

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

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

Plaintiffs,

v.

CASE NO.: 2019-CA-3254

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

Defendant.

**NOTICE OF FILING DEPOSITION TRANSCRIPT OF DAVID PETRELLA IN
SUPPORT OF PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

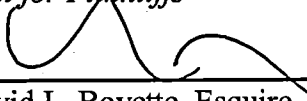
Plaintiff, DOLPHIN POINT, LLC, a Florida limited liability company, pursuant to Fla.R.Civ.P. 1.500, hereby gives notice of filing the deposition transcript of David Petrella taken on January 6, 2023 in support of its Motion for Partial Summary Judgment which was filed on November 14, 2022 at Docket No. 136.

CERTIFICATE OF SERVICE

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

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and DOLPHIN POINT, LLC, a Florida limited liability
company,

Plaintiff,

vs.

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

DEPOSITION OF

DAVID PATRELLA, M.D.,

CORPORATE REPRESENTATIVE OF THE CLUB AT LA PENINSULA

VOLUME 1

Pages 1 through 126

Friday, January 6, 2023

9:06 a.m. - 1:24 p.m.

Location: Grant Fridkin Pearson, P.A.
5551 Ridgewood Drive, Suite 501
Naples, FL 34108

STENOGRAPHICALLY REPORTED BY
ANDREA J. STEFANICK, RMR, CRR, CRC, FPR

Job No.: 501395

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2 On behalf of PLAINTIFFS</p> <p>3 BY: David L. Boyette, Esquire (Appearing remotely)</p> <p>4 ADAMS and REESE, LLP 1515 Ringling Boulevard Suite 700 Sarasota, FL 34230-6017 941-316-7600 David.boyette@arlaw.com</p> <p>7 BY: Wayne P. Seidensticker, Jr., Esquire SEIDENSTICKER & SAN FILIPPO, LLC 791 10th Street South Suite 202 Naples, FL 34102 Wps@sandslawoffices.com</p> <p>11</p> <p>12 On behalf of DEFENDANT</p> <p>13 BY: Michael Traficante, Esquire GRANT FRIDKIN PEARSON, P.A. 5551 Ridgewood Drive Suite 501 Naples, FL 34108 Mtraficante@gfpac.com</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 PLAINTIFFS' EXHIBITS MARKED FOR IDENTIFICATION</p> <p>2 Description Page</p> <p>3 Plaintiffs' Exhibit No. 1 Declaration of Covenants 9</p> <p>4 Plaintiffs' Exhibit No. 2 Aerial of Subject Property 18</p> <p>5 Plaintiffs' Exhibit No. 3 Warranty Deed 23</p> <p>6 Plaintiffs' Exhibit No. 4 Bill of Sale and Assignment 25</p> <p>7 Plaintiffs' Exhibit No. 5 Amendment to Declaration 30</p> <p>8 Plaintiffs' Exhibit No. 6 Special Warranty Deed 32</p> <p>9 Plaintiffs' Exhibit No. 7 Assignment and Assumption of Development Rights 32</p> <p>10 Plaintiffs' Exhibit No. 8 Warranty Deed 33</p> <p>11 Plaintiffs' Exhibit No. 9 Assignment and Assumption of Development Rights 33</p> <p>12 Plaintiffs' Exhibit No. 10 Memorandum of Settlement 35</p> <p>13 Plaintiffs' Exhibit No. 11 Tennis Court Easement and Covenants 43</p> <p>14 Plaintiffs' Composite Exhibit No. 12 Certificate of Amendment 54</p> <p>15 Plaintiffs' Exhibit No. 13 5/27/2015 Special Unit Owners Meeting Minutes 59</p> <p>16 Plaintiffs' Exhibit No. 14 6/28/2015 Special Unit Owners Meeting Minutes 59</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 3</p> <p style="text-align: center;">I N D E X</p> <p>1</p> <p>2 Page</p> <p>3 WITNESS: DAVID PATRELLA, M.D., CORPORATE REPRESENTATIVE OF THE CLUB AT LA PENINSULA</p> <p>4 DIRECT EXAMINATION 6 BY MR. BOYETTE</p> <p>5</p> <p>6 FURTHER DIRECT EXAMINATION 99 BY MR. SEIDENSTICKER</p> <p>7</p> <p>8 CROSS-EXAMINATION 120 BY MR. TRAFICANTE</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1 Plaintiffs' Exhibit No. 15 8/8/2015 Special Unit Owners Minutes 61</p> <p>2 Plaintiffs' Exhibit No. 16 5/6/2015 Letter 61</p> <p>3 Plaintiffs' Composite Exhibit No. 17 Vote Tally Sheet 65</p> <p>4 Plaintiffs' Exhibit No. 18 Proxy - Aversano 68</p> <p>5</p> <p>6 Plaintiffs' Exhibit No. 19 Proxy - Keeler 70</p> <p>7</p> <p>8 Plaintiffs' Exhibit No. 20 (Not marked for I.D.) 71</p> <p>9</p> <p>10 Plaintiffs' Exhibit No. 21 Articles of Amendment - Capri Real Estate Properties 71</p> <p>11</p> <p>12 Plaintiffs' Exhibit No. 22 Proxy - Sonntag 73</p> <p>13</p> <p>14 Plaintiffs' Exhibit No. 23 Warranty Deeds - Sonntag 74</p> <p>15</p> <p>16 Plaintiffs' Exhibit No. 24 Proxy - Langdon 78</p> <p>17</p> <p>18 Plaintiffs' Exhibit No. 25 Special Warranty Deed - Langdon 78</p> <p>19</p> <p>20 Plaintiffs' Exhibit No. 26 Proxy - Walter 81</p> <p>21</p> <p>22 Plaintiffs' Exhibit No. 27 Warranty Deeds - Walter 81</p> <p>23</p> <p>24 Plaintiffs' Exhibit No. 28 Warranty Deed - Wickberg 83</p> <p>25</p> <p>CERTIFICATE OF OATH 123</p> <p>CERTIFICATE OF REPORTER 124</p> <p>NOTIFICATION LETTER 125</p> <p>ERRATA SHEET 126</p>

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1 The following proceedings began at 9:06 a.m.
 2
 3 THE COURT REPORTER: Would you raise your right
 4 hand, please?
 5 Do you solemnly swear or affirm that the
 6 testimony you're about to give in this cause is the
 7 truth, the whole truth and nothing but the truth.
 8 THE WITNESS: Yes.
 9 MR. TRAFICANTE: And just before we get
 10 started, we were just speaking off the record, but
 11 we've stipulated that we will only be objecting to
 12 form and that we're not waiving any trial
 13 objections.
 14 MR. SEIDENSTICKER: Agreed.
 15 THEREUPON,
 16 DAVID PATRELLA, M.D.,
 17 CORPORATE REPRESENTATIVE OF THE CLUB AT LA PENINSULA,
 18 was called as a witness and, having first been duly
 19 sworn, was examined testified as follows:
 20 FURTHER DIRECT EXAMINATION
 21 BY MR. BOYETTE:
 22 Q. My name is David Boyette. I represent Kimberly
 23 Mitchell and Donnie Gene Mitchell and Dolphin Point,
 24 LLC.
 25 And seated across the table from you is Wayde

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1 Seidensticker, he is co-counsel with me, also
 2 representing the Mitchells and Dolphin Point.
 3 I'm going to ask you a series of questions. If
 4 you find any of the questions to be confusing or you
 5 don't understand the question or you have any kind of
 6 problem with the question, would you let me know?
 7 A. Yes.
 8 Q. And what is your full name?
 9 A. David Patrella.
 10 Q. And have you been designated by The Club at
 11 La Peninsula to testify on behalf of the corporation
 12 today?
 13 A. Yes.
 14 Q. And what is your address?
 15 A. 3478 West Silver Springs, Mount Pleasant,
 16 Michigan, 48858.
 17 Q. Doctor, could you give me a brief description
 18 of your educational background?
 19 A. I have a degree as a Medical Doctor, and did my
 20 undergraduate there in the University of Detroit; went
 21 to Europe and studied there for a couple years and
 22 finished up at Wayne State University in Detroit.
 23 I did my residency in radiology and diagnostic,
 24 both interventional and diagnostic radiology, and I
 25 practiced at that same location for almost 40 years.

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1 Q. Are you retired now?
 2 A. I am retired. I still maintain my license, but
 3 I'm retired.
 4 Q. What was that?
 5 A. I said I still maintain my license, but I
 6 officially retired.
 7 Q. Okay. Are you currently serving on the board
 8 at The Club at La Peninsula?
 9 A. Yes.
 10 Q. And how long have you -- well, let's put it
 11 this way. What years have you served on the board at
 12 The Club?
 13 A. From 2018 until present.
 14 Q. And have you served as an officer of The Club?
 15 A. Yes.
 16 Q. And what offices have you held and over what
 17 years?
 18 A. I initially was a director and in 2019 I was
 19 elected president.
 20 Q. And what years have you been president?
 21 A. 2019 until present time.
 22 Q. And do you have the exhibits there with you?
 23 MR. TRAFICANTE: We do, Dave. Just so you
 24 know, it's on my laptop and I showed Wayde. It's
 25 just 1 through 36 with the exhibits.

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1 (Plaintiffs' Exhibit No. 1, Declaration of
 2 Covenants, was marked for identification.)
 3 BY MR. BOYETTE:
 4 Q. Exhibit 1, it's in the lower right-hand corner,
 5 it says page 1 of 16 and there are 16 pages there.
 6 Do you agree that Exhibit 1 is a authentic copy
 7 of the declaration of covenants -- put it this way, the
 8 original Declaration of Covenants, Conditions and
 9 Restrictions of La Peninsula?
 10 MR. TRAFICANTE: And just bear with us, Dave.
 11 I was just loading. I had to open it up for him,
 12 so he's just looking at it now and I'm just showing
 13 him.
 14 If you have to scroll down, you can just --
 15 like a laptop, you can just click on the arrow.
 16 THE WITNESS: You don't have a mouse?
 17 MR. TRAFICANTE: No, there's no mouse for this
 18 one. Do you want me to scroll?
 19 Is it okay, Dave, if I scroll down for him?
 20 MR. BOYETTE: Yeah, go ahead. Absolutely. Or
 21 show him how to do it.
 22 MR. TRAFICANTE: Yeah, I showed him. It's
 23 actually my paralegal's laptop and it's a little
 24 tricky.
 25 THE WITNESS: Could you repeat your question?



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1 BY MR. BOYETTE:
 2 Q. Do you remember the question?
 3 A. No, I don't.
 4 Q. The question was, I just wanted to find out if
 5 we could confirm on the record from you as the
 6 representative of The Club that Exhibit 1 is an
 7 authentic copy of the original Declaration of
 8 Covenants, Conditions and Restrictions of La Peninsula.
 9 A. Although it says "not a certified copy," it
 10 otherwise would appear to be, but I can't say that this
 11 indeed was the document that was recorded with the
 12 county.
 13 Q. Does the stamp at the top of page 1 of 16,
 14 where it says -- it's stamped "Collier County, Recorded
 15 August 19, 1986, at 1:56 p.m."
 16 Does that help you recognize that this is a
 17 copy of the original declaration that was recorded with
 18 the county?
 19 A. I want to be certain where you're referring to
 20 in the -- on the first page there?
 21 Q. Yeah, on the first page at the very top, look
 22 at the very top of page 1. Do you see where it says
 23 "01025277 Collier County"?
 24 A. Yes.
 25 Q. And then next to that it says: "Recorded

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1 August 19, 1968, at 1:56 p.m."
 2 Do you see that?
 3 A. My copy is a little blurry, but I think I can
 4 make that out, yes.
 5 MR. SEIDENSTICKER: If it's easier, I have an
 6 actual printed copy. Are you having a difficult
 7 time seeing it?
 8 THE WITNESS: Yes.
 9 MR. SEIDENSTICKER: I have it highlighted.
 10 Does that help you identify?
 11 THE WITNESS: Absolutely, yes.
 12 So I guess my answer would be, it appears to
 13 be.
 14 MR. SEIDENSTICKER: If you need it again, I'll
 15 hand it. I have a paper copy just as backup.
 16 MR. TRAFICANTE: I was going to say, Wayde, it
 17 might be easier to just use the paper copy if we
 18 can.
 19 David, if you're going to ask questions about
 20 it, it might be easier just because it's a longer
 21 document.
 22 MR. BOYETTE: Yes, I'm going to have questions
 23 just about all of the 36 exhibits.
 24 MR. TRAFICANTE: Well, that's -- if we have a
 25 paper copy, it might be easier. On the ones that

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1 we don't, you know, obviously I can pull them up
 2 easy like we have here.
 3 MR. BOYETTE: Wayde, can you give him the paper
 4 one of Exhibit 1?
 5 MR. SEIDENSTICKER: I sure can.
 6 MR. BOYETTE: Appreciate it.
 7 MR. SEIDENSTICKER: I don't know whether it's
 8 going to be clear. It looks to be about the same
 9 size as the exhibits you sent on the computer, but
 10 I've handed him my paper copy of it if he needs it.
 11 We can enlarge those on the screen, too.
 12 MR. TRAFICANTE: He did.
 13 THE WITNESS: And I just did.
 14 MR. SEIDENSTICKER: Does that make it easier?
 15 MR. TRAFICANTE: Is that easier for you then?
 16 THE WITNESS: Yes.
 17 MR. TRAFICANTE: Okay. We're ready, David.
 18 BY MR. BOYETTE:
 19 Q. On page 2 of 16 of Exhibit 1, under sub (j),
 20 there is a definition for condominium property where it
 21 says: "Means and includes all lands that are subjected
 22 to condominium ownership," and it goes on from there.
 23 Do you see that definition?
 24 A. Not all the document is included on the screen
 25 here.

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1 Okay. What -- is there a number or something
 2 you could reference?
 3 Q. Yeah, page 2 of 16, subsection (j).
 4 A. Okay.
 5 Q. Do you see the definition of condominium
 6 property?
 7 A. Yes.
 8 Q. Do you have a general understanding of what the
 9 property of the La Peninsula condominium is?
 10 A. Yes.
 11 Q. And what is that?
 12 A. It's all the lands that include the association
 13 called La Peninsula.
 14 Q. Okay. And do you have a general understanding
 15 of what improvements are located within that land?
 16 A. I do.
 17 Q. And what are the improvements within the land
 18 that are covered by this declaration?
 19 A. There are seven condominium buildings,
 20 clubhouse with a swimming pool. One of the buildings
 21 has its own swimming pool. There are roads, there are
 22 various retention ponds, landscaping, and tennis
 23 courts, construction lot.
 24 Q. Thank you.
 25 Of the seven condominium buildings that you

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1 mentioned, do you agree that there are 176 units,
 2 residential units located within those seven buildings?
 3 A. Yes, to the best of my knowledge.
 4 Q. Do you know if I have it correct that there are
 5 four buildings with 25 units, one with 19 units, one
 6 with 20 units and one with 37 units?
 7 A. That's also my understanding.
 8 Q. I'm sorry, what did you say?
 9 A. I said yes, that's also my understanding.
 10 Q. And are you familiar with the single-family
 11 home at 85 Pelican Street West which is owned by my
 12 clients, the Mitchells?
 13 A. Yes.
 14 Q. Is the land where that home is located, do you
 15 know if it's part or included in the condominium
 16 property as defined in subsection (j) on page 2 of the
 17 declaration?
 18 MR. TRAFICANTE: Object to form.
 19 You can answer.
 20 THE WITNESS: I don't believe that that land is
 21 part of where their home is. I mean the way you
 22 asked the question, you stated that if I knew or if
 23 I was familiar with that home, and I believe I
 24 answered yes. And then you went on to say, is that
 25 land part of that -- it isn't. That's a separate

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1 piece of property.
 2
 3 BY MR. BOYETTE:
 4 Q. Yeah, and that's my question. I appreciate you
 5 making that clear.
 6 And just to make it extra clear. There's a
 7 home that's located on a residential lot at 85 Pelican
 8 Street West, correct?
 9 A. Yes.
 10 Q. And that residential lot, to your
 11 understanding, is not part of the property that is the
 12 subject of this declaration, Exhibit 1, correct?
 13 MR. TRAFICANTE: Object to form.
 14 You can answer.
 15 THE WITNESS: I don't believe I understood your
 16 question because I -- I don't understand your
 17 question. Please repeat the question so we're on
 18 the same wavelength.
 19 BY MR. BOYETTE:
 20 Q. Okay. Well, we've agreed, I believe, that
 21 there is a single-family home located on a lot at 85
 22 Pelican Street West, correct?
 23 A. Yes.
 24 Q. And we've also agreed that there is land
 25 defined as condominium property in Exhibit 1, correct?

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1 A. I don't know what Exhibit 1 precisely states,
 2 but if you're referring to the vacant lot next to the
 3 Mitchell residence, then the answer is yes.
 4 Q. Well, I haven't -- I'm going to get there in a
 5 minute. I haven't gotten there yet.
 6 I'm still trying to talk about the lot on which
 7 the home is located, but I've got to take a step back
 8 because apparently we're not talking the same thing.
 9 Let's try again.
 10 A. All right.
 11 Q. So there is a -- there is an entity called The
 12 Club at La Peninsula, right?
 13 A. Yes.
 14 Q. And there is a declaration of covenants that
 15 was recorded in 1986 that created that entity, correct?
 16 A. Yes.
 17 Q. And there was land that was dedicated by the
 18 original declaration which we've marked as Exhibit 1,
 19 correct?
 20 A. I'd have to look at what you've marked as
 21 Exhibit 1.
 22 Q. Yeah, feel free to look at it again.
 23 MR. TRAFICANTE: It's that document.
 24 THE WITNESS: Then the answer is yes.
 25

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1 BY MR. BOYETTE:
 2 Q. Okay. And we talked about what land was
 3 subjected to this condominium declaration and you had
 4 said there are roads and a retention pond, and a
 5 clubhouse and a swimming pool, and there are seven
 6 condo buildings that are all within the lands that are
 7 subjected to this condominium declaration, correct?
 8 A. Yes.
 9 Q. And I just want to confirm that the residential
 10 lot on which 85 Pelican Street -- at 85 Pelican Street
 11 West is not part of the lands that are subject to this
 12 condominium declaration, Exhibit 1; is that correct?
 13 MR. TRAFICANTE: Object to form.
 14 You can answer.
 15 THE WITNESS: Can I rephrase your question to
 16 be absolutely crystal clear?
 17 BY MR. BOYETTE:
 18 Q. Absolutely.
 19 A. What you're asking is that 85 West Pelican part
 20 of The Club of La Peninsula and the answer is no. That
 21 is a --
 22 Q. That's my question.
 23 A. Yes. And so that is a separate residence that
 24 has nothing to do with The Club at La Peninsula.
 25 Q. I appreciate that. Thank you for -- you know,

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1 you said it nice and clear and simple and I guess --
 2 A. Well, thank you for your patience.
 3 Q. -- things that are complicated and simple and
 4 sometimes we don't do such a good job, so I appreciate
 5 that.
 6 Okay. So my next question is about the
 7 subject -- the parcel of land that is the subject of
 8 this lawsuit, which I understand is a 2.15-acre parcel
 9 that has four tennis courts on it.
 10 Are you familiar with such parcel of property?
 11 A. I am.
 12 Q. And do you have Exhibit 2 there in front of
 13 you?
 14 MR. TRAFICANTE: We can get it up. Just give
 15 me a second, Dave.
 16 MR. BOYETTE: Yep.
 17 MR. TRAFICANTE: We have it up now.
 18 (Plaintiffs' Exhibit No. 2, Aerial of Subject
 19 Property, was marked for identification.)
 20 BY MR. BOYETTE:
 21 Q. Does Exhibit 2 accurately depict the 2.15-acre
 22 parcel that is the subject of this lawsuit?
 23 A. Yes.
 24 Q. And is this -- I guess let me just tell you
 25 this. For purposes of this deposition, if I say "the

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1 subject property" or "the subject parcel," I'm talking
 2 about this 2.15-acre parcel shown in Exhibit 2.
 3 Is that okay with you?
 4 A. Yes.
 5 Q. And is the subject parcel part of The Club at
 6 La Peninsula?
 7 A. Yes.
 8 Q. That's a "yes"?
 9 A. Yes.
 10 Q. Do you know when these tennis courts were built
 11 that are on the specific parcel?
 12 A. My understanding is that was one of the first
 13 amenities that was established, so I think we go back
 14 to the late '80s.
 15 Q. Have you looked into what it would cost to
 16 remove the tennis courts from the subject parcel?
 17 A. Yes, I have.
 18 Q. And what have you done in that regard?
 19 A. I should probably clarify my answer.
 20 We've not looked at the cost at removing the
 21 tennis courts. We've looked at the cost of
 22 constructing similar tennis courts at a different
 23 location.
 24 Q. At a different location?
 25 A. Yes.

Page 20

1 Q. And what have you done with regard to looking
 2 into building new tennis courts in a different
 3 location?
 4 A. If I understood your question, you asked what
 5 we -- what I've done in that regard to making that
 6 move, the relocation?
 7 Q. Correct. What have you done to investigate
 8 that, correct.
 9 A. Yes, we solicited bids from various
 10 contractors. And, quite frankly, it became so
 11 convoluted that we engaged an engineer to collect and
 12 coordinate that information and then give us an
 13 estimate of what that cost would be, not including the
 14 demolition of the existing tennis courts.
 15 Q. And who is the engineer?
 16 A. Mr. Josh Maxwell from Turrell & Associates.
 17 Q. And what was the estimate?
 18 A. I'm speaking from memory, but it was over a
 19 million dollars. I think the exact figure was
 20 \$1,028,000.
 21 Q. Is it true that all of the owners of the 176
 22 condominium units are members of The Club at
 23 La Peninsula?
 24 A. Yes.
 25 Q. And is The Club at La Peninsula a condominium

Page 21

1 association?
 2 A. Yes.
 3 Q. Let me direct your attention to Exhibit 1 again
 4 on page 4 of 16.
 5 MR. TRAFICANTE: Just bear with us one sec.
 6 Dave, we're just pulling it back up. You said
 7 page 4?
 8 MR. BOYETTE: Page 4 of 16. And I want to ask
 9 you to read to yourself, you don't need to read it
 10 out loud, but read Section 3.3(b).
 11 MR. TRAFICANTE: I'm just moving it down for
 12 him, Dave. What did you say, 3.3(b)?
 13 MR. BOYETTE: B as in Bob.
 14 MR. TRAFICANTE: Yep.
 15 MR. SEIDENSTICKER: You need to let him know
 16 when you're done reading it, Dr. Patrella.
 17 THE WITNESS: Go ahead, Mr. Boyette.
 18 BY MR. BOYETTE:
 19 Q. Do you agree that 3.3(b) of Exhibit 1 requires
 20 that for all units that are jointly owned, except for
 21 those where it is jointly owned by a husband and wife,
 22 the joint owners are required to sign and file with the
 23 secretary of The Club a voting certificate?
 24 MR. TRAFICANTE: Object to form.
 25 You can answer.

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1 THE WITNESS: Yes, that's what this says.

2 BY MR. BOYETTE:

3 Q. And does The Club have a practice of asking

4 joint owners to do this?

5 A. Currently, no.

6 Q. Currently, no?

7 A. Correct.

8 Q. Has The Club ever had a practice of getting

9 voting certificates from owners of joint -- jointly

10 owned units?

11 A. They may have, but to the best of my knowledge,

12 there's one voting certificate out there from a

13 management company of Building 400, but I have no

14 knowledge, personal knowledge of retention of any

15 voting certificates. Our management company may have

16 them.

17 Q. Do you know if the management company has any?

18 A. I don't know that.

19 Q. So as you sit here today, you're not aware of

20 any voting certificates that The Club at La Peninsula

21 has ever received from the owners of any jointly owned

22 condominium unit in The Club?

23 A. The only voting certificate I've ever seen is

24 that of a unit in 400.

25 Q. Okay. Which building was that?

Page 23

1 A. 400.

2 Q. And do you remember the names of the owners of

3 that unit?

4 A. I believe that was Mr. and Mrs. Keeler.

5 Q. Can you spell that?

6 A. K-E-E-L-E-R.

7 Q. Do you know why The Club does not have a

8 practice of asking for voting certificates when it's

9 called for in the declaration, the original

10 declaration?

11 MR. TRAFICANTE: Object to form.

12 You can answer.

13 THE WITNESS: They may well have, Mr. Boyette.

14 It was before my time, so they may have them.

15 Whether they still possess them, I can't say.

16 Only thing I can say, I've never seen any other

17 than the one that I've previously described.

18 (Plaintiffs' Exhibit No. 3, Warranty Deed,

19 was marked for identification.)

20 BY MR. BOYETTE:

21 Q. Okay. Let me direct you to Exhibit 3.

22 MR. TRAFICANTE: And you can scroll down right

23 here, Dr. Patrella, if you need to.

24 THE WITNESS: Yes, sir.

25

Page 24

1 BY MR. BOYETTE:

2 Q. Have you seen this document before?

3 A. I have.

4 Q. Do you agree that this is an authentic copy of

5 a deed by which a former developer conveyed the subject

6 parcel and other parcels to Aircraft Investment, LLC?

7 MR. TRAFICANTE: Object to form.

8 You can answer.

9 THE WITNESS: It appears to be.

10 BY MR. BOYETTE:

11 Q. Yeah, I agree that it appears to be.

12 Do you have any reason to dispute that it is an

13 authentic copy of a deed from a Florida developer to

14 Aircraft Investments conveying the subject parcel?

15 MR. TRAFICANTE: Same objection. You can

16 answer.

17 THE WITNESS: I -- yeah, I'm not an attorney,

18 I'm a physician. I -- if I were advised by our

19 legal counsel that indeed it is, I would not

20 disagree with you.

21 BY MR. BOYETTE:

22 Q. And you don't -- sitting here right now, you

23 can't think of any reason to think that it's not an

24 authentic copy of such a deed, correct?

25 A. The signatories are not personally known by me.

Page 25

1 I'm assuming that we would have known if this was not,

2 perhaps, an authentic document by some other means. So

3 we rely on counsel to make that determination.

4 Q. And, you know, I may get to ask your lawyer his

5 position on this at another time, but now, today is my

6 opportunity to ask The Club, and you're here as the

7 designated representative of The Club.

8 So if you have some reason to dispute that this

9 is an authentic copy of the deed as I have described

10 it, this is my chance to find that out.

11 So if you have any basis to dispute that, would

12 you please let me know.

13 A. I -- let me manipulate the document again here.

14 The only reason that I would say that I can't

15 confirm this with a hundred percent degree of certainty

16 is the signatory to the document appears on multiple

17 documents, and there are documents which I've viewed in

18 the past where the same individual signs as both the

19 grantor and the grantee.

20 I've never been able to sort that out. So,

21 again, I would defer to counsel whether this is indeed

22 legitimate or not.

23 (Plaintiffs' Exhibit No. 4, Bill of Sale and

24 Assignment, was marked for identification.)

25

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1 BY MR. BOYETTE:

2 Q. All right. Let's go to Exhibit 4. Let me know

3 when you've had a chance to look at that one.

4 A. Okay.

5 Q. Can we agree that Exhibit 4 is an authentic

6 copy of a Bill of Sale and Assignment from a Florida

7 developer to Aircraft Investment?

8 MR. TRAFICANTE: Object to form. You can

9 answer.

10 THE WITNESS: My same concern, because it's the

11 same individual's signature on this document.

12 BY MR. BOYETTE:

13 Q. So it's the same answer as to Exhibit -- as you

14 gave to Exhibit 3?

15 A. Yes, sir.

16 Q. Okay. Would you agree that Aircraft

17 Investments -- or Investment, LLC, assigned all of its

18 rights as developer and declarant under the original

19 declaration -- I'm sorry, I'm going to rephrase that.

20 I got that wrong.

21 Would you agree that Twin Dolphins Equity

22 Partners assigned to Aircraft Investment all of its

23 rights as developer and declarant under the original

24 declaration of The Club at La Peninsula?

25 MR. TRAFICANTE: Object to form. You can

Page 27

1 answer.

2 THE WITNESS: Again, you know, Mr. Boyette, if

3 you look at the signature line, it's by a James

4 Kabcenell as manager for Twin Dolphin Enterprises,

5 LLC.

6 When -- and I have, you know, reviewed the

7 paperwork and all these transactions. And I'm

8 sorry, you need to be an attorney to figure this

9 out because his signature appears as both the

10 grantor and the grantee on a couple of copies.

11 I don't know if indeed he's a part of Twin

12 Dolphins Equity Partners, which the community

13 knowledge was that was Charles Bennett, and you

14 know, now we see him representing this company that

15 was in the past out there as being transferred by

16 the same individual.

17 So it becomes -- it's extremely confusing and,

18 quite honestly, as a layperson volunteer of the

19 board, we've always deferred to counsel.

20 BY MR. BOYETTE:

21 Q. Do you have any personal knowledge as to

22 whether James Kabcenell, K-A-B-C-E-N-E-L-L, was a

23 manager of Twin Dolphins Enterprises, LLC, on March 8,

24 2007, the date that the signature notarization is dated

25 on page 2 of Exhibit 4?

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1 A. I have no knowledge of that at all.

2 Q. Okay. And looking at Exhibit 3, do you have

3 any personal knowledge as to whether -- I'm going to

4 ask you a different question. Same signature on

5 Exhibit 3, so I'm going to ask you a different

6 question.

7 Do you have any personal knowledge of any facts

8 that would indicate that James Kabcenell was not

9 authorized to sign the warranty deed, Exhibit 3, or

10 bill of sale which is Exhibit 4?

11 A. I'm speaking from memory now. And I reviewed

12 some documents dating back to 2006, where there was

13 county objections in the transfer of title or

14 designation of the managing partner on these entities.

15 These entities are very similarly named and

16 described. Two of them had the same identical name,

17 other than it had an extra L in the LLC. And for me,

18 it was very confusing and I was not able to track it to

19 my satisfaction to establish the answer to the question

20 that you're asking.

21 Q. Well, I appreciate that, but I'm not asking if

22 you were confused and didn't understand documents you

23 looked at.

24 What I'm trying to find out is, do you have

25 personal knowledge of facts that indicate Mr. Kabcenell

Page 29

1 was not authorized to sign Exhibit 3 or 4?

2 A. I have no personal knowledge one way or the

3 other, whether he was or not. I -- so I guess the

4 answer to your question is no.

5 Q. That's what I figured. I just wanted to get it

6 on the record.

7 And do you have any personal knowledge of any

8 facts that would indicate that Twin Dolphins Equity

9 Partners did not have the right to assign all of its

10 rights as developer and declarant under the

11 La Peninsula declaration to Aircraft Investment when

12 Exhibit 4 was signed?

13 A. I'm not sure I can answer that yes or no. I

14 would express the same concerns that I expressed in

15 responding to the previous question.

16 Q. Well, you could answer with either a "yes" or

17 "no."

18 For instance, you could say yes, I have

19 personal knowledge, because in 2007 I knew

20 Mr. Kabcenell and I was involved and I knew that he had

21 a gun to his head and was forced to sign that document

22 against his will. That would be a yes, I have personal

23 knowledge, I witnessed something and I know that he

24 didn't have authority to do that or you -- AND there's

25 multiple ways that could happen, I suppose.

Page 30

1 Or you might say, I wasn't involved in 2007, I
 2 don't have personal knowledge as to whether they had
 3 authority to do that on that date.
 4 So it could be a "yes" or "no" either way and
 5 I'm just -- it seems like a simple question to me.
 6 And I just would like to get it confirmed on
 7 the record, do you or do you not have personal
 8 knowledge about whether Twin Dolphins had the authority
 9 to assign developer rights on this date?
 10 MR. TRAFICANTE: Object to form. You can
 11 answer.
 12 THE WITNESS: I have no personal knowledge.
 13 (Plaintiffs' Exhibit No. 5, Amendment to
 14 Declaration, was marked for identification.)
 15 BY MR. BOYETTE:
 16 Q. Let's go to Exhibit 5.
 17 MR. TRAFICANTE: I'm just bringing it up for
 18 him, Dave.
 19 MR. BOYETTE: Pardon?
 20 MR. TRAFICANTE: I'm just bringing it up for
 21 him.
 22 MR. BOYETTE: Okay.
 23 MR. TRAFICANTE: It's up now, Dave.
 24 BY MR. BOYETTE:
 25 Q. When you've had a chance to look at that, let

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1 me know.
 2 A. Okay. I have it, Mr. Boyette.
 3 Q. Do you agree that this document indicates that
 4 it is an amendment to the original declaration that we
 5 looked at, which is marked as Exhibit 1?
 6 A. I believe it was filed as an amendment, yes.
 7 Q. Okay. And do you have any reason to dispute
 8 that this document, in fact, amended the original
 9 declaration?
 10 A. Yes.
 11 MR. TRAFICANTE: Object to form.
 12 BY MR. BOYETTE:
 13 Q. And what reason do you have to dispute that?
 14 A. My understanding is that turnover by the
 15 developer had occurred several years prior to this
 16 amendment and, therefore, you know, on advice of prior
 17 counsel that this was not a --
 18 MR. TRAFICANTE: Well, I'm going to stop you.
 19 We're not going to disclose conversations that you
 20 had with counsel, whether it was prior counsel or
 21 our office.
 22 Mr. Boyette is asking you for your knowledge as
 23 the corporate representative of La Pen, so do not
 24 disclose conversations or advice from counsel.
 25 THE WITNESS: Okay.

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1 BY MR. BOYETTE:
 2 Q. Other than turnover having occurred, assuming
 3 it occurred prior to this document Exhibit 5, do you
 4 have any other reason to believe that this document did
 5 not validly amend the original declaration?
 6 MR. TRAFICANTE: Object to form. You can
 7 answer.
 8 THE WITNESS: No.
 9 (Plaintiffs' Exhibit No. 6, Special Warranty
 10 Deed, was marked for identification.)
 11 BY MR. BOYETTE:
 12 Q. Let's go to Exhibit 6.
 13 MR. TRAFICANTE: He's there, Dave.
 14 BY MR. BOYETTE:
 15 Q. Can we agree that this is an authentic copy of
 16 a warranty deed which was given by Aircraft Investment,
 17 LLC, to Mr. and Mrs. Mitchell?
 18 A. Yes, it appears to be.
 19 Q. And can we agree that this deed conveyed the
 20 subject parcel to the Mitchells?
 21 A. If the Exhibit A is an accurate description,
 22 yes.
 23 (Plaintiffs' Exhibit No. 7, Assignment and
 24 Assumption of Development Rights, was marked
 25 for identification.)

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1 BY MR. BOYETTE:
 2 Q. And let's go to Exhibit 7. Do you agree that
 3 this is an authentic copy of an assignment and
 4 assumption of development rights, et cetera, you'll
 5 see -- and I'm not going to read the whole title --
 6 from Aircraft Investment, LLC, to the Mitchells?
 7 A. It appears to be, yes.
 8 Q. Do you agree that this document assigned all of
 9 the developer and declarant rights under the original
 10 declaration to the Mitchells?
 11 MR. TRAFICANTE: Object to form. You can
 12 answer.
 13 THE WITNESS: I would say that from a layman's
 14 understanding, yes.
 15 (Plaintiffs' Exhibit No. 8, Warranty Deed,
 16 was marked for identification.)
 17 BY MR. BOYETTE:
 18 Q. And Exhibit 8, do you have that one in front of
 19 you?
 20 A. Yes.
 21 Q. Do you agree that this is an authentic copy of
 22 a warranty deed conveying the subject parcel for
 23 Mr. and Mrs. Mitchell to Dolphin Point, LLC?
 24 A. Yes, it appears to be.
 25 (Plaintiffs' Exhibit No. 9, Assignment and

Page 34

1 Assumption of Development Rights, was marked
 2 for identification.)
 3 BY MR. BOYETTE:
 4 Q. And how about Exhibit 9, can we agree that is
 5 an authentic copy of an assignment and assumption of
 6 development rights from Mr. and Mrs. Mitchell to
 7 Dolphin Point, LLC?
 8 A. Yes.
 9 Q. And do you have any reason to question whether
 10 the Mitchells assigned all of the developer and
 11 declarant rights under the original declaration to
 12 Dolphin Point, LLC, by operation of Exhibit 9?
 13 MR. TRAFICANTE: Object to form. You can
 14 answer.
 15 THE WITNESS: I want to make sure I understand
 16 you, so perhaps you could repeat that?
 17 MR. BOYETTE: Could -- I'd like the court
 18 reporter to read it back.
 19 (Thereupon, the court reporter read back from
 20 the record as follows:
 21 "Question: And do you have any reason to
 22 question whether the Mitchells assigned all of the
 23 developer and declarant rights under the original
 24 declaration to Dolphin Point, LLC, by operation of
 25 Exhibit 9?")

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1 THE WITNESS: No.
 2 (Plaintiffs' Exhibit No. 10, Memorandum of
 3 Settlement, was marked for identification.)
 4 BY MR. BOYETTE:
 5 Q. And let's go to Exhibit 10. Can you identify
 6 what this is?
 7 A. It is the memorandum of settlement dated
 8 3/14/2013.
 9 Q. And were you -- had you ever served on the
 10 board at The Club at the time of this document, which
 11 is dated March 14 of 2013?
 12 A. I was not an owner until June of 2013.
 13 Q. Were you aware of this settlement at the time
 14 that it occurred?
 15 A. Not at the time it occurred, no.
 16 Q. Do you agree that this is an authentic copy of
 17 a mediated settlement agreement entered into between
 18 The Club and Aircraft Investment, LLC?
 19 A. Yes, to the best of my knowledge.
 20 Q. So at the top of this document it says -- well,
 21 it's got a case number and it says the plaintiff was
 22 The Club and the defendant was Aircraft Investment.
 23 Do you know why The Club sued Aircraft
 24 Investment?
 25 MR. TRAFICANTE: And I'm just going to get on

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1 the record that this is outside the scope of the
 2 subject matter in the depo notice, but I'll allow
 3 him to answer.
 4 THE WITNESS: Yes, I -- the explanation will be
 5 rather lengthy, but my understanding is that after
 6 several years of trying to sell that parcel,
 7 Aircraft was unable. And Aircraft, being an
 8 investment company, was looking to extract some
 9 value and offered to donate that parcel to the
 10 county; the county refused acceptance. They tried
 11 to offer it to a nonprofit organization on the
 12 Isles of Capri; they refused to accept it.
 13 And I believe in order to prevent any further,
 14 not sale, but loss of control of any portion of
 15 that part of La Peninsula, the board of directors
 16 at that time decided to file suit against Aircraft.
 17 BY MR. BOYETTE:
 18 Q. Do you know what claims The Club brought
 19 against Aircraft in this lawsuit?
 20 MR. TRAFICANTE: And again, Dave, just so I can
 21 have it, you know, this is outside the scope, so
 22 he's not testifying on this as the corporate rep,
 23 but I'll allow you to ask the question.
 24 MR. BOYETTE: Well, I don't think it's out of
 25 the scope -- outside the scope. We can debate that

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1 another time, I suppose. But if you're going to
 2 allow him to answer, I --
 3 MR. TRAFICANTE: Yeah.
 4 MR. BOYETTE: We can debate in what capacity he
 5 answers at some other point in time, I suppose.
 6 MR. TRAFICANTE: Not a problem.
 7 THE WITNESS: Without having the documents in
 8 front of me, I can't answer that.
 9 BY MR. BOYETTE:
 10 Q. Do you know if Aircraft Investment filed any
 11 counterclaims against The Club in this lawsuit?
 12 A. Yes.
 13 Q. Do you know what the counterclaims were for?
 14 A. Again, without having the documents in front of
 15 me, I can't specifically say.
 16 Q. Do you know if The Club alleged in this
 17 litigation that Aircraft Investment had assumed all of
 18 the prior developer's obligations and interests
 19 relative to La Peninsula and was responsible for
 20 seawall repairs, landscaping and road resurfacing?
 21 A. If I understand your question, you're asking
 22 did Aircraft acknowledge --
 23 Q. Let me break it down. I'll make it shorter and
 24 simpler.
 25 Do you know if The Club in this lawsuit alleged

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1 that Aircraft Investment had assumed all of the prior
 2 developer's obligations and interests relative to
 3 La Peninsula?
 4 A. Yes.
 5 Q. And do you know if The Club alleged that
 6 Aircraft Investment was responsible for making seawall
 7 repairs and landscaping improvements and road
 8 resurfacing improvements?
 9 A. Yes.
 10 Q. In Section 4(b) of Exhibit 10, do you see where
 11 it says, "Approved construction of up to 37-unit
 12 condominium on the development parcel that will be part
 13 of The Club"?
 14 Do you see that?
 15 A. Yes.
 16 Q. And do you agree that the reference to the
 17 development parcel is a reference to the 2.15-acre
 18 parcel we've defined as the subject parcel for this
 19 deposition?
 20 A. Yes.
 21 Q. And 4.C says that, "The plaintiff," which is
 22 The Club, "agrees to recognize the rights of the owner
 23 of the development parcel as declarant, subject to a
 24 partial assignment of architectural control rights to
 25 The Club as to all areas other than the development

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1 parcel."
 2 Do you see that provision?
 3 A. I do.
 4 Q. And what is your understanding of what that
 5 provision means?
 6 MR. TRAFICANTE: Object to form. You can
 7 answer.
 8 THE WITNESS: My understanding is that The Club
 9 acknowledges that the owners of that 2.14 acres is
 10 the declarant developer of that parcel, and that
 11 The Club has no right of architectural control of
 12 that parcel.
 13 BY MR. BOYETTE:
 14 Q. And going back to Exhibit 1, let me direct you
 15 to page 12 of 16, to Section 11.3.
 16 MR. TRAFICANTE: Just hold on one sec, Dave.
 17 He's just getting to Exhibit 1.
 18 You said page 12?
 19 MR. BOYETTE: Exhibit 1, page 12.
 20 MR. TRAFICANTE: I can go there quicker. Keep
 21 going to page 12 so you can see it.
 22 He's on page 12. Which section, Dave?
 23 MR. BOYETTE: 11.3.
 24 MR. TRAFICANTE: He's there.
 25

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1 BY MR. BOYETTE:
 2 Q. Okay. Do you see where the original
 3 declaration says that, "The declarant may amend the
 4 declaration for any purpose, without the consent of the
 5 members, so long as it owns any property or units in
 6 La Peninsula and provided such amendment doesn't
 7 materially and adversely affect the plane of
 8 development for La Peninsula"?
 9 A. Yes.
 10 Q. And do you agree that Aircraft Investment had
 11 the rights of the declarant at least as of the date of
 12 this memorandum of settlement we were just looking at?
 13 MR. TRAFICANTE: Object to form. You can
 14 answer.
 15 THE WITNESS: They -- yes. I mean, we -- we
 16 signed that memorandum of agreement and agreed that
 17 with regard to the subject parcel they indeed did
 18 have the right.
 19 BY MR. BOYETTE:
 20 Q. And those rights would include the right to
 21 amend the declaration as under the terms of 11.3 of the
 22 declaration, wouldn't they?
 23 MR. TRAFICANTE: Object to form. You can
 24 answer.
 25 THE WITNESS: Relative to the parcel, yes.

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1 BY MR. BOYETTE:
 2 Q. We looked earlier at Exhibit 5, which was the
 3 document titled "Declarant Amendment by" -- and it
 4 says, "by Aircraft Investment."
 5 If you want to look at Exhibit 5 again.
 6 A. Okay.
 7 Q. So my next question is: Do you have -- does
 8 The Club -- let me put it this way.
 9 Is it The Club's position that Aircraft
 10 Investment did not have the right to do this declarant
 11 amendment under 11.3 of the original declaration?
 12 A. Again, I think the assumption was that turnover
 13 had occurred and then this was not relevant.
 14 Q. Is there anything in Exhibit 5 that The Club
 15 contends materially and adversely affects the plan of
 16 development for La Peninsula?
 17 MR. TRAFICANTE: Object to form. You can
 18 answer.
 19 THE WITNESS: I'd have to, you know, review the
 20 whole thing and look at it.
 21 BY MR. BOYETTE:
 22 Q. Well, Exhibit 5 is not that long, so take your
 23 time and look at it.
 24 And the question is whether you know of
 25 anything in Exhibit 5 that materially and adversely

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1 affects the plan of development for La Peninsula.

2 A. I don't see anything that would specifically

3 indicate that there was a act or anything that would at

4 that time adversely affect The Club.

5 Q. So just to be clear, you're not aware of

6 anything in Exhibit 5 that materially and adversely

7 affects the plan of development for La Peninsula,

8 correct?

9 MR. TRAFICANTE: Same objection. You can

10 answer.

11 THE WITNESS: I perhaps could, you know,

12 conceive of a scenario where there would be an

13 alteration of the initial site plan that could

14 conceivably affect some or all of the membership of

15 La Peninsula.

16 BY MR. BOYETTE:

17 Q. And is that -- but let me put it this way.

18 There is no alteration to the site plan in

19 Exhibit 5. I mean, what you conceive as a possibility

20 is not anywhere described in the four corners of

21 Exhibit 5, correct?

22 A. See -- I see a contradiction here insofar as

23 if -- if turnover had already occurred and if the

24 declarant at the time was referring to the subject

25 parcel, then I agree with you a hundred percent that

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1 it -- it doesn't, you know, adversely affect it.

2 Unless they wanted to put in a theme park or

3 something like that, or a food truck park. That is

4 what I'm referring to when I'm saying conceivably there

5 could be a scenario that would adversely affect the

6 remainder of La Pen.

7 Q. Right. And I'm just confirming of the record

8 that there's nothing in Exhibit 5 that says the subject

9 parcel is going to be a theme park or have food trucks;

10 and it doesn't do anything to change the site plan or,

11 at least at this point in time, within its four

12 corners, that adversely affects the plan of

13 development.

14 True?

15 A. No, I wouldn't agree with that because I -- it

16 says that they can modify the site plan at their

17 leisure, effectively.

18 Q. But it doesn't do that at this point in time.

19 A. No, in this point in time, I agree.

20 (Plaintiffs' Exhibit No. 11, Tennis Court

21 Easement and Covenants, was marked for

22 identification.)

23 BY MR. BOYETTE:

24 Q. Let's go to Exhibit 11. Let me know when

25 you've had a chance to look at that.

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1 A. I have it here, Counselor.

2 Q. Is this an authentic copy of a tennis court

3 easement and --

4 A. Yes.

5 Q. -- covenants that was signed by Aircraft

6 Investment and The Club pursuant to the mediated

7 settlement agreement?

8 A. Yes, it appears to be.

9 Q. What was that?

10 A. I said yes, it appears to be.

11 Q. Okay. Well, when you say "it appears to

12 be" --

13 MR. TRAFICANTE: Hold on one sec, Dave. We

14 just accidentally -- he clicked onto the wrong

15 exhibit, so he's back on now.

16 BY MR. BOYETTE:

17 Q. When you say "it appears to be," do you have

18 any reason to think it's anything other than an

19 authentic copy of a tennis court easement document

20 signed by The Club and Aircraft Investment pursuant to

21 the mediated settlement agreement?

22 A. Only because there were several copies that I

23 believe were received from your office that had notes

24 written all over it, and just to make sure they're the

25 same, but this appears to be signed again by Kabcenell.

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1 And I'm looking for the signature.

2 Q. Go to page 9.

3 A. Okay.

4 Q. Do you see the signature of the president of

5 The Club on page 9 of Exhibit 11?

6 A. Yes.

7 Q. And was Richard Van Deelen the president --

8 A. Yes.

9 Q. -- in --

10 Does The Club contend that there's been a

11 breach of any of the terms in this tennis court

12 easement document?

13 A. Yes.

14 Q. Can you describe for me what sort of breach The

15 Club feels has occurred?

16 A. Members or guests of members were prevented

17 from playing during a tournament.

18 And there were bleachers and a bandstand that

19 were formerly on the subject parcel, apparently by code

20 ordinance violation. They had to move those off the

21 subject parcel. They, meaning the owners.

22 The -- they were then subsequently placed on

23 tennis courts three and four, of which The Club owns a

24 good portion of that court number four, and prevented

25 membership from participating in the tournament.

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1 Q. When did this occur?
 2 A. That would have been in December of 2019.
 3 Q. And I just want to make sure. It's a little
 4 hard to hear you, so I want to make sure I got it
 5 right.
 6 You're saying there were bleachers placed on
 7 courts three and four?
 8 A. Bleachers and a bandstand that the -- I'm not
 9 sure what his proper title is, but the inspector had
 10 asked them to move those off their property.
 11 Apparently there was code violation. So they were
 12 moved off of the subject parcel on to the tennis
 13 courts.
 14 MR. BOYETTE: Can we take a short break?
 15 MR. TRAFICANTE: Yeah, of course.
 16 MR. BOYETTE: I think my third grandchild has
 17 just been born and I want to take a brief call from
 18 my wife.
 19 MR. TRAFICANTE: Congratulations, and no
 20 problem. Do you want to take a five-minute break
 21 then, David?
 22 MR. BOYETTE: Five minutes, please.
 23 MR. TRAFICANTE: Perfect.
 24 MR. SEIDENSTICKER: That's a good reason.
 25 (Thereupon, a brief recess was taken.)

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1 BY MR. BOYETTE:
 2 Q. Prior to the break I had asked you if it is
 3 The Club's position that there has been a breach of the
 4 tennis court easement, Exhibit 11, and you described an
 5 incident with bleachers and a grandstand, I think you
 6 said, being placed on courts three and four.
 7 Is that right?
 8 A. I said bandstand with a B.
 9 Q. Gotcha. Do you know who put those items on the
 10 tennis courts?
 11 A. Someone that was working for the Mitchells.
 12 Q. Okay. Do you know the name of the person?
 13 A. No.
 14 Q. And you said -- you broke up -- someone -- I
 15 didn't hear your whole answer.
 16 A. Someone who was working on behalf of the
 17 Mitchells.
 18 Q. And how do you know the person was working on
 19 behalf of the Mitchells?
 20 A. Because I believe it was the same person that
 21 attempted to dismantle the netting on one of the tennis
 22 courts.
 23 Q. Has the bandstand and the bleacher, are those
 24 items, were they later removed from the tennis courts?
 25 A. Yes. Code compliance was, I believe, notified

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1 by our attorney at the time and the bleachers and
 2 bandstand were subsequently removed.
 3 Q. And for how long a period of time were those
 4 items on the tennis courts?
 5 A. Probably not longer than a week.
 6 Q. And would it be fair to say that that breach of
 7 the tennis court easement was cured when the items were
 8 removed?
 9 MR. TRAFICANTE: I object to form. You can
 10 answer.
 11 THE WITNESS: I missed the -- your adjective
 12 there.
 13 BY MR. BOYETTE:
 14 Q. Would it be fair to say that that breach, by
 15 putting the items on the tennis court, was cured when
 16 the items were removed?
 17 MR. TRAFICANTE: Same objection. You can
 18 answer.
 19 THE WITNESS: Yes, other than it -- it
 20 prevented our use of those two tennis courts.
 21 BY MR. BOYETTE:
 22 Q. Does The Club contend that there have been any
 23 other breaches of the tennis court easement other than
 24 this incident with the bleachers and the bandstand?
 25 A. Prior to moving the bleachers and bandstand on

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1 the courts, I believe there was an employee of the
 2 Mitchells began to dismantle the court and actually
 3 hammered off one of the cleats on the netting pole to
 4 release the net because he couldn't -- couldn't get the
 5 clasp to unhinge, so they pounded it off.
 6 And also there were locks put on the gates to
 7 prevent entrance on to the tennis courts. There were
 8 signs posted on the tennis courts.
 9 There was, you know, an incident there whereby
 10 the police were called. The sheriff deputy had to show
 11 up. I have personal knowledge witnessing a portion of
 12 that. And I guess offhand that's all I can recollect.
 13 Q. A lot of that answer I couldn't hear. It's
 14 breaking up. I mean, the sound quality wasn't good
 15 before the break and it's gotten worse.
 16 MR. TRAFICANTE: I'm trying to raise the
 17 volume, Dave. Let me see if that works better.
 18 And I'll ask Dr. Patrella just to speak up a little
 19 more.
 20 Can you hear me clearly?
 21 MR. BOYETTE: Yes, I heard you clearly.
 22 MR. TRAFICANTE: So, if you can, Dr. Patrella,
 23 just try to speak up a little louder.
 24 Do you want --
 25 MR. BOYETTE: I didn't get that last answer, so

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1 I'd ask you to do it again.

2 MR. TRAFICANTE: Do you want us to have the

3 court reporter read it back, Dave?

4 MR. BOYETTE: That would be fine.

5 (Thereupon, the court reporter read back from

6 the record as follows:

7 "Answer: Prior to moving the bleachers and

8 bandstand on the courts, I believe there was an

9 employee of the Mitchells began to dismantle the

10 court and actually hammered off one of the cleats

11 on the netting pole to release the net because he

12 couldn't -- couldn't get the clasp to unhinge, so

13 they pounded it off.

14 "And also there were locks put on the gates to

15 prevent entrance on to the tennis courts. There

16 were signs posted on the tennis courts.

17 "There was, you know, an incident there whereby

18 the police were called. The sheriff deputy had to

19 show up. I have personal knowledge witnessing a

20 portion of that. And I guess offhand that's all I

21 can recollect."

22 MR. BOYETTE: I heard all of that nice and

23 clear, so whatever -- whatever microphone she's

24 talking into, I'll ask the witness to do the same.

25 MR. TRAFICANTE: So it's the same microphone,

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1 Dave. I'll just ask Dr. Patrella to speak up a

2 little more.

3 MR. BOYETTE: Yeah. And I can hear you good,

4 too, so --

5 BY MR. BOYETTE:

6 Q. What is the current status of the tennis

7 courts?

8 A. Two of the courts, number three and number

9 four, are functional.

10 One and two were so severely damaged by Ian

11 that progress is being made, but they're probably not

12 to the standard that we want them to be, so it's a work

13 in progress.

14 We've -- unfortunately, some of the sand that

15 was brought in to the subject parcel because of the

16 high water during Ian washed on to those courts,

17 particularly court number one. And we're going to

18 probably have to get a skid steer in there to take that

19 down and then resurface that particular court.

20 Q. You said that there were signs posted. What

21 did the signs say?

22 A. They were "no trespassing" signs, effectively.

23 I can't -- our former attorney I know came out and took

24 pictures, so those are available I'm sure somewhere.

25 Q. Have the signs been removed?

Page 52

1 A. Yes.

2 Q. And for how long a period of time were the

3 signs displayed?

4 A. Ten days.

5 Q. Okay. And have the locks on the gates been

6 removed?

7 A. Yes.

8 Q. And for what period of time were the gates

9 locked?

10 A. Approximately the same.

11 Q. Other than what we've already discussed, is

12 there any other thing that The Club contends have been

13 a breach of the tennis court easement?

14 A. Not that I have personal knowledge of.

15 Q. How about anything that you don't have personal

16 knowledge of?

17 A. There were -- information was circulated

18 throughout the community whereby notices had been put

19 out apparently on Marco Island alerting people there,

20 that if they wanted to play tennis they could come over

21 to utilize those courts.

22 And I -- you know, our -- and I was not on the

23 board at the time, but the feeling was that was an

24 intimidation tactic to force some other type of

25 compliance.

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1 And again, I -- I don't -- I saw those articles

2 and commentary about those articles, but the discussion

3 was the right to extend privileges to someone living in

4 Fort Myers and Marco Island to utilize the tennis

5 courts that The Club maintains.

6 Q. Do you know if there have been any persons who

7 were not members of The Club who have used the tennis

8 courts since the tennis court easement was signed?

9 A. Yes, of course.

10 Q. I guess anybody who is not a guest of a club

11 member?

12 A. Yes.

13 Q. And how often does that happen?

14 A. Well, until the courts were recently destroyed,

15 it happened with great frequency.

16 Q. And does The Club -- is it The Club's position

17 that that is a breach of the tennis court easement?

18 A. Our rules and regs were indeed violated by

19 having any member or any resident of the Isles of Capri

20 having access to the tennis courts.

21 Q. You said "our rules and regs," you mean

22 The Club's rules and regulations?

23 A. Correct, the same ones that were in effect in

24 1986.

25 Q. My question wasn't whether use by persons

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1 outside The Club, not as guests of members of The Club,
 2 whether that breached the tennis court easement. Not
 3 whether it violated The Club's rules and regs.
 4 So I want to redirect you to my question which
 5 is whether it's The Club's position that use by such
 6 persons constitutes a breach of the tennis court
 7 easement.
 8 A. So --
 9 MR. TRAFICANTE: Object to form. You can
 10 answer.
 11 THE WITNESS: Yeah, with that stipulation you
 12 made, I would say no, there's nothing else that I
 13 know of.
 14 (Plaintiffs' Composite Exhibit No. 12,
 15 Certificate of Amendment, was marked for
 16 identification.)
 17 BY MR. BOYETTE:
 18 Q. Okay. Let's go to Exhibit 12, and when you've
 19 had a chance to look at this can you tell me what it
 20 is?
 21 A. There are a couple of documents included in
 22 here, one of which is the -- or the first one is the
 23 certificate of amendment, and then the amendment and
 24 restated documents follow that first document.
 25 Q. And that's an amended and restated declaration,

Page 55

1 articles and bylaws, correct?
 2 A. Yes.
 3 Q. Section 11.2 in the original declaration, which
 4 is Exhibit 1, states that an amendment to the
 5 declaration has to be signed by the president and the
 6 secretary.
 7 Do you agree with that, that that's what it
 8 says?
 9 MR. TRAFICANTE: Object to form. You can
 10 answer.
 11 THE WITNESS: Yes.
 12 BY MR. BOYETTE:
 13 Q. And this amendment is not signed by the
 14 secretary; is that correct?
 15 A. It appears as though on behalf of The Club at
 16 La Peninsula it was signed by Robert White.
 17 Q. And he was the president?
 18 A. Yes.
 19 Q. So when this amendment was done, it did not
 20 comply with the requirement that the secretary also
 21 sign, correct?
 22 MR. TRAFICANTE: Object to form. You can
 23 answer.
 24 THE WITNESS: I guess I'd say if the '86
 25 declarations requested the secretary to sign them,

Page 56

1 I would agree this doesn't have the secretary's
 2 signature.
 3 BY MR. BOYETTE:
 4 Q. You're kind of breaking up again. I don't know
 5 why. It's hard to hear you. I don't know if you're
 6 talking into the microphone different than -- maybe
 7 it's when you -- I don't know what the problem is.
 8 MR. TRAFICANTE: The microphone -- the
 9 microphone is by the TV, so I think it might just
 10 be when he's looking at the computer, because he's
 11 not facing the TV.
 12 MR. BOYETTE: Yeah, I think that's the problem.
 13 BY MR. BOYETTE:
 14 Q. Section 11.2 in Exhibit 1, the original
 15 declaration, says that an amendment shall set forth the
 16 effective date, the date of notice of the
 17 meeting -- the date notice of meeting was given, the
 18 total number of votes, the number of votes required for
 19 a quorum, the number of votes necessary to adopt the
 20 amendment and the number of votes cast against the
 21 amendment, correct?
 22 A. I'm -- you said 11 point?
 23 Q. Two. Page 11 of Exhibit 1.
 24 A. Got it. No, I've got it.
 25 Q. It requires that an amendment set forth all

Page 57

1 those items of information, correct?
 2 A. Yes.
 3 Q. And this certificate of amendment, Exhibit 12,
 4 fails to do any of those requirements or satisfy any of
 5 those requirements, correct?
 6 MR. TRAFICANTE: Object to form. You can
 7 answer.
 8 THE WITNESS: Yes. Of course, we relied on our
 9 management company to assure that all of this was
 10 done properly in conjunction with our legal team at
 11 the time.
 12 BY MR. BOYETTE:
 13 Q. And the management company and the legal team
 14 at the time failed to comply with what 11.2 requires,
 15 correct?
 16 MR. TRAFICANTE: Object to form.
 17 THE WITNESS: I'm -- I'm not sure I'm qualified
 18 to state whether they complied or not. They may
 19 have reasons for doing what they did.
 20 BY MR. BOYETTE:
 21 Q. Okay. Well, is there anything within
 22 Exhibit 12 that -- where you see that it sets forth the
 23 six items, any of the six items that I mentioned?
 24 A. It has Robert White's signature on there.
 25 Q. Well, the six items I was talking about were

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1 the effective date, the date notice of the meeting was
 2 given, the total number of votes, the number of votes
 3 required for quorum, the number of votes necessary to
 4 adopt the amendment and the number of votes cast
 5 against the amendment.
 6 Is it your position that any of that is
 7 provided in Exhibit 12?
 8 MR. TRAFICANTE: Object to form. You can
 9 answer.
 10 THE WITNESS: I'm at the first document of
 11 Exhibit 12. Again, all the various points that
 12 you're saying were required, what I see here is,
 13 you know, a statement that there is an amendment
 14 and it was signed by Robert White.
 15 I have no other knowledge of any other
 16 documents that are out there.
 17 BY MR. BOYETTE:
 18 Q. What -- I didn't follow the last part of that
 19 answer.
 20 A. I'm not aware of any other documents that are
 21 out there other than this certificate of amendment
 22 signed by Robert White as president.
 23 Q. Okay. Does The Club agree that this amendment,
 24 Number 12, is invalid because it fails to comply with
 25 what Section 11.2 in Exhibit 1 required?

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1 A. No.
 2 Q. And why not?
 3 A. I guess that would more appropriately be
 4 addressed to the management company and legal counsel.
 5 (Plaintiffs' Exhibit No. 13, 5/27/2015
 6 Special Unit Owners Meeting Minutes, was
 7 marked for identification.)
 8 BY MR. BOYETTE:
 9 Q. Let's go to Exhibit 13. Let me know when
 10 you've had a chance to look at that.
 11 A. I have it up.
 12 Q. Is it correct that The Club called a special
 13 members' meeting on May 27th of 2015?
 14 A. Yes.
 15 Q. And the business on the agenda was to vote on
 16 the amended and restated declaration, articles and
 17 bylaws, which were being proposed at the time, correct?
 18 A. Yes.
 19 Q. And the meeting was adjourned because The Club
 20 didn't get enough votes; is that right?
 21 A. I don't know why the meeting was adjourned. I
 22 suspect -- it does say that a quorum was established so
 23 the meeting could take place, but I don't know why the
 24 meeting was adjourned.
 25 (Plaintiffs' Exhibit No. 14, 6/28/2015

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1 Special Unit Owners Meeting Minutes, was
 2 marked for identification.)
 3 BY MR. BOYETTE:
 4 Q. Let's look at Exhibit 14. Is it true that
 5 The Club called another special members meeting on
 6 June 28 of 2015 for the same purpose, to vote on these
 7 amended -- proposed amended governing documents?
 8 A. That date of June 28th may be incorrect. I
 9 tried to find some other minutes or something that
 10 would corroborate that date and I was not able to find
 11 any. That may be a typo and that should be July 28th.
 12 Q. Okay.
 13 A. But I'm not certain.
 14 Q. And Exhibit 13 says that the meeting was
 15 adjourned, to continue on July 28th.
 16 Do you see that?
 17 A. Yeah, that's why I referenced that, yes.
 18 Q. Yeah. Understood.
 19 And Exhibit 14 indicates the meeting was being
 20 continued to August 18th, correct?
 21 A. Yes.
 22 Q. And this meeting that was June 28th, perhaps
 23 July 28th, whatever the date was, do you know why it
 24 was adjourned?
 25 A. I don't.

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1 (Plaintiffs' Exhibit No. 15, 8/8/2015 Special
 2 Unit Owners Minutes, was marked for
 3 identification.)
 4 BY MR. BOYETTE:
 5 Q. All right. Let's go to Exhibit 15. Well,
 6 actually, back up a second.
 7 Am I -- is it true that Exhibits 13 and 14 are
 8 authentic copies of club meeting minutes?
 9 A. They appear to be.
 10 Q. How about Exhibit 15, is that an authentic copy
 11 of Club meeting minutes?
 12 A. The one from August?
 13 Q. Exhibit 15 dated August 18th of '15.
 14 A. Yes.
 15 Q. And is it correct that the amended and restated
 16 governing documents under Exhibit 12 were passed at
 17 this meeting on August 18th?
 18 A. Yes.
 19 Q. And the minutes indicate it was passed with 119
 20 "yes" votes, correct?
 21 A. Yes.
 22 (Plaintiffs' Exhibit No. 16, 5/6/2015 Letter,
 23 was marked for identification.)
 24 BY MR. BOYETTE:
 25 Q. And can you identify Exhibit 16?

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1 A. Okay.

2 Q. And what is this?

3 A. It is a letter to the La Peninsula membership

4 from the president at the time, Bob White.

5 Q. And it's dated May 6th of 2015, correct?

6 MR. TRAFICANTE: Hold on one sec, Dave. We

7 just -- I just want to get this. There you go.

8 THE WITNESS: Could you repeat the question,

9 please?

10 MR. BOYETTE: Yeah.

11 BY MR. BOYETTE:

12 Q. Was this letter sent out on or about May 6th of

13 2015?

14 A. That's when it's dated. Whether it was sent

15 out around then, difficult to say because we were in

16 the process of changing management companies and we had

17 just done the same a few months prior. So we went

18 through three management companies I believe in a year.

19 We were on our third one within the same year.

20 So I -- my understanding was there was some

21 confusion at the time, but the letter is certainly

22 dated May 6th.

23 Q. Can you confirm this letter was sent by

24 the -- or to the members?

25 A. I would have to speculate. I'm going to assume

Page 63

1 it was.

2 Q. In the third paragraph it says:

3 "You are well aware that the Master Board has

4 been trying for three years to have new condominium

5 documents developed and approved by La Peninsula

6 owners."

7 Do you see that?

8 A. Yes.

9 Q. And is The Club at La Peninsula, Inc.,

10 sometimes referred to as the Master Board?

11 A. The master association, insofar as there are

12 seven other condo associations within La Pen.

13 Q. And each of those seven buildings has its own

14 condominium association, correct?

15 A. Yes.

16 Q. And then The Club is sometimes referred to as

17 the Master Association, correct?

18 A. That is correct.

19 Q. In the next sentence the letter says:

20 "It's been a difficult process. An approval

21 requires 118 'yes' votes."

22 Do you see that?

23 A. Yes.

24 Q. And is that a correct statement? Do you agree

25 with that?

Page 64

1 A. Yes.

2 Q. And is it also correct that there were 119

3 "yes" votes, which means the proposed amended governing

4 documents which are under Exhibit 12 passed by one

5 vote; is that right?

6 A. I was not personally involved at the time. I

7 know there's subsequently been additional recounts, but

8 I think that number accurately reflects what the

9 membership desired.

10 Q. How many recounts were there?

11 A. I couldn't answer that. I was not involved.

12 Q. Do you know the result of any of those

13 recounts?

14 A. Only that the proxies approved the -- the

15 proxies approved the restated and amended articles and

16 declarations.

17 Q. Okay. I'm confused.

18 I asked you if you knew what the result of the

19 recount was and I just -- you said only that the

20 proxies what? I didn't understand your answer.

21 A. We had sufficient proxies to approve the

22 change.

23 Q. Oh, okay. Do you know if the recount came out

24 at 119 or 125 or some other number?

25 Do you know?

Page 65

1 A. Not exactly.

2 Q. Do you know who did the recount?

3 A. Management at the time, and that's pretty

4 much -- it would be Resort Management.

5 Q. Do you know the name of the management company

6 at the time that might have done a recount?

7 A. Resort Management.

8 Q. What was that?

9 A. Resort Management.

10 Q. Do you know the name of the contact person who

11 might have been working on it?

12 A. At that time, no.

13 Q. And do you know the name of any contact person

14 at that company that The Club had done business with?

15 A. I believe our CAM at that time was an

16 individual by the name of Dan Hutchinson, and there

17 were a couple of layers of management above him, one of

18 which was Matt Darling and another district manager

19 Dipolito or something of that nature.

20 (Plaintiffs' Composite Exhibit No. 17, Vote

21 Tally Sheet, was marked for identification.)

22 BY MR. BOYETTE:

23 Q. Can you look at Exhibit 17?

24 A. Okay.

25 Q. And do you know what this document is?

Page 66

1 A. Yes.

2 Q. Did you hear my question?

3 A. I did.

4 Q. Okay. Do you know what this document is? It's

5 15 pages.

6 A. Yes.

7 Q. What is it?

8 A. It's the tally of the proxies, dated 8/5 of

9 '15, and in the corner it says 8/17.

10 Q. And then on page 15 of 15, it's got -- do you

11 see where it says 119 and then 24?

12 MR. TRAFICANTE: He's getting there, Dave.

13 THE WITNESS: Yes.

14 BY MR. BOYETTE:

15 Q. And is that the tally of "yes" and "no" votes?

16 A. Yes, amongst other things, yes.

17 Q. And I see that it says it's got Y-121, N-24,

18 and then it's got without 311-411, 119-24.

19 Do you see that?

20 A. I do.

21 Q. What was that?

22 A. Yes.

23 Q. Okay. Were the votes for Units 311 and 411

24 disqualified because they were more than 90 days

25 delinquent on dues?

Page 67

1 A. I don't know that.

2 Q. Do you know if the votes for those two units

3 were disqualified?

4 A. I don't know that.

5 Q. Do you know who wrote "without 311-411"?

6 A. No, I don't. I would assume it was either our

7 attorney at the time or management personnel.

8 Q. And do you know why the tally came out this

9 way, where it says "yes-121" and then "without"

10 311-411, 119?

11 Do you know why that is?

12 A. I don't.

13 Q. Do you agree that for some reason the votes on

14 311 and 411 were disqualified and the "yes" votes were

15 counted as a total of 119?

16 MR. TRAFICANTE: Object to form. You can

17 answer.

18 THE WITNESS: I'm not sure they were

19 disqualified. I don't know what that notation

20 means.

21 BY MR. BOYETTE:

22 Q. But you do know that the minutes reported that

23 there were 119 "yes" votes to pass these proposed

24 amended documents, correct?

25 A. Yes.

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1 (Plaintiffs' Exhibit No. 18, Proxy -

2 Aversano, was marked for identification.)

3 BY MR. BOYETTE:

4 Q. Let me have you go to Exhibit 18. Is this the

5 vote that was cast by Unit 203 of Building 700?

6 A. Yes.

7 Q. And this unit owner, Virginia Aversano, voted

8 against the proposed amendments, correct?

9 A. Yes.

10 Q. And if you go to page 12 of Exhibit 17 for Unit

11 203 of Building 700, it shows Sal and Virginia Aversano

12 own the unit, correct?

13 MR. TRAFICANTE: He's getting there. He's back

14 on the prior exhibit. He's just scrolling.

15 You said page 12?

16 MR. BOYETTE: Yep, page 12 of 17.

17 MR. TRAFICANTE: And which unit, Dave?

18 MR. BOYETTE: Page 12, it's got Unit 700-203,

19 and it shows Sal and Virginia Aversano as the

20 owner.

21 Do you see that?

22 THE WITNESS: Yes.

23 BY MR. BOYETTE:

24 Q. And on the tally sheet it shows "yes" votes as

25 being cast for that unit, correct?

Page 69

1 A. Yes.

2 Q. But the proxy shows that in fact this unit

3 owner voted "no," correct?

4 A. Yes. And I think at the time, the notation

5 that it was 700-203 was not made, and the assumption

6 that it was just Building 200, Unit 203.

7 Q. Do you agree that this was a mistake counting

8 this as a "yes" vote when it was really a "no" vote?

9 A. Yes.

10 Q. So if we correct that mistake, that would mean

11 there would be 118 "yes" votes instead of 119, correct?

12 MR. TRAFICANTE: Object to form. You can

13 answer.

14 THE WITNESS: Based on this tally. But those

15 two other votes weren't counted. So I'm not sure,

16 you know, that I can say with accuracy that indeed

17 it was 118.

18 BY MR. BOYETTE:

19 Q. Well, we can say that if the mistake were

20 corrected, the minutes, Exhibit 15, should have

21 reported 118 "yes" votes instead of 119, correct?

22 A. Yes.

23 MR. TRAFICANTE: Dave, is it okay to take a

24 two-minute break just to use the restroom? I

25 apologize. If you -- I don't want to break your

Page 70

1 thought, but --

2 MR. BOYETTE: No, that's fine.

3 MR. TRAFICANTE: I just need two minutes.

4 MR. BOYETTE: Let's make it a short one.

5 MR. TRAFICANTE: Yep, not a problem.

6 (Thereupon, a brief recess was taken.)

7 MR. TRAFICANTE: Thank you, Dave. Dave, you're

8 on mute.

9 MR. BOYETTE: Thank you.

10 BY MR. BOYETTE:

11 Q. Back to Exhibit 17 on page 8.

12 MR. TRAFICANTE: I'm just going to get him to 8

13 real quick.

14 BY MR. BOYETTE:

15 Q. Near the top of page 8, it shows "yes" votes

16 from Unit 421 owned by Capri Real Estate Properties,

17 LLC, correct?

18 A. Yes.

19 (Plaintiffs' Exhibit No. 19, Proxy - Keeler,

20 was marked for identification.)

21 BY MR. BOYETTE:

22 Q. And Exhibit 19 is the vote that was cast for

23 that unit, correct?

24 A. 719. Yes.

25 Q. And it indicates it was signed by Clayton

Page 71

1 Keeler, correct?

2 A. Yes.

3 Q. Do you know if The Club did anything to

4 determine whether Clayton Keeler had authority to cast

5 his vote on behalf of Capri Real Estate Properties,

6 LLC?

7 A. I'm not sure what you mean, did they do

8 anything.

9 (Plaintiffs' Exhibit No. 21, Articles of

10 Amendment - Capri Real Estate Properties, was

11 marked for identification.)

12 BY MR. BOYETTE:

13 Q. Let me direct you to Exhibit 21. On page 4 of

14 5, do you agree this document shows that Clayton Keeler

15 was removed as a manager of Capri Real Estate

16 Properties, LLC?

17 MR. TRAFICANTE: Object to form.

18 THE WITNESS: Yes.

19 BY MR. BOYETTE:

20 Q. Do you know if Clayton Keeler was a manager of

21 that corporation when he signed the proxy vote?

22 A. He was the sole owner of that corporation.

23 Q. I didn't ask that. I appreciate it, but I

24 think my question was if you know if he was a manager

25 when he signed the proxy vote.

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1 A. I have -- no, I have no personal knowledge of

2 that. All I know is he was a resident there.

3 Q. Do you agree that his -- that the vote for this

4 unit should not have been counted if he was not a

5 manager or not authorized to cast the vote?

6 MR. TRAFICANTE: Object to form. You can

7 answer.

8 THE WITNESS: I suspect that they would just

9 alter that and have his wife sign instead of him.

10 BY MR. BOYETTE:

11 Q. Which Exhibit 19 indicates they failed to do,

12 correct?

13 A. I would have to listen to your previous

14 question. Because if I understood your previous

15 question, it was something to the effect did you check

16 to see if he could vote and -- and if, in fact, you

17 know, it was found that he couldn't, they would just

18 ask his wife then to sign.

19 Q. Yeah. And then my question was: Isn't it true

20 they did not have his wife sign the vote?

21 A. Correct. He signed that.

22 Q. Let's go back to Exhibit 17 on page 11. It

23 shows votes cast for Unit 624 and 633 by James Keay

24 Trust. Do you see that?

25 A. Six? I'm sorry?

Page 73

1 Q. 624 and 633.

2 A. Vosika?

3 Q. What was that?

4 A. Vosika? 623 is --

5 Q. 624 and 633 on page 11, it says James K-E-A-Y

6 Trust on 633, and it says T-R on 624.

7 Do you see that?

8 A. No.

9 MR. TRAFICANTE: He's looking at Unit 623,

10 Dave.

11 MR. BOYETTE: 624.

12 MR. TRAFICANTE: He's talking about Unit 624.

13 THE WITNESS: Okay. James Keay, yes.

14 BY MR. BOYETTE:

15 Q. And then it says Ralph Sonntag Irrevocable

16 Trust. Do you see that?

17 A. I do.

18 Q. And these were counted as "yes" votes, correct?

19 A. Yes.

20 (Plaintiffs' Exhibit No. 22, Proxy - Sonntag,

21 was marked for identification.)

22 BY MR. BOYETTE:

23 Q. And Exhibit 22 is the proxy by which those

24 votes were cast, correct?

25 Page 1 is the first page for Unit 624 and

Page 74

1 page 3 is the first page for Unit 633.
 2 A. Correct.
 3 Q. And Laura Sonntag cast the "yes" votes for both
 4 of these units, correct?
 5 A. Yes.
 6 (Plaintiffs' Exhibit No. 23, Warranty Deeds -
 7 Sonntag, was marked for identification.)
 8 BY MR. BOYETTE:
 9 Q. And do you agree that the deeds, which are
 10 attached as Exhibit 23, show that this unit was owned
 11 by -- or both of these units were owned by the Ralph
 12 Sonntag Irrevocable Trust and not by Laura Sonntag when
 13 the votes were cast?
 14 A. I assume they're one and the same.
 15 Q. Why don't we take it one step at a time.
 16 Exhibit 23, page 1 and 2, is a deed by which
 17 Ralph and Laura Sonntag bought Unit 624 in November of
 18 2002.
 19 Do you agree with that?
 20 MR. TRAFICANTE: He's getting back to it, Dave,
 21 so you'll probably have to repeat the question.
 22 BY MR. BOYETTE:
 23 Q. Exhibit 23, pages 1 and 2.
 24 The question is: Do you agree this shows that
 25 Ralph and Laura Sonntag bought Unit 624 in November of

Page 75

1 2002?
 2 A. Yes.
 3 Q. And then page 3 of 9 of Exhibit 23 shows that
 4 Ralph and Laura bought Unit 633 in April of '03.
 5 Do you agree with that?
 6 A. Yes.
 7 Q. And then pages 4 and 5 indicate that in April
 8 of 2005, Ralph and Laura Sonntag transferred both of
 9 the units to James Keay as Trustee of the Ralph E.
 10 Sonntag Irrevocable Trust.
 11 Do you agree with that?
 12 A. Which page was that, Counselor?
 13 Q. 4 and 5.
 14 A. Yes.
 15 Q. And then pages 6 and 7 indicate that James Keay
 16 as Trustee of the Ralph Sonntag Trust conveyed Unit 624
 17 in March -- March 29th of 2016, correct?
 18 A. Yes.
 19 Q. And do you also agree that pages 8 and 9
 20 indicate that in July of 2016, James Keay as Trustee of
 21 the Ralph Sonntag Irrevocable Trust, says Individually
 22 and as Trustee, conveyed Unit 633 to an entity that
 23 bought the unit?
 24 A. Yes.
 25 Q. So would you agree that these deeds indicate

Page 76

1 that on the date Laura Sonntag cast the votes for these
 2 two units, the units were owned by James Keay as
 3 Trustee of the Ralph Sonntag Irrevocable Trust?
 4 A. We're assuming she had permission to do so.
 5 Q. Well, I'm going to get to that, but I first
 6 just want to confirm that on the date that she cast the
 7 votes, she didn't own the property; isn't that right?
 8 A. That she did not own the property?
 9 Q. Correct.
 10 A. I can't say. I mean, this is legalese, and,
 11 you know, I'm not really qualified to, you know, make
 12 that determination. And, you know, these documents are
 13 not simple.
 14 Q. We went through the deeds and you did agree
 15 that they indicate that the properties, these two units
 16 were owned by this trust when the vote was cast.
 17 I mean, that's why I put them all in there. So
 18 we've at least agreed to that.
 19 And it wasn't Mr. Keay as Trustee who cast the
 20 votes for these units. You've seen that as well,
 21 correct?
 22 A. I'm saying I didn't hear you. You said it was
 23 or wasn't?
 24 Q. It was not Mr. Keay as Trustee who cast the
 25 vote because it was Laura Sonntag who cast these votes.

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1 You've seen that in these documents, correct?
 2 A. Correct.
 3 Q. Now, did The Club do anything to investigate
 4 whether Laura Sonntag had authority to cast these votes
 5 on behalf of the trust?
 6 A. Management company may have.
 7 Q. But you don't know.
 8 A. No.
 9 Q. And The Club doesn't know.
 10 A. That's why we pay our managers.
 11 Q. Okay. Do you agree that the "yes" votes for
 12 these two units, 624 and 633, should not have been
 13 counted as "yes" votes?
 14 MR. TRAFICANTE: Object to form. You can
 15 answer.
 16 THE WITNESS: No.
 17 BY MR. BOYETTE:
 18 Q. And why is that?
 19 A. Because she may have had permission to cast the
 20 votes in that manner.
 21 Q. Are you aware of any provision in the
 22 declaration of covenants for The Club at La Peninsula
 23 that provides that the owner of a unit can give verbal
 24 permission to somebody else to cast their vote as a
 25 member -- as a member of The Club?

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1 MR. TRAFICANTE: Object to form. You can
 2 answer.
 3 THE WITNESS: I'd have to say I don't know.
 4 BY MR. BOYETTE:
 5 Q. I'd like to go back to Exhibit 17, page 1. It
 6 shows "yes" votes for Unit 111 and it shows that unit
 7 is owned by a Greg Langdon.
 8 Do you see that?
 9 A. Yes.
 10 (Plaintiffs' Exhibit No. 24, Proxy - Langdon,
 11 was marked for identification.)
 12 BY MR. BOYETTE:
 13 Q. And do you agree Exhibit 24 shows that the vote
 14 for this unit was cast by an Allen Langdon?
 15 A. Yes.
 16 (Plaintiffs' Exhibit No. 25, Special Warranty
 17 Deed - Langdon, was marked for
 18 identification.)
 19 BY MR. BOYETTE:
 20 Q. And do you agree that Exhibit 25 shows that
 21 this unit was purchased by Greg Langdon as to a half
 22 interest, and Allen and Marsha Langdon as to another
 23 half interest, the other half interest?
 24 A. Yes.
 25 Q. And you're not aware of any voting certificates

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1 having been filed for this unit prior to the vote in
 2 August of 2015 to pass the amended and restated
 3 declaration, correct?
 4 A. No. I mean, they may not have been retained,
 5 but I do not.
 6 Q. And do you agree that under the provision in
 7 Section 3.3 of the original declaration that we looked
 8 at a long time ago that requires voting certificates,
 9 that due to that provision this vote should not be
 10 counted as a "yes" vote?
 11 MR. TRAFICANTE: Object to form. You can
 12 answer.
 13 THE WITNESS: I don't think I can accurately
 14 say one way or the other.
 15 BY MR. BOYETTE:
 16 Q. Would you agree that if The Club complied with
 17 what is directed in Section 3.3 of Exhibit 1, where it
 18 says, "In the absence of such a writing, such vote
 19 shall not be counted," that if The Club were to comply
 20 with that provision, this vote would not be counted?
 21 Isn't that true?
 22 MR. TRAFICANTE: Object to form. You can
 23 answer.
 24 THE WITNESS: Well, referencing my previous
 25 response, I don't know that there -- you know, they

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1 may have had some certificates, and we kind of went
 2 over this before. You know, that's quite a while
 3 ago. And I know much of that information has, you
 4 know, been removed from the files of -- by the
 5 management company.
 6 Now, it could conceivably -- like I said, there
 7 were three management companies in that very short
 8 period of time. R & P, and Compass, and then
 9 ultimately Resort Management. So one of those
 10 firms may have possession of those, but I've not
 11 seen them.
 12 BY MR. BOYETTE:
 13 Q. If there is no such voting certificate, if one
 14 was just never done for this unit, wouldn't you agree
 15 that in that event, if The Club were to follow what is
 16 directed in Section 3.3 of the original declaration,
 17 then this vote shall not be counted. Wouldn't you
 18 agree with that?
 19 MR. TRAFICANTE: Object to form. You can
 20 answer.
 21 THE WITNESS: I can't answer that.
 22 I -- because I don't know. There may be some other
 23 parameters that I'm not aware of.
 24 BY MR. BOYETTE:
 25 Q. Exhibit 17 on page 3, it shows a "yes" vote for

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1 Unit 211 and it indicates it's owned by a Kenneth
 2 Walter, Sr.
 3 Do you see that?
 4 A. Yes.
 5 Q. Is that a "yes"?
 6 A. Yes.
 7 (Plaintiffs' Exhibit No. 26, Proxy - Walter,
 8 was marked for identification.)
 9 BY MR. BOYETTE:
 10 Q. And Exhibit 26 shows "yes" votes cast by a
 11 Kenneth Walter, Jr., correct?
 12 A. That looks like a junior.
 13 Q. And do you agree that Exhibit 25 shows that on
 14 the date of this vote this unit was owned jointly by
 15 Ken Walter, Jr., Ken Walter, Sr., and Robert Walter?
 16 MR. TRAFICANTE: Did you say Exhibit 25, Dave?
 17 MR. BOYETTE: I said Exhibit 27.
 18 MR. TRAFICANTE: Okay. You said 25, so he's
 19 going to 27 now.
 20 MR. BOYETTE: I'm sorry, I misspoke. There are
 21 two deeds under Exhibit 27.
 22 (Plaintiffs' Exhibit No. 27, Warranty Deeds -
 23 Walter, was marked for identification.)
 24 BY MR. BOYETTE:
 25 Q. A December 21, 1987, deed to the three Walters

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1 and a May 15, 2016, deed out of the three Walters.
 2 And I'll just restate my question. Do you
 3 agree that these deeds show that on the date this vote
 4 was cast, the unit was owned by Robert Walter, Ken
 5 Walter, Jr., and Ken Walter, Sr.?
 6 A. Those are a lot of Walters, but yes.
 7 Q. If you could look at the screen. Whenever
 8 you're looking at the computer, I can't understand you.
 9 What did you say?
 10 A. Yes.
 11 Q. Okay. Do you know if The Club -- let me put it
 12 this way. Do you know if the Walters filed a voting
 13 certificate with the secretary of The Club prior to
 14 this vote being cast?
 15 A. I don't know.
 16 Q. Let's go to Exhibit 17, page 5, and look at
 17 Unit 307. It shows "yes" votes and it shows the owners
 18 as Nicholas and Jessie Carey.
 19 Do you see that?
 20 A. Which unit was that, Counselor?
 21 MR. TRAFICANTE: Which unit, Dave? Which unit,
 22 Dave?
 23 MR. BOYETTE: Oh, it's Unit 307.
 24 THE WITNESS: Nicholas and Jessie Carey?
 25 MR. BOYETTE: That is what it says, correct?

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1 THE WITNESS: Yes.
 2 (Plaintiffs' Exhibit No. 28, Warranty Deed -
 3 Wickberg, was marked for identification.)
 4 BY MR. BOYETTE:
 5 Q. And go to Exhibit 28. This shows -- first,
 6 there's a deed of June 30, 2015, from -- it's got
 7 signatures from a Nicholas and Jessie Carey to Paul
 8 Wickberg and Kathleen Pitra.
 9 Do you see that?
 10 A. Yes.
 11 Q. And then also in Exhibit 28, page 3, there's a
 12 deed from Paul Wickberg and Kathleen Pitra to Paul
 13 Wickberg, May of '17.
 14 Do you see that?
 15 A. A quitclaim deed?
 16 Q. Correct.
 17 A. Yes.
 18 Q. In Exhibit 29, shows that the vote for this
 19 unit was cast by Paul Wickberg.
 20 Do you see that?
 21 A. Yes.
 22 Q. And the deeds in Exhibit 28, the deed by which
 23 Paul and Kathleen got the property, it says he was a
 24 single man and she was a single woman.
 25 Do you see that?

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1 A. I'll have to go back and look at it.
 2 Q. It's in the first paragraph.
 3 A. Yes.
 4 Q. And the quitclaim deed at page 3 of Exhibit 28
 5 indicates they were still single when it was conveyed
 6 to Paul in May of 2017, correct?
 7 MR. TRAFICANTE: You're on page 3, Dave, now?
 8 MR. BOYETTE: Yep.
 9 THE WITNESS: What was the date you gave,
 10 Mr. Boyette?
 11 BY MR. BOYETTE:
 12 Q. May of 2017 is the date on the quitclaim deed.
 13 A. Yes.
 14 Q. Do you know if Paul Wickberg and Kathleen Pitra
 15 provided a voting certificate to the secretary of The
 16 Club prior to Paul casting the vote for this unit?
 17 A. I don't know.
 18 Q. I want to look at my notes and I want to have a
 19 phone call with Wayne. And we won't be taking up much
 20 more of your time, I don't think.
 21 A. Thank you.
 22 MR. TRAFICANTE: Sounds good. Do you want to
 23 take a five-minute break, is that enough time, or
 24 do you need ten minutes?
 25 MR. SEIDENSTICKER: Let's take ten.

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1 MR. TRAFICANTE: We'll come back at 12:15,
 2 Dave, and we'll go off the record.
 3 MR. BOYETTE: Okay. We're off the record.
 4 (Thereupon, a brief recess was taken.)
 5 MR. BOYETTE: All right. Court reporter, are
 6 you ready?
 7 THE COURT REPORTER: Yes, thank you.
 8 BY MR. BOYETTE:
 9 Q. One of the things we looked at was the amended
 10 and restated governing documents which were passed in
 11 August of 2015. You recall those, correct?
 12 A. Yes.
 13 Q. Is it true that Aircraft Investment, LLC, never
 14 provided consent for those amendments to the governing
 15 documents?
 16 A. Not to my knowledge.
 17 Q. And to the best of your knowledge, The Club
 18 does not have any sort of document from Aircraft
 19 Investment, LLC, consenting to the amended and restated
 20 governing documents which were Exhibit 12, correct?
 21 A. Yes.
 22 Q. Are you aware if there is a gate or some kind
 23 of bar that blocks the Mitchells from having access to
 24 part of the subject parcel?
 25 A. Not to my knowledge. There is a gate along

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1 the -- it's not there anymore, following Ian, but there
 2 was a gate there for, you know, a period of time
 3 because there is an easement that exists not only over
 4 La Peninsula property, but over portions of the
 5 Mitchells' property as well, that had been granted to
 6 Marco Tower, which is an adjacent condominium
 7 association.
 8 Q. Does The Club have any policies or procedures
 9 to ensure that only members of The Club and their
 10 guests are able to use the tennis courts?
 11 A. Yes. The rules and regs are fairly specific of
 12 how the courts should be utilized.
 13 There were formerly sign-up sheets and
 14 reservations had to be made, but, you know, we suffered
 15 two hurricanes in four and a half years there, and you
 16 know, the interest in tennis isn't what it used to be.
 17 Q. Practically speaking, how does The Club police
 18 the use of the tennis courts to make sure it's only The
 19 Club members using them?
 20 A. Resort Management employed maintenance
 21 personnel and the maintenance personnel would groom the
 22 courts every day, make sure the courts were in order.
 23 And, you know, if someone came in from the
 24 street, they would, you know, request identification,
 25 ask, you know, names and addresses, et cetera.

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1 Q. We talked earlier about bleachers and a
 2 bandstand being placed on the tennis courts. Do you
 3 recall that discussion?
 4 A. Yes.
 5 Q. Do you know if those bleachers were put on the
 6 courts for purposes of a tennis tournament?
 7 A. Absolutely not.
 8 Q. Do you know why they were placed on the courts?
 9 A. Because I believe code enforcement came as they
 10 were unpermitted on the subject parcel and they were
 11 subsequently moved on to the tennis courts.
 12 Q. Does The Club agree that the Mitchells and
 13 Dolphin Point are -- or Dolphin Point, or both, are
 14 entitled to use the tennis courts?
 15 A. Yes.
 16 Q. Does The Club agree that the Mitchells and/or
 17 Dolphin Point are entitled to remove the tennis courts?
 18 A. With proper notice and permitting, yes.
 19 Q. Is it The Club's position that the Mitchells
 20 owe unpaid dues or assessments to The Club?
 21 A. Yes.
 22 Q. And how much?
 23 A. I couldn't tell you that.
 24 Q. And when does The Club contend that the dues
 25 started accruing for the Mitchells?

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1 A. I think when The Club had a shortfall that we
 2 had to do special assessments.
 3 Q. And you agreed with me earlier that the
 4 property at 85 Pelican Street West is not within The
 5 Club at Peninsula, correct?
 6 A. If that's the address of the Mitchell home,
 7 correct.
 8 Q. So why would The Club contend that the
 9 Mitchells owed dues and assessments if they don't own
 10 any property within The Club?
 11 A. Well, then let's clarify that and say Dolphin
 12 Point, LLC, then would carry those obligations.
 13 Q. Okay. And let's be clear. So it is The Club's
 14 position that Dolphin Point is required to pay dues
 15 because it owns property within The Club development,
 16 correct?
 17 A. Yes.
 18 Q. But it is also The Club's position that the
 19 Mitchells do not owe any money to The Club for dues or
 20 assessments, correct?
 21 A. Other than that which was obligated prior to
 22 assignment to Dolphin Point, LLC.
 23 Q. I didn't hear all that. Say that again.
 24 A. I said other than that which was obliged prior
 25 to the transfer of ownership to Dolphin Point, LLC.

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1 Q. Exhibit 8 is a deed -- hang on.
 2 Exhibit 6 is a deed to the Mitchells on
 3 October 31 of '17. And Exhibit 8 is a deed from
 4 Mitchells to Dolphin Point, December 3 of '19.
 5 So The Club's position is whatever dues accrued
 6 during that two-year period, roughly, would be owed by
 7 the Mitchells?
 8 A. Yes, and subsequently Dolphin Point, LLC.
 9 Q. And that would be after the deed to Dolphin
 10 Point.
 11 A. I'm sorry, I didn't get that.
 12 Q. The Club's position is that dues and
 13 assessments would accrue to Dolphin Point only after
 14 the subject parcel was deeded to Dolphin Point by the
 15 Mitchells, right?
 16 A. Correct.
 17 Q. Do you know the amounts that are being claimed
 18 to be owed by either the Mitchells or Dolphin Point?
 19 A. Precisely, no.
 20 Q. Isn't it the case that the governing documents
 21 only require unit owners to pay dues and assessments?
 22 MR. TRAFICANTE: Object to form. You can
 23 answer.
 24 THE WITNESS: I'm not sure.
 25

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1 BY MR. BOYETTE:
 2 Q. Do you agree that Dolphin Point does not own a
 3 unit within the development?
 4 A. They own the subject parcel.
 5 Q. I didn't ask you if they owned the subject
 6 parcel. I asked if they owned a unit.
 7 A. And if you're referring to a unit as a
 8 condominium unit, then I would agree with you.
 9 Q. Has The Club obtained a \$2 million liability
 10 insurance policy in connection with the tennis courts
 11 which names the Mitchells or Dolphin Point as an
 12 additional insured?
 13 A. I can't be certain about those details, but our
 14 insurance carrier told us that the Mitchells are
 15 covered under our insurance policy for any liability
 16 arising from the tennis courts.
 17 Q. And you don't know the amount of that coverage?
 18 A. I suspect it's what you said. It's either 2 or
 19 3 million, I think.
 20 Q. Do you know when the Mitchells were named as
 21 additional insureds on the liability insurance?
 22 A. I'm going to say probably -- well, specifically
 23 in, I believe February of 2018, but our carrier had
 24 told us that they're covered prior to that even.
 25 Q. Well, when prior?

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1 A. Well, from the time they took ownership. That
 2 was insurance that carried over even while Aircraft
 3 owned that property.
 4 Q. Are you saying The Club did not have the
 5 Mitchells or Dolphin Point as an additional insured,
 6 but you were incorrectly told by the management company
 7 that they were covered?
 8 A. No, I'm not -- I did not say that at all.
 9 MR. TRAFICANTE: Object to form.
 10 BY MR. BOYETTE:
 11 Q. Okay. Well, I'm just confused, so let's try to
 12 clear it up.
 13 When were the Mitchells first named as an
 14 additional insured on the liability insurance for the
 15 tennis courts?
 16 A. Our insurance carrier told us that that was not
 17 necessary because the tennis courts' liability, they
 18 were included in that and did not have to be
 19 specifically named as additional insured.
 20 Now, you know, we've been through this a couple
 21 of three times, but I -- again, I'm not 100 percent
 22 certain, but in February of 2018 we may have forced our
 23 carrier to add them on specifically.
 24 Q. February of 2018?
 25 A. Yes.

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1 Q. Okay. So the question was "When were they
 2 added as insureds," and I think the answer is February
 3 of 2018.
 4 MR. TRAFICANTE: Object to form.
 5 MR. BOYETTE: Is that right?
 6 THE WITNESS: No, no, that is not correct.
 7 What I had said, and I think it was because
 8 their counsel had sent us a letter to confirm that
 9 they had been added as additional insured. And
 10 I -- I don't have the response of our attorney at
 11 the time, but our attorney had said that, checking
 12 with the insurance company, they were already
 13 covered under the existing policy just as Aircraft,
 14 their predecessor, was.
 15 BY MR. BOYETTE:
 16 Q. The reason I'm getting confused is because --
 17 my question is: When were the Mitchells or Dolphin
 18 Point added as additional insureds?
 19 And your answers have been to tell me about
 20 what the insurance carrier told you, what letters were
 21 sent between lawyers, and I'm not asking about what
 22 insurance agents have told you, I'm not asking about
 23 what lawyers have said or what notice was given.
 24 I'm just trying to figure out, do you know
 25 when, if it happened, when the Mitchells or Dolphin

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1 Point was officially added as a named insured on a
 2 liability insurance policy.
 3 MR. TRAFICANTE: Object to form. You can
 4 answer.
 5 THE WITNESS: Yeah. Well, I can't tell you
 6 that then. Asking it that way I can't tell you.
 7 BY MR. BOYETTE:
 8 Q. So as you sit here today, you don't know if the
 9 Mitchells or Dolphin Point have ever officially been
 10 added as a named insured on the liability insurance
 11 policy.
 12 MR. TRAFICANTE: Object to form.
 13 THE WITNESS: Not correct.
 14 BY MR. BOYETTE:
 15 Q. It's not correct?
 16 A. Not correct.
 17 Q. Okay. So you do know that they were added as
 18 an additional insured.
 19 Now, to your knowledge, what you know, was it
 20 the Mitchells or Dolphin Point that were added as
 21 additional insureds, or was it both?
 22 A. I don't know specifically about Dolphin Point.
 23 Q. Okay. Do you know when the Mitchells were
 24 specifically added as named insureds?
 25 A. As I previously said --

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1 Q. What was that?

2 A. I said, as I previously said, when they

3 inquired as to whether they were added as additional

4 insureds, the response from our carrier and our legal

5 counsel was they are already covered under the policy,

6 that they don't need to be --

7 Q. Let me interrupt you.

8 A. All right.

9 Q. The question is a when. And the

10 question -- when I start a question with "when," what

11 I'm really trying to figure out is a date. And if I

12 asked, what did your insurance carrier say or what did

13 your lawyer say, then I want to find out about what

14 people said about things.

15 But I'm just trying to figure out a date right

16 now. So could you please just focus on the date and

17 tell me if you know when the Mitchells -- the date that

18 the Mitchells were added as additional insureds, or the

19 month if that's the best you can do.

20 A. No.

21 MR. TRAFICANTE: Object to form.

22 MR. BOYETTE: Pardon?

23 THE WITNESS: No.

24 BY MR. BOYETTE:

25 Q. You don't know the date?

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1 A. I don't know the date.

2 Q. Okay. And how do you know that they were

3 officially added as additional insureds?

4 A. Okay. I thought I've explained it now a couple

5 of times.

6 The policy indicated that the tennis court

7 liability was covered. No matter who owned the

8 property, both La Pen and the owners of the property

9 were covered. That was a continuation of the same

10 coverage that we had with Aircraft.

11 So it doesn't matter whether it's the Mitchells

12 or Dolphin Point, they're all covered.

13 Q. And that is an opinion on coverage which was

14 provided to you by your -- The Club's insurance agent;

15 is that right?

16 A. Yes.

17 Q. Well, without telling me what your insurance

18 agent's opinion is about the scope of coverage or who

19 would be covered, can you tell me, did the insurance

20 agent ever specifically tell The Club "we have

21 officially added the Mitchells as named insureds on a

22 policy"?

23 Did they ever tell you that specifically?

24 A. Not me personally.

25 Q. Well, how about anybody on behalf of The Club,

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1 do you know?

2 A. Only what I've already said, that we were

3 assured that they were covered.

4 Q. Yeah. And I guess my concern is, insurance

5 agent opinions about coverage are not always agreed

6 with by insurance underwriters or the actual insurance

7 company, so you can't always count on that.

8 A. I -- a copy of that was sent at the request of

9 Mitchell counsel and that was in February of 2018.

10 Q. Do you know if The Club has a copy of a

11 insurance declarations page that shows the Mitchells as

12 an additional insured?

13 A. I don't know.

14 Q. I'm going to do a share screen in a second.

15 Give me a second here. All right. I'm going to try to

16 do a share screen. Wish me luck.

17 Are you seeing some photos on my screen?

18 MR. TRAFICANTE: Yes, but they're real small,

19 David.

20 MR. BOYETTE: Yeah. Is that better?

21 MR. TRAFICANTE: No. But I can get

22 Dr. Patrella to go up to the screen if you need him

23 to.

24 MR. BOYETTE: Well, I really don't know that I

25 can make it any bigger. That's about as big as I

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1 can make it.

2 MR. SEIDENSTICKER: Yep, that -- that's

3 working.

4 MR. BOYETTE: I might be able to make it a

5 little bigger.

6 MR. TRAFICANTE: For some reason your screen is

7 only taking up like a quarter of the page.

8 MR. SEIDENSTICKER: Yep, that's working.

9 BY MR. BOYETTE:

10 Q. So do you see a green, I don't know if I'd call

11 it a bar or it looks like a -- two posts, and like a

12 gate that goes up and down? Do you see that?

13 A. Yes.

14 Q. And this is a -- I'm showing another photo of

15 the same thing.

16 A. Yes.

17 Q. Can you tell me where this gate is located?

18 A. It would be just before the entrance gate into

19 La Peninsula.

20 Q. Do you know if this gate would impede the

21 Mitchells from getting access to the subject parcel if

22 it were closed?

23 A. Probably would prevent a vehicle from getting

24 through without trespassing on La Peninsula other

25 property.

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1 Q. So they could walk, but they couldn't drive a
 2 car. Is that what you're saying?
 3 A. Correct.
 4 Q. Do you know how this gate is accessed?
 5 Does it have a key or a code, or do you know
 6 how it functions?
 7 A. Yes.
 8 Q. How does it work?
 9 A. Manually lift it.
 10 Q. Manually with a what?
 11 A. You manually lift it.
 12 Q. Oh, you just lift it.
 13 A. Correct.
 14 Q. Okay. And anybody could just go up and lift
 15 it, is that the case?
 16 A. Yes.
 17 Q. It doesn't lock in any way.
 18 A. Not to my knowledge.
 19 Q. Okay.
 20 MR. BOYETTE: I don't have anything else. I
 21 don't know if Wayde has any followup on what I just
 22 asked, but I'll ask him if he does.
 23 MR. SEIDENSTICKER: I have just a few.
 24 MR. TRAFICANTE: And I'm just going to
 25 lodge -- we'll let you go, Wayde, but obviously,

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1 I'm just going to lodge the objection of both
 2 attorneys asking questions of the same witness, but
 3 I'm going to allow you to proceed with your
 4 questioning.
 5 MR. SEIDENSTICKER: I'm going to be very brief.
 6 MR. TRAFICANTE: Yep.
 7 FURTHER DIRECT EXAMINATION
 8 BY MR. SEIDENSTICKER:
 9 Q. Dr. Patrella, I understood from your testimony
 10 earlier that there was some sort of a log maintained
 11 for who was using the courts and who wasn't by The
 12 Club; is that right?
 13 A. Yes.
 14 Q. Whose responsibility was it to maintain that
 15 log to make sure that as far as La Peninsula granting
 16 access to the tennis courts, that they were members or
 17 member guests with proper authorization to use the
 18 courts?
 19 A. It would be Resort Management, CAM.
 20 Q. Okay. And where were those logbooks
 21 maintained? Was that a regular practice to maintain
 22 those?
 23 A. Up until -- probably up until after Irma it
 24 became more difficult to maintain those because of the
 25 damage and disruption that that had done.

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1 Q. So what was it -- are we talking about
 2 Hurricane Irma that occurred in September of 2017?
 3 A. Correct.
 4 Q. All right. So what was it about Hurricane Irma
 5 that prevented The Club at La Peninsula from
 6 maintaining a logbook or any sort of records as to who
 7 was using the tennis courts?
 8 A. The clubhouse was damaged and we had roof
 9 damage. We lost an entire wall in there that had to be
 10 replaced, and I believe that was a room where those
 11 records were maintained.
 12 Q. Okay. So that room has been rebuilt since
 13 Irma, I'm assuming?
 14 A. Just this past season.
 15 Q. Okay. Well, are there any sort of security
 16 logs or documents that The Club maintains for visitors
 17 on to the premises?
 18 A. No.
 19 Q. Okay. So do I understand correctly, then,
 20 since Hurricane Irma in September of 2017, The Club has
 21 not undertaken any type of measures to track or watch
 22 who uses the tennis courts; is that correct?
 23 MR. TRAFICANTE: Object to form. You can
 24 answer.
 25 THE WITNESS: Yeah, I'd say that's an accurate

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1 statement, because interest has diminished.
 2 BY MR. SEIDENSTICKER:
 3 Q. Okay. So for that reason, anybody, any of the
 4 general public, as far as you know, could access the
 5 courts and use them at will; is that right?
 6 A. No.
 7 MR. TRAFICANTE: Object to form.
 8 BY MR. SEIDENSTICKER:
 9 Q. Well, how do you access the tennis courts?
 10 A. There are a couple of different ways.
 11 You can come in through the main gate, and
 12 being that it is proximal to the entrance, you don't
 13 have to have official entrance through the security
 14 gate, so you don't have to have the code number to
 15 access the gate that leads to the clubhouse.
 16 So you would go in through where Mr. Boyette
 17 showed that drop gate if you were walking in from the
 18 main entrance.
 19 You can also enter from Pelican Street around
 20 the back side and come around, I guess that would be
 21 the west side of the tennis courts, and come in that
 22 way.
 23 Q. But anyone could access that came in off of
 24 Pelican, correct?
 25 The public could access them from that side of

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1 Pelican?

2 A. Yes, technically, yes.

3 Q. So there was no -- there had been locks, I

4 understand, for a short period of time; the gates,

5 roughly ten days, then The Club cut those locks off; is

6 that correct?

7 A. I would assume it was either an agent of

8 The Club or -- or it could have been at the request of

9 counsel that the Mitchells remove that or their

10 maintenance people remove those.

11 Q. And that was sometime in 2019; is that correct?

12 A. The end of 2019 or like the first week of 2020.

13 Q. All right. So since that time, access to the

14 tennis courts for anyone has been open. There's no

15 locks that prevent the general public from accessing

16 the courts, correct?

17 A. Other than what I had mentioned earlier,

18 whereby the maintenance individual would approach

19 people that he didn't recognize and ask them for who

20 and what their purpose was there and who gave them

21 permission.

22 Q. Are the courts lit?

23 A. Yes.

24 Q. So is the maintenance person, does he also

25 serve as a security guard --

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1 A. No.

2 Q. -- 24/7?

3 A. No.

4 Q. Okay. So when -- what hours does the security

5 guard and where is he stationed?

6 In other words, would he automatically know

7 immediately if somebody came on and accessed the

8 courts?

9 A. Up until noon, yes.

10 Q. So he only works until noon?

11 A. Yes. And he's maintenance, he's not security.

12 Q. Okay. To follow up on Mr. Boyette's question

13 about the insurance policies. Have you ever seen a

14 declarations page with either the Mitchells' name or

15 Dolphin's Point name on it?

16 A. I may have. I -- but I, you know, could not

17 definitively say 100 percent today that I have.

18 It seems to me that I have. Because I was

19 concerned about that, as well, that it seemed to me a

20 simple solution. We're paying the insurance anyway, so

21 please add the Mitchells on as additional insured,

22 what's the big deal?

23 And, I mean, and our carrier said, "They're

24 already insured," so I -- that demand was made of the

25 carrier.

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1 Q. But sitting here --

2 A. But I can't tell you for sure if that indeed

3 was done.

4 Q. Okay. So would you agree with -- you

5 agree -- have you read the -- the easement was brought

6 up. The tennis court easement was brought up as an

7 exhibit.

8 So you've read that easement before today's

9 deposition and you're familiar with it?

10 A. Yes.

11 Q. You would agree that the easement requires

12 The Club to carry liability insurance naming the

13 grantor, which in this case is the Mitchells, and then

14 Dolphin Point, as an additional named insured, correct?

15 MR. TRAFICANTE: Object to form. You can

16 answer.

17 THE WITNESS: Yes. But that said, this served

18 the same purpose, I guess.

19 BY MR. SEIDENSTICKER:

20 Q. Well, as a doctor, do you understand the

21 difference between being covered under a policy and

22 being an additional named insured on a policy?

23 A. My malpractice never alludes to an additional

24 insured, but -- so I can't specifically say that

25 there is -- there shouldn't be a difference, if what

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1 you're getting at that there is a difference.

2 Q. Okay. But you've never seen a DEC page with

3 the Mitchells' name on it as an additional insured, or

4 with Dolphin's Point as an additional named insured,

5 any sort of policy that was maintained by The Club,

6 correct?

7 A. I've never seen one with Dolphin Point, but I

8 may have seen one with Mitchell.

9 Q. Okay. Since -- since October of 2017, who

10 would have been responsible for maintaining the DEC

11 pages for any insurance coverages, if they exist,

12 naming the Mitchells as an additional insured?

13 A. Our management company, Resort Management.

14 Q. And it's only been Resort since 2017?

15 A. Yes.

16 Q. And who is your insurance agent through whom

17 the policy was purchased?

18 A. His first name is Sam and the last name starts

19 with an N. It's -- I can produce that for you, if I

20 had to.

21 Q. Okay.

22 MR. SEIDENSTICKER: If your counsel agrees.

23 MR. TRAFICANTE: Yeah, no problem. I think we

24 already produced the insurance policies per the

25 request for production, so it should have that

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1 information on it. But if it doesn't, Wayde, just
 2 let me know and we'll get it for you.
 3 MR. SEIDENSTICKER: Okay.
 4 BY MR. SEIDENSTICKER:
 5 Q. I think you testified earlier that it's
 6 La Peninsula's position that the Mitchells and/or
 7 Dolphin Point owe assessments; is that right?
 8 A. Yes.
 9 Q. Yes? Even though they're not unit owners?
 10 MR. TRAFICANTE: Object to form. You can
 11 answer.
 12 THE WITNESS: Yes.
 13 BY MR. SEIDENSTICKER:
 14 Q. Have either the Mitchells or -- well, is it
 15 also your position that the Mitchells or Dolphin Point
 16 are a member then of the association?
 17 A. The subject parcel is part of, you know,
 18 The Club.
 19 Q. My question is: Is it your position that the
 20 Mitchells are members of The Club at La Peninsula?
 21 MR. TRAFICANTE: Object to form. You can
 22 answer.
 23 THE WITNESS: You know, from everything that's
 24 been said today, it would be Dolphin Point would be
 25 a member of The Club, yeah.

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1 BY MR. SEIDENSTICKER:
 2 Q. After the Mitchells deeded the property to
 3 Dolphin Point.
 4 A. Yes.
 5 Q. Okay. But the Mitchells would have initially,
 6 during the time they owned it, is it your position they
 7 were members --
 8 A. Yes.
 9 Q. -- of The Club?
 10 Okay. And have either the Mitchells or
 11 The Club ever sent notices of any meetings of The Club
 12 since October of 2017?
 13 MR. TRAFICANTE: Object to form. You can
 14 answer.
 15 THE WITNESS: Sent to whom?
 16 MR. SEIDENSTICKER: To the Mitchells.
 17 BY MR. SEIDENSTICKER:
 18 Q. Have they ever provided the Mitchells with any
 19 type of meetings that The Club was engaging in or
 20 notices that there were meetings that were going to be
 21 occurring?
 22 A. Perhaps prior to the lawsuit, but subsequent to
 23 that, no.
 24 Q. Have you ever seen any notices and can you
 25 testify of your own personal knowledge whether the

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1 Mitchells were ever provided any such notice?
 2 A. To the best of my knowledge, I don't know, no.
 3 Q. Okay. And have the Mitchells or Dolphin Point
 4 ever been -- let me back up.
 5 I think you testified earlier that they owe
 6 assessments, but you don't know the amount; is that
 7 right?
 8 A. That's correct.
 9 Q. You're suing them for assessments in this
 10 lawsuit, right?
 11 MR. TRAFICANTE: Object to form.
 12 THE WITNESS: I believe so, yes.
 13 BY MR. SEIDENSTICKER:
 14 Q. Okay. So how much are you suing them for in
 15 assessments in this lawsuit?
 16 A. I -- the only thing I can say is there's
 17 concerns about the seawall, because that subject parcel
 18 does not have -- they were approached to -- when we did
 19 the seawall replacement, to continue the seawall along
 20 that property and we never received a response.
 21 Q. Okay. So are you suggesting that
 22 that's a -- there's a special assessment in addition to
 23 a regular assessment?
 24 What type of assessments are you suing them for
 25 in this lawsuit?

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1 MR. TRAFICANTE: Object to form. You can
 2 answer.
 3 THE WITNESS: They're -- there were several,
 4 both of what you said, special assessments.
 5 BY MR. SEIDENSTICKER:
 6 Q. Okay. How much do you claim that they owe in
 7 special assessments?
 8 A. All I can say is that we spent 6 million on the
 9 seawall. And, you know, there's road repairs and some
 10 of the other things that we would include in it, but I
 11 can't -- I can't give you a dollar figure.
 12 Q. So you're suing the Mitchells for assessments,
 13 but you can't give me a dollar figure as to how much
 14 you're suing them for; is that right?
 15 A. Not today --
 16 MR. TRAFICANTE: Object to form.
 17 THE WITNESS: -- I can't, but I could produce
 18 that.
 19 BY MR. SEIDENSTICKER:
 20 Q. Have they ever been invoiced for any special
 21 assessment or regular assessment in the last five
 22 years?
 23 A. Not to my knowledge. Not since I've been
 24 president of the board.
 25 Q. Okay. So sitting here today on behalf of the

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1 association, you can't tell us how much in assessments
 2 they're being sued for and you've never seen any sort
 3 of an invoice for an assessment that was sent to them.
 4 A. Not specifically to them, correct.
 5 Q. The gate that was brought up and shown in that
 6 picture that you had indicated a vehicle, that that
 7 gate would need to be up in order for a vehicle to
 8 access the subject parcel owned by Dolphin Point, who
 9 maintains the key to that gate or when it's up?
 10 I understand Ian recently, you said that the
 11 gate hasn't been there since Ian, but prior to that, in
 12 the approximate five years prior to Ian, from 2017
 13 forward, that gate had a lock on it; is that correct?
 14 A. Not the green gate that was there.
 15 Q. Well, there's a bar that came down. Is there a
 16 locking mechanism for that?
 17 A. Not to my knowledge.
 18 Q. Okay. Who placed that gate there?
 19 A. That gate's -- I've owned since 2013 and that
 20 gate's always been there.
 21 Q. But when the gate was down, that would have
 22 prevented the Mitchells from being able to get a
 23 vehicle or golf cart through, onto the parcel; is that
 24 correct?
 25 MR. TRAFICANTE: Object to form. You can

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1 answer.
 2 THE WITNESS: Yeah, I -- yeah, I think you're
 3 right. I don't think you could get around it
 4 if -- certainly not with a vehicle; perhaps with a
 5 golf cart.
 6 BY MR. SEIDENSTICKER:
 7 Q. When you reviewed the easement in this case,
 8 you saw that there was a specific designated area for a
 9 tennis court relocation, correct?
 10 A. Yes.
 11 Q. And that tennis court relocation area is on
 12 land that's owned by La Peninsula, correct?
 13 A. Yes.
 14 Q. After Hurricane Irma, I understand there were
 15 seawall wall either replacements or repairs and riprap
 16 replacement by The Club at La Peninsula, correct?
 17 A. Yes.
 18 Q. And when was that work completed?
 19 A. 2019.
 20 Q. Okay. So obviously Irma occurred in September
 21 2017. So between 2017, when the Mitchells acquired the
 22 property, through 2019 that the seawall was being
 23 repaired by The Club at La Peninsula, there was
 24 construction going on --
 25 A. Yes.

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1 Q. -- for the seawall?
 2 Where was the construction for the seawall
 3 being staged?
 4 A. On portions of the -- what we call the
 5 construction lot, but it's -- probably what you're
 6 referring to is the relocation site.
 7 Q. Okay. The tennis court relocation area,
 8 correct?
 9 A. Yes.
 10 Q. All right. So that tennis court relocation
 11 area is depicted. I'm just going to -- for purposes of
 12 speed, I'm going to show you Exhibit D to the easement.
 13 Is that the area that you're referring to?
 14 A. Yes.
 15 Q. All right. And so that's the area that the
 16 owner of the subject parcel would have to relocate the
 17 new tennis courts; is that right?
 18 A. Correct.
 19 Q. All right. So how long did the construction of
 20 the seawall span from the date of Hurricane Irma in
 21 September of '17 until -- you said it was completed in
 22 2019?
 23 A. Yes.
 24 Q. So approximately two years?
 25 A. Yes.

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1 Q. So during that two-year period, the Mitchells,
 2 in order to relocate the tennis courts, would not have
 3 been able to relocate them on the tennis court -- the
 4 designated tennis court relocation area, because that
 5 was being used for construction staging materials,
 6 right?
 7 MR. TRAFICANTE: Object to form.
 8 THE WITNESS: No.
 9 BY MR. SEIDENSTICKER:
 10 Q. Okay. Well, I thought that's what you just
 11 testified to.
 12 A. I did not testify to that.
 13 Q. Okay.
 14 A. And can you allow me to clarify?
 15 Q. Please.
 16 A. So, anecdotally, we'll use the product that was
 17 most important, which is the steel panels.
 18 Yes, those steel panels were placed on that
 19 construction lot or the tennis relocation lot, but they
 20 were there for maybe six weeks and then they were
 21 removed. I mean they were utilized.
 22 Most of the work was concrete work which didn't
 23 require any storage or any materials at all on the
 24 relocation lot.
 25 Q. Were there concrete panels that were used?



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1 A. No, no, they were steel, sheeted steel, and
 2 then concrete was poured over that to form the seawall
 3 cap.
 4 Q. You had mentioned that the relocation area, I
 5 think you referred to it as the construction lot; is
 6 that right?
 7 A. Yes.
 8 Q. Were there other types of construction
 9 materials and activities that took place on that lot as
 10 well during that period?
 11 A. No.
 12 Q. What other construction -- you used the term
 13 "construction lot." What other purposes has The Club
 14 been using that for that lot?
 15 A. Most recently, all of the -- and this is prior
 16 to Ian -- all of the buildings have been structurally
 17 restored, and so you have dumpsters there to remove
 18 debris during the reconstruction process of each
 19 building.
 20 And this did not occur simultaneously. It was
 21 primarily sequentially, with now only one
 22 building -- well, one and a half buildings, because the
 23 one that was almost done was re-destroyed by Ian, that
 24 are -- that had to use that lot to store equipment and
 25 dumpsters primarily to remove debris.

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1 Q. So the lot was unavailable to relocate the
 2 tennis courts while it was being used by The Club,
 3 correct?
 4 A. Perhaps portions of it.
 5 Q. Okay. How many times have the Mitchells
 6 provided notice of their intent to relocate the tennis
 7 courts?
 8 A. Twice.
 9 Q. Okay. Once in 2017 and once in 2019, correct?
 10 A. Yes.
 11 Q. And does The Club contend that there is any
 12 sort of deficiencies or problems with the notices that
 13 were provided?
 14 First, let's take 2017.
 15 A. You know, 2017's notice was news to me. I was
 16 not on the board. I never heard anything about that.
 17 I don't think any action was taken by anyone
 18 and I'm not sure even where that was sent to. Was
 19 it -- I don't know if it was received by our management
 20 company or whoever received it.
 21 Q. My question is: Sitting here today, were there
 22 facts, any facts that you're aware of that there was
 23 something deficient with the notice that was provided?
 24 A. No.
 25 Q. Okay. So why did The Club at that time object

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1 to the Mitchells proceeding with the tennis court
 2 relocation?
 3 MR. TRAFICANTE: Object to form.
 4 THE WITNESS: The Club did not object. We were
 5 encouraging it actually. We wanted the tennis
 6 courts moved.
 7 BY MR. SEIDENSTICKER:
 8 Q. Who is the one that was encouraging it? Who --
 9 A. Board of directors.
 10 Q. In what manner were they encouraging it?
 11 A. Discussion amongst the board members was it's
 12 better now than waiting, let's get it -- let's get them
 13 moved.
 14 Q. And during this same time, though, there was
 15 construction going on on the seawall, correct?
 16 A. Yes.
 17 Q. All right. And so that relocation area was at
 18 least partially being used in the construction of the
 19 seawalls after Irma, right?
 20 A. Yes, so we could have made other arrangements.
 21 There was other property where materials could have
 22 been stored.
 23 Q. Did you ever communicate with the Mitchells
 24 about that?
 25 A. They never communicated with us, other than

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1 notification that they were going to do this.
 2 Q. Then was it -- what, after they gave notice in
 3 2019, prompted The Club to sue them or countersue them
 4 for an injunction to prevent them from removing the
 5 tennis courts?
 6 MR. TRAFICANTE: Object to form.
 7 THE WITNESS: The fact that we had communicated
 8 at the time with their attorney and their attorney
 9 had assured our counsel that we would be kept in
 10 the loop of what progress was done.
 11 So when the gates were -- to the tennis courts
 12 were locked and the trailer with the bleachers
 13 and -- or the trailer with the bandstand and then
 14 the bleachers separately were stored on the two
 15 tennis courts, our attorney at the time looked for
 16 permits and he saw that there were no permits that
 17 were out there.
 18 So, you know, then the legal communications
 19 began, and ultimately, unfortunately, evolved into
 20 this.
 21 BY MR. SEIDENSTICKER:
 22 Q. Okay. Your content -- you don't contend that a
 23 permit was required before they gave notice of intent
 24 to remove the courts, correct?
 25 A. Absolutely correct.

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1 Q. Okay. So there was nothing deficient or
 2 improper about them notifying you of their intent.
 3 Is that your testimony?
 4 A. The -- the notice was correct. It took a while
 5 to get to us because it had been sent erroneously to a
 6 building address where the resident hadn't been there
 7 for four months and wasn't going to be there for
 8 another couple of months, and one of the other
 9 neighbors happened to find that notice and brought it
 10 to our attention.
 11 Q. So is it your testimony that the notice was
 12 received by The Club but it just was never
 13 acknowledged, or there was a delay in acknowledging the
 14 notice?
 15 A. Once -- that's probably an accurate statement.
 16 Once we found that notice, we provided it to our
 17 counsel at the time.
 18 Q. Okay. And after you received the notice in
 19 this lawsuit, you then filed for an injunction against
 20 the Mitchells to prevent them from constructing the
 21 courts, correct?
 22 MR. TRAFICANTE: Object to form.
 23 THE WITNESS: Until they had the proper
 24 permitting.
 25

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1 BY MR. SEIDENSTICKER:
 2 Q. Well, it was an injunction to prevent them from
 3 removing the existing courts; is that right?
 4 A. Yes.
 5 Q. But at that time they had never actually
 6 undertaken any construction or demolition of the
 7 courts, correct?
 8 A. As I testified earlier, someone had gone over
 9 there and started removing the nets and physically
 10 disrupted with a hammer the cleat that holds the net in
 11 place.
 12 Q. I think that's when you testified that the net
 13 was -- two of the courts were not used for
 14 approximately ten days; is that right?
 15 A. Yes, because of the combination of a couple of
 16 things; that which I just described, and then
 17 subsequent to that the placement of a trailer with the
 18 bandstand and then the bleachers on the other court.
 19 Q. Understood.
 20 But other than that ten-day period in
 21 approximately late 2019 or early 2020, The Club has had
 22 full use and access to all four courts, correct?
 23 A. Yes.
 24 Q. Okay.
 25 MR. SEIDENSTICKER: I don't think I have

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1 anything further. Anything else from you, David?
 2 MR. BOYETTE: No.
 3 MR. TRAFICANTE: And I just have a few
 4 questions just real quick.
 5 CROSS-EXAMINATION
 6 BY MR. TRAFICANTE:
 7 Q. Dr. Patrella, you were just asked some
 8 questions. Were you ever -- was The Club ever asked by
 9 the Mitchells or Dolphin Point to remove any materials
 10 from the tennis relocation site?
 11 A. No.
 12 Q. And the Mitchells were the party that sued and
 13 initiated the current lawsuit, correct?
 14 A. Yes.
 15 Q. And the injunction that was being sought by
 16 The Club that was referenced by Mr. Seidensticker was
 17 because The Club realized that the Mitchells didn't
 18 have, according to Collier County records, the proper
 19 permitting to relocate the tennis courts; is that
 20 correct?
 21 A. Yes.
 22 Q. Okay. You were asked questions about the gate
 23 that lifted, real quick, the green gate that you saw
 24 pictures of that Mr. Boyette showed.
 25 Do you recall that?

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1 A. Yes.
 2 Q. If that gate -- I think you testified that that
 3 gate could be manually lifted; is that correct?
 4 A. Yes.
 5 Q. And when that gate is manually lifted, is there
 6 access by vehicle then?
 7 A. Yes, but -- excuse me. But I'm not sure a
 8 vehicle could -- a golf cart could, but I don't think a
 9 vehicle could make it to the subject parcel.
 10 Q. Because the road is narrow?
 11 A. Yes. There's a pinch point there between the
 12 courts and like a 45-degree angle slope there that I
 13 don't think you could drive a vehicle over.
 14 Q. And you were shown several proxies by
 15 Mr. Boyette as to the 2015 vote.
 16 Do you recall that?
 17 A. Yes.
 18 Q. Is it The Club's position that the individuals
 19 who executed those proxies were authorized to do so as
 20 best as The Club knows?
 21 A. Yes.
 22 MR. TRAFICANTE: No further questions.
 23 MR. BOYETTE: You going to read or waive?
 24 MR. TRAFICANTE: We're going to read.
 25 MR. BOYETTE: I'm not going to order it right

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1 now, but we'll let you know if we do.
 2 MR. TRAFICANTE: Sounds good.
 3 MR. BOYETTE: Okay. Have a good day,
 4 everybody.
 5 (Thereupon the deposition was concluded at
 6 1:24 p.m.)
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1 CERTIFICATE OF OATH
 2
 3
 4 STATE OF FLORIDA
 5 COUNTY OF LEE
 6
 7
 8 I, the undersigned authority, certify that DAVID
 9 PATRELLA, M.D., CORPORATE REPRESENTATIVE OF THE CLUB AT
 10 LA PENINSULA, personally appeared before me and was duly
 11 sworn on January 6, 2023.
 12
 13 Signed this 9th day of February, 2023.
 14
 15 *Andrea Stefanick*
 16 ANDREA J. STEFANICK, RMR, CRR, CRC, FPR
 17 Notary Public, State of Florida
 18 My Commission No.: HH 280007
 19 Expires: September 27, 2026
 20
 21
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1 CERTIFICATE OF REPORTER
 2
 3 STATE OF FLORIDA
 4 COUNTY OF LEE
 5
 6 I, ANDREA J. STEFANICK, RMR, CRR, CRC, FPR,
 7 do hereby certify that I was authorized to and did
 8 stenographically report the foregoing deposition of
 9 DAVID PATRELLA, M.D., CORPORATE REPRESENTATIVE OF
 10 THE CLUB AT LA PENINSULA, pages 1 through 122; that a
 11 review of the transcript was requested; and that the
 12 transcript is a true record of my stenographic notes.
 13 I further certify that I am not a relative,
 14 employee, attorney, or counsel of any of the parties,
 15 nor am I a relative or employee of any of the parties'
 16 attorneys or counsel connected with the action, nor am I
 17 financially interested in the action.
 18
 19 Dated this 9th day of February, 2023.
 20
 21 *Andrea Stefanick*
 22 ANDREA J. STEFANICK, RMR, CRR, CRC, FPR
 23
 24
 25

Page 125

1 February 9, 2023
 2 DAVID PATRELLA, M.D.
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 8
 9 In Re: Deposition of DAVID PATRELLA, M.D.,
 10 CORPORATE REPRESENTATIVE OF THE CLUB AT LA PENINSULA
 11 KIMBERLY MITCHELL, et al., vs. CLUB AT LA PENINSULA
 12 Case No.: 2019-CA-3254
 13
 14 Please take notice that on January 6, 2023, your
 15 client's deposition was taken in the above cause. At
 16 that time, signature was not waived. The transcript is
 17 now available for your client to read and sign.
 18 Please execute the Errata Sheet. Once completed, please
 19 print, sign, and return to us at
 20 production@naplescrs.com for distribution to all
 21 parties.
 22
 23 If your client does not read and sign the deposition
 24 within a reasonable amount of time, the original, which
 25 has already been forwarded to the ordering attorney, may
 be filed with the Clerk of the Court.
 If you client wishes to waive his/her signature now,
 please sign in the blank at the bottom of this letter
 and return to the address listed below.
 Very truly yours,
 ANDREA J. STEFANICK, RMR, CRR, CRC, FPR
 Naples Court Reporting and Legal Services, Inc.
 production@naplescrs.com
 I do hereby waive my signature:
 DAVID PATRELLA, M.D.,
 CORPORATE REPRESENTATIVE OF THE CLUB AT LA PENINSULA

1

ERRATA SHEET

DO NOT WRITE ON TRANSCRIPT-ENTER CHANGES HERE

2

KIMBERLY MITCHELL, et al., vs. CLUB AT LA PENINSULA

3

DEPONENT: DAVID PATRELLA, M.D., CORPORATE
REPRESENTATIVE OF THE CLUB AT LA PENINSULA

4

Date of : January 6, 2023

Case No.: 2019-CA-3254

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Under penalties of perjury, I declare that I have read the foregoing transcript of my deposition, and I hereby swear that the testimony therein was true at the time it was given and is now true and correct, including any corrections and/or amendments listed above.

24

25

DATE DAVID PATRELLA, M.D., CORPORATE
REPRESENTATIVE OF THE CLUB AT LA PENINSULA

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