

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 13-80456-CIV-KAM

PALM BEACH DIVISION

NORMAN HIRSCH, MATTHEW DWYER,
and RALPH WILLARD, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

JUPITER GOLF CLUB LLC, a Delaware
LLC, d/b/a TRUMP NATIONAL GOLF
CLUB JUPITER and RBF, LLC d/b/a THE
RITZ-CARLTON GOLF CLUB & SPA,
JUPITER,

Defendants.

RBF, LLC d/b/a THE RITZ-CARLTON
GOLF CLUB & SPA, JUPITER,

Cross-Plaintiff,

vs.

JUPITER GOLF CLUB, LLC d/b/a TRUMP
NATIONAL GOLF CLUB JUPITER,

Cross-Defendant.

**DEFENDANT, RBF, LLC'S, ANSWER AND AFFIRMATIVE DEFENSES
TO CLASS ACTION COMPLAINT AND CROSS-CLAIM**

Defendant, RBF, LLC, d/b/a THE RITZ-CARLTON GOLF CLUB & SPA, JUPITER
("RBF"), hereby files these answer and affirmative defenses in response to the correspondingly
numbered paragraphs of Plaintiffs' Class Action Complaint and state as follows:

NATURE OF CASE

1. RBF admits that Plaintiffs are bringing a putative class action on behalf of individuals who paid refundable Membership Deposits in connection with their purchase of memberships to The Ritz-Carlton Golf Club & Spa, Jupiter, n/k/a the Trump National Golf Club Jupiter (“Club”) but denies that Plaintiffs will be able to certify the class and denies that Plaintiffs are entitled to any relief against RBF or that RBF is liable for any damages to Plaintiffs.

2. RBF admits that Plaintiffs have paid Membership Deposits. RBF states that the Membership Agreements and Plans speak for themselves as to their terms, provisions, conditions and limitations and otherwise denies the allegations in paragraph 2 of the Complaint.

3. RBF admits that Donald Trump (“Trump”), through Jupiter Golf Club, LLC as Purchaser (“JGC”), purchased the Club and now operates the Club and admits that the terms of the sale from RBF to JGC are as set forth in the Purchase and Sale Agreement (“PSA”) executed by and between RBF and JGC and admits that, after the sale to JGC, RBF had no ownership interest in, or control over the operations of, the Club. RBF denies all remaining allegations in paragraph 3 of the Complaint.

4. RBF states that the PSA speaks for itself as to its terms, provisions, conditions, and limitations. RBF specifically admits that, under the PSA, JGC has assumed all liability for the refund of Membership Deposits. RBF specifically denies that RBF has not honored RBF’s agreements with Plaintiffs and the class members and denies every allegation in paragraph 4 not specifically admitted herein.

5. RBF admits that the \$50,000,000 liability assumed by JGC to refund Membership Deposits set forth in the PSA adequately covers the return of all Membership Deposits and that

JGC has assumed all liability for the return of Membership Deposits. RBF specifically denies that RBF violated the Membership Agreements and Plans and specifically denies that, after the sale of the Club to JGC, RBF has any ability to grant or deny access to the Club. RBF denies every allegation in paragraph 5 not specifically admitted herein.

6. RBF is without knowledge as to JGC or Trump's actions after the sale of the Club to JGC and therefore denies the allegations in paragraph 6 of the Complaint. RBF denies that RBF played any part in changing/terminating or otherwise altering any categories of membership and denies that RBF has any ability to refund Membership Deposits.

7. RBF denies that, after the sale of the Club to JGC, RBF has any ability to refund any Membership Deposits and denies that RBF has violated any provision of the Membership Agreement and Plan and otherwise denies all allegations in paragraph 7 of the Complaint.

8. RBF is without knowledge of any actions taken by JGC or Trump since the sale of the Club to JGC and therefore denies the allegations in paragraph 8 of the Complaint. RBF denies that RBF has played any part, or has any control over any bills and/or demands sent to Plaintiff and class members and otherwise denies every allegation in paragraph 8 of the Complaint not specifically admitted herein.

9. RBF admits that Plaintiffs are seeking the relief set forth in this paragraph but denies that RBF has any ability to refund Membership Deposits, denies that RBF has any liability to the Plaintiffs and class members for Club dues, and denies that RBF breached the Membership Agreements.

PARTIES

10. Without knowledge and therefore denied.

11. Without knowledge and therefore denied.

12. Without knowledge and therefore denied.

13. RBF admits that JGC is a Delaware limited liability company. RBF is without knowledge as to the remainder of the allegations in this paragraph and therefore denies the same.

14. RBF denies that, since the time of the sale to JGC, RBF has had or has any role in the operation of the Club or that the Club continues to operate as a Ritz-Carlton property. RBF is without knowledge as to the remaining allegations in paragraph 14 of the Complaint and therefore denies the allegations.

15. RBF admits that registrations with the Florida Department of State, Division of Corporations are public documents and has no reason to dispute the information reflected on the Florida Department of State's website. RBF is otherwise without knowledge as to the allegations in paragraph 15 of the Complaint and therefore denies the allegations.

16. RBF admits that RBF is a Delaware limited liability company with its current principal place of business in Orlando, Florida. RBF admits that RBF formerly operated The Ritz-Carlton Golf Club & Spa, Jupiter but denies that RBF still owns or operates the Club and denies that the Club is still affiliated with The Ritz-Carlton.

17. Without knowledge and therefore denied.

JURISDICTION AND VENUE

11.¹ RBF admits, for jurisdictional purposes only, that Plaintiffs are contending that the amount in controversy exceeds \$5,000,000. RBF denies that RBF has committed any wrongdoing or has any liability to Plaintiffs or the class members.

¹ Plaintiffs repeat certain paragraph numbers in their Complaint; for instance, there are three sets of paragraph numbers 11-15. To avoid more confusion, RBF will respond to the paragraphs as numbered in the Complaint rather than re-numbering them in sequential order.

12. Admitted for jurisdictional purposes only; RBF denies that RBF committed any wrongdoing or that Plaintiffs have a cause of action against RBF.

FACTS

Ritz-Carlton

13. RBF admits that RBF previously operated the Club as The Ritz-Carlton Golf Club & Spa, Jupiter, but that RBF sold the Club to JGC in December 2012. RBF denies that RBF has had any part in owning or operating the Club since the sale of the Club to JGC and denies that the Club is still operated as a Ritz-Carlton property.

14. RBF admits that RBF previously operated the Club as The Ritz-Carlton Golf Club & Spa, Jupiter, but that RBF sold the Club to JGC in December 2012. RBF denies that RBF has had any part in owning or operating the Club since the sale of the Club to JGC and denies that the Club is still operated as a Ritz-Carlton property. RBF admits that during the time of RBF's ownership of the Club, RBF sold several categories of membership in the Club and sold residential real property. RBF denies that RBF has had any involvement in any change, termination, or altering of membership categories since the sale of the Club to JGC.

15. RBF admits that there were different categories of membership in the Club and that Club Members entered into Membership Agreements with RBF. RBF admits that the terms of Club membership are set forth in the Membership Agreements, the Membership Plans, and the Rules and Regulations. RBF admits that membership in the Club required payment of Membership Deposits.

Plaintiff Matthew Dwyer

11. RBF admits that Exhibit "A" appears to be an (uncompleted) copy of the Golf Membership Agreement and appears to be executed by Mr. and Mrs. Dwyer on May 29, 2003.

The Golf Membership Agreement speaks for itself as to its terms, provisions, limitations and conditions.

12. RBF admits that the Fractional Golf Membership Agreement speaks for itself as to its terms, provisions, limitations and conditions.

13. RBF admits that the \$41,000 Membership Deposit for Plaintiff Dwyer's golf membership interest in the Club was paid.

14. RBF admits that the Fractional Golf Club Membership Agreement speaks for itself as to its terms, provisions, limitations and conditions. RBF denies that, after the sale of the Club to JGC, RBF has any ability to refund Membership Deposits.

Plaintiff Norman Hirsch

15. RBF admits that Exhibit "B" appears to be a redacted copy of an Associate Membership Agreement for Upgrading Social & Spa Members and appears to be executed by Mr. and Mrs. Hirsch on May 21, 2007. The Associate Membership Agreement for Upgrading Social & Spa Members speaks for itself as to its terms, provisions, limitations and conditions.

16. RBF admits that Plaintiff Hirsch had previously paid \$55,000 for a Social & Spa Membership and that the membership upgrade cost \$20,000.

Plaintiff Ralph Willard

17. Without knowledge and therefore denied.

18. Without knowledge and therefore denied.

19. RBF admits that the Social & Spa Membership Agreement speaks for itself as to its terms, provisions, conditions, and limitations.

20. RBF admits that Plaintiff Willard executed a Full Membership Agreement on or about August 8, 2008, and that, pursuant to the terms of the Full Membership Agreement, Plaintiff Willard agreed to pay a Membership Deposit of \$210,000.

21. RBF admits that Exhibit "C" appears to be an (uncompleted) copy of the Full Membership Agreement executed by Mr. & Mrs. Willard on August 8, 2008. RBF admits that the Full Membership Agreement speaks for itself as to its terms, provisions, conditions and limitations.

22. RBF admits that RBF applied previously paid Membership Deposits made by Plaintiff Willard to the Full Membership purchased by Plaintiff Willard in August 2008.

23. RBF admits that Mr. Willard made payments towards his Membership Deposit. RBF denies that RBF has received or accepted any payments made to the Club after the sale of the Club to JGC.

24. RBF admits that RBF accepted all payments made by Plaintiffs toward their Membership Deposits prior to the sale of the Club to JGC. RBF denies that RBF has received or accepted any payments, or portions thereof, made to the Club by Plaintiffs or any other Club Members after the sale of the Club to JGC.

25. RBF admits that RBF sold the Club to JGC and that JGC assumed all obligations under the Membership Agreements regarding Membership Deposits. RBF admits that the \$50,000,000 of liability JGC assumed under the PSA to refund Membership Deposits is more than sufficient to cover the refund of all Membership Deposits on all memberships that existed as of the sale of the Club to JGC. RBF admits that the Membership Agreements provide that "[i]n the event that the Club Facilities are sold and the buyer assumes liability for the repayment of the membership deposit, then undersigned shall look solely to the new owner for repayment of the

membership deposit and the seller of the Club Facilities shall be released from all liability for the repayment thereof.”

26. RBF admits that the provision quoted in paragraph 26 of the Complaint appears in Exhibit “A” attached to the Complaint, which appears to be a Golf Membership Agreement executed by Plaintiff Dwyer. RBF denies that this quoted provision appears in Section III to Exhibit “B” of the Complaint, which appears to be an Associate Membership Agreement for Upgrading Social & Spa Members executed by Plaintiff Hirsch. RBF denies that this provision appears as quoted in Section III to Exhibit “C” to the Complaint, which appears to be a Full Membership Agreement executed by Plaintiff Willard. Specifically, this provision in Exhibit “C” contains a caveat that the member is only entitled to a refund “[p]rovided that the member has paid his or her entire membership deposit in full.”

27. RBF admits that Exhibit “D” appears to be a copy of the Club’s Membership Plan dated December 2002. RBF admits that the language quoted in paragraph 26 of the Complaint appears at page 7 to Exhibit “D.”

28. RBF admits that the language quoted in paragraph 28 of the Complaint appears under the heading “Special Membership Benefits” at page i of Exhibit “D” to the Complaint. RBF otherwise denies the characterization that RBF “touted” the refundable Membership Deposit.

29. RBF admits that Section III of the various different Membership Agreements speak for themselves as to their terms, provisions, conditions and limitations. RBF denies that Section III is the applicable provision for the refund of Membership Deposits upon the termination of certain categories of membership, that Section IV of the Membership Agreements pertains to the termination of a membership category and provides that upon termination of a

membership category, the affected members are entitled “to a refund of the membership deposit paid within 30 days”, and that under the circumstances a Club Member is entitled to a refund of their Membership Deposit in excess of the amount paid.

30. RBF admits that the language quoted in paragraph 30 of the Complaint appears in Section III to Exhibit “A” to the Complaint. RBF denies that the language quoted in paragraph 30 of the Complaint appears in Section III of Exhibit “B” to the complaint. RBF denies that the language quoted in paragraph 30 of the Complaint appears as quoted in Section III of Exhibit “C” to the Complaint. Specifically, this provision in Exhibit “C” to the Complaint includes an intervening sentence that is not included in the quoted provision.

31. RBF admits that the language quoted in paragraph 31 of the Complaint appears in Section IV of Exhibits “A”, “B,” and “C” to the Complaint.

32. RBF admits that the language quoted in paragraph 32 of the Complaint appears in Section IV of Exhibits “A,” “B,” and “C” to the Complaint but states that, in Section IV, this quoted language is preceded by the word “only.”

33. RBF admits that the language quoted in paragraph 33 of the Complaint appears in the Exhibit “D” to the Complaint, under the heading “Transfer of Membership to the Club” at page 8.

34. RBF admits that the language quoted in Paragraph 34 appears in Exhibit “D” to the Complaint and admits that under the Membership Plan a resigned member is obligated to continue paying dues and other charges until that member’s membership is reissued by the Club.

35. RBF admits that Exhibit “E” appears to be a copy of the Promissory Note executed by Mr. and Mrs. Willard. RBF admits that the language quoted in Paragraph 35 of the Complaint appears in Exhibit “E” to the Complaint.

36. RBF admits that the language quoted in Paragraph 36 of the Complaint appears in Exhibit "D" to the Complaint and admits that under the Membership Plan a resigned member is obligated to continue paying dues and other charges until that member's membership is reissued by the Club.

37. RBF admits that the language quoted in Paragraph 37 of the Complaint appears in Exhibit "D" to the Complaint.

38. RBF admits that the language quoted in Paragraph 38 of the Complaint appears in Exhibit "D" to the Complaint. RBF otherwise denies the remainder of Paragraph 38 of the Complaint.

Trump acquires the Club

39. RBF admits that in December 2012 RBF sold the Club to JGC and memorialized the terms of the sale in the PSA. RBF admits that JGC assumed all liability and obligations under the Membership Agreements. RBF denies that RBF maintained any ownership in, or operation of, the Club after the sale to JGC and had any ability to refund Membership Deposits. RBF denies that any of RBF's employees continued to work at the Club as RBF employees.

40. RBF admits that under the PSA, JGC assumed the obligations owed under the Membership Agreements and any liability for refund of Membership Deposits. The PSA provides that "Purchaser is not assuming any liability for the Seller's breaches of contracts, torts, or violations of law" and "Seller is not assuming any liability for the Purchaser's breaches of contracts, torts, or violations of the law." RBF otherwise denies the allegations of Paragraph 40 of the Complaint.

41. RBF admits that JGC acquired the Club, including the Club's assets and Club Facilities, and assumed the liability for the refund of Membership Deposits.

42. RBF admits that JGC has admitted that JGC assumed the obligation to refund Membership Deposits and admits that this is not a fact in dispute.

43. RBF is without knowledge as to JGC's acknowledgements, but admits that, under the PSA, JGC assumed all obligations to, and liability for, refunds of Membership Deposits.

44. Without knowledge and therefore denied.

45. Exhibits "F" and "G" to the Complaint appear to be the Membership Plan and Legacy Addendum regarding the Trump National Golf Club; RBF is otherwise without knowledge as to JGC's actions and therefore denies the allegations in Paragraph 45 of the Complaint.

46. RBF admits that JGC assumed the obligations to refund Membership Deposits. RBF admits that the Legacy Addendum speaks for itself as to its terms, provisions, conditions and limitations. RBF denies that RBF had any involvement in the drafting of the Legacy Addendum or any control in the ownership or operation of the Club after the sale of the Club to JGC.

47. Without knowledge and therefore denied.

48. RBF is without knowledge as to the declarations made by Trump and therefore denies the allegations in Paragraph 48 of the Complaint. RBF admits that Exhibit "H" to the Complaint appears to be a letter from Trump to Club Members dated December 17, 2002, but denies that RBF played any part in the drafting of the letter or had any control in the ownership or operation of the Club after the sale to JGC.

49. Without knowledge and therefore denied.

50. Without knowledge and therefore denied.

51. RBF is without knowledge of JGC's actions. However, RBF admits that provision 3 of the Legacy Addendum provides that "some of the memberships in the Prior Club did include refundable memberships, and Club Owner will honor certain of those memberships at the Club." Based on the provisions of the Legacy Addendum, RBF denies that JGC terminated these categories of membership and terminated the right of Club Members with these types of memberships to receive a refund of Membership Deposits. However, RBF denies that RBF had any involvement in, or any authority as to, any decisions regarding club memberships.

52. Without knowledge and therefore denied. RBF further states that Paragraph 52 calls for a legal conclusion to which no response is required.

53. Paragraph 53 of the Complaint calls for a legal conclusion to which no response is required. To the extent a response is required, RBF is without knowledge as to JGC's or Trump's actions, and therefore denies the allegations in Paragraph 53 of the Complaint.

54. RBF admits that the quoted language in Paragraph 54 of the Complaint appears in the Membership Agreements RBF entered into with Club Members and admits that JGC took title to the Club subject to all of the terms and conditions of the Membership Agreements. RBF denies that RBF did not sell the Club subject to all the terms and conditions of the Membership Agreements. RBF denies that RBF imposed any limitations on the sale of the Club that limited JGC's liability to refund Membership Deposits, as the total amount of Membership Deposits at the time of the sale of the Club was below \$50,000,000. RBF denies all remaining allegations of paragraph 54 of the Complaint.

55. RBF denies that RBF breached any of the Membership Agreements with any of the Club Members or breached the Membership Plan. RBF denies that the \$50,000,000 liability assumed by JGC to refund Membership Deposits does not allow for the refund of all

Membership Deposits that existed as of the date of the sale of the Club to JGC. RBF denies that RBF had any obligation to obtain a financial statement from JGC evidencing that JGC had the “financial wherewithal to fulfill any member refunds” and denies that RBF is liable to Plaintiffs and the class members for any inability of JGC to fulfill any member refunds.

56. RBF admits that the language quoted in Paragraph 56 of the Complaint appears in Section 8.9 of the PSA. RBF admits that JGC assumed all liability to repay all Membership Deposits up to \$50,000,000, which more than adequately covered the refund of all Membership Deposits existing as of the sale of the Club to JGC. RBF denies all remaining allegations in paragraph 56 of the Complaint.

57. RBF admits that the language quoted in Paragraph 57 of the Complaint appears in subsection (b) of the Membership Plan at page 9. RBF denies that this provision is applicable under the situations here, because refunds of Membership Deposits for “termination of membership categories” are governed by Section IV of the Membership Agreements which provides that upon termination of a membership category, the affected members are entitled to a “refund of the membership deposit paid within 30 days.” RBF denies that Plaintiffs were entitled to receive a refund for an amount greater than their original deposit amount.

58. RBF admits that the provision referenced in Paragraph 58 of the Complaint speaks for itself as to its terms, provisions, conditions, and limitations. RBF denies that, under the circumstances, Plaintiffs were entitled to receive a refund for an amount greater than their original deposit amount in the event of a termination of their category of membership.

59. Paragraph 59 of the Complaint calls for a legal conclusion to which no response is required. To the extent a response is required, RBF denies that the “fundamental purpose,” or

any purpose, of the Membership Agreement has been breached or violated due to any actions on RBF's part.

60. Denied.

61. Denied. RBF specifically denies that Plaintiffs are entitled to receive an increase in the amount of their Membership Deposits based upon any termination of their membership categories.

62. Without knowledge and therefore denied.

63. Paragraph 63 calls for a legal conclusion to which no response is required. To the extent a response is required, RBF denies that RBF played any part in any changes to membership categories or decisions regarding membership categories and denies that RBF has any liability to Plaintiffs and the class members under the terms of the Membership Agreements and the PSA.

Resignation List

64. RBF admits that Plaintiff Dwyer requested to resign his membership in the Club. RBF denies that, during the time of RBF's ownership of the Club, the necessary events had taken place for Plaintiff Dwyer to receive a refund of his Membership Deposit. RBF admits that any refund due to Plaintiff Dwyer, at the appropriate time, would be offset by any unpaid charges.

65. Paragraph 65 calls for a legal conclusion to which no response is required. To the extent a response is required, RBF denies that RBF played any part, or had any authority regarding, any actions taken by JGC regarding membership categories and denies that RBF has any liability to Plaintiffs and the class based on the Membership Agreements and the PSA. RBF further denies that the Trump Legacy Addendum terminated all of Plaintiff Dwyer's membership rights or entitled him to refund of his Membership Deposit.

66. RBF admits that Plaintiff Hirsch requested to resign his membership in the Club. RBF denies that, during the time of RBF's ownership of the Club, the necessary events had taken place for Plaintiff Hirsch to receive a refund of his Membership Deposit. RBF admits that any refund due to Plaintiff Hirsch, at the appropriate time, would be offset by any unpaid charges.

67. Paragraph 67 calls for a legal conclusion to which no response is required. To the extent a response is required, RBF denies that RBF played any part, or had any authority regarding, any actions taken by JGC regarding membership categories and denies that RBF has any liability to Plaintiffs and the class based on the Membership Agreements and the PSA. RBF further denies that the Trump Legacy Addendum terminated all of Plaintiff Hirsch's membership rights or entitled him to refund of his Membership Deposit.

68. RBF admits that Plaintiff Willard requested to resign his membership in the Club. RBF denies that, during the time of RBF's ownership of the Club, the necessary events had taken place for Plaintiff Willard to receive a refund of his Membership Deposit. RBF admits that any refund due to Plaintiff Willard, at the appropriate time, would be offset by any unpaid charges. RBF admits that Exhibits "I" and "J" appear to be a handwritten note from Plaintiff Willard expressing his intention to resign his golf membership and RBF's response thereto, respectively. RBF admits that Exhibit "J" makes clear that Plaintiff Willard's membership would be refunded only upon re-issuance of his membership in accordance with the procedures set forth in the Membership Agreements.

69. Paragraph 69 calls for a legal conclusion to which no response is required. To the extent a response is required, RBF denies that RBF played any part, or had any authority regarding, any actions taken by JGC regarding membership categories and denies that RBF has any liability to Plaintiffs and the class based on the Membership Agreements and the PSA. RBF

further denies that the Trump Legacy Addendum terminated all of Plaintiff Willard's membership rights or entitled him to refund of his Membership Deposit.

70. RBF is without knowledge of any actions taken by JGC regarding invoices and payments since RBF sold the Club to JGC and denies that RBF played any part in, or had any authority regarding, invoicing and collecting of dues, denies that RBF has received any portion of any dues collected by JGC, and denies that RBF is subject to any liability to Plaintiffs and the class based on any actions taken by JGC after the sale of the Club to JGC. RBF otherwise denies the allegations in paragraph 70 of the Complaint, including the legal conclusion that the Plaintiffs' categories of membership were terminated.

71. Paragraph 71 calls for a legal conclusion to which no response is required. To the extent a response is required, denied. RBF specifically denies that RBF had any role in, or any liability for, any actions taken by JGC or Trump regarding membership in the Club after the sale of the Club to JGC. RBF denies that RBF had any obligation to, or any ability to, refund deposits to Plaintiffs and the class members after RBF sold the Club to JGC.

72. RBF is without knowledge as to JGC's or Trump's actions regarding access to the Club Facilities and therefore denies the allegations in paragraph 72 of the Complaint. RBF denies that RBF had any ability or right to grant or deny access to the Club after the sale of the Club to JGC.

73. RBF is without knowledge as to JGC's actions regarding collection of payments and therefore denies the allegations in paragraph 73 of the Complaint. RBF denies that RBF played any part in collecting payments and denies that RBF received any payments from Plaintiffs, or that any payments have been remitted from JGC to RBF, after RBF sold the Club to JGC.

74. RBF denies that RBF had any ability to grant or deny access to the Club after RBF sold the Club to JGC and denies that RBF has any liability for granting or denying access to the Club. RBF denies that the Membership Agreements provide that Club Members are entitled to continued access to the Club, as members who resign their memberships have no entitlement to use the Club Facilities.

75. RBF admits that the language quoted by Plaintiffs in paragraph 75 of the Complaint appears in the Membership Agreements. RBF denies that the language in the Membership Agreements allows access to the Club Facilities after a Club Member has resigned his membership and states that a plain reading of the Membership Plan Rules and Regulations make clear that a member who resigns his membership transfers the membership to the Club – along with the right to use Club Facilities. RBF denies that RBF had any ability, or right, to grant or deny access to the Club after the sale of the Club to JGC.

76. RBF admits that RBF never denied access to the Club Facilities to any of the Plaintiffs during the time RBF owned the Club. RBF denies that denying access to a Club Member who had resigned his membership would have constituted a violation of the Club Documents, as the Membership Plan Rules and Regulations make clear that a member who resigns his membership transfers the membership to the Club - along with the right to use Club Facilities.

77. Paragraph 77 of the Complaint calls for a legal conclusion to which no response is required. To the extent response is required, RBF denies that RBF had any ability, or right, to grant or deny access to the Club after the sale of the Club to JGC. RBF denies that RBF has any liability to Plaintiffs and the class members based on access to the Club Facilities.

78. Paragraph 78 of the Complaint calls for a legal conclusion to which no response is required. To the extent a response is required, RBF denies that RBF played any part in revoking any access to the Club Facilities or has any liability based on access to the Club Facilities.

79. Without knowledge and therefore denied.

CLASS ALLEGATIONS

80. RBF admits that Plaintiffs purport to bring this action as a class action. RBF denies that class adjudication is appropriate and denies that Plaintiffs will be able to satisfy the requirements for certification of a class.

81. RBF admits that Plaintiffs seek to have the Court certify the class set forth in Paragraph 81, but denies that class adjudication is appropriate and denies that Plaintiffs will be able to satisfy the requirements for certification of a class.

82. RBF admits that the persons identified in paragraph 82 are excluded from any putative class, but denies that class adjudication is appropriate.

83. RBF admits that Plaintiffs seek to bring this action as a class action but denies that class certification or adjudication are appropriate. RBF denies that the information necessary to identify the class members is available from RBF's records.

Numerosity

84. RBF denies that class adjudication is appropriate and denies that the information necessary to identify the class members is available from RBF's records.

Commonality and Predominance

85. Paragraph 85 of the Complaint calls for a legal conclusion to which no response is required. To the extent a response is required, RBF denies that RBF engaged in any wrongful conduct or that RBF has any liability to Plaintiffs and the class members under the Membership

Agreements and the PSA. RBF denies that class adjudication of this matter is appropriate as Plaintiffs are unable to satisfy all the elements necessary to certify a class, and denies that individual issues do not predominate over common questions of law or fact.

Typicality

86. Paragraph 86 of the Complaint calls for a legal conclusion to which no response is required. To the extent a response is required, without knowledge and therefore denied.

Adequacy of Representation

87. Paragraph 87 of the Complaint calls for a legal conclusion to which no response is required. To the extent a response is required, RBF admits that Plaintiffs fall within the class, as defined in the Complaint, but denies that class certification or adjudication are appropriate.

88. RBF is without knowledge as to Plaintiffs' ability to fairly and adequately protect the interests of the class, but denies that class adjudication is appropriate and denies that common questions of law and fact predominate over individual issues that may exist.

89. Without knowledge and therefore denied.

Superiority

90. Paragraph 90 calls for a legal conclusion to which no response is required. To the extent a response is required, RBF denies that class adjudication is appropriate.

Class-Wide Injunction and Declaration

91. RBF admits that Plaintiffs seek both injunctive and declaratory relief, however RBF denies that Plaintiffs' request for injunctive relief is proper because it is nothing more than a plea for money damages, as Plaintiffs are plainly seeking payment of money they claim they are owed, and Plaintiffs have an adequate remedy at law and cannot show irreparable harm.

92. RBF denies that injunctive relief is proper because Plaintiffs' request for injunctive relief is really a plea for money damages and because Plaintiffs have an adequate remedy at law and cannot show irreparable harm.

93. Without knowledge and therefore denied.

94. Without knowledge and therefore denied.

COUNT I
DECLARATORY RELIEF

95. RBF incorporates and realleges all its responses to the allegations contained in paragraphs 1-87 of the Complaint as if fully set forth herein.

96. RBF admits that Plaintiffs bring this action pursuant to 28 U.S.C. §2201(a) for declaratory judgment and supplemental relief, but denies that Plaintiffs are entitled to any relief against RBF.

97. RBF denies that RBF failed to convey the Club subject to the terms and provisions of the Membership Agreements and Membership Plans and denies that the \$50,000,000 of liability assumed by JGC under the PSA does not more than adequately cover the return of all Membership Deposits existing as of the date of the sale of the Club to JGC. RBF denies that the Plaintiffs are entitled to receive any increase in the amount of their Membership Deposits and denies that RBF has any liability to Plaintiffs and the class members under the terms of the Membership Agreements and the PSA.

98. Without knowledge and therefore denied.

99. Paragraph 99 of the Complaint calls for a legal conclusion to which no response is required. To the extent a response is required, RBF denies that Plaintiffs are entitled to an immediate refund of their Membership Deposits under the circumstances and denies that RBF has any obligation to refund their Membership Deposits, as all liability for refunding

Membership Deposits was assumed by JGC under the PSA and Plaintiffs expressly acknowledged in their Membership Agreements that they would only look to JGC for any refund of their Membership Deposits.

100. Admitted.

101. RBF denies that JGC did not assume all liability for refunds of all Membership Deposits and denies that RBF has any liability to refund Membership Deposits under the terms of the Membership Agreements and the PSA.

102. Paragraph 102 calls for a legal conclusion to which no response is required. To the extent a response is required, denied.

103. Paragraph 103 calls for a legal conclusion to which no response is required. To the extent a response is required, RBF denies that RBF did not convey the Club subject to all the terms and provisions of the Membership Agreements.

104. RBF denies that RBF has taken any actions that are inconsistent with, or in breach of, the Membership Agreements and Membership Plan. RBF denies that any course of dealing other than as set forth in the Membership Agreements and Membership Plan negates the terms of the Membership Agreements and Membership Plans, such as any prior actions of RBF – prior to the sale of the Club to JGC – to allow resigned members continued use of the Club Facilities despite RBF's ability to deny access to such facilities.

105. Denied.

106. Paragraph 106 of the Complaint is incomplete and thus, RBF is unable to form a response to this allegation. Otherwise, denied.

107. RBF denies that the terms of the Membership Agreements, Membership Plan and PSA are in any way vague and ambiguous requiring declaratory relief, and state that these

documents make clear that RBF has not breached any of the governing agreements, RBF conveyed the Club to JGC subject to all the terms and conditions of the Membership Agreements, JGC has assumed all liability for obligations to refund Membership Deposits, and Plaintiffs and the class members, in their Membership Agreements, expressly acknowledged that they would look only to JGC for the repayment of their Membership Agreements and other obligations.

108. Without knowledge and therefore denied.

109. Denied.

WHEREFORE, Defendant RBF requests entry of judgment in RBF's favor and any such other and further relief deemed appropriate and just under the circumstances.

COUNT II
BREACH OF CONTRACT
RBF LLC AND JUPITER GOLF CLUB LLC

110. RBF incorporates and realleges all its responses to the allegations contained in paragraphs 1-87 of the Complaint as if set forth fully herein.

111. Denied.

112. Denied.

113. This allegation does not involve RBF and therefore no response by RBF is required. Further, this allegation calls for a legal conclusion to which no response is required; to the extent a response is required, denied.

114. Denied.

115. Denied.

116. Denied.

117. Without knowledge and therefore denied.

118. RBF denies that Plaintiffs and the class members have been damaged by any actions or inactions on RBF's part and denies that Plaintiffs and the class members have any recourse against RBF based on the PSA and Membership Agreements.

COUNT III
INJUNCTIVE RELIEF

119. RBF incorporates and realleges all its responses to the allegations contained in paragraphs 1-87 and 103-107 of the Complaint as if fully set forth herein.

120. RBF admits that Plaintiffs are bringing this count under Rule 23(b)(3). RBF denies that Plaintiffs are entitled to injunctive relief.

121. Denied.

122. RBF denies the allegations in paragraph 122 of the Complaint as to RBF.

123. RBF denies the allegations in paragraph 123 of the Complaint as to RBF.

124. RBF denies the allegations in paragraph 124 of the Complaint as to RBF.

125. Denied.

126. RBF denies the allegations in paragraph 126 of the Complaint as to RBF.

127. Denied.

128. Denied.

129. Denied.

RBF denies, severally, all demands for damages and other relief and denies each and every allegation of the Class Action Complaint not specifically admitted herein.

PRAYER FOR RELIEF

WHEREFORE, Defendant RBF respectfully requests that this Court enter a judgment in RBF's favor and against Plaintiffs on every count of the Complaint, deny the relief sought by Plaintiffs, grant RBF its reasonable attorneys' fees and costs pursuant to Florida Statute §57.105,

the Membership Agreements, or otherwise to which it is entitled under Florida law, and grant any further and additional relief deemed just and appropriate under the circumstances.

AFFIRMATIVE DEFENSES

By way of defense and affirmative defense, RBF states as follows:

1. RBF affirmatively alleges and asserts that Plaintiffs have failed to state a cause of action against RBF. As more fully set forth below, JGC assumed all liability for the Club, including, without limitation, the refund of Membership Deposits; Plaintiffs and the class members agreed to look only to JGC for the refund of Membership Deposits; the \$50,000,000 liability on Refund Obligations is more than sufficient to cover the refund of all membership deposits existing as of the date of the sale of the Club to JGC; after the sale of the Club to JGC, RBF has played no part in, and has had no authority to, change or alter the categories of membership in the Club; after the sale of the Club to JGC, RBF has no authority to grant or deny access to the Club to Club Members who had resigned their membership; and, after the sale of the Club to JGC, RBF has played no part in, and has had no authority, to collect payments from Club Members or send collection demands to Club Members, nor has RBF received any portion of any monies collected from the Club, whether as dues, payments toward Membership Deposits, or other payments.

2. RBF affirmatively alleges and asserts that Plaintiffs have failed to state a cause of action against both Defendants. As more fully set forth below, JGC did not terminate categories of memberships that existed as of the date of the sale of the Club to JGC; Club Members who held refundable memberships before the sale of the Club to JGC are still able to receive a return of their Membership Deposits; Plaintiffs and the class members have no right to use the Club Facilities following resignation of their memberships in the Club; and Club Members who have

resigned their memberships are still obligated to continue paying dues and other payments until their memberships are reissued.

3. RBF affirmatively alleges and asserts that RBF sold the Club to JGC in December 2012, the terms of which were memorialized in the Purchase and Sale Agreement (“PSA”), and that under the PSA, JGC assumed ownership of the Club, subject to all monetary and non-monetary obligations relating to the Membership Agreements, Membership Notes and Membership Plan by and between RBF and each Club Member.

4. RBF affirmatively alleges and asserts that RBF has no liability to Plaintiffs for the causes of action asserted in the Complaint and Plaintiffs’ claims against RBF are barred by the PSA, including section 8.9(a) therein. Pursuant to the PSA, RBF conveyed title to the Club, including the Club Facilities, to JGC subject to all of the terms and provisions of the PSA and the schedules attached to the PSA. Pursuant to the PSA, JGC has assumed all obligations regarding refunding Membership Deposits. Section 8.9(a) of the PSA provides, in pertinent part, that “Purchaser [JGC] will assume the right, title, interest, and obligations of Seller [RBF] in the Delivered Club Documents including the Refund Obligations.” “Refund Obligations” are defined in Section 1.61 of the PSA as “the obligation to repay each Club Member that is a party to a Membership Agreement the refundable membership deposit, if any, to which each, as applicable, is or may become entitled pursuant to his or her Membership Agreement and the Membership Note.” In addition to Section 8.9(a) of the PSA, Section 8.9(e) of the PSA reiterates that “the Delivered Club Documents are being assumed by Purchaser in their entirety, so as to specifically also include the assumption of non-financial obligations contained therein.”

5. RBF affirmatively alleges and asserts that, as of the date of the sale of the Club to JGC, the maximum outstanding liability for all Membership Deposit refund obligations was

\$47,403,100, as set forth in Schedule T to the PSA (the “Member Matrix”), well below the \$50,000,000 liability on refund obligations assumed by JGC. RBF did not “cap” JGC’s liability to refund Membership Deposits.

6. RBF affirmatively alleges and asserts that Plaintiffs must look solely to JGC, as JGC explicitly agreed to assume liability for the refund of all Membership Deposits in an amount that would be sufficient to satisfy any potential refund to which Plaintiffs might be entitled

7. RBF affirmatively alleges and asserts Plaintiffs, and the class’ claims are barred by the doctrines of estoppel, waiver, and acquiescence. Plaintiffs and the class expressly agreed that they would look only to JGC for any refund of their Membership Deposits. The Membership Agreements executed by each Club Member, including Plaintiffs, provide that:

In the event that the Club Facilities are sold and the buyer assumes liability for the repayment of the membership deposit, the undersigned shall look solely to the new owner for repayment of the membership deposit and the seller of the Club Facilities shall be released from all liability for the repayment thereof.

8. RBF affirmatively alleges and asserts that Plaintiffs, and the class, do not have a right to receive a refund in excess of their Membership Deposits based on Sections III and IV of the Membership Agreements and Membership Plan pertain to situations where Club Members have resigned their membership and those memberships have been re-issued. Plaintiffs’ claims are based on their allegation that JGC’s “termination of membership categories triggered [JGC’s] and RBF’s duty to refund deposits within 30 days.” Refund of Membership Deposits for “termination of membership categories” is governed by Section IV of the Membership Agreements which provides that upon termination of a membership category, the affected members are entitled “to a refund of the membership deposit paid within 30 days.”

9. RBF affirmatively alleges and asserts that the Increased Refund Provision in Section III of the Membership Agreements allows a resigned Club Member to receive a refund of “seventy percent (70%) of the then-current Membership Deposit charged by the Club to the new members acquiring the membership.” Plaintiffs do not assert that JGC raised the cost of the membership categories of the memberships held by Plaintiffs, so that the obligation to refund Membership Deposits exceeded \$50,000,000.

10. RBF affirmatively alleges and asserts that Plaintiffs’ claims are barred, in whole or in part, to the extent such claims are based on damages that are speculative. By way of illustration, Plaintiffs and the class members are not entitled to receive a refund for an amount greater than their original deposit amount where the condition(s) to trigger such a greater amount is/are a mere possibility and not a vested contract right.

11. RBF affirmatively alleges and asserts that, after the sale of the Club to JGC, RBF has played no role in, and had no authority to partake in, any decisions regarding membership categories, including any changes or cancellations to any membership categories, and is not liable for any actions taken by JGC regarding memberships.

12. RBF affirmatively alleges and asserts that, after the sale of the Club to JGC, RBF has had no ability or authority to control access to the Club Facilities, including the ability to deny access to Club Facilities to Club Members who had resigned their memberships, and is not liable for any actions taken by JGC related to denying access to Club Facilities. Section 8.9(a) of the PSA plainly states that “Seller will no longer be operating the Club post-closing and therefore will no longer be responsible for ensuring that the Club Members are afforded the privilege to use the golf course or other facilities in accordance with the Delivered Club Documents during the post-Closing period.”

13. RBF affirmatively alleges and asserts that, after the sale of the Club to JGC, RBF has played no part in, and had no authority to, collect dues or other payments from Club Members or send any collection demands or invoices to Club Members, and is not liable for any payments collected, or collection demands sent, by JGC.

14. RBF affirmatively alleges and asserts that, after the sale of the Club to JGC, RBF has not received any portion of any monies collected from Club Members, either as dues, payments toward Membership Deposits, or any other payments, and RBF cannot be responsible for refunding, or ordered to refund, any payments collected by JGC.

15. RBF affirmatively alleges and asserts that JGC has the discretion to modify the procedure for refunding Membership Deposits under the Membership Agreements.

16. RBF affirmatively alleges and asserts that RBF, and then JGC, had the discretion to grant or deny access to the Club Facilities to members who had resigned their memberships. The RBF Rules and Regulations specifically provide that “[a]ny member of the Club, who has had his membership privileges terminated for any reason other than the failure to meet eligibility for membership, shall be eligible for membership or permitted to use the Club Facilities at the discretion of the Club.” Any decisions by RBF prior to the sale of the Club to JGC to allow any members who had resigned their memberships continued access to the Club does not constitute any waiver of the right to deny access to other resigned Club Members or to deny access to the same resigned Club Members at later points in time.

17. RBF affirmatively alleges and asserts that Plaintiffs are not entitled to injunctive relief and have failed to state a cause of action for injunctive relief because they have an adequate remedy at law and have not suffered irreparable harm as their claim is really a claim for money damage.

18. RBF affirmatively alleges and asserts that Plaintiffs' claims are barred by the statute of limitations and the doctrines of laches to the extent that Plaintiffs' proposed class includes members whose claim accrued, if at all, more than five years before the filing of the Complaint.

19. RBF affirmatively alleges and asserts that Plaintiffs and members of the putative class lack standing to bring this action.

WHEREFORE, having answered the Class Action Complaint and having asserted the foregoing affirmative defenses, Defendant RBF respectfully requests that this Honorable Court enter a judgment in favor of Defendant RBF and against Plaintiffs, Norman Hirsch, Matthew Dwyer, and Ralph Willard, individually and on behalf of all others similarly situated, as the prevailing party on all counts of the Class Action Complaint and costs as the prevailing party and to further award any additional relief as may be appropriate under the circumstances.

RBF, LLC's CROSS-CLAIM AGAINST JUPITER GOLF CLUB, LLC

Defendant/Cross-Plaintiff, RBF, LLC d/b/a THE RITZ-CARLTON GOLF CLUB & SPA, JUPITER ("RBF"), hereby files this cross-claim against Defendant/Cross-Defendant, Jupiter Golf Club, LLC d/b/a TRUMP NATIONAL GOLF CLUB JUPITER ("JGC"), and in support thereof states as follows:

PARTIES, JURISDICTION, AND VENUE

1. RBF is a Delaware limited liability company with its principal place of business in Orlando, Orange County, Florida. RBF is authorized to do business and does business in Florida and at all times material hereto conducted business in Palm Beach County, Florida.

2. JGC is a Delaware limited liability company with its principal place of business in Jupiter, Palm Beach County, Florida. JGC does business in Florida including Palm Beach County, Florida.

3. This Court has subject matter jurisdiction over this cross-claim because this is a cross-claim arising out of the same nucleus of facts alleged in Plaintiffs', NORMAN HIRSH, MATHEW DWYER, and RALPH WILLARD individually and on behalf of all others similarly situated (collectively, "Plaintiffs"), putative Class Action Complaint, as amended (DE 23).

GENERAL ALLEGATIONS

4. On or about November 14, 2012 ("Effective Date"), RBF, as Seller, and JGC, as Purchaser, entered into a Purchase and Sale Agreement for the sale and purchase of the property ("Property") as defined in section 1.52 and described in Schedule "R" therein. A true and correct copy of the Purchase and Sale Agreement together with its attachments/schedules (collectively referred to as the "PSA") is attached hereto as **Exhibit "A"** and incorporated herein by reference.

5. The Property to be conveyed by RBF to JGC at the closing ("Closing") included, among other things: The Ritz-Carlton Golf Club & Spa, Jupiter (the "Club"); the clubhouse ("Clubhouse"); and the spa ("Spa") (the Clubhouse and Spa collectively hereinafter are referred to as the "Club Facilities") together with the membership agreements ("Membership Agreements") between RBF and Club members ("Club Members"), membership notes ("Membership Notes"), membership plan ("Membership Plan") (the Membership Agreements, Membership Notes, Membership Plan and the Rules and Regulations of the Club collectively hereinafter are referred to as the "Club Documents"), and other Assets.¹

6. The PSA and Club Documents including the Membership Agreements and Membership Plan governed and controlled Club Members' rights and JGC's refund obligations,

¹ The terms Club, Clubhouse, Spa, Membership Agreements, Club Members, Membership Notes, Membership Plan, Club Documents, and Assets are defined in the PSA. *See e.g.*, PSA sections 1.13, 1.17, 1.62, 1.43, 1.16 1.44, 1.45, 1.14, 1.6, respectively. The term Club Facilities is described in the Membership Plan. *See* PSA at Schedule "B", page i (page number references to the Membership Plan are to the page numbers appearing on the bottom center of the Membership Plan document).

where applicable. As defined in the PSA, the Membership Agreements related to a “Club Member’s right to use the Club and obligations of Club Members, and obligations of Seller [RBF] with respect to a refund of a Club Member’s deposits, as applicable.” PSA, section 1.43 (modification added).

7. Pursuant to the Membership Plan (Schedule B), the Club offered various membership categories. *See* PSA, Membership Plan, at Schedule B, pages 2 – 5, 16 – 17.

8. The Membership Plan also stated that:

[i]n the event of termination of the Membership Plan, termination of a person’s category of membership or the discontinuance of operation of all or substantially all of the Club Facilities, the Club will refund the membership deposit or initiation fee to the affected members.

PSA, Membership Plan, at Schedule B, page 16.

9. Pursuant to section 8.9 and Schedule C (entitled “Club Document Agreement”), JGC assumed the “right, title, interest and obligations”, whether financial or non-financial, of RBF with respect to Club Documents that RBF delivered to JGC prior to the Effective Date of the PSA, of which JGC acknowledged receipt and review (“Delivered Club Documents”). PSA, section 8.9(a) and (e); *see* section 6.17.

10. The “right, title, interest and obligations” assumed by JGC with respect to the Delivered Club Documents included among other things “the performance of the post-Closing obligations under the Delivered Club Documents” and “Refund Obligations.” PSA, section 8.9(a).

11. To be sure that JGC assumed the Delivered Club Documents in their entirety including its non-financial aspects, section 8.9(e) states, in pertinent part: “[f]or the avoidance of doubt, the Delivered Club Documents are being assumed by Purchaser [JGC] in their entirety, so

as to specifically also include the assumption of non-financial obligations contained therein.”

(Modification added).

12. Also, with respect to JGC’s assumed obligations, section 8.9(a) states, in pertinent part:

By way of clarification, it is understood that the Seller [RBF] will no longer be operating the Club post-Closing and therefore will no longer be responsible for ensuring that Club Members are afforded the privileges to use the golf course or other facilities in accordance with the Delivered Club Documents during the post-Closing period. Seller shall remain liable, however, for ensuring that Club Members were afforded the privileges to use the golf course and other facilities in accordance with the Delivered Club Documents during the pre-Closing Period. Notwithstanding anything to the contrary, Purchaser [JGC] is not assuming an obligation to repay any Club Member’s refundable deposit in excess of the Refund Obligations (i.e. in accordance with the limitations described in the definition of “Refund Obligations” in Section 1.62 [SIC]) or Refund Obligations in an aggregate amount in excess of \$50,000,000.00, in each case, less all amounts from time to time paid, exchanged, forgiven or otherwise validly expunged with respect to such Refund Obligations. The ‘Assumed Obligations’ are the obligations assumed by Purchaser under this section 8.9(a). Nothing herein shall prohibit or restrict the ability of Purchaser to amend any Club Documents after the Closing, provided, however, Purchaser may not amend the Club Documents so as to increase the Refund Obligations of any Club Member above the amount set forth for such Members on Schedule T attached hereto. This Section 8.9(a) shall survive Closing.

(Brackets added).

13. Section 1.61 of the PSA defines “Refund Obligations” as:

the obligation to repay to each Club Member that is a party to a Membership Agreement the refundable member deposit, if any, to which each, as applicable is or may become entitled pursuant to his or her Membership Agreement and Membership Note, if any, in each case (a) up to the amount set forth for each such Club Member on Schedule T hereto and (b) in accordance with the terms and conditions of his or her Membership Agreement and Membership Note, and the Membership Plan.

14. As to “financial obligations to Club Members being assumed by Purchaser [JGC]” such financial obligations “are as set forth on the member matrix” attached as Schedule T

to the PSA (the “Member Matrix”). Section 8.9(e) (modification added).

15. The Member Matrix lists all Club Members at Closing and provides financial information relating to their accounts, including any refundable deposits.² See PSA, Member Matrix, at Schedule T.

16. Pursuant to the Member Matrix, at Closing the total maximum outstanding liability for all membership deposit Refund Obligations was \$47,403,100.00, (see PSA, Member Matrix, at Schedule T, last page), which is below the \$50,000,000 limit referenced in section 8.9(a).

17. Consistent with the language in section 8.9, section 3 of the Club Document Agreement (Schedule C) provides as follows:

ASSIGNMENT AND ASSUMPTION. Assignor [RBF] hereby assigns to Assignee, [JGC] and Assignee hereby assumes from Assignor the right, title, interest and obligations of Assignor in the Delivered Club Documents including the Refund Obligations. Notwithstanding the foregoing, Assignee’s assumption of the right, title, interest, and obligations of Assignor in the Delivered Club Documents is limited to the performance of the post-Closing obligations under the Delivered Club Documents. Assignee is not assuming any liability for the Assignor’s breaches of contract, torts or violations of law. Assignor is not assuming any liability for the Assignee’s breaches of contract, torts or other violations of law. By way of clarification, it is understood that the Assignor will no longer be operating the Club post-Closing and therefore will no longer be responsible for ensuring that Members are afforded the privileges to use the golf course or other facilities in accordance with the Delivered Club Documents during the post-Closing period. Assignor shall remain liable, however, for ensuring that Members were afforded the privileges to use the golf course and other facilities in accordance with the Delivered Club Documents during the pre-Closing period. Notwithstanding anything to the contrary, Assignee is not assuming an obligation to repay any Club Member’s refundable deposit in excess of the Refund Obligations (i.e. in accordance with the limitations described in the definition of “Refund Obligations” in Section 1.62 of the Purchase Agreement) or Refund Obligations in an aggregate amount in excess of

² To protect the identity of individual members, Schedule T was redacted to remove the names of individual members and, instead, replaced names with identification numbers.

\$50,000,000.00, in each case, less all amounts from time to time paid, exchanged, forgiven or otherwise validly expunged with respect to such Refund Obligations. The “Assumed Obligations” are the obligations assumed by Assignee under this Section 3. Nothing herein shall prohibit or restrict the ability of Assignee to amend any Club Documents after the Closing, provided, however, Assignee may not amend the Club Documents so as to increase the Refund Obligations of any Member above the amount set forth for such Member on the Member Matrix attached as Schedule T of the Purchase Agreement.

(Modification added).

18. Further, section 3 of the Club Document Agreement incorporates by reference as if fully set forth therein, section 8.9(e) (portions of which are referenced above).

19. The PSA including sections 8.9(a), (e), and the Club Document Agreement (Schedule C) demonstrate that JGC assumed RBF’s financial and non-financial obligations relating to Club Members’ and Plaintiffs’ Membership Agreements including Refund Obligations in their entirety.

20. Consistent with JGC’s assumption of the Delivered Club Documents including Refund Obligations in their entirety, Plaintiffs’ Membership Agreements—attached to Plaintiffs’ Complaint as Exhibits “A” – “C”—expressly provide, in pertinent part, as follows:

In the event that the Club Facilities are sold and the buyer assumes liability for the repayment of the membership deposit, the undersigned shall look solely to the new owner for repayment of the membership deposit and the seller of the Club Facilities shall be released from all liability for the repayment thereof.³

21. Pursuant to the PSA, the Closing occurred on or about December 7, 2012.

³ Plaintiff Mathew Dyer’s Membership Agreement—purportedly attached as Exhibit “A” to the Complaint—contains a slightly different version of this sentence, and reads: “[i]n the event that the Club Facilities are sold and the buyer assumes liability for the repayment of membership deposit and the seller of the Club Facilities shall be released from all liability for the repayment thereof.”

22. On May 3, 2013, Plaintiffs filed a Class Action Complaint (DE 1) against JGC and RBF asserting the following claims: declaratory action (Count I), breach of contract (Count II), and injunctive relief (Count III).

23. Subsequently, on August 8, 2013, Plaintiffs filed an amended Class Action Complaint (DE 23) against JGC and RBF asserting substantially the same claims: declaratory action (Count I), breach of contract (Count II), and injunctive relief (Count III).

24. In Plaintiffs' Complaint, as amended (DE 23), Plaintiffs seek to recover refunds of Membership Deposits which Plaintiffs claim are due and owing under various theories including that membership categories have been terminated, that Plaintiffs have been denied access to the Club Facilities, or that dues and payments have wrongfully continued to be collected against them.

25. While Plaintiffs' claims primarily are based on allegedly terminated membership categories, Plaintiffs refer to provisions of the Membership Agreements and Membership Plan regarding refundable membership deposits for Club Members who seek to resign their Club membership.

26. Certain Club membership categories provided a "refundable membership deposit for a resigning member acquiring a Refundable Membership (as defined below)", where applicable. *See* PSA, Membership Plan, at Schedule B, page i

27. A Refundable Membership as described by the Membership Plan "entitles the members to a refund of the membership deposit paid for the membership in accordance with the 'Membership Deposit and Initiation Fee' section of this Membership Plan and each member's Membership Agreement." *See* PSA, Membership Plan, at Schedule B, page 2.

28. Pursuant to the “MEMBERSHIP DEPOSIT AND INITIATION FEE” section of the Membership Plan, a Refundable Membership was acquired and was refunded, where applicable, as follows:

MEMBERSHIP DEPOSIT REQUIRED TO ACQUIRE REFUNDABLE MEMBERSHIP

Each person who desires to acquire a Refundable Membership will be required to pay a refundable membership deposit determined by the Club from time to time. The Club may charge a higher membership deposit for Non-Resident Full and Golf Memberships than for Resident Full and Golf Memberships. Any price difference may or may not continue in the future, in the club’s sole discretion. Membership deposits are refundable only in accordance with this Membership Plan, the Rules and Regulations of the Club and the Membership Agreement.

REFUND OF MEMBERSHIP DEPOSIT

The membership deposit of a Refundable Member will be refunded as follows, unless otherwise set forth in the Membership Agreement:

- (a) Social & Spa and Ritz-Carlton Club Golf Refundable Members Who Resign Prior to Thirty Years. Such a Refundable Member who resigns less than 30 years after joining the Club will receive a refund when the resigned Refundable Membership is reissued by the Club to a new member. The amount of the refund will be the greater of: (i) the amount of the membership deposit previously paid by the resigning member, without interest, or (ii) seventy percent (70%) of the then current membership deposit charged by the Club to the new member acquiring the membership.
- (b) Full and Golf Refundable Members Who Resign Prior to Thirty Years. Such a Refundable Member who resigns less than 30 years after joining the Club will receive a refund when the resigned membership is reissued by the Club to a new member. The amount of the refund will be the greater of: (i) the amount of the membership deposit previously paid by the resigning member, without interest, or (ii) seventy percent (70%) of the then-current membership deposit charged by the Club to the new member acquiring the membership.
- (c) Refundable Members Who Continue Their Membership for 30 Years. A Refundable Member who continues to remain a member in good standing for 30 years will receive a refund 30 years after the member

joined the Club. The amount of the refund will be the amount of the membership deposit previously paid by the member, without interest. The member or the member's estate will not receive any additional refund when the membership is eventually resigned and reissued by the Club to a new member, or acquired by a spouse or heir of the member.

The refund of the membership deposit for a Portfolio Membership and Associate Membership shall be as set forth in their respective Membership Agreements. The Eagle Tree Membership is a Non-Refundable Membership.

...

INITIATION FEE REQUIRED TO ACQUIRE NON-REFUNDABLE MEMBERSHIP

Each Person who desires to acquire a Non-Refundable Membership will be required to pay a non-refundable initiation fee determined by the Club from time to time.

See PSA, Membership Plan, at Schedule B, pages 9 – 10.

29. On August 9, 2013, RBF filed a motion to dismiss the amended Complaint (DE 31), which the Court denied on May 20, 2014 (DE 44).

30. Subsequently and concurrently with this cross-claim, RBF answered the amended Complaint and asserted—consistent with RBF's motion to dismiss—among other things: that JGC assumed liability regarding the Refund Obligations; that Plaintiffs agreed to look only to JGC for repayment of their Membership Deposit; that no Club membership categories were terminated as alleged by Plaintiffs; that the refund provisions regarding resigning Club members are not applicable; and that otherwise no breach of the Membership Agreements occurred.

31. Additionally, RBF asserted that since the consummation of the Closing RBF has played no part in, and has had no authority to: change or alter the categories of memberships in the Club; grant or deny access to the Club to Club Members who had resigned their memberships; collect payments from Club Members or send collection demands to Club

Members or otherwise received any portion of any monies collected from the Club, whether as dues, payments toward Membership Deposits, or other payments.

32. All conditions precedent to the filing of this cross-claim have been performed, have occurred, or have been waived.

33. RBF has retained the law firm of Baker & Hostetler, LLP and has agreed to pay reasonable attorneys' fees and costs for its services.

COUNT I – ACTION FOR BREACH OF CONTRACTUAL INDEMNIFICATION

34. RBF realleges and incorporates by reference paragraphs 1 – 33 above as though fully set forth herein.

35. Section 8.9(d) of the PSA provides in pertinent part:

Purchaser [JGC] shall defend, indemnify and hold Seller [RBF] and its affiliates, employees, agents, officers and directors and their successors and assigns (collectively, the “Seller Indemnified Parties”), harmless from and against any and all Claims^[4] that may be imposed upon, incurred by or asserted against any of seller Indemnified Parties for Purchaser's breach of the Assumed Obligations. . . . This Section 8.9(d) shall survive Closing.

(Modification added: footnote next to “Claims”).

36. Section 5 of the Club Document Agreement (Schedule C) incorporates by reference section 8.9(d) as if fully set forth in Section 5.

37. Pursuant to the PSA, including section 8.9 and the Club Document Agreement, to the extent that the Court finds that Plaintiffs are entitled to a refund of their Membership Deposits, such an obligation is entirely JGC's, not RBF's.

38. Pursuant to the PSA, including section 8.9(d) and section 5 of the Club Document Agreement, JGC must indemnify and hold RBF, including Seller Indemnified Parties as that

⁴ Claims is defined in section 1.10 to mean “liabilities, obligations, damages, penalties, claims costs, charges and expenses, including reasonable attorneys' fees and disbursements and reasonable fees of other professionals and experts in connection therewith.”

term is defined in section 8.9(d), harmless from any and all liabilities, obligations, damages, penalties, claims costs, charges and expenses of every kind or character including reasonable attorneys' fees and costs.

39. On May 15, 2013, RBF demanded, in writing, that JGC indemnify and hold RBF harmless as JGC is required to do by the PSA.

40. Despite RBF's demands, JGC's has failed or refused to indemnify and hold RBF harmless as required by the PSA, which constitutes a material breach of the PSA.

41. As a proximate cause of JGC's material breach of the PSA, if the Court finds that Plaintiffs' are due a refund of their Membership Deposits and enters judgment against RBF, RBF's damages, exclusive of interest, costs, and attorneys' fees, would exceed \$75,000 including, without limitation, any and all damages, interest, costs, attorneys' fees, and others sums of money, if any, deemed to be due and owing to Plaintiffs.

WHEREFORE, Defendant/Cross-Plaintiff, RBF, respectfully requests that judgment be entered in RBF's favor and against JGC (a) requiring or mandating that JGC indemnify and hold RBF harmless from any and all liabilities, obligations, damages, penalties, claims, costs, charges and expenses of every kind or character including reasonable attorneys' fees pursuant to the PSA including sections 10.6 and 13.11 and section 9 of the Club Document Agreement and costs, (b) otherwise awarding RBF all damages caused by JGC's breaches, together with interest, costs and reasonable attorneys' fees, and (c) awarding such other and further relief to RBF as the Court deems just and proper.

COUNT II – ACTION FOR COMMON LAW INDEMNIFICATION

42. RBF realleges and incorporates by reference paragraphs 1 – 3 and 32 – 33 above as though fully set forth herein.

43. This is a cause of action for common law indemnification against JGC in the alternative to the breach of contractual indemnification action set forth in Count I. To the extent that the Court finds that Plaintiffs' are due a refund of their Membership Deposits and enters judgment against RBF, the damages would exceed \$75,000.00, exclusive of interest, costs, and reasonable attorneys' fees.

44. To the extent that the Court finds that Plaintiffs are entitled to a refund of their Membership Deposits, the obligation is entirely JGC's, not RBF's.

45. Since the consummation of the Closing, JGC, and not RBF, has been the owner of the Property including the Club, Club Facilities, Delivered Club Documents, and other Assets with exclusive control over all aspects of the Club, Club Facilities, Delivered Club Documents, and other Assets.

46. Since the consummation of the Closing, RBF has played no part in, and has had no authority to: change or alter the categories of memberships in the Club; grant or deny access to the Club to Club Members who had resigned their memberships; collect payments from Club Members or send collection demands to Club Members or otherwise receive any portion of any monies collected from the Club, whether as dues, payments toward Membership Deposits, or other payments.

47. RBF bears no fault for the claims alleged by Plaintiffs and any liability of RBF arising out of Plaintiffs' claims is solely constructive, technical, or derivative and is based on the actual wrongdoing of JGC.

48. To the extent that the Court finds that RBF is liable to Plaintiffs for any sums due, then JGC must indemnify and pay RBF for any and all such sums of money, including, without limitation, any and all damages, interest, costs, and reasonable attorneys' fees.

WHEREFORE, Defendant/Cross-Plaintiff, RBF, respectfully requests that judgment be entered in RBF's favor and against JGC, awarding to RBF any and all sums of money for which RBF is found or deemed to be liable to Plaintiffs including, without limitation, any and all damages, interest, costs, and reasonable attorneys' fees, together with such other relief as may be just and equitable.

COUNT III – ACTION FOR EQUITABLE SUBROGATION

49. RBF realleges and incorporates by reference paragraphs 1 – 3, 32 – 33, and 44 – 46 above as though fully set forth herein.

50. This is a cause of action for equitable subrogation against JGC in the alternative to the breach of contractual and common law indemnification actions set forth in Counts I and II. To the extent that the Court finds that Plaintiffs' are due a refund of their Membership Deposits and enters judgment against RBF, the damages would exceed \$75,000.00, exclusive of interest, costs, and reasonable attorneys' fees.

51. To the extent that the Court finds that RBF is required to make payment to Plaintiffs, any such payment shall be involuntary and made to protect RBF's interest, and RBF shall be entitled (a) to be subrogated to the rights and claims that Plaintiffs possess and hold against JGC and (b) to recover from JGC any and all damages and other sums of money that RBF is made to pay Plaintiffs, together with interest, costs and reasonable attorneys' fees.

52. Subrogation would not work any injustice to the rights of any third-party.

WHEREFORE, Defendant/Cross-Plaintiff, RBF, respectfully requests that judgment be entered in RBF's favor and against JGC (a) finding that RBF shall be subrogated to the rights and claims of Plaintiffs and (b) awarding to RBF any and all sums of money or damages, if any,

that RBF must pay to Plaintiffs, together with interest, costs, reasonable attorneys' fees and such other and further relief as may be just and equitable.

JURY DEMAND

RBF hereby requests a trial by jury on all issues so triable.

Dated: June 3, 2014

Respectfully Submitted,

/s/ Julie Singer Brady
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Attorneys for RBF, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 3, 2014, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to:

<p>Steven R. Jaffe E-mail: steve@pathtojustice.com Mark S. Fistos E-mail: mark@pathtojustice.com Seth Lehrman E-mail: seth@pathtojustice.com FARMER, JAFFE, WEISSING, EDWARDS, FISTOS & LEHRMAN, P.L. 425 N. Andrews Ave., Suite 2</p>	<p>Herman J. Russomanno E-mail: hrussomanno@russomanno.com Robert J. Borrello E-mail: rborrello@russomanno.com Herman J. Russomanno III E-mail: herman2@russomanno.com RUSSOMANNO & BORRELLO, P.A. Museum Tower, Penthouse 2800 150 West Flagler Street</p>
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/s/ Jerry R. Linscott
Jerry R. Linscott