

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.

**JOINT MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT
AND MEMORANDUM IN SUPPORT**

The Plaintiff Class in this matter, through class representatives ESTATE OF RICHARD HANEY, SEMYON GENNIS and MANYA SCHONFELD, ("Plaintiffs") and Defendant THE PINNACLE CONDOMINIUM ASSOCIATION, INC. ("Pinnacle"), have reached a settlement of this proposed class action, for which they seek preliminary Court approval.

A. Background

Plaintiffs through class representatives THE ESTATE OF RICHARD HANEY, SEMYON GENNIS and MANYA SCHONFELD filed this action in the Circuit Court of Miami-Dade County, captioned *Haney v. Plucienkowski et al.*, No. 12-17609-CA-42 ("Lawsuit"), against Defendant THE PINNACLE CONDOMINIUM ASSOCIATION, INC. This action was commenced on May 3, 2012.

The case alleges a breach of fiduciary duty and negligence against the Pinnacle. The Plaintiffs alleged the Association entered into two contracts with Continental Painting, Waterproofing and Restoration, Inc. (“CPWR”) on or about March 3, 2006. Reacting to the proposed assessments to pay for these contracts, a cadre of Association members pressured the Association’s Board of Directors into resignation and took the board positions for themselves. The “new board”, consisting principally of the named Directors, subsequently breached the CPWR contracts and drew the Association into multi-year litigation captioned “*Continental Painting, Waterproofing and Restoration, Inc. v. The Pinnacle Condominium Association, Inc.*” Case No. 07-09196-CA-11, which resulted in an adverse jury verdict on June 19, 2009. The Association entered into a post-judgment settlement for \$2,440,000 (over \$1 million more than the sum total of the breached contracts), which required each member of the Association to pay a pro-rata share of the settlement.

Pinnacle appeared and filed its Answer, strenuously denying all of Plaintiff’s allegations. Pinnacle denies the material allegations of liability and wrongdoing. Pinnacle has raised various legal and Affirmative Defenses to Plaintiffs’ claims, causes of action, and damages.

After this matter was filed and issue was joined, the parties exchanged and evaluated written discovery responses. The Plaintiffs moved for class certification on April 28, 2017, which was granted on November 9, 2017, by Judge Rodney Smith.¹

The parties began settlement discussions after jointly retaining a mediator—Judge Jeffrey Streitfeld, Esq. (“Mediator”), a highly skilled and experienced mediator of complex disputes—to mediate their settlement discussions. The parties met with Judge Streitfeld at Pinnacle condominiums, and began a long course of settlement discussions, including several telephone

¹ Typically, there is a request in Joint Motions for Preliminary Approval for conditional certification of the Class. That is unnecessary as the proposed class has been certified.

conferences with Judge Streitfeld, which culminated in this Settlement. Notwithstanding the foregoing allegations, Pinnacle has agreed to enter into an agreement and join in this motion to avoid further expense, inconvenience, and the distraction and exposure of litigation, and to be completely free of further participation in the Action and any further controversy with respect to the Released Claims discussed below.

Following the settlement discussions, the parties, through their counsel, turned to the task of memorializing the terms of the settlement in a Settlement Agreement, along with an accompanying class notice form. On October 9, 2020, the Plaintiffs and Pinnacle finalized the Settlement Agreement, attached hereto as Exhibit “A”. In accordance with the terms of the Settlement Agreement, the parties jointly move for an Order initially approving the Settlement Agreement for the following settlement class:

“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.”

Excluded from the Settlement Class are officers, directors, and employees of Pinnacle and their parents and subsidiaries, as well as judicial officers and employees of the Court. Also excluded from the Settlement Class are Persons who exclude themselves from the Settlement Class in the manner and time prescribed by the Court.

In brief, the Settlement—if finally approved by this Court—would provide significant remediation for the Class. The proposed Settlement provides a partial reimbursement to each Unit owner who received an assessment in the underlying case. Monetary relief is the only form of compensation. There is no alleged active wrongdoing, there is no ongoing marketing, selling,

or billing practices that affected the class, and there are no warranties or similar type of relief that alleged or at issue.

As such, the proposed settlement provides an excellent and eminently fair resolution, to what surely would be a hotly contested litigation if it were to continue. Unit owners are guaranteed reimbursement from the assessments without additional litigation, fees, and costs. Settlement is in the best interest of the settlement class.

This Settlement was subsequently memorialized in the Settlement Agreement attached as Exhibit "A". The Settlement contains the material economic terms of the settlement, the manner and form of Notice to be given to the Settlement Class, the contingencies or conditions to the settlement's final approval, and other terms.

Class Counsel possessed adequate information concerning the strengths and weaknesses of the Lawsuit against Pinnacle after extensive formal and informal discovery. In addition, Class Counsel is highly competent counsel with many years of experience litigating class actions. Finally, the complexity, expense, uncertainty, and likely duration of the Lawsuit also militate in favor of consummating the settlement process. Indeed, had this litigation continued, Plaintiffs and the class would face significant uncertainty on the merits, based upon Pinnacle's positions that there is no individual liability for individual members of a condominium association's board of directors. Accordingly, all the circumstances support preliminary approval of the Settlement.

B. The Settlement Agreement is Fair, Reasonable, and Adequate.

The Plaintiffs arrived at an agreement in principal with Pinnacle with the benefit of discovery and after extensive arm's length negotiations. The proposed settlement is sufficiently fair, reasonable, and adequate to warrant sending notice of the Action and the proposed

settlement to the Class Members and holding a full hearing on the proposed settlement. *See, e.g., Nelson v. Wakulla City*, 985 So.2d 564, 570 (Fla. 1st DCA 2008) (citing *Barnhill v. Florida Microsoft Anti-Trust Litig.*, 905 So.2d 195 (Fla. 3d DCA 2005)).

Just like its federal counterpart, Federal Rule of Civil Procedure 23(e), Florida Rule of Civil Procedure 1.220(e) requires court approval for any compromises of a class action. *See Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 617 (1997); *Chase Manhattan Mortg. Corp. v. Porcher*, 898 So. 2d 153, 156-57 (Fla. 4th DCA 2005) (“Because Florida’s class action rule is based on Federal Rule of Civil Procedure 23, Florida courts may generally look to federal cases as persuasive authority in their interpretation of rule 1.220.”). In determining whether to approve the Settlement, the Court should be guided by the strong judicial policy favoring pretrial settlement of complex class action lawsuits. *See, e.g., Maher v. Zapata Corp.*, 714 F.2d 436, 455 (5th Cir. 1983); *Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977); *Airline Stewards & Stewardesses Ass’n Local 550 v. Trans World Airlines, Inc.*, 630 F.2d 1164, 1166-67 (7th Cir. 1980) (“Federal Courts look with great favor upon the voluntary resolution of litigation through settlement ...”). *See also* David F. Herr, *Annotated Manual for Complex Litigation* section 21.632 (4th ed. Updated 2011). The policy favoring class settlements has particular force, in part because of the size and complexity of class actions:

Particularly in class action suits, there is an overriding public interest in favor of settlements It is common knowledge that class action suits have a well-deserved reputation as being most complex. The requirement that counsel for the class be experienced attests to the complexity of the class action ... In these days of increasing congestion within the federal court system, settlements contribute greatly to the efficient utilization of our scarce judicial resources.

Cotton, 559 F.2d at 1133 (citation omitted). Although class action settlements require court approval, such approval is committed to the sound discretion of the District Court. *In re U.S. Oil & Gas Litig.*, 967 F.2d 489, 493 (11th Cir. 1992).

The first step in determining whether to grant preliminary approval to a class settlement is for “the Court [to] make[] a preliminary fairness evaluation of the proposed settlement.” *Cope v. Duggins*, No. CIV-A-98-3599, 2001 WL 333102, *1 (E.D. La. April 4, 2001), citing Manual for Complex Litigation (Third) § 30.41 (1995). The Court must “evaluate the likelihood that the Court would approve the settlement during its second review stage, the full fairness hearing.” *Id.* In so doing, the Court “will examine the submitted materials and determine whether the proposed settlement appears fair on its face.” *Id.*; see *In re Corrugated Container Antitrust Litig.*, 643 F.2d 195, 212 (5th Cir. 1981).

At the preliminary stage, the Court’s review is less stringent. See, e.g., *Karvaly v. eBay, Inc.*, 245 F.R.D. 71, 86 (E.D.N.Y. 2007); Manual for Complex Litigation (Fourth), § 21.63 (2004) (“At the stage of preliminary approval, the questions are simpler, and the court is not expected to, and probably should not, engage in analysis as rigorous as is appropriate for final approval”). See also *Fresco v. Auto Data Direct, Inc.*, No. 03-61063-CIV, 2007 WL 2330895 at *4 (S.D. Fla. May 14, 2007); *Newberg*, §11.25, at 38-39 (quoting *Manual for Complex Litigation*, §30.41 (3rd Ed.)); *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1110 (9th Cir. 2008).

The parties respectfully request that the Court preliminary approval of the proposed settlement and set a fairness hearing for final approval of the settlement. The Parties have negotiated, drafted, and agreed to the form of the following documents to be submitted to the Court in conjunction with the executed Settlement Agreement: the Claim Form, the Class Notice, and a proposed Preliminary Approval Order. The Parties will submit a mutually agreeable

proposed Final Order and Judgment in accordance with the terms of the Joint Motion and the Settlement Agreement upon conclusion of the fairness hearing.

Preliminary approval will allow the Parties to inform the court concerning the factors that the Court must consider when determining whether final approval of the settlement is appropriate. *See Grosso v. Fid. Nat. Title Ins. Co.*, 983 So.2d 1165, 1173-74 (Fla. 3d DCA 2008).

C. Form and Method of Class Notice Are Adequate and Satisfy the Requirements of Rule 1.220.

Under Rule 1.220(e) of the Florida Rules of Civil Procedure, when approving a class action settlement, notice of the proposed settlement “shall be given to all members of the class as the court directs.”

To that end, the Proposed Order Granting Preliminary Approval, attached as Exhibit “2”, spells out the details of the Parties’ notice plan, and provides that notice to members of the Settlement Class will be made by either by mail or email, where either such address is known and readily available. Based upon the records of Pinnacle which maintains records of unit owners in its own database, the Parties estimate that 75 – 80% of the proposed class will receive direct, individual notice of the Settlement. In order to reach former unit owners, the Settlement further provides that notice of the Settlement will be mailed and emailed pursuant to notice plan to reach those former owners and published on an informational website to be maintained by the settlement administrator selected by the Plaintiffs. The Parties expect that these components will place the “reach” of class notice well within the “norm” of “70-95%” identified by the Federal

Judicial Center as meeting due process requirements. *See Class Action Pocket Guide* at 27 (3d ed. 2010).²

The forms of the Notice is attached as Exhibit “A” to the Proposed Order. The form of the Notice is written in plain and straightforward language consistent with the spirit of Rule 1.220(e). The form of Notice objectively and neutrally apprises the Settlement Class Members of the nature of the action, the definition of the class, the class claims and issues, that Settlement Class Members may enter an appearance before the Court at the Fairness Hearing, that the Court will exclude from the Settlement Class any Person who opts out (and sets forth procedures and deadlines for doing so), and the binding effect of a class judgment on Settlement Class Members under Rule 1.220. The form of Notice also apprises Settlement Class Members of the procedures and deadlines for submitting objections.

The Court will decide whether to grant final approval to the Settlement Agreement after notice is sent to all members of the Settlement Class whose addresses reasonably can be identified, after they have been given the opportunity to object or opt out, and after this Court hears final arguments at a fairness hearing pursuant to the provisions of the attached proposed order. The Settlement Administrator, The Notice Company will administer Notice to the Settlement Class pursuant to the plan set forth in the Proposed Order.

If the Court grants the Preliminary Approval Order requested, the parties will need time to accomplish all the administrative matters that need to be completed prior to the fairness hearing. The proposed settlement administrator will review submitted claims by class members. The Settlement Administrator, The Notice Company will need to publish the proposed Class

² [http://www.fjc.gov/public/pdf.nsf/lookup/ClassGd3.pdf/\\$file/ClassGd3.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/ClassGd3.pdf/$file/ClassGd3.pdf) (last visited May 2, 2014).

Notice. The Parties propose that the Notice be published ninety (90) days before the fairness hearing.

Given the administrative matters to be accomplished, the Parties request that a fairness hearing be set by the court at the hearing on joint motion for preliminary approval.

D. Conclusion

For the foregoing reasons, the Parties respectfully request that the Court grant preliminary approval of the Settlement Agreement and entry of the attached order, set a date for the fairness hearing as requested herein, and to grant such other and further relief as this Court deems necessary and proper for the effective administration of this class action.

Respectfully submitted and prepared jointly by Class Counsel and Counsel for the Defendants.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been electronically filed through the Florida Courts E-Filing on this 14th day of October, 2020.

/s/ JON M. HERSKOWITZ
JON M. HERSKOWITZ, ESQUIRE
Attorney for Plaintiffs

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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 *Hamey, et al. v. Plucienkowki, 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.*

Plucienkowski, 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 *cy pres* 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

By: 
Joseph M. Bruno (LA. Bar #3604) PHV No.
100495
Daniel A. Meyer (LA. Bar #33278) PHV No.
100494
855 Baronne Street
New Orleans, LA 70113
Telephone: (504) 525-1335
Facsimile: (504) 561-6775

Attorneys for Plaintiffs:

BARON & HERSKOWITZ

By: _____
Jon Herskowitz
Florida Bar No. 814032
jon@bhfloridalaw.com
9100 S. Dadeland Blvd.
PH-1, Suite 1704
Miami, FL 33156
Telephone: (305) 670-0101
Facsimile: (305) 670-2393

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.

**ORDER ON JOINT MOTION FOR PRELIMINARY
APPROVAL OF STIPULATION OF SETTLEMENT**

THIS CAUSE is before the Court upon the Plaintiffs and Defendants' Joint Motion for Preliminary Approval of Settlement ("Motion for Preliminary Approval"). In accordance with Rule 1.220 of the Florida Rules of Civil Procedure, the Court has considered the Settlement Agreement executed on behalf of the Plaintiffs and Defendants. Upon review of the Settlement Agreement and Parties' Joint Motion for Preliminary Approval, the Joint Motion for Preliminary Approval is hereby GRANTED.

1. Class certification has been previously granted and the terms of the settlement are within the range of reasonableness and accordingly are preliminarily approved. Plaintiffs fairly and adequately represent the interests of the Settlement Class. The Motion for Preliminary Approval of Settlement is therefore GRANTED. This preliminary approval is subject to further consideration at the Final Fairness Hearing.

2. The Court hereby appoints Jon Herskowitz, Esq. of Baron and Herskowitz and

EXHIBIT 2

Daniel Meyer, Esq. and Joe Bruno, Esq. of Bruno and Bruno, LLP as Settlement Class Counsel.

3. This Order is not admissible as evidence for any purpose against Defendants or any other party in any pending or future litigation. This Order shall not be construed or used as support for conditional certification or certification of any class or collective action. This Order shall not be construed or used as an admission, concession, or declaration by or against Defendants of any fault, wrongdoing, breach, or liability and Defendant specifically denies any such fault, breach, liability, or wrongdoing. This Order shall not be construed or used as an admission, concession, declaration, or waiver by any party of any arguments, defenses, or claims he, she, or it may have. Neither the fact of, nor any provision contained in the Stipulation and Settlement Agreement or its exhibits, nor any actions taken thereunder shall be construed as, offered into evidence as, received in evidence as, and/or deemed to be evidence of a presumption, concession, or admission of any kind as to the truth of any fact alleged or validity of any defense that has been, could have been, or in the future might be asserted.

4. At the Final Fairness Hearing, the Court will consider whether the terms of the Settlement Agreement are fair, reasonable, adequate, and in the best interests of the Settlement Class, and whether final orders and judgments in accordance with the terms of the Settlement Agreement should be entered.

5. The Court preliminarily finds that the Settlement Agreement: (1) was reached after arm's-length negotiations before a nationally-recognized mediator, and after substantial factual and legal analyses by the parties; and (2) provides substantial benefits to all class members, especially in light of the evidence and risks associated with this litigation.

6. The Court approves, as to form and content, the Notice submitted by the parties (Exhibit "1") and finds that the procedures described in the Settlement Agreement meet the requirements of Rule 1.220 of the Florida Rules of Civil Procedure as well as due process and provides the best notice practicable under the circumstances.

7. Plaintiffs shall bear all costs related to the Notices and publication. Prior to the Final Fairness Hearing, Plaintiffs shall file proof, by affidavit, of the Notice and publication.

8. Class Members will have forty-five (45) days before the date of the Fairness Hearing to opt-out of the Settlement. To opt-out, a Class Member must send a letter by mail stating they want to be excluded from the Settlement in *HANEY v. PLUCIENKOWSKI et al.*, or complete a request for exclusion, which will be available through the website managed by the Settlement Administrator. Those opting-out with a letter sent by mail must include their name, address, telephone number, and signature. The opt-out exclusion request must be mailed to: The Notice Company, P.O. Box 455, Hingham MA 02043. Any request to opt-out must include the following information: (1) the complete legal name of the Class Member who wishes to be excluded; (2) the mailing address; (3) a statement that the Class Member wishes to be excluded from the Settlement; and (4) the Class Member's (or authorized representative's) signature or, if the person (or authorized representative) is unable to sign, his/her/its legal representative or guardian's name and signature.

9. A Class Member who does not properly and timely exclude himself, herself, or itself from the Settlement Class will be bound by the Settlement Agreement and the Releases, as provided for therein, and by any judgments in this action.

10. To object to the Settlement, a Class Member must do so in writing no later than forty-five (45) days before the date of the Fairness Hearing. The objection must set forth all objections and reasons therefore and state whether the Class Member intends to appear at the Final Fairness Hearing. The objection must identify: (1) a statement of each objection being made; (2) a detailed description, including citation(s), of the legal authorities underlying each objection; (3) a statement of whether the objector will appear at the Fairness Hearing; (4) a list of witnesses whom the objector may call by live testimony, deposition testimony, or affidavit during the Fairness Hearing; (5) a description of the testimony to be offered; and (6) a list of the

exhibits that the objector may offer during the Fairness Hearing, along with copies of those exhibits. If the objector fails to comply with this procedure for making objections, any objection will be waived.

11. Subject to the terms for objections set forth above and in the Settlement Agreement and Notice, a Settlement Class Member may appear at the Final Fairness Hearing to show cause on the issue of whether any of the terms of the settlement should be approved as fair, reasonable and adequate, or whether judgment should be entered upon them.

12. Any Settlement Class Member who does not make an objection in the manner provided herein shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, adequacy or reasonableness of the settlement, or Settlement Class Counsel's Motion for Attorneys' Fees and Expenses.

13. The Final Fairness Hearing will be held before this Court at the Miami-Dade County Courthouse, on _____, 2020 at __: __m in Courtroom ____, located at 73 West Flagler St., Miami, FL 33156, to consider the fairness, reasonableness and adequacy of the proposed settlement and to determine whether the settlement should be finally approved.

14. The Court retains jurisdiction of this action for all purposes.

ORDERED THIS _____ DAY OF _____, 2020.

HONORABLE _____
CIRCUIT COURT JUDGE

Copies furnished:
Counsel of record

NOTICE OF CLASS ACTION SETTLEMENT

**If You Paid an Assessment for the February 3, 2010 Settlement Between
the Pinnacle Condominium Association and
Continental Painting, Waterproofing, & Restoration, Inc.,
You Could Be Eligible to Benefit from a Settlement Fund
Valued at \$445,000.**

A Circuit Court Judge approved this notice. This is not a solicitation from a lawyer.

- Please read this Notice carefully to learn about your rights under the proposed settlement. Your legal rights may be affected whether or not you act.
- This proposed settlement (“Settlement”) resolves litigation concerning the Pinnacle Condominium Association, Inc. regarding the contract cancellation and subsequent negotiations with Continental Painting, Waterproofing, & Restoration, Inc. from August 30, 2006 through February 3, 2010 in the case entitled *Haney, et al. v. Plucienkowski, et al.*, Case No. 12-17609-CA 12 (the “Litigation”). This Settlement will not be effective until finally approved by the Court.
- You may be eligible for payment from the Settlement Class Benefit Fund if you submit a qualified and timely Claim Form.
- The Court has not expressed any opinion concerning the truth of any allegations or defenses asserted in the Litigation. This Notice is solely to advise you of the proposed Settlement of the Litigation and of your rights in connection with the Settlement.

YOUR LEGAL RIGHTS AND OPTIONS IN THE PROPOSED SETTLEMENT	
SUBMIT A CLAIM FORM BY MONTH XX, 2020	You must submit a claim to receive a payment from the Settlement. See Questions 7 and 12 below.
OBJECT BY MONTH XX, 2020	You can file an objection with the Court explaining why you disagree with the Settlement. See Question 18 for more details.
EXCLUDE YOURSELF BY MONTH XX, 2020	You can exclude yourself from the Settlement, which will allow you to retain your rights against the Defendants. See Questions 13 and 14 for more details.
GO TO THE HEARING ON MONTH XX, 2020	You can ask to speak in Court about the Settlement. See Questions 18, 19 and 20 for more details.
DO NOTHING	If you do nothing, then you will not receive payment from the Settlement, and you will give up any rights you currently may have to separately sue the Defendants for the conduct that is the subject of this litigation.

These rights and options – **and the deadlines to exercise them** – are explained in this Notice. A copy of the Settlement and all documents related to the claims process are available online at www.PinnacleCondoSettlement.com. You may also call 1-305-670-0101 for more information.

BASIC INFORMATION

1. What is this notice about?

This Notice is to inform you about the Settlement that has been reached which may affect your rights, including your right to object to, or exclude yourself from the Settlement. You have the right to know about the Settlement and about your legal rights and options before the Court decides whether to approve the Settlement.

The Court in charge is the Eleventh Judicial Circuit of Miami-Dade County, Florida ("Court"). The case is entitled *Haney, et al. v. Plucienkowski, et al.*, Case No. 12-17609-CA 12 (the "Litigation"). The people that sued are called the plaintiffs, and the parties they sued are called the defendants (see Question 2).

To be eligible to receive a share of the Settlement Fund, you must follow the steps described in this Notice and submit a valid and timely claim no later than MONTH XX, 2020. If you want to be excluded (opt-out) or to object to the Settlement, you must follow the steps described in this Notice no later than MONTH XX, 2020.

2. Who are the parties involved in the Litigation?

In October of 2012, Richard Haney, Semyon Genis, and Manya Schonfeld, on behalf of themselves and others similarly situated (the "Plaintiffs") sued the Defendants (described below).

The remaining "Defendant" in this Litigation is the Pinnacle Condominium Association, Inc. (the "Association"). The Association is a not-for-profit Corporation organized in Florida, whose membership consists of unit owners in the Pinnacle Condominium Building, and whose principle place of business is in Miami-Dade County, Florida, at 17555 Collins Avenue, Sunny Isles, Florida, 33160.

3. What is the Litigation about?

The Litigation concerns current and former members of the Association's requirement to pay the settlement of a contractual dispute between the Association and Continental Painting, Waterproofing and Restoration, Inc. ("CPWR"). The Litigation alleges that the Association, through its Board of Directors' handling of the CPWR contracts and pursuing litigation, led to increased construction costs, litigation costs, loss of opportunity to obtain release at a more favorable price, adverse judgment, and a subsequent Settlement Agreement between CPWR and the Association. The Plaintiffs are seeking recovery of a portion of the charges assessed to its members arising from the February 3, 2010 CPWR Settlement. On November 9, 2017, the Court certified this Litigation as a class action lawsuit.

4. What is a class action?

In a class action, representatives maintain an action on behalf of a group or class of others with similar claims. Since the Court determined that this matter should proceed as a class action, everyone's claims were combined into a single proceeding, creating efficiencies for the parties and the Court. In a class action, the court resolves the issues for all class members except those who exclude themselves from the Class.

WHO IS INCLUDED IN THE SETTLEMENT?

5. Between whom has the Settlement been attained?

The Settlement has been reached between the Plaintiffs and 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.

6. Who are the Class Representatives?

The Court has appointed the Estate of Richard Haney, Semyon Genis, and Manya Schonfeld as “Class Representatives”.

7. How do I know if I am in the Settlement Class?

As certified by, the Court the “Class” or “Settlement Class” consists of:

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 SETTLEMENT’S BENEFITS

8. What does the Settlement provide?

The proposed Settlement establishes a “Settlement Fund” of \$445,000.00 (four hundred and forty-five thousand dollars) to pay eligible claimants, compensate Class Representatives, pay attorneys’ fees, litigation costs and Settlement Administrative Costs. The allocated portion of the Settlement Fund for eligible claimants shall be equal to \$237,000.00 (two hundred and thirty-seven thousand dollars). The recovery obtained will be funded by the Association’s Insurance Policy Under no circumstances will the Association members be paying themselves. The full Settlement agreement is available for review at www.PinnacleCondoSettlement.com.

9. How is the Settlement Fund being allocated?

Details of the proposed distribution of the Settlement Fund is set forth in the Settlement Agreement, which is available online. In summary, the Settlement Agreement provides for distribution of the Settlement Fund as follows:

- a. \$240,000.00 shall be allocated to the “Settlement Class Benefit Fund”;
 - i. From the Settlement Class Benefit Fund, \$3,000.00 shall be allocated to pay the Class Representative Awards of \$1,000.00 for each of the three Class Representative (listed in Question 6).
 - ii. The remaining Settlement Class Benefit Fund of \$237,000.00 shall be allocated per qualifying claimed Association Ownership Share, as described below (in Question 10);
- b. \$178,000.00 (40%) shall be allocated to Attorneys’ Fees for Class Counsel;
- c. \$14,500.00 shall be allocated to cover Held Litigation Costs;
- d. \$12,500.00 shall be allocated to fund Settlement Administrative Costs.

10. How much will I be paid?

Upon the Court's final approval of the Settlement, a "Settlement Share" will be calculated per qualifying claimant based on the qualifying claimants proportional ownership share in Pinnacle Condominium Association, Inc. at the time of the February 3, 2010 CPWR Settlement ("Association Ownership Share"), 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 Association 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 Association Ownership Shares, then Owner A would be awarded $(0.01/0.9) \times \$237,000 = \$2,633.33$.

All payments will be made per Association Ownership Share, not per person. If multiple Class Members file qualified claims for the same Association Ownership Share (i.e. two or more claims are filed by co-owners of a single condominium unit located in the Pinnacle Condominium Building), then only one (1) Settlement Share shall be paid. This Settlement Share will be made payable to the First Named co-owner listed in the Association's records.

11. When will I get a payment?

Payments will be distributed once the Court grants final approval to the Settlement and after appeals, if any, are resolved.

HOW TO GET A PAYMENT CHECK

12. How can I get a payment check?

If you are eligible for payment under this Settlement, you must submit a completed and signed Claim Form. Claim Forms are available at www.PinnacleCondoSettlement.com or you can obtain a copy by calling Class Counsel, 1-305-670-0101. Claim Forms are also available by writing to The Notice Company, Inc., the "Claim Administrator", at the address below.

Return your completed claim by mail or email to the Claim Administrator so that it is **emailed or postmarked no later than MONTH XX, 2020**. To return your claim by email, send your signed and scanned document to Claim Administrator at: claims@PinnacleCondoSettlement.com.

The mailing address of the Claim Administrator is:

Pinnacle Condominium Settlement
c/o The Notice Company
P.O. Box 455
Hingham, MA 02043

You must complete and submit one claim form for each Association Ownership Share.

FAILURE TO SUBMIT A VALID AND TIMELY CLAIM FORM SO THAT IT IS RECEIVED BY MONTH XX, 2020 WILL BAR YOU FROM RECEIVING PAYMENT FROM THE SETTLEMENT.

RIGHT TO EXCLUDE YOURSELF

13. May I exclude myself from the Settlement?

If you are a member of the Class and you wish to keep your rights, if any, to sue the Defendants about the claims, judgment and settlement in this case, you must exclude yourself. If you exclude yourself, you will not get any money from this Settlement. You may not submit a Claim Form if you exclude yourself from this Settlement.

14. How do I Exclude myself from the Settlement Class?

In order to exclude yourself (opt-out) from the Settlement and Class and keep your individual rights, if any, to sue the Defendant(s), you must send a letter to the Claim Administrator that includes the following:

1. Your full name, current mailing address and telephone number;
2. A statement saying that you request exclusion from the Pinnacle Condominium Settlement Class in the case entitled "*Haney, et al. v. Plucienkowski, et al.*, Case No. 12-17609-CA 12";
3. State the dates during which you owned unit(s) at 17555 Collins Avenue, Sunny Isles, Florida, 33160, and the unit number (if you recall this information); and
4. Your signature and the date of the letter.

To be valid, all exclusion requests must be **postmarked no later than MONTH XX, 2020** and mailed to:

Exclusions - Pinnacle Condominium Settlement
c/o The Notice Company
P.O. Box 455
Hingham, MA 02043

No request for exclusion will be considered valid unless all of the information described above is included. No further opportunity to request exclusion will be given in this Litigation unless ordered by the Court. If you choose to be excluded from the Settlement, you will **not** be: (a) entitled to share in the proceeds of this Settlement described herein; (b) bound by any judgment entered in the litigation; and (c) precluded by the Settlement from otherwise prosecuting an individual claim against Defendants, based on the matters that were the subject of this litigation.

REMAINING IN THE SETTLEMENT CLASS

15. What am I giving up if I stay in the Settlement Class?

If you do not exclude yourself from the Settlement Class, you will have given up your right to sue the Defendants on your own for the claims raised, the decisions issued, and the Settlement in this case, and you will be bound by the Settlement and all subsequent proceedings, orders and judgments in the Litigation.

The Settlement Agreement describes the released claims in detail, so read it carefully. If you have any questions, you may contact Class Counsel. You may also consult your own lawyer at your own expense. The Settlement Agreement is available at **www.PinnacleCondoSettlement.com**.

THE LAWYERS REPRESENTING YOU

16. Do I have a lawyer representing me?

The Court has appointed three attorneys, Joseph M. Bruno, Sr., Esquire, Daniel A. Meyer, Esquire, and Jon Herskowitz, Esquire, to represent you as “Class Counsel”. If you have any questions for Class Counsel, you may write to them at the following addresses:

1. Joseph M. Bruno, Sr., Esq.
Bruno & Bruno, LLP
855 Baronne Street
New Orleans, LA 70113

2. Daniel A. Meyer, Esq.
Bruno & Bruno, LLP
855 Baronne Street
New Orleans, LA 70113

3. Jon Herskowitz, Esq.
BARON & HERSKOWITZ
9100 S. Dadeland Blvd.
PH-1, Suite 1704
Miami, FL 33156

If you exclude yourself from the Settlement, then the attorneys for the Class will not represent you.

17. How will the lawyers be paid?

Class Counsel will ask the Court for \$178,000.00 in full settlement of all claims for an award of attorneys’ fees in the Litigation. Any requests for attorneys’ fees or litigation expenses, plus the costs to administer the Settlement, are subject to Court approval.

If you want to be represented by your own lawyer, or have that lawyer appear in court for you in this case, you may hire one at your own expense.

OBJECTING TO OR COMMENTING ON THE SETTLEMENT, PLAN OF DISTRIBUTION, ATTORNEYS’ FEES AND LITIGATION EXPENSES, AND AWARDS TO CLASS REPRESENTATIVES

18. How do I object or comment on the Settlement?

You may ask the Court to deny final approval by filing an objection to the Settlement Agreement. If the Court denies approval, no settlement payments will be sent out and the Litigation will continue.

You may object to the Settlement Agreement in writing. Written objections should include the following:

- Your full name, current mailing address, email address (if any), telephone number, and if you are being assisted by a lawyer, the lawyer’s name, address and telephone number;
- The case name and number (*Haney, et al. v. Plucienkowski, et al.*, Case No. 12-17609-CA 12);
- A statement establishing your membership in the Settlement Class;
- An explanation of all objections and the reasons therefore, and a statement whether the Class Member intends to appear at the 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; and
- Signed by you and your counsel (if being represented).

An objection must be mailed to the Court and filed in this litigation. The Court’s address is below. **To be valid, objections must be filed with the Court on or before MONTH XX, 2020:**

Court:
Clerk of Court
Correspondence Unit
73 W. Flagler Street, Room 137
Miami, Florida 33130.

Copies of the objection must also be mailed, postmarked on or before MONTH XX, 2020, to the attorneys for the parties as follows:

Class Counsel:	Defendants' Attorneys:
Joseph M. Bruno, Sr., Esquire	Joshua Goldstein, Esquire
Bruno & Bruno, LLP	Cole Scott & Kissane, P.A.
855 Baronne Street	222 Lakeview Avenue, Ste. 120
New Orleans, LA 70113	West Palm Beach, FL 33401

THE FAIRNESS HEARING

19. When and where will the Court consider the Settlement?

The Court will consider all aspects of this agreement at a Fairness Hearing which will be held on **MONTH XX, 2020** at **XX:XX a.m./p.m.** before the Honorable Rodney Smith Circuit Court Judge, at the Miami-Dade County Eleventh Circuit Court, XXXX ADDRESS, CITY, ST, ZIP. The Court may adjourn or continue the Fairness Hearing to additional dates without further notice, so you should check the website, www.PinnacleCondoSettlement.com, for current information.

The purpose of the Fairness Hearing will be to determine: (1) whether the proposed settlement, as set forth in the Settlement Agreement, should be approved as fair, reasonable and adequate to the Members of the Settlement Class; and (2) whether the proposed plan to distribute the Settlement Funds is fair, reasonable, and adequate; (3) whether the application by Plaintiffs' attorneys for an award of attorneys' fees and expenses should be approved; and, if so, in what amounts; and (4) whether the Court should approve the proposed Settlement as a Judgment of the Court.

20. Do I have to come to the hearing?

No. Plaintiffs' attorneys will answer any questions the Court may have. You, or another attorney of your own choosing, are welcome to come to the Fairness Hearing at your own expense, but you are not required to attend. If you file an objection or comment, you don't have to come to Court to talk about it. As long as you filed your written objection on time, it will be presented to the Court for its consideration.

MORE INFORMATION

21. Where can I get more information about this case?

This Notice summarizes the Settlement. For the most up-to-date information and for precise terms and conditions of the Settlement, please visit www.PinnacleCondoSettlement.com.

**ALL INQUIRIES CONCERNING THIS NOTICE SHOULD BE MADE TO
THE CLAIM ADMINISTRATOR OR TO CLASS COUNSEL.**

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE.