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Clerk of Circuit Court
Manitowoc County, WI
2025CV000015

**STATE OF WISCONSIN CIRCUIT COURT
MANITOWOC COUNTY**

MANITOWOC TIMESHARE MANAGEMENT,
LLC.,

Plaintiff,

v.

FOX HILLS OWNERS ASSOCIATION, INC.,

Defendant and Third-Party Plaintiff,

Case No.: 2025-CV-000015
Case Code: 30301

FH RESORT LIMITED PARTNERSHIP

Third-Party Defendant.

**FOX HILLS OWNERS ASSOCIATION, INC.'S ANSWER TO THIRD-
PARTY DEFENDANT FH RESORT LIMITED PARTNERSHIP'S
COUNTERCLAIM**

NOW COMES the Defendant and Third-Party Plaintiff Fox Hills Owner's Association, Inc., ("Fox Hills") by and through their undersigned attorneys at Kaman & Cusimano, LLC., hereby answers the Third-Party Defendant FH Resort Limited Partnership's ("FHR") Counterclaim as follows:

ANSWER

1. The Third-Party Defendant, FH Resort Limited Partnership ("FHR"), is a Wisconsin limited Partnership having its principal place of business at 1223 Appleton Road, Menasha, Wisconsin 54952.

RESPONSE: Admit.

2. The Third-Party Plaintiff, Fox Hills Owners Association, Inc. (the "Association"), is a Wisconsin non-stock non-profit corporation having its principal place of business at 212 W. Church Street, Mishicot, Wisconsin 54228.

RESPONSE: Admit.

CREATION OF THE FOX HILLS CONDO

1. The dispute at issue involves a number of agreements, actions, documents, and payments over the course of nearly 30 years.

RESPONSE: Defendant and Third-Party Plaintiff Fox Hills lacks knowledge or information sufficient to admit or deny and therefore denies.

2. By way of background, FHR originally acquired what was then known as the Fox Hills Golf Course and the Fox Hills Inn and Country Club, which is located generally along Church Street, State Street, and Samz Road in Mishicot, WI, from Fox Hills Inn and Country Club, Inc.

RESPONSE: Defendant and Third-Party Plaintiff Fox Hills lacks knowledge or information sufficient to admit or deny and therefore denies.

3. This transaction closed on February 25, 1994.

RESPONSE: Defendant lacks knowledge or information sufficient to admit or deny and therefore denies.

4. Fox Hills Inn and Country Club, Inc., was the original developer of the golf course property, along with the abutting residential condominium developments.

RESPONSE: Admit.

5. These condominium developments were previously established pursuant to different condominium plats and were governed by different condominium declarations and associations. As of February 25, 1994, the land legally described on Exhibit "A" and depicted below was generally subject to a declaration of condominium recorded with the Manitowoc County Register of Deeds as document # 626492.

RESPONSE: Objection, “Exhibit A” speaks for itself. As to the remainder of the paragraph, Defendant lacks knowledge or information sufficient to admit or deny and therefore denies.

6. This condominium development was known generally as the “Fox Hills Villas Condominium.”

RESPONSE: Defendant and Third-Party Plaintiff Fox Hills lacks knowledge or information sufficient to admit or deny and therefore denies.

7. As of February 25, 1994, the land legally described on Exhibit “B” and depicted below was generally subject to a declaration of condominium recorded with the Manitowoc County Register of Deeds as document # 632614, as amended.

RESPONSE: “Exhibit B” speaks for itself and therefore a response is not required.

8. This condominium development was known generally as the “Fox Hills Golf Villas Condominium.”

RESPONSE: Defendant Fox Hills lacks knowledge or information sufficient to admit or deny and therefore denies.

9. On February 25, 1994, Fox Hills Inn and Country Club, Inc., sold and assigned its development rights to FHR.

RESPONSE: Defendant and Third-Party Plaintiff Fox Hills lacks knowledge or information sufficient to admit or deny and therefore denies.

10. An Assignment of Declarant Rights was recorded with the Manitowoc County Register of Deeds on March 1, 1994, as document #'s 733212 and 733213, designating FH Resort Limited Partnership as the successor developer/declarant.

RESPONSE: Admit that FHR became the successor declarant. Deny all other allegations.

11. Thus, as of March 1, 1994, FHR was the owner of the golf course and assumed the status as developer/declarant of the Fox Hills Villas Condominium and Fox Hills Golf Villas Condominium, generally depicted below.

RESPONSE: Objection, the above paragraph states a legal conclusion to which no response is required. Subjection to the objection, defendant lacks knowledge sufficient to admit or deny, and therefore, denies.

12. On October 20, 1997, as developer, FHR recorded a Declaration of Condominium and Time-Share Instrument of Fox Hills Condominium Vacation Ownership Plan (“Fox Hills Condo”) with the Manitowoc County Register of Deeds as document number 797624.

RESPONSE: Admit.

13. That document is attached hereto as Exhibit “C” and will be referred as the “Declaration” throughout this Counterclaim.

RESPONSE: Admit.

14. Initially, the land that was subject to the Declaration was the land solely described in Exhibit “B.”

RESPONSE: Defendant and Third-Party Plaintiff lack knowledge or information sufficient to admit or deny and therefore denies.

15. Pursuant to the Articles and Agreement of Merger recorded with the Manitowoc County Register of Deeds as document # 798425 on November 4, 1997, Fox Hills

Villas Condominium and Fox Hills Golf Villas Condominium were merged into the newly established Declaration of Condominium and Time-Share Instrument for Fox Hills Condominium Vacation Ownership Plan.

RESPONSE: Admit.

16. A copy of that document is attached hereto as Exhibit “D.”

RESPONSE: Objection is made because “that document” is not defined. Subject to the objection, Exhibit D speaks for itself.

17. As a result of the merger of Fox Hills Villas Condominium and Fox Hills Golf Villas Condominium on November 4, 1997, the entirety of the real estate governed by the Declaration of Condominium and Time-Share Instrument of Fox Hills Condominium Vacation Ownership Plan was the real estate described in Exhibit “A” and Exhibit “B”, which is confirmed at Paragraph 8 of the Articles and Agreement of Merger (Doc. # 798425).

RESPONSE: Defendant and Third-Party Plaintiff lack knowledge or information sufficient to admit or deny and therefore denies. These exhibits speak for themselves.

18. With the merger and establishment of the new Fox Hills Condo by FHR, the Association was established to provide governance over the Fox Hills Condo.

RESPONSE: Defendant and Third-Party Plaintiff Fox Hills lacks knowledge or information sufficient to admit or deny and therefore denies.

19. A true and correct copy of the Association’s Bylaws is attached hereto as Exhibit “E.”

RESPONSE: Admit.

20. A true and correct copy of the Association's statutory-required "Time-Share Disclosure Statement" is attached hereto as Exhibit "F".

RESPONSE: Admit.

FHR'S INITIAL OWNERSHIP

21. At the time of the merger and establishment of the Condo, FHR owned the neighboring golf course and resort facility, and also owned over 3,000 timeshare weeks within the Condo.

RESPONSE: Defendant and Third-Party Plaintiff Fox Hills lacks knowledge or information sufficient to admit or deny and therefore denies.

22. These timeshare weeks were acquired as a result of the merger and ultimate conversion of the Condo to a timeshare form of ownership.

RESPONSE: Defendant and Third-Party Plaintiff Fox Hills lacks knowledge or information sufficient to admit or deny and therefore denies.

23. Further, as part of its land acquisition from Fox Hills Inn Golf and Country Club, Inc., FHR purchased an existing parcel of land that was not part of any of the existing condominiums, and which contained an indoor pool, laundry facilities, and meeting space, as depicted below (the "Rec Center")

RESPONSE: Defendant and Third-Party Plaintiff Fox Hills lacks knowledge or information sufficient to admit or deny and therefore denies.

24. Thus, as of the establishment of the Condo, FHR owned the golf course and related resort properties, approximately 3,000 timeshare weeks within the Condo, and the Rec Center property centrally located within the Condo.

RESPONSE: Defendant and Third-Party Plaintiff Fox Hills lacks knowledge or information sufficient to admit or deny and therefore denies.

25. As owner of the adjoining golf course and resort, FHR recognized that owners and users of timeshare weeks within the Condo would be beneficial to FHR's business.

RESPONSE: Defendant and Third-Party Plaintiff Fox Hills lacks knowledge or information sufficient to admit or deny and therefore denies.

26. Further, as the developer of the Condo, FHR desired to see the Condo and the Association succeed by adding new timeshare owners.

RESPONSE: Defendant and Third-Party Plaintiff Fox Hills lacks knowledge or information sufficient to admit or deny and therefore denies.

27. Due to this common relationship and common interest, FHR provided numerous benefits to the Association (and its timeshare owner-members) over the 30-year relationship in order to ensure that the Association was able to operate without undue financial burden to its members.

RESPONSE: Paragraph 27 is ambiguous. Thus, Defendant and Third-Party Plaintiff Fox Hills deny.

28. Because of FHR's financial generosity, the Association was able keep annual assessments charged to members the same for many years in a row, while other timeshare associations imposed annual dues increases each year.

RESPONSE: Defendant and Third-Party Plaintiff Fox Hills lacks knowledge or information sufficient to admit or deny and therefore denies.

29. Conversely, there was a longstanding agreement between FHR and the Association that in partial exchange for the benefits conferred upon the Association, there was no expectation that FHR would pay dues or assessments on timeshare weeks that it owned.

RESPONSE: Deny.

30. One of the biggest ways FHR provided assistance to the Association was by providing the Association a "line of credit."

RESPONSE: Defendant and Third-Party Plaintiff Fox Hills lacks knowledge or information sufficient to admit or deny and therefore denies.

31. For instance, when the Association was short on cash, FHR would provide cash to the Association to utilize to operate.

RESPONSE: Defendant and Third-Party Plaintiff Fox Hills lacks knowledge or information sufficient to admit or deny and therefore denies.

32. Similarly, when the Association desired to make improvements, repairs, buy furniture, or incur other capital expenditures, the Association would turn to FHR to provide the needed cash, which FHR provided.

RESPONSE: Deny.

33. Initially, there was no specific payback term, meaning the monies advanced to the Association by FHR was to be generally paid back as able, which is specifically noted in Para. 4 of the Time-Share Disclosure Statement (Ex. F): "the Developer loaned money, as set forth in the balance sheet of the Association, to pay for cost of operations and replacement of the furniture and furnishings in many of the Units.

The loan is an obligation of the Association which must be repaid from time-Share Assessments. At present, the Developer anticipate repayment from any “surplus” assessments received from persons who are presently Owners and from persons who acquire Time-Share Estes in the future. [. . .] Receipts not needed to cover current expenses will thereby create a surplus which will be used to repay the loan from the Developer. Until written notice is given to the Association, the Developer will accept such method of repaying its loan.”

RESPONSE: Defendant and Third-Party Plaintiff Fox Hills lacks knowledge or information sufficient to admit or deny and therefore denies.

34. As such, the Association would build up a balance on the line of credit, and then pay down some or all of the line of credit as annual assessments were collected.

RESPONSE: Defendant and Third-Party Plaintiff Fox Hills lacks knowledge or information sufficient to admit or deny and therefore denies.

35. Over the years, it is estimated that FHR advanced over \$14 million to the Association for its use.

RESPONSE: Defendant and Third-Party Plaintiff Fox Hills lacks knowledge or information sufficient to admit or deny and therefore denies.

36. As a further benefit to the Association, instead of charging interest that a bank would typically charge on a line of credit, FHR charged a lower interest rate, first using 6%, and then using the IRS’ published “Blended Annual Rate” (“BAR”).

RESPONSE: Deny. FHR often stated that it was not charging any interest on the funds advanced, which would not have been needed had FHR paid the assessments it owed.

37. For example, the current BAR interest rate is presently 5.03%; whereas, the current prime interest rate is 7.5%.

RESPONSE: Defendant and Third-Party Plaintiff Fox Hills lacks knowledge or information sufficient to admit or deny and therefore denies.

38. Banks will typically charge interest on business lines of credit in excess of the prime interest rate.

RESPONSE: Defendant and Third-Party Plaintiff Fox Hills lacks knowledge or information sufficient to admit or deny and therefore denies.

39. As a result of charging lower interest, FHR saved the Association hundreds of thousands of dollars in interest savings over the years.

RESPONSE: Deny.

40. Further, FHR did not require security (i.e. a mortgage) for the sums advanced – something that a bank would typically require.

RESPONSE: Defendant and Third-Party Plaintiff Fox Hills lacks knowledge or information sufficient to admit or deny and therefore denies.

41. To be certain, the revolving amount owed on the line of credit, along with the amounts paid and the interest charged, was disclosed to the members at the annual meeting, and to the Association's board of directors in financials, which were reviewed and discussed at board meetings, and was reviewed and discussed with the Association's officers and business manager.

RESPONSE: Defendant lacks knowledge or information sufficient to admit or deny which annual meeting is referred to. For years FHR advised the Board that no interest would be charged on any funds advanced, but later FHR started charging interest as soon as the Association in 2023 or so referenced having an attorney review the documents FHR had provided.

42. As of the filing of this Counterclaim, the Association owes FHR \$1,004,784.17 in principal and at least \$641,401.52 in interest on the line of credit.

RESPONSE: Deny.

43. Another way in which FHR subsidized the Association was by allowing the Association rent-free use of FHR's "Rec Center:"

RESPONSE: Defendant and Third-Party Plaintiff Fox Hills lacks knowledge or information sufficient to admit or deny and therefore denies.

44. The Rec Center is an approximate 12,384 square foot building located in the heart of the condominium complex that houses a swimming pool, laundry facilities, storage, and gathering space, part of which is depicted below:

RESPONSE: Admit.

45. Since its inception in 1997, the Association (and its timeshare members) has been permitted to exclusively utilize the Rec Center without having to pay rent

RESPONSE: Deny.

46. The only costs the Association was responsible for were utilities, maintenance, repairs, insurance, and taxes.

RESPONSE: Defendant lacks knowledge or information sufficient to admit or deny and therefore denies.

47. Upon information and belief, the current fair market rent for a facility like the Rec Center would be at least \$12,500 / month, under a triple net lease (\$150,000.00 / year + occupancy expenses).

RESPONSE: Defendant and Third-Party Plaintiff Fox Hills lacks knowledge or information sufficient to admit or deny and therefore denies.

48. Thus, in the past 6 years alone, the Association has not had to pay at least \$900,000.00 in rent.

RESPONSE: Defendant and Third-Party Plaintiff Fox Hills lacks knowledge or information sufficient to admit or deny and therefore denies.

49. Another example of the interrelationship between the parties involves reclaimed timeshare weeks. From time-to-time, the Association (not FHR) would foreclose on, or otherwise “take back” a timeshare week from an owner (due to non-payment of dues, death, or other reasons).

RESPONSE: Admit that the Association would from time to time foreclose on a timeshare week. As to the remainder of the allegations, deny.

50. In lieu of retaining ownership of these timeshare weeks, the Association would instead assign those timeshare weeks to FHR.

RESPONSE: Deny. FHR’s related management company would instruct the Association to assign the weeks to FHR and no one advised the Association of these transfers until an Association officer asked about the FHR and the Association foreclosures.

51. This ultimately benefited the Association because the Association had no mechanism to sell timeshare weeks (i.e. no sales office or personnel), as such, it fell onto FHR to take responsibility for selling the weeks or otherwise managing the inventory.

RESPONSE: Deny.

52. FHR subsequently re-selling the weeks benefited the Association because it would then be able to collect assessments from the new owner.

RESPONSE: Defendant lacks knowledge or information sufficient to admit or deny and therefore denies.

53. A specific example of how this ultimately benefited the Association took place in 2018, when FHR transferred a significant number of timeshare weeks to a company called Global Exchange Development Corp., who is now paying in excess of \$600,000 per year in dues and assessments.

RESPONSE: Admit that Global is an owner of timeshare weeks and pays assessments. As to the remainder of the allegation, deny.

54. FHR received no profit in the transfer of these timeshare weeks, and proceeded with the transaction solely because it would benefit the Association and its members, financially.

RESPONSE: Deny.

55. Because FHR understood that it did not have to pay assessments on timeshare weeks that it owned, it had no objection to taking the weeks and then re-selling them.

RESPONSE: Defendant and Third-Party Plaintiff Fox Hills lacks knowledge or information sufficient to admit or deny and therefore denies.

56. Had FHR known it was going to subsequently be charged assessments for these timeshare weeks, it never would have agreed to be assigned them, as they were of no value or use to FHR since FHR had its own pre-existing timeshare inventory to sell.

RESPONSE: Defendant and Third-Party Plaintiff Fox Hills lacks knowledge or information sufficient to admit or deny and therefore denies.

57. The Association maintains that it is owed over \$2 million in assessments that have gone unpaid by FHR.

RESPONSE: Admit.

58. As addressed above, there was a longstanding agreement between FHR and the Association that FHR would not be obligated to pay assessments, since it was conferring other valuable benefits to the Association, including lower interest on the line of credit, flexible payment terms on the line of credit, and no rent on the Rec Center.

RESPONSE: Deny.

59. Every annual budget since 1997 was approved by the Association's board of directors, and that budget never included dues payable from FHR for timeshare weeks owned by FHR.

RESPONSE: Defendant and Third-Party Plaintiff lack knowledge or information sufficient to admit or deny and therefore denies.

60. The board of directors and officers of the Association were aware that FHR was not paying assessments, and never once was there a demand made to do so, nor was there an objection lodged.

RESPONSE: Deny. Various Board members asked FHR and FHR representatives about assessments and the budget and each time FHR represented that under the documents FHR was not liable for assessments.

61. In fact, as recently as 2016, the Association acknowledged that FHR was not paying nor expected to pay assessments, as evidenced in the written agreement between FHR and the Association concerning the sale of FHR's timeshare weeks to Global.

RESPONSE: Admit that FHR has claimed and falsely advised the Association that it was not liable for assessments under the condominium documents, but deny all other allegations.

62. A copy of that agreement is attached hereto as Exhibit "G."

RESPONSE: The above paragraph speaks for itself and therefore a response is not required.

63. Had FHR known it would be obligated to pay assessments on its timeshare weeks, it would have (a) charged standard interest on the line of credit, (b) ensured that the line of credit was paid down with more regularity, (c) charged fair market rent for the use of the Rec Center; and (d) declined to be assigned any timeshare weeks that the Association otherwise reclaimed from other owners.

RESPONSE: Defendant and Third-Party Plaintiff Fox Hills lacks knowledge or information sufficient to admit or deny and therefore denies.

64. The Association asserts that it is entitled to payment for 6-years of past-due assessments on timeshare weeks associated with "unbuilt condo units in buildings known as 16-19 and 21" on the condominium plat.

RESPONSE: Admit.

65. Buildings 16, 17, 18, 19 and 21 are depicted on the original condominium plat of Fox Hills Villas, but do not presently exist as shown in this GIS overlay:

RESPONSE: Defendant and Third-Party Plaintiff Fox Hills lacks knowledge or information sufficient to admit or deny and therefore denies.

66. In fact, as shown in the overlay, there is an outdoor swimming pool in the footprint of building 21, and a tennis court in the footprint of building 19.

RESPONSE: Defendant and Third-Party Plaintiff Fox Hills lacks knowledge or information sufficient to admit or deny and therefore denies.

67. Thus, the Association seeks to impose assessments on units in buildings that do not exist, on land that has been used by the Association's members to swim and play tennis.

RESPONSE: Deny.

68. The Condo Declaration and Association Bylaws are silent as to the right of the Association to levy assessments for timeshare weeks associated with buildings that do not exist.

RESPONSE: Deny.

69. FHR has no ability to use, sell, or rent the unbuilt timeshare weeks, and therefore, does not benefit from the common areas that are otherwise utilized by timeshare owners who have a place to occupy while on the premises.

RESPONSE: Defendant and Third-Party Plaintiff Fox Hills lacks knowledge or information sufficient to admit or deny and therefore denies.

70. The Association would not allow FHR to pitch a tent and camp on the footprints of Buildings 16-19 and 21, yet it expects FHR to pay assessments with respect thereto.

RESPONSE: Admit that FHR is expected to pay assessments like all other owners, as required by the condominium documents. Deny all other allegations.

71. Charging assessments for nonexistent units disproportionately burdens those owners without providing them the benefits other owners receive, and fundamentally violates principles of equity.

RESPONSE: Objection, this is a legal conclusion for which no response is required. Subject to the objection, Deny.

72. During the entirety of the Association's history, it has never levied assessments for timeshare weeks associated with unbuilt units.

RESPONSE: Defendant and Third-Party Plaintiff lack knowledge or information sufficient to admit or deny and therefore denies.

73. Setting aside the lunacy of the Association seeking to levy assessments against an owner of a timeshare week in a non-existent building, the “unbuilt units” – and the land associated therewith – are no longer part of the Condo.

RESPONSE: Deny.

74. Pursuant to the first page of the Condo Declaration: “in the event construction of a building on a parcel is not completed within five (5) years from the date of recording[. . .] title to the Real Property subjected to this Declaration/Time-Share Instrument less and except any Parcel upon which a building has been constructed shall, as of the day preceding the fifth annual anniversary of the Recording Date, revert to the Developer free and clear of the Declaration/Time-Share Instrument.” See Ex. C at page 1.

RESPONSE: Admit

75. The Declaration continues to state that “Developer may, but is not required to, record an instrument identifying the legal description of the property removed from the Declaration/Time-Share Instrument.”

RESPONSE: The Declaration speaks for itself and therefore no response is required.

76. Buildings 16, 17, 18, 19 and 21 were not completed within five (5) years from the date of recording of the Declaration on October 20, 1997, and those buildings do not exist to this day.

RESPONSE: Admit

77. As such, even assuming the Association had the right to levy assessments against owners of timeshare weeks in unbuilt units, that right terminated on October 21, 2002, because the land in question was no longer subject to the Declaration.

RESPONSE: Deny.

78. On December 23, 2020, FHR formally excised and sold the land described on Exhibit “B” to FH Hospitality LLC, as no building had been constructed on this land and more than 5 years had passed since the recording of the Declaration of Condominium and Time-Share Instrument of Fox Hills Condominium Vacation Ownership Plan.

RESPONSE: Admit that FHR allegedly sold land that it could not legally own to FH Hospitality and that 5 years had passed since the recording of the Declaration. Deny all other allegations.

79. On October 31, 2024, FHR formally excised the remaining land within the Condo that was not otherwise developed. Specifically, the land depicted below as “Lot 1” and legally described within Exhibit “H.”

RESPONSE: Deny.

80. Accordingly, the land identified as “Lot 1” on Exhibit “H” was and is no longer subject to the terms, conditions, limitations, or restrictions of the Condo Declaration, and title should be solely vested in the name of FH Resort.

RESPONSE: Deny.

81. In acquiring a timeshare estate, each purchaser takes title to that estate subject to the terms and conditions of the Condo Declaration.

RESPONSE: Admit that a purchaser would take title subject to the LEGAL provisions of the Declaration. Deny all other allegations.

82. The Condo Declaration makes clear that any undeveloped land within the Condo plat was automatically removed from the Condo no later than October 21, 2022.

RESPONSE: Objection, this is a legal conclusion and as such no response is required. Subject to the objection, Deny.

83. By accepting title to a timeshare estate, each current owner (and any predecessor in interest) within the Condo consented to the terms of the Declaration, and therefore, has consented to and acknowledged that “in the event construction of a building on a parcel is not completed within five (5) years from the date of recording[, . . .] title to the Real Property subjected to this Declaration/Time-Share Instrument less and except any Parcel upon which a building has been constructed shall, as of the day preceding the fifth annual anniversary of the Recording Date, revert to the Developer free and clear of the Declaration/Time-Share Instrument.”

RESPONSE: Admit that each current owner consented to the LEGAL provisions of the Declaration. Deny all other allegations.

INTERFERENCE WITH CONTRACTUAL RIGHTS & OPPRESSIVE CONDUCT

84. The Association’s board consists of five (5) members.

RESPONSE: Admit.

85. Pursuant to the Association’s Bylaws (at § 4.3) and the Declaration (at § 5.4), FHR, as Developer, retains the right to appoint two (2) individuals to the Association’s Board of Directors.

RESPONSE: Deny.

86. 2 directors out of 5 directors does not constitute a majority of the director positions on the Board.

RESPONSE: Admit.

87. FHR has historically appointed 2 directors to the Board; however, because the parties were engaged in pre-suit negotiations/mediation, the 2 directors resigned from the Board in late 2024 in order to avoid any potential assertion that negotiations/settlement was being unfairly manipulated.

RESPONSE: Admit FHR historically appointed 2 directors to the Board; lack knowledge or information sufficient to admit or deny the remainder of the allegations and therefore deny.

88. On April 12, 2025, the Association conducted the annual meeting of the members.

RESPONSE: Admit.

89. At such meeting, one of the items of business was to elect individuals to serve on the board of directors.

RESPONSE: Admit.

90. According to a ballot that was sent to all timeshare owners, because the board members who were previously appointed by FHR had resigned, there were a total of 3 board seats to fill:

RESPONSE: Admit.

91. A true and correct copy of the ballot is attached hereto as **Exhibit "T"**.

RESPONSE: Admit.

92. Because settlement negotiations failed, and in light of the fact that the Association was attempting to fill board seats that FHR historically appointed, FHR provided written notice to the Association on April 11, 2025, that it was appointing 2 directors, as was its right.

RESPONSE: Admit FHR provided written notice to the Association on April 11, 2025. Deny that appointing 2 directors is FHR's right. Lack information and therefore deny all other allegations in this paragraph.

93. A true and correct copy of the notice of appointment is attached hereto as **Exhibit "J"**.

RESPONSE: Admit.

94. At the annual meeting, the Association declared that it would not honor FHR's appointment of directors "on the advice of counsel."

RESPONSE: Defendant and Third-Party Plaintiff lack knowledge or information sufficient to admit or deny and therefore denies.

95. As such, the Association proceeded with the board election of 3 directors, disregarding FHR's 2 valid director appointments.

RESPONSE: Admit that the Board proceeded with the board election of 3 directors, deny that FHR has valid director appointments.

96. As addressed above, the ballot presented to Association members stated that "there will be three (3) open board seats to fill."

RESPONSE: Admit.

97. As such, multiple owners cast ballots selecting 3 out of the 4 individuals listed on the ballot, believing that they had the right to vote to fill each vacancy.

RESPONSE: Defendant and Third-Party Plaintiff lack knowledge or information sufficient to admit or deny and therefore denies.

98. Once the votes were cast and the results were announced, it became clear to members in attendance that votes were not being appropriately counted.

RESPONSE: Deny.

99. For instance, one candidate (who lost), Nick Klaseus, was reported to have noticeably fewer votes than the number of individuals who were physically present at the meeting and who voted for him.

RESPONSE: Defendant and Third-Party Plaintiff lack knowledge or information sufficient to admit or deny and therefore denies.

100. When the results were challenged, members were ultimately told that as an owner, they only had one vote per week of timeshare ownership, and could only vote that week once. Meaning, if there were three open positions but a member only owned one week, that member could only vote to fill one of the three board seats.

RESPONSE: Deny.

101. Further, if a member voted to fill more board seats than they had weeks available to vote, then the entire ballot was not counted, and thrown out.

RESPONSE: Admit.

102. Separately, an entity called Global Exchange Vacation Club (“Global”), granted a proxy to Michael Jacobson, to vote the entirety of Global’s weeks (totaling 1183.5 weeks) in the board election.

RESPONSE: Admit.

103. Pursuant to the proxy, Michael Jacobson provided a ballot to the Association, casting the entirety of its votes in favor of Nick Klaseus.

RESPONSE: Deny.

104. That said, the ballot further made clear that if there were, in fact, 2 additional board seats to fill, then write-in candidates were noted and voted for.

RESPONSE: Defendant and Third-Party Plaintiff lack knowledge or information sufficient to admit or deny and therefore denies.

105. A true and correct copy of Global’s proxy, notice of proxy, and ballot are attached as **Exhibit “K”**.

RESPONSE: Admit.

106. At the annual meeting, the Association declared that it would not honor Global’s ballot and therefore not count Global’s votes.

RESPONSE: Admit the Association did not count Global’s votes, Defendant and Third-Party Plaintiff lack knowledge or information sufficient to admit or deny and therefore denies all other allegations in this paragraph.

107. Had the Association not disregarded the ballots that it disregarded, upon information and belief, the individuals who were elected at the annual meeting would not have been elected.

RESPONSE: Defendant and Third-Party Plaintiff lack knowledge or information sufficient to admit or deny and therefore denies.

108. Attached hereto as **Exhibit “N”** are statements issued by members of the Association sharing their experience and viewpoint.

RESPONSE: Defendant and Third-Party Plaintiff lack knowledge or information sufficient to admit or deny and therefore denies.

109. On May 31, 2025, a special meeting of the members of the Association was held to address the instant litigation and to address concerns that were raised by owners regarding the validity of the board election.

RESPONSE: Admit a meeting of the members of the Association was held on May 31, 2025, to address litigation, deny all other allegations in this paragraph.

110. FHR, the developer and owner of timeshare weeks, was barred from attending this meeting despite any legal basis to do so.

RESPONSE: Admit FHR was barred from meeting, deny that there was no legal basis to do so.

111. Attached hereto as **Exhibit “O”** is a true and correct copy of an email sent regarding this meeting and making clear FHR could not attend.

RESPONSE: Admit.

112. At this special meeting, the Association reaffirmed its position and refused to honor the ballots previously disregarded.

RESPONSE: Admit.

113. FHR, as an owner, previously requested a copy of the Association’s membership ledger, which FHR is entitled to pursuant to Wis. Stat. Sec. 181.1601-1602.

RESPONSE: Admit the Association received the request, deny that FHR is entitled to a copy of the Association’s membership ledger.

114. FHR’s request for this information was summarily denied without any basis.

RESPONSE: Admit that FHR’s request was denied, deny that it was done without any basis.

115. A true and correct copy of FHR’s request for the membership ledger, and the Association’s denial, is attached hereto as **Exhibit “L”**.

RESPONSE: Admit.

THE CLAIMS

COUNT I - Breach of Contract

114. Pursuant to the parties’ agreement, as reflected in the Time-Share Disclosure Statement, FHR advanced over \$14.0 million to the Association, with a current balance of \$1,004,784.17 in principal and \$641,401.52 in interest due and owing as of

the filing of this Counterclaim, which the Association has failed to repay despite due demand.

RESPONSE: Deny.

115. The Association's board of directors and officers reviewed and approved the terms of this line of credit in financial statements and meetings, constituting acceptance of the agreement.

RESPONSE: Deny.

116. The Association has breached this agreement by failing to repay the outstanding principal and interest on the line of credit.

RESPONSE: Deny.

117. As a direct and proximate result of the Association's breach, FHR has suffered damages in the amount of no less than \$1,646,185.69 (principal plus interest), plus additional damages to be proven at trial.

RESPONSE: Deny.

COUNT II Unjust Enrichment

118. FHR conferred substantial benefits upon the Association, including rent-free use of the Rec Center (valued at least \$900,000 over the past 6 years), a below-market interest rate on the line of credit (saving the Association hundreds of thousands of dollars in interest), and acceptance of reclaimed timeshare weeks to facilitate their resale, all without expectation of assessments on FHR-owned timeshare weeks.

RESPONSE: Deny.

119. The Association knowingly accepted and retained these benefits, utilizing the Rec Center exclusively for its members, relying on the low-interest line of credit for operational and capital needs, and benefiting from dues paid by new owners of reclaimed weeks sold by FHR.

RESPONSE: Deny.

120. It would be inequitable for the Association to retain these benefits without compensating FHR, particularly while simultaneously seeking to impose over \$2 million in assessments that contradict the parties' longstanding arrangement, which is evidenced in Exhibit "G".

RESPONSE: Deny.

121. As a result, assuming the Court were to conclude that FHR is required to pay back assessments to the Association, FHR is entitled to an offset against such assessments in an amount to be determined at trial, including but not limited to the fair market value of the Rec Center's use and the interest savings provided.

RESPONSE: Deny.

COUNT III – Declaratory Judgment

122. FHR realleges and incorporates by reference all prior paragraphs of this Counterclaim as if fully set forth herein.

RESPONSE: Defendant and Third-Party Plaintiff Fox Hills restates and incorporated by reference all prior paragraphs of this Answer as if fully set forth herein.

123. An actual controversy exists between FHR and the Association regarding the Association's claim that FHR owes over \$2 million in unpaid assessments on timeshare weeks it owns, weeks it was assigned by the Association, and weeks associated with unbuilt units in buildings 16-19 and 21.

RESPONSE: Deny.

124. Pursuant to the parties' longstanding agreement, as evidenced by budgets approved annually since 1997 and the 2016 written agreement with Global Exchange Development Corp., FHR was not obligated to pay assessments on its timeshare weeks in exchange for the financial benefits it provided to the Association.

RESPONSE: Deny.

125. Further, the Association has no legal basis to levy assessments on timeshare weeks tied to unbuilt units, as (a) such units do not exist and provide no benefit to FHR, (b) the Condo Declaration and Bylaws are silent on this authority, and (c) the land associated with buildings 16-19 and 21 reverted to FHR free of the Declaration on October 21, 2002, per the Declaration's terms.

RESPONSE: Deny.

126. The Association has separately challenged the terms of the Declaration and whether and to what extent the land associated with buildings 16-19 and 21 reverted to FHR free of the Declaration.

RESPONSE: Admit.

127. FHR seeks a declaratory judgment from this Court that:

- i. FHR is not liable for any past or future assessments on timeshare weeks it owns or owned, based on the parties' agreement and course of conduct;
- ii. The Association has no authority to impose assessments on timeshare weeks associated with unbuilt units in buildings 16-19 and 21;
- iii. The Association has no authority to impose assessments on timeshare weeks that it unilaterally assigned to FHR; and
- iv. The land associated with unbuilt units is no longer subject to the Condo Declaration, with title vested solely in FHR or its successors.

RESPONSE: Objection, a response is not required. Subject to the objection, Association denies FHR is entitled to the declaratory judgment it requests.

COUNT IV – PROMISSORY ESTOPPEL

128. The Association, through its conduct and approval of budgets since 1997, represented to FHR that it would not be required to pay assessments on its timeshare weeks in exchange for FHR's financial support, including the line of credit, Rec Center use, and management of reclaimed weeks.

RESPONSE: Deny.

129. FHR reasonably relied on this representation by providing over \$14.0 million in advances, forgoing fair market rent on the Rec Center, accepting reclaimed weeks, and not charging standard interest rates, all to its detriment.

RESPONSE: Deny.

130. The Association's current demand for assessments is inconsistent with its prior representations, and enforcing such a demand would be unjust given FHR's reliance

RESPONSE: Deny.

131. FHR is entitled to an order estopping the Association from collecting assessments and to damages for its reliance, in an amount to be proven at trial.

RESPONSE: Deny.

COUNT V – BREACH OF DECLARATION & BYLAWS

132. The Bylaws and the Declaration each state that FHR, as developer, has the right to appoint 2 directors to the Association's board of directors.

RESPONSE: Admit the bylaws and declaration state this, deny that these provisions are enforceable or legal under Wisconsin law.

133. There is nothing in Chapter 707, Wis. Stats., that prohibits or bars FHR from appointing directors.

RESPONSE: No response is required because it calls for a legal conclusion. To the extent a response is required, Defendant and Third-Party Plaintiff lack knowledge or information sufficient to admit or deny and therefore denies.

134. The Association has knowingly and intentionally deprived FHR of its lawful right to appoint directors, to FHR's detriment.

RESPONSE: Deny.

135. The Association has violated FHR's contractual and legal rights as a result, and the Association should be ordered to acknowledge and accept FHR's original appointment of directors, who should be installed immediately.

RESPONSE: Deny.

136. The Association has further denied the rights of multiple members, including Global, in refusing to accept properly cast ballots.

RESPONSE: Deny.

137. Global has assigned its legal right to pursue its claims against the Association to FHR, and a copy of that assignment is attached hereto as **Exhibit "M"**.

RESPONSE: Admit.

138. As such, declaratory judgment should be entered in favor of FHR concluding that all ballots previously denied by the Association, including Global's, should be counted, the improper directors should be removed, and the proper directors installed.

RESPONSE: Deny.

COUNT VI – VIOLATION OF RECORDS STATUTE

139. Wis. Stat. § 181.1602 allows members of the Association to inspect the membership list of the Association so long as the requirements of § 181.1605 are met.

RESPONSE: Deny.

140. FHR submitted a request to inspect the membership list of the Association, and satisfied the requisites of § 181.1605.

RESPONSE: Admit.

141. The Association denied the request without any proper basis to do so.

RESPONSE: Deny.

142. Wis Stat § 181.1604 provides that “If a corporation does not allow a member who complies with s. 181.1602(1) to inspect and copy any records required by that subsection to be available for inspection, the circuit court for the county where the corporation’s principal office, or, if none in this state, its registered office is located may summarily order inspection and copying of the records demanded at the corporation’s expense upon application of the member.”

RESPONSE: The allegation calls for a legal conclusion, and therefore no response is required.

143. Wis. Stat. § 181.1604 further provides that “If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the member’s costs, including reasonable attorney fees, incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had reasonable basis for doubt about the right of the member to inspect the records demanded.”

RESPONSE: The allegation calls for a legal conclusion, and therefore no response is required.

144. As such, FHR requests that the Court order the Association to comply with FHR’s request.

RESPONSE: No response is required as no factual allegation is made.

145. Further, FHR asks the Court to order the Association to pay FHR’s costs and attorneys fees on the basis that the Association lacked good faith in denying FHR’s request.

RESPONSE: No response is required as no factual allegation is made.**COUNT VII – INJUNCTIVE RELIEF**

146. The Association, specifically through Richard Glomski and Cyndi Gierczak (who are now directors), has acted in an oppressive manner to FHR, Global, and other members of the Association.

RESPONSE: Deny.

147. Specifically, the Association has acted oppressively by:

- a. Arbitrarily denying FHR’s request to inspect the Association’s membership list;

- b. Denying FHR's right to appoint directors;
- c. Arbitrarily disregarding properly cast ballots; and
- d. Barring FHR, a member, to attend a special meeting of the Association's membership.

RESPONSE: Deny.

148. The Association should be enjoined from continuing to engage in such oppressive conduct.

RESPONSE: Deny.

149. A prohibitory injunction should further be entered barring the current board from engaging in any activities that bind the corporation, as there's a justiciable controversy regarding whether the current board is properly constituted.

RESPONSE: Deny.

150. An affirmative injunction should be entered (a) installing FHR's appointed directors; (b) installing the actual winner of the highest number of votes for the remaining board seat; or (c) ordering a new election for the remaining board seat to be filled.

RESPONSE: Deny.

In the alternative, or in addition, the Court should appoint a temporary receiver to manage the affairs of the Association until such time as the proper board can be ascertained and installed.

RESPONSE: Deny.

Dated this 11th of July, 2025.

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