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mailed 8/14/19

# Becker

Becker & Poliakoff  
1 East Broward Blvd., Suite 1800  
Ft. Lauderdale, FL 33301

August 13, 2019

13<sup>th</sup> Floor Homes  
Michael Nunziata

**Re: 13<sup>th</sup> Floor Homes ("13<sup>th</sup> Floor") Reimbursement Agreement and Scope of Services ("WHOA Agreement) for Woodlands Homeowners Association ("WHOA") re: proposed redevelopment (and associated applications including LUPA and Rezoning) of Woodlands Golf Courses, in Tamarac, FL ("Project")**

Dear Mr. Nunziata:

After multiple meetings, discussions, review of plans, and consideration of the future of our community, the WHOA has come to the conclusion it is in its best interest to support 13<sup>th</sup> Floor Homes' redevelopment plans for the Woodlands Golf Courses, provided the contingencies and conditions laid out in the following paragraphs are met by applicant. Specifically, the WHOA's support of the Project is based on the memorialization of design progress and WHOA Agreement as follows:

1. **Community Outreach:** In the spirit of community outreach and being good neighbors, 13<sup>th</sup> Floor will continue to meet with the WHOA, individual homeowners and Sections regarding the land use, zoning and site plan applications, and take notes on concerns and feedback, to be passed along regularly to the WHOA and posted on the Woodlands 2020 website. Should it appear that there is widespread community support for modifications, 13<sup>th</sup> Floor and the WHOA will discuss if it is in the best interests of the overall community to amend the affected applications, and if so, agree on appropriate implementation plans.
2. **Transparency:** 13<sup>th</sup> Floor will provide the WHOA with copies of all land use, zoning and site plan applications, as well as any supplemental submittal materials, including expert reports, that have been or will be submitted to the City and/or County ("Submittal Materials"). 13<sup>th</sup> Floor understands that the WHOA, including its consultants, will review the Submittal Materials and provide feedback and comments for 13<sup>th</sup> Floor's consideration. The WHOA acknowledges and agrees that the transparency noted above shall be mutual between the parties and that the WHOA will provide 13<sup>th</sup> Floor with copies of any WHOA correspondence or materials submitted to the City, County or other government agencies (including elected officials) related to the Project.
3. **Binding Documents Passed along to WHOA:** 13<sup>th</sup> Floor will provide all binding documentation to the WHOA for its review and comment; this shall include, but not be limited to: Development Agreement with City, any Grant applications to City or other governmental entity, Restrictive Covenant, and Association Documents. The WHOA acknowledges that it will not be a party to the Development Agreement with the City. WHOA shall have the right

to review any provisions in the Restrictive Covenant, and Association Documents that may directly affect WHOA. 13<sup>th</sup> Floor shall work with WHOA as to any provisions that affect the WHOA. Any provisions in the Restrictive Covenant, and Association Documents that directly burden the WHOA may not be included without WHOA's prior written approval.

4. Density: 13<sup>th</sup> Floor agrees that the site plan shall have a maximum of 410 residential units.
5. Restrictive Covenant: 13<sup>th</sup> Floor agrees that the Project shall include a minimum of 160 acres of open space to be maintained in perpetuity; the aforementioned Restrictive Covenant shall run with the land, bind and inure to the benefit of the WHOA, successors and assigns. The maintenance of these 160 acres will be the sole responsibility of "Section 9" as described herein or a community development district established by 13<sup>th</sup> Floor. The Restrictive Covenant shall also include other commitments and obligations made by 13<sup>th</sup> Floor for the benefit of the WHOA. Once prepared, a draft of the Restrictive Covenant will be provided to the WHOA for review and comment and compliance with paragraph 3 above.
6. Phasing: 13<sup>th</sup> Floor shall obtain building permits and commence construction of amenities within a given phase prior to, or concurrent with, issuance of vertical residential building permits for the first production homes (excluding model homes) within that phase of the Project. Amenities shall include preservation of a minimum of 160 acres of permanently preserved open space as evidenced by a recorded Restrictive Covenant, the recreation campus that will include a new clubhouse, pool, sports courts and other recreation amenities ("Recreation Campus"), a new recreation trail that will include sitting areas, water features such as fountains in the existing and new lakes, entry features that will include gated entrances and new signage for the community, landscape buffers between existing and proposed development, and other improvements and amenities all of which shall be specifically located through the site plan review process for the Project ("Amenities"). 13<sup>th</sup> Floor agrees that the Recreation Campus shall be available to all current Woodlands homeowners, their heirs, executors and assigns for a monthly fee, generally understood to be not more than \$100, that will be established prior to completing the Restrictive Covenant. The timing obligations established in this paragraph shall not prevent 13<sup>th</sup> Floor from obtaining and commencing land development activity or construction of model homes.
7. Landscape Buffering: 13<sup>th</sup> Floor agrees to install appropriate landscape buffering as specified on the approved site plan for the Project between the new homes proposed within the Project abutting or directly impacting upon existing homes within the Woodlands community, prior to, or concurrent with, issuance of residential building permits for the first production homes (excluding model homes) within that particular phase of the Project. Landscape buffering may include: lakes, open space, berms, mature trees, and other appropriate landscape features ("Landscape Buffers"). For clarification, the timing obligations established in this paragraph shall not prevent 13<sup>th</sup> Floor from obtaining and commencing land development activity or construction of model homes. 13<sup>th</sup> Floor shall use good faith efforts to complete landscape buffers adjacent to lots where 13<sup>th</sup> Floor reasonably anticipates construction of new homes to commence within six (6) months (except model homes). For the avoidance of doubt, no

residential construction (except model homes) may commence prior to the completion of an adjacent landscape buffer.

8. Section 9: The new Section 9 that is created as a result of the Project shall pay for and be responsible for maintenance and required improvements of common areas, including the Amenities, Landscape Buffers, Recreation Campus, recreational trails, perimeter walls and fences and other improvements proposed as part of the Project, which shall include the 160 acres referenced in Paragraph 5 above. Payment would be made via an assessment on the tax bill through a newly created Community Development District or monthly invoicing through a homeowners association, as applicable, created by 13<sup>th</sup> Floor for Section 9.
9. Financial Documents of Golf Courses: 13<sup>th</sup> Floor agrees to share with WHOA whatever financial documents Clublink (owner and operator of the Woodlands Golf Courses) provides, to the extent such documents are not confidential and Clublink has consented to 13<sup>th</sup> Floor's release of such documents.
10. Conditions of Approval: All of the limitations or restrictions on development noted herein or otherwise imposed by the City, County or other governmental agencies, shall be included in one or all of the following: Conditions of approval by the City of Tamarac, Development Agreement, Plat Note Restriction (as applicable), LUPA Restriction (as applicable), Restrictive Covenant or a binding WHOA Agreement between 13<sup>th</sup> Floor and the WHOA, as appropriate and otherwise required by the applicable government agency.
11. Reimbursement for Present Fees and Traffic Review: Upon execution of this WHOA Agreement, 13<sup>th</sup> Floor agrees to directly reimburse WHOA Twenty-Five Thousand and 00/100 (\$25,000.00) for current fees and costs incurred or anticipated to be incurred imminently by the WHOA in relation to its review of the Project. Additionally, WHOA may, at its discretion, hire its own development consultants, which may include a traffic consultant to review traffic impacts from the LUPA, Rezoning and Site Plan and suggest mitigation and improvements. Estimated fees for the traffic consultant are Ten Thousand and 00/100 Dollars (\$10,000.00). WHOA further represents, and 13<sup>th</sup> Floor does not dispute, that the WHOA has incurred an additional Fifteen Thousand and 00/100 Dollars (\$15,000.00) in relation to its review of the Project to date. 13<sup>th</sup> Floor acknowledges and agrees to reimburse the WHOA the additional Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) dollars noted above (\$10,000.00 for consultants and \$15,000.00 already incurred) within five (5) business days of the Planning Board's approval of the site plan for the Project, assuming such site plan is not "called up" by the City Commission or otherwise appealed.
12. Reimbursement for future fees and monitoring expenses: 13<sup>th</sup> Floor will pay to WHOA an additional One Hundred Thousand and 00/100 Dollars (\$100,000.00) toward anticipated future fees and costs in connection with the Project, including monitoring, compliance and related attorneys' fees. It is specifically acknowledged and agreed by both 13<sup>th</sup> Floor and the WHOA that 13<sup>th</sup> Floor is agreeing to pay to WHOA an additional One Hundred Thousand and 00/100 Dollars (\$100,000.00) with the clear understanding that the professionals being hired by the WHOA are working with both the community and 13<sup>th</sup> Floor towards approval of a plan that

is consistent with the most recent development plan introduced by 13<sup>th</sup> Floor to the community (attached hereto). Additional experts WHOA may plan to hire as part of monitoring the Project, compliance, conducting due diligence and planning include: Civil Engineer, Planner, Landscape Architect, Land Use Expert and Economic Impact Study. The scope of services will include (1) review of the Submittal Materials; and (2) review of any conditions or restrictions governing 13<sup>th</sup> Floor's development plan, including the Development Agreement with the City, the Restrictive Covenants, and any conditions of approval proposed by the City, County or 13<sup>th</sup> Floor. Fees shall be reimbursed based upon the following schedule: 1) Fifty Thousand and 00/100 Dollars (\$50,000.00) within five (5) business days of expiration of the thirty (30) day appeal period following approval of the LUPA, Second Reading of the Rezoning and final approval of the Site Plan. 2) Fifty Thousand and 00/100 Dollars (\$50,000) within five (5) business days of 13<sup>th</sup> Floor closing on the property. It is generally expected that the landscape architect and planner will be retained earlier on in the DRC process, in order to review, opine and make recommendations on the site plan. All expert reports shall upon written or email request by 13<sup>th</sup> Floor be shared with 13<sup>th</sup> Floor, and if both parties consent, may be made part of the record at the City. The WHOA and 13<sup>th</sup> Floor acknowledge and agree that they will continue to work in good faith and in the spirit of cooperation and the WHOA agrees that it will cooperate, support and not oppose the Project. If at any time WHOA opposes approval of the Project 13<sup>th</sup> Floor may choose to immediately terminate this WHOA Agreement and shall not be obligated to any of the commitments noted herein, including remaining financial commitments. This WHOA Agreement not to oppose the Project applies to WHOA, and WHOA Board Members acting in their official WHOA Board Member capacity. The WHOA and WHOA Board Members, acting in their official capacity, intend to abide by the terms and spirit of this agreement to support the project.

13. Construction Management: 13<sup>th</sup> Floor will work with WHOA to ensure minimal impacts and disruption to the community during construction. A construction management plan will be agreed upon and executed between the parties at a later date, and shall include the following: Construction Work Hours, ROW closure plan, Loading plan, a Construction Liaison to host twice-monthly meetings with the community and be responsive with email and phone inquiries.
14. Insurance: The WHOA will be listed as an Additional Insured on the Project's liability policy.
15. Damage to Property: 13<sup>th</sup> Floor agrees that any damage caused to common areas or existing residential property within the Woodlands Community that clearly results from construction activities by 13<sup>th</sup> Floor or its contractors will be repaired or compensated. It shall be the WHOA or such individual owner's responsibility to clearly establish with supporting documentation, photographs or other evidence that such damage was caused by 13<sup>th</sup> Floor or its contractors.
16. Support of Proposed Project: The WHOA will provide a letter of support from the Board of Directors of the WHOA indicating that the Board has voted to support the Project, and the Board of Directors shall continue to support the Project throughout the approval process. The Board will not file or join any litigation opposing the Project. WHOA has no control over individual owners in the WHOA and/or individual associations in the WHOA, and cannot, and

does not, agree to anything regarding the actions of individual owners or individual associations or their board of directors in regard to the Project or this WHOA Agreement.

17. Complete agreement. This document, the WHOA Agreement, represents the complete and binding agreement between the parties and shall not be modified or amended unless in writing signed by the parties. The WHOA specifically acknowledges that none of the obligations or commitments established herein shall be binding on 13<sup>th</sup> Floor if the Project is not approved by the City, County and all other applicable government agencies and 13<sup>th</sup> Floor does not close on the property, with the exception of payments already made by 13<sup>th</sup> Floor to the WHOA as they shall be considered final once remitted.
18. Dispute Resolution. In the event that any disputes arise as to the terms, rights, and duties of the parties under the WHOA Agreement which cannot be resolved through good faith discussions, the prevailing party shall be entitled to recover their attorneys' fees and costs incurred at all level of legal proceedings where such disputes are at issue including appeals at the local level and in the courts. Any such dispute shall be filed in Broward County, Florida, and both parties waive their right to a jury trial in any such action to enforce the terms, rights and duties of the parties under this WHOA Agreement.

Sincerely,

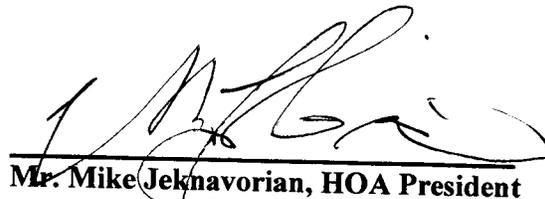


Jeremy Shir

CC: Scott Backman, Counsel for 13<sup>th</sup> Floor Homes

By:

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Mr. Michael Nunziata, 13<sup>th</sup> Floor



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Mr. Mike Jeknavorian, HOA President