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

COMPLEX BUSINESS LITIGATION DIVISION

IN RE: CHAMPLAIN TOWERS SOUTH COLLAPSE LITIGATION.

CLASS REPRESENTATION

CASE NO. 2021-015089-CA-01

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BECKER & POLIAKOFF, P.A.'S MOTION TO DISMISS OR ABATE

Defendant, Becker & Poliakoff, P.A., through its undersigned counsel, and pursuant to the provisions of Florida Rules of Civil Procedure 1.140(b)(3) and 1.140(b)(6), hereby moves to dismiss this action and, in the alternative, to abate the proceeding only as to the Plaintiffs' claims against Becker & Poliakoff, P.A.

INTRODUCTION

On the morning of June 24, 2021 the people of Miami witnessed what was undoubtedly the most horrific event in the history of this community. We watched as news accounts unfolded about the collapse of Champlain Towers South, ultimately resulting in the death of some 98 residents. It was impossible not to be touched by this unspeakable tragedy.

In the days and weeks that followed, various lawsuits were filed, which have now been consolidated under the umbrella of this litigation. This Court has made it clear that this litigation will proceed quickly, with an anticipated trial date in June of 2022, barely one year from the date of the collapse. In that regard, the Court has expressed commendable concern for those who have lost loved ones, to ensure that justice is not delayed. However, the Court also made it clear during one of the early hearings in this matter that the Court would not countenance the prosecution of

"dubious Hail Mary claims," which presumably reflected equal concern over a potential rush to judgment.

Becker & Poliakoff is a long-standing and highly respected member of the Florida legal community. Yet it has been sued here for "gross negligence," based upon a series of questionable claims, despite the fact that similar claims have not been leveled against the individuals and entities whom the Class claims identify as being principally responsible for the collapse of Champlain Towers South. It is readily apparent that the Consolidated Second Amended Class Action Complaint is an attempt to create duties that do not exist in the law, while simultaneously disavowing the suggestion that these claims are actually based upon the conduct of the Becker attorneys as counsel for the Champlain Towers South Condominium Association.

As will be noted later in this motion, the allegations against Becker conflate several different theories of liability, while attempting to craft a cause of action which will withstand judicial scrutiny, or which can overcome existing law. For the law has always made it clear that the attorney-client relationship is sacrosanct, and that attorneys have no duty or allegiance to individuals who are not in privity with the firm, i.e., who were never being represented by the firm, because they are not clients. In that regard, Becker & Poliakoff would respectfully submit that the claims against it must be considered in that context, for the theories which have been advanced against it in this matter would engender long-term consequences for the legal profession that must be carefully and closely examined, notwithstanding the worthy goal of attempting to compensate the many victims of the June 24th tragedy. Any decision to assess liability here can and should be examined in that light.

ARGUMENT

I. The Court Must Dismiss Plaintiffs' Claim Against Becker for Improper Venue

Dismissal for improper venue is appropriate in this instance, as the Plaintiffs have failed to comply with a mandatory venue-selection provision in the legal services agreement from which their rights to pursue any claims against the firm necessarily arise (to the extent that any such rights exist). This Court lacks the discretion to refuse application of the provision and must either dismiss, or transfer the Plaintiffs' claim against Becker & Poliakoff ("Becker" or the "Firm") to Broward County.

Becker and Champlain Towers South Condominium Association, Inc. (the "Association") entered into the operative engagement agreement, titled 'Community Association Authority to Represent and Retainer Agreement' (the "Retainer") to be effective from January 1, 2021 through December 31, 2021. (Exhibit "1").[1] The Retainer's exhibit "C," titled 'Terms and Conditions for Community Association Annual Retainer Agreement', directs at paragraph 9 that "In any action or lawsuit arising out of or related in any way to the COMMUNITY ASSOCIATION AUTHORITY TO REPRESENT AND RETAINER AGREEMENT, or any exhibit thereto, venue shall be in a court of competent jurisdiction in Broward County, Florida." (Ex. 1).

Initially, the Retainer's use of the word "shall" unequivocally indicates that Becker and the Association intended venue in Broward County to be mandatory rather than permissive. *See Am. Boxing & Athletic Ass'n, Inc. v. Young*, 911 So.2d 862, 865 (Fla. 2d DCA 2005) ("Forum selection clauses stating that litigation 'must' or 'shall' be initiated in a particular forum are generally considered to be mandatory."); *Mercedes Homes, Inc. v. Osborne*, 687 So.2d 840, 840

[1] Although a trial court is generally limited to the allegations within the four corners of the complaint and any attachments when considering a motion to dismiss, the Third District Court of Appeal recognizes several exceptions where a court is permitted to consider outside evidence, including motions to dismiss for improper venue based on a contractual forum selection clause. *See Steiner Transocean Ltd. v. Efremova*, 109 So.3d 871, 873 (Fla. 3d DCA 2013).

(Fla. 2d DCA 1996) (court held mandatory clause providing "Venue for any action arising herein or related hereto shall be in Brevard County, Florida."). A similar provision had been used repeatedly in prior engagements.

Florida courts have long recognized that forum selection clauses are presumptively valid. *Am. Safety Cas. Ins. Co. v. Mijares Holding Co., LLC*, 76 So.3d 1089, 1091–92 (Fla. 3d DCA 2011); *Corsec, S.L. v. VMC Int'l Franchising, LLC*, 909 So.2d 945, 947 (Fla. 3d DCA 2005). They "provide a degree of certainty to business contracts by obviating jurisdictional struggles and by allowing parties to tailor the dispute resolution mechanism to their particular situation." *Mijares Holding Co., LLC*, 76 So.3d at 1092 (quoting *Manrique v. Fabbri,* 493 So.2d 437, 439 (Fla. 1986)). Further, precisely *because* Florida law presumes that forum-selection clauses in contracts are valid and enforceable, a party seeking to avoid enforcement of such a clause must establish that enforcement would be unjust or unreasonable. *See Corsec*, 909 So.2d at 947. The enforcement is unreasonable and unfair only when the designated forum amounts to "no forum at all." *Id.*

Here, there is nothing to suggest that the venue clause in the Retainer between Becker and the Association was unreasonable, or that there is any justification for this Court to decline to enforce it. The venue clause was openly included in the Retainer by two parties of relatively equal bargaining power. Thus, Plaintiffs cannot show that the venue selection clause is unreasonable or unjust.

While Plaintiffs may suggest the presence of "compelling reasons" to refuse to enforce the clause, such as "avoiding multiple lawsuits,"[2] those concerns are not applicable here. Only one claim has been asserted against Becker; there is no risk of either splitting causes of action or

[2] *See, e.g, Love's Window & Door Installation, Inc. v. Acousti Eng'g Co*., 147 So.3d 1064, 1065 (Fla. 5th DCA 2014) ("Compelling reasons not to enforce a forum selection clause include avoiding multiple lawsuits, minimizing judicial labor, reducing the expenses to the parties, and avoiding inconsistent results.").

inconsistent results based on the same conduct. *Cf. Girdley Const. Co. v. Architectural Exteriors, Inc*., 517 So.2d 137, 138 (Fla. 5th DCA 1987) (declining transfer of one portion of an action by Architectural Exteriors against Girdley Construction Co. which would have resulted in multiple suits and a splitting of causes of action). Further, as will be discussed later in this motion, any claims against Becker arising out of attorney-client relationship with the Association are premature, legally and factually.

Defendant also anticipates the Class will argue they are not bound by any provision in the Retainer because they are neither signatories to the agreement nor third-party beneficiaries of the relationship between Becker and the Association. However, the fact remains that they are suing Becker for the provision of legal services derived from the Retainer. As explained in more detail below, this reality is inescapable, regardless of the Plaintiffs' decision to style what by all indications is a legal malpractice claim against Becker as one for "gross negligence."

Indeed, Plaintiffs' standing to sue the Becker Defendants is wholly derivative of the Association's engagement agreement with the Firm. Even assuming the Plaintiff class somehow does have basic standing to pursue damages couched as some form of negligence claim against Becker—which the Firm certainly contests—then they are equally bound by the engagement from which those purported rights originated. Because any negligence claim brought by the Association against Becker would clearly be subject to compulsory venue in Broward County, this Court should decline to permit any non-party to the Retainer to escape the mandate of the venue provision and pursue their claims in any other forum, where those claims are predicated upon knowledge gained or actions taken by the Becker defendants as counsel for the Association.

Becker's position in that regard is well supported by Florida law. Specifically, a non-signatory to a forum-selection clause is bound by it where that non-signatory is "closely related" to the dispute or has interests "completely derivative" of those who signed it. *Lipcon v.*

Underwriters at Lloyd's, 148 F.3d 1285, 1299 (11th Cir. 1998). Following *Lipcon*, Florida courts have enforced venue-selection clauses against non-signatories who were "transaction participant[s] whose conduct or interests are closely related **or whose interests are derivative of or directly related to those of the contracting parties**." *Sure Fill & Seal, Inc. v. Platinum Packaging Group, Inc.*, 8:10-CV-316-T-17TBM, 2010 WL 4342117, at *3 (M.D. Fla. Oct. 8, 2010), report and recommendation adopted, 8:10-CIV-316-T-17-TB, 2010 WL 4337994 (M.D. Fla. Oct. 27, 2010) (emphasis added). *See also World Vacation Travel, S.A. v. Brooker,* 799 So.2d 410, 412 (Fla. 3d DCA 2001) (forum selection clause against non-signatory proper where the claims arise directly out of the agreement and the commercial relationship of the parties); *Tuttle's Design–Build, Inc. v. Florida Fancy, Inc*., 604 So.2d 873, 873–74 (Fla. 2d DCA 1992) (recognizing that a reasonable forum selection clause would be enforced against a non-signatory).

It appears that no Florida appellate court has considered the effect of a venue provision in a contract for legal services in a direct claim against a condominium association's counsel brought by individual owners. This is likely due to the novelty of Plaintiffs' liability claim, as pled, which is presumably intended to circumvent their lack of privity with Becker and any corresponding legal duty owed by the Firm. However, at least one Florida court has *enforced* such a provision against a non-party to a contract for professional services in a malpractice case predicated upon the provision of those services.

In *Deloitte & Touche v. Gencor Indus., Inc.,* 929 So.2d 678, 683 (Fla. 5th DCA 2006), Gencor Industries, Inc. filed suit against Deloitte and Touche U.S. and DTGP for professional negligence and negligent misrepresentation. Gencor ACP, a wholly-owned subsidiary of Gencor, engaged DTGP to perform audit work. Deloitte moved to dismiss, citing the engagement letter between Gencor ACP and DTGP which contained a mandatory forum selection provision

designating the United Kingdom as the proper venue. The trial court in *Deloitte* declined to enforce the engagement letter's venue provision, concluding that it was not enforceable against Gencor, a non-party to the engagement contract.

Reversing the denial of the motion to dismiss, the Fifth District Court of Appeal correctly explained that a forum selection clause must be enforced against a non-party where "there exists a close relationship between the non-signatory and signatory and the interests of the non-signatory are derivative of the interests of the signatory." *Id*. at 683. The court noted that these requirements were satisfied as to Gencor ACP, as the entity was Gencor's wholly-owned subsidiary and "[t]he work performed under the engagement letter between DTGP and Gencor ACP is the work at issue in Gencor's claims." *Id*. The court further explained that Gencor's claim was completely derivative of the professional engagement of DTGP by its subsidiary and the work to be performed was plainly intended to be used by Gencor. *Id*. at 684. Ultimately, Gencor was held to be bound by the terms of the retainer where it "sue[d] for professional negligence alleging that DTGP owed Gencor a duty to conduct Gencor ACP's audit with due care." *Id*.

There can be no debate that the work performed by Becker under the Retainer is the work at issue in Plaintiffs' claim. The claim is entirely derivative of Becker's professional engagement, and the legal services for which the Firm was retained were—according to the Plaintiffs' express allegations—partially intended for the Plaintiffs' benefit. Again, Becker emphasizes its disagreement with the basic notion that they owed Plaintiffs any legal duties whatsoever, as explained in detail in the section below. But to the extent these Plaintiffs wish to avail themselves of the unique duties imposed upon Becker as a result of its relationship with the Association, then they necessarily stand in the shoes of the Association. This means they are bound by the same limitations as would apply to the Association were it pursing claims predicated on identical allegations as the Class asserts here.

Whether venue is proper in a particular forum is not a matter of judicial discretion. *Mgmt. Computer Controls, Inc. v. Charles Perry Const., Inc*., 743 So.2d 627, 630 (Fla. 1st DCA 1999). Rather, if there is no legal basis to support a plaintiff's choice of venue, the court *must* dismiss the case or transfer it to an authorized forum. *Id.* (explaining that a motion to dismiss for improper venue "usually presents an issue of law or a mixed issue of law and fact. The question is not whether the trial court should transfer venue, but whether it must.").

This Court should enforce the venue provision in the Firm's engagement letter and dismiss or transfer the claim to Broward County.

II. Abatement, if not an Outright Dismissal, is Necessary and Appropriate

Abatement of this matter is also warranted given the nature of the claims and legal theories which are at issue here. Abatement is particularly appropriate where a malpractice action is filed during the pendency of an ongoing related judicial proceeding which "will determine whether damages were incurred which are causally related to the alleged negligence/malpractice." *See Perez-Abreu, Zamora & De La Fe, P.A. v. Taracido,* 790 So.2d 1051, 1054 (Fla. 2001); *Burgess v. Lippman*, 929 So.2d 1097, 1098 (Fla. 4th DCA 2006).

In *Burgess*, the plaintiff alleged his funds had been converted and his attorney should have warned him about the individual who allegedly converted the funds. The *Burgess* court concluded the threshold question of whether or not the funds were converted was critical to deciding whether the plaintiff could show a causal connection between his damages and his attorney's legal services. *Burgess*, 929 So.2d at 1099. As a result, the *Burgess* court held that the malpractice claim had to be stayed pending the outcome of the conversion claim. *Id.*

That same argument is appropriate for application to the Plaintiffs' claim here. At this point, liability on the part of the Association obviously has not been determined. The Plaintiffs have also alleged in great detail that the collapse was caused by the negligence of the construction

activities of the adjacent Eighty-Seven Park project. Should those activities ultimately be deemed the sole proximate cause of the collapse, then the Association could very well be relieved of any liability to the Class. At that point, there could be no viable cause of action against Becker under any circumstances, since there will have been be no concomitant obligation on the part of the Firm to take steps to somehow prompt additional repairs to the Condominium, even under the attenuated theory of liability advanced by the Class.[3]

The policy rationale articulated by the Florida Supreme Court in support of abatement is twofold. On the one hand, it is based on the reasoning that a client in litigation has not been damaged until the settlement or exhaustion of appeals in that litigation, as any damages are contingent before that point. *Id*. The second is that a client should not be forced into the "wholly untenable" position of being forced to defend its conduct in one forum while simultaneously suing its attorneys for negligently permitting it to engage in such conduct in a different forum. *Larson & Larson, P.A. v. TSE Indus., Inc.,* 22 So.3d 36, 44 (Fla. 2009) (citing *Peat, Marwick, Mitchell & Co. v. Lane*, 565 So.2d 1323, 1326 (Fla. 1990)).

Becker anticipates the Class will argue that abatement is inappropriate because (1) they have not sued for "legal malpractice" but gross negligence, or (2) that they are not clients. The Court should reject both arguments. The Class's claim against Becker is a de facto legal malpractice claim, regardless of the tactical decision to label it "gross negligence." Yet the claim is clearly not rooted in Becker's relationship with the members of the Class itself, but rather the Firm's relationship with its actual client, and current co-defendant, the Champlain Towers South Condominium Association.

[3] While the Defendant does not agree that it has either the obligation or the ability to insist upon particular repairs at a condominium, even assuming such an obligation existed, it could not be deemed the proximate cause of the losses here if the failure to effect those repairs was not the cause of the collapse.

The Firm can only speculate why the Plaintiffs have asserted these claims in the manner they have. Presumably, the Class is attempting to circumvent strict limitations on the liability of lawyers. Those limitations not only prevent non-clients from bringing malpractice claims against attorneys, but actually prevent clients from assigning otherwise valid malpractice claims to non-clients. *See Law Office of David J. Stern, P.A. v. Sec. Nat. Servicing Corp.*, 969 So.2d 962, 966 (Fla. 2007). This prohibition is rooted directly in the uniquely personal nature of the attorney-client relationship.

The Plaintiffs freely acknowledge Becker & Poliakoff was counsel for the Association, not the individual residents of Champlain Towers. Pursuant to fundamental legal malpractice jurisprudence, the representation of the Association—which finds itself totally adverse to the residents who now sue it—did not extend to those residents, despite the fact that the Association is wholly comprised of those very residents. It is also immaterial that Becker's representation of the Association might be anticipated to benefit its constituent members. *See Brennan v. Ruffner*, 640 So.2d 143 (Fla. 4th DCA 1994) (attorney representing corporation owes no duty to individual shareholder absent special circumstances). While the Florida Supreme Court did recognize a narrow exception to this privity requirement in *Stern*, that exception applies strictly to intended third-party beneficiaries. *Law Office of David J. Stern, P.A.,* 969 So.2d at 968. Yet here, Plaintiffs expressly disclaim such status.[4] Further, Florida law has made it clear that the residents are not intended third-party beneficiaries in this context. *See Silver Dunes Condo. of Destin, Inc. v. Beggs & Lane,* 763 So.2d 1274, 1277 (Fla. 1st DCA 2000) (affirming summary judgment in favor of condo association's law firm, and concluding that individual unit owners were not the apparent intended third-party beneficiaries of the legal services contract between the association and firm). In fact, there are only limited contexts where Florida has recognized

[4] *See* Consolidated Second Amended Class Action Complaint, at ¶ 526.

the right of an intended third-party beneficiary to file an action against an attorney; this is most commonly characterized by the so-called "will drafting" exception to privity. *Ellerson v. Moriarty*, 46 Fla. L. Weekly D1459 (Fla. 2d DCA June 23, 2021).

The cumulative effect of the foregoing is that the Class has expressly pled itself out of the realm of legal malpractice. It appears to have instead strategically determined to pursue its claims as "gross negligence" in an attempt to bypass these limitations. But it is well established in the jurisprudence of lawsuits against attorneys that this is also inappropriate.

Courts look past labels to the substance of a claim when evaluating such questions. *See Hotels of Key Largo, Inc. v. RHI Hotels, Inc*., 694 So.2d 74, 78 (Fla. 3d DCA 1997); *Resolution Tr. Corp. v. Holland & Knight*, 832 F. Supp. 1528, 1530 (S.D. Fla. 1993) ("The body of the complaint, … rather than the label employed by the plaintiff, defines the type of claim asserted."). Numerous courts have rejected attempts to circumvent legal malpractice defenses by creatively rebadging a malpractice claim as something else. *Hastings v. Viacava*, 2019 WL 4751751, at *1 (M.D. Fla. Sept. 30, 2019) (construing allegations that an attorney was "grossly negligent in the defense of Plaintiff" as claims for legal malpractice); *E.P. v. Hogreve*, 259 So.3d 1007, 1009–10 (Fla. 5th DCA 2018). This is most often seen in the context of attempts to avoid the short two-year statute of limitations for claims against attorneys, by asserting claims involving similar causes of action which may carry longer limitations periods, such as claims for breach of contract, fraud, or breach of fiduciary duty. *See, e.g., Willis v. Maverick*, 723 S.W.2d 259, 261 (Tex. App. 1986), writ granted (July 15, 1987), aff'd, 760 S.W.2d 642 (Tex. 1988) ("Whatever label is placed on it, a suit for legal malpractice is in the nature of a tort action and thus the two-year statute of limitations governs."). In such settings courts have consistently refused to disguise tort actions as contract claims.

The question has also been addressed in the context of a criminal convict's attempts to pursue ordinary negligence claims against an attorney to avoid limitations on a convict's ability to bring claims against counsel. Florida law requires a convict to obtain post-conviction relief for inadequate advice of counsel as a condition precedent to bringing any legal malpractice claim against a criminal defense lawyer. A plaintiff who wished to avoid that limitation attempted to plead a different but similar claim in *Georganas-Kesselman v. Sheppard,* 4:01CV98-RH, 2002 WL 34519639, at *3 (N.D. Fla. Mar. 27, 2002). In that case, a federal district court expressly rejected such an attempt, holding that the plaintiff's complaints about an attorney's representation were in fact legal malpractice claims, no matter what she called them:

> That Ms. Georganas–Kesselman couches her claim in different language makes no difference. Just as a rose by any other name would smell as sweet, so also a legal malpractice claim by any other name still is governed by Steele. Ms. Georganas–Kesselman's claim is, in essence, a legal malpractice claim, and the reasons given by the Florida Supreme Court for dismissal of the claim at issue there apply just as fully here.

Georganas-Kesselman, 2002 WL 34519639, at *3.

It is important for the Court to understand the magnitude of deviation from the law the Plaintiffs ask the Court to recognize. Allowing the Plaintiffs' theory would effectively allow non-clients—strangers to the attorney-client relationship—an easier path to recovery than the clients themselves, given similar claims, where such claims should not be allowed at all. The prejudice inherent in this scenario is therefore compound: First, Becker will be forced to defend a de facto malpractice case that should not even be recognized *in any respect*. Then in defending that claim, Becker would be *stripped of all the defenses it would be permitted to assert against its actual clients if the claims had been brought by the client.* The notion that strangers to the contractual and fiduciary relationship between the attorney and client can somehow assert *superior* claims against the attorneys *than the clients themselves* figuratively stands all controlling precedent on its head.

To exacerbate matters further, this perverse construct goes beyond forcing the Association into the "wholly untenable" circumstance the Supreme Court has warned against—defending its actions on one hand while blaming its counsel on the other. It throws client and counsel into the proverbial ring together where they could very likely be incentivized to battle *each other*, while simultaneously defending the Class's catastrophic claims in the very same action. The sacrosanct boundaries of the attorney-client relationship should not be casually swept aside in such an extraordinary fashion.

It is important that the Court recognize this lawsuit for what it truly is—a thinly veiled effort to recast a claim for malpractice in some other garb. The very source of any alleged duty of an attorney involving the discharge of his or her professional skills is the retention itself. Without the retention, and without the relationship, there is no duty. As was long since explored by British common law as far back as 1861, the privity requirement is a necessary corollary and limitation upon the heightened duty of professional care imposed on attorneys.

There is a give and take to that responsibility. While the duty an attorney owes their client is far higher than ordinary citizens owe one another, the imposition of that heightened duty (in derogation of the common law) is justified by the fact that the attorney is not forced to exercise such a demanding standard of care with respect to *everyone*, but only to those with whom they share a special relationship as a result of the retention:

> As this duty was not imposed by general law, I never had any doubt that it could be established only by showing privity of contract between the parties. . . .[5]

This does not mean an attorney is *not* bound by the typical duty of ordinary care that applies to all persons. Becker is not suggesting it is "immune" from claims of gross negligence; rather, a non-client should *not* be permitted to use that theory to cloak a de facto malpractice claim, to

[5] *See* § 7:5. Privity of contract—Historical antecedents—The early common law, 1 Legal Malpractice § 7:5 (2021 ed.) (quoting *Robertson v. Fleming*, 4 Macq. at 177).

perform an end-run around every defense the Firm would be entitled to assert if the claim's label matched it substance.

If the Champlain Towers collapsed because attorneys from Becker & Poliakoff negligently operated construction machinery near the building, they would clearly have the same liability *anyone* would bear in such circumstances. But conversely, also like anyone else, the Firm does not have an obligation to interject itself into the affairs of strangers. The duty to exercise "ordinary" care is exactly that—*ordinary*. It is the duty to avoid actively harming another. It does not include the duty to take affirmative action to intervene to prevent third parties from being harmed by others. *See Pollack v. Cruz*, 296 So.3d 453, 457 (Fla. 4th DCA 2020), review denied, SC20-897, 2020 WL 7392819 (Fla. Dec. 16, 2020) ("A legal duty requires more than just foreseeability alone. A duty requires one to be in a position to 'control the risk.'") (citation omitted).[6]

This is also supported by general negligence jurisprudence, which holds that a person has no duty to control the conduct of another or to warn those placed in danger by such conduct unless a special relationship exists between the defendant and the foreseeable victim of such conduct. *See Jackson Hewitt, Inc. v. Kaman*, 100 So.3d 19, 28–29 (Fla. 2d DCA 2011); 38 Fla.

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[6] Also worth noting is the Third District's decision in *Boynton v. Burglass*, 590 So.2d 446, 450 (Fla. 3d DCA 1991), in which the parents of a murder victim sued a psychiatrist for malpractice, alleging that the psychiatrist's voluntary outpatient shot and killed their son because of the psychiatrist's negligence. On appeal, the Third District affirmed the trial court's dismissal with prejudice for failure to state a claim, holding that there was no duty on the part of the psychiatrist to warn or protect third parties from the criminal acts of a patient:

> To impose a duty [on a psychiatrist] to warn or protect third parties would require the psychiatrist to foresee a harm which may or may not be foreseeable, depending on the clarity of his crystal ball. Because of the inherent difficulties psychiatrists face in predicting a patient's dangerousness, psychiatrists cannot be charged with accurately making those predictions and with sharing those predictions with others.

Id. at 450. The court found that imposing such a duty is "neither reasonable nor workable and is potentially fatal to effective patient-therapist relationships." *Id*. at 448.

Jur. 2d Negligence § 19. Unsurprisingly, this "general" law parallels similar limitations imposed by legal malpractice jurisprudence.

The special relationship exception to the general rule only applies where the defendant has the right or ability to control the third party's conduct. *See id*. Attorneys do not control their clients. *Pickard v. Mar. Holdings Corp*., 161 So.2d 239, 241 (Fla. 3d DCA 1964) ("It is recognized that an attorney acting under employment, at the direction of his client and in legal manner is not liable for the consequences of his client's actions."). To the contrary, they are agents. The entirety of authority addressing the attorney-client relationship is fundamentally inconsistent with the notion that the attorney controls his or her client in any way. As a corollary, general negligence law dictates that a negligence action must be based on the violation of a duty owed to the plaintiff and not one owed to someone else by the defendant. This directly parallels the legal-malpractice-specific authority in *Stern*, *supra*. that requires that any action against an attorney for the inadequate exercise of their professional skill be limited strictly to clients, or those who are clearly their intended third-party beneficiaries.

Here, the Class attempts to avail itself of the best of both worlds by selectively invoking then conflating two incompatible concepts: the heightened duty of care an attorney owes to a client that is only recognized because of their special relationship, with the breadth of obligation ordinary negligence law imposes upon every individual. These standards are fundamentally incompatible, and the attempt to merge them into a single theory of liability is inappropriate.

It is not an exaggeration to state that the recognition of such a broad duty would create an entirely new category of liability for lawyers that would not merely *expand* attorney liability, but multiply its scope by orders of magnitude. Such potentially extensive liability to non-clients would quite literally dwarf any other form of liability the law has previously recognized for attorneys, liability which has been carefully defined over decades, if not centuries. For instance,

railway or airline travelers injured by the carrier would be permitted not only to sue the carriers themselves for their conduct in contributing to their injuries, but also a carrier's attorneys for failing to coerce their clients to take more aggressive action to avoid harm to passengers, or otherwise warn the passengers.

And more apropos for application here—using Plaintiffs' claim—is the notion that any number of other law firms would theoretically be liable in this matter using the same theory, to the extent that those firms represented actual or prospective defendants, including developers, contractors, architects, testing companies, and engineers, who may have been privy to problems occasioned by the construction of Eighty-Seven Park. Presumably, some of those attorneys may have been privy to knowledge which was far superior to any information received by Becker during its representation of the Association concerning potential threats posed by the construction process. Because, according to the Plaintiffs' theory, the duty to warn in this circumstance or to take other corrective measures was somehow paramount to the law firms' obligations to their own clients, this raises yet another way in which the Plaintiffs' construct departs from existing malpractice jurisprudence. If the Association itself sued its attorneys for failing to force it to take some sort of action sooner, the Firm would be entitled to defend itself based upon the well-established proposition that it is not an attorney's place to tell a client what action to take, but rather discharge the client's wishes within the limits of the law. *See Boyd v. Brett-Major,* 449 So.2d 952, 954 (Fla. 3d DCA 1984).[7] It would obviously be anomalous to afford strangers to the relationship greater rights than the unique and heightened duties owed to the client. Stated more simply, as outsiders to the relationship, the *best* position the class should

[7] "It is not the role of an attorney acting as counsel to independently determine what is best for his client and then act accordingly. Rather, such an attorney is to allow the client to determine what is in the client's best interests and then act according to the wishes of that client within the limits of the law." *Boyd v. Brett-Major*, 449 So.2d 952, 954 (Fla. 3d DCA 1984) (quoting *Orr v. Knowles*, 215 Neb. 49, 337 N.W.2d 699, 702 (1983)).

ever be permitted to achieve would place it on *equal* footing with actual clients, but never superior footing.

Becker believes that one final comment is warranted, given the apparent theory of liability which Class counsel attempts to advance through its complaint. Much is made of the Firm's expertise in condominium law and the excellence of its construction litigation practice. Conspicuously absent from those allegations, however, is any suggestion that the Firm is comprised of general contractors, architects, engineers, or other individuals who are skilled at assessing and/or recognizing threats to the safety of the occupants of a high-rise condominium. The reality is that no matter how skilled or talented the Firm's attorneys may be as construction litigators, such experience would never elevate the attorneys at Becker to the level of skill necessary to feel comfortable—let alone justified—in passing on such issues, or even venturing opinions. To the contrary, Becker's counsel believes that it would be malfeasance per se for a lawyer to be providing advice as to construction techniques or threats that might be posed by faulty workmanship, or the simple inattention to the results of tests which were designed to gauge the existence vel non of such threats.

Undersigned counsel has been representing lawyers in this community for 40 years. Yet despite developing some level of expertise in representing tax attorneys, undersigned counsel would never hold himself out as an expert in the preparation of tax returns or the conduct of an audit. And in this instance, while Becker employs an array of talented construction litigation lawyers, as well as lawyers who have been representing condominiums for three decades, none of those individuals would be so presumptuous as to believe that they should be providing advice—let alone warnings—with regard to threats posed by neighboring construction or the failure to effect necessary repairs to a condominium, other than by relating warnings *to their clients* of any imminent concerns which were actually expressed by competent engineering or

construction professionals. There is no suggestion alleged in some 549 paragraphs of pleading that Becker ever failed to pass along concerns which had been identified by any competent construction professional with whom they worked as part of their engagement by the Association.

CONCLUSION

As was noted in the Introduction to this motion, Becker fully understands and appreciates the Court's desire to provide justice to the families of those individuals who perished as a result of the collapse of Champlain Towers. But that goal will not be achieved through the recognition of an unparalleled theory of liability that ignores the realities of the practice of law, let alone hundreds of years of precedent.

The claim leveled against Becker here would place every lawyer at risk as a result of knowledge gained during the course of a client's representation, or the limited expertise developed during the course of that representation, from exposure to third parties which may well be in derogation of the rights of the attorney's own clients. The public policy implications are beyond ominous. Aside from upsetting 400 years of jurisprudence, the Class theory would also create a climate where no lawyer could reasonably practice, without being concerned as much or more about obligations to third parties than to the attorney's own client. The essence of the claim which has been brought against Becker would essentially require lawyers to assume a role for which they are not qualified, by requiring them to gauge the existence vel non on of potential harm to third parties caused by the client's inaction, or the inaction of qualified professionals. It is not hyperbole to suggest that acceptance of such an obligation here would threaten the entire legal system.

If this Court is not inclined to dismiss the claim against Becker & Poliakoff, P.A. for the reasons addressed in this Motion, then the Firm respectfully asks this Court to dismiss the

Consolidated Second Amended Class Action Complaint for improper venue and transfer the claim against the Firm to Broward County. In addition, Becker requests that this Court abate the proceedings pending resolution of the balance of the claims advanced in this action against the Association and the remaining defendants.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via the e-portal on this 20th day of December, 2021 to all counsel in the attached service list.

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By: /s/ *Robert M. Klein*
ROBERT M. KLEIN

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Daumy, Aniuska

From: Becker Poliakoff – Annual Retainer <Annual-Retainer@beckerlawyers.com>
Sent: Friday, November 20, 2020 11:00 AM
To: Manager@ChamplainSouth.org; jeanwodnicki@att.net
Subject: 2021 Annual Retainer Agreement (FTL) - (C09862.231785 - Champlain Towers South)
Attachments: C09862.231785 - Champlain Towers South.pdf

If you are not the person who will be responsible for addressing the 2021 Annual Retainer Agreement, please forward immediately to the appropriate person or alternatively email AnnualRetainer@beckerlawyers.com so that we may re-direct this important communication.

Dear Members of the Board:

I am pleased to enclose for your review the Firm's 2021 COMMUNITY ASSOCIATION AUTHORITY TO REPRESENT AND RETAINER AGREEMENT.

Pursuant to the terms of the Annual Retainer Agreement, the Retainer is automatically renewed at the Association's option, upon its payment of the 2021 Annual Retainer Fee of $200.00. Unless we hear from you to the contrary, you will receive a separate bill in December 2020 for the 2021 Annual Retainer Fee of $200.00. **IT IS NOT NECESSARY TO SIGN OR RETURN THE ANNUAL RETAINER AGREEMENT. YOUR PAYMENT OF THE 2021 ANNUAL RETAINER FEE SHALL CONSTITUTE EVIDENCE OF YOUR ACCEPTANCE OF THE CHANGES AND YOUR AGREEMENT TO ITS TERMS AND PROVISIONS.** Please note that payment of the Retainer fee must be received by February 28, 2021, in order for you to continue to receive the services and lower hourly billing rates provided to Annual Retainer clients of the Firm.

We sincerely appreciate the confidence you have shown through your retention of the Firm to serve as your Community's legal counsel and look forward to building upon that relationship. If you have any questions, please feel free to call upon me. Thank you for allowing the Firm the opportunity to serve you.

Sincerely,

Kenneth S. Direktor
Shareholder
Chair, Community Association Law Practice Group
Board Certified Specialist, Condominium & Planned Development Law

Annual Retainer

Becker & Poliakoff

Annual-Retainer@beckerlawyers.com
www.beckerlawyers.com

COMMUNITY ASSOCIATION AUTHORITY TO REPRESENT AND RETAINER AGREEMENT

This Agreement is effective from January 1, 2021 to December 31, 2021.

This Agreement can be renewed for additional one year periods, **AT THE ELECTION OF THE ASSOCIATION**, by paying the Annual Retainer Fee for the next calendar year period. The billing rate and the terms of this Agreement effective for any renewal term remain the same, unless a change is announced by the Firm in writing. **This Agreement may be terminated at any time by either party by giving written notice to the other party.**

Champlain Towers South Condominium Association, Inc. ("Association"),

by and through its Board of Directors, retains the law firm of BECKER & POLIAKOFF, P.A. (hereinafter referred to as "Firm" or "Becker"), to represent it as legal counsel in the matters described in this Agreement and its Exhibits. This retainer and representation is solely and exclusively for the benefit of the Association, as a corporate entity, and not for any other party or third parties. There are no intended third party beneficiaries, including, but not limited to members of the Association; residents living in the community operated by the Association or guests of such residents; officers, directors, employees, or agents of the Association.

Paying the Annual Retainer Fee sum of Two Hundred ($200.00) Dollars entitles the Association to the services listed in Exhibit "A" **at no extra charge**.

The Firm will provide general legal services upon the request of the Association or as authorized by this Agreement concerning the day-to-day operation of the Association, including certain litigation, arbitration and mediation matters, on the reduced hourly fees stated in Exhibit "B" to this Agreement, subject to the terms and conditions in Exhibit "A".

The undersigned officer or agent of the Association represents and certifies that he(she) is authorized by the Board of Directors to execute this Agreement and agrees to the terms contained in the attached Exhibits on behalf of the Association and its membership.

"**ASSOCIATION**"

BY: _____(SEAL)

Print Name: _____

Print Title: _____

Date: _____

The above employment is accepted on the terms set forth herein.

BECKER & POLIAKOFF, P.A.

BY_____(SEAL)
KENNETH S. DIREKTOR, ESQ.
Association Practice Group Leader

Law Offices
Becker
1 East Broward Blvd., Suite 1800 • Ft. Lauderdale, FL 33301
Telephone (954) 987-7550

EXHIBIT "A"

SERVICES PROVIDED UNDER ANNUAL RETAINER AGREEMENT AT NO EXTRA CHARGE

1. Preferred hourly billing for all Becker attorneys performing work under the Annual Retainer Agreement. This includes general association matters, mediation, arbitration and certain litigation services.

2. Preparing a standard Annual Meeting notice package [notice(s), general or statutory limited proxy (as applicable) and voting certificate] for the Association's Annual Meeting occurring in the calendar year of the Annual Retainer Agreement. The Retainer must be paid no later than February 28 in order for the Annual Meeting Notice Package to be prepared at no charge. The Annual Meeting Questionnaire is now available on-line and must be completed and returned electronically. You will receive a link to your Annual Meeting Questionnaire every year with instructions on how to fill out and submit electronically after completion. *In addition, to have your annual meeting notice package prepared at no cost, you must return the Annual Meeting Questionnaire to your attorney at least 30 days prior to the date on which your first notice must be mailed. Any changes requested after you have received your Annual Meeting Notice Package will be charged at your attorney's billing rate.* **NOTE: The Association will be billed for preparing voting documents for any vote other than the election of the Board of Directors. The attendance of an attorney at the Annual Meeting, preparing amendments or anything else not specifically included in the standard notice package set forth above are not included under the annual retainer fee and will be billed at the hourly fee in Exhibit "B" to this Agreement.**

3. Annual Retainer Clients receive a substantial discount on the use of the online voting software known as BeckerBALLOT, formerly known as BPBALLOT. Pricing for votes in master associations, community development districts, multi-condominium associations and communities with extraordinary customer service demands will be set on a case by case basis. For more information visit www.beckerballot.com.

4. Membership in the Firm's Community Association Leadership Lobby ("CALL") is exclusive to annual retainer clients and CALL members and includes year-round CALL email alerts explaining and tracking Florida legislation and other timely topics impacting shared ownership communities. This lets you know everything that is going on in Tallahassee, what laws they may be thinking of passing that may impact you, how we as a Firm stand on each issue, and whether or not we would like for you to reach out to your elected officials regarding any issues. In addition, we will send out a legislative update each year which notifies you about any new law that has been passed and how it will impact your community.

5. First access to Firm publications keeping the Association informed of selected new case decisions, legislation, or other matters of interest to the Association. We offer many blogs, newsletters, and special alerts that each focus on various specialized topics that may be of interest to you, such as our Florida Condo and HOA blog and our Community Association Law Blog, our Construction Law Authority Blog and, of course, our Community Association Update E-Newsletter.

6. Free, client-focused programming, including educational presentations sponsored by the Firm. We offer approximately 200 client courses annually all over the state on a variety of topics, including, for example, Board Certification, 40 year recertification, Pets, Dealing with Difficult Unit Owners, and Bylaws, among others. All classes for CAM credit or otherwise required by the DBPR are approved by the State and offer CAM (Manager) credit. Note: In light of COVID-19, our in-person class schedule has been indefinitely suspended. For safety and convenience, many of our course offerings are now available online and can be accessed at https://www.floridacondohoalawblog.com/classes/.

7. Access 24 hours per day, 365 days per year to the Firm's collection/foreclosure case information Website: http://bpcollections.com. This Client portal, which is password protected, allows you access to your collection/foreclosure matter(s) at any time of day or night, so that you no longer have to call or get billed to find out the status on your matter(s). The portal is updated regularly and also enables you to view and/or print status reports on any one or all of your collection/foreclosure matter(s).

EXHIBIT "B"

BECKER & POLIAKOFF, P.A.

FORT LAUDERDALE

ANNUAL RETAINER BILLING RATES
(January 1, 2021 - December 31, 2021)

ATTORNEY	HOURLY BILLING RATES
Kenneth S. Direktor Shareholder Chair, Community Association Law Practice Group Board Certified Specialist, Condominium & Planned Development Law	**$425.00**
Donna D. Berger Shareholder Board Certified Specialist, Condominium & Planned Development Law	**$365.00**
Howard J. Perl Shareholder Board Certified Specialist, Condominium & Planned Development Law	**$325.00**
Karyan C. San Martano Attorney	**$250.00**
Diane T. Schick Association Paralegal	**$ 75.00**

NOTE: Other attorneys, not included on this list, will from time to time perform work for your Association. At such time, you will be advised of their billing rates before any work is commenced. Rates for collection work will vary and are set forth in the Exhibits to this Retainer.

EXHIBIT "C"

TERMS AND CONDITIONS
FOR COMMUNITY ASSOCIATION ANNUAL RETAINER AGREEMENT

THE FIRM WILL ALSO HANDLE THE FOLLOWING MATTERS:

1. Assessment Collection: The Association can ask the Firm to collect delinquent assessments. Most standard collection and foreclosure work will be billed as detailed in the Uniform Collection Policy and Retainer Agreement attached as Exhibit "D" and the Foreclosure Retainer Agreement contained in Composite Exhibit "E". Unless a different fee is specified, other Collection work, including standard foreclosure actions, will be billed at the rate of $175.00 per hour, according to the terms of this Agreement, the Collection Retainer Agreement, and the Foreclosure Retainer Agreement. Defending standard foreclosures will be handled according to the terms of this Agreement and the Defense of Foreclosure Retainer Agreement in Composite Exhibit "E".

2. Enforcement of Rules and Regulations and Covenants: After receiving a written request from the Association concerning a violation of the covenants or rules and regulations and verifying the violation, a letter will be sent to the violator advising of the violation and requesting compliance with the covenants and/or rules and regulations. By authorizing the Firm to send a violation letter, the Association also authorizes the Firm to reply to or communicate with any person who responds on behalf of the violator. This service is provided at the hourly rate set forth in Exhibit "B". If the letter fails to achieve the desired results, upon the written request of the Association, an action will be commenced in court or in arbitration, or pre-suit mediation will be initiated, as may be required by law, and handled in accordance with the terms of this Agreement and the Covenant Enforcement Retainer Agreement attached as Exhibit "F". The rates and terms set forth in Exhibit "F" apply only to routine covenant and rules enforcement matters against members of the Association. Non-routine covenant enforcement matters (as determined by the Firm) and representation in matters adverse to parties other than members of the Association are subject to such terms and conditions as the Firm determines to be reasonable, as set forth below regarding legal services not covered by this Retainer.

3. Corporate Status: Unless the Association instructs the Firm, in writing, not to provide the service, the Firm will check the Association's corporate status annually with the Florida Secretary of State and report to client, if client has any status other than active or if any deadline for presenting the status is approaching. This service is provided at the hourly rate in Exhibit "B", but is not billable unless we determine that the filing is delinquent or the Association has been or is on the verge of being administratively dissolved.

4. Registered Agent: At the Association's request, the Firm will serve as registered agent for the Association at no charge. As registered agent, the Firm may receive service of process and official notices from governmental agencies and other parties on behalf of the Association. The Firm will forward them to the Association with instructions on handling. This service will be provided at the hourly rate in Exhibit "B".

5. Legal Opinions for Audits: Generally accepted accounting principles require a legal opinion on the Association's potential liability in connection with an audit. Every file and matter the Firm handled for the Association over the past fiscal year must be reviewed and analyzed in order to render the legal opinion required by the Association's accountant. The Firm takes on liability for these opinions. Therefore, the Association will be value-billed, at the rate set forth in Exhibit B, in accordance with the vast undertaking and liability involved.

6. Legal Opinions for Bank Loans: As a condition to loaning money, most banks require a legal opinion from the Association's attorney concerning the validity of the loan documents and collateral, the authority of the Association to borrow money and the verification that the procedures followed by the Association were correct. This is a complicated and time-consuming process, as every loan document must be reviewed and analyzed, the governing documents must be reviewed and analyzed, various other searches and due diligence must be performed, the Association's meetings, actions and procedures must be reviewed and analyzed and various communications with the bank and its attorney must be made. The Firm is exposed to potential liability for these opinions. Therefore, the Association will be value-billed by the attorneys handling the loan transaction, in accordance with the vast undertaking and liability involved. All attorney's fees for the loan opinion, including all attorney's fees for all work and services arising out of, concerning, or relating to the loan and loan opinion, must be on the loan closing statement and paid from the loan closing proceeds at the loan closing. These attorney's fees will not be billed and invoiced on the Association's normal monthly invoice from the Firm, unless the loan does not close.

7. Attorney Testimony and Discovery Responses: In the event an attorney from the Firm is asked by the Association to testify or give evidence on the Association's behalf, or if an attorney from the Firm is subpoenaed or otherwise required to testify or give evidence on behalf of or against the Association, the Association will be billed at and the Association agrees to pay the hourly rate set forth in Exhibit "B" or at the attorney's preferred hourly rate for annual retainer clients, if the attorney's hourly rate is not listed on Exhibit "B".

8. Marketable Record Title Act ("MRTA") and Covenant Extinguishment: Please note that pursuant to Florida's Marketable Record Title Act ("MRTA") certain covenants and restrictions applicable to Associations (primarily related to homeowners' associations but also applicable to other types of associations in certain circumstances) are extinguished by law after a period of 30 years. Certain covenants and restrictions may also expire on their own terms without regard to MRTA. There are procedures for preventing MRTA extinguishment and revival after extinguishment. There may or may not be procedures for the extension or revival of covenants and restrictions which expire by their own terms. The Firm is not responsible to detect, calendar or otherwise address these issues under this Retainer Agreement unless requested in writing by the Association to do so.

9. In any action or lawsuit arising out of or related in any way to the COMMUNITY ASSOCIATION AUTHORITY TO REPRESENT AND RETAINER AGREEMENT, or any exhibit thereto, venue shall be in a court of competent jurisdiction in Broward County, Florida. IN THE EVENT OF A DISPUTE OVER THE AMOUNT OF LEGAL FEES CHARGED OR THE MANNER, NATURE OR EXTENT OF LEGAL SERVICES PROVIDED, YOU AGREE YOU HAVE WAIVED THE RIGHT TO A TRIAL BY JURY.

LAW CLERKS AND PARALEGALS:

In our continuing effort to provide our Associations with quality legal services in the most cost-effective manner, we make use of law clerks and paralegals, both within and outside of Florida, provided that all work performed by paralegals and law clerks is reviewed by an attorney. If the Firm determines that research or other work can be efficiently handled by a law clerk or paralegal under an attorney's supervision, the time of the law clerk or paralegal will be billed at the rate specified on Exhibit "B". Collection and foreclosure paralegals, as noted above under "Assessment Collection," will be billed at the rate of $175.00 per hour.

VALUE BILLING:

In situations where a previously-developed work product (e.g. a previously-developed management contract) is used as a primary source of an attorney's work product, a value may be applied to the previously-developed work product. This process is known as value billing. The benefit to the Association is improved legal services tailored to the Association's needs in less time and at a reduced cost. In all matters, a weighted value (value billing) will be applied to an attorney's efforts that utilize, as a primary source, a previously-developed work product. In other situations, where the Firm's exposure to liability is unrelated to the time actually spent on the legal services performed or is otherwise unusually high for the legal services performed, the Association will be value-billed based on the risk and liability imposed upon the Firm (risk billing). For these services, such as, but not limited to, loan opinions, audit opinions, or insurance coverage opinions, the Association will be charged a fee commensurate with the risk and potential liability of the Firm, which may result in a fee higher than the actual time spent performing the legal services.

If you have any questions concerning the application of value billing or risk billing to a specific matter being handled by the Firm, please feel free to write or call the attorney handling the matter.

LEGAL SERVICES NOT COVERED BY RETAINER:

All other matters not covered by this Agreement, including, but not limited to, matters involving construction, developers, warranties, contractors, casualty and insurance claims, taxation, misrepresentations, accounting claims, mandatory club memberships, recreational leases, land leases, management contract disputes, real-estate transactions, zoning and land use matters, probate matters, complex foreclosure and defense of mortgage foreclosure actions (including, but not limited to, actions involving multi-units or complex lien priority questions), computer issues, bankruptcy and telecommunications issues, and complex or multi-party litigation will be handled on a case-by-case basis, with fees determined and a separate retainer agreement entered into, if and when the need arises. If, for any reason, a separate Retainer Agreement for these other matters is not executed, non-retainer billing rates apply. If services are provided by the Firm prior to the commencement date of this Agreement and no Retainer Agreement is in effect for that period, non-retainer rates and the terms of this Retainer, including but not limited to, the terms set forth under the heading "Billing Policy", apply to those services. Any time the Association discontinues the Annual Retainer Agreement or terminates the services of the Firm for any reason, the Association must execute a new and separate agreement for each and every matter on which the Association wants the Firm to continue representing the Association and for any new matter on which the Association wants the

Firm to represent the Association. **The Firm will not perform any legal services or work unless and until the new agreement is executed by the Association.** The new agreement will be on such terms and conditions as the Firm requires for a non-annual retainer association. Except to the extent expressly stated in this Retainer, the Firm only performs legal services or gives legal advice when specifically requested or specifically instructed to do so. The Firm does not unilaterally or proactively search for possible or potential legal issues or possible or potential problems, unless specifically and expressly asked to do so.

BILLING POLICY:

The Firm will provide the Association monthly itemized statements for services performed, with the exception of attorney's fees for loan opinions, as set forth in Paragraph 6 above. Fees billed are due and payable within ten (10) days after receiving the statement. Unpaid bills bear interest at the highest rate permissible under the law until paid, commencing 30 days after due date. All payments received on account are applied to the oldest balance then due on any matter, unless otherwise instructed by the Association. In the event that legal action by the Firm is required to collect past-due obligations from the Association, the Firm is entitled to recover its costs and reasonable attorney's fees, and the value of attorney's fees when the Firm represents itself at all pre-litigation, trial, arbitration, and appellate levels. The Firm is also entitled to recover reasonable attorney's fees to establish its right to recover attorney's fees and to establish the amount of attorney's fees to which it is entitled to recover. Should the Firm cease to represent the Association for any reason, including the Firm's voluntary withdrawal during the pendency of any matter or action, and any attorney's fees or costs remain unpaid, the Firm is entitled to a charging lien and to payment of any costs and attorney's fees out of any eventual recovery in the action (in addition to any right to a retaining lien) or other rights retained herein. The Firm can also retain any monies held in trust for the client during the pendency of a fee dispute. In the event the annual retainer fee is not paid on or before February 28 of the calendar year for which the Annual Retainer Agreement is effective, the Association will not be on an Annual Retainer, but instead, will have discontinued the Annual Retainer Agreement.

DOCUMENT REVIEW FOR NEW CLIENTS ONLY:

As a starting point for representation, we require a complete set of the governing and corporate documents for the community. These are required to be part of the official records of the Association. This includes the original version of the Declaration of Condominium or Covenants, the Articles of Incorporation, the Bylaws, and any amendments or restatements to the foregoing. This also includes, whether recorded or unrecorded, Rules and Regulations and policies, procedures and resolutions of the Board (by way of example, but not limitation, architectural approval forms, records access rules, shutter specifications or collections policies).

The attorney assigned to your file has the discretion to order documents from the public records at the cost to the Association. The attorney also has the discretion to perform an initial review of the documents, on an hourly basis, to familiarize himself or herself with the general documentation of the community or to organize the documents in a manner that will facilitate future representation. Such reviews are not intended to ascertain problematic provisions, conflicts in the documents, or ascertain expiration dates or MRTA issues, as discussed above. Such services can be authorized by the Association by written request to the Firm.

It may also be necessary, in the discretion of the attorney, to order other documents from time to time. Without limitation these may include master covenants, prospectuses, supplements, plats, easements or deeds. The client shall be responsible for the costs of obtaining such documents, and review of same as may be necessary.

COSTS AND OTHER CHARGES:

In addition to the fees set forth above, the Association must pay the Firm for any and all costs, including, but not limited to postage; overnight courier services; travel; parking; filing and electronic filing, recording, certification, Remote Online Notary services, registration or recording fees charged by governmental agencies; costs of preparation and investigation, computer legal research; abstracting; complex document production; processing, loading, conversion, coding, manipulation, technical assistance and project management costs for use with litigation support software; computer searches and computer generated documents and filings; and applicable taxes. Some such costs may include an administrative fee charged by the Firm, as determined by the Firm from time to time. However, instead of charging for long distance and telephone conference fees, facsimile transmissions, routine printing, scanning, photocopying, or other digital or electronic images, the firm may elect to charge a one-time fee of $2.25 per megabyte of stored records rounded up to the nearest dollar. This electronic records fee will be charged only once, as records are added to the database, and will not be a recurring charge for storage.

NON-RETAINER BILLING RATES:

Associations not on Annual Retainer or Associations who discontinue Annual Retainer Agreements or terminate the services of the Firm for any reason will be billed at the following hourly rates for general legal services that would have otherwise been covered by the Annual Retainer, which are higher than the hourly rates for Annual Retainer Associations of the Firm: $550.00 for shareholders, $450.00 for senior attorneys, $400.00 for associates. Legal services that would not have otherwise been covered by the Annual Retainer will be billed at the prevailing hourly rates of the attorneys handling the matter and will be quoted prior to commencing legal services for non-retainer Associations. At any time the Association discontinues the Annual Retainer Agreement or terminates the services of the Firm for any reason, the Association will be billed at the attorneys' higher non-annual retainer hourly rates for all legal services the Firm continues to provide at the Association's request or for any new or additional legal services. Further, any and all costs and fees that have accrued, but have not been taken by the Firm or for which payment has not been received by the Firm, are automatically and immediately due and payable in full by the Association to the Firm. The Firm will not provide any legal services unless and until all such accrued costs and fees are paid to the Firm by the Association. In addition to billing at the attorneys' higher non-annual retainer hourly rate, the Firm can require the Association to deposit with the Firm a cost and fee retainer of the Firm's choosing commensurate with the legal services the Firm is being asked to provide. If the Firm requires this cost and fee retainer, the Firm will not provide any legal services unless and until the cost and fee retainer is paid to the Firm by the Association. All client files belong to the Firm, not the client. Subject to the Firm's retaining lien, upon termination of representation, the client may request, only in writing, a copy of client files, excluding Firm work product, administrative materials, internal Firm communications, and billing and financial related items (hereinafter referred to as the "File Documents"). The client must identify with particularity which File Documents it requests. The client must pay, in advance, the cost or estimated cost of duplicating and delivering File Documents calculated as follows: labor cost of $175 per hour (it is estimated four to ten hours will be required for each matter depending upon the size of the file) plus archival retrieval and duplication costs, plus any out-of-pocket costs incurred by the Firm. Copies will be provided within 45 days from receipt of the client's written request *and* payment of the cost of duplicating and delivering File Documents specified herein. The Firm may extend the date for providing copies when the File Documents requested are voluminous. However, Client files are, generally, destroyed seven (7) years after completion of the work and may not be available thereafter for retrieval. **NOTE: If the Association has not renewed its retainer agreement but still requests legal work to be performed or if legal work is otherwise required, the terms and conditions of this Retainer Agreement shall apply except that the Preferred Hourly Rates specified shall not apply and the default non-retainer rates set forth elsewhere herein shall be deemed applicable, and may be adjusted retroactively.**

DISCLOSURE OF ATTORNEY-CLIENT RELATIONSHIP:

The Association consents to the firm disclosing the attorney-client relationship existing between the Association and Becker for the firm's marketing and promotional purposes.

Our communications with the Association are subject to the attorney-client privilege, which could be waived by communications with parties not subject to the privilege. Based upon Florida case law, a court may determine on a case by case basis whether communications with a Community Association Manager (CAM) or management company constitute a privilege waiver. We recommend that our clients consult with us about this issue and determine the extent of CAM/management company involvement in legal matters. Absent same, and understanding that a privilege waiver issue could arise, it is the Firm's policy to communicate with those "authorized contacts" designated by the Association, including CAMs and management companies unless advised to the contrary.

CONFIDENTIALITY:

Our relationship with you, including the communications between our office and you and your co-workers, is confidential and those communications are covered by what is called lawyer/client privilege. In order for us to best represent your interests and to give you the best possible legal representation, it is vitally important that you respect that relationship and confidentiality and that you take care not to divulge any of our confidential communications to any outside party including family members and friends. Providing such information to another person or company means that the opposing party to our litigation may in some fashion gain access to information which we consider to be highly critical in the representation of your matter.

The usage of social media such as Facebook©, Instagram®, Twitter© or even Linkedin® (etc.) may jeopardize the confidentiality, if any of the materials you "post" on a site are relevant to any matter involved in your case. A "tweet" in which you might discuss a deposition or a discussion that you might have with someone in your firm may allow the opposing counsel to "discover" (using a process called Discovery) details of a matter which is germane and possibly even vital to your representation. We ask,

therefore, that you not use any of these kinds of sites to discuss your case or anything even remotely related to your case. We cannot take responsibility for, nor countenance the usage of social media. Please be advised that if we, in our professional opinion, feel that you have used such media in a manner which is detrimental to the matter at hand and to our success or failure in representing your interests, we reserve the right to withdraw from representation in the same manner that we might if you had failed to follow through with our requests for information or other case related requirements.

CONFLICTS OF INTEREST:

In instances when the Firm represents a corporation or other entity, our Client is the "entity" and not with its individual officers, shareholders, members, managers, directors, partners, or persons in similar positions, or with its parent, subsidiaries, or other affiliates. In these cases, our professional responsibilities are owed only to that entity, alone, and no conflict of interest will be asserted by you because we represent persons with respect to interests that are adverse to the individual persons or business organizations having a relationship with you. Of course, we can also represent individual officers, shareholders, partners, members, managers and other persons related to the entity in matters that do not conflict with the interests of the entity, but any such representation will be the subject of a separate engagement letter. Similarly, when we represent a party on an insured claim, we represent the insured, not the insurer, even though we may be approved, selected, or paid by the insurer.

VIRUS AND COMPUTER HACKING PROTECTION:

During the course of our engagement, we will exchange electronic versions of documents and emails with you and others using commercially available software. Unfortunately, businesses and people are often victimized by the creation and dissemination of computer viruses, hackers, malware, ransomware or similar destructive electronic programs. We take these issues seriously and have invested in software and systems that identify and protect against these issues. We update our system with the software of various vendors' current releases at regular intervals. And we train lawyers and staff to recognize these issues.

Because bad actors can penetrate any computer security systems, we cannot guarantee we will not be successfully attacked or that your documents, email and confidential information will not be compromised. Accordingly, we are not responsible for any such issues and make no warranties regarding them.

EXHIBIT "D"

UNIFORM COLLECTION POLICY AND RETAINER AGREEMENT FOR COMMUNITY ASSOCIATION ANNUAL RETAINER CLIENTS OF BECKER & POLIAKOFF, P.A.

When a collection matter is referred to the Firm, it must be submitted on a ledger showing all charges, payments and delinquencies and dating back to a time when the delinquent owner had a zero balance. The Firm will send a letter to the delinquent owner requesting payment of the outstanding obligation and specifying the Association's intent to record a Claim of Lien and to foreclose that Claim of Lien, if the entire balance is not paid in full.

If payment in full is not received within the time allowed under the Firm's initial collection letter, after verifying that payment has not been made directly to the Association and obtaining the Association's authorization, the Firm will record of a Claim of Lien. The Firm will send the owner a copy of the Claim of Lien, together with the written notice of the Association's intent to foreclose that Claim of Lien within thirty (30) days, or forty-five (45) days, as applicable, from the date the letter is mailed, unless full payment is made.

Pursuant to the **Fair Debt Collections Practices Act,** the Firm may be defined as a debt collector when providing collection services and the assessment may fall within the definition of a debt. The law requires collection efforts to be suspended, if a debtor requests validation of the debt in writing within thirty (30) days of the initial communication between the debtor and the debt collector. The Firm will cease collection efforts until the Association verifies, in writing, the amount due. The Association agrees to cooperate with the Firm in connection with any effort to validate the debt. If the Association fails to cooperate, the Firm will take no further action on the Association's behalf. The Firm will mail a copy of the Association's verification to the debtor. Should the Association receive any notice disputing the delinquent amount or receive a request for validation of the debt, such notice or request must be immediately provided to the Firm.

As compensation for collection services provided by the Firm, the Association agrees to pay to the Firm One Hundred Seventy Five ($175.00) Dollars per hour. The billing rate and the terms of this Agreement effective for any renewal term remain the same, unless a change is announced by the Firm in writing before the renewal begins.

The Firm will provide the Association monthly itemized statements for services performed. Fees billed are due and payable within ten (10) days after receiving the statement. Unpaid bills bear interest at the highest rate permissible under the law until paid, commencing 30 days after due date. Alternative billing arrangements may be made by the Firm, at its discretion, upon the written request of the Association. If so provided, the Association must sign a separate retainer agreement setting forth the terms of representation.

In addition to the fees set forth above, the Association must pay the Firm for any and all costs, including, but not limited to postage; overnight courier services; travel; parking; filing and electronic filing, recording, certification, registration or recording fees charged by governmental agencies; costs of preparation and investigation, computer legal research; abstracting; complex document production; processing, loading, conversion, coding, manipulation, technical assistance and project management costs for use with litigation support software; computer searches and computer generated documents and filings; and applicable taxes. Some such costs may include an administrative fee charged by the Firm, as determined by the Firm from time to time. However, instead of charging for long distance and telephone conference fees, facsimile transmissions, routine printing**,** scanning, photocopying, or other digital or electronic images, the firm may elect to charge a one-time fee of $2.25 per megabyte of stored records rounded up to the nearest dollar. This electronic records fee will be charged only once, as records are added to the database, and will not be a recurring charge for storage.

The owners may be responsible to reimburse the Association for court costs and attorney's fees incurred in the collection of assessments. Nevertheless, the Association understands that the Firm will remit statements for services rendered and costs incurred on a monthly basis and the Association agrees to pay such amounts as billed. Any amount received from the owner will be remitted to the Association and such amount may include attorney's fees and costs previously paid to the Firm by the Association. Regardless of whether all fees and costs billed to the Association are recovered from the owner, the Association understands and agrees to pay fees and costs billed. If the Association is past due on any of its financial obligations to the Firm, the Firm may withhold delivery of any funds received from an owner at any stage of the collection or foreclosure process until the Association cures any delinquency owed to the Firm, and the Firm may apply any such funds towards any fees and costs owed to the Firm. Should the Firm cease representing the Association for any reason, including the Firm's voluntary withdrawal during the pendency of any matter or action,

and if any attorney's fees or costs remain unpaid, the Firm is entitled to a charging lien and to payment of any costs and attorney's fees out of any eventual recovery in the action (in addition to any right to a retaining lien) or other rights retained herein.

The Firm will try to recover from the owner the amount paid by the Association to the Firm for those services involved in the collection process at the time the collection matter is resolved. Legal fees billed become part of the claim against the unit (home) owner where permitted by law. At the Firm's discretion, there may be non-routine aspects of a collection matter (e.g. special assessments, developer assessment delinquency, non-assessment charges, etc.) that may require review or work by the Firm to properly represent the Association. Some charges are typically not recoverable from the delinquent owner, even though those charges are billed to and paid by the Association. The Association acknowledges that, in certain circumstances, not all legal fees billed will become part of the claim against the owner. Such fees and circumstances are determined by the Firm in its discretion. Unless authorized by the Association, the case will not be settled by the Firm without including the attorney's fees that are part of the claim. Unless Association has an account receivable with the Firm over sixty (60) days past due on any matter, the Firm will advance the cost of recording the claim of lien in the Public Records and the cost of postage, including certified or registered mail. These costs are due and payable on a monthly basis and become delinquent in the same manner as fees provided herein. If any other costs may be incurred in connection with the collection process, the Association must provide the Firm with a cost deposit, in advance of incurring the cost, when requested by the Firm. Any cost deposits not utilized will be refunded to the Association upon conclusion of the matter. However, the Firm has the right, at any time, to disburse funds recovered in the collection process and, at the conclusion of the matter or upon the Association's termination of services, the Firm has the right to disburse the balance of funds in the cost deposit account directly to the Firm to pay fees due the Firm for any collection or other matter.

Notwithstanding anything to the contrary, at any time the Association discontinues the Annual Retainer Agreement or terminates the services of the Firm for any reason, the Association will be billed at the attorneys' higher non-annual retainer prevailing hourly rates for all legal services the Firm continues to provide at the Association's request or for any new or additional legal services the Firm provides at the Association's request. Further, any and all costs and fees that have accrued, but have not been billed by the Firm or for which payment has not been received by the Firm, are automatically and immediately due and payable in full by the Association to the Firm. The Firm will not provide any legal services unless and until all such accrued costs and fees are paid to the Firm by the Association. In addition, the Firm can require the Association to deposit with the Firm a cost and fee retainer of the Firm's choosing commensurate with the legal services the Firm is being asked to provide. If the Firm requires this cost and fee retainer, the Firm will not provide any legal services unless and until the cost and fee retainer is paid to the Firm by the Association. All client files belong to the Firm, not the client. Subject to the Firm's retaining lien, upon termination of representation, the client may request, only in writing, a copy of client files, excluding Firm work product, administrative materials, internal Firm communications, and billing and financial related items (hereinafter referred to as the "File Documents"). The client must identify with particularity which File Documents it requests. The client must pay, in advance, the cost or estimated cost of duplicating and delivering File Documents calculated as follows: labor cost of $175 per hour (it is estimated four to ten hours will be required for each matter depending upon the size of the file) plus archival retrieval and duplication costs, plus any out-of-pocket costs incurred by the Firm. Copies will be provided within 45 days from receipt of the client's written request *and* payment of the cost of duplicating and delivering File Documents specified herein. The Firm may extend the date for providing copies when the File Documents requested are voluminous. However, Client files are, generally, destroyed seven (7) years after completion of the work and may not be available thereafter for retrieval.

In the event that legal action is required to collect past-due obligations owed to the Firm by the Association, the Firm is entitled to recover reasonable costs and attorney's fees, including the value of time expended by the Firm in pursuing such legal action, even when the Firm represents itself. The Firm is also entitled to recover reasonable attorney's fees to establish its right to recover attorney's fees and to establish the amount of attorney's fees to which it is entitled to recover.

This Agreement authorizes the Firm to sign Claims of Lien and Satisfactions of Lien for and on behalf of the Association.

COMPOSITE EXHIBIT "E"

FORECLOSURE RETAINER AGREEMENT

As compensation for foreclosing the Association's Claim of Lien, the Association agrees to pay to the Firm One Hundred Seventy Five ($175.00) Dollars per hour. The Firm will provide the Association monthly itemized statements for services performed. Fees billed are due and payable within ten (10) days after receiving the statement. Unpaid bills bear interest at the highest rate permissible under the law until paid, commencing 30 days after due date. Alternative billing arrangements may be made by the Firm, at its discretion, upon the written request of the Association. If so provided, the Association must sign a separate retainer agreement setting forth the terms of representation. The billing rate and the terms of this Agreement effective for any renewal term remain the same, unless a change is announced by the Firm in writing before the renewal begins. Association acknowledges that the fees being paid under this Retainer Agreement are less than those fees charged to Associations that are not under an Annual Retainer Agreement with the Firm.

The owners may be responsible to reimburse the Association for court costs and attorney's fees in connection with foreclosing the Association's Claim of Lien. Nevertheless, the Association understands that the Firm will remit statements for services rendered and costs incurred on a monthly basis and the Association agrees to pay such amounts as billed. Any amount received from the owner will be remitted to the Association and such amount may include attorney's fees and costs previously paid to the Firm by the Association. Regardless of whether all fees and costs billed to the Association are recovered from the owner, the Association understands and agrees to pay fees and costs billed. If the Association is past due on any of its financial obligations to the Firm, the Firm may withhold delivery of any funds received from an owner at any stage of the foreclosure process, until the Association cures any delinquency owed to the Firm, and the Firm may apply any such funds towards any fees and costs owed to the Firm. Should the Firm cease representing the Association for any reason, including the Firm's voluntary withdrawal during the pendency of any matter or action, and if any attorney's fees or costs remain unpaid, the Firm is entitled to a charging lien and to payment of any costs and attorney's fees out of any eventual recovery in the action (in addition to any right to a retaining lien) or other rights retained herein.

The Firm will try to recover from the owner, or from the proceeds of the foreclosure sale, the amount paid by the Association to the Firm for those services involved in the foreclosure process, if the matter is resolved prior to a judgment entered by the court. In most circumstances, all legal fees billed become part of the claim against the owner. However, the Association acknowledges that, in certain circumstances, not all legal fees billed will become part of the claim against the owner; such fees and circumstances are determined by the Firm in its discretion. Unless authorized by the Association, the case will not be settled by the Firm without including the attorney's fees that are part of the claim. If attorney's fees are awarded by a court and are collected from a foreclosure sale or are paid by the owner, the Firm is entitled to receive such fees to the extent they exceed the amount the Association would otherwise be obligated to pay the Firm under this Agreement.

It is understood and agreed that this agreement does not apply: (1) to the defense of any counterclaim that may be filed against the Association, or (2) in the event of any factor rendering the litigation unusually complex, as set forth in a written notice from the Firm to the Association, in which case the Firm will be entitled to compensation at the hourly rates set forth in Exhibit "B" or in a separate Retainer Agreement. In the event that a covenant enforcement cause of action is brought against the owner(s) by the Association in the foreclosure action, the billing rates and procedures for covenant enforcement only is the same as those set forth in Exhibit "F". In the event an appeal of the action is filed, a different fee structure may, in the Firm's discretion, apply.

In addition to the fees set forth above, the Association must pay the Firm for any and all costs, including, but not limited to postage; overnight courier services; travel; parking; filing and electronic filing, recording, certification, registration or recording fees charged by governmental agencies; costs of preparation and investigation, computer legal research; abstracting; complex document production; processing, loading, conversion, coding, manipulation, technical assistance and project management costs for use with litigation support software; computer searches and computer generated documents and filings; and applicable taxes. Some such costs may include an administrative fee charged by the Firm, as determined by the Firm from time to time. However, instead of charging for long distance and telephone conference fees, facsimile transmissions, routine printing**,** scanning, photocopying, or other digital or electronic images, the firm may elect to charge a one-time fee of $2.25 per megabyte of stored records rounded up to the nearest dollar. This electronic records fee will be charged only once, as records are added to the database, and will not be a recurring charge for storage.

Some of the costs are recoverable in the event of a settlement or a favorable judgment. Any cost deposits not utilized will be refunded to the Association upon conclusion of the matter. Further, the Association agrees to submit such attorney's fee deposits,

in advance, as may be required at the discretion of the Firm, in order to insure that sufficient funds will be available to pay the services that are being rendered, based upon the circumstances of the case from time to time.

If the Association authorizes the Firm to file a foreclosure action, the Association must submit an initial cost deposit for costs, such as filing fees, process server charges and computer searches, which the Firm will deposit into a trust account in the name of the Association. The amount of the initial cost deposit is determined by the Firm, in its discretion, at the time it is requested. Additional cost deposits may be required as the action progresses. The Association agrees to submit such additional cost deposits in advance as required by the Firm. At the conclusion of the litigation or if the Association terminates the Firm's representation, the Firm has the right to disburse the balance of funds in the cost deposit account directly to the Firm to pay fees or costs due the Firm for any collection/foreclosure or other matter.

A short authorization form or other similar writing must be submitted by the Association to the Firm authorizing the Firm to proceed pursuant to the terms of this Agreement. Any additional authorizations or special instructions by the Association regarding the amounts due and/or status of the account or concerning the settlement or dismissal of the action must be submitted in writing to the Firm. This Agreement authorizes the Firm to sign satisfactions of lien for Association. Association acknowledges and agrees that the Firm relies on Association to provide accurate information regarding or in any way relating to any amounts due the Association and Association agrees to defend, indemnify and hold the Firm harmless for any claims of any kind whatsoever, including, but not limited to, any costs and attorney's fees related in any way to the Firm's reliance on the information provided by the Association or Association's agent regarding or in any way related to the amount due the Association.

At any time the Association discontinues the Annual Retainer Agreement or terminates the services of the Firm for any reason, the Association will be billed at the attorneys' higher non-annual retainer prevailing hourly rates for all legal services the Firm continues to provide at the Association's request or for any new or additional legal services the Firm provides at the Association's request. Further, any and all costs and fees that have accrued, but have not been billed by the Firm, or for which payment has not been received by the Firm, are automatically and immediately due and payable in full by the Association to the Firm. The Firm will not provide any legal services unless and until all such accrued costs and fees are paid to the Firm by the Association. In addition, the Firm can require the Association to deposit with the Firm a cost and fee retainer of the Firm's choosing commensurate with the legal services the Firm is being asked to provide. If the Firm requires this cost and fee retainer, the Firm will not provide any legal services unless and until the cost and fee retainer is paid to the Firm by the Association. All client files belong to the Firm, not the client. Subject to the Firm's retaining lien, upon termination of representation, the client may request, only in writing, a copy of client files, excluding Firm work product, administrative materials, internal Firm communications, and billing and financial related items (hereinafter referred to as the "File Documents"). The client must identify with particularity which File Documents it requests. The client must pay, in advance, the cost or estimated cost of duplicating and delivering File Documents calculated as follows: labor cost of $175 per hour (it is estimated four to ten hours will be required for each matter depending upon the size of the file) plus archival retrieval and duplication costs, plus any out-of-pocket costs incurred by the Firm. Copies will be provided within 45 days from receipt of the client's written request *and* payment of the cost of duplicating and delivering File Documents specified herein. The Firm may extend the date for providing copies when the File Documents requested are voluminous. However, Client files are, generally, destroyed seven (7) years after completion of the work and may not be available thereafter for retrieval.

In the event that legal action is required to collect past-due obligations owed to the Firm by the Association, the Firm is entitled to recover reasonable costs and attorney's fees, including the value of time expended by the Firm in pursuing such legal action, even when the Firm represents itself. The Firm is also entitled to recover reasonable attorney's fees to establish its right to recover attorney's fees and to establish the amount of attorney's fees to which it is entitled to recover.

COMPOSITE EXHIBIT "E"

DEFENSE OF
FORECLOSURE RETAINER AGREEMENT

As compensation for defending the Association in a mortgage foreclosure, or in a community association lien foreclosure action when the Association is a defendant by virtue of its status as an alleged junior lien holder, or to assert in that lawsuit or by separate action, any claims it may have against Plaintiff or the owners, including, but not limited to, foreclosure and damages, the Association agrees to pay to the Firm One Hundred Seventy Five ($175.00) Dollars per hour. The Firm will provide the Association monthly itemized statements for services performed. Fees billed are due and payable within ten (10) days after receiving the statement. Unpaid bills bear interest at the highest rate permissible under the law until paid, commencing 30 days after due date. Alternative billing arrangements may be made by the Firm, at its discretion, upon the written request of the Association. If so provided, the Association must sign a separate retainer agreement setting forth the terms of representation. The billing rate and the terms of this Agreement effective for any renewal term remain the same, unless a change is announced by the Firm in writing before the renewal begins. Association acknowledges that the fees being paid under this Retainer Agreement are less than those fees charged to Associations that are not under an Annual Retainer Agreement with the Firm.

It is understood and agreed that this retainer does not apply: (1) to the defense of any cross-claim that may be filed against the Association, or (2) in the event of any factor rendering the litigation unusually complex, as set forth in a written notice from the Firm to the Association, in which case the Firm will be entitled to compensation at the hourly rates set forth in Exhibit "B" or in a separate Retainer Agreement. In the event that a covenant enforcement cause of action is brought against the owner(s) by the Association in the foreclosure action, the billing rates and procedures for the covenant enforcement only are the same as those set forth in Exhibit "F". In the event an appeal of the action is filed, a different fee structure may, in the Firm's discretion, apply.

In addition to the fees set forth above, the Association must pay the Firm for any and all costs, including, but not limited to postage; overnight courier services; travel; parking; filing and electronic filing, recording, certification, registration or recording fees charged by governmental agencies; costs of preparation and investigation, computer legal research; abstracting; complex document production; processing, loading, conversion, coding, manipulation, technical assistance and project management costs for use with litigation support software; computer searches and computer generated documents and filings; and applicable taxes. Some such costs may include an administrative fee charged by the Firm, as determined by the Firm from time to time. However, instead of charging for long distance and telephone conference fees, facsimile transmissions, routine printing, scanning, photocopying, or other digital or electronic images, the firm may elect to charge a one-time fee of $2.25 per megabyte of stored records rounded up to the nearest dollar. This electronic records fee will be charged only once, as records are added to the database, and will not be a recurring charge for storage.

Some such costs may include an administrative fee charged by the Firm, as determined by the Firm from time to time. It is understood and agreed that the Firm will not be required to advance costs on behalf of the Association, except as elsewhere provided herein, and the Association agrees to submit such cost deposit funds, in advance, as are necessary to pay for out-of-pocket expenses in connection with this matter. Further, the Association agrees to submit such attorney's fee deposits, in advance, as may be required at the discretion of the Firm, in order to insure that sufficient funds will be available to pay the services that are being rendered, based upon the circumstances of the case from time to time. The Firm may, in its discretion, bill the Association for costs incurred on the Association's behalf; payment by Association is due immediately upon billing. At the conclusion of the litigation, or if the Association terminates the Firm's representation, the Firm has the right to disburse the balance of funds in the cost deposit account directly to the Firm to pay fees or costs due the Firm for any collection/foreclosure or other matter. In the event that legal action is required to collect past-due obligations owed to the Firm by the Association, the Firm is entitled to recover reasonable attorney's fees and costs, including the value of time expended by the Firm in pursuing such legal action, even when the Firm represents itself. The Firm is also entitled to recover reasonable attorney's fees to establish its right to recover attorney's fees and to establish the amount of attorney's fees to which it is entitled to recover.

The owners may be responsible to reimburse the Association for court costs and attorney's fees in connection with the proceedings contemplated herein. Nevertheless, the Association understands that the Firm will remit statements for services rendered and costs incurred on a monthly basis, and the Association agrees to pay such amounts as billed. Any amount received from the owner will be remitted to the Association, and such amount may include attorney's fees and costs previously paid to the Firm by the Association. Regardless of whether all fees and costs billed to the Association are recovered from the owner, the Association understands and agrees to pay fees and costs billed. If the Association is past due on any of its financial obligations to the Firm, the Firm may withhold delivery of any funds received from an owner at any stage of the collection or foreclosure process, until the

Association cures any delinquency owed to the Firm, and the Firm may apply any such funds towards any fees and costs owed to the Firm. Should the Firm cease to represent the Association for any reason, including the Firm's voluntary withdrawal during the pendency of any matter or action, and if any attorney's fees or costs remain unpaid, the Firm is entitled to a charging lien and to payment of any costs and attorney's fees out of any eventual recovery in the action (in addition to any right to a retaining lien) or other rights retained herein.

If the Firm, or any of its attorneys, serves as the Association's registered agent and is served with a foreclosure action wherein the Association is named as an adverse party, this Agreement is the Association's authorization for the Firm to act on the Association's behalf to file whatever response the Firm deems appropriate in the action. Such response may include, but is not limited to, an answer to protect the Association's interest. Such response may be taken by the Firm, in its sole discretion, without any further authorization from the Association and the Association agrees to pay for attorney's fees incurred in such action. Likewise, if the Association, or any agent of the Association, delivers a foreclosure action to the Firm wherein the Association is named as an adverse party, such delivery is the Association's authorization to take whatever action is necessary to protect the Association's interest without further approval from the Association. Any additional authorizations or special instructions by the Association regarding the amounts and/or status of this account or concerning settlement or dismissal of the action must be submitted in writing to the Firm.

At any time the Association discontinues the Annual Retainer Agreement or terminates the services of the Firm for any reason, the Association will be billed at the attorneys' higher non-annual retainer prevailing hourly rates for all legal services the Firm continues to provide at the Association's request or for any new or additional legal services the Firm provides at the Association's request. Further, any and all costs and fees that have accrued, but have not been billed by the Firm or for which payment has not been received by the Firm, are automatically and immediately due and payable in full by the Association to the Firm. The Firm will not provide any legal services unless and until all such accrued costs and fees are paid to the Firm by the Association. In addition, the Firm can require the Association to deposit with the Firm a cost and fee retainer of the Firm's choosing commensurate with the legal services the Firm is being asked to provide. If the Firm requires this cost and fee retainer, the Firm will not provide any legal services unless and until the cost and fee retainer is paid to the Firm by the Association. All client files belong to the Firm, not the client. Subject to the Firm's retaining lien, upon termination of representation, the client may request, only in writing, a copy of client files, excluding Firm work product, administrative materials, internal Firm communications, and billing and financial related items (hereinafter referred to as the "File Documents"). The client must identify with particularity which File Documents it requests. The client must pay, in advance, the cost or estimated cost of duplicating and delivering File Documents calculated as follows: labor cost of $175 per hour (it is estimated four to ten hours will be required for each matter depending upon the size of the file) plus archival retrieval and duplication costs, plus any out-of-pocket costs incurred by the Firm. Copies will be provided within 45 days from receipt of the client's written request *and* payment of the cost of duplicating and delivering File Documents specified herein. The Firm may extend the date for providing copies when the File Documents requested are voluminous. However, Client files are, generally, destroyed seven (7) years after completion of the work and may not be available thereafter for retrieval.

EXHIBIT "F"

COVENANT
ENFORCEMENT RETAINER AGREEMENT

As compensation for pre-suit mediation, arbitration, or a court action against the unit or lot owner(s) and such other individuals as the Firm may decide, to enforce community association statutes, covenants, restrictions and/or rules and regulations, the Association agrees to pay the Firm based upon Exhibit "B". The Firm will provide the Association monthly itemized statements for services performed. Fees billed are due and payable within ten (10) days after receiving the statement. Unpaid bills bear interest at the highest rate permissible under the law until paid, commencing 30 days after due date. Alternative billing arrangements may be made by the Firm, at its discretion, upon the written request of the Association. If so provided, the Association must sign a separate retainer agreement setting forth the terms of representation. The billing rate and the terms of this Agreement effective for any renewal term remain the same, unless a change is announced by the Firm in writing before the renewal begins. Association acknowledges that the fees being paid under this Retainer Agreement are less than those fees charged to Associations that are not under an Annual Retainer Agreement with the Firm. In the event an appeal is filed, a different rate may apply.

At any time the Association discontinues the Agreement or terminates the services of the Firm, the Association will be billed at the attorneys' higher non-annual retainer prevailing hourly rates for all legal services the Firm continues to provide at the Association's request or for any new or additional legal services the Firm provides at the Association's request. Any and all costs and fees that have accrued, but have not been taken by the Firm or for which payment has not been received by the Firm, are automatically and immediately due and payable in full by the Association to the Firm. The Firm will not provide any legal services unless and until all such accrued costs and fees are paid by the Association. In addition to billing at the attorneys' higher hourly rate, the Firm can require the Association to deposit with the Firm a cost and fee retainer of the Firm's choosing commensurate with the legal services the Firm is being asked to provide. If the Firm requires this cost and fee retainer, the Firm will not provide any legal services until the cost and fee retainer is paid. All client files belong to the Firm, not the client. Should the Firm cease to represent you for any reason, including the Firm's voluntary withdrawal during the pendency of any action, and subject to the right of the Firm to assert a retaining lien, you may request, only in writing, a copy of client files, excluding Firm work product, administrative materials, internal Firm communications, and billing and financial related items (hereinafter referred to as the "File Documents"). You must identify with particularity which File Documents you are requesting. You must pay, in advance, the cost of duplicating and delivering File Documents calculated as follows: labor cost of $175 per hour plus archival retrieval and duplication costs, plus any out-of-pocket costs incurred by the Firm. Copies will be provided within 45 days from receipt of your written request *and* payment of the cost of duplicating and delivering File Documents specified herein. The Firm may extend the date for providing copies when the File Documents requested are voluminous. However, Client files are, generally, destroyed seven (7) years after completion of the work and may not be available thereafter for retrieval.

In addition to the fees set forth above, the Association must pay the Firm for any and all costs, including, but not limited to postage; overnight courier services; travel; parking; filing and electronic filing, recording, certification, registration or recording fees charged by governmental agencies; costs of preparation and investigation, computer legal research; abstracting; complex document production; processing, loading, conversion, coding, manipulation, technical assistance and project management costs for use with litigation support software; computer searches and computer generated documents and filings; and applicable taxes. Some such costs may include an administrative fee charged by the Firm, as determined by the Firm from time to time. However, instead of charging for long distance and telephone conference fees, facsimile transmissions, routine printing**,** scanning, photocopying, or other digital or electronic images, the firm may elect to charge a one-time fee of $2.25 per megabyte of stored records rounded up to the nearest dollar. This electronic records fee will be charged only once, as records are added to the database, and will not be a recurring charge for storage.

Some such costs may include an administrative fee charged by the Firm, as determined by the Firm from time to time. It is understood and agreed that the Firm will not be required to advance costs on behalf of the Association and the Association agrees to submit such additional cost deposit funds as are necessary to pay for out-of-pocket expenses in connection with this matter. The Association agrees to submit such attorney's fee deposits as may be required at the discretion of the Firm, in order to insure that sufficient funds will be available to pay the services that are being rendered, based upon the circumstances of the case from time to time. In the event that legal action by the Firm is required to collect past-due obligations from the Association, the Firm is entitled to recover its costs and reasonable attorney's fees, including the value of time expended by the Firm in pursuing such legal action, even when the Firm represents itself. The Firm is also entitled to recover reasonable attorney's fees to establish its right to recover attorney's fees and to establish the amount of attorney's fees to which it is entitled to recover. Should the Firm cease to represent the Association

for any reason, including the Firm's voluntary withdrawal during the pendency of any matter or action, and any attorney's fees or costs remain unpaid, the Firm is entitled to a charging lien and to payment of any costs and attorney's fees out of any eventual recovery in the action (in addition to any right to a retaining lien) or other rights retained herein.

The owners may be responsible for court costs, arbitration costs and attorney's fees in connection with the proceedings contemplated herein. Nevertheless, the Association understands that the Firm will remit statements for services rendered and costs incurred on a monthly basis and the Association agrees to pay such amounts as billed. Any amount received from the owner will be applied first to the unpaid balance of fees and costs, if any, and any excess returned to the Association as a reimbursement of fees and costs previously paid.

A short authorization form or other similar writing must be submitted by the Association to the Firm, authorizing the Firm to proceed pursuant to the terms of this Agreement. Any additional authorizations or special instructions by the Association regarding the services provided under this Retainer must be submitted to the Firm in writing.