

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

CASE NO.: 12-17609 CA 12

RICHARD HANEY; SEMYON GENIS;
AND MANYA SCHONFELD,

Plaintiffs,

v.

GEORGE F. PLUCIENKOWSKI;
LUIS A. D'AGOSTINO; ALVARO R. MINOR;
GREGORY KHESS; JOSHUA G. BUSTOS;
And THE PINNACLE CONDOMINIUM
ASSOCIATION, INC

Defendants.

SETTLEMENT AGREEMENT

This Settlement Agreement sets forth the terms of the class action settlement between Defendant, The Pinnacle Condominium Association, Inc. (the "Association") and the Class (all as defined herein):

I. DEFINITIONS.

For the purposes of this Agreement and all exhibits hereto:

A. "Agreement" or "Settlement Agreement" or "Settlement" shall mean this Settlement Agreement, and the settlement described herein, or any modification thereof by the written consent of Association and the Class.

B. "Appellate Court(s)" shall mean the District Circuit Court of Appeal of Florida, Third District, and the Florida Supreme Court.

C. "Claim" or "Claims" shall mean any and all past, present or future claims, demands, suits, actions, rights of action, liabilities, interventions, subrogations, liens, rights, obligations and causes of action, at law, equity, or otherwise for compensatory damages or other relief, whether known or unknown, filed or unfiled, asserted or as yet unasserted, arising out of the Incident, including all claims contained in the petitions filed in Circuit Court of the 11th Judicial Circuit Court of Miami-Dade County, Florida, entitled *Haney, et al. v. Plucienkowski, et al.*, Case No. 12-17609 CA, and all supplemental and amended petitions thereto.

D. As certified by the Court and employed herein, "Class" shall mean: "All condominium unit owners of the Pinnacle Condominium who suffered financial damage from the obligations imputed upon them under the February 3, 2010 Settlement Agreement for the matter of "*Continental Painting, Waterproofing & Restoration, Inc. v. The Pinnacle Condominium Association*, Circuit Court of the Eleventh District of Florida, Case No. 07-09196 CA 06", who were not members of the Board of Directors from August 30, 2006 through February 3, 2010." The parties recognize the right that the Association may not revoke this Settlement Agreement on the basis of opt-outs from the Class Settlement. The Class which is certified in this Litigation and the

Class settling with the Compromising Defendant is one and the same and co-extensive, for purposes of the release of claims.

E. “Continental Painting Settlement” shall mean the February 3, 2010 Settlement Agreement for the matter of *Continental Painting, Waterproofing & Restoration, Inc. v. The Pinnacle Condominium Association*, Circuit Court of the Eleventh District of Florida, Case No. 07-09196 CA 06.

F. “Class Counsel” shall mean the group of Persons appointed by the Court to represent the Class for the Litigation, who are:

1. Joseph M. Bruno, Sr. (LA. Bar #3604) PHV No. 100495
2. Daniel A. Meyer (LA. Bar #33278) PHV No. 100494
3. Jon Herskowitz Florida Bar No. 814032

G. “Class Members(s)” or “Member(s) of the Class” shall mean singularly or collectively (as their interests may appear) Persons who as of the date of the Preliminary Approval Order is issued, meet the criteria set forth in Section I(D).

H. “Class List(s)” shall mean the comprehensive list(s) of all known Class Members, as provided by the Compromising Defendant from their records pursuant to this Settlement Agreement. The Class Lists shall include all Class Members’(as that term is defined herein), First Name, Middle Initial, Last Name, Suffix, and/or entity name, name of the entity’s representative(s) (if applicable and known), unit number, purchase date, sale date (if applicable), last known mailing address,

email address (if known), and phone number(s) (if known),.

I. "Class Representatives" shall mean those Persons designated by the Court, as follows: Estate of Richard Haney, Semyon Genis, and Manya Schonfeld;

J. "Class Settlement Notice" or "Notice" shall mean the legal notice of the terms of this Agreement published in accordance with the order(s) of the Court, the Florida Rules of Civil Procedure, the applicable law, and the terms of this Agreement.

K. "Claim Administrator" shall mean The Notice Company, Inc. or such other Person or Persons qualified to address notice, tax, banking, or settlement fund distribution matters.

L. "Compromising Defendant" shall mean and refer to The Pinnacle Condominium Association, Inc. (the "Association"), as well as their respective past and present parent companies, subsidiaries, inter-related companies, agents, assigns, successors, representatives, employees, servants, officers, directors, members, shareholders, and insurers.

M. "Court" shall mean Circuit Court of the 11th Judicial Circuit Court of Miami-Dade County, Florida.

N. "Fairness Hearing" shall mean the hearing to be conducted by the Court, upon notice to the Class, and other interested Persons, pursuant to Florida Rules of Civil Procedure article 1.220(e), to determine the fairness, adequacy and reasonableness of this Settlement in accordance with the law.

O. “Final Settlement Date” shall mean the date on which all the following have occurred: a) execution of this Agreement by the Parties; b) entry of the final Order and Judgment approving this settlement as contemplated by this Agreement; c) finality of the Order and Judgment by virtue of the Order and Judgment having become final and non-appealable due to: 1) no objection(s) being properly raised to the Order and Judgment; 2) the expiration of all allowable appeal periods without a motion for an order for an appeal having been filed; 3) final affirmance of the Order and Judgment on appeal or final dismissal or denial of such appeals, including the exhaustion of further opportunity for appellate review by appeal; or 4) the dismissal with prejudice of the Claims of the Class against the Compromising Defendant. The Parties agree to employ their best efforts to reach the Final Settlement Date in accordance with the terms and provisions of this agreement.

P. “Incident” shall refer to the claims made in the Litigation, specifically alleged in the Amended Complaint which arise from the Association’s dispute with Continental Painting, Waterproofing & Restoration, Inc., (“CPWR”) for work on the Pinnacle Condominium Building, resulting in a lawsuit to recover CPWR’s unpaid invoices on and the Association’s eventual settlement of that lawsuit with CPWR for \$2,440,000.00, for which the Members of the Association were specially assessed their pro rata share.

Q. “Litigation” shall mean that class action captioned *Haney, et al. v.*

Plucienkowi, et al., Case No. 12-17609 CA 42, Circuit Court of the 11th Judicial Circuit Court of Miami-Dade County, Florida, including all cases encompassed in the class definition or otherwise made part of the class action as provided in the court's Order certifying the class, and any subsequent orders and/or rulings of the Appellate Courts regarding class certification.

R. "Order and Judgment" shall mean the order to be entered by the court: 1) approving this Agreement as fair, adequate and reasonable and in the best interest of the Class as a whole in accordance with the Florida Rules of Civil Procedure; 2) dismissing with prejudice all claims of the Class in the Litigation against the Compromising Defendant; 3) ordering that upon the Final Settlement Date, liability of any type of the Compromising Defendant to the Class in the Litigation is fully satisfied; 4) releasing all "Released Claims" by the Class and/or Class Members against the Compromising Defendant; 5) effectuating the bar order requested and described herein; and 6) making such other orders, findings and determinations necessary and appropriate to effectuate the terms and intent of this Agreement. (The Parties reserve the right to submit a proposed Preliminary Approval Order).

S. "Party and/or Parties" shall mean the Class and each or all Class Counsel and the Compromising Defendant.

T. "Person" or "Persons" shall mean any natural person, individual, juridical person, government entity, or legal entity, including, without

limitation: Parties, corporations, partnerships, limited liability companies, attorneys, insurers, associations, healthcare providers, as well as city, parish, state and federal entities, and any of their successors, predecessors or assigns.

U. “Preliminary Approval Order” shall mean the order to be entered by the Court, preliminarily approving this Agreement. The Preliminary Approval Order shall be immediately effective and, immediately upon entry, shall trigger deadlines set forth herein or as otherwise ordered by the Court, which are dependent upon the date of entry of the Preliminary Approval Order. (The Parties reserve the right to submit a proposed Preliminary Approval Order).

V. “Released Claim” or “Released Claims” shall mean any and all claims by the Class or any Class Members in the Litigation whatsoever against the Compromising Defendant relating to the Incident, including any and all Claims that the Class and/or Members of the Class may have, regardless of whether such Claim is known or unknown filed or unfiled, asserted or as yet unasserted, or existing or contingent, and regardless of the legal theory or theories which arise out of or are in any manner related to, or connected with, the Incident. “Released Claims” shall also include any claims which have been asserted or may be asserted by, or on behalf of any Person falling within the Class, or which have been or may be asserted in the Litigation by related Persons, and/or any and all claims which have been or may be asserted

under lease, statute, regulation, ordinance and/or guideline, arising out of any injury to any Class Member due to the Incident.

W. "Released Party" shall mean the Compromising Defendant as defined hereinabove.

X. "Settlement Administrative Costs" shall mean all costs, expenses and fees reasonably incurred by the Claim Administrator in 1) preparing and disseminating any notices to the Class; 2) funding the day-to-day operations and functions of the Claim Administrator; 3) compensating the Claim Administrator and his agents, contractors, and employees, for services pertaining to the Settlement, including but not limited to, reviewing and analyzing the claims of Class Members, providing information to Class Members in connection with the preparation of documentation of Claims, determining amounts of claim payments to be made to Class Members and distributing Settlement Fund Payments to Class Members; 4) creating and maintaining any administrative accounts with amounts necessary to provide sufficient funding to effectuate the Settlement; and 5) payment of fees and costs of the segregated bank account associated with the Settlement, and any and all other related banking fees.

Y. "Settlement Benefits" shall mean the consideration for this Agreement, comprised of the Settlement Payment (as defined below in Section I(Z)).

Z. "Settlement Payment" shall mean the sum of Four Hundred Forty-

Five Thousand and 00/100 (\$445,000.00) to be paid into a segregated account, held by the Class Counsel, within twenty-one (21) days after the Court issues a Preliminary Approval Order of the Settlement, which Settlement Payment shall be held in trust as set forth in this Settlement Agreement, and drawn on to pay Settlement Administrative Costs. In the event that the Settlement Agreement does not reach the Final Settlement Date, then any funds drawn to pay the Settlement Administrative Costs shall be reimbursed by Class Counsel.

II. RECITALS AND REASONS FOR SETTLEMENT:

The essential elements of this Settlement Agreement are to: 1) provide the Members of the Class with the Settlement Benefits; 2) upon receipt of which, the Class agrees to dismiss all claims against the Compromising Defendant in the *Haney, et al. v. Plucienkowski, et al.*, Case No. 12-17609 CA 42, class action litigation and all Released Claims as defined herein; and 3) to bring finality and resolution to any and all claims for injuries and damages arising out of the Incident.

Whereas, the Compromising Defendant and the Class have entered into this Agreement in order to put to rest all controversy by and between them in any way related to the Incident and/or Litigation and to avoid further expense and burdensome, protracted and costly litigation that would be required in defending and prosecuting the Litigation;

Whereas, the Parties are entering into this Agreement in recognition of 1) the risks inherent in litigation; 2) the likelihood that future proceedings will be protracted and expensive if the proceeding is not settled by voluntary agreement; 3) the magnitude of the benefits derived from the contemplated settlement in light of both the upside potential and the downside risk associated with further litigation, and the expense thereof and the exposure associated therewith; and 4) the

determination by the Parties that the Settlement is fair, reasonable, adequate and in their best interests under the circumstances;

Whereas, the Class Counsel and the Class Representatives have evaluated the Claims asserted against the Compromising Defendant related to the Incident from a settlement versus further litigation perspective and have determined that a settlement is in the best interests of the Class;

Whereas, the Compromising Defendant enter into this Agreement to obtain a complete release for all Released Claims against them;

Whereas, substantial time and effort has been expended by the Parties and their Counsel in arm's length negotiation of this Agreement and the Settlement contemplated hereby;

Whereas, this Agreement incorporates all previous negotiations and agreements, and is the result of arm's length negotiations, and the Class Representatives and their respective Counsel consider this Settlement to be fair, reasonable, adequate, and in the best interest of the Class;

Whereas, the Compromising Defendant denies and continues to deny each and every one of the Class Representatives' allegations in the Litigation described hereinabove, but desire on their part to avoid the expense, inconvenience, and distraction of further litigating this Class Action, and all Parties agree and acknowledge that this Settlement is not to be construed in any manner, shape or form as an admission of liability on the part of the Compromising Defendant;

Whereas, the Compromising Defendant's insurer has provided a defense to the Compromising Defendant under a full reservation of rights, and is paying the Settlement Payment;

Now Therefore, the Parties do hereby, subject to the final approval of this Settlement by the Court, and the other contingencies provided herein, settle and compromise all "Released Claims" of the Class Representatives and the Class, such that all such claims shall be dismissed

with prejudice, as follows:

III. TERMS OF SETTLEMENT:

A. Settlement Consideration, Settlement Payment, and Schedule.

1. The “Consideration” for this Settlement shall be the Settlement Payment and Settlement Benefits as defined hereinabove. The Settlement Payment is a recoupment of money paid by the Class Members as a result of the Incident. The Settlement Payment shall be allocated as follows:

- a) \$240,000.00 shall be allocated to the “Settlement Class Benefit Fund”; From the Settlement Class Benefit Fund, \$3,000.00 shall be allocated to pay Class Representative Awards of \$1,000.00 for each of the three Class Representative identified in *Section I(I)* above.
- b) \$178,000.00 (40%) shall be allocated to Attorneys’ Fees for Class Counsel;
- c) \$14,500.00 shall be allocated to Held Litigation Costs;
- d) \$12,500.00 shall be allocated to fund Settlement Administrative Costs.

2. The Parties agree this is a Final Settlement.

3. On or before October 9, 2020, the Parties shall take steps necessary or appropriate to obtain Preliminary Approval of the Settlement Agreement and certification of a settlement class as defined in Section I(D) of this Agreement. The Class through Class Counsel and Defendant through its counsel will jointly request that the Court enter orders granting Preliminary Approval and setting

forth the notice program required for accomplishment of the Settlement.

4. Compromising Defendant shall aid, assist, and provide its best efforts in implementing this Agreement, and gaining Court approval for the Settlement.

5. Subsequent orders of the Court shall set the date of the Fairness Hearing, approve the Notice, and also approve and establish procedures for objecting to the Settlement, and/or address issues regarding the Class Settlement Notice, and such other procedures, guidelines, directives and dates that the Court may deem warranted.

6. The Class, Class Counsel, Compromising Defendant, and its counsel, will use their best efforts to conduct a Fairness Hearing properly, timely, with dispatch, and in accordance with the orders of the Court.

7. The dates and deadlines set forth in the court orders described herein shall be subject to alteration by order of the Court, including that the Fairness Hearing may be adjourned, continued or rescheduled with no additional notice other than that posted or given at the time and place at which the Fairness Hearing was scheduled to occur if it is continued or rescheduled.

8. In the event the previously issued class certification, notice to the Class or definition of the Class are found to be defective, deficient, or otherwise altered by the Court or Appellate Court, the Parties agree to seek curative orders, and/or to take procedural steps to cure any perceived or later recognized deficiencies, and to implement this Settlement Agreement.

9. As part of the consideration for Compromising Defendant entering into this Settlement, Class Counsel agrees not to represent any party that has opted out

or objector to the Settlement Agreement and further agrees not to cooperate with, or share any work product or strategies, with any counsel outside of Class Counsel.

B. Opt-Outs.

1. **Opt-Out Period.** Class Members will have forty-five (45) days following the Notice of this Class Settlement (or such different period as the Court may direct) to opt-out of the Settlement in accordance with Section III(B)(2) of this Agreement (the “Opt-Out Period”). If the settlement is approved by the Court, then all Class Members who have not opted out by the end of the forty-five (45) day period will be bound by this Settlement Agreement.

2. **Opt-Out Process.** Individual Class Members must request to opt out of the Class and from the Settlement set forth herein by mailing a signed written request for exclusion to the Claim Administrator. A pleading or form or any other request made or signed by counsel shall not be sufficient. The opt-out request must be postmarked within the Opt-Out Period. Settlement Class Counsel shall be obliged to file all opt-outs with the Court by a date prior to the Fairness Hearing to be determined by the Court.

C. Objections. Any Class Member who has any objection to certification of the Class, or to approval of this Settlement or any terms hereof, or to the approval process must make that objection by the following procedure:

1. Class Members will have forty-five (45) days following the Claim Administrator’s issuance of Notice of this Class Settlement (or such different

period as the Court may direct) to object to the Settlement in accordance with Section III(C) of this Agreement (the "Objection Period").

2. The objection must be in writing;
3. The objection must set forth all objections and the reasons therefore, and a statement whether the Class Member intends to appear at the Certification Hearing or Fairness Hearing either with or without the objector's counsel. The objection must identify any witnesses' testimony, and all documents to be used or offered into evidence, at the Certification Hearing or Fairness Hearing.
4. The objection must be signed by the individual Class Member and by his/her counsel; an objection signed by counsel alone shall not be sufficient;
5. The objection must contain the caption of the Litigation and include the name, mailing address, e-mail address, if any (an e-mail address is not required), and telephone number of the objecting Class Member;
6. The objection must be mailed to the Court and filed in the Litigation, with copies mailed to Class Counsel, Joseph Bruno, Bruno & Bruno, L.L.P., 855 Baronne Street, New Orleans, LA 70113 and Counsel for Compromising Defendant, Joshua Goldstein, Cole Scott & Kissane, P.A., 222 Lakeview Avenue, Ste. 120, West Palm Beach, FL 33401. The objection must be postmarked within the 45-day Objection Period described in Section III(C)(1). Plaintiffs' Class Counsel shall be obliged to file all objections with the Court by a date prior to the Fairness Hearing to be determined by the Court.
7. Class Members who fail to file and serve timely written objections as set forth above shall be deemed to have waived any objections and shall be

foreclosed from making any objection (whether by appeal or otherwise) to the certification of the Settlement Class or to the Settlement.

D. Complete Resolution of All Claims.

1. **Dismissal with Prejudice of Claims.** Upon reaching the Final Settlement Date, the Class Counsel on behalf of the Class agree that the claims of the Class against the Compromising Defendant shall be dismissed with prejudice.

2. **Release by Class Members.**

a) By virtue of this Settlement and the Order and Judgment, any and all Persons falling within the Class will be deemed to have fully, finally, and completely released the Compromising Defendant for any and all Released Claims and will be forever barred from asserting such Released Claims in the future.

b) The Release provided herein can and will be raised as a complete defense to and will preclude any Released Claim against Compromising Defendant.

E. Notice of the Settlement and Plan for Dissemination of Notice.

Simultaneously with the filing of the Motion for Preliminary Approval as set forth hereinabove, Class Counsel will submit to the Court a Proposed Notice to Class Members (“Detailed Notice”), substantially attached hereto as **Exhibit A**. Said Notice is in a form that is clear, concise, easily understood language, describing the Settlement Agreement, setting forth the Fairness Hearing date and outlining the legal rights and options of Class Members, including the right to object

to the Settlement Agreement, and shall be in accordance with Florida Rules of Civil Procedure and due process. The Detailed Notice shall be disseminated with the Claim Form (attached hereto as **Exhibit B**), collectively known as the “Notice Package”. The Claim Form to be used by Persons who qualify as Class Members will clearly state the Claims deadline as forty-five (45) days following the Claim Administrator’s issuance of Notice of this Class Settlement (or such different period as the Court may direct) (the “Claims Period”).

1. **Class List - Delivery.** No later than seven (7) days after Preliminary Approval of this Settlement, the Compromising Defendant shall provide to the Claim Administrator an updated Class List, as defined in Section I(H), from the list already provided to Class Counsel, to the extent necessary.
2. **Class List – Duty to Update.** The Compromising Defendant shall update the Class List with any information discovered after provision of the original Class List. The Compromising Defendant shall provide notice to the Claim Administrator within seven (7) days of a sale of a Class Member’s unit or the death of a Class Member between the date of Preliminary Approval and the date of Final Approval of this Settlement to the extent this information is known by the Compromising Defendant.
3. **Class Notice.** The Notice of this Class Settlement shall be made within twenty-one (21) days after Preliminary Approval of this Settlement.
 - a) **Direct Mail and/or Email Notice Delivery.** The Claim Administrator shall disseminate the Notice Package by direct United

States Postal Service (USPS) First-Class Mail and/or E-mail (where E-mail addresses of the Putative Class Members are known).

b) Settlement Website. The Claim Administrator shall create a Settlement Website at www.PinnacleCondoSettlement.com, containing information in the Notice, a Claim Form, and instructions governing opting out or objecting to the settlement. The Settlement Website shall be active within twenty-one (21) days of the Preliminary Approval Order of the Settlement and continuing through scheduled date for the Fairness Hearing.

c) Posting Notice. The Compromising Defendant will post a copy of the Detailed Notice in a common area easily visible by building residents (the "Notice Posting"). The Notice Posting shall commence within twenty-one (21) days of the Preliminary Approval Order of the Settlement and continue through the end of the Claims Period. Class Counsel shall draft and provide the form of the Notice Posting formatted to fit on a standard 8 ½ x 11 sheet of paper. The cost of printing and posting the Notice Posting shall be incurred by the Compromising Defendant, separate from the Settlement Administrative Costs and the Settlement Payment. The Compromising Defendant shall provide, to the Claim Administrator, written confirmation by emailing a photo of the Notice Posting upon the completion of the Claims Period.

d) Publishing Notice. Within twenty-one (21) days of the Preliminary Approval Order of the Settlement, the Compromising

Defendant will send an email to its existing membership setting forth the following (“Notice Publishing”) the following:

- (1) “If You paid an assessment for the February 3, 2010 Settlement between the Pinnacle Condominium Association, Inc. and Continental Painting, Waterproofing, & Restoration, Inc., then you could be affected by a class action settlement. Review the attached Legal Notice for details.”, and
- (2) Attach, to that email the statement in Section III(E)(3)(e)(1), a copy of the Detailed Notice.

The cost of Notice Publishing shall be directly borne by the Compromising Defendant, separate from Settlement Payment and the Settlement Administrative Costs. The Compromising Defendant shall provide, to the Claim Administrator a copy of the email sent to its existing membership, as proof of compliance.

IV. ALLOCATION AND DISTRIBUTION.

A. The Court shall administer the benefits provided by this Settlement Agreement, through the services of the Claim Administrator as outlined below, and shall handle and resolve issues involving Class membership, claim forms, allocation and distribution of funds/benefits, and all other issues presented, in a rational, equitable, practical, responsive, cost-effective, efficient and, where justified, expansive and inclusive manner.

B. Claim Administrator:

1. The Parties agree that the Court will appoint as a Claim Administrator, The Notice Company, Inc. Subject to the approval of the Court, the Claim Administrator shall have authority to contract with others or to appoint such agents as may be necessary to carry out his/her responsibilities as Claim Administrator. The Claim Administrator shall carry out such responsibilities in as economical and effective a manner as possible, and shall consult with and report to the Court, Class Counsel, and Counsel for the Compromising Defendant on a regular basis. The duties of the Claim Administrator shall include, but are not limited to, the following:

a) Establish conduct and manage the Claims Administration process and, if necessary, to hire and compensate his/her own employees or agents to accomplish same;

b) Effectuate a direct notice of class certification and settlement;

c) Create claim forms;

d) Formulate fair, equitable and reasonable criteria and procedures for the claims process and for allocation and distribution of Settlement Fund Payments to the Class Members;

e) Instruct Class Counsel to distribute payments from the Settlement Fund in accordance with the criteria established; and

f) Otherwise assist the Court and the Parties as necessary and in accordance with this Agreement.

2. The Claim Administrator shall have the power to implement reasonable

procedures designed to protect against and prevent payment of fraudulent claims, to assure an acceptable level of reliability and quality control in the processing of claims, and to do such other things as are necessary to promote fair, full, and final administration of Claims and the distribution of settlement proceeds.

V. SUBMISSION AND PAYMENT OF CLAIMS

A. Upon final approval of the Settlement, and following the Final Settlement Date, Class Members who have submitted proofs of claim that satisfy objective criteria established by the Claim Administrator, including appropriate proof of class membership, and meet the deadline established by the Court for filing such claims, will receive benefits from the Settlement Fund in accordance with procedures to be established by the Claim Administrator. The Claim Administrator shall determine benefits for each Class Member based on their proportional ownership share in Pinnacle Condominium Association, Inc. at the time of the Continental Painting Settlement, with such shares to be proportionally adjusted by the percentage of ownership interests represented by all timely-submitted claims. For example, if a claim is submitted by "Owner A" with an ownership share of 1% and 100% of all qualifying owners submit claims, then Owner A would be awarded $0.01 \times \$237,000 = \$2,370.00$. However, if Class claims are submitted for only 90% of all qualifying ownership shares, then Owner A would be awarded $(.01/.9) \times \$237,000 = \$2,633.33$.

B. The Class Members filing proof of claim shall each warrant that

they are duly authorized to make their respective claims and that they are the proper parties to receive the Settlement Proceeds distributed pursuant to this Settlement. The Class Members further shall warrant that they will not execute on any judgment to the extent that it is entered against, or would require or result in payment by, any of the Released Parties to any Person for damages resulting from the aforesaid alleged injuries and damages arising out of the Released Claims or the Causes of Action. In the event that a Class Member does not comply with all of the requirements for submitting a timely and fully completed Claim Form as prescribed by the Claim Administrator, then such Class Member shall not be eligible to receive any allocation or payment from the Settlement Fund. The claims of Class Members who do not file timely Claim Forms with all appropriate documentation as required by the Claim Administrator are forever barred as specified in the Final Order and Judgment and will not be entitled to participate in the Settlement although they will remain bound by the terms of the Settlement.

C. Once a Settlement Benefit Check is issued by the Class Counsel, it shall be valid for six (6) months. Following the expiration of all checks in circulation, the total amount of unclaimed Settlement Class Benefit Funds shall be distributed as a *cypres* award to Legal Services of Greater Miami, Inc.

D. It is the intent of this Settlement Agreement, and the Court shall so

order Class Counsel, that all Settlement Funds shall be distributed to Class Members, subject to the deduction of such amounts, as set forth at Section III(A)(1)(a)-(d) as approved by the Court for related attorney's fees, litigation expenses, and settlement administrative costs, including compensation for the Claims Administrator.

E. In the event a Single Unit Owner Class Member is deceased without heirs known to the Class Counsel, it shall be the responsibility of the alleged Heirs to provide appropriate documentation proving their heirship to the Claim and identifying the appropriate Person or entity to whom to direct Settlement benefits.

F. In the event a Class Member who was a Co-Owner of a Unit is deceased, the Settlement benefits shall be directed to the surviving Co-Owner.

G. In the event multiple Class Members are Co-Owners of a Unit, the Settlement Benefits shall be directed to the First Named Co-Owner.

VI. REPRESENTATIONS AND WARRANTIES

A. The Class Counsel on behalf of the Class represent and warrant that they explained and will continue to explain this Agreement and other matters related to the Settlement to the Class Representatives, and the Class Representatives have been and will continue to be properly informed of the nature of the Released Claims and the terms of the Settlement.

B. Each named Class Representative acknowledges that he or she consents to the terms of this Settlement Agreement and that he or she considers the terms of this

Settlement Agreement to be adequate, fair and reasonable.

C. Compromising Defendant represents and warrants that it will satisfy its obligations under this Agreement, and further, that its board members, agents and/or counsel will in good faith take such steps and actions that are reasonably required to fund the Settlement.

D. Compromising Defendant represents and warrants that the information on current and previous unit owners, comprising all or part of the Class Membership, is correct to the best of its knowledge.

VII. PROPOSED ORDERS

A. The Class Counsel and Compromising Defendant's counsel shall promptly submit this Agreement to the Court and jointly request an Order a) granting Preliminary Approval of the Settlement; b) establishing and approving dissemination of Notice to Class Members; and c) appointing the Claim Administrator, describing the duties and obligations of same, and providing for compensation of same.

B. The Class and Compromising Defendant shall also request the Court to:

1. Issue an order or orders setting forth scheduling and procedures for the implementation of the terms and conditions of this Agreement;
2. Issue an order enjoining the assertion, after the date of execution of this Agreement, of Released Claims against the Compromising Defendant and staying defense of the Litigation against the Compromising Defendant, in the Court and the Appellate Courts (Moreover, the Class and Compromising Defendant agree

to file pleadings as may be needed to stay related appeals and proceedings, if any);

3. Set forth procedures and deadlines associated with, and express its approval of, the notice, settlement procedure, and the Fairness Hearing;
4. Establish an objection procedure.

A. Upon Final Approval of this Settlement, the Class Counsel on behalf of the Class, and Compromising Defendant, through counsel, shall jointly submit to the Court a proposed order dismissing with prejudice the Claims of the Class in the litigation against the Compromising Defendant consistent with this Agreement.

VIII. STAY OF LITIGATION

Pending the Final Settlement Date, the Class and Compromising Defendant will jointly move for a stay of the Litigation between the Class and Compromising Defendant in the Court, Appellate Courts and any other proceedings as required. Such motion shall be made in or contemporaneously with the motion for the Preliminary Approval Order.

IX. COUNSEL AND OTHER PROFESSIONAL AND ADMINISTRATIVE FEES

A. Class Counsel have made no agreement among themselves, nor any agreement with Compromising Defendant, regarding the amount of Class Counsel fees or Litigation expenses to be recovered, save for the agreement that Class Counsel's requested fee of \$178,000.00 (40% of the gross settlement) is reasonable.

B. Neither the Class, any Member of the Class, any Class Counsel, nor other attorneys who have represented the Class/Members of the Class, shall have any Claim whatsoever against Compromising

Defendant for payment of attorneys' fees, administrative expenses, compensation of the Claim Administrator, or their agents or employees. All Class Counsels' fees and expenses, administrative expenses (including all costs of Notice provided in Section III(E) above), shall be paid from Settlement Funds subject to Court approval.

X. RELEASE

A. Class Members hereby warrant that they are the sole parties entitled to assert claims for damages arising out of, or directly or indirectly resulting from the Claims, Released Claims and/or Incident as defined herein.

B. Each Class Member, for and in consideration of the sums prescribed herein, to be received on behalf of Compromising Defendant, does hereby remise, release, acquit and forever discharge the Compromising Defendant from any and all claims, potential claims, causes of action, suits, debts, dues, damages, including compensatory and punitive damages, medical payment benefits, sums of money, accounts, reckonings, bonds, bills, covenants, contracts, controversies, agreements, promises, claims and demands of whatsoever kind or nature, in law or in equity, whether asserted or unasserted, actual or contingent, anticipated or unanticipated, known or unknown, which each Class Member ever had, now has, may have had, or may hereafter acquire, or which any personal representative, successor, family member, heir or assign of said Class Member now has, ever had, or

may hereinafter acquire against said Compromising Defendant. This Release includes, but is not limited to, all claims and causes of action, and potential claims and causes of actions, which have been, could be or could have been asserted or alleged against Compromising Defendant, as well as all potential causes of action or alleged damages in connection with the claims and potential claims giving rise to the claims against Compromising Defendant as set forth in this Incident.

C. Class Members warrant that they will not file or participate in any suit, demand, claim, action, lien, proceeding or cause of action against the Compromising Defendant and shall not execute on any future judgment entered against any of the Compromising Defendants for damages arising out of, or directly or indirectly resulting from the Released Claims.

XI. MISCELLANEOUS PROVISIONS

A. **Headings for Convenience Only.** The headings of each section and paragraph of this Agreement are included for convenience only and shall not be deemed to constitute part of this Agreement or to affect its construction.

B. **Applicable Law.** The law of the state of Florida shall apply to all issues of the interpretation, application or enforcement of this Agreement.

C. **Authority of Signatories.** The signatory to this Agreement on behalf of Compromising Defendant warrants that he/she is authorized

and empowered to execute this Agreement on behalf of and to bind Compromising Defendant. Each of the signatories on behalf of the Class warrants that he/she is the Person identified in the order(s) appointing Class Counsel and is authorized to execute this Agreement.

D. No Admission of Liability. This Agreement is entered into by the Parties for the purpose of compromising and resolving the issues and matters between the Parties arising out of the Incident. This Agreement does not constitute, and shall not be construed as, an admission by any party to this Agreement of the truth or validity of any claims asserted or contentions advanced by any other party arising out of the instant lawsuit.

E. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective estates, heirs, successors and assigns.

F. No Party Deemed the Drafter. This Agreement has been negotiated at arm's length, with the active and full participation of Class Counsel and Compromising Defendant's counsel. In the event of any dispute arising out of this Agreement, or in any proceeding to enforce any of the terms of this Agreement, neither the Class nor Compromising Defendant shall be deemed to be the drafter of this Agreement or of any particular provision or provisions, and no part of this Agreement shall be construed against any Party on the basis of that Party's identity as the drafter of any part of this Agreement.

G. Entire Agreement. This Agreement contains the full and complete agreement between the Parties. The Parties represent, warrant and agree

that with respect to this Settlement no promise or agreement not expressed herein has been made to them, and that this Agreement contains the entire agreement between the Parties, and that this Agreement supersedes any and all prior agreements or understandings, between the Parties with respect to the matters herein, and that the terms of this Agreement are contractual and not a mere recital; that in executing this Agreement, no Party is relying on any statement or representation made by another Party or any agents or attorneys of any Party concerning the subject matter, basis or effect of this Agreement other than as set forth herein; and that in executing this Agreement, the Parties rely solely on their own judgment and knowledge. No prior draft of this Agreement, nor any negotiations or proceedings in pursuance of this Agreement, nor any other parole evidence, shall be offered or received as evidence concerning the interpretation or construction of this Agreement.

H. Amendments. This Agreement shall not be altered, amended or modified except by written instrument executed by all Parties. The Parties reserve the right to grant any reasonable extensions of time that might be necessary or desirable in carrying out any of the provisions of this Agreement, if all Parties so agree in writing.

I. Inadmissibility. The Parties specifically acknowledge, agree and admit that this Agreement and its exhibits, along with all related drafts, motions, pleadings, conversations, negotiations and correspondence,

shall be considered a compromise within the meaning of the Florida Statutes 90.408 and any equivalent rule of evidence of any state, and shall not constitute, be construed, be offered, or received into evidence in the Litigation or in any other pending or subsequently filed action. However, nothing contained in this paragraph shall be interpreted to restrict the right of any Party to introduce evidence required for the approval, enforcement or interpretation of this Agreement.

J. Severability. If any part of this Agreement is determined by the Court, where applicable, or an Appellate Court, where available, to be invalid, or unenforceable, such ruling shall not affect the validity or enforceability of other parts of this Agreement, provided that the amount of the Settlement Funds is approved and the release and dismissal provisions, bar order and non-execution agreement herein are still enforceable.

K. Procedure for Execution. This Agreement may be executed in multiple originals (with or without separate signature pages) and shall become effective on the last date the said originals have been signed by all of the Parties. Due to the importance of time, it is expressly agreed that copies of the executed signature pages may be sent by facsimile or email between the Parties and that these facsimiled or emailed signatures, when received, shall be effective as original signatures for any and all purposes. Once executed, multiple originals of the Agreement signed by all Parties shall be delivered thereafter by mail or

otherwise to the Parties after the facsimiled or emailed signatures have been received.

L. Continuing and Exclusive Jurisdiction. The Court shall have continuing and exclusive jurisdiction over all matters related to the Settlement and shall be the sole and exclusive forum for activities or disputes between the Parties relating to the Settlement.


M. Governing Law. This Agreement is made in the State of Florida, and it is agreed that this Agreement shall be interpreted in accordance with the laws of the State of Florida in effect on the date of this Agreement.

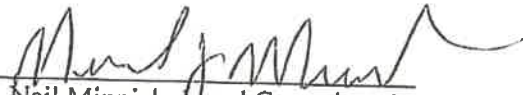
N. Mutual Obligations of Assistance. The Class, each Class Member, and Compromising Defendant and their representatives and attorneys, shall have the mutual obligation to assist each other and cooperate in the effectuation of this Agreement in accordance with the terms of this Agreement and all applicable legal requirements. The Class, Compromising Defendant, and their representatives and attorneys, as well as all released Persons, shall take all steps necessary or appropriate to obtain an order from the Court granting Preliminary Approval and a final Order and Judgment regarding this Agreement and to provide the Settlement Benefits to Class Members.

SIGNATURES

Compromising Defendant:


The Pinnacle Condominium Association, Inc.

By: 
Luis D'Agostino, President/Legal
Committee Member

By: 
Neil Minnich, Legal Committee Member

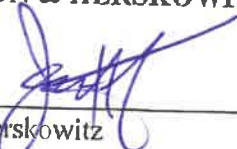
Class Counsel:

BRUNO & BRUNO, LLP

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