



FILED

09-10-2025

2501 East Enterprise Avenue
Manitowoc, WI 54220
P.O. Box 785
Appleton, WI 54912-0785
t 920.731.6631
f 920.734.0981

William P. McKinley

William-McKinley@mennlaw.com

September 10, 2025

VIA: E-FILING ONLY

Hon. Judge Robert Dewane
Manitowoc County Circuit Court
1010 S. 8th Street
Manitowoc, WI 54220

Re: Manitowoc Timeshare Management, LLC vs. Fox Hills Owners Association, Inc., et al.
Manitowoc County Case No. 25 CV 15

Dear Judge Dewane:

Please consider this letter brief a short supplement to the Plaintiff's pending Motion for Injunctive Relief, which is set to be heard by the Court next Thursday. Because the Court has indicated a desire to have time to review everything prior to making an oral ruling, I felt it best to provide this supplement in writing versus orally at the hearing due to the already-complex nature of the issues before the Court.

The reason for this supplement is due to the Defendant Association providing written discovery responses a week ago, and from those responses, there are two items of note that directly relate to the pending Motion.

First, when asked to "identify all individuals who counted ballots at the April 12, 2025, annual meeting, their roles, and any determinations that were made concerning whether or not to count a ballot," the Association responded by stating that "Whitney Meyer, Association Office and Human Resources Manager counted the ballots while Dave Graff, Timeshare Owner and Dale Mullikin, Timeshare Owner observed." (See Interrogatory #5 attached as **Exhibit "A"** p. 5).

This response is important to note because the Association's Bylaws make clear at Section 3.4: "The President shall count the votes at membership meetings." (*See* 1st Am. Compl. Ex. E | ECF # 66 | Bylaws). Thus, the Association failed to follow the proper protocol with respect to who actually counted the ballots, as the president apparently did not do so, and instead, three unelected individuals were responsible for counting and/or supervising the ballot count. This constitutes another violation of process and further calls into question the legitimacy of the election itself.

September 10, 2025

Page 2

Second, and more interesting, is the Association's response to Interrogatory # 4, which asked: "describe the voting process at the April 12, 2025, annual meeting, including the rationale for not treating each director seat as a separate election and disregarding ballots." (Ex. A at p. 4). As the Court will glean from the Association's briefing, no actual justification has been offered explaining why each timeshare owner could not vote for a candidate to fill each open board seat. Now, according to the Association's discovery response:

The rational for not treating each director seat as a separate election is because the statutes dictate how elections work and the condominium documents do not provide another method. It would not make sense to hold separate elections because then a single majority holding member would have the ability to elect all of the directors based on their majority share.

(Id. at p. 5). Yet again, the Association does not actually cite to what "statutes" support their position.

Conversely, FHR can cite to two statutes that "dictate how elections work." Specifically, Wis. Stat. Sec. 181.0721, which states, "each member is entitled to one vote on each matter voted on by the members," and Sec. 181.0723(1), which confirms, "a majority of the votes entitled to be cast by the members present in person or represented by proxy at a meeting at which a quorum is present shall be necessary for the adoption of any matter voted upon by the members."

In reality, what the Association is arguing is that it would not be fair for one member that owns a lot of weeks to be able to vote for each director seat, because that member would be able to then control who serves on the board by "out voting" the other members who just hold one week. Setting aside the axiomatic concept that in corporate governance "majority rules," this exact concern is why the principle of *cumulative voting* exists under the statute.

Specifically, Wis. Stat. Sec. 181.0725 states that if the articles of incorporation or bylaws provide for cumulative voting, "members may so vote, by multiplying the number of votes the members are entitled to cast by the number of directors for whom they are entitled to vote, and cast the product for a single candidate or distribute the product among 2 or more candidates." Cumulative voting appeals to "minority shareholders who want to guarantee representation on the board of directors." Nathaniel S. Hammons et al., *The Wisconsin Business Entity Handbook* at § 6.14 (1st ed. 2024).

In other words, ***assuming*** the articles or bylaws allow it, if there are 3 open board seats, and a member has 1 vote for each board seat, they can choose to cast those 3 votes for one seat only. If enough members do this, they could "out vote" the member who would otherwise be able to win that specific seat. In this case, neither the articles of incorporation nor the bylaws permit cumulative voting. Thus, much to the Association's dismay, each member must vote for each open

September 10, 2025

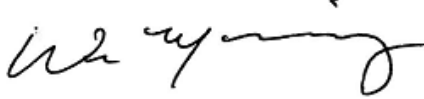
Page 3

seat, even if that means owners with more weeks (and therefore more voting power) will be able to elect their preferred candidate for each seat.¹

In summary, neither in its briefing nor in its discovery responses can the Association articulate any legal basis to maintain that a member of the Association holding only 1 week can only vote for 1 board seat, even though 3 seats are open for election. This is very important to keep in mind when the Court ascertains whether the Association conducted a lawful election by discarding numerous ballots simply because the member casted a vote for 3 (supposedly) open director seats.

Thank you for your additional attention to this submission.

MENN LAW FIRM, LTD.

A handwritten signature in black ink, appearing to read 'William P. McKinley', with a stylized, flowing script.

William P. McKinley

cc: Attorney Daniel J. Miske (via e-filing)
Attorney Matthew Lowe (via e-filing)

¹ Interestingly, the Association appears to believe that a member owning multiple weeks can split their weeks/votes among multiple board members, so long as the total number of votes that they cast do not exceed their total number of weeks owned. This amounts to a bastardized-form of cumulative voting (because the member can allocate votes disproportionately among open board seats), which is not recognized under the law and is not otherwise permitted under the Bylaws.

STATE OF WISCONSIN
MANITOWOC COUNTY
CIRCUIT COURT

MANITOWOC TIMESHARE
MANAGEMENT, LLC

Plaintiff,

v.

FOX HILLS OWNERS
ASSOCIATION, INC.

Defendant and Third-Party
Plaintiff,

v.

FH RESORT
LIMITED PARTNERSHIP

Third-Party Defendant.

Case No. 2025 CV 15
Class Code: 30301

**DEFENDANT & THIRD-PARTY PLAINTIFF, FOX HILLS OWNERS
ASSOCIATION, INC.'S RESPONSES TO THIRD-PARTY DEFENDANT'S FIRST
SET OF INTERROGATORIES, AND REQUEST FOR PRODUCTION OF
DOCUMENTS**

TO: FH Resort Limited Partnership
c/o Attorney Patrick Coffey
MENN LAW, LTD
2501 E Enterprise Avenue
P.O. Box 785
Appleton, WI 54912-0785

1. Defendant and Third-Party Plaintiff objects to each Interrogatory: (1) insofar as it seeks information not in Defendant and Third-Party Plaintiff's possession, custody, or control; (2) insofar as it seeks information that was prepared for or in anticipation

of litigation, constitutes attorney work product, contains attorney-client communications, or is otherwise privileged; (3) insofar as it seeks information which is publicly available or otherwise equally available and/or uniquely or equally available from third-parties; (4) insofar as it seeks information that does not specifically refer to the events which are the subject matter of this litigation; and (5) insofar as it seeks information not relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence.

2. These responses and objections are made on the basis of information known to Defendant and Third-Party Plaintiff and are made without waiving any further objections to, or admitting the relevancy or materiality of, any of the information requested. Defendant and Third-Party Plaintiff's investigation, discovery, and preparation for proceedings are continuing and all answers are given without prejudice to Defendant and Third-Party Plaintiff's right to introduce or object to the discovery of any documents, facts, or information discovered after the date hereof. Defendant and Third-Party Plaintiff likewise does not waive the right to object, on any and all grounds to (1) the evidentiary use of information contained in these responses and objections; and (2) discovery requests relating to those objections and responses.

3. Defendant and Third-Party Plaintiff will provide its responses based on terms as they are common understood and consistent with the Wisconsin Rules of Civil Procedure. Defendant and Third-Party Plaintiff object to and will refrain from

extending or modifying any words employed in the requests to comport with expanded definitions or instructions.

4. Defendant and Third-Party Plaintiff submits these responses and objections without conceding the relevancy or materiality of the subject matter of any request of any document or that any responsive materials exist.

5. Defendant and Third-Party Plaintiff's responses and objections are not intended to be, and shall not be construed as, agreement with Third-Party Defendants' characterization of any fact, circumstances, or legal obligations. Defendant and Third-Party Plaintiff reserve the right to contest any characterization as inaccurate. Defendant and Third-Party Plaintiff also object to the Request to the extent they contain any express or implied assumptions of fact or law concerning matters at issue in this litigation.

6. The responses and objections contained herein are made on the basis of information now known to Defendant and Third-Party Plaintiff and are made without waiving any further objections to or admitting the relevancy or materiality of any of the information requested. Defendant and Third-Party Plaintiff's investigation, discovery and preparation for proceedings are continuing and all answers are given without prejudice to Defendant and Third-Party Plaintiff's right to introduce or object to the discovery of any documents, facts or information discovered after the date hereof.

WRITTEN INTERROGATORIES

INTERROGATORY NO. 1: Identify all individuals who have provided factual information to respond to these discovery requests, and state which request (by number) they provided information in relation to.

RESPONSE: Cyndi Gierczak (2,4,5,8,12,13,16); Richard Glomski (9,10,13,16); Richard Isley Jr. (9,10); Dave Holschbach (9,10,16); Whitney Meyer (4,5,8); Kaitie Bunnell (4,5).

INTERROGATORY NO. 2: Explain the Association's basis for calculating 6,240 total timeshare weeks.

RESPONSE: The total timeshare weeks of 6,240 was taken from the Disclosure Book, Time-Share Disclosure Statement, Item 1, Page 2. As of today, the total is actually 6,448. $(104 \text{ built units} \times 52) + (20 \text{ unbuilt units} \times 52)$

INTERROGATORY NO. 3: Explain the Association's decision to exclude Building 21 from the unbuilt week count, including when and why a pool was constructed on its designated land.

RESPONSE: We are not aware of how or why MTM and FHR deviated from the condominium documents and built the pool where Building 21 was to be located.

INTERROGATORY NO. 4: Describe the voting process at the April 12, 2025, annual meeting, including the rationale for not treating each director seat as a separate election and disregarding ballots.

RESPONSE: Objection to the extent the question requests attorney client privileged communications. Subject to this objection, a ballot box was placed at the entrance of the conference room with a large sample ballot and an instruction sign taped to the

front. Owners were allowed to vote until the start of the meeting. Once the President announced the voting had closed, Association employee Whitney Meyer brought the ballot box to her table and counted the valid votes. Owner Dave Graff agreed to observe the count and sat to Mrs. Meyer's right. The owner sitting to Mrs. Meyer's left (Dale Mullikin) also appeared to be observing the process. After recording most of the ballots, Mrs. Meyer brought a handful of ballots to Mrs. Gierczak and explained that the person signing the ballot did not appear on the member list. Mrs. Gierczak advised her to call Kaitie Bunnell at the condo office to look in the system to see if she could find the name in Triton as a secondary owner. All ballot signers were found in the system, and the ballots were counted. Any rationale for disregarding certain ballots can be found in our response to Interrogatory 5 below and FHR's motion, including owners casting too many votes. The rationale for not treating each director seat as a separate election is because the statutes dictate how elections work and the condominium documents do not provide another method. It would not make sense to hold separate elections because then a single majority holding member would have the ability to elect all of the directors based on their majority share.

INTERROGATORY NO. 5: Identify all individuals who counted ballots at the April 12, 2025, annual meeting, their roles, and any determinations that were made concerning whether or not to count a ballot.

RESPONSE: Whitney Meyer, Association Office and Human Resources Manager counted the ballots while Dave Graff, Timeshare owner and Dale Mullikin, Timeshare Owner observed. Ballots were not counted if any of the following occurred:

(1) The ballot was unsigned or signed by someone other than owner or properly appointed designated proxy (2) There were multiple ballots submitted for the same unit or time share week and those ballots were in contradiction. (3) The ballot reflected more votes than the owner is entitled to and (4) The ballot was received after voting closed.

INTERROGATORY NO. 6: Explain the legal and factual basis for the Association's refusal to honor FHR's appointment of two directors on April 10, 2025.

RESPONSE: Defendant and Third-Party Plaintiff object to this Interrogatory as it calls for a legal conclusion, is over broad and unduly burdensome. Without waiving the foregoing objections, FHR does not have the right to appoint two directors to the Association because a declaration may not authorize any declarant control after 10 years, if not sooner.

INTERROGATORY NO. 7: Provide the reasons for denying FHR's request to inspect the membership ledger in 2025, including any statutory or legal basis, and identify all individuals involved in the decision.

RESPONSE: Defendant and Third-Party Plaintiff object to this Interrogatory as it asks for information that is protected by Attorney-Client Privilege and/or the Work-Product Doctrine. Without waiving the foregoing objections, The Association has no legal requirement to allow FHR to inspect the membership ledger for the reasons stated in the Association's reply brief. (Dkt. 78).

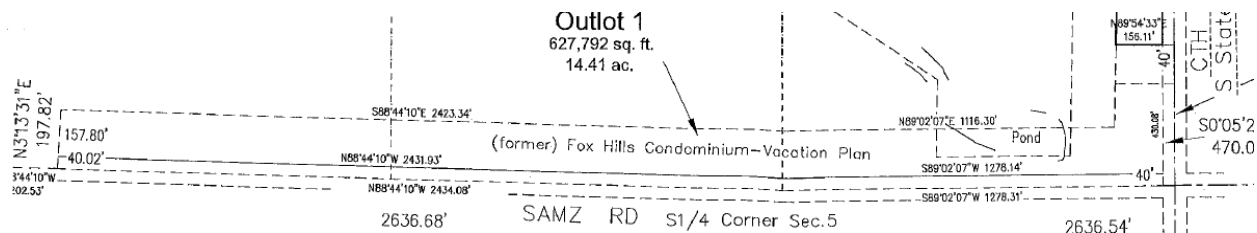
INTERROGATORY NO. 8: Describe all communications between the Association and its members regarding the April 12, 2025, election, including notices, voting instructions, and clarifications about vote splitting.

RESPONSE: Defendant and Third-Party Plaintiff object to this Interrogatory as it is overly burdensome. Without waiving the foregoing objection, Winter 2024 Fox Tales; Spring 2025 Fox Tails; Email from Cyndi Gierczak to Rick Sargent of GEVC on 4/7/25 explaining how owners with more the one vote can distribute those votes. Emails were sent to owners who mailed in invalid ballots which were received by the Association prior to April 12 explaining the ballot could not be counted as submitted, explaining the correct way to vote, and asking them to submit a new ballot before voting close.

INTERROGATORY NO. 9: Identify all individuals with knowledge of the 1993/1994 acquisition of Fox Hills Resort.

RESPONSE: David Holschbach might have knowledge of the 1993/1994 acquisition of Fox Hills resort. We also believe that the Jacobsons and Ann Bonneville have knowledge.

INTERROGATORY NO. 10: Describe all communications between the Association and its counsel in 2020 regarding the notification of the land excision of “Outlot 1” depicted below, including any assurances of legality:



RESPONSE: Objection to the extent the question requests attorney client privileged communications. Subject to the objections, none of which we are aware, but if Plaintiff or Third-Party Defendant have any please produce them now.

INTERROGATORY NO. 11: Explain why the Association believes the Declaration’s reversion clause violates Wis. Stat. § 703.28.

RESPONSE: Defendant and Third-Party Plaintiff object to this Interrogatory as it requests information that is protected by attorney-client privilege and/or the work product doctrine. Without waiving the foregoing objections, there are no exceptions to the requirement of the consent of all unit owners and lien holders set forth in Wis. Stat. § 703.28 to remove land from a condominium association.

INTERROGATORY NO. 12: Identify all timeshare weeks the Association alleges FHR owns as of December 31, 2024, and describe how and when each week was assigned or transferred to FHR, and on what basis title was transferred (i.e. sale, foreclosure, assignment).

RESPONSE: Defendant and Third-Party Plaintiff object to this Interrogatory as it is overly burdensome. Without waiving the foregoing objection, see documents produced in response to Request No. 14.

INTERROGATORY NO. 13: Provide a detailed accounting of the revolving loan balance / working capital provided by FHR to the Association as of December 31, 2024, including all advances, repayments, and board approvals for expenditures.

RESPONSE: Defendant and Third-Party Plaintiff object to this Interrogatory as it is revolving loan balance and working capital are undefined and therefore ambiguous. Without waiving the foregoing objection, see documents produced in response to Request No. 17.

INTERROGATORY NO. 14: Describe the Association's basis for claiming ownership of the land surrounding the Rec Center.

RESPONSE: Defendant and Third-Party Plaintiff object to this Interrogatory as it requests information that is protected by attorney-client privilege and/or the work product doctrine. Without waiving the foregoing objections, land that was in the Association without the consent of all of the unit owners and their lien holders, which Plaintiff and FHR failed to obtain in violation of Section 703.28 Wis. Stat. Explain the Association's basis for claiming that FHR owes cash dues on built or unbuilt timeshare weeks, including any board discussions or decisions from 2019 to 2024 indicating that dues were owed and not otherwise covered by the longstanding quid pro quo arrangement between FHR and the Association concerning the Association's rent-free use of the rec center.

INTERROGATORY NO. 15: Explain the Association's basis for claiming that FHR owes cash dues on built or unbuilt timeshare weeks, including any board discussions or decisions from 2019 to 2024 indicating that dues were owed and not otherwise

covered by the longstanding quid pro quo arrangement between FHR and the Association concerning the Association's rent-free use of the rec center.

RESPONSE: Defendant and Third-Party Plaintiff object to this Interrogatory as it is overly broad, unduly burdensome, multiple and requests information that is protected by attorney-client privilege and/or the work product doctrine. Without waiving the foregoing objections, there is no "barter" or "quid pro quo arrangement" between the parties other than one that FHR just recently alleged. The governing documents do not exempt FHR from paying assessments on units. MTM, which has the same owners as FHR, for years falsely told the Association board and unit owners that FHR did not have to pay assessments and unfortunately FHOA relied on those false statements. If MTM properly managed the Association, it would not have falsely represented what the documents provide to its owners' financial benefit.

INTERROGATORY NO. 16: Identify all prior officers and directors of the Association from 1997 to the present.

RESPONSE: Defendant and Third-Party Plaintiff object to this Interrogatory as it is overly burdensome and asks for information that is irrelevant to the claims asserted in this lawsuit. Without waiving the foregoing objections, please see the documents produced.

INTERROGATORY NO. 17: Explain why the Association believes it is appropriate for it to not have to pay rent for utilizing the Rec Center property, while simultaneously requiring FHR to pay dues?

RESPONSE: Defendant and Third-Party Plaintiff object to this Interrogatory as it requests information that is protected by attorney-client privilege and/or the work product doctrine. Without waiving the foregoing objections, the Association believes it is appropriate that FHR pay dues because that is what the governing documents require. FHR has paid rent for the Rec Center by maintaining it.

INTERROGATORY NO. 18: Explain why the Association believes FHR should have to pay dues on unbuilt units when FHR cannot occupy or utilize unbuilt units?

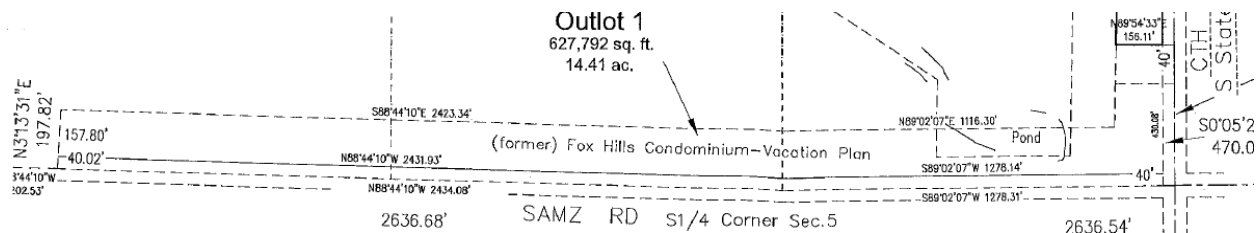
RESPONSE: Defendant and Third-Party Plaintiff object to this interrogatory as it requests information that is protected by attorney-client privilege and/or the work product doctrine. Without waiving the foregoing objections, FHR should have to pay dues on unbuilt units because that is what the law and documents require. There is no exemption for unbuilt units. It was FHR that made the decision not to build the units, not the Association.

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST NO. 1: Produce all member and board meeting agendas, minutes, and meeting notes from 1994 to 2025.

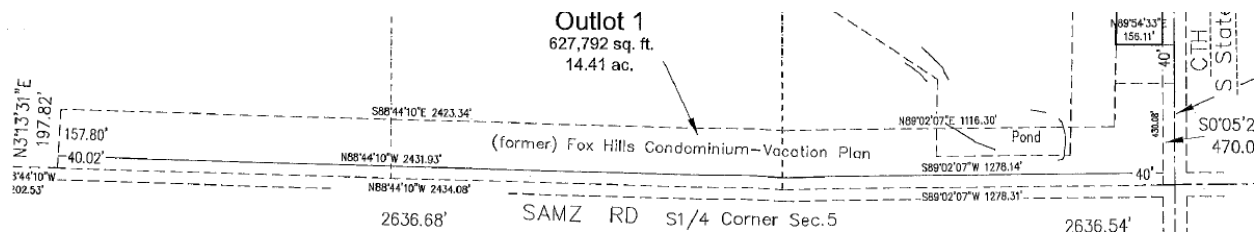
RESPONSE: Defendant and Third-Party Plaintiff object to this Request as it is unduly burdensome. Without waiving the foregoing objection, see attached.

REQUEST NO. 2: Produce all correspondence relating to the 2020 excision of land depicted as Outlot 1, below, by FH Resort:



RESPONSE: See attached.

REQUEST NO. 3: Produce all documents related to the 2020 board resolution approving the excision of land described as Outlot 1, below, including any approvals by Richard Glomski or other directors:



RESPONSE: FHR should have these documents. None were discovered after reasonable due diligence.

REQUEST NO. 4: Produce all documents related to the 1993/1994 acquisition of Fox Hills Resort, including purchase agreements, timeshare week valuations, and title policies.

RESPONSE: None found after reasonable due diligence.

REQUEST NO. 5: Produce all ballots, vote counts, notices, and correspondence from the April 12, 2025, annual meeting, including disregarded ballots and voting instructions.

RESPONSE: See attached.

REQUEST NO. 6: Produce all documents related to the Association's denial of FHR's request to inspect the membership ledger in 2025, including correspondence with members or internal communications among board members.

RESPONSE: Nothing found.

REQUEST NO. 7: Produce the Association's membership ledger as of April 12, 2025, and May 31, 2025, including all unit ownership details and voting rights for each timeshare week.

RESPONSE: See attached.

REQUEST NO. 8: Produce all documents related to the May 31, 2025, special meeting, including notices, agendas, minutes, and correspondence barring FHR's attendance.

RESPONSE: See attached.

REQUEST NO. 9: Produce all documents related to the construction of a pool on the land designated for Building 21, including permits, board approvals, and communications.

RESPONSE: None found after reasonable due diligence.

REQUEST NO. 10: Produce all documents evidencing FHR's use of unbuilt weeks for establishing a quorum or voting at annual meetings from 1994 to 2024.

RESPONSE: Defendant and Third-Party Plaintiff object to this Request as it is overly burdensome. Without waiving the foregoing objection, see attached.

REQUEST NO. 11: Produce all documents related to the 1997 merger of Fox Hills Villas and Fox Hills Golf Villas, including notes, memos, correspondence, agreements, and board approvals.

RESPONSE: Defendant and Third-Party Plaintiff object to this Request as it is overly burdensome. Without waiving the foregoing objection, see attached.

REQUEST NO. 12: Produce all documents and agreements related to the sale of lots by FHR to Par Five in 2020, including deeds, contracts, and correspondence.

RESPONSE: None found after reasonable due diligence.

REQUEST NO. 13: Produce all documents on which the Association bases its claim to ownership of the land surrounding the Rec Center.

RESPONSE: Defendant and Third-Party Plaintiff object to this Request as it requests information that is protected by attorney-client privilege and/or the work product doctrine. Without waiving the foregoing objections, the documents are in your possession and include but are not limited to the declaration, plat maps, and bylaws.

REQUEST NO. 14: Produce all documents, correspondence, or agreements related to the assignment or transfer of timeshare weeks from the Association to FHR from 1994 to 2024, including any board approvals or contracts.

RESPONSE: Defendant and Third-Party Plaintiff object to this Request as it is overly burdensome and quite frankly impossible. Without waiving the foregoing objections, see attached.

REQUEST NO. 15: Produce all documents, correspondence, or agreements from 2019 to 2024 indicating that FHR was required to pay cash dues on built or unbuilt

timeshare weeks, or that such dues were not covered by a barter arrangement for the rent-free use of the Rec Center and adjacent lands.

RESPONSE: Defendant and Third-Party Plaintiff also object to this Request because it is unaware of a “barter” arrangement. Without waiving the foregoing objections, none found after reasonable due diligence.

REQUEST NO. 16: Produce all documents or correspondence from 1994 to 2023 indicating that there was not an agreement between FHR and the Association to barter cash dues for the rent-free use of the Rec Center and adjacent lands.

RESPONSE: Defendant and Third-Party Plaintiff object to this Request as it is overly burdensome. Defendant and Third-Party Plaintiff also object to this request because it is unaware of a “barter” arrangement. Without waiving the foregoing objections, none found after reasonable due diligence.

REQUEST NO. 17: Produce all documents related to the revolving loan balance / working capital provided by FHR to the Association, including agreements, correspondence, or board approvals indicating the loan was interest-free or that the Association did not approve expenditures contributing to the balance.

RESPONSE: Defendant and Third-Party Plaintiff object to this Request as it is revolving loan balance and working capital are undefined and therefore ambiguous. Without waiving the foregoing objection, see attached.

REQUEST NO. 18: For each and every timeshare week owned by FHR identified in Interrogatory 11, provide all records of transfer of ownership to FHR, including deeds, purchase agreements, correspondence, or other documents.

RESPONSE: Defendant and Third-Party Plaintiff object to this Request as it requests information that is protected by attorney-client privilege and/or the work product doctrine. Without waiving the foregoing objections, see attached.

REQUEST NO. 19: Produce any and all documents evidencing amendments to the Declaration, the Association's Bylaws, or the Association's Timeshare Disclosure document.

RESPONSE: See attached.

REQUEST NO. 20: Produce all written agreements between the Association and Fairway Inn and Suites concerning the Association's current use of any Fairway Inn and Suites amenities (i.e. pool).

RESPONSE: See attached.

Dated this 2nd day of September, 2025.

KAMAN & CUSIMANO, LLC.
Attorneys for the Defendant and Third-
Party Plaintiff

KAMAN & CUSIMANO, LLC
Attorneys for Defendant and Third-Party Plaintiff
By: Electronically signed by Matthew Lowe
Matthew Lowe
State Bar No. 1118997
By: Electronically signed by Daniel J. Miske
Daniel J. Miske

State Bar No. 1010608

P.O. ADDRESS:
111 E. Kilbourn Avenue,
Suite 1700,
Milwaukee, WI 53202
mlope@kamancus.com
dmiske@kamancus.com

