:** All right. Very good.
 3 **MR. TRAFICANTE:** Madame Court Reporter, we'll
 4 take a copy.
 5 (Whereupon, the proceedings were concluded at
 6 1:51 p.m.)
 7
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CERTIFICATE OF OATH

STATE OF FLORIDA
COUNTY OF SARASOTA

I, OLIVIA CRISTANTIELLO, CSR, the undersigned authority, certify that LAURA SONNTAG personally appeared before me on October 21st, 2022, at 1:30 p.m. and was duly sworn.

WITNESS my hand and official seal this 2nd day of November, 2022.



Olivia Cristantiello

Olivia Cristantiello, CSR
Notary Public State of Florida
Commission # HH 72310
Expiration: December 15, 2024

CERTIFICATE OF REPORTER

STATE OF FLORIDA
COUNTY OF SARASOTA

I, Olivia Cristantiello, Certified Shorthand Reporter, do hereby certify that I was authorized to and did stenographically report the deposition of LAURA SONNTAG; that a review of the transcript was requested; and that the foregoing transcript is a true record of my stenographic notes.

I FURTHER CERTIFY that I am not a relative, employee, or attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED this 2nd day of November, 2022, at Sarasota County, Florida.

Olivia Cristantiello

Olivia Cristantiello, CSR

ERRATA SHEET

DO NOT WRITE ON TRANSCRIPT - ENTER CHANGES HERE

RE: KIMBERLY ANN SCHNELL MITCHELL v THE CLUB AT LA PENINSULA, INC., a Florida Corporation

CASE NO.: 2019-CA-3254

DEPONENT: LAURA SONNTAG

DATE: October 21st, 2022

Page No.	Line No.	Change	Reason

Under the penalties of perjury, I declare that I have read the foregoing document and that the facts stated in it are true.

DATE _____ LAURA SONNTAG

ORIG: David Boyette, Esq., david.boyette@arlaw.com

COPY: Michael Traficante, Esq., mtraficante@gfpac.com

November 2nd, 2022

Laura Sonntag
Laurasonntag@hotmail.com.

In Re: Deposition of LAURA SONNTAG taken on October 21st, 2022

KIMBERLY ANN SCHNELL MITCHELL vs. THE CLUB AT LA PENINSULA, INC., a Florida Corporation

Dear Madam:

This letter is to advise that your deposition transcript has been completed and is available for review. Please contact Imperial Court Reporting at (941) 260-9000 to make arrangements to read and sign the transcript at our office within 30 days from the date of this letter to be forwarded to all parties for inclusion in the transcript.

If you decide to waive your right to read, please sign below and email this page to admin@imperialcourtreporting.com.

Sincerely,

Imperial Court Reporting

cc: David Boyette, Esq., david.boyette@arlaw.com
Michael Traficante, Esq., mtraficante@gfpac.com

Waiver: I, _____, hereby waive the reading & signing of my deposition transcript.

Witness Signature _____ Date _____

<p style="text-align: center;">A</p>	<p>authorizing (2) 10:11;13:4 available (1) 24:</p>	<p>10:17 casting (1) 10:7 cc (1) 24:</p>	<p>20:4;23:24 Corporation (3) 1:10;23;;24:6 corrections (1) 19:21</p>	<p>3:16;5:1,9,15,17; 6:12,22;8:4,14 Defendant (2) 1:11;2:6 definitely (2) 12:25;16:13 Depo (1) 5:2 DEPONENT (1) 23: DEPOSITION (6) 1:13;3;;22:7;24:,8,22 Description (1) 3:14 details (1) 14:13 Direct (2) 3:4;4:6 director (1) 17:5 discuss (1) 18:6 discussions (3) 18:11,15;19:6 document (6) 5:1,14;9:10;18:2; 19:3;23:19 documents (6) 6:17;13:13;14:25; 15:2,6,13 DOLPHIN (2) 1:6;4:9 DONNIE (1) 1: down (1) 5:13 Drive (2) 2:8;4:17 duly (2) 4:3;21:9 During (1) 15:4</p>
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RECONVENED
PROXY
THE CLUB AT LA PENINSULA, INC.

The undersigned Owner/s of Unit 624 located in building number 600 in The Club at La Peninsula, Inc., hereby appoints (check one):

- (a) Jay Benedetti, Director of the Association, on behalf of the Board of Directors; or
 (b) _____ (if you check (b), write in the name of your proxy)

as my/our proxy holder to attend a Special Members Meeting of The Club at La Peninsula, Inc., to be held on July 28, 2015 at 10:00 AM at the Clubhouse at La Peninsula, 10 La Peninsula Blvd, Naples, Florida. Failure to check either (a) or (b) above, or failure to write in the name of your proxy, shall be deemed an appointment of Mr. Benedetti as your proxy holder and to cast your vote as specifically instructed below. The proxy holder named above has the authority to vote and act for me/us to the same extent that I/we would if personally present, establish quorum, with power of substitution, except that my/our proxy holder's authority is limited as indicated below.

For your vote to be counted on the following issues, you must indicate your preference in the blank(s) below. The proxy holder does not have the authority to check "yes" or "no" if you fail to specify. I/WE SPECIFICALLY AUTHORIZE AND INSTRUCT MY/OUR PROXY HOLDER TO CAST MY/OUR VOTE IN REFERENCE TO THE FOLLOWING MATTERS, AS INDICATED BELOW:

1. **Amendment and Restatement of Declaration of Condominium.** Enclosed herewith is a copy of a proposed Amended and Restated Declaration of Covenants, Conditions and Restrictions for La Peninsula. Also enclosed is a summary of changes. This summary includes all changes from the document previous circulated prior to the 2015 Annual Meeting. Do you approve the Amended and Restated Declaration? The Board recommends voting "IN FAVOR".

In Favor Against

2. **Amendment to the Bylaws and Articles of Incorporation.** A proposed Amended and Restated Articles of Incorporation and Bylaws were previously sent to you in March, 2015. That document is not being further amended for your consideration. Do you approve the Amended and Restated Articles of Incorporation and Bylaws as previously provided to you?

In Favor Against

PLEASE SIGN AND DATE THE PROXY IN THE SPACE PROVIDED BELOW
(Signatures of Owner/s or Designated Voter/s)

Signature of Owner: Laura K Sonntag
Printed Name: LAURA K SONNTAG

LaPen_002065

Date: 6/21/2015

THIS PROXY IS REVOCABLE BY THE UNIT OWNER AND IS VALID ONLY FOR THE MEETING FOR WHICH IT IS GIVEN AND ANY LAWFUL ADJOURNMENT. IN NO EVENT IS THE PROXY VALID FOR MORE THAN NINETY (90) DAYS FROM THE DATE OF THE ORIGINAL MEETING FOR WHICH IT WAS GIVEN.

Substitution of Proxy	
The undersigned, appointed as proxy above, does hereby designate _____ to substitute for me in the proxy set forth above.	
Date: _____	Signature of Proxy: _____

YOU MAY RETURN THIS PROXY TO THE ASSOCIATION, AS FOLLOWS:

VIA E-MAIL:	LaPeninsula@resortgroupinc.com
VIA FACSIMILE:	239-642-9306
REGULAR MAIL:	Resort Management 815 Bald Eagle Drive, Suite 201 Marco Island, FL 34145

LaPen_002066

RECONVENED
PROXY
THE CLUB AT LA PENINSULA, INC.

The undersigned Owner/s of Unit 633 located in building number 600 in The Club at La Peninsula, Inc., hereby appoints (check one):

(a) Jay Benedetti, Director of the Association, on behalf of the Board of Directors; or
 (b) _____ (if you check (b), write in the name of your proxy)

as my/our proxy holder to attend a Special Members Meeting of The Club at La Peninsula, Inc., to be held on July 28, 2015 at 10:00 AM at the Clubhouse at La Peninsula, 10 La Peninsula Blvd, Naples, Florida. Failure to check either (a) or (b) above, or failure to write in the name of your proxy, shall be deemed an appointment of Mr. Benedetti as your proxy holder and to cast your vote as specifically instructed below. The proxy holder named above has the authority to vote and act for me/us to the same extent that I/we would if personally present, establish quorum, with power of substitution, except that my/our proxy holder's authority is limited as indicated below.

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1. **Amendment and Restatement of Declaration of Condominium.** Enclosed herewith is a copy of a proposed Amended and Restated Declaration of Covenants, Conditions and Restrictions for La Peninsula. Also enclosed is a summary of changes. This summary includes all changes from the document previous circulated prior to the 2015 Annual Meeting. Do you approve the Amended and Restated Declaration? The Board recommends voting "IN FAVOR".

In Favor Against

2. **Amendment to the Bylaws and Articles of Incorporation.** A proposed Amended and Restated Articles of Incorporation and Bylaws were previously sent to you in March, 2015. That document is not being further amended for your consideration. Do you approve the Amended and Restated Articles of Incorporation and Bylaws as previously provided to you?

In Favor Against

PLEASE SIGN AND DATE THE PROXY IN THE SPACE PROVIDED BELOW
(Signatures of Owner/s or Designated Voter/s)

Signature of Owner: Laura K Sonntag
Printed Name: Laura K Sonntag

LaPen_002070

Date: 8/3/2015

THIS PROXY IS REVOCABLE BY THE UNIT OWNER AND IS VALID ONLY FOR THE MEETING FOR WHICH IT IS GIVEN AND ANY LAWFUL ADJOURNMENT. IN NO EVENT IS THE PROXY VALID FOR MORE THAN NINETY (90) DAYS FROM THE DATE OF THE ORIGINAL MEETING FOR WHICH IT WAS GIVEN.

Substitution of Proxy	
The undersigned, appointed as proxy above, does hereby designate _____ to substitute for me in the proxy set forth above.	
Date: _____	Signature of Proxy: _____

YOU MAY RETURN THIS PROXY TO THE ASSOCIATION, AS FOLLOWS:

VIA E-MAIL:	LaPeninsula@resortgroupinc.com
VIA FACSIMILE:	239-642-9306
REGULAR MAIL:	Resort Management 815 Bald Eagle Drive, Suite 201 Marco Island, FL 34145

LaPen_002071

3093137 OR: 3172 PG: 1468

RECORDED in OFFICIAL RECORDS of COLLIER COUNTY, FL
12/11/2002 at 08:18AM DWIGHT B. BROCK, CLERK

CONS 440000.00
REC FEE 10.50
DOC-.70 3080.00

This Document Prepared By and
Record and Return to:
Dunn Title Company
921 N. Collier Blvd.
Marco Island, FL 34145
File No.02-2001M

Retd:
DUNN TITLE
PICK UP

WARRANTY DEED

THIS INDENTURE made this 13 day of November, 2002,
between **Stephen Doo**, a single person, whose post office address is 7
Prentiss Street, Cambridge, MA 02140, hereinafter called the Grantor, and
Ralph Sonntag and Laura Sonntag, husband and wife, whose post office
address is 9 Braircliff Road, Mountain Lakes, NJ 07046, hereinafter called the
Grantee.

WITNESSETH, That the grantor, for and in consideration of the sum
of Ten Dollars (\$10.00) and other good and valuable considerations, receipt
whereof is hereby acknowledged, has granted bargained, and sold unto the
grantee, and grantee's heirs and assignees forever, the following described
land situated in Collier County, Florida, to wit:

FOLIO NO. 73605000186

**Unit No.624, 600 LA PENINSULA, a Condominium, according to the
Declaration of Condominium thereof recorded in Official Records Book
1337, pages 1984 through 2050, of the Public Records of Collier County,
Florida, together with its undivided share of the Common Elements.**

This deed is executed subject to restrictions, reservations and easements of
record common to the subdivision, and taxes from the date of this deed and
subsequent years.

And the Grantor hereby fully warrants the title to said land and will defend the
same against the lawful claims of all persons whomsoever.



Warranty Deed
Page 2 of 2

IN WITNESS THEREOF, grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in our presence:

[Signature]
Witness #1 Signature

[Signature]
Stephen Doo

Stephen P. Leonard
Witness #1 Print Name

[Signature]
Witness #2 Signature

Susanne Cain
Witness #2 Print Name

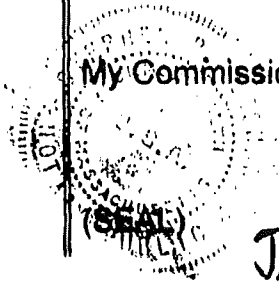
STATE OF MA
COUNTY OF Sussex

The foregoing instrument was sworn to and acknowledged before me this 13th day of November, 2002, by Stephen Doo, who is/are personally known to me or who has/have produced Valid Drivers License as identification and who did did not take an oath. NOTE: If a type of identification is not inserted in the blank provided, then the person executing this instrument is personally known to me. If the words "did not" are not marked, then the person executing this instrument did take an oath.

[Signature]
Notary Public

My Commission Expires:

Stephen P. Leonard
Notary Printed Name



JANUARY 21, 2005

Prepared By: Amy Hesson
Island Title Guaranty Agency, Inc.
1118 N. Collier Blvd.
Marco Island, FL
incidental to the issuance of a title insurance policy.
File Number: 03-1068m
Parcel ID #: 73605000267
Grantee(s) SS #:

*** 3158169 OR: 3256 PG: 3448 ***

RECORDED in OFFICIAL RECORDS of COLLIER COUNTY, FL
04/04/2003 at 07:40AM DWIGHT B. BROCK, CLERK
CONS 455000.00
RBC PBB 6.00
DGC-.70 3195.00

Retn:
ISLAND TITLE GUARANTY AGENCY I
PICK UP

**WARRANTY DEED
(CORPORATE)**

This WARRANTY DEED, dated 4/1/03 by NSI, INC., A MAINE CORPORATION whose post office address is: 1504 CAPE MARCO DR. (COZUMEL), MARCO ISLAND, FL. hereinafter called the GRANTOR, to RALPH SONNTAG and LAURA K. SONNTAG, husband and wife whose post office address is: 9 BRIARCLIFF ROAD, MOUNTAIN LAKES, NJ 07046 hereinafter called the GRANTEE:

(Wherever used herein the terms "Grantor" and "Grantee" include all parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations.)

WITNESSETH: That the GRANTOR, for and in consideration of the sum of \$10.00 and other valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the GRANTEE, all that certain land situate in Collier County, Florida, viz:

Unit 633, OF 600 LA PENINSULA CONDOMINIUM, a Condominium, according to the Declaration of Condominium of 600 La Peninsula Condominium, recorded in Official Record Book 1337, Pages 1984 through 2050, inclusive, of the Public Records of Collier County, Florida, as amended.

SUBJECT TO covenants, conditions, restrictions, reservations, limitations, easements and agreements of record, if any, taxes and assessments for the year 2003 and subsequent years; and to all applicable zoning ordinances and/or restrictions and prohibitions imposed by governmental authorities, if any.

TOGETHER with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD, the same in fee simple forever.

AND THE GRANTOR hereby covenants with said GRANTEE that except as above noted, the GRANTOR is lawfully seized of said land in fee simple; that the GRANTOR has good right and lawful authority to sell and convey said land; that the GRANTOR hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, GRANTOR has signed and sealed these presents, the date set forth above.

NSI, INC., A MAINE CORPORATION

SIGNED IN THE PRESENCE OF THE FOLLOWING WITNESSES:

Witness #1
Signature: Amy Hesson
Print Name: Amy Hesson

Witness #2
Signature: Pamela Schindler
Print Name: Pamela Schindler

By: Donald A. Leeb
DR. DONALD A. LEEBER, PRESIDENT

State of Florida
County of Collier

I am a notary public of the state of Florida and my commission expires: 9/17/2006.

THE FOREGOING INSTRUMENT was acknowledged before me on 4/1/03 by:

DR. DONALD A. LEEBER, PRESIDENT

of

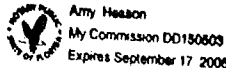
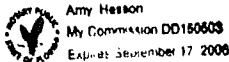
NSI, INC., A MAINE CORPORATION

, on behalf of the corporation.

He/She is personally known to me or who has produced DRIVER'S LICENSE as identification and v. ho DID NOT take an oath.

Notary Seal

Signature: Amy Hesson
Print Name: Amy Hesson Notary Public



3633613 OR: 3815 PG: 3660

RECORDED in OFFICIAL RECORDS of COLLIER COUNTY, FL
06/08/2005 at 09:08AM DWIGHT H. BROCK, CLERK

CONS 1270000.00
REC FEE 18.50
DOC-.70 8890.00

Prepared by and return to:
Fred W. Mundie, Jr.
Attorney at Law
Fred W. Mundie, Jr., P.A.
PO Box 845
Marco Island, FL 34146
239-394-3072
File Number: 2005209

Retn:
FRWD W MUNDIE JR
PO BOX 845
MARCO ISLAND FL 34146

[Space Above This Line For Recording Data]

Warranty Deed

This Warranty Deed made this 29th day of April, 2005 between Ralph E. Sonntag and Laura K. Sonntag, husband and wife whose post office address is 9 Briarcliff Road, Mountain Lakes, NJ 07046, grantor, and James Keay as Trustee of the Ralph E. Sonntag Irrevocable Trust whose post office address is 17490 Meandering Way, Unit 1011, Dallas, TX 75252, grantee:

(Whenever used herein the terms "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives, and assigns of individuals, and the successors and assigns of corporations, trusts and trustees)

Witnesseth, that said grantor, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable considerations 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:

Unit No. 624, of 600 LA PENINSULA, A CONDOMINIUM, according to the Declaration of Condominium thereof, as recorded in Official Records Book 1337, Page 1984 through 2050, inclusive, of the Public Records of Collier County, Florida, as amended, together with its undivided share of the Common Elements.

Parcel Identification Number: 73605000186

and

Unit No. 633, of 600 LA PENINSULA, A CONDOMINIUM, according to the Declaration of Condominium thereof, as recorded in Official Records Book 1337, Page 1984 through 2050, inclusive, of the Public Records of Collier County, Florida, as amended, together with its undivided share of the Common Elements.

Parcel Identification Number: 73605000267

Together with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

To Have and to Hold, the same in fee simple forever.

And the grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land; that the grantor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances, except taxes accruing subsequent to **December 31, 2004**.

In Witness Whereof, grantor has hereunto set grantor's hand and seal the day and year first above written.

DoubleTimee

Signed, sealed and delivered in our presence:

[Signature]
Witness Name: Fred W. Mundie, Jr.

Ralph E. Sonntag (Seal)
Ralph E. Sonntag

[Signature]
Witness Name: Scott E. Summers

Laura K. Sonntag (Seal)
Laura K. Sonntag

[Signature]
Witness Name: Fred W. Mundie, Jr.

[Signature]
Witness Name: Scott E. Summers

State of Florida
County of Collier

The foregoing instrument was acknowledged before me this 29th day of April, 2006 by Ralph E. Sonntag and Laura K. Sonntag, who are personally known or have produced a driver's license as identification.

[Notary Seal]

[Signature]
Notary Public

Printed Name: Fred W. Mundie, Jr.

My Commission Expires: 4-12-06



Fred W. Mundie, Jr.
MY COMMISSION # DD105115 EXPIRES
April 12, 2006
BONDED THRU TROY FAN INSURANCE, INC.

ORIGINAL COPY

Prepared by and return to:
Fred W. Mundie, Jr.
Attorney at Law
Fred W. Mundie, Jr., P.A.
993 North Collier Blvd.
Marco Island, FL 34145
239-394-3072
File Number: 16115jh

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Warranty Deed

This Warranty Deed made this 29th day of March, 2016 between James Keay, individually and as Trustee of the Ralph E. Sonntag Irrevocable Trust whose post office address is 17490 Meandering Way, Unit 1011, Dallas, TX 75252, grantor, and James M. Mulligan and Rose C. Mulligan, as Co-Trustees of the Mulligan Family Trust dated April 25, 2005, whose post office address is 1271 La France Court, The Villages, FL 32162, grantee:

(Whenever used herein the terms "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives, and assigns of individuals, and the successors and assigns of corporations, trusts and trustees)

Witnesseth, that said grantor, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable considerations 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:

Unit No. 624, of 600 LA PENINSULA, A CONDOMINIUM, according to the Declaration of Condominium thereof, as recorded in Official Records Book 1337, Page 1984 through 2050, inclusive, of the Public Records of Collier County, Florida, as amended, together with its undivided share of the Common Elements.

Parcel Identification Number: 73605000186

Further subject to the above described Declaration of Condominium, which Grantee herein agrees to observe and perform. Together with all of the appurtenances to said condominium unit.

Subject to ad valorem and non-ad valorem, real property taxes for the year of closing and subsequent years; zoning, building code and other use restrictions imposed by governmental authority; outstanding oil gas and mineral interest of record, if any; restrictions, reservations and easements common to the subdivision.

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.

The Grantee, as trustee, has the full power and authority to protect, conserve, sell, convey, lease, encumber, and to otherwise manage and dispose of said real property pursuant to F.S. 689.073.

Together with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

To Have and to Hold, the same in fee simple forever.

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And the grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land; that the grantor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances, except taxes accruing subsequent to December 31, 2015.

In Witness Whereof, grantor has hereunto set grantor's hand and seal the day and year first above written.

Signed, sealed and delivered in our presence:

Michael J. March
Witness Name: Michael J. March

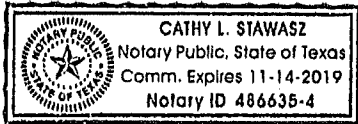
James Keay
James Keay, individually and as Trustee of the Ralph E. Sonntag Irrevocable Trust,

Fernando Bayley
Witness Name: Fernando Bayley

State of Texas
County of Dallas

The foregoing instrument was acknowledged before me this 24th day of March, 2016 by James Keay, individually and as Trustee of the Ralph E. Sonntag Irrevocable Trust, who is personally known or has produced a driver's license as identification.

[Notary Seal]



Cathy L. Stawasz
Notary Public
Printed Name: Cathy L. Stawasz
My Commission Expires: 11-14-19

ORIGINAL COPY

Prepared by and return to:
Fred W. Mundie, Jr.
Attorney at Law
Fred W. Mundie, Jr., P.A.
993 North Collier Blvd.
Marco Island, FL 34145
239-394-3072
File Number: 16277jh
Consideration: \$475,000.00

[Space Above This Line For Recording Data]

Warranty Deed

This Warranty Deed made this 27th day of July, 2016 between James Keay, individually and as Trustee of the Ralph E. Sonntag Irrevocable Trust whose post office address is 4315 Bendwood Lane, Unit 1011, Dallas, TX 75287, grantor, and Trekker Enterprises, LLC, a Minnesota limited liability company, a company existing under the laws of the state of Minnesota, whose post office address is 51 West 240th Street, Jordan, MN 55352, grantee:

(Whenever used herein the terms "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives, and assigns of individuals, and the successors and assigns of corporations, trusts and trustees)

Witnesseth, that said grantor, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable considerations 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:

Unit 633, 600 LA PENINSULA, a Condominium, according to the Declaration of Condominium thereof, as recorded in Official Records Book 1337, Page 1984, and all amendments thereto, of the Public Records of Collier County, Florida, together with its undivided interest in the common elements appurtenant thereto.

Parcel Identification Number: 736050000267

Further subject to the above described Declaration of Condominium, which Grantee herein agrees to observe and perform. Together with all of the appurtenances to said condominium unit.

Subject to ad valorem and non-ad valorem, real property taxes for the year of closing and subsequent years; zoning, building code and other use restrictions imposed by governmental authority; outstanding oil gas and mineral interest of record, if any; restrictions, reservations and easements common to the subdivision.

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.

Together with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

To Have and to Hold, the same in fee simple forever.

And the grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land; that the grantor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances, except taxes accruing subsequent to December 31, 2015.

DoubleTimes

In Witness Whereof, grantor has hereunto set grantor's hand and seal the day and year first above written.

Signed, sealed and delivered in our presence:

[Signature]
Witness Name: HEATHER LEE CODY

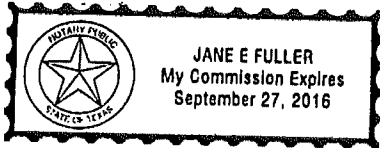
[Signature]
James Keay, individually and as Trustee of the Ralph E. Sonntag Irrevocable Trust

[Signature]
Witness Name: Chelsea Johnson

State of Texas
County of Dallas

The foregoing instrument was acknowledged before me this 20th day of July, 2016 by James Keay, individually and as Trustee of the Ralph E. Sonntag Irrevocable Trust, who is personally known or has produced a driver's license as identification.

[Notary Seal]



[Signature]
Notary Public
Printed Name: Jane E. Fuller
My Commission Expires: 9-27-16

DUPLICATE COPY



In The Matter Of:
Kimberly Ann Schnell Mitchell, et al v.
The Club at La Peninsula, Inc.

Clayton G. Keeler
December 15, 2022



SARASOTA
BRADENTON
LAKEWOOD RANCH

TAMPA
ST. PETERSBURG
VENICE

*Thank you for your
continued business!*



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imperialcourtreporting.com
admin@imperialcourtreporting.com

Min-U-Script® with Word Index

Page 1

IN THE CIRCUIT COURT OF THE 20TH JUDICIAL CIRCUIT
IN AND FOR COLLIER COUNTY, FLORIDA

CASE NO.: 2019-CA-3254

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

Plaintiffs,

vs.

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

Defendant.

REMOTE DEPOSITION OF
CLAYTON G. KEELER

(PAGES 1-25)

Thursday, December 15, 2022
9:34 a.m. - 9:58 a.m.

Zoom Videoconference

Stenographically Reported By:
Melissa Gromko, RPR, FPR-C

Job No.: 112490

Page 2

1 APPEARANCES:

2 On behalf of Mitchell and Dolphin Point:

3

4 Adams and Reese, LLP
5 1515 Ringling Boulevard
6 Suite 700
7 Sarasota, Florida 34230
8 941-316-7600

9 BY: DAVID L. BOYETTE, ESQUIRE
10 david.boyette@arlaw.com
11 Appearance by Zoom Videoconference

12

13 Seidensticker & San Filipoo, LLC
14 791 10th Street South
15 Suite 202
16 Naples, Florida 34102
17 239-403-0611

18 BY: PETE FERNANDES, ESQUIRE
19 psf@sandslawoffices.com
20 Appearance by Zoom Videoconference

21

22 On behalf of The Club at La Peninsula, Inc.:

23

24 Grant Fridkin Pearson, PA
25 5551 Ridgewood Drive
Suite 501
Naples, Florida 34108
239-514-1000

BY: MICHAEL TRAFICANTE, ESQUIRE
mtraficante@gfpac.com
Appearance by Zoom Videoconference

ALSO PRESENT: DAVID PATRELLA

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Page 4

1 The following proceedings began at 9:34 a.m.:

2 **THE STENOGRAPHER:** If you'll raise your

3 right hand, please?

4 Do you solemnly swear that the testimony

5 you're about to give in this cause will be the

6 truth, the whole truth, and nothing but the

7 truth?

8 **THE WITNESS:** Yes.

9 **THE STENOGRAPHER:** Thank you.

10 Thereupon:

11 CLAYTON G. KEELER,

12 having been produced and first duly sworn, was

13 examined and testified as follows:

14 **DIRECT EXAMINATION**

15 **BY MR. BOYETTE:**

16 **Q.** Good morning. My name is David Boyette. I

17 represent Kim Mitchell and Dolphin Point, LLC. Also

18 on this call with us is Pete Fernandes. He's

19 co-counsel for the plaintiffs that -- he represents

20 the same people I represent. We've also got Mike

21 Traficante. He represents The Club at La Peninsula.

22 I'm going to ask you a few questions. It won't

23 take too long. If you don't understand any of the

24 questions, just let me know, okay?

25 **A.** Okay.

Page 5

1 Q. What is your name?
2 A. Clayton Keeler.
3 Q. And your address?
4 A. Which address?
5 Q. Well, let's start with your home address.
6 A. I live in two different places. Which one
7 would you like, New Jersey or Florida?
8 Q. Let's go with Florida.
9 A. [REDACTED]
10 [REDACTED].
11 Q. And your New Jersey address?
12 A. [REDACTED].
13 Q. And your phone number?
14 A. [REDACTED].
15 Q. And do you have an e-mail address?
16 A. [REDACTED].
17 Q. And I have some exhibits I want to show you.
18 I can do a share screen or I --
19 MR. BOYETTE: Court reporter, if you've
20 got them on your computer that you can put
21 them on the screen. Either way is okay by me.
22 THE STENOGRAPHER: I'm happy to if you let
23 me know which ones you're ready for.
24 MR. BOYETTE: Let's go with 19.
25 (The document referred to was previously

Page 7

1 A. Yes.
2 Q. And on --
3 MR. BOYETTE: Can you show him Page 2 of
4 2?
5 THE STENOGRAPHER: (Indicating).
6 BY MR. BOYETTE:
7 Q. It's dated July 27, 2015, correct?
8 A. Yeah, I see it. Yes. July 27, '15.
9 Q. And did you cast this vote on a vote at Club
10 at La Peninsula on July 27 of '15 for Unit 421?
11 A. I don't remember. I mean, obviously I did,
12 but I don't remember. I don't know what it's in
13 reference to.
14 Q. Go back to Page 1 of 2. Do you see that
15 this was a proxy for a vote on an amended and --
16 amendment and restatement of declaration of
17 condominium?
18 A. Yes. I'm trying to read now, just going --
19 I mean, I'm looking at a two-inch by two-inch cube,
20 so it's not that easy.
21 Q. Let me --
22 MR. BOYETTE: Ms. Court Reporter, let me
23 try my share screen. Let's see how that one
24 looks.
25 BY MR. BOYETTE:

Page 6

1 received and marked as Exhibit 19 for
2 Identification).
3 THE STENOGRAPHER: Okay (indicating). Can
4 you see that okay?
5 MR. TRAFICANTE: It shows up on my screen,
6 Madam Court Reporter. I think it's probably
7 small for Mr. Keeler.
8 MR. BOYETTE: Can you make it bigger?
9 THE STENOGRAPHER: (Indicating).
10 THE WITNESS: I'm making it larger. Do
11 you want me to read this?
12 BY MR. BOYETTE:
13 Q. You don't need to read it out loud, but I do
14 want you to look at it and familiarize yourself with
15 it. Hopefully you'll recognize it.
16 A. Well, I don't really remember. I mean, how
17 long ago was this? I seriously doubt seven years ago
18 I remember all the documents I signed in my lifetime.
19 Q. Yup. Scroll down -- are you able to see the
20 bottom where the signature is?
21 A. Yes.
22 Q. You see at the bottom it says depo Exhibit
23 19, Page 1 of 2?
24 A. Yes.
25 Q. Did you sign this document?

Page 8

1 Q. Can you see the whole page now?
2 A. Yes.
3 Q. Do I need to make it bigger?
4 A. No. It's fine.
5 Q. All right. Good.
6 A. Okay. Yup. I got it.
7 Q. Let me go to Exhibit 20.
8 (The document referred to was previously
9 received and marked as Exhibit 20 for
10 Identification).
11 BY MR. BOYETTE:
12 Q. Are you able to see this one (indicating)?
13 A. Yes. A warranty deed.
14 Q. And it is to Capri Real Estate Properties,
15 LLC, correct?
16 A. Yes.
17 Q. And that's a company that you formed,
18 correct?
19 A. That's correct.
20 Q. And did you form it for the purpose of
21 buying Unit 421 and holding title to it?
22 A. Yes.
23 Q. And does Capri Real Estate Properties, LLC
24 still own the unit?
25 A. Yes.

Page 9

1 Q. All right. I'm going to show you Exhibit
2 21.
3 (The document referred to was previously
4 received and marked as Exhibit 21 for
5 identification).
6 BY MR. BOYETTE:
7 Q. I'm on Page 2 of 5. Do you see it's a cover
8 letter?
9 A. Yeah. I have a copy of all that. It was
10 sent with the deposition request.
11 Q. Very good.
12 A. I'm familiar with it.
13 Q. Do you recall these articles of amendment?
14 A. Yes. I added my wife as the manager.
15 Q. On Page 4 of 5 it shows your wife. Is
16 Suzanne still your wife?
17 A. Yes.
18 Q. And it shows the box for "add" was checked
19 off there?
20 A. Yes.
21 Q. And then it's got you listed as a manager,
22 and the box for "remove" was checked off?
23 A. Yes.
24 Q. So is it true that by these articles of
25 amendment filed April 7, 2014 your wife was added as

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1 discussion that you have?
2 A. She was in agreement with it.
3 Q. And so were you?
4 A. Yes.
5 Q. Why didn't your wife cast the vote, since
6 she was the manager of the company and you were not?
7 A. Because I had the ability to do an
8 electronic signature, she didn't.
9 Q. She didn't have the ability to do an
10 electronic signatures when you did?
11 A. Yes. That's correct.
12 Q. So were you out of state when this vote was
13 cast?
14 A. I don't remember.
15 Q. Have you served on the board of The Club at
16 La Peninsula?
17 A. Yes.
18 Q. What dates have you been on that board?
19 A. I don't remember exact dates.
20 Q. How about approximate dates?
21 A. 2014 through 2018, '19, roughly.
22 Q. Do you know why The Club at La Peninsula has
23 listed you as a witness in this case?
24 A. No.
25 Q. Do you ever recall any discussions among the

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1 a manager and you were removed as a manager?
2 MR. TRAFICANTE: Object to the form.
3 THE WITNESS: Yes.
4 BY MR. BOYETTE:
5 Q. Do you recall if you were added back on as a
6 manager after these articles of amendment?
7 A. No. I didn't officially make myself a
8 member after I put Suzanne on.
9 Q. So when Exhibit 19 -- when you signed
10 Exhibit 19, which was the proxy vote, you were no
11 longer a manager of the company, correct?
12 A. No, but I was the sole member of the
13 company. It's a sole membership LLC, and I remained
14 the sole member.
15 Q. Does your wife own any interest in the
16 company?
17 A. No.
18 Q. What -- was there a corporate resolution
19 passed authorizing you to vote for the LLC on July 27
20 of '15?
21 A. No. We didn't do any kind of resolution.
22 Q. Did you discuss the vote with your wife,
23 Suzanne?
24 A. I did.
25 Q. What -- can you tell me any memory of that

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1 board while you were serving on the board about the
2 use of voting certificates?
3 A. No.
4 Q. Do you know what a voting certificate is?
5 A. No.
6 Q. Were there articles of -- I'm going to
7 rephrase that.
8 MR. BOYETTE: I don't have any other
9 questions for you, Mr. Keeler.
10 MR. TRAFICANTE: Mr. Keeler, I just have a
11 few, but, David, if you could, can you enable
12 share screen so I can possibly pull up --
13 MR. BOYETTE: You want me to stop sharing?
14 MR. TRAFICANTE: Stop your sharing, and
15 then if you can enable share screen where I
16 can share?
17 MR. BOYETTE: I stopped mine, but the
18 court reporter has to enable it.
19 THE STENOGRAPHER: You should be good. I
20 think he just had to stop.
21 MR. TRAFICANTE: Perfect. Thank you,
22 Madam Court Reporter.
23 CROSS-EXAMINATION
24 BY MR. TRAFICANTE:
25 Q. Mr. Keeler, Michael Traficante on behalf of

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1 The Club at La Peninsula. As I mentioned, I just
2 have a few questions.
3 Can you briefly just describe, are you -- do you
4 have any licenses, professional licenses?
5 A. Yes.
6 Q. What professional licenses do you have?
7 A. Engineering.
8 Q. And are you -- are you a licensed engineer?
9 A. Yes. In the state of Florida.
10 Q. Okay. Any other states?
11 A. New Jersey and Pennsylvania.
12 Q. Since purchasing -- since Capri -- well, let
13 me strike that, just to make the record clear.
14 Capri Real Estate Properties, LLC, I believe you
15 testified that's your company; is that correct?
16 A. That's correct.
17 Q. And you're the sole owner of that company?
18 A. That's correct.
19 Q. Okay. Since -- and it purchased Unit 421 in
20 the 400 Building at La Peninsula; is that correct?
21 A. Yes.
22 Q. And it purchased it on February 14, 2013,
23 pursuant to the deed that Mr. Boyette showed you; is
24 that correct?
25 A. Yes.

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1 received and marked as Exhibit 33 for
2 Identification).
3 BY MR. TRAFICANTE:
4 Q. Is this the 2014 limited liability company
5 annual report for LLC?
6 A. Yes.
7 Q. And did you file this also as the managing
8 member, or the manager?
9 A. Yes. Managing member.
10 Q. And since its inception, were you the only
11 manager of Capri Real Estate Properties, LLC for a
12 certain period of time?
13 A. Yes. Originally.
14 Q. Okay. And then you saw the document Mr.
15 Boyette showed you as Exhibit 21, the 2014 amendment,
16 where I believe you said you added your wife as a
17 manager?
18 A. That's correct.
19 Q. Have you also been serving as manager of
20 this company that entire time?
21 A. Yes.
22 Q. I want to show you what's been marked as
23 Exhibit 34.
24 (The document referred to was later
25 received and marked as Exhibit 34 for

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1 Q. Since that date, have you and your wife,
2 Suzanne, been the primary occupants of that unit?
3 A. Yes.
4 Q. Okay. And I want to show you -- bear with
5 me one second.
6 I want to show you what's previously been marked
7 as Exhibit 32.
8 (The document referred to was later
9 received and marked as Exhibit 32 for
10 Identification).
11 BY MR. TRAFICANTE:
12 Q. Can you see this document (indicating)?
13 A. Yes.
14 Q. Are these the articles of organization for
15 Capri Real Estate Properties, LLC that you filed on
16 January 23, 2013 with the State of Florida?
17 A. Yes.
18 Q. And you're listed as the registered agent,
19 correct?
20 A. Yes.
21 Q. As well as the manager, correct?
22 A. Correct. Yes.
23 Q. And I want to show you what we've marked as
24 Exhibit 33 to your deposition.
25 (The document referred to was later

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1 Identification).
2 BY MR. TRAFICANTE:
3 Q. Is this the 2016 annual report that was
4 filed for Capri Real Estate Properties, LLC?
5 A. Yes.
6 Q. And do you see this lists both you and your
7 wife, Suzanne, as the manager?
8 A. Yes.
9 Q. Were there any officers of Capri Real Estate
10 Properties, LLC?
11 A. No.
12 Q. And have you always signed things,
13 documents, on behalf of this LLC?
14 A. Yes.
15 Q. And have you always had the authority to do
16 so?
17 A. Yes.
18 Q. Has Suzanne also, since becoming manager,
19 signed documents on behalf of the LLC?
20 A. No.
21 Q. I'm just seeing if there's anything else
22 that I have.
23 I want to show you -- again, this was Exhibit 19
24 that was shown to you. It's the proxy that was
25 signed by you on July 27, 2015. Do you see that, Mr.

1 Keeler (indicating)?
 2 A. Yes.
 3 Q. And in this proxy you voted in favor of the
 4 amendment and restatement of the declaration of
 5 condominium. Do you see that under Number 1?
 6 A. Yes.
 7 Q. And on Number 2 you voted in favor of the
 8 amendment to the bylaws and articles; do you see
 9 that?
 10 A. Yes.
 11 Q. Okay. And I believe you testified that you
 12 discussed this with your wife, Suzanne, and she
 13 agreed?
 14 A. Yes.
 15 Q. Okay. Also -- and let me just stop the
 16 share real quick.
 17 Were you a witness on an occasion at La Peninsula
 18 where the Mitchells called the cops on an owner at La
 19 Peninsula while using the tennis courts?
 20 A. Yes.
 21 Q. When did that occur?
 22 A. I'm only guessing, 2017, '18.
 23 Q. Okay. And what happened on that occasion,
 24 can you just describe briefly?
 25 A. Yeah. There were some people using the

1 tennis courts, some residents. As I recall, Kim
 2 Mitchell was videoing it on her phone. One of the
 3 tennis players made a remark to her. I don't
 4 remember exactly what he had said. I think it was
 5 kind of in a laughing gesture of what she was doing.
 6 I believe -- at that point I believe she called the
 7 sheriff. The sheriff arrived on the site and talked
 8 to the person who had made some comments to her, put
 9 him into the squad car, had some more conversations
 10 with the residents, there was two other ones, I
 11 believe there was parents, and then he was released.
 12 Q. And was Ms. Mitchell's complaint at that
 13 time that these residents were somehow trespassing on
 14 her property by using the tennis courts?
 15 A. Possibly. I don't -- I don't remember the
 16 basis of the complaint. I know that after the
 17 incident took place David Patrella and I met at our
 18 unit and wrote some notes, and I think we may have
 19 submitted them to the sheriff as well. I don't
 20 recall exactly.
 21 Q. And because of your engineering background
 22 and being a resident of La Peninsula, have you also
 23 followed the permitting that has been filed by the
 24 Mitchells as to relocating these tennis courts?
 25 A. Yes, I have.


1 Q. And how have you followed that?
 2 A. On the portal, Collier County Portal.
 3 Q. When was the last time that you looked on
 4 the Collier County Portal?
 5 A. I think maybe two months ago.
 6 Q. Did you see any permitting being issued to
 7 the Mitchells to relocate these tennis courts at that
 8 time?
 9 A. No. The last documents I saw were -- was
 10 the response from Collier County's comments, which at
 11 the time I believe there was a 270-day, calendar day
 12 period that they had to respond. They didn't respond
 13 within that timeframe, which means that the
 14 permitting would be closed. American Engineering on
 15 Marco Island, they responded, it had to have been
 16 close to a year later, and Collier County had
 17 accepted those comments. At that time I had talked
 18 to some of the members and the board expressing my
 19 concern that this was being reopened and it really
 20 needed to be closed and a new process to begin the
 21 permitting, and that's the last that I think I
 22 remember and seeing anything in the permitting. I
 23 don't know what Collier County's response is. I just
 24 haven't looked recently.
 25 Q. You haven't seen any permitting being issued

1 to the Mitchells or Dolphin Point, LLC to relocate
 2 these tennis courts, correct?
 3 A. That's correct.
 4 Q. But you're aware that the Mitchells, at
 5 least on one occasion, cut down the nets for the
 6 tennis courts, correct, or took down the nets?
 7 A. Yeah. They had mobilized one of their
 8 contractors to start removing the tennis nets, as
 9 well as the structures to support the nets. I think
 10 at that point we had raised some questions as far as
 11 their ability to be able to move it, since we still
 12 kind of owned the surface of the tennis courts.
 13 MR. TRAFICANTE: I have no further
 14 questions.
 15 MR. BOYETTE: I have one more question for
 16 you, maybe one or two or three.
 17 REDIRECT EXAMINATION
 18 BY MR. BOYETTE:
 19 Q. When the -- the amendment and restatement of
 20 declaration of condominium, when you voted for that,
 21 were you involved in the counting of the votes?
 22 A. No, I wasn't.
 23 Q. Do you know who did count the votes?
 24 A. I don't. I would assume it was the resort's
 25 management.



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1 **Q. Do you remember if there were any issues or**
 2 **problems with the vote, the votes or the counting of**
 3 **the votes?**
 4 A. No, I do not.
 5 **MR. BOYETTE:** Okay. I don't have any
 6 other questions.
 7 You have the right to read the transcript
 8 I'm not ordering it at this time, but if it is
 9 ever ordered you have the right to read it.
 10 You can waive that right, but if you want to
 11 read it you'll get an errata sheet from the
 12 court reporter on which you can make note the
 13 page and line to correct any errors in the
 14 transcript. Do you want to read it or waive?
 15 **THE WITNESS:** No. I'll read it.
 16 **MR. BOYETTE:** Okay. Very good.
 17 **MR. TRAFICANTE:** Madam Court Reporter, we
 18 are going to order.
 19 **MR. BOYETTE:** Then I'll take a copy.
 20 **THE STENOGRAPHER:** Okay. Thank you.
 21 (With witness was excused).
 22 (The deposition was concluded at 9:58
 23 a.m.).
 24
 25

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1 **CERTIFICATE OF REPORTER**
 2
 3 STATE OF FLORIDA)
 4 COUNTY OF COLLIER)
 5
 6 I, Melissa Gromko, do hereby certify that
 7 I was authorized to and did stenographically
 8 report the foregoing deposition of CLAYTON
 9 KEELER; that a review of the transcript was
 10 requested; and that the transcript, pages 4
 11 through 21 is a true record of my stenographic
 12 notes.
 13 I FURTHER CERTIFY that I am not a
 14 relative, employee, attorney, or counsel of
 15 any of the parties, nor am I a relative or
 16 employee of any of the parties' attorney or
 17 counsel connected with the action, nor am I
 18 financially interested in the action.
 19 Dated this 21st day of December, 2022.
 20
 21
 22 
 23
 24 Melissa Gromko, RPR, FPR-C
 25

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1 **CERTIFICATE OF OATH**
 2
 3 STATE OF FLORIDA)
 4
 5 COUNTY OF COLLIER)
 6
 7
 8
 9 I, Melissa Gromko, Notary Public, State of
 10 Florida, certify that CLAYTON KEELER remotely
 11 appeared before me on December 15, 2022 and
 12 was duly sworn.
 13
 14 Signed this 21st day of December, 2022.
 15
 16 
 17 
 18 _____
 19 Melissa Gromko
 20 Notary Public, State of Florida
 21 My Commission No. HH 064506
 22 Expires: March 15, 2025
 23
 24
 25

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December 21, 2022
 Clayton Keeler
 promx6@aol.com
 In Re: Deposition of Clayton Keeler taken on
 December 15, 2022
 Mitchell vs. La Peninsula
 Dear Sir:
 This letter is to advise that the transcript for the
 above-referenced deposition has been
 completed and is available for review. Please
 contact Imperial Court Reporting at (941) 260-9000 to
 make arrangements to read and sign the transcript at
 our office within 30 days from the date of this
 letter; otherwise, you may sign below to waive review
 of this transcript and e-mail this page to the e-mail
 address below.
 In the alternative, if you have ordered a copy of the
 transcript and will be handling reading and signing,
 have your client note any corrections on the errata
 sheet provided and e-mail it to
 admin@imperialcourtreporting.com to be forwarded to
 all parties for inclusion in the transcript.
 Sincerely,
 Imperial Court Reporting, Inc.
 cc: Michael T. Traficante, Esquire
 David L. Boyette, Esquire
 Waiver:
 I, _____, hereby waive the reading &
 signing of my deposition transcript.
 Deponent Signature _____ Date _____

SIGNATURE PAGE/ERRATA SHEET

WITNESS: Clayton Keeler
DATE: December 15, 2022
CASE REFERENCE: Mitchell v La Peninsula
COURT REPORTER: Melissa Gromko, RPR, FPR-C

After you have read your transcript, please note any errors in transcription on this page. Do not mark on the transcript itself.
Please sign and date this sheet as indicated below. If additional lines are required for corrections, attach additional sheets. If there are no corrections, please indicate "None".

Page/Line	Error or Amendment/Reason for Change
-----------	--------------------------------------

I have read my transcript and subscribe to its accuracy, to include the corrections or amendments noted above or hereto attached.

Clayton Keeler _____ Date
Job No.: 112490

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7-24

RECONVENED
PROXY
THE CLUB AT LA PENINSULA, INC.

The undersigned Owner/s of Unit 42 located in building number 400 in The Club at La Peninsula, Inc., hereby appoints (check one):

(a) Jay Benedetti, Director of the Association, on behalf of the Board of Directors; or
 (b) _____ (if you check (b), write in the name of your proxy)

as my/our proxy holder to attend a Special Members Meeting of The Club at La Peninsula, Inc., to be held on July 28, 2015 at 10:00 AM at the Clubhouse at La Peninsula, 10 La Peninsula Blvd, Naples, Florida. Failure to check either (a) or (b) above, or failure to write in the name of your proxy, shall be deemed an appointment of Mr. Benedetti as your proxy holder and to cast your vote as specifically instructed below. The proxy holder named above has the authority to vote and act for me/us to the same extent that I/we would if personally present, establish quorum, with power of substitution, except that my/our proxy holder's authority is limited as indicated below.

For your vote to be counted on the following issues, you must indicate your preference in the blank(s) below. The proxy holder does not have the authority to check "yes" or "no" if you fail to specify. I/WE SPECIFICALLY AUTHORIZE AND INSTRUCT MY/OUR PROXY HOLDER TO CAST MY/OUR VOTE IN REFERENCE TO THE FOLLOWING MATTERS, AS INDICATED BELOW:

1. **Amendment and Restatement of Declaration of Condominium.** Enclosed herewith is a copy of a proposed Amended and Restated Declaration of Covenants, Conditions and Restrictions for La Peninsula. Also enclosed is a summary of changes. This summary includes all changes from the document previous circulated prior to the 2015 Annual Meeting. Do you approve the Amended and Restated Declaration? The Board recommends voting "IN FAVOR".

In Favor Against

2. **Amendment to the Bylaws and Articles of Incorporation.** A proposed Amended and Restated Articles of Incorporation and Bylaws were previously sent to you in March, 2015. That document is not being further amended for your consideration. Do you approve the Amended and Restated Articles of Incorporation and Bylaws as previously provided to you?

In Favor Against

PLEASE SIGN AND DATE THE PROXY IN THE SPACE PROVIDED BELOW

(Signatures of Owner/s or Designated Voter/s)

Signature of Owner: CG Keeler
Digitally signed by Clayton G Keeler
DN: cn=Clayton G Keeler, o=Capri Real Estate Properties LLC, ou,
email=proxm6@aol.com, c=US
Date: 2015.07.27 11:18:57 -0400

Printed Name: Clayton Keeler

Clayton Keeler
12/15/2022
EXHIBIT MG
19

LaPen_002024

Date: July 27, 2015

THIS PROXY IS REVOCABLE BY THE UNIT OWNER AND IS VALID ONLY FOR THE MEETING FOR WHICH IT IS GIVEN AND ANY LAWFUL ADJOURNMENT. IN NO EVENT IS THE PROXY VALID FOR MORE THAN NINETY (90) DAYS FROM THE DATE OF THE ORIGINAL MEETING FOR WHICH IT WAS GIVEN.

Substitution of Proxy	
The undersigned, appointed as proxy above, does hereby designate _____ to substitute for me in the proxy set forth above.	
Date: _____	Signature of Proxy: _____

YOU MAY RETURN THIS PROXY TO THE ASSOCIATION, AS FOLLOWS:

VIA E-MAIL:	LaPeninsula@resortgroupinc.com
VIA FACSIMILE:	239-642-9306
REGULAR MAIL:	Resort Management 815 Bald Eagle Drive, Suite 201 Marco Island, FL 34145

LaPen_002025

Prepared by and return to:
Fred W. Mundie, Jr.
Attorney at Law
Fred W. Mundie, Jr., P.A.
993 North Collier Blvd.
Marco Island, FL 34145
239-394-3072
File Number: 13019fm

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Warranty Deed

This Warranty Deed made this 14th day of February, 2013 between Joseph M. Vandette and Cynthia M. Vandette, husband and wife whose post office address is 6 Houstons Way, Hampstead, NH 03841, grantor, and Capri Real Estate Properties, LLC, Florida limited liability company whose post office address is 80 Linvale Road, Ringoes, NJ 08551, grantee:

(Whenever used herein the terms "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives, and assigns of individuals, and the successors and assigns of corporations, trusts and trustees)

Witnesseth, that said grantor, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable considerations 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:

Unit No. 421, 400 LA PENINSULA, a Condominium according to the Declaration of Condominium thereof, as recorded in Official Records Book 2140, Page 856, and all amendments thereto, of Public Records of Collier County, Florida.

Parcel Identification Number: 33400000282

Subject to taxes for 2013 and subsequent years; covenants, conditions, restrictions, easements, reservations and limitations of record, if any.

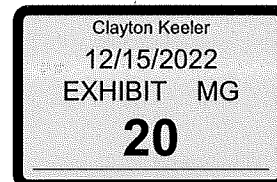
Further subject to the above described Declaration of Condominium, which Grantee herein agrees to observe and perform. Together with all of the appurtenances to said condominium unit.

Together with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

To Have and to Hold, the same in fee simple forever.

And the grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land; that the grantor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances, except taxes accruing subsequent to December 31, 2012.

In Witness Whereof, grantor has hereunto set grantor's hand and seal the day and year first above written.



DoubleTimes

Signed, sealed and delivered in our presence:

Sign: [Signature]
Witness #1 Print Name: Patricia P. Brown

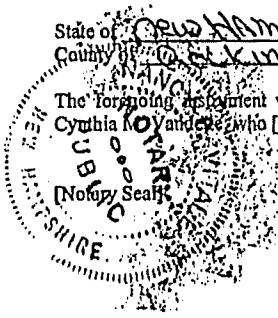
[Signature] (Seal)
Joseph M. Vandette

Sign: [Signature]
Witness #2 Print Name: Adrienne Grant

[Signature] (Seal)
Cynthia M. Vandette

State of New Hampshire
County of Rockingham

The foregoing instrument was acknowledged before me this 31 day of January, 2013 by Joseph M. Vandette and Cynthia M. Vandette, who are personally known or have produced a driver's license as identification.



[Signature]
Notary Public

Printed Name: NANCY C. VITALE
Notary Public - New Hampshire
My Commission Expires: October 26, 2016

NOT A CERTIFIED COPY

L13000011316

(Requestor's Name)

(Address)

(Address)

(City/State/Zip/Phone #)

PICK-UP WAIT MAIL

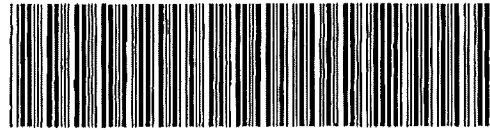
(Business Entity Name)

(Document Number)

Certified Copies _____ Certificates of Status _____

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TALLAHASSEE, FLORIDA

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T. HAMPTON

Clayton Keeler
12/15/2022
EXHIBIT MG
21

COVER LETTER

**TO: Registration Section
Division of Corporations**

SUBJECT: Capri Real Estate Properties LLC
Name of Limited Liability Company

The enclosed Articles of Amendment and fee(s) are submitted for filing.

Please return all correspondence concerning this matter to the following:

Suzanne Keeler
Name of Person

CAPRI REAL ESTATE PROPERTIES LLC
Firm/Company

80 Linvale Road
Address

Ringoes NJ 08551
City/State and Zip Code

promx6aol.com
E-mail address: (to be used for future annual report notification)

For further information concerning this matter, please call:

Suzanne Keeler at **(609) 333.1700**
Name of Person Area Code Daytime Telephone Number

Enclosed is a check for the following amount:

- \$25.00 Filing Fee
- \$30.00 Filing Fee & Certificate of Status
- \$55.00 Filing Fee & Certified Copy (additional copy is enclosed)
- \$60.00 Filing Fee, Certificate of Status & Certified Copy (additional copy is enclosed)

MAILING ADDRESS:
Registration Section
Division of Corporations
P.O. Box 6327
Tallahassee, FL 32314

STREET/COURIER ADDRESS:
Registration Section
Division of Corporations
Clifton Building
2661 Executive Center Circle
Tallahassee, FL 32301

**ARTICLES OF AMENDMENT
TO
ARTICLES OF ORGANIZATION
OF**

Capri Real Estate Properties LLC

(Name of the Limited Liability Company as it now appears on our records.)
(A Florida Limited Liability Company)

The Articles of Organization for this Limited Liability Company were filed on January 23, 2013 and assigned Florida document number L13000011316.

This amendment is submitted to amend the following:

A. If amending name, enter the new name of the limited liability company here:

The new name must be distinguishable and end with the words "Limited Liability Company," the designation "LLC" or the abbreviation "L.L.C."

Enter new principal offices address, if applicable:

(Principal office address MUST BE A STREET ADDRESS)

Enter new mailing address, if applicable:

(Mailing address MAY BE A POST OFFICE BOX)

FILED
2014 APR -7 PM 12:16
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

B. If amending the registered agent and/or registered office address on our records, enter the name of the new registered agent and/or the new registered office address here:

Name of New Registered Agent:

New Registered Office Address:

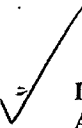
Enter Florida street address

_____, Florida _____
City Zip Code

New Registered Agent's Signature, if changing Registered Agent:

I hereby accept the appointment as registered agent and agree to act in this capacity. I further agree to comply with the provisions of all statutes relative to the proper and complete performance of my duties, and I am familiar with and accept the obligations of my position as registered agent as provided for in Chapter 605, F.S. Or, if this document is being filed to merely reflect a change in the registered office address, I hereby confirm that the limited liability company has been notified in writing of this change.

If Changing Registered Agent, Signature of New Registered Agent



If amending the Managers or Authorized Member on our records, enter the title, name, and address of each Manager or Authorized Member being added or removed from our records:

MGR = Manager
AMBR = Authorized Member

Title Name Address Type of Action

MGR Suzanne Keeler 80 Linvale Road Add
 Suzanne N. Keeler Ringoes, NJ 08551 Remove

MGR Clayton Keeler 80 Linvale Road Add
 Ringoes, NJ 08551 Remove

_____ _____ _____ Add

_____ _____ _____ Remove

_____ _____ _____ Add

_____ _____ _____ Remove

_____ _____ _____ Add

_____ _____ _____ Remove

_____ _____ _____ Add

_____ _____ _____ Remove

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 APR - 7 PM 12:15
 SECRETARY OF STATE
 TALLAHASSEE, FLORIDA

D. If amending any other information, enter change(s) here: (Attach additional sheets, if necessary.)

Four horizontal lines for amending information.

E. Effective date, if other than the date of filing: _____ (optional)
(The effective date must be specific, cannot be prior to date of receipt or filed date and cannot be more than 90 days after the date this document is filed by the Florida Department of State)

Dated March 31, 2014

<u><i>CK Keeler</i></u>	<u><i>Suzanne H Keeler</i></u>
<small>Signature of a member or authorized representative of a member</small>	<small>Signature of a member or authorized representative of a member</small>
<u>Clayton Keeler</u>	<u>SUZANNE H. KEELER</u>
<small>Typed or printed name of signer</small>	<small>Typed or printed name of signer</small>

Page 3 of 3
Filing Fee: \$25.00

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2014 APR - 7 PM 12:16
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

**Electronic Articles of Organization
For
Florida Limited Liability Company**

L13000011316
FILED 8:00 AM
January 23, 2013
Sec. Of State
stoner

Article I

The name of the Limited Liability Company is:
CAPRI REAL ESTATE PROPERTIES LLC

Article II

The street address of the principal office of the Limited Liability Company is:
421 LA PENINSULA BLVD
421
NAPLES, FL. 34113

The mailing address of the Limited Liability Company is:
80 LINVALE ROAD
RINGOES, NJ. 08551

Article III

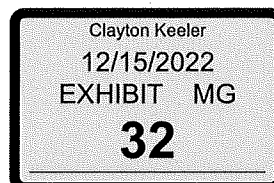
The purpose for which this Limited Liability Company is organized is:
ANY AND ALL LAWFUL BUSINESS.

Article IV

The name and Florida street address of the registered agent is:
CLAYTON KEELER
421 LA PENINISULA
421
NAPLES, FL. 34113

Having been named as registered agent and to accept service of process for the above stated limited liability company at the place designated in this certificate, I hereby accept the appointment as registered agent and agree to act in this capacity. I further agree to comply with the provisions of all statutes relating to the proper and complete performance of my duties, and I am familiar with and accept the obligations of my position as registered agent.

Registered Agent Signature: CLAYTON KEELER



Article V

The name and address of managing members/managers are:

Title: MGRM
CLAYTON KEELER
80 LINVALE ROAD
RINGOES, NJ. 08551

L13000011316
FILED 8:00 AM
January 23, 2013
Sec. Of State
stoner

Article VI

The effective date for this Limited Liability Company shall be:

01/21/2013

Signature of member or an authorized representative of a member

Electronic Signature: CLAYTON KEELER

I am the member or authorized representative submitting these Articles of Organization and affirm that the facts stated herein are true. I am aware that false information submitted in a document to the Department of State constitutes a third degree felony as provided for in s.817.155, F.S. I understand the requirement to file an annual report between January 1st and May 1st in the calendar year following formation of the LLC and every year thereafter to maintain "active" status.

2014 FLORIDA LIMITED LIABILITY COMPANY ANNUAL REPORT

DOCUMENT# L13000011316

Entity Name: CAPRI REAL ESTATE PROPERTIES LLC

Current Principal Place of Business:

421 LA PENINSULA BLVD
421
NAPLES, FL 34113

FILED
Feb 11, 2014
Secretary of State
CC2993829969

Current Mailing Address:

80 LINVALE ROAD
RINGOES, NJ 08551

FEI Number: 46-1846299

Certificate of Status Desired: No

Name and Address of Current Registered Agent:

KEELER, CLAYTON
421 LA PENINSULA
421
NAPLES, FL 34113 US

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE: _____

Electronic Signature of Registered Agent

_____ Date

Authorized Person(s) Detail :

Title MGRM
Name KEELER, CLAYTON
Address 80 LINVALE ROAD
City-State-Zip: RINGOES NJ 08551

I hereby certify that the information indicated on this report or supplemental report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am a managing member or manager of the limited liability company or the receiver or trustee empowered to execute this report as required by Chapter 605, Florida Statutes; and that my name appears above, or on an attachment with all other like empowered.

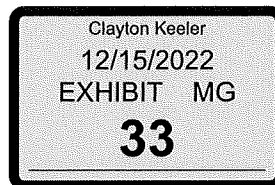
SIGNATURE: CLAYTON KEELER

MEMBER

02/11/2014

Electronic Signature of Signing Authorized Person(s) Detail

_____ Date



2016 FLORIDA LIMITED LIABILITY COMPANY ANNUAL REPORT

DOCUMENT# L13000011316

Entity Name: CAPRI REAL ESTATE PROPERTIES LLC

Current Principal Place of Business:

421 LA PENINSULA BLVD
421
NAPLES, FL 34113

FILED
Jan 24, 2016
Secretary of State
CC7558519524

Current Mailing Address:

80 LINVALE ROAD
RINGOES, NJ 08551

FEI Number: 46-1846299

Certificate of Status Desired: No

Name and Address of Current Registered Agent:

KEELER, CLAYTON
421 LA PENINSULA
421
NAPLES, FL 34113 US

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE: _____

Electronic Signature of Registered Agent

_____ Date

Authorized Person(s) Detail :

Title	MGR	Title	MANAGER
Name	KEELER, SUZANNE	Name	KEELER, CLAYTON GRANT
Address	80 LINVALE ROAD	Address	80 LINVALE ROAD
City-State-Zip:	RINGOES NJ 08551	City-State-Zip:	RINGOES NJ 08551

I hereby certify that the information indicated on this report or supplemental report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am a managing member or manager of the limited liability company or the receiver or trustee empowered to execute this report as required by Chapter 605, Florida Statutes; and that my name appears above, or on an attachment with all other like empowered.

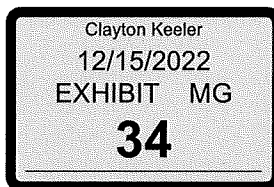
SIGNATURE: CLAYTON KEELER

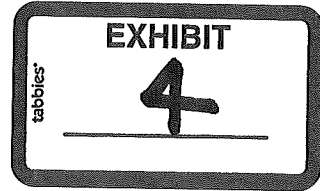
MANAGER

01/24/2016

Electronic Signature of Signing Authorized Person(s) Detail

_____ Date





In The Matter Of:
Kimberly Ann Schnell Mitchell, et al. v.
The Club at La Peninsula, Inc

Heidi Donato
December 15, 2022



SARASOTA
BRADENTON
LAKEWOOD RANCH

TAMPA
ST. PETERSBURG
VENICE

Thank you for your
continued business!



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Min-U-Script® with Word Index

Page 1

IN THE CIRCUIT COURT OF THE 20TH JUDICIAL CIRCUIT
IN AND FOR COLLIER COUNTY, FLORIDA

CASE NO.: 2019-CA-3254

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

Plaintiffs,

vs.

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

Defendant.

REMOTE DEPOSITION OF
HEIDI DONATO (MAYERHOFER)

(PAGES 1-14)

Thursday, December 15, 2022
10:07 a.m. - 10:15 a.m.

Zoom Videoconference

Stenographically Reported By:
Melissa Gromko, RPR, FPR-C

Job No.: 112490

Page 2

1 APPEARANCES:

2 On behalf of Mitchell and Dolphin Point:

3

4 Adams and Reese, LLP
5 1515 Ringling Boulevard
6 Suite 700
7 Sarasota, Florida 34230
8 941-316-7600

9 BY: DAVID L. BOYETTE, ESQUIRE
10 david.boyette@arlaw.com
11 Appearance by Zoom Videoconference

12

13 Seidensticker & San Filipoo, LLC
14 791 10th Street South
15 Suite 202
16 Naples, Florida 34102
17 239-403-0611

18 BY: PETE FERNANDES, ESQUIRE
19 psf@sandslawoffices.com
20 Appearance by Zoom Videoconference

21

22 On behalf of The Club at La Peninsula, Inc.:

23

24 Grant Fridkin Pearson, PA
25 551 Ridgewood Drive
Suite 501
Naples, Florida 34108
239-514-1000

BY: MICHAEL TRAFICANTE, ESQUIRE
mtraficante@gfpac.com
Appearance by Zoom Videoconference

ALSO PRESENT: DAVID PATRELLA

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1 The following proceedings began at 10:07 a.m.:

2 **THE STENOGRAPHER:** I'm just going to put

3 you under oath, if you'll raise your right

4 hand, please?

5 Do you solemnly swear that the testimony

6 you're about to give in this cause will be the

7 truth, the whole truth, and nothing but the

8 truth?

9 **THE WITNESS:** Yes, I do.

10 **THE STENOGRAPHER:** Thank you.

11 Thereupon:

12 HEIDI DONATO (MAYERHOFER),

13 having been produced and first duly sworn, was

14 examined and testified as follows:

15 **DIRECT EXAMINATION**

16 **BY MR. BOYETTE:**

17 **Q.** My name is David Boyette. I, along with

18 Pete Fernandes, represent Kim Mitchell and Dolphin

19 Point, LLC. We also have on this call Mike

20 Traficante. He represents The Club at La Peninsula.

21 I just have a few questions. We'll get you out

22 of here pretty quick. If you don't understand any

23 questions, just let me know, okay?

24 **A.** Okay.

25 **Q.** Your name, please?

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1 A. Heidi Donato.
2 **Q. And your address?**
3 A. [REDACTED]
4 [REDACTED].
5 **Q. And your phone number?**
6 A. Cell number is [REDACTED].
7 **Q. Do you have an e-mail address?**
8 A. Yes. Heidi, my name; Capri, where I live,
9 [REDACTED]
10 **Q. Okay. I am going to show you a document.**
11 **(The document referred to was previously**
12 **produced and marked as Exhibit 31 for**
13 **identification).**
14 **BY MR. BOYETTE:**
15 **Q. Can you see on the screen a document I'm**
16 **pointing where it says warranty deed?**
17 A. Yes.
18 **Q. And it's marked Exhibit 31, Page 1 of 2; do**
19 **you see that?**
20 A. I don't see the exhibit.
21 **Q. Down at the bottom (indicating).**
22 A. Oh. Oh, okay. Yes. Uh-huh.
23 **Q. Is this a copy of the deed from your**
24 **purchase on March 31, 2003 of Unit 507 in The Club at**
25 **La Peninsula?**

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1 **Q. And you've owned it continuously since March**
2 **of '03?**
3 A. Yes.
4 **Q. And the two of you have been continuously**
5 **married since approximately May 22, 2005?**
6 A. Yes.
7 **Q. All right. I am scrolling to Exhibit 30.**
8 **(The document referred to was previously**
9 **produced and marked as Exhibit 30 for**
10 **identification).**
11 **BY MR. BOYETTE:**
12 **Q. Can you see that (indicating)?**
13 A. Yes.
14 **Q. And is that your signature at the bottom of**
15 **Exhibit 30?**
16 A. Yes.
17 **Q. And you were legally married to Mr. Donato**
18 **on the date that you signed this?**
19 A. Yes. I can't see the date, though. What is
20 that?
21 **Q. Can you see where I'm pointing (indicating)?**
22 A. Yes.
23 **Q. May 14, 2015?**
24 A. May 14, '15. Oh, yes. Definitely.
25 **Q. Okay. Have you ever had any contact with**

Page 6

1 A. What year?
2 **Q. 2003?**
3 A. Yes.
4 **Q. And it shows that the purchasers were Jeff**
5 **Donato and Heidi Mayerhofer, a single person, as**
6 **joint tenants with right of survivorship?**
7 A. Correct.
8 **Q. So you were not married on the date of this**
9 **purchase?**
10 A. Correct.
11 **Q. Did you later marry Jeff Donato?**
12 A. Yes.
13 **Q. And what date did the two of you get**
14 **married?**
15 A. I really don't know. March the -- I'm
16 sorry. May the 22 -- what day was that one?
17 **Q. March 31, '03.**
18 A. '03. I think it was '05, but I'm not 100
19 percent sure on that.
20 **Q. Okay. Just a couple years later after**
21 **buying this unit, correct?**
22 A. Yes. Yes.
23 **Q. All right. And do you and Mr. Donato still**
24 **own this unit?**
25 A. Yes.

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1 **Kim Mitchell?**
2 A. Yes. I know her.
3 **Q. Do you remember any discussions you've had**
4 **with her?**
5 A. I mean, I've been to parties at her house.
6 I've seen her at -- we've been out to -- you know,
7 with friends, out to dinner.
8 **Q. Okay. Have you ever served on the board at**
9 **The Club at La Peninsula?**
10 A. No.
11 **Q. Have you ever discussed the issues in this**
12 **lawsuit with Kim Mitchell?**
13 A. I don't even know what this lawsuit is.
14 **Q. Pardon?**
15 A. I don't even know what this lawsuit is.
16 **Q. Okay.**
17 A. I don't know what it's about.
18 **MR. BOYETTE:** Okay. I don't have any
19 other questions for you.
20 **CROSS-EXAMINATION**
21 **BY MR. TRAFICANTE:**
22 **Q. Good morning, Ms. Donato. Michael**
23 **Traficante on behalf of The Club at La Peninsula. I**
24 **just have a few questions, possibly, so I won't take**
25 **a lot of your time this morning.**

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1 Prior to today, did you have any discussions with
2 the Mitchells' attorneys, either Mr. Fernandes and
3 his office or Mr. Boyette and his office?
4 A. Have I had any -- pardon me?
5 Q. Have you had any discussions with either of
6 them?
7 A. No discussions, but I did reach out to David
8 Patrella because I didn't know how to do a Zoom call,
9 so -- and I really didn't know what the subpoena was
10 about, so I had called. They sent me to an answering
11 service. The answering service got in touch with him
12 and left a number. He called. I didn't receive the
13 call. I called him back to tell him I didn't know
14 how to do a Zoom, and I really was very confused
15 about the whole subpoena, why I was even being
16 subpoenaed. He just said they had some questions.
17 He told me to come to this office and they would help
18 me with the Zoom.
19 Q. And you said that was David Patrella, or Mr.
20 Boyette's office?
21 A. I'm sorry. Mr. Boyette.
22 Q. Okay. Do you recall who you spoke with at
23 Mr. Boyette's office?
24 A. I believe it was Mr. Boyette.
25 Q. Did you discuss this lawsuit at all?

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1 Q. Do you know Paul Wickberg?
2 A. Yes.
3 Q. Do you know if he's currently in Florida?
4 A. I really don't know. I do know that he does
5 have a job in California.
6 Q. Do you know when he'll be returning to
7 Florida?
8 A. I don't know.
9 MR. BOYETTE: Okay. I don't have anything
10 else for you.
11 THE WITNESS: Okay.
12 MR. BOYETTE: Thanks for your time. Sorry
13 to bug you.
14 MR. TRAFICANTE: Thank you, Ms. Donato.
15 We appreciate it.
16 David, did you want to advise Ms. Donato
17 of her right to read?
18 MR. BOYETTE: Yes. You have the right to
19 read this transcript, or you can waive that
20 right. If you want to read, the purpose is to
21 check for errors in the transcript, make sure
22 the court reporter got down everything
23 correctly. If you want to do that, she'll
24 send you an errata sheet with the transcript
25 and then you can read it and make any

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1 A. No.
2 Q. And you were shown a proxy that you signed
3 back in 2015. I can bring it up. Bear with me one
4 second. Can you see this document, Ms. Donato
5 (indicating)?
6 A. Yes.
7 Q. This was Exhibit 30 that you were shown by
8 Mr. Boyette.
9 A. Yes.
10 Q. And you signed this document, correct, back
11 in May of 2015?
12 A. Yes, but I don't even know what the document
13 was about.
14 Q. No problem, and I don't want to tax your
15 memory.
16 A. I'm just verifying that's my signature.
17 Q. Understood. I don't want to tax your
18 memory. I just want to check. If you signed this
19 document, I'm assuming that you had authority to sign
20 this document, correct?
21 A. Correct.
22 MR. TRAFICANTE: No further questions.
23 MR. BOYETTE: I do have one more question.
24 REDIRECT-EXAMINATION
25 BY MR. BOYETTE:

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1 corrections on that separate document. Do you
2 want to do that or do you want to waive that?
3 THE WITNESS: I can do that, but do I have
4 to send it back if there is -- if it's all
5 okay?
6 MR. BOYETTE: You're supposed -- if you
7 want to do it, you don't waive it, you're
8 supposed to read and sign the document that
9 she sends you and send it back to her. Yup.
10 THE WITNESS: Okay. Then I'll waive that.
11 MR. TRAFICANTE: Madam Court Reporter,
12 we'll order a copy.
13 THE STENOGRAPHER: Mr. Boyette, did you
14 want a copy of her transcript?
15 MR. BOYETTE: Mike ordered it?
16 THE STENOGRAPHER: Yes.
17 MR. BOYETTE: Yeah, I guess I'll take a
18 copy.
19 THE STENOGRAPHER: Okay. Thank you.
20 (The witness was excused).
21 (The deposition was concluded at 10:15
22 a.m.).
23
24
25

CERTIFICATE OF OATH

CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF COLLIER)

STATE OF FLORIDA)
COUNTY OF COLLIER)

I, Melissa Gromko, Notary Public, State of Florida, certify that HEIDI DONATO (MAYERHOFER) remotely appeared before me on December 15, 2022 and was duly sworn.

I, Melissa Gromko, do hereby certify that I was authorized to and did stenographically report the foregoing deposition of HEIDI DONATO (MAYERHOFER); that a review of the transcript was not requested; and that the transcript, pages 4 through 12 is a true record of my stenographic notes.

Signed this 21st day of December, 2022.

I FURTHER CERTIFY that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.



Dated this 21st day of December, 2022.

Melissa Gromko
Notary Public, State of Florida
My Commission No. HH 064506
Expires: March 15, 2025

Melissa Gromko, RPR, FPR-C

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PROXY
THE CLUB AT LA PENINSULA, INC.

The undersigned Owner/s of Unit 507 located in building number 5 in The Club at La Peninsula, Inc., hereby appoints (check one):

- (a) Jay Benedetti, Director of the Association, on behalf of the Board of Directors; or
 (b) _____ (if you check (b), write in the name of your proxy)

as my/our proxy holder to attend a Special Members Meeting of **The Club at La Peninsula, Inc.**, to be held on **May 27, 2015 at 10:00 AM at the Clubhouse at La Peninsula, 10 La Peninsula Blvd, Naples, Florida.** Failure to check either (a) or (b) above, or failure to write in the name of your proxy, shall be deemed an appointment of Mr. Benedetti as your proxy holder and to cast your vote as specifically instructed below. The proxy holder named above has the authority to vote and act for me/us to the same extent that I/we would if personally present, establish quorum, with power of substitution, except that my/our proxy holder's authority is limited as indicated below.

For your vote to be counted on the following issues, you must indicate your preference in the blank(s) below. The proxy holder does not have the authority to check "yes" or "no" if you fail to specify. I/WE SPECIFICALLY AUTHORIZE AND INSTRUCT MY/OUR PROXY HOLDER TO CAST MY/OUR VOTE IN REFERENCE TO THE FOLLOWING MATTERS, AS INDICATED BELOW:

1. **Amendment and Restatement of Declaration of Condominium.** Enclosed herewith is a copy of a proposed Amended and Restated Declaration of Covenants, Conditions and Restrictions for La Peninsula. Also enclosed is a summary of changes. This summary includes all changes from the document previous circulated prior to the 2015 Annual Meeting. Do you approve the Amended and Restated Declaration? The Board recommends voting "IN FAVOR".


<input checked="" type="checkbox"/> In Favor <input type="checkbox"/> Against

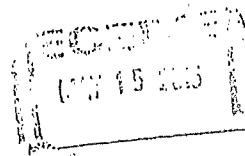
2. **Amendment to the Bylaws and Articles of Incorporation.** A proposed Amended and Restated Articles of Incorporation and Bylaws were previously sent to you in March, 2015. That document is not being further amended for your consideration. Do you approve the Amended and Restated Articles of Incorporation and Bylaws as previously provided to you?

<input checked="" type="checkbox"/> In Favor <input checked="" type="checkbox"/> Against
--

PLEASE SIGN AND DATE THE PROXY IN THE SPACE PROVIDED BELOW

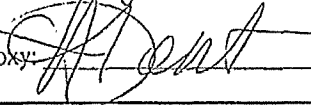
(Signatures of Owner/s or Designated Voter/s)

Signature of Owner: 
Printed Name: Heidi Donato
Date: 5/14/15



LaPen_002040

THIS PROXY IS REVOCABLE BY THE UNIT OWNER AND IS VALID ONLY FOR THE MEETING FOR WHICH IT IS GIVEN AND ANY LAWFUL ADJOURNMENT. IN NO EVENT IS THE PROXY VALID FOR MORE THAN NINETY (90) DAYS FROM THE DATE OF THE ORIGINAL MEETING FOR WHICH IT WAS GIVEN.

Substitution of Proxy	
The undersigned, appointed as proxy above, does hereby designate _____ to substitute for me in the proxy set forth above.	
Date: <u>5/14/15</u>	Signature of Proxy: 

YOU MAY RETURN THIS PROXY TO THE ASSOCIATION, AS FOLLOWS:

VIA E-MAIL:	LaPeninsula@resortgroupinc.com
VIA FACSIMILE:	239-642-9306
REGULAR MAIL:	Resort Management 815 Bald Eagle Drive, Suite 201 Marco Island, FL 34145

LaPen_002041

3157869 OR: 3256 PG: 2055

RECORDED in OFFICIAL RECORDS of COLLIER COUNTY, FL
04/03/2003 at 01:58PM DWIGHT B. BROCK, CLERK

CONS 510000.00
RBC PBB 10.50
DOC-.70 3570.00

Retn:
DUNN TITLE
PICK UP

Record and Return to: **03-2124M**
Dunn Title Company File No.:

THIS INSTRUMENT PREPARED BY:
JOHN A. NOLD
995 N. Collier Blvd.
Marco Island, FL 34145
(239) 394-7811

WARRANTY DEED

THIS INDENTURE made this 31st day of March, 2003, between Robert W. Schultz and Barbara A. Schultz, Husband & Wife, whose post office address is La Peninsula #507, Naples, FL 34113, hereinafter called the Grantor, and Jeff Donato a Single Person and Heidi Mayerhofer, a Single Person, as Joint Tenants with right of Survivorship, whose post office address is La Peninsula #507, Naples, FL 34113, hereinafter called the Grantee.

WITNESSETH, That the grantor, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable considerations, receipt whereof is hereby acknowledged, has granted bargained, and sold unto the grantee, and grantee's heirs and assignees forever, the following described land situated in Collier County, Florida, to wit:

FOLIO NO. 32455000144

Unit 507 of 500 La Peninsula, A condominium, in accordance with and subject to the Declaration of Condominium of 500 La Peninsula, a Condominium, recorded in Official Record Book 1374, Page 1407 and all amendments thereto, of the Public Records of Collier county, Florida.

This deed is executed subject to restrictions, reservations and easements of record common to the subdivision, and taxes from the date of this deed and subsequent years.

And the Grantor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever.

Heidi Donato
12/15/2022
EXHIBIT MG
31

IN WITNESS THEREOF, grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in our presence:

Andrea S. Peterson
Witness #1 Signature

Robert W. Schultz
Robert W. Schultz

Andrea S. Peterson
Witness #1 Print Name

Barbara A. Schultz
Barbara A. Schultz

Dalila M. Y...
Witness #2 Signature

Falicia M. Y...
Witness #2 Print Name

STATE OF FLORIDA
COUNTY OF COLLIER

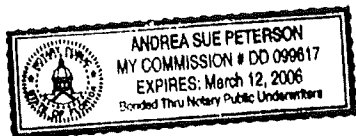
The foregoing instrument was sworn to and acknowledged before me this 21 day of March, 2003, by Robert W. Schultz and Barbara A. Schultz, who are personally known to me or who have produced _____ as identification and who did not take an oath. NOTE: If a type of identification is not inserted in the blank provided, then the person executing this instrument is personally known to me. If the words "did not" are not marked, then the person executing this instrument did take an oath.

Andrea S. Peterson
Notary Public

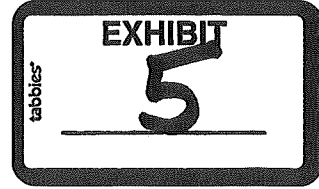
My Commission Expires

Andrea S. Peterson
Notary Printed Name

(SEAL)



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,

CASE NO. 2019-CA-3254

Plaintiffs,

vs.

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

Defendant.

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

Naples Court Reporting & Legal Services
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.	2	Exhibit 18 - Vote Tally 8/5/15
3	Seidensticker & San Filippo, LLC	3	Exhibit 19 - Bill Morris 30-Day Notice 11/21/17
4	791 10th Street South	4	Exhibit 20 - Letter to Bill Morris 12/11/17
5	Suite 202	5	Exhibit 21 - Second 30-Day Notice
6	Naples, Florida 34102	6	Exhibit 22 - 11/22/19 Letter
7	Wps@sandslawoffices.com	7	Exhibit 23 - Text Messages
8	David L. Boyette, Esq.	8	Exhibit 24 - Collier County Portal Printout 1/4/23
9	Adams and Reese, LLP	9	Exhibit 25 - Letter to Chris Scott
10	1515 Ringling Boulevard	10	Exhibit 26 - Mor-Sports Bid
11	Suite 700	11	Exhibit 27 - Letter from Bill Morris 2/6/19
12	Sarasota, Florida 34230	12	Exhibit 28 - Letter from Bill Morris 3/7/19
13	David.boyette@arlaw.com	13	Exhibit 29 - E-mail Chain 3/19/19
14	For the Defendant: Michael T. Traficante, Esq.	14	Exhibit 30 - Letter to Yovanovich 6/14/19
15	Grant Fridkin Pearson, P.A.	15	Exhibit 31 - E-mail from Ann Hall
16	5551 Ridgewood Drive	16	Exhibit 32 - E-mail from Robert Pritt
17	Suite 501	17	Exhibit 33 - First Request for Production (Mitchell)
18	Naples, Florida 34108	18	Exhibit 34 - Second Request for Production (Mitchell)
19	Mtraficante@gfpac.com	19	Exhibit 35 - First Request for Production (Dolphin)
20	Also Present: Gregg Clemons, Videographer	20	Exhibit 36 - Interrogatory Responses
21		21	Exhibit 37 - Disclosure of Fact/Expert Witness List
22		22	
23		23	
24		24	
25		25	

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2	PAGE	2	Exhibit 15 - Special Unit Owners Minutes 8/18/15
3	WITNESS	3	Exhibit 16 - Letter to La Peninsula Owners 5/6/15
4	KIMBERLY MITCHELL	4	Exhibit 17 - Vote Tally Sheet 8/5/15
5	Direct (By Mr. Traficante)	5	Exhibit 18 - Aversano Proxy
6	Cross (By Mr. Boyette)	6	Exhibit 22 - Sonntag Proxy
7	Cross (By Mr. Seidensticker)	7	Exhibit 23 - Sonntag Warranty Deed
8	Redirect (By Mr. Traficante)	8	Exhibit 24 - Langdon Proxy
9	Recross (By Mr. Seidensticker)	9	Exhibit 25 - Langdon Special Warranty Deed
10	Further Redirect (By Mr. Traficante)	10	Exhibit 26 - Walter Proxy
11	DEFENDANT'S EXHIBITS	11	Exhibit 27 - Walter Warranty Deed
12	Exhibit 1 - Amended Notice of Taking Depo	12	Exhibit 28 - Wickberg Warranty Deed
13	Exhibit 2 - Warranty Deed	13	Exhibit 29 - Wickberg Proxy
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15	Exhibit 4 - Warranty Deed 3/8/07	15	
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24	Exhibit 13 - Declaration of Covenants 8/15/86	24	
25	Exhibit 14 - Declarant Amendment 2/12/13	25	
	Exhibit 15 - Memorandum of Settlement 3/14/13		
	Exhibit 16 - Tennis Court Easement 5/8/13		

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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: Wayde 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

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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

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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,

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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 Wayne, 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.

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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 --

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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:

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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.

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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.

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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?

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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.

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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

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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

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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?

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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.

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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?

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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.

Page 45

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?

Page 47

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.

Page 48

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.

Page 49

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?

Page 53

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

Page 54

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?

Page 56

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

Page 57

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.

Page 60

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.

Page 62

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

Page 64

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?

Page 66

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

Page 67

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.

Page 68

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

Page 69

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

Page 70

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.

Page 71

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

Page 72

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:

Page 73

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,

Page 74

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.

Page 75

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

Page 76

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

Page 77

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?

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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?

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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?

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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?

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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?

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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

Page 126

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

Page 132

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.

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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.

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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?

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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

Page 144

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

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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.

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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 ahal17911@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

Page 154

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

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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

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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.

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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

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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

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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.

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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.

Page 172

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?

Page 173

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?

Page 174

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."

Page 178

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.

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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 Vandeele.
 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?

Page 191

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

Page 192

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?

Page 193

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 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 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 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 Invalidity
 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 Invalidity?
 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 Invalidity 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 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 RE-CROSS-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 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.)
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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

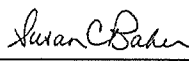
8 duly sworn.

9

10 WITNESS my hand and official seal this 16th day

11 of January, 2023.

12

13 

14

Susan C. Baker
 Notary Public - State of Florida
 My Commission No.: HH 105160
 Expires: March 16, 2025

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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 I.D. _____

21

22 _____

23 Notary Public in and for the

24 State of Florida at Large.

25

My commission expires:

22
23
24
25

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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 stenographic 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'

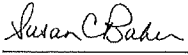
17 attorney or counsel connected with the action; nor am I

18 financially interested in the action.

19

20 DATED this 16th day of January, 2023.

21

22 

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
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5	_____	_____	_____
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20	_____	_____	_____
21	_____	_____	_____

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

25 entered here.

KIMBERLY MITCHELL DATE