IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

vs.

BRIAN P. RUSH,

Respondent.

Supreme Court Case
No. SC 2020-1685

The Florida Bar File
No. 2018-10, 741 (13B)

RESPONDENT, BRIAN P. RUSH'S ANSWER AND AFFIRMATIVE DEFENSES

Respondent, BRIAN P. RUSH, by and through his undersigned counsel, hereby files his Answer and Affirmative Defenses to the Complaint filed by the Florida Bar against Brian P. Rush, who states as follows:

INTRODUCTION

I. FDOT's Absolute Obligation to Pay "Reasonable" Fees and Costs

Under the Florida Constitution and Florida Statutes, the **FDOT is absolutely required to pay "reasonable" attorney's fees and costs in an eminent domain case.** See, Florida Constitution and Florida Supreme Court cases defining fees and costs in eminent domain cases as part of **Constitutional "just-compensation."** See, *Jacksonville Expressway Authority v. Henry G. Du Pree Co.*, 108 So.2d 289 (Fla. 1959); *Dade County v. Brigham*, 47 So.2d 602 (Fla. 1950); *Lee County v. Sager*, 595 So.2d 177 (Fla. 2d DCA 1992). FDOT's duty to pay reasonable fees and costs is part of Florida's constitutional **"just-compensation" and is an absolute statutory obligation**, even though the **final amount** of reasonable attorney's fees is **unliquidated at the beginning of the case**. Under Florida Law, **FDOT's obligation to pay "reasonable fees and costs" is absolute and is not contingent.** *Standard Guaranty Insurance Company v. Quanstrom*, 555 So.2d 828, 835 (Fla. 1990) **(eminent domain attorney's fees have "special, distinct**

factors", and "the attorney is assured of a (reasonable) fee when the action commences"). If the landowner waives these attorney's fees, then the landowner becomes liable to pay these fees to his attorney. See, *Winn v. City of Cocoa*, 75 So.2d 909, 912 (Fla. 1954).

II. Florida has Long Recognized an Attorney's Lien as an Enforceable Equitable Lien

An attorney's lien has long been recognized and approved by the Florida Supreme Court as an equitable lien to secure the payment of the attorney's fees and costs. See, *Miller v. Scobie*, 11 So.2d. 892 (Fla., 1943); See, *Mabry v. Knabb*, 10 So.2d 330 (Fla. 1942). See, Rule 4-1.8(i)(1), Rules Regulating the Florida Bar.

III. Attorney's Liens Authorized in Eminent Domain Proceedings

An attorney's lien has long been recognized as an **enforceable equitable lien** which protects and ensures the payment of an attorney's reasonable attorney's fees and costs in an eminent domain proceeding. See, *Winn v. City of Cocoa*, 75 So.2d 909, 912 (Fla. 1954). **(in an eminent domain proceeding, the Client Landowner is "obligated" to pay the terminated attorney "a reasonable fee for the services rendered up to the time of such discharge," and the Attorney is entitled to receive the "reasonable value of his services."**

Rush's 2014 Fee Agreement used the exact same phrase used by the Florida Supreme Court in *Winn*: the discharged attorney is entitled to be paid an attorney's fee equal to the **"reasonable value of his services."** Similarly, Rush's 2014 Fee Agreement uses the exact same phrase as used by more recent Florida Supreme Court decisions. See, *Rosenberg v. Levin*, 409 So.2d 1016 (Fla. 1982). **(Discharged attorney is entitled to a reasonable attorney's fee based on the "reasonable value of attorney's services").**

IV. Attorney's Lien Authorized Attorneys to File Motions in the Pending Case File

Under Florida Law, an attorney's lien must be filed in the Court file of the pending lawsuit, before any settlement is paid or dismissal occurs. Once filed in the Court file, the notice of the attorney's lien becomes an equitable lien which attaches to any future settlement or payment in the pending case. The attorney's lien also authorizes the attorney to file motions and pursue a recovery under the attorney's lien **by filing motions in the pending case**. See, *Brown v. Vermont Mutual Insurance Company*, 614 So.2d 574, 580 (Fla. 1st DCA 1993). (**"Although the parties to a lawsuit that are represented by attorneys may settle the dispute between themselves, without the participation of their attorney, any such settlement made without knowledge of or notice to a party's attorney, and without payment of the attorney's fee due such attorney, operates as a fraud upon the attorney, whether intended or not, and the attorney may continue the litigation in the name of the parties to enforce the right to be paid a fee.")**

V. Florida Bar Rules Specifically Authorize Attorney's Lien

The Florida Bar Rules specifically authorize attorneys to acquire an attorney's lien. See, Rule 4-1.8(i)(1), Rules Regulating the Florida Bar **("the lawyer may acquire a lien granted by law to secure the lawyer's fee or expenses.")**. Under Florida Law, an Attorney's Lien can only be perfected by actually filing the Notice of Attorney's Lien **in the Court file**, before settlement and/or dismissal. See, *Brown v. Vermont Mutual Insurance Company*, 614 So.2d 574, 580-82 (Fla. 1st DCA 1993).

VI. "Reasonable" Attorney's Fees Cannot be a "Penalty" and Cannot be "Unreasonable"

The Florida Bar Rules do not prohibit a termination clause. Instead, the Rules only prohibit a "penalty" provision in the termination clause **of a contingency fee agreement**. Rule 4-

1.5, Rules Regulating the Florida Bar specifically protects any fee which is reasonable. In any case, a reasonable fee cannot possibly be a "penalty," because the award of reasonable attorney's fees s subject to judicial review.

VII. Eminent Domain Fee Agreement is Not a Contingency Fee Agreement

Eminent domain attorney's fees are not contingency fees because **payment of a "reasonable" attorney's fee in eminent domain is "assured," and the fees are paid, as part of "just compensation."** *Standard Guarantee Insurance Company v. Quanstrom* 555 So.2d 828, 835 (Fla. 1990) **(eminent domain attorney's fees have "special, distinct factors", and "the attorney is assured of a (reasonable) fee when the action commences");** See, *Schick v. Department of Agriculture and Consumer Services* 599 So.2d 641, 644 (Fla. 1992) **(eminent domain attorney is not entitled to a contingency risk multiplier);** See, *City of North Miami Beach v. Reed* 863 So.2d 351, 353 (Fla. 3rd DCA 2003) **(Contingency risk multiplier is unavailable in eminent domain cases).** While both eminent domain and probate cases are subject to statutory percentage fee schedules, neither of these types of cases are contingency fee cases. See, *Quanstrom* (supra) at 834-36. See, *FDOT v. Skinners Wholesale Nursery*, 736 So.2d 3, 8 (Fla. 1st DCA 1998) **("enhancement (of) fees based on contingency risk factor is inappropriate in this eminent domain case."** (applying new 1994 Statute.).

VIII. Liability and Collectability Are Not at Issue in Any Eminent Domain Case and Damages are Presumed and are Prepaid by the State

Unlike true contingency fee cases, liability and collectability against the State are presumed and are not disputed in eminent domain or probate cases. In an eminent domain case, the condemning authority is the Plaintiff, and the condemning authority has no defenses to its liability or collectability. Unlike **true** contingency cases, the property owner does not have to prove liability, insurability, or collectability and the property owner's costs and expert fees must

be paid by condemning authority. Unlike true contingency cases, the State and FDOT have no defenses to liability, reasonable fees or collectability. Finally, unlike true contingency cases, damages are presumed and the state has to prepay and deposit in the Court registry the minimum damages as a condition precedent to the order of taking. **In eminent domain, there is no true contingency.** In any case, the statutory schedule is only used to "calculate" a reasonable fee.

IX. Construction of Contracts and Fee Agreements

Under Florida Law every contract must be read "as a whole" and every provision of a contract must be construed so as to "give meaning" to each and every provision in the contract. Additionally, under Florida Law, successive contracts in regard to the same subject matter like the 2014 and 2018 Fee Agreements **must be construed together**, in *pari materi*.

ANSWER

1. **Admitted**. Brian P. Rush **("Rush")** was admitted to the Florida Bar on or about November 1, 1982, and in over 38 years of law practice, **Respondent Rush has never been disciplined by the Florida Bar.**

2. **Without knowledge, and therefore, Denied**. However, it is Rush's understanding that the Grievance Committee only found probable cause, **after the committee refused Respondent Rush's request to testify under oath before the Grievance Committee.** See, Rush's December 23, 2019 **Response Letter to Grievance Committee**, which showed that Mr. Suarez' Bar Complaint was substantially false and which contained Rush's request to testify.

Taylor's Authority to Retain Rush

3. **Admitted in part and Denied in part**. **Denied** that Taylor was not authorized by North Park to retain Respondent Rush. **Admitted** that JT North Park, LLC and North Park Isles, PTC, LLC **(the "North Park Companies" or "North Park")** and Respondent Rush entered into

a written 2014 Fee Agreement on or about September 25, 2014, bearing the notarized signature of Todd R. Taylor **("Taylor")**, who signed the 2014 Fee Agreement as the **"managing member and as the agent for"** the North Park Companies. Additionally, Taylor was identified on page 1 of the 2014 Fee Agreement as **"TODD R. TAYLOR, MANAGING MEMBER, as authorized agent of North Park Isles, PTC, LLC and JT North Park, LLC."** Otherwise **Denied**.

Effect of Order of Taking

4. **Admitted in part and Denied in part**. **Denied**, that the condemnation proceeding **only related and affected and damaged a mere portion** of North Park's property. **Admitted in part** that the North Park property was located in Hillsborough, Florida. **Admitted in part** that on or about May 19, 2017, the Florida Department of Transportation **("FDOT")** filed an eminent domain action and the Order of Taking against the North Park Companies, styled as: Florida Department of Transportation v. North Park Isles, PTC, LLC, et al., Case No. 17-CA-004759. Otherwise **Denied**.

Taylor's Control of Eminent Domain Case (2014-2018)

5. **Admitted in part and Denied in part**. **Denied** in part because Taylor was the authorized and appointed North Park manager and agent to manage the eminent domain matter. **Denied** to the extent that JT North Park, LLC did not actually manage or control the North Park Companies. In fact, Todd R. Taylor was the appointed managing member who was authorized to hire Respondent Rush to act as North Park's eminent domain attorney. **Admitted in part** that JT North Park, LLC was the corporate manager of North Park Isles, PTC, LLC, but Taylor was in actual control and was authorized to act on behalf of JT North Park, LLC. Otherwise **Denied**.

6. **Admitted in part and Denied in part**. **Denied** in part to the extent that Jack Suarez and Robert Suarez had actually appointed Taylor as the managing agent to manage the

subject eminent domain matter and to employ Respondent Rush. **Admitted in part**, to the extent that Taylor, Suarez and Suarez were each owners and members of JT North Park, LLC, but this ownership interest did not affect Taylor's actual authority and appointment to manage and set goals for the eminent domain case. Otherwise **Denied**.

2014 and 2018 Written Fee Agreements

7. **Admitted in part and Denied in part**. **Denied** in part because the Suarez Brothers had actually appointed and authorized Taylor to act on their behalf and on North Park's behalf when Taylor signed both the 2014 and 2018 Fee Agreements to retain Rush. **Denied** in part. The 2014 Fee Agreement was **not** the only written fee agreement between Rush and the North Park Companies, and **the 2014 and 2018 Fee Agreements must be construed together**. A copy of the 2014 fee agreement is attached to Rush's Answer and Defenses as **Exhibit "A."** **Admitted in part** that Todd Taylor signed the 2014 Fee Agreement on September 25, 2014 and Taylor signed with full authority. Otherwise **Denied**.

8. **Denied**. Before signing the 2014 Fee Agreement, **Todd Taylor did consult** with Taylor's partners/members, Jack Suarez **("Suarez")** and Robert Suarez **("Suarez")**, who are known herein together as the **"Suarez Brothers." Denied**. Prior to Taylor signing the 2014 Fee Agreement, the Suarez Brothers specifically appointed and authorized Taylor to retain and hire Respondent Rush to represent the North Park Companies in the subject eminent domain matter.

North Park's Various Obligations to Pay Attorney's Fees Under North Park's 2014 and 2018 Fee Agreements

9. **Denied**. Respondent Rush's fee agreement is approximately 6 pages long and has a **number of provisions addressing North Park's obligations to pay attorney's fees** under different factual scenarios. **Denied**. North Park also signed a **2018 Fee Agreement** providing for **North Park to pay hourly fees/reasonable fees to Rush and the 2014 and 2018 Fee**

Agreements must be read together. Denied that the 2014 Fee Agreement **actually** limited the payments of attorney's fees to **only** the amount paid by the condemning authority. In facts, this limitation only applies where **(1)** the client has not breached the fee agreement; and **(2)** the client has not breached his duty to "fully cooperate" with the attorney and/or the experts **as set forth on page 2** of the fee agreement; and **(3)** the client has not terminated the attorney's representation **as set forth on page 3** of the fee agreement; and **(4)** the client has not unreasonably rejected an offer of judgment/proposal for settlement from the condemning **authority as set forth on page 3** of the fee agreement; and **(5)** the client has not otherwise repudiated the fee agreement. On or about April 6, 2018, Taylor and the North Park Companies entered into a **second** written fee agreement **(the "2018 Fee Agreement")**, wherein Taylor and the North Park Companies **agreed to pay hourly fees/reasonable fees to Rush** for the ongoing eminent domain litigation. A copy of the 2018 Fee Agreement is attached as **Exhibit "B."** The Florida Bar's allegations in this paragraph are materially incomplete and **denied**. **Admitted** in part. **On page 1 of the 2014 Fee Agreement,** the fee agreement does provide that **"As set forth in this Agreement, Attorney's fees and costs will be limited to the amount paid to Attorney by the condemning authority through a settlement or the amount awarded by the Court, if Attorneys cannot reach a settlement of their fees."** Otherwise **Denied**.

FDOT's Absolute Obligations to Pay Reasonable Attorney's Fees

10. **Denied.** FDOT has an **absolute obligation** to pay a reasonable attorney's fee as part of **constitutional "just compensation"** which is governed by the Florida Constitution, the United States Constitution and Chapter 73, Florida Statutes, including Section 73.091 and Section 73.092. **Denied**. The Florida Bar Complaint's description of Section 73.092 is not complete and not fully accurate in regard to Florida Law. **Denied**. Section 73.092, Florida

Statutes only provides a **statutory schedule** for **calculating** the **amount** of a **"reasonable" fee**, which FDOT is absolutely obligated to pay in an eminent domain case.

11. **Admitted in part and Denied in part**. **Denied**. The Client would not necessarily be required to pay any attorney's fee to Respondent Rush. **Denied**. Because the condemning authority **still remains liable** for paying all reasonable eminent domain attorney's fees and costs, **the Client is not necessarily required to pay any attorney's fees** to Rush, after termination. **Admitted in part** that on page 3 of the 2014 Fee Agreement, the termination provision states: **"Client shall at all times have the right to terminate Attorney's services upon written notice to that effect, but Client would then be obligated to pay Attorney the reasonable value of his services." Admitted in part** that on page 2 of the 2014 Fee Agreement, the Agreement states and incorporates by reference: **"Florida Statutes Section 73.091 and Section 73.092 regarding the obligation of the government to pay Client's attorney's fees, costs and expert fees."** Otherwise **Denied**.

12. **Admitted**. On or about May 19, 2017, FDOT filed the subject eminent domain action, condemning the property owned by the North Park Companies and the property interests of other Defendants which caused substantial damages and losses.

Order of Taking

13. **Admitted in part and Denied in part**. **Denied** that **"the only issue that remained was the valuation of the taking,"** in that this allegation is incorrect and materially incomplete. **Denied**. The Order of Taking and FDOT's plans, specifications and easements attached to and incorporated in the Order of Taking, effectively **precluded North Park from constructing its planned entry road, parkway and entryway amenities from Sam Allen Road to the single-family residential property located on the northern portion of North**

Park's property. See, Affidavit of Reginald Mesimer, P.E., attached as **Exhibit "C." Denied**. The Florida Bar's limited allegations in paragraph 13 of the Florida Bar's Complaint are factually incorrect and materially incomplete. **Admitted in part** that on or about October 23, 2017, the Court held an Order of Taking hearing which resulted in an Order of Taking dated October 23, 2017. Otherwise **Denied**.

North Park's Planned Sale to NPID

14. **Admitted**. In approximately 2016 through 2018, the North Park Companies entered into a series of contracts, joint venture agreements and extension agreements with NPID and others, for various purposes including selling most of North Park's property to NPID, and including North Park's retention of a portion of the North Park property for future development. **Otherwise Denied.**

15. **Denied**. As set forth above in paragraph 13 of Rush's Answer, the Order of Taking and FDOT's plans, specifications and easements attached to the Order of Taking substantially impaired/blocked North Park's unfettered ingress and egress from Sam Allen Road to North Park's single-family residential property. See, the Affidavit of Reginald Mesimer, P.E. attached as **Exhibit "C."** See, Appraisal Report of Richard Harris **excerpt** attached as **Exhibit "D." Admitted in part.** The Order of Taking impaired the economic viability of the North Park project and delayed the planned closing of the sale of the North Park property to NPID. **Denied** in part. **North Park's decision making also delayed the sale to NPID**. Otherwise **Denied**.

Rush's and North Park Settlement Demands on FDOT

16. **Admitted in part and denied in part**. **Denied**. On or about March 21, 2018, Taylor, Suarez, Suarez and Rushnell briefly discussed the sale of the property to NPID, but the discussion was substantially limited to North Park's assertion that NPID and its lenders were

unwilling or unable to purchase or finance the North Park property, **unless or until** FDOT agreed to relocate FDOT's 7-acre drainage/retention pond, and **unless or until** FDOT agreed to modify its road plans, construction plans, specifications and easements in order to relocate the FDOT drainage pond and restore unfettered ingress and egress. **Denied**. Rush listened to North Park's discussion. **Denied**. Rush's eminent domain representation **did not** include responsibility for environmental "permitting" or the sale/closing with NPID. In fact, Rush's representation was **limited to eminent domain litigation**. **Admitted in part** that Respondent Rush repeatedly met with and communicated with **Todd Taylor, Devon Rushnell ("Rushnell"), and North Park's team of experts, Reginald Mesimer, P.E., Richard Harris and John C. Greer in regard to the eminent domain case**. **Admitted in part** that Respondent Rush met with and communicated with **Jack Suarez, Robert Suarez, Todd Taylor and Devon Rushnell** during March and April of 2018 to discuss Rush's ongoing representation of North Park. **Admitted in part** that on or about March 21, 2018, Respondent Rush met with Taylor, Suarez, Suarez and Rushnell at Jack Suarez' Tampa office, and in March and April 2018, **North Park approved Rush's ongoing eminent domain litigation strategy.** Otherwise **Denied**.

North Park's Settlement Objectives Were the Same as Rush's Objectives

17. **Admitted in part and Denied in part**. **Denied**, in part because this allegation is materially incomplete and incorrect. **Denied** in part. On or about March 21, 2018, North Park advised Respondent that **North Park's goals and objectives were to force FDOT to enter into a settlement agreement, wherein FDOT would relocate the 7-acre drainage pond at FDOT's expense, without North Park obtaining required environmental water permits, and to force FDOT to modify its plans, specifications and easements at FDOT's expense, so that the condemnation action could be promptly settled on North Park's terms, so that**

NPID's purchase and lender financing of the property could actually occur. Admitted that North Park gave explicit direction to Respondent Rush to **put "pressure" on FDOT** to force FDOT to relocate its 7-acre drainage pond and modify FDOT's taking, plans, specifications and easements attached to the 2017 Order of Taking. Otherwise **Denied**.

Jack Suarez' Unreasonable Deadlines for FDOT Action

18. **Admitted in part and Denied in part**. **Denied** that any significant or real disagreements occurred until the end of the second meeting at Jack Suarez' office between Respondent Rush, Todd Taylor, Jack Suarez, Devon Rushnell and others on April 12, 2018, when **Jack Suarez made an aggressive ad hominum attack on FDOT**. North Park directed Respondent Rush to **increase pressure on FDOT to relocate FDOT's drainage pond and modify FDOT's plans, specifications and easements**, so that the eminent domain case could be settled at mediation. **Denied**. Jack Suarez agreed with Respondent Rush's litigation strategy of completing the expert reports as demanded by FDOT, so that the case could be scheduled for mediation. **Admitted to the extent that** toward the end of the April 12, 2018 meeting, a significant "disagreement" arose in regard to **Jack Suarez' unreasonable demand that mediation be completed and the case settled within 13 days, on or before April 25, 2018. Jack Suarez also unreasonably denigrated FDOT's statutory obligations and FDOT's employees, and Suarez verbally attacked FDOT's employees and called them "cowards." Denied**. This Suarez-Rush exchange **was not a "disagreement" in regard to North Park's objectives or Rush's strategy. Admitted** in part that Respondent Rush did not agree with Jack Suarez' April 12, 2018 unreasonable deadlines and unfair disparagement of FDOT personnel. Otherwise **Denied**.

Attorney Rush's Pursuit of Prompt Mediation and Potential Settlement with FDOT

19. **Admitted in part and Denied in part**. **Denied**. **North Park urged Respondent Rush to advance the objective of claiming that FDOT's taking, drainage pond and FDOT's plans, specifications and easements for the FDOT project had adversely affected North Park's unfettered ingress and egress from Sam Allen Road "endangering the entire North Park project."** **Denied**. North Park's claims for compensation and damages also related to an increased value for the **part of the land taken** by FDOT, **plus** severance damages, impairment damages, cost to cure and related damages, **plus** attorney's fees, expert fees and costs. **Denied** that Respondent Rush urged North Park to pursue North Park's compensation and damages claim in order "to advance the litigation." Otherwise **Denied**.

20. **Admitted in part and Denied in part**. **Denied**. North Park and its members discussed their desire to settle, but also demanded that FDOT move FDOT's pond at FDOT's expense. **Denied**. North Park and Rush did not discuss "advancing the litigation." **Denied**. North Park expressly directed Respondent Rush to Complete North Park's expert reports and directed Rush to take steps to schedule mediation with FDOT as part of North Park's goal of negotiating a settlement with FDOT. **Admitted** that Jack Suarez advised Attorney Rush to **set the case for trial** in late March 2018 to increase pressure on FDOT. **Admitted** that Respondent Rush took the above steps requested by Suarez and Taylor based upon North Park's express direction, to carry out a strategy to convince FDOT to agree to North Park's request for prompt mediation and to support **North Park's extraordinary settlement demands that FDOT relocate FDOT's 7-acre drainage pond and modify FDOT's plans, specifications and easements at FDOT's expense. Admitted** that North Park and its members and Respondent Rush **jointly agreed to**

pursue settlement by increasing pressure on FDOT, completing the expert reports and scheduling mediation to try to promptly settle the eminent domain case. Otherwise **Denied**.

North Park's Termination Provision Can Only Be Implemented by North Park

21. **Denied**. The allegation in paragraph 21 of the Florida Bar's Complaint is non-sensical, because Respondent Rush could not **"implement the termination provision of the engagement agreement to seek his fees from the Companies."** Under the express terms of the 2014 Fee Agreement's Termination of Representation provision, North Park is only **"obligated to pay to attorney the reasonable value of his services," if the client elects "to terminate attorney's services upon written notice to that effect."**

North Park's Authorization and Direction to Rush to Put Pressure on FDOT to Settle

22. **Denied**. In March and April of 2018, North Park authorized Rush to file motions to put pressure on FDOT to promptly settle whereby FDOT would agree to move FDOT's 7-acre pond, plus other changes to FDOT's plans. **Denied**. It is Respondent's understanding that the word **"pleadings"** is limited to complaints, counterclaims, answers, affirmative defenses and responsive motions filed in response to a complaint or counterclaim. **Denied**. Motions are not pleadings. **Denied**. As set forth in Respondent Rush's answer in paragraph 20 above, Respondent Rush filed two motions for partial summary judgment against FDOT in March and April of 2018, to increase settlement pressure and leverage on FDOT, as directed by North Park. **Denied**. Respondent Rush filed ab Attorney's Lien and various motions for final **(not interim)** expert fees, attorney's fees and costs, all of which are expressly authorized on page 1 of North Park's 2014 Fee Agreement, which provides in part as follows: **"Client agrees to fully cooperate and fully join in a petition to the Court for attorney's fees and costs and expert fees …**

Attorneys will apply to the Court for payment/reimbursement of all such recoverable costs and expenses incurred in connection with this case and Client will fully cooperate with these applications for payment." See, Rule 4-1.8(i)(1); See, *Brown v. Vermont Mutual Insurance Company* 614 So.2d 574 (Fla. 1st DCA 1993), citing controlling Florida Supreme Court precedent. In *Vermont Mutual*, the Court affirmed an attorney's right to file an attorney's lien **in the pending court case file** and to **pursue the case to seek recovery of attorney's fees and costs against the opposing party in the pending court case**. Otherwise **Denied**.

Rush's 2018 Court Filings Were Designed to Obtain Settlement Through Mediation

23. **Admitted in part and Denied in part**. **Denied**. The subject filings speak for themselves. **Denied**. The Complainant's allegation appears to be misleading in that it appears to assert that Attorney Rush filed 10 separate motions for attorney's fees in a four (4) month period. The Complainant's allegation appears to be incorrect or overstated in that most of the filings **are not primarily motions for attorney's fees**, but rather, most of the filings are motions for scheduling mediation, motions to set case for trial, motions for summary judgment, motions to recover expert fees, notice of filing attorney's liens, notice of serving expert reports, motions for case management, motions to withdraw or a notice of filing previously served discovery responses, and previously served motions **(not-filed previously)** and are mostly not separate motions for attorney's fees. **The inclusion of a request for attorney's fees at the end of a motion for summary judgment or a motion to withdraw does not convert such motions into a motion for attorney's fees. Denied**. Under Section 73.091 and Section 73.092, Florida Statutes, attorney's fees, expert fees and costs are **at issue** through the initial pleadings and are always relevant to fully mediate and fully settle an eminent domain case. **Additionally, attorney's fees are "at issue" because North Park agreed to pay Rush hourly fees under the**

2018 Hourly/Reasonable Fee Agreement. Admitted in part and denied in part. Respondent Rush's filings were appropriate and authorized by North Park's fee agreements, Rush's Attorney's Lien, Florida Law, and the issue of attorney's fees was "at issue." **Otherwise, denied**.

24. **Admitted in part and Denied in part**. **Denied**. Respondent Rush did not seek an interim award of attorney's fees or costs or expert fees. **Denied**. An attorney's lien is not a request for interim attorney's fees and costs. **Denied** that Respondent Rush and his law firms filed a motion for an "interim" award of attorney's fees or sought such an interim award of attorney's fees. **Admitted** that Florida Law does not permit interim **awards** of attorney's fees in eminent domain proceedings, but Florida Law does permit the filing of Rush's motions for attorney's fees, expert fees and costs in an eminent domain case**.** Otherwise **Denied**.

North Park's Obligations to Pay Hourly Fees

25. **Denied**. When Rush filed his Attorney's Lien and related motions against FDOT (not the client), **North Park was already obligated to pay hourly fees to Rush as provided by the 2018 Hourly/Reasonable Fee Agreement**. Because of its exposure to paying fees, North Park had expressly directed Rush to seek to recover attorney's fees and expert fees from FDOT, so that North Park would not have to pay these fees and costs **Denied**. It is not a conflict of interest for an attorney to follow Florida Law and file an Attorney's Lien or motions for fees and costs **against FDOT**, especially where under Florida Law, the **lien must be filed prior to settlement and judgment/dismissal**, and where the lien is authorized by Florida Law and the Florida Bar Rules. **Denied**. It is not a conflict of interest for an attorney to file motions for expert fees and attorney's fees, especially where the **client has specifically authorized these motions in the client's fee agreements** with the attorney and the expert witnesses. **Denied**. The filing of

these motions was **not adverse to North Park's desire to settle the case** and did not prevent or delay settlement. **Denied**. The Client settled the case in January 2019, without settling the attorney's fees claims, such that the Attorney's Lien and fee claims obviously did not prevent settlement. Otherwise **Denied**.

North Park's Hiring of Attorney Petitt

26. **Admitted in part and Denied in part**. **Denied** that Respondent Rush told North Park and its members that Rush would not advise North Park **on eminent domain issues** in the condemnation action. Obviously, North Park hired Respondent Rush to represent North Park in the eminent domain litigation, but **the litigation matter did not include real estate development issues, real estate permitting, real estate purchase and sale issues** or drafting of real property instruments. **Denied**. Respondent Rush did not decline to represent North Park in regard to the eminent domain case. **Denied**. It appears that Petitt was hired to "break" North Park's contracts with Rush and North Park's expert witnesses. **Admitted in part** that Petitt was hired by North Park. **Admitted in part** that Respondent Rush declined to perform legal services outside of Rush's litigation practice area, especially in regard to real estate development issues, real estate permitting, real estate purchase and sale issues or drafting/closing of real property instruments. Otherwise **denied**.

27. **Without knowledge, and therefore Denied**. Respondent Rush does not have personal knowledge of North Park's requests to Mr. Petitt in regard to his Notice of Appearance, and therefore, **Denied**.

May 2018 Hearing to Schedule Mediation

28. **Admitted in part and Denied in part**. **Denied**. The May 24, 2018 hearing was scheduled and noticed for the purpose of hearing motions filed by Respondent Rush to schedule

mediation and potentially set the case for a trial date, **as expressly requested by Jack Suarez previously**. Admitted in part that Respondent Rush, Attorney Petitt, Jack Suarez, Attorney Sanchez and various FDOT personnel were present at the May 24, 2018 hearing. **Admitted in part**, that the Court may or may not have held a case management conference on May 24, 2018. **See, hearing transcript**. Otherwise, **denied**.

29. **Admitted in part and Denied in part**. **Denied**. Jack Suarez' statements in regard to "threats" was false. **Denied**. Respondent Rush had not threatened North Park. **Denied** that Rush violated any of his duties to North Park under the 2014 and 2018 Fee Agreements. **Denied**. In April, May and June of 2018, North Park breached and repudiated North Park's Fee Agreements, and Rush properly filed a Notice of Lien against FDOT **(not the client)**, and Rush filed various motions to recover attorney's fees, expert fees and costs **against FDOT (not the client)** as authorized by the fee agreements and by Florida Law. **Admitted in part** that the entire transcript from the hearing is the best evidence of **what was said at the May 24, 2018 hearing**. Otherwise **Denied**.

30. **Denied**. The transcript from the hearing is the best evidence of what was said at the May 24, 2018 hearing, but Respondent Rush has not recently reviewed that transcript and does not recall the Trial Judge's exact words.

North Park's Repudiation of Fee Agreements

31. **Admitted in part and Denied in part**. **Denied**. In April and May and June of 2018, North Park repeatedly breached and repudiated North Park's Fee Agreements which would likely be **constructive termination** of Attorney Rush's representation. **Denied** that North Park's July 3, 2018 written termination notice allowed Respondent Rush to cease representing North

Park. **Admitted in part** that North Park sent **written notice** advising that North Park was terminating Respondent Rush's representation on or about July 3, 2018. Otherwise **Denied**.

Rush's Motions to Withdraw Required by Florida Law

32. **Admitted in part and Denied in part**. **Admitted in part**. As **required** by Rule 2.505, Florida Rules of Judicial Administration, Respondent Rush filed a motion to withdraw and an amended motion to withdraw on July 9, 2018 and July 10, 2018. **Denied in part**, because these two motions **properly advised and requested** that the Trial Court enter appropriate orders as provided by the above Rule, including retaining jurisdiction to consider pending motions for attorney's fees, expert fees and costs **against FDOT**. **See, North Park's 2018 Hourly Fee/Reasonable Fee Agreement, wherein North Park agreed to pay hourly fees to Rush.** Otherwise **Denied**.

33. **Denied**. The July 12, 2018 Order speaks for itself. **Denied**. Respondent recalls that the Court only entered an Order granting **North Park's Motion to Substitute Counsel**, with specific changes required by the Court. **Admitted** that Rush withdrew from representing North Park on or about July 11, 2018. Otherwise **Denied**.

Court Retained Jurisdiction to Hear Rush's Motions for Fees and Costs

34. **Admitted in part and Denied in part. Denied** as phrased. The Order speaks for itself. **Denied**. Respondent Rush's Attorney's Lien, motions for fees/costs, and North Park's Fee Agreements with Rush actually preserved Rush's ability to seek attorney's fees, and the Order only confirmed that the Court was retaining jurisdiction to hear the motions for fees and costs filed by Rush and North Park. **Denied**. At the request of Respondent Rush, the Court retained jurisdiction to rule upon Rush's past and future motions for attorney's fees, expert fees and costs, as allowed by Rule 2.505.

Rule 1.525 Requires Timely Motions for Fees and Costs

35. **Admitted in part and Denied in part**. **Denied**. Motions and notices are not pleadings. Rule 1.525, Florida Rules of Civil Procedure, requires that motions for fees and costs be filed **within 30 days** of a Final Judgment, and Rush **properly refiled** his various motions to recover attorney's fees, expert fees and costs. **Admitted** in part that the Court's Order dated July 12, 2018 and the Court's subsequent Order dated July 18, 2018, authorized future filings of motions for fees and costs by Rush. **Denied**. As specifically provided in the case of *Brown v. Vermont Mutual Insurance Company*, 614 So.2d 574 (Fla. 1st DCA 1993), **(an attorney is authorized to file papers in the underlying case to pursue a recovery of attorney's fees and costs, pursuant to the attorney's lien). Denied**. Rule 4-1.8(i)(1), Florida Bar Rules specifically authorizes an attorney to acquire and perfect a lien to protect the payment of his attorney's fees and costs **("the lawyer may: (1) acquire a lien granted by law to secure the lawyer's fee or expenses.")**.

North Park's Motions to Substitute Attorneys

36. **Admitted in part and Denied in part**. **Denied**. The transcript from the subject hearings would be the best evidence of what was said, by whom, at the July 11, 2018 and July 18, 2018 hearings, and Rush does not independently recall all of the exact words used at the July 2018 hearings. **Denied** that Respondent Rush threatened to sue FDOT's counsel at the July 2018 hearings. **Denied** that Respondent Rush threatened to file a Bar Complaint against FDOT's counsel at the July 2018 hearings. **Admitted** that FDOT's legal counsel, **Aloyma Sanchez,** carried out an **ex parte disparagement** of an **unrepresented, third-party expert witness'** and attacked the expert's **fee claim** at a July 2018 hearing, before the **same Judge** who in the future would be ruling on the **same expert witness' fee claim. Otherwise Denied.**

37. **Admitted in part and denied in part. Denied** that Rush's single post representation lawsuit against North Park **to compel arbitration before the Florida Bar Arbitration program was improper** or in violation of any Bar Rule. **Admitted in part** that Respondent Rush filed a single action to compel arbitration against the North Park Companies **("North Park")**, which included various claims to compel arbitration before the Florida Bar Arbitration program for breach of contract, equitable lien/constructive trust and other claims. **Denied** in part that Respondent Rush filed a second legal action **against North Park Companies**, but Rush did file a separate action **against NPID, which is not North Park. Admitted in part**. Rush filed two lawsuits in 2018, but only one (1) lawsuit was filed against the North Park Companies. Otherwise **Denied**.

Lis Pendens Is Authorized for Lien Claims

38. **Admitted in part and denied in part**. **Denied** that the Lis Pendens was filed before the Court granted North Park's Motion to Substitute Counsel. **Admitted** in part that Respondent Rush and his law firm filed an original Lis Pendens and later filed a corrected Lis Pendens on the subject property pursuant to Respondent Rush's claims to enforce an equitable lien/constructive trust/Attorney's Lien, which was properly pled as part of the arbitration action.

39. **Denied**. The Lis Pendens was legally appropriate (valid) authorized under Florida Law pursuant to Respondent Rush's claims to enforce an equitable lien/constructive trust/Attorney's Lien, which was pled as part of the arbitration action. **Denied** that the Lis Pendens were without legal basis, especially under a claim for equitable lien/constructive trust against North Park based in part on an Attorney's Lien and North Park's inequitable conduct. **Denied**. Florida Law does authorize a Lis Pendens for a claim of equitable lien. The Lis Pendens

were notice to the public that Rush was pursuing these claims against North Park for equitable lien/constructive trust. Otherwise **Denied**.

40. **Admitted in part and denied in part**. **Denied** that the filing or dissolving of a Lis Pendens in Respondent Rush's lawsuit to compel Arbitration of various equitable lien claims, is a violation of any Florida Bar Rule, especially where Rush sought arbitration of the equitable lien claim before the Florida Bar Arbitration program. **Admitted** that in approximately October of 2018, the Trial Court entered a **Non-Final Order** dissolving the Lis Pendens, in a non-evidentiary hearing, where the Court heard brief oral argument, but took no evidence or testimony. This Non-Final Order remains subject to appeal. Otherwise **Denied**.

Bar's Undefined Conspiracy Allegations

41. **Without knowledge, and therefore Denied**. Respondent Rush does not understand this vague allegation and cannot formulate a reasonable or complete response to this vague allegation. This allegation is in regard to an undefined conspiracy claim which contains no statement of ultimate facts in regard to the alleged conspiracy, especially as to who, what, where, how or when. **Respondent Rush supposedly also "attempted to advance a claim (that certain individuals) engaged in a conspiracy to settle the case for a low amount, etc."** In what Court or action did this allegedly occur? In what year did this occur? How exactly was this claim allegedly advanced? Therefore, **Denied**. **Otherwise Denied**.

42. **Without knowledge, and therefore Denied**. Respondent Rush does not understand this vague allegation and cannot formulate a reasonable or complete response to this vague allegation. This vague allegation is in regard to some sort of dismissal order and contains no statement of ultimate facts as to who, what, where, how or when "**the Judge allegedly "dismissed" the conspiracy claim."** In what Court or action did this allegedly occur? Which

Judge? In what year did this occur? What is the date of the alleged dismissal order? Therefore, **Denied**. **Otherwise Denied**.

North Park and FDOT Delayed Settlement

43. **Denied.** Without knowledge and therefore **Denied** as to the vague phrase: **Respondent's "actions impeded the companies' ability to settle with FDOT."** What actions? When did they occur? How did these "actions" actually impede North Park's ability to settle? **Denied**. In approximately the Spring, Summer and Fall of 2018 FDOT repeatedly rejected North Park's written settlement proposals.

Sanchez Justification Report

44. **Admitted**. A settlement was reached and the stipulated final judgment retained jurisdiction over attorney's fees and costs **as required by the Trial Court's previous two orders,** dated July 12, 2018 and July 18, 2018.

Petitt's 2019 Motion for Fees

45. **Admitted in part and denied in part**. Attorney Petitt filed a motion seeking payment of attorney's fees from FDOT, and Respondent Rush also timely filed a motion for attorney's fees and costs against FDOT, pursuant to his properly filed and lawful Attorney's Lien. **Both of these motions were filed in February 2019, within 30 days of the entry of a final judgment, as required by Rule 1.525, Florida Rules of Civil Procedure,** and also pursuant to the Attorney's Lien and the Trial Court's two (2) July 2018 orders retaining jurisdiction to hear motions for attorney's fees and costs. **Without knowledge**, as to remainder of allegation, and therefore, **Denied**. Otherwise **Denied**.

Motions for Fees Filed Against FDOT Only

46. **Admitted in part and Denied in part. Denied**. Respondent Rush claimed both monetary and non-monetary benefit attorney's fees against FDOT, secured by Rush's Attorney's Lien. **Admitted in part** that Respondent Rush continued to assert his claim for fees pursuant to the properly filed and lawful Attorney's Lien and the Trial Court's July 2018 Orders. **Admitted in part** that Respondent Rush asserted that his Attorney's Lien was a lawful claim that had to be resolved before the various claims for attorney's fees could be resolved. See, *Brown v. Vermont Mutual Insurance Company*, 614 So.2d 574 (Fla. 1st DCA 1993). Otherwise, **Denied**.

North Park's Lawful Objectives Were Same as Rush's Strategy

47. **Denied**. Without knowledge as to the Florida Bar's vague phrase: **"Companies' decisions concerning the objectives of the representation."** (Which decisions? Which objectives? Who? What? When? How? Etc.?) Respondent Rush incorporates by reference Respondent Rush's answers in paragraphs 1 through 46 above. This allegation is not true. **Denied**. Respondent Rush sent at least two (2) detailed written settlement communications to FDOT in April and June of 2018, **at the express direction of North Park. Denied**. In fact, Rush's "strategy" was designed to carry out North Park's agreed "objectives." Otherwise **Denied**.

Lawful Pursuit of Attorney's Lien Against FDOT

48. **Denied**. Respondent Rush properly filed a lawful Attorney's Lien against FDOT **(not the clients),** and Rush properly pursued that Attorney's Lien in the underlying eminent domain case against FDOT, as specifically provided for in *Brown v. Vermont Mutual Insurance Company* 614 So.2d 574 (Fla. 1st DCA 1993) and as authorized by Rule 4-.8(i)(1), Rules Regulating the Florida Bar. Pursuant to Rule 1.525, Florida Rules of Civil Procedure, Rush filed

renewed motions for attorney's fees and costs within 30 days of the July 15, 2019 final judgment, as required by Rule 1.525. **Denied**. Rush's lawful pursuit of the Attorney's Lien and fees did not cause any legal "detriment" to North Park. **Otherwise Denied**.

49. **Denied**. Respondent Rush properly filed a lawful an Attorney's Lien against FDOT **(not the clients),** and Rush properly pursued that Attorney's Lien in the underlying eminent domain case against FDOT, as specifically authorized and provided in *Brown v. Vermont Mutual Insurance Company* 614 So.2d 574 (Fla. 1st DCA 1993). **Denied**. Rush's lawful pursuit of an Attorney's Lien and attorney's fees against FDOT was not adverse to North Park, because **North Park wanted FDOT to pay all fees and costs**, so that North Park would not have to pay these fees and costs. **Denied**. Rush's lawful pursuit of the Attorney's Lien and fees did not cause any legal "detriment" to North Park. **Otherwise Denied**.

Lawful Attorney's Lien is Not a Threat

50. **Denied**. Respondent Rush incorporates by reference Respondent Rush's paragraphs 46, 47, 48 and 49. **Denied.** The filing of a lawful Attorney's Lien and the filing of lawful motions for attorney's fees, expert fees and costs against FDOT **(not the client)** is not a "threat" and is not "intimidation." See, Rule 4-1.8(i)(1), Rules Regulating the Florida Bar **(Attorney may acquire an Attorney's Lien to secure payment of fees and costs)**; See, Section 73.091 and Section 73.092, Florida Statutes. **Denied**. Rush's lawful pursuit of the Attorney's Lien and fees did not cause any legal "detriment" to North Park. **Otherwise Denied**.

FDOT Repeatedly Rejected North Park Settlement Proposals

51. **Denied.** On a number of occasions, FDOT sent notice to North Park rejecting North Park's settlement proposals/requests. Additionally, North Park delayed

mediation/settlement by disrupting the May 24, 2018 hearing on the Motion to Schedule Mediation. Otherwise **Denied**.

No Violation of Bar Rules By Rush

52. **Denied**. Respondent Rush has not violated the following listed Rules Regulating the Florida Bar for the following reasons and the **Florida Bar bears the Burden of Proof, through evidence**:

Rule 4-1.2 (Objectives and Scope of Representation). From approximately September 2014 to April 2018, Respondent Rush carried out North Park's eminent domain litigation objectives and goals to recover significant monetary damages and just-compensation from FDOT and to obtain modifications to FDOT's Order of Taking, especially modifications to FDOT's plans, specifications and easements to construct a 7-acre drainage pond, drainage structures and related road improvements, all of which impaired North Park's unfettered ingress and egress and North Park's use of its property.

Rule 4-1.4 (Communication). From approximately September 2014 to at least May/June 2018, Respondent Rush repeatedly communicated to North Park and repeatedly confirmed North Park's eminent domain litigation objectives and Rush's scope of representation for the eminent domain matter. Both the 2014 Fee Agreement and the 2018 Fee Agreement provide detailed descriptions of **North Park's agreed eminent domain litigation objectives and Rush's scope of representation for the eminent domain matter.** The 2014 and 2018 Fee Agreements **expressly limit** Rush's representation to eminent domain litigation matters and **exclude representation** in regard to areas outside of Rush's trial practice area. From

approximately September 2014 to at least May/June 2018, Respondent Rush repeatedly confirmed North Park's eminent domain objectives, including obtaining additional monetary just compensation from FDOT and forcing FDOT to relocate FDOT's 7-acre drainage pond and modify FDOT's plans and easements for drainage structures and related road improvements.

North Park's objectives and Rush's strategy remained consistent, and Rush pursued these objectives consistently. However, FDOT repeatedly rejected North Park's settlement demands.

Rule 4-1.5 (Fees and Costs for Legal Services). Respondent Rush's 2014 Fee Agreement and 2018 Fee Agreement are limited to either reasonable fees or hourly fees at $395.00 per hour, and do not contain an agreement for excessive or illegal attorney's fees, and do not contain any prohibited "penalty" for termination clause. A reasonable fee or an hourly fee to be approved by a Court is not a "penalty" clause, because there is **no liquidated penalty amount** and, in any case, **a reasonable fee cannot logically be "unreasonable."** Of course, Rule 4-1.5 specifically approves and authorizes "reasonable fees," **especially where the award of reasonable fees are approved by a Florida Court.** In any case, eminent domain fees are not contingency fees, under Florida case law, such that the penalty provision does not apply.

Rule 4-1.7 (Conflict of Interest; Current Clients). After North Park repudiated and breached North Park's fee agreements with Respondent Rush, then Rush properly filed a lawful Attorney's Lien against FDOT **(not the client)**, as authorized by Rule 4-1.8(i)(1) Rules Regulating the Florida Bar **("Attorneys may acquire a lien to secure payment of attorney's fees and costs")**, and as authorized by Florida

Supreme Court precedent which requires that an Attorney's Lien be filed in the Court file while the case is still pending.

At the time Rush filed the Attorney's Lien and related motions against FDOT, North Park was demanding that North Park be protected from having to pay any eminent domain attorney's fees, expert fees and costs, such that **Rush's pursuit of attorney's fees, expert fees and costs against FDOT (not the client) was not in conflict with North Park's interest**.

Rule 4-3.1 (Meritorious Claims and Contentions). Respondent Rush's pretermination motions to recover expert fees and motions to recover attorney's fees and costs from FDOT and Rush's Notice of Attorney's Lien against FDOT **were only filed against FDOT, and not against North Park.** All of Rush's motions for expert fees, attorney's fees and costs, filed in the eminent domain action, **are expressly authorized by North Park. FDOT is absolutely obligated to pay reasonable attorney's fees, expert fees and costs for the eminent domain matter**. See, Florida Constitution and Florida Supreme Court cases defining fees and costs in eminent domain cases as part of **Constitutional "just-compensation."** See, *Jacksonville Expressway Authority v. Henry G. Du Pree Co.*, 108 So.2d 289 (Fla. 1959); *Dade County v. Brigham*, 47 So.2d 602 (Fla. 1950); *Lee County v. Sager*, 595 So.2d 177 (Fla. 2d DCA 1992).

Finally, Respondent Rush's filing of a Lis Pendens and a corrected List Pendens in the separate action to compel binding arbitration before the Florida Bar arbitration program were reasonable and meritorious under the circumstances, especially where this separate action and Lis Pendens was filed long after the Trial Court entered an

Order granting North Park's motions for substitution of counsel and thereby authorized Rush's withdrawal from representing North Park. Even though the Trial Court entered a non-final Order which removed the Lis Pendens, Respondent Rush properly filed a Lis Pendens to advance his meritorious claim for equitable lien/constructive trust, which was based upon the lawful Attorney's Lien and North Park's inequitable conduct.

Rule 4-3.4 (Fairness to Opposing Party and Counsel). Apparently, the Florida Bar is refencing subparagraph (h) of this Rule which states: **"a lawyer shall not present, participate in presenting, or threaten to present disciplinary charges under these rules solely to obtain an advantage in a civil matter."**

This Rule is limited to an attempt **to use** the threat or filing of a grievance against an attorney **solely** to obtain **an advantage** in a civil matter.

The Bar Complaint appears to list only two (2) potential violations of this Rule, which are set forth in paragraph 36 and paragraph 50 of the Florida Bar's Complaint, but these paragraphs are extremely vague and conclusory.

Paragraph 36 states *in toto*: **"At another hearing in July 2018, Respondent threatened to sue counsel for the FDOT for interfering with his ability to collect his attorney's fees and threatened to file a bar complaint against her."**

Paragraph 50 states *in toto*: **"Respondent used the termination provision of the engagement agreement as a tool to threaten and intimidate not only the Companies, but also counsel for the FDOT and Mr. Petitt."**

Prior to North Park filing its grievance against Rush, North Park's new attorney, Mr. Petitt sent two (2) letters to Rush, dated May 18, 2018 and May 21, 2018,

threatening Rush with a grievance, if Rush refused to rescind Rush's lawful 2014 Fee Agreement and Rush's lawful 2018 Fee Agreement, which would have also effectively rescinded the three (3) expert witnesses' fee agreements with North Park. Instead, Mr. Petitt demanded that Rush sign a new one-page fee agreement, which by its terms required that Attorney Rush not carry out his ethical duty of independent judgment and competence, and also required that Rush not communicate with the clients, the Court and opposing counsel, all of which would appear to violate the Florida Bar Rules. Of course, Rush declined to sign Mr. Petitt's the proposed improper one-page fee agreement. **Rush also declined to negotiate away Attorney Petitt's accusation that Rush's fee agreements were "illegal" and in violation of the Florida Bar Rules.**

Either the 2014 and 2018 Fee Agreements are illegal or they are not. Mr. Petitt is not allowed to "negotiate away" an alleged Bar violation. Attorney Petitt should have simply filed North Park's grievance, rather than attempt to extract a rescission by negotiating away what Attorney Petitt claimed was an **"illegal" fee** agreement and supposedly a clear bar violation.

In any case, the Bar Complaint fails to allege any specific threat or intimidation by Rush against North Park, Attorney Petitt or FDOT's legal counsel, and this alleged violation should be dismissed.

In any case, the vague and conclusory accusations against Respondent Rush in paragraph 36 and paragraph 50 do not state how Rush used any such alleged threat or used the termination clause to solely gain advantage in a civil case.

Rule 4-8.4 (Misconduct). The Bar's Complaint is not clear as to what conduct or which sub-Rule Respondent Rush is alleged to have violated. This requires Respondent Rush to assume which specific sub-Rule he has allegedly violated.

Apparently, the Bar's Complaint is contending that Respondent Rush's overall conduct violated **subparagraph (a)** in that Rush has allegedly violated other rules of professional conduct. Because this alleged violation is vague, and Respondent Rush has already responded to the other Rule violations, Rush hesitates to repeat his previous responses or frame any specific response at this time.

In any case, Respondent Rush has previously denied violating any Florida Bar Rule and looks forward to the Bar's presentation of evidence at trial.

Because there is no factual allegation that Attorney Rush has: committed a criminal act under **subparagraph (b)**; or that Attorney Rush has committed a fraud or misrepresentation under **subparagraph (c)**; or that Attorney Rush has disparaged or discriminated against anyone under **subparagraph (d)**; or that Attorney Rush has violated **subparagraph (e)** (improper influence or means); or that Attorney Rush has violated **subparagraph (f)** (assisting violation of Judicial Conduct Rules); or that Attorney Rush has violated **subparagraph (g)** (failed to respond to Bar inquiry); or that Attorney Rush has violated **subparagraph (h)** (failed to pay child support); or that Attorney Rush has violated **subparagraph (i)** (sexual conduct with a client), Attorney Rush will not attempt to imagine how he might respond further.

Wherefore, Respondent Rush requests that this Court deny and dismiss the Florida Bar's Complaint and grant Respondent Rush's Motions for Summary Judgment against the Florida Bar's Complaint, and find that Rush has not violated the above Rules Regulating the Florida Bar.

RUSH'S AFFIRMATIVE DEFENSES

Respondent Rush hereby files Rush's Affirmative Defenses to the Complaint filed by the Florida Bar, as follows:

General Allegations

1. Respondent Rush is a trial attorney, who has practiced law for approximately 38 years and Rush has never been disciplined by the Florida Bar. Rush practices almost exclusively in the area of complex civil litigation, in both State and Federal Courts, and Rush has practiced in the area of Florida eminent domain law for more than 30 years.

Attorney Rush's Limited Representation of North Park

2. Respondent Rush **does not practice law in the practice areas of** real estate development law, environmental permitting law, real estate land use regulation, real estate contract negotiation and drafting and/or real estate purchase and sale transactions, including real estate closings or issuance of title insurance. Similarly, Respondent Rush does not draft or record real estate instruments, including easements or deeds.

3. Respondent Rush's **eminent domain practice is limited to civil litigation matters**, primarily representing clients who own real property, leasehold property interests and/or related businesses, that suffer damages and losses as a result of a condemnor's taking of the client's property or property interests.

4. Rush's eminent domain representation is limited to litigation services designed to secure the client's right to recover full and just compensation from the condemnor's taking of the client's property, as guaranteed by the Florida and United States Constitutions. While ancillary issues and settlement issues arise, **the primary focus remains on securing full and just**

compensation for the client, which can include valuable non-monetary benefits often obtained through settlement negotiations or at mediation.

2014 Fee Agreement

5. On or about September 25, 2014, Todd Taylor as authorized agent and managing member of the North Park companies signed a 2014 fee agreement with Respondent Rush and his law firms. Pursuant to the 2014 Fee Agreement, North Park retained Rush and his law firms **for the limited purpose of pursuing and securing the North Park Companies' right to recover full and just compensation from FDOT's taking of North Park's property.** In pertinent part, the 2014 Fee Agreement specifically limited Rush's representation to represent the client in condemnation proceedings for various damages and losses sustained by the North Park clients as follows:

> **TODD R. TAYLOR, MANAGING MEMBER, as authorized agent of NORTH PARK ISLES PTC, LLC and JT NORTH PARK, LLC** (known together as "Client"), hereby retains and employs Brian P. Rush, Esq., Brian P. Rush, P.A., and Woodlief and Rush, P.A. ("Attorney") to **represent Client in a condemnation proceeding for damages, loss of land value, impairment of access, loss of furniture, fixtures and equipment and/or business loss claims or other losses/claims** involving the State of Florida, and/or the Florida Department of Transportation. **Id**. at top of page 1 (Bold emphasis added.)
>
> ***
>
> It is anticipated that Attorneys will retain, on Client's behalf, such additional experts or consultants as are **necessary to ensure that Attorneys secure the right and full compensation for the taking of Client's property as is guaranteed by the Constitution and the laws of the State of Florida**. **Id**. at middle of page 2. (Bold emphasis and underline added.)

2018 Hourly Fee/Reasonable Fee Agreement

6. On or about April 6, 2018, Todd Taylor individually and as authorized agent and managing member of the North Park companies signed a **2018 Hourly Fee/Reasonable Fee Agreement** with Respondent Rush and his law firms, whereby the North Park companies

retained Rush and his law firms to provide certain eminent domain services, **including future eminent domain litigation services, which the North Park companies agreed "will require substantial additional legal work and additional attorney's fees."** In the 2018 Fee Agreement, **Todd Taylor and the North Park companies both agreed to pay Rush the greater of either an hourly fee or a reasonable fee to be awarded by the Court.** In pertinent part, the 2018 Fee Agreement states as follows:

> **Client agrees to pay Attorney an hourly rate of $395.00 per hour for each hour of Attorney's time**, which shall increase annually by five percent (5%) on January 1st of each year…**It is anticipated that this litigation will require substantial additional legal work and additional Attorney's fees…** (Bold emphasis and underline added)
>
> **In the alternative to the above hourly fee payment to be paid to Attorney, Client agrees that Attorney shall be entitled to receive a reasonable fee awarded by the court…** (Bold emphasis and underline added)
>
> In any circumstance, **Client agrees that Attorney shall be entitled to receive the largest or greatest award of Attorney's fees, whichever is greater or larger.** (Bold emphasis and underline added) **Id**. top of page 2.

7. In the 2018 Fee Agreement, **Taylor and North Park agreed that Rush's representation was limited to eminent domain "litigation" matters and specifically excluded legal services relating to "real estate property development."** In pertinent part, the 2018 Hourly/Reasonable Fee Agreement specifically limited Rush's representation to represent the client in this eminent domain litigation and specifically excluded nonlitigation areas of practice, as follows:

> **It is anticipated that this litigation will require substantial additional legal work and additional Attorney's fees…** (Bold emphasis and underline added)
>
> ***
>
> **Attorney is not being hired to provide Client with any** securities, tax, banking, financial, lending, accounting, **real estate property development or financial advice, and Client will not rely upon**

Attorney for such advice. (Bold emphasis and underline added) **Id**. at bottom of page 1.

8. When read separately or when read together, the 2014 and 2018 Fee Agreements specifically limit Rush to a reasonable attorney's fee or an hourly fee, which cannot possibly be a penalty.

North Park's Duty to Cooperate with Rush's Motions for Fees Under the 2014 and 2018 Fee Agreements

9. In the 2014 Fee Agreement, North Park agreed to **fully cooperate** with Rush's motions for attorney's fees and motions for expert fees. In pertinent part, the 2014 Fee Agreement provides as follows:

> **Client agrees to fully cooperate and to join in a petition to the Court for Attorney's fees and costs and expert fees… Id**. at bottom of page 1. (Underline and bold emphasis added)
>
> ***
>
> **Attorneys will apply to the court for payment/reimbursement of all such recoverable costs and expenses incurred in connection with this case and Client will fully cooperate with these applications for payment of such experts/consultants fees and costs. Id**. at middle of page 2. (Underline and bold emphasis added)

10. In the 2018 Fee Agreement, **North Park agreed to pay for all costs and expenses, including "expert witness fees" in the eminent domain litigation.** In pertinent part, the 2018 Fee Agreement provides as follows:

> **Client shall pay for all costs and expenses incurred in the handling of this claim, regardless of whether a recovery is obtained. Those costs shall include… expert witness fees.** (Bold emphasis and underline added)
>
> **Client shall also pay reasonable retainers to expert witnesses at the time they are engaged for service, and pay experts periodically when asked otherwise. Id**. beginning at middle of page 2. (Bold emphasis and underline added)
>
> **Client agrees to pay for all costs incurred by Attorneys in the prosecution of Client's claims and authorizes Attorneys to undertake and/or incur such**

costs as Attorneys may deem necessary from time to time. Id. at bottom of page 2. (Bold emphasis and underline added)

FIRST AFFIRMATIVE DEFENSE

North Park's Fee Agreements When Read as a Whole are Reasonable and Lawful and Do Not Contain a Prohibited Penalty for Termination Clause

11. Respondent Rush realleges paragraphs 1 through 10 above.

12. North Park's Fee Agreements with Rush are lawful contracts and fully enforceable. The 2014 and 2018 Fee Agreements are specifically limited to the payment of **"reasonable" fees and costs.** By definition, a **"reasonable" fee,** especially one described in the eminent domain fee statute, **cannot possibly be unreasonable.** Florida Courts have long used a detailed test for determining a "reasonable" attorney's fee, and a "reasonable" fee cannot logically be a penalty. See, *Florida Patients Compensation Fund v. Rowe*, 472 So.2d 1145, (Fla., 1985).

13. Under Florida Law, a contract must be **"construed as a whole,"** and **"the Court must review the entire contract,"** and **"every provision in a contract should be given meaning and effect,"** so that Court's must **"read provisions of a contract harmoniously in order to give effect to all portions thereof."** *City of Homestead v. Johnson*, 760 So.2d 80, 84 (Fla. 2000); *Excelsior Ins. Co. v. Pomona Bar & Package Company*, 369 So.2d 938, 941 (Fla. 1979). Similarly, because the 2014 and 2018 Fee Agreements deal with the same subject matter, both fee agreements must be read and construed together, in *pari materi*. *Southfork Investments Group, Inc. v. Williams* 706 So.2d 75 (Fla. 2nd DCA 1998); *Williams v. Atlantic Sugar*, 773 So.2d 1176 (Fla. 4th DCA 2000). When read together, both fee agreements are limited to a reasonable fee and/or a reasonable hourly fee, and a "reasonable" fee cannot be a penalty.

14. The Florida Bar Rules specifically state that an attorney's fee agreement with the Client **"will ordinarily be enforceable according to the terms of such contracts or agreements,"**

unless the fee agreement is illegal, obtained through prohibited solicitation or clearly excessive. See, Rule 4-1.5(d), Rules Regulating the Florida Bar.

15. Because both of North Park's Fee Agreements are limited to a **"reasonable" fee** and because the fee agreements specifically incorporated the eminent domain reasonable fee statutes, Sections 73.091 and 73.092, Florida Statutes, Rush's Fee Agreements does not contain a "penalty" for termination and do not provide for an unreasonable or excessive fee.

16. Because North Park's 2018 Fee Agreement provided for an **hourly fee at $395.00 per hour**, and because **both** fee agreements must be construed **together**, *in pari materi*, both the 2014 and 2018 Fee Agreements provide for a reasonable fee.

17. Under Rule 4-1.5, Rules Regulating the Florida Bar, an attorney is always entitled to request payment of a reasonable fee. As a matter of law, an attorney's contractual claim for a "reasonable fee" **(which could possibly be zero dollars)** and which is subject to judicial review, cannot possibly be either an unreasonable fee or a penalty for termination.

18. Typically, a prohibited penalty for termination clause contains a liquidated damages amount, which must be part of a contingency fee agreement. The 2014 and 2018 Fee Agreements do not contain any such liquidated damage clause and leave it to the Arbitration to award a reasonable fee, which under the Arbitration Statute is **subject to judicial review,** before it can be approved by the Trial Court and is then **subject to Appellate review**. Under Florida Law, a reasonable award of attorney's fees cannot possibly be "unreasonable" or a penalty, because the fee award is subject to Judicial Review. See, *First Baptist Church of Cape Coral, Fla., Inc. v. Compass Construction*, 115 So.3d 978 (Fla. 2013) **(Award of attorney's fees is a reasonable fee under Rowe, because it is subject to judicial review, and therefore, there is no danger of an excessive fee.)**

SECOND AFFIRMATIVE DEFENSE

Attorney's Liens are Authorized in Eminent Domain Proceedings and Florida Law Specifically Authorizes Rush to File Motions for Fees to Pursue an Attorney's Lien

19. Respondent Rush realleges paragraphs 1 through 10 above.

20. An attorney's lien has long been recognized as an **enforceable equitable lien** which protects and ensures the payment of an attorney's reasonable attorney's fees and costs in an eminent domain proceeding. See, *Winn v. City of Cocoa*, 75 So.2d 909, 912 (Fla. 1954). **(in an eminent domain proceeding, the Client Landowner is "obligated" to pay the terminated attorney "a reasonable fee for the services rendered up to the time of such discharge," and the attorney's lien attaches to the entire eminent domain settlement fund). Id at 912.** (Underline added).

21. An attorney's lien has long been approved by the Florida Supreme Court. See, *Miller v. Scobie*, 11 So.2d. 892 (Fla., 1943); See, *Mabry v. Knabb*, 10 So.2d 330 (Fla. 1942); See, *Brown v. Vermont Mutual Insurance Company*, 614 So.2d 574, 580 (Fla. 1st DCA 1993).(**"Although the parties to a lawsuit that are represented by attorneys may settle the dispute between themselves, without the participation of their attorney, any such settlement made without knowledge of or notice to a party's attorney, and without payment of the attorney's fee due such attorney, operates as a fraud upon the attorney, whether intended or not, and the attorney may continue the litigation in the name of the parties to enforce the right to be paid a fee.")**

22. The Florida Bar Rules specifically authorize attorneys to acquire an attorney's lien. See, Rule 4-1.8(i)(1), Rules Regulating the Florida Bar **("the lawyer may acquire a lien granted by law to secure the lawyer's fee or expenses.")**.

23. North Park's 2014 and 2018 fee agreements specifically authorize Respondent Rush to file motions to recover attorney's fees, expert fees and costs, and North Park agreed to fully cooperate with these motions. Under the 2018 Fee Agreement, North Park agreed to actually pay these fees, if requested.

24. On or about July 12, 2018, the Trial Court entered an order approving Rush's withdrawal from representing North Park, and the Court specifically retained jurisdiction to hear Rush's motions for attorney's fees, expert fees and costs, after any judgment was entered.

25. Because Respondent **Rush filed Rush's motions to recover attorney's fees, expert fees and costs against FDOT only,** and because North Park's **Fee Agreements obligate North Park to pay fees and costs,** and because North Park's Fee **Agreements specifically authorize the filing of such fee motions**, and because Florida's **Law on attorney's liens specifically authorizes the filing of such motions** to pursue an attorney's lien, and because the trial **Court retained jurisdiction to hear Rush's motions** for fees and costs, the filing of these motions was lawful, proper and authorized by the client and by the Court's Order.

THIRD AFFIRMATIVE DEFENSE

Rush's Attorney's Lien and Equitable Lien Action Authorized Rush to File a Lis Pendens in the new 2018 Arbitration Case

26. Respondent Rush realleges paragraphs 1 through 10 above

27. On or about July 12, 2018, the Trial Court entered an order approving Rush's withdrawal from representing North Park, which then allowed Rush to file a legal action against North Park to compel Florida Bar Arbitration. However, North Park refused to arbitrate for more than two years.

28. On or about August 3, 2018, Rush filed an action, seeking to **compel binding arbitration of all disputes with North Park** and to enforce Rush's Attorney's Lien and Equitable

Lien against North Park (the **"2018 Arbitration case"**). Rush's Equitable Lien action is based in part on North Park's unjust actions and on Rush's Attorney's Lien and resulting security interest in the FDOT payments. Also, Rush's professional services have **substantially improved the value of North Park's real property and substantially enhanced North Park's negotiating position with FDOT.**

29. In the 2018 arbitration case, Rush sought binding arbitration before the Florida Bar Arbitration program in regard to both the attorney's lien and an equitable lien/constructive trust, which Rush contended had arisen by virtue of North Park's and Taylor's inequitable conduct. **Under Florida Law, an attorney's lien is recognized as an equitable lien that exist to protect and secure an attorney's recovery of fees and costs. An equitable lien is a protected property right, which can attach to real property and is properly protectable by the filing of a Lis Pendens.**

30. Rush lawfully filed a Lis Pendens in September 2018, but the Lis Pendens was removed in October of 2018 by Order of Court. Even so, the filing of the Lis Pendens was lawful in support of Rush's Attorney's Lien and separate equitable lien/constructive trust. In any case, **North Park's January 2019 sale to NPID was not delayed and North Park suffered no damages or prejudice from the filing of this Lis Pendens**.

FOURTH AFFIRMATIVE DEFENSE

Suarez Brothers Approval, Ratification and Adoption of North Park's 2014 and 2018 Fee Agreements

31. Respondent Rush realleges paragraphs 1 through 10 above.

32. Before Todd Taylor signed the 2014 Fee Agreement, Jack Suarez and Robert Suarez **authorized and approved** Taylor's hiring of Respondent Rush as the attorney for the North Park Companies in the eminent domain matter with FDOT.

33. At all times material, Jack Suarez and Robert Suarez (the **"Suarez Brothers"**) acted together as agents for each other when **Robert Suarez or Jack Suarez** communicated with Respondent Rush in regard to approving Rush's representation of North Park, and thereby **adopted and ratified** Taylor's authority and decisions and North Park's execution of the 2014 and 2018 Fee Agreements.

34. Between January 1, 2014 and approximately late April 2018, **Robert Suarez** never objected to the decisions, representations and promises by Todd R. Taylor, or the litigation objection/goals adopted by Todd R. Taylor and North Park or Rush's legal strategies in the subject eminent domain matter.

35. In 2016, 2017 and 2018, **Robert Suarez** recognized and communicated directly with Respondent Rush in Tampa in regard to Rush's representation of North Park, and thereby ratified and adopted Taylor's authority **to retain Rush** and **to sign** North Park's 2014 Eminent Domain Fee Agreement.

36. Between January 1, 2014 and approximately mid-April 2018 **Jack Suarez** never objected to the management decisions, representations and promises by Todd R. Taylor, or the litigation objectives/goals of Todd R. Taylor and North Park or Rush's legal strategies in the subject eminent domain matter.

37. In early 2018, **Jack Suarez** communicated **directly with Respondent Rush** in Tampa in regard to Rush's ongoing eminent domain representation of North Park, and thereby **adopted and ratified** Taylor's authority and North Park's 2014 Eminent Domain Fee Agreement with Rush.

FIFTH AFFIRMATIVE DEFENSE

North Park's Confirmation of North Park's Objectives, Goals, Directions and Approval of Rush's Strategies to Promptly Settle Eminent Domain Case Within North Park's Short Deadline

38. Respondent Rush realleges paragraphs 1 through 10 above.

39. In March and April of 2018, North Park, Taylor, Rushnell, Jack Suarez and Robert Suarez summoned Attorney Rush to Jack Suarez' Tampa office for a meeting with Jack Suarez, Robert Suarez, Todd Taylor and Devon Rushnell in regard to North Park's ongoing problems with FDOT. **At the March 21, 2018 meeting, both Jack Suarez and Robert Suarez demanded that Attorney Rush take steps to "put pressure" on FDOT to immediately "settle the case" with FDOT, so that FDOT would be required to modify its taking, easements and construction plans, so that the FDOT drainage pond would be relocated at FDOT's expense,** so that ingress and egress from Sam Allen Road to North Park's property would be fully restored.

40. In March and April of 2018, Jack Suarez met with Rush, Taylor and others on three (3) separate occasions to discuss North Park's **previously agreed upon** eminent domain objectives/goals and North Park's and Rush's **previously agreed upon** litigation strategies for the eminent domain matter. Prior to May of 2018, Jack Suarez did not object to Taylor's eminent domain objectives/goals or Rush's litigation strategies.

41. On or about March 27, 2018, **Jack Suarez sent an email to Rush and Taylor recommending that Rush set the eminent domain case for trial so that North Park could use the threat of trial to pressure FDOT to enter into a settlement agreement with North Park**, on North Park's terms.

42. On or about April 12, 2018, Jack Suarez, Todd Taylor and North Park delivered a **meeting agenda** to Rush demanding that Rush take immediate steps to force FDOT to settle with

North Park on North Park's terms, **on or before April 25, 2018**. Additionally, Jack Suarez, Todd Taylor and North Park demanded that Attorney Rush **immediately increase pressure on FDOT so that FDOT would settle by the April 25, 2018 deadline at FDOT's expenses.**

43. In the Spring of 2018, Respondent Rush repeatedly communicated with Taylor, Suarez and Suarez in regard to Rush's ongoing litigation strategies and actions, designed to pursue mediation and prompt settlement, as specifically directed by North Park, Jack Suarez and Todd Taylor. **Prior to early May of 2018, North Park did not object to any of Rush's strategies or filings.**

44. On or about April 16, 2018, Rush filed a motion to schedule mediation and set case for trial, as previously directed by Suarez, Taylor and North Park.

45. On or about April 16, 2018, Rush filed a motion for partial summary judgment against FDOT in order to notify FDOT of North Park's significant damages caused by FDOT, and in order to put pressure on FDOT to promptly settle, **as previously directed by Suarez, Taylor and North Park.**

46. On or about April 18, 2018, Rush emailed and mailed a detailed letter to Todd Taylor, Jack Suarez, Robert Suarez and North Park, confirming that Rush was completing the expert reports demanded by FDOT and confirming that Rush was pursuing various motions in regard to North Park's demand for damages, mediation and trial, as previously directed by Suarez, Taylor and North Park.

47. On or about April 18, 2018, Rush emailed and mailed a detailed letter to Todd Taylor, Jack Suarez, Robert Suarez and North Park, confirming that Rush was pursuing various litigation strategies in support of North Park's demand for damages, mediation and trial, as previously directed by Suarez, Taylor and North Park.

48. The above described actions, communications and directions from Todd Taylor, Jack Suarez, Robert Suarez and North Park confirmed North Park's previous direction to put pressure on FDOT and to pursue completion of expert reports, document North Park's damage claims and put pressure on FDOT to mediate and settle promptly within North Park's short April 25, 2018 deadline for settlement, which North Park subsequently extended into early May 2018.

SIXTH AFFIRMATIVE DEFENSE

North Park's Confirmation of North Park's Goal to Force FDOT to Relocate FDOT's Drainage Pond and Modify FDOT's Plans, Structures and Easements at FDOT's Expense

49. Respondent Rush realleges paragraphs 1 through 10 above.

50. On or about March 6, 2018, Todd Taylor, North Park and their engineering agent, Devon Rushnell sent an email demanding an emergency meeting with FDOT, so that North Park and Rush could demand that FDOT enter into a settlement agreement on North Park's terms which required FDOT to relocate FDOT's drainage pond and modify FDOT's plans, structures and easements at FDOT's expense. The March 6, 2018 Taylor/Rushnell email reads as follows:

Taylor and Rushnell's March 6, 2018 Email to Attorney Brian Rush

> **FDOT is stopping the pond changes unless the lawsuit is resolved. This is a major problem.**
>
> **FDOT needs to be put on notice that without the pond changes and changes to the Sam Allen roadway plans the entry boulevard to the subdivision will not work, thus disabling the entire project. (This email was also sent to Jack Suarez on March 6, 2018.) (Underline added).**

April 4, 2018 Settlement Conference at FDOT and North Park's Settlement Proposal to FDOT

51. In approximately late March of 2018, Rush arranged for a North Park meeting at FDOT headquarters in Tampa, **which was scheduled for April 4, 2018**. This April 4th meeting was attended by approximately fifteen (15) individuals, including Jack Suarez, Todd Taylor, Devon

Rushnell, Brian Rush, Reginald Mesimer, P.E. and Richard Harris, Appraiser, along with numerous FDOT representatives, including Kevin Lee, P.E., Ron Crew, and Aloyma Sanchez, Esquire.

FDOT's and Kevin Lee, P.E.'s Accusations Against North Park

52. Toward the end of the April 4, 2018 settlement conference at FDOT, FDOT's project engineer, **Kevin Lee, P.E. openly accused Devon Rushnell, Todd Taylor and North Park of broken promises in regard to North Park's previous agreement** to provide FDOT with reliable drainage calculations, engineering drawings for a relocated pond and to apply for and obtain the necessary water management permits from SWFWMD, the local water management/environmental district.

53. On April 4, 2018, **Kevin Lee accused Devon Rushnell and Todd Taylor of making misleading statements and false promises to FDOT** in regard to North Park's drainage pond and North Park's previous commitments to obtain required SWFWMD permits.

North Park's April 2018 Request for FDOT to Sign a Memorandum of Understanding

54. During the April 4, 2018 meeting at FDOT, **North Park requested that FDOT enter into an immediate settlement of the eminent domain case which would include the relocation of the FDOT drainage pond and the modification of the FDOT's construction plans and easements**, so that unfettered ingress and egress of the North Park property would be completely restored and would no longer be impaired.

55. **However, FDOT refused to sign a binding agreement and refused North Park's request for immediate settlement, and instead, FDOT demanded that North Park complete all of its expert reports before FDOT scheduled mediation.**

56. On April 4, 2018 and April 5, 2018, Taylor and North Park demanded that Rush draft and send a proposed Memorandum of Understanding **("MOU")** to the FDOT **again requiring**

that FDOT relocate FDOT's drainage pond and modify FDOT's plans and easements, so that unfettered ingress and egress would be fully restored to North Park's property, at FDOT's expense.

57. In response to North Park's demands and **unreasonable** deadlines for settlement, Rush advised Taylor and North Park that **Rush would not proceed with the case without a new fee agreement securing Rush's attorney's fees and the expert fees and costs**. On April 6, 2018, Taylor and North Park signed the new 2018 Hourly/Reasonable Fee Agreement, and **North Park was now obligated to pay hourly attorney's fees to Rush at $395.00 per hour**.

58. On or about April 6-7, 2018, Rush transmitted a detailed Memorandum of Understanding to FDOT. However, **FDOT refused to sign North Park's Memorandum of Understanding, and FDOT refused to engage in settlement negotiations with North Park.**

59. **On or about April 20, 2018, FDOT sent a detailed letter to Taylor, Rushnell and North Park stating that FDOT was unwilling to relocate the FDOT drainage pond and was unwilling to modify its plans and easements**, primarily because of North Park's broken promises to FDOT**.**

60. In the April 20, 2018 letter, FDOT blamed North Park for **selecting the site of FDOT's drainage pond and accused North Park of repeatedly failing to keep North Park's promises to the FDOT in regard to North Park obtaining the necessary engineering and drainage calculations and related permits** from various governmental agencies, including the South West Florida Water Management District (SWFWMD).

FDOT's and Kevin Lee's April 20, 2018 Letter to North Park

> **As a result of our meeting of April 4, 2018, this letter is to clarify any misunderstandings you have with regard to your request that relocated Pond "AB1" be relocated for a second time.**

> **You have been informed on numerous occasions, that the most recent pond relocation request is dependent primarily on your ability to obtain permits for North Park Isles.**
>
> **FDOT previously agreed to relocate Pond "AB1" in 2014 pursuant to your request… Given the fact that you did not provide us with the permits, construction plans and the other documentation from other entities with permitting authority, your current request to relocate the pond cannot be accommodated. (underline added)**

61. On or about June 25, 2018, North Park and its new attorney, Richard Petitt, sent a detailed settlement proposal to FDOT, demanding that FDOT relocate FDOT's drainage pond and modify FDOT's plans, easements and structures, so that unfettered ingress and egress would be restored to North Park's property, and so that North Park would be able to develop **14-waterfront lots next to the relocated FDOT drainage pond.** On or about June 26, 2018, FDOT and Attorney Aloyma Sanchez **again rejected** the above North Park/Petitt settlement proposal and **again** attached a copy of FDOT's previous **April 20, 2018 rejection letter, signed by Kevin Lee, P.E.**

62. On or about June 28, 2018, North Park and its new attorney, Richard Petitt, demanded that Attorney Rush send a substantially identical detailed settlement proposal to FDOT, demanding that FDOT relocate FDOT's drainage pond and modify FDOT's plans, easements and structures, so that unfettered ingress and egress would be restored to North Park's property, and North Park would be able to develop 14-waterfront lots next to the relocated FDOT drainage pond.

63. On or about June 29, 2018, Attorney Rush emailed the substantially identical settlement proposal letter to FDOT, which was dated July 2, 2018. On or about July 6, 2018, FDOT and its legal counsel, Aloyma Sanchez **again rejected** the above North Park settlement proposal and **again attached** a copy of FDOT's previous **April 20, 2018 rejection letter, signed by Kevin Lee, P.E.** Aloyma Sanchez' letter states in pertinent part as follows:

Aloyma Sanchez' July 6, 2018 FDOT Letter

> **On, June 25, 2018, Rich Petitt, Esq., sent me a proposed settlement offer/agreement in order to resolve the above-captioned case. Late Friday, June 29, 2018, you [Brian Rush] also sent me a similar offer with additional terms asking for a quick response to your settlement proposal.**
>
> **In any event, we cannot accommodate your request to redesign the project. FDOT has selected a contractor who is constructing the project as designed and approved.**
>
> **Attached is Kevin Lee's letter dated April 20, 2018, to Messers Taylor and Rushnel. Mr. Lee advised them that the FDOT had not been provided the necessary permits from entities with permitting authority, construction plans and other documentation. (underline added)**

64. The substantially identical North Park settlement proposals sent by both Attorney Rush and Attorney Petitt and North Park to FDOT over several months (March to July 2018) show that there was **never a real disagreement over the client's objective or Rush's strategy, and Attorney Rush consistently sent North Park approved settlement proposals to FDOT**, which FDOT repeatedly rejected because of North Park's broken promises and unreasonable demands.

SEVENTH AFFIRMATIVE DEFENSE

North Park's and Petitt's Demand That Rush Sign a New Fee Agreement Which Likely Violated the Florida Bar Rules in Regard to Attorney Rush's Duty to Use Independent Judgment and Attorney Rush's Duty to Communicate to Client, Court and Opposing Counsel

65. Respondent Rush realleges paragraphs 1 through 10 above.

66. In approximately May of 2018, North Park, Richard Petitt and Jack Suarez **notified Rush that North Park and Suarez would pursue a Bar complaint against Attorney Rush, unless Attorney Rush agreed to terminate North Park's Fee Agreements and enter into a new unethical one (1) page Fee Agreement,** which improperly restricted Attorney Rush's independent judgment and improperly precluded Attorney Rush's duty to communicate to the client, the Court

and opposing counsel, and unfairly damaged certain third party experts, in violation of Attorney Ethics Standards.

67. In May of 2018, Jack Suarez and Attorney Petitt drafted and sent to Rush separate **May 18, 2018 and May 21, 2018 demand letters**, enclosing a new improper one (1) page Fee Agreement for Rush's execution, and this new one-page fee agreement likely violated the Rules Regulating the Florida Bar and Florida Law and Attorney ethical standards, requiring that an attorney exercise independent legal judgment and communicate with the client, the Court and opposing counsel and treat third parties fairly. Attorney Petitt's May 18, 2018 and May 21, 2018 demand letters to Rush state in pertinent part, as follows:

Attorney Petitt's May 18, 2018 Demand Letter

The Engagement Agreement is unenforceable for a number of reasons, which include, without limitation, the following:

1. **It violates the Rules Regulating the Florida Bar, in that it contains an illegal termination provision that purports to require the Clients to pay you a fee if they terminate the attorney-client relationship, even if the contingency is not fulfilled. The Florida Bar and the courts have been consistent in holding that such a termination provision is void and unenforceable in the context of contingent fee agreements. See, e.g., *Guy Bennett Rubin, P.A. v. Guettler*, 7 So.3d 809 (Fla. 2011).**
2. **The Engagement Agreement is inconsistent, overreaching, and confusing.**
3. **Todd Taylor did not have the mental capacity to understand the Engagement Agreement.**
4. **Todd Taylor did not have the actual or apparent authority of the Clients to execute the Engagement Agreement.**

Accordingly, the Clients demand that you communicate in writing no later than 5 p.m. on May 22, 2018, your consent and agreement to rescind and cancel the Engagement Agreement. (Underline added).

***

Petitt's May 21, 2018 Demand Letter

As for the Clients' intentions regarding the illegal engagement agreement, that is dependent on the choice you make. The Clients have given you a path to enter into a new, legal engagement agreement. The Clients await your response.

> **If you persist in insisting that the current engagement agreement is valid and enforceable, then the Clients will pursue their legal remedies. Although the precise course of action is still under consideration, I disagree that the Clients are bound by the purported arbitration provision in the illegal engagement agreement. (Underline added).**

North Park's Constructive Discharge of Rush

68. In May of 2018, North Park and Jack Suarez knew that Petitt's above demand letter and proposed new one-page Fee Agreement was improper and **breached and repudiated North Park's 2014 and 2018 Fee Agreement with Rush, amounting to constructive discharge of Rush.**

69. When Petitt sent the above demand letters to Attorney Rush, **Petitt knew that Rush could not ethically negotiate-away an alleged violation of the Florida Bar Rules by secretly rescinding the alleged "illegal fee agreement." Such a bargain is prohibited by the Florida Bar Rules.**

70. On or about June 11, 2018, Rush received notice from the Florida Bar that North Park had filed a Bar Grievance against Rush, alleging that Rush's Fee Agreements with North Park were illegal.

71. When North Park breached and repudiated North Park's Fee Agreements in April/May 2018, Rush was **immediately relieved** of his **contractual** duties to North Park, but North Park remained obligated to "fully cooperate" with Respondent Rush. *Hosp. Mortg. Grp. v. First Prudential Dev. Corp.*, 411 So.2d 181, 182 (Fla. 1982) **"One party's repudiation of a duty to render performance discharges the other party's remaining duties to render performance."**).

72. Because North Park breached and repudiated North Park 2014 and 2018 Fee Agreements, **Rush was authorized to immediately file an attorney's lien against FDOT only**

and to file supporting motions to enforce the lien and security interest against FDOT. See, See, *Brown v. Vermont Mutual Insurance Company*, 614 So.2d 574, 580 (Fla. 1st DCA 1993).

73. As required by the Florida Bar Rules, **Attorney Rush continued to complete the North Park work in progress related to completing the expert reports and Attorney Rush continued to transmit to FDOT the written settlement proposals authorized and drafted by North Park**, including Attorney Rush's detailed settlement letter to FDOT dated July 2, 2018.

EIGHTH AFFIRMATIVE DEFENSE

Second DCA has Already Affirmed the Trial Court's 2018 Order Determining that North Park's 2014 Fee Agreement is Enforceable and the Second DCA has Rejected North Park's Argument that the 2014 Fee Agreement is Illegal or Contains a Penalty

74. Respondent Rush realleges paragraphs 1 through 10 above.

75. In its Bar Grievance, North Park incorrectly asserted that the 2014 fee agreement was illegal and unenforceable because the fee agreement was supposedly a **"contingency fee agreement" with an illegal "penalty" for termination clause**. The Florida Bar has adopted this same position in the Bar's Complaint.

76. In May of 2019, the Second DCA **rejected North Park's "penalty" argument and affirmed the Trial Court Order** in a per curium affirmed decision, dated September 20, 2018, enforcing the 2014 Fee Agreement and compelling binding arbitration. Three separate doctrines require respect for the Second DCA's Affirmance of the Trial Court's Order: Law of the Case, Collateral Estoppel and Res Judicata.

Law of the Case Doctrine

77. The Law of the Case Doctrine generally precludes relitigating any issue previously resolved by the Appellate Court. *Smith v. City of Fort Myers*, 944 So. 2d 1092, 1094 (Fla. 2d D.C.A. 2006). **A per curiam affirmance is the law of the case with respect to all**

issues presented and decided in the Appellate Court, even without an opinion. *Woolin v. Bernay*, 920 So. 2d 1151, 1153 (Fla. 3d D.C.A. 2006).

Collateral Estoppel and Res Judicata Prohibit the Florida Bar's Complaint Based Upon Alleged Illegality, Unenforceability and Violation of Public Policy

78. The Doctrine of Collateral Estoppel or "issue preclusion", prevents the same parties (or their privies) from relitigating the same issues that have been determined in a prior Court proceeding. The Doctrine of Collateral Estoppel does not require a final judgment or decision on the merits. Instead, **Collateral Estoppel prevents identical parties (and their privies) from "relitigating identical issues that have been determined in prior litigation."** See, Bradenton Group, Inc. v. State 970 So.2d 403, 408 (Fla. 5th DCA 2007).

79. In *Holt v. Brown's Repair Service, Inc.* 780 So.2d 180, 182 (Fla. 2nd DCA 2001). The Second District Court of Appeal explained collateral estoppel as follows:

> **"[F]or the doctrine of collateral estoppel to apply, an identical issue must be presented in a prior proceeding; the issue must have been a critical and necessary part of the prior determination; there must have been a full and fair opportunity to litigate this issue; the parties in the two proceedings must be identical; and the issues must have been actually litigated." Id. at 182.**

80. Collateral estoppel applies where the prior issue has been fully litigated and resulted in a final decision on that issue, by a Court of competent jurisdiction. Obtaining Appellate review is not a prerequisite for applying collateral estoppel, but **where the Appellate Court affirms the decision in the prior proceeding, collateral estoppel is clearer still.**

81. In *M.C.G. v. Hillsborough County School Board*, 927 So.2d 224, 225 (Fla. 2nd DCA 2006), the Court determined that collateral estoppel applied to preclude the parties from relitigating an issue that had been decided against them. In M.C.G., two parents brought a claim against the school board alleging that the parents' autistic child, who was in a full-time home

education program, was entitled to speech therapy services for **the 2004-05' school year.** An administrative law judge had previously denied a similar claim brought by the parents involving **the prior 2003-04' school year**.

North Park's 2018 Motion to Dismiss in the Trial Court

82. In its 2018 motion to dismiss, North Park argued that Rush's Petition to Compel Arbitration should be dismissed because North Park erroneously asserted that the Rush's 2014 eminent domain fee agreement was illegal and unenforceable, because the 2014 fee agreement contained an illegal fee penalty for termination clause. **See, Issue No.3 on pages 6 and 7 of North Park's motion to dismiss, which cite the same three inapplicable cases, cited in North Park's various false Florida Bar Complaints.**

83. In its 2018 motion to dismiss, **North Park specifically argued** that the 2014 eminent domain fee agreement was illegal and unenforceable because the 2014 eminent domain fee agreement provided for the award of a **"reasonable" fee, based upon "the reasonable value of the attorney's services."** In its 2018 motion to dismiss, North Park erroneously argued that the 2014 eminent domain fee agreement was illegal and unenforceable because:

> **"provisions penalizing clients for terminating their attorney are unenforceable on public policy grounds, because such provisions have a chilling effect on the fundamental right all clients have to select counsel of their choice."** (Underline added).

84. In its 2018 motion to dismiss, North Park then erroneously cited three (3) Florida cases arising from personal injury and probate tort cases to support North Park's erroneous legal argument that the 2014 eminent domain fee agreement was illegal because of a **non-existent penalty provision** and was **"unenforceable on public policy grounds."** These are the same erroneous legal arguments which have previously been rejected by three (3) Circuit Court orders and three (3) Second DCA Appellate Judges in the 2018 Circuit Court action.

North Park's 2018 Appeal

85. On October 19, 2018, North Park filed a notice of appeal specifically appealing the Trial Court's order. Attached to North Park's notice of appeal, was the Trial Court's September 20, 2018 order denying North Park's motion to dismiss and granting the Rush Attorneys' motion to compel arbitration.

86. Thereafter, North Park and the Rush Attorneys filed their respective appellate briefs in the Second DCA in regard to the Trial Court's order denying North Park's motion to dismiss and compelling arbitration. Again, North Park's Appellate Brief included North Park's erroneous contention that the 2014 fee agreement was illegal and unenforceable, **citing the same three (3) cases cited in North Park's motion to dismiss in the Trial Court.**

Second District's Decision Affirming Trial Court Order

87. In May of 2019, the Second District Court of Appeals rendered its decision, affirming the Trial Court's Order denying North Park's motion to dismiss and granting the Rush Attorneys' motion to compel arbitration.

NINTH AFFIRMATIVE DEFENSE

Eminent Domain Fees are Not Contingency Fees Under Florida Case Law

88. Respondent Rush realleges paragraphs 1 through 10 above

89. Eminent domain attorney's fees are not contingency fee agreements because **payment of the attorney's fee in eminent domain is generally assured, and the fees are paid to the property owner, as "just compensation."** *Standard Guarantee Insurance Company v. Quanstrom* 555 So.2d 828, 835 (Fla. 1990) **(eminent domain attorney's fees have "special, distinct factors", and "the attorney is assured of a (reasonable) fee when the action commences");** See, *Schick v. Department of Agriculture and Consumer Services* 599 So.2d 641,

644 (Fla. 1992) **(eminent domain attorney is not entitled to a contingency risk multiplier);** See, *City of North Miami Beach v. Reed* 863 So.2d 351, 353 (Fla. 3rd DCA 2003) **(Contingency risk multiplier is unavailable in eminent domain cases).**

Liability and Collectability are Not an Issue in Eminent Domain Cases

90. While both eminent domain and probate cases are subject to statutory percentage fee schedules, neither of these types of cases are contingency fee cases. See, *Quanstrom* (supra) at 834-36. See, *FDOT v. Skinners Wholesale Nursery*, 736 So.2d 3, 8 (Fla. 1st DCA 1998) **("enhancement (of) fees based on contingency risk factor is inappropriate in this eminent domain case."** (applying new 1994 Statute.).

91. Unlike true contingency fee cases, liability and collectability are not an issue in eminent domain or probate cases. **Importantly, in eminent domain cases the property owner is the Defendant and is not the Plaintiff. Additionally, the attorney's fee in eminent domain is not paid out of the Client's recovery, but rather is paid by the condemning authority.**

Eminent Domain Fee Schedule Only Calculates the "Amount" of a Reasonable Fee

92. Under Section 73.091 and Section 73.092, Florida Statues, the FDOT is absolutely obligated to pay a "reasonable" fee in an eminent domain proceeding, and this obligation is both statutory and constitutional. **Only the amount of the "reasonable fee" is in doubt.**

93. Under Section 73.092, Florida Statues, the Legislature has created a statutory schedule for calculating the amount of a "reasonable" attorney's fee which FDOT is absolutely obligated to pay, even though the calculation may result in a reasonable attorney's fee of zero dollars. **However, the statutory schedule does not convert the eminent domain fee**

agreement into a contingency fee agreement. As the Florida Supreme Court stated in *Quanstrom* (supra), **"the attorney is assured of a reasonable fee" in eminent domain cases.**

North Park's 2018 Fee Agreement Requires North Park to Pay Hourly/Reasonable Fees

94. In any case, **North Park's 2018 Hourly Fee/Reasonable Fee Agreement requires North Park to pay an hourly fee of $395.00 per hour, or a reasonable fee to be set by a Court.** Either way, the 2018 Fee Agreement is an hourly fee agreement and is not a contingency fee agreement. North Park's obligation to pay a reasonable hourly fee does not constitute a penalty upon termination, because the hourly fee **would always be subject to Court review**. See, (below) *First Baptist Church of Cape Coral, Fla., Inc. v. Compass Construction Inc.* 115 So.3d 978, 982 (Fla. 2013).

TENTH AFFIRMATIVE DEFENSE

The 2014 Fee Agreement Provides that the Rush Attorneys' Fees are Limited to a "Reasonable" Fee, and a Reasonable Fee Can Never be Unreasonable, Illegal or Violate Florida Public Policy, Because an Award of Attorney's Fees is Subject to Court Review

95. Respondent Rush realleges paragraphs 1 through 10 above

96. The 2014 eminent domain fee agreement limits Rush's recovery to a reasonable fee, either under the eminent domain statute or under the terms of the contract. **Under Florida Law, a reasonable fee award can never be excessive or unreasonable, because the award is subject to judicial review** under the "reasonable" fee standard set forth in *Florida Patient's Compensation Fund v. Rowe* 472 So.2d 1145, 1151 (Fla. 1985). See also, *Standard Guar. Ins. Co. v. Quanstrom* 555 So.2d 828, 834 (Fla. 1990).

97. In *First Baptist Church of Cape Coral, Fla., Inc. v. Compass Construction Inc.* 115 So.3d 978, 982 (Fla. 2013) the Florida Supreme Court confirmed that a reasonable fee awarded under *Rowe* could never be unreasonable or be a penalty. The Court stated:

> **Once a fee-shifting statute or contract triggers a court-awarded fee, the trial court is constrained by *Rowe* and its progeny in setting a fee that must be reasonable. This alleviates any concern that enforcing an alternative fee recovery clause will result in the nonprevailing party paying an unreasonable fee. *See Moxley,* 557 So.2d at 864;*see also Tampa Bay Publ'ns, Inc. v. Watkins,* 549 So.2d 745, 746–47 (Fla. 2d DCA 1989) ("adopt[ing] the reasoning in *Moxley* " that an alternative fee recovery clause does "not violate *Rowe* because a reasonable fee does not expose the party required to pay to being victimized by having to pay an excessive fee, which was the possible harm envisioned in *Rowe* "). Id. at 982. (Underline added).**

98. Because the 2014 Fee Agreement and the 2018 Hourly/Reasonable Fee Agreement are limited to an award of "reasonable" fees upon termination, neither of these Fee Agreements contain a prohibited "penalty" for termination.

99. As the Florida Supreme Court stated in *Compass Construction*, **"a fee recovery clause does not violate *Rowe* because a reasonable fee does not expose the party required to pay to being victimized by having to pay an excessive fee,"** because the fee awarded "must be reasonable" under the *Rowe* standards.

ELEVENTH AFFIRMATIVE DEFENSE

FDOT's Order of Taking Frames Issues of Damages

100. Respondent Rush realleges paragraphs 1 through 10 above

101. The Order of Taking and its attached construction plans, drawings and easements set forth the extent and effect of FDOT's taking of North Park's property and related property rights. Under Florida Law, the Order of Taking **defines the scope of damages and any non-monetary benefit and any resulting non-monetary benefit attorney's fees, to be paid by FDOT**.

102. In paragraph 12 of its Order of Taking, the Court ordered that the subject FDOT road project must be constructed in conformance with the FDOT plans, specifications and

easements attached to the Order of Taking. The Order of Taking was drafted by FDOT and must be construed against FDOT.

Wye River Farms Doctrine

103. In paragraph 12 of the Order of Taking, the Court specifically determined that the Order of Taking was controlled by the holding in ***Central and Southern Florida Flood Control Dist. v. Wye River Farms, Inc.*****,** 297 So.2d 323, (Fla. 4th DCA 974), cert. denied, 310 So.2d 745 (Fla. 1975). See, Section 73.015(3), Florida Statutes.

104. In Wye River Farms (supra), the Court set forth undisputed Florida law that the landowner is allowed to assume the **"worst possible effect"** from the FDOT's plans and easements and taking. The Court stated: **("plans and specifications for construction of a public project are admissible in evidence by either party.") ("when such information is in evidence, the condemnor is bound thereby and the issues as to damages to the remainder are framed there in. All such damages as are caused by the taking… are recoverable.") ("[The landowner] will be allowed to assume the worst possible effect upon their remainder by virtue of the taking."). Id. at 327 (underline added).**

FDOT's Reliance Upon Rush's Work Product and Expert Reports in Regard to FDOT's Execution of 2019 Settlement with North Park

105. **Aloyma Sanchez, Esquire and FDOT have conceded that FDOT and Sanchez specifically relied upon Attorney Rush's 4-year work product and the resulting expert reports when FDOT decided to enter into the January 2019 Stipulated Final Judgment.**

106. In the Final Judgment, FDOT agreed to substantially modify the FDOT construction plans, drawings and easements attached to the 2017 Order of Taking, and FDOT agreed to undertake substantial contractual obligations to fully cooperate in relocating the FDOT

ponds and **FDOT agreed to "swap" real property** between FDOT and North Park and its successors in order to avoid causing millions of dollars of damages to North Park.

2019 Final Judgement Modified 2017 Order of Taking and Created a Non-Monetary Benefit to North Park and a Multi-Million Dollar Savings to FDOT

107. On January 18, 2019, FDOT, North Park and NPID filed a Stipulated Final Judgment, whereby the Court entered a Final Judgment and confirmed that FDOT had agreed to modify FDOT's construction plans, drawings and easements for the planned relocation of FDOT's drainage pond, structures and easements, and confirmed that FDOT had agreed to fully cooperate with North Park and its assigns in relocating the subject FDOT drainage pond, structures and easements, including **an agreement for future "land swaps."**

108. The Rush Attorneys' four (4) years of work and the resulting expert reports and affidavits **created settlement leverage against FDOT**, which directly led to the North Park settlement and a **significant non-monetary benefit** to North Park, and a **multimillion-dollar monetary savings for FDOT. The January 2019 Stipulated Final Judgment states in part:**

2019 Stipulated Final Judgment

8. **Easement Language:** With respect to Parcels 803A and 803B, the FDOT **clarifies** the scope of the existing non-exclusive easements acquired as set forth below:

a. A **non-exclusive** perpetual drainage easement for the purposes of constructing and maintaining storm water conveyance facilities such as pipes and swales and associated drainage structures as depicted in the construction plans introduced at the Order of Taking hearing in this case. (bold added)

b. This easement includes the non-exclusive right to ingress and egress over the **surface** of the easement area. This easement includes the right to use and occupy the **surface** of the easement area in order to do necessary clearing, excavating construction and maintenance. (bold added)

c. In the event that maintenance of the constructed features requires entry upon and through the **surface** of the easement area, the **surface** will be restored to the same condition as existed prior to the maintenance action…The owner of the property encumbered by this easement is **reserved all rights to use of the property that are** not inconsistent with the purpose of this easement.

12. **Defendants or their assigns may apply for FDOT, SWFMD, or City of Plant City permits to modify, redesign or relocate the ponds** and/or easements prior to completion of the construction of Parcels 112,803A and 803B; (bold added)

13. **FDOT shall not unreasonably withhold approval without cause for Defendants or their assigns to redesign, modify or relocate the Sam Allen Road improvements,** which include but are not limited to, piping, structures, roadways, and pond, identified in FDOT's construction plans that were introduced into evidence at the Order of Taking hearing and are attached hereto as Exhibit "B"; (bold added)

14**.** **FDOT shall cooperate in good faith to execute any permit applications** necessary to obtain approvals of any such redesign, modifications or relocation; (bold added)

16. Defendants or their assigns and **FDOT acknowledge and contemplate that any such redesign, modification or relocation will require the FDOT and the then current landowners to <u>"swap" ownership of real property</u> to accommodate the redesign, modification or relocation and the parties <u>agree to cooperate in so doing</u>**; (bold added)

18. **FDOT <u>shall not unreasonably withhold approval</u> for Defendants' or their assigns' construction, use, and maintenance of any roadways, drainage, landscape, hardscape, signage, monumentation, or other items** within the boundaries of the FDOT easement provided that such improvements, uses and maintenance do not materially interfere with the FDOT's or its successor in interest's right of use of its easements; (underline <u>and</u> bold added)

109. The January 2019 Stipulated Final Judgment **<u>modified/amended</u>** the Court's 2017 Order of Taking, so that North Park and its assigns, including NPID, **can now relocate** FDOT's drainage pond, so that North Park and NPID **could <u>entirely avoid all of the damages</u>** resulting from FDOT's taking, as "framed" by the plans, specifications, and easements attached to the Order of Taking. <u>See</u>, <u>*Wye River Farms*</u> (supra).

<u>Rush's Efforts and North Park's Expert Reports Caused 2019 Final Judgement and Facilitated North Park's $10,000,000.00 Sale to NPID and "Saved" FDOT $5,000,000.00 in Damages</u>

110. The January 2019 Stipulated Final Judgment was **<u>drafted by</u> FDOT and <u>signed and agreed to</u> by North Park and NPID**, **which <u>confirms</u> that NPID <u>required</u> FDOT's modification of the FDOT plans and easements set forth in the Final Judgement.** The Stipulated Final Judgment **<u>eliminated substantially all or entirely all</u> of North Park's**

damages from the FDOT taking, and thereby removed the actual impediments to North Park selling the subject property to NPID.

111. More importantly, the 2019 Final Judgement **satisfied NPID's lender, so that NPID could then obtain lender financing, so that North Park could then sell the North Park property to NPID**.

112. As a result of the Rush Attorneys' four (4) years of effort (2014-2018), North Park was able to successfully close and sell most of the North Park property to NPID for **ten million dollars ($10,000,000.00).**

113. Rush's representation of North Park **was not in conflict** with North Park's goals and "objectives" to settle the eminent domain case. **The case could not settle without Rush's efforts and the expert's reports.**

114. In fact, Rush's work product and resulting expert's reports, allowed FDOT to "justify" the 2019 Final Judgement, which is a required predicate for FDOT's settlement with North Park. In other words, there was "no conflict" at all between Rush's work effort and North Park's objective to settle with FDOT.

[SPACE INTENTIONALLY LEFT BLANK]

ESTIMATED LENGTH OF TRIAL AND ANTICIPATED DISCOVERY

Respondent Rush estimates that a trial will take approximately five (5) days, more or less. Additionally, Respondent will likely call approximately ten (10) witnesses, more or less.

Respondent also anticipates taking a number of pre-trial discovery depositions of various individuals, including but not limited to (1) Todd Taylor; (2) Jack Suarez; (3) Robert Suarez; (4) Devon Rushnell; (5) Richard Petitt; (6) Aloyma Sanchez; (7) Kevin Lee, P.E., (8) Ron Crew; (9) Jeffery Hills; (10) Robert Barnes, Esquire; (11) Reginald Mesimer, P.E.; (12) Richard Harris, Appraiser; (13) John Greer; and (14) Michael Rocha, Esquire plus any expert witnesses or additional fact witnesses listed by the Florida Bar.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by email, facsimile and/or U.S. Mail and has been electronically filed as required by the Florida Rules of Civil Procedure on this 7th day of December, 2020, to:

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Respectfully Submitted,

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