

PLASTIRAS & TERRIZZI

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LEGAL SERVICES AGREEMENT

(FIXED FEE – A LA CARTE)

1. IDENTIFICATION OF PARTIES. This agreement is made between The Law Firm of Plastiras and Terrizzi, hereafter referred to as "Law Firm," and [Enter client name], A California Nonprofit Mutual Benefit Corporation, hereafter referred to as "Client" in San Rafael, California. This agreement relates to the collection of delinquent homeowner assessment and related charges for the property address: _____.

This agreement is required by Business and Professions Code Section 6148 and is intended to fulfill the requirements of that section.

2. LEGAL SERVICES TO BE PROVIDED. The legal services to be provided by the Law Firm to Client are as follows: To prosecute Client's claim for delinquent assessments and related charges as instructed by the Client's selection of specific "fixed fee" services as delineated on the Addendum 1, attached, and according the Client's Governing Documents; and, to provide any other services requested by Client and agreed to in writing by Law Firm. Law Firm will provide those legal services reasonably required to represent Client. Law Firm will take reasonable steps to keep Client informed of progress and to respond to Client's inquiries.

Because of the nature of the fixed fee - a la carte services options delineated on Addendum 1, each matter undertaken by the Firm on behalf of the Client will require a new Legal Services Agreement. Unless Client and Law Firm make a subsequent agreement in writing, this Agreement will govern all future services Law Firm may perform for Client on the specific case identified in paragraph 1, above.

For purposes of educating Client about the process of obtaining Default Judgment, and for Client's consideration when performing a pre-litigation cost/benefit analysis, Law Firm provides herewith a description of the typical procedures required to obtain a Clerk's Judgment, and a Court Judgment, as well as some of the possible variables that may arise and have an effect

on Client's legal fees to prosecute their claim (Addendum No. 2).

Prior to filing a formal Complaint, and initiating judicial action against a delinquent owner, Client shall complete the form attached hereto as Addendum 1, setting forth Client's election to have any or all of the following services performed by Law Firm. Fees for such services shall be billed at Law Firm's fixed fee rates stated below.

Description of Optional Services	A La Carte Fixed Fee Services
Initial Delinquent Letter – Law Firm shall prepare a letter to delinquent owner explaining the amount that is owed, that their debt continues to accrue interest and attorneys' fees, and providing contact information for negotiating a resolution within a set time period.	\$265.00
Skip Trace Search – In the event Client cannot provide a current address for subject homeowner Law Firm will conduct a search through 3 reputable, online resources to locate subject in anticipation of effecting service of process, and/or transmitting Initial Delinquent Letter.	\$250.00
Initial file review, Preparation and filing of Summons & Complaint, Service of Process and Obtaining Default against non-responsive Defendant <i>** This fee includes \$370 filing fee & \$150 budgeted for process server. If actual fees exceed these amounts Client shall pay the increased fee; and, if the actual fee for these services is less than stated, client shall receive a credit off-set.</i>	\$1,750
Negotiation, preparation and filing of Stipulated Judgment or Stipulation for Entry of Judgment.	\$550
OBTAIN CLERK'S DEFAULT JUDGMENT: Preparation of documents and obtain Clerk's Default Judgment (upon completion of obtaining Default, listed above); and facilitate obtaining Abstract of Judgment.	\$550
OBTAIN DEFAULT JUDGMENT BY THE COURT BY SUBMISSION OF PROVE UP DECLARATIONS PURSUANT CODE OF CIVIL PROCEDURE §585(d) (no appearance necessary): Preparation and filing of prove up Declarations, and Request for Default Judgment by the Court; Review, analyze and update accounting as necessary. <i>*** if Firm initially submits request for Clerk's Judgment which is rejected by the Court and Court requires resubmission of Request for Court Judgment with prove up Declarations, the amount paid by client for the "Clerk's Judgment" will be credited toward the amount charged for "Court Judgment."</i>	\$1,250.00

PREPARATION FOR AND APPEARANCE AT PROVE UP HEARING RE: REQUEST FOR DEFAULT JUDGMENT BY THE COURT: Preparation and filing of additional prove up declarations, and/or prove up documents; preparation for and appearance at Prove up Hearing.

\$500.00

(This fee is in addition to the \$1,250 fee, above, for Obtaining a Default Judgment by the Court on Submission of Prove Up Declarations Pursuant to CCP §585(d)).

In the event that a defendant should file a response to the pleadings, thereby eliminating the Client's ability to obtain a Default Judgment, if Client elects to proceed with litigation of the matter, on written instruction to do so, Firm will proceed with litigation which will be charged at Firm's hourly rates listed below in paragraph 4.

3. RESPONSIBILITIES OF LAW FIRM AND CLIENT. Law Firm will perform the legal services called for under this agreement, keep Client informed of progress and developments, and respond promptly to Client's inquiries and communications. Client will be truthful and cooperative with Law Firm; keep Law Firm reasonably informed of developments and of Client's address, telephone number, and whereabouts; and timely make any payments required by this agreement. Law firm will provide monthly status reports to keep client apprised of the status of the matter – such reports may be directed to the Client's property manager, or its agent.

4. HOURLY ATTORNEY'S FEES. In the event additional legal services, not specified in the "fixed fee terms" of this agreement are performed at the request of Client, Client will be charged for such services at Firm's hourly rate of \$325/hour for partners, \$250/hour for Associates, and \$125/hour for paralegals. The Law Firm will charge in increments of one-tenth of an hour, rounded off for each particular activity to the nearest one-tenth of an hour. The minimum time charged for any particular activity will be one-tenth of an hour.

Under the "hourly fee arrangement" Law Firm will charge for all activities undertaken in providing legal services to Client, including, but not limited to, the following: conferences, court sessions, and depositions (preparation and participation); correspondence and legal documents (review and preparation); litigation status reports; legal research; and telephone conversations. When two or more of the Law Firm's personnel are engaged in working on the matter at the same time, such as in conferences between them, the time of each will be charged at his or her hourly rate.

If, while this agreement is in effect, Law Firm increases the hourly rates being charged to Client generally for attorney's fees, that increase may be applied to fees incurred under this

agreement, but only with respect to services provided 30 days or more after written notice of the increase is mailed to Client. If Client chooses not to consent to the increased rates, Client may terminate Law Firm's services under this agreement by written notice effective when received by Law Firm, provided Client executes and returns a Substitution of Attorney form immediately on its receipt from Law Firm if Law Firm is Client's attorney of record in any proceeding.

5. COSTS. Within the "Fixed Fee – A La Carte" agreement, Client will be credited \$370 toward filing fees for the initial Complaint and \$150 for Service of Process. Should filing fees and/or process service fees exceed those amounts the Client shall pay the difference; and, should the actual fees for filing and process service be less than the amount stated, Firm will credit the excess amount to Client.

For services provided outside the scope of the "Fixed Fee – A La Cart" agreement Client will pay all "costs" in connection with Law Firm's representation of Client under this agreement. Costs may, at the discretion of Law Firm, be advanced by Law Firm and then billed to Client for reimbursement, or Law Firm may forward cost bills to Client for direct payment to the service provider. Costs commonly include, but are not limited to, court fees, court reporter fees, expert fees and expenses, investigation costs, long-distance telephone charges, messenger service fees, photocopying expenses, and process server fees.

6. RETAINER. Client shall make an initial deposit in the amount of the **\$1,750** as an initial retainer for each and every Default Judgment matter undertaken by Law Firm on behalf of Client. Once the Default is granted and entered, the second phase of services will commence according to the Fixed Fee services selected by Client on Addendum 1, and upon receipt of the corresponding fixed fee amount for those services.

7. STATEMENTS AND PAYMENTS. Law Firm will send Client monthly statements indicating services provided and attorney's fees and costs incurred in each matter and their basis, including any amounts applied from retainer, and any current balance owed. Any balance will be paid in full within 30 days after the statement is mailed.

8. EFFECTIVE DATE OF AGREEMENT. The effective date of this agreement will be the date that it is executed by all parties thereto.

9. ATTORNEY'S LIEN. To secure payment to Law Firm of all sums advanced, Client hereby grants Law Firm a lien on Client's claim and any cause of action or lawsuit filed thereon.

10. ARBITRATION. Any dispute arising under this agreement or in connection

with Law Firm's services hereunder including any claim by Client against Law Firm Attorney(s) for malpractice or other tort claim, shall be resolved by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. In any dispute arising under this agreement or in connection with Law Firm's services hereunder, the prevailing party shall recover from the other party reasonable attorneys' fees and costs.

11. DISCLAIMER OF GUARANTEE. Nothing in this Agreement and nothing in Law Firm's statements to Client will be construed as a promise or guarantee about the outcome of Client's matter. Law Firm makes no such promises or guarantees. Law Firm's comments about the outcome of Client's matter are expressions of opinion only.

12. CLIENT'S RECEIPT OF AGREEMENT AND KNOWLEDGE OF TERMS. Client acknowledges that he/she has read and fully understands all of the terms and conditions of this Agreement before signing it, and has received a copy of this Agreement upon execution thereof.

I, the Client, have read and understand the foregoing terms and agree to them, as of the date Plastiras & Terrizzi first provided services.

Dated: _____

[Print Name]

Billing Address:

Phone: _____

Email: _____

PLASTIRAS & TERRIZZI

Dated:

By: _____

Michael P. Terrizzi

ADDENDUM 1

DATE:

CLIENT/HOA:

ADVERSE PARTY/OWNER & SUBJECT ADDRESS:

Client elects to have the following “FIXED FEE” services performed by Law Firm pertaining to collection of delinquent Homeowners Association Assessment and related fees and costs.

This Addendum is incorporated into and shall become part of the Fixed Fee – A La Carte Legal Services Agreement entered into by _____, Client,” and Plastiras & Terrizzi, “Firm,” hereinafter referred to collectively as the “Parties” on _____, 2011 at _____, California.




Check Box to Select option	Description of Optional Services	A La Carte Fixed Fees For Services
<input type="checkbox"/>	Initial Delinquent Letter – Law Firm shall prepare a letter to delinquent owner explaining the amount that is owed, that their debt continues to accrue interest and attorneys fees, and providing contact information for negotiating a resolution within a set time period.	\$265.00
<input type="checkbox"/>	Skip Trace Search – In the event Client cannot provide a current address for subject homeowner, Law Firm will conduct a search through 3 reputable, online resources to locate subject in anticipation of effecting service of process, and/or transmitting Initial Delinquent Letter.	\$250.00
<input type="checkbox"/>	Initial file review, Preparation and filing of Summons & Complaint, Service of Process and Obtaining Default against non-responsive Defendant <i>** This fee includes \$370 filing fee & \$150 budgeted for process server. If actual fees exceed these amounts Client shall pay the increased fee; and, if the actual fee for these services is less than stated, Client shall receive a credit off-set.</i>	\$1,750
<input type="checkbox"/>	Negotiation, preparation and filing of Stipulated Judgment or Stipulation for Entry of Judgment.	\$550

ADDENDUM 1 - Continued

DATE:

CLIENT/HOA:

ADVERSE PARTY/OWNER & SUBJECT ADDRESS:

	<p>OBTAIN CLERK'S DEFAULT JUDGMENT: Preparation of documents and obtain Clerk's Default Judgment (upon completion of obtaining Default, listed above); and facilitate obtaining Abstract of Judgment</p>	<p>\$550</p>
	<p>OBTAIN DEFAULT JUDGMENT BY THE COURT BY SUBMISSION OF PROVE UP DECLARATIONS PURSUANT CODE OF CIVIL PROCEDURE §585(d) (no appearance necessary): Preparation and filing of prove up Declarations, and Request for Default Judgment by the Court; Review, analyze and update accounting as necessary. <i>*** if Firm initially submits request for Clerk's Judgment which is rejected by the Court and Court requires resubmission of Request for Court Judgment with prove up Declarations, the amount paid by client for the "Clerk's Judgment" will be credited toward the amount charged for "Court Judgment."</i></p>	<p>\$1,250.00</p>
	<p>PREPARATION FOR AND APPEARANCE AT PROVE UP HEARING RE: REQUEST FOR DEFAULT JUDGMENT BY THE COURT: Preparation and filing of additional prove up declarations, and/or prove up documents; preparation for and appearance at Prove up Hearing. (This fee is in addition to the \$1,250 fee, above, for Obtaining a Default Judgment by the Court on Submission of Prove Up Declarations Pursuant to CCP §585(d)).</p>	<p>\$500.00</p>

ADDENDUM 2

This addendum is intended to provide an overview of the process of obtaining a Clerk's Default Judgment, and alternatively a Default Judgment by the Court within most jurisdictions in the San Francisco Bay and North Bay Areas. This overview is in no way intended to direct or limit the expectations of the Client or services provided by the Law Firm in the prosecution of the subject collection action, but rather to provide a general idea of the steps involved in the majority of cases.

Although there are similarities in the scope of work performed, each case is unique and may require additional services, not indicated here, which cannot be anticipated due to the constantly evolving nature of litigation.

In the event a defendant files a responsive pleading, Client/Plaintiff is barred from obtaining a Default Judgment, and therefore the case would transition into litigation requiring additional services including but not limited to Court mandated appearances, formal and informal discovery, potential settlement negotiations and possibly trial.

Clerk's Judgment:

- Initial File Review by Paralegal Staff
- Confirm Accounting to be provided by Client
- Prepare & file Summons & Complaint Consistent with Governing Documents
- Prepare & serve Attorney Declaration and Request for Attorneys' Fees to be Fixed by the Court
- Serve Defendant
- File Proof of Service
- 30 – 40 day Response period within which defendant must respond
- Prepare & send Monthly Status Report to Client
- Prepare & file Request for Default
- Prepare & file Request for Dismissal of DOES
- Prepare & file Request for Clerk's Judgment (if no responsive pleading filed)
- Prepare Closing Report with transmittal of Judgment to Client

ADDENDUM 2 – Continued

Default Judgment by the Court:

Please Note: Because obtaining Clerk's Judgment is the most cost effective process we initially attempt to obtain Judgment through this method. However, in some cases our request is rejected and we are required to resubmit a request for a more detailed Court Judgment. We are allowed in most Jurisdictions to submit sworn testimony via Declaration under Civil Code Section 585(d), in lieu of personal appearance. Following is the usual process for obtaining a Court Judgment in the relevant jurisdictions:

- Initial File Review by Paralegal Staff
- Confirm Accounting to be provided by Client
- Prepare & file Summons & Complaint Consistent with Governing Documents
- Serve Defendant
- File Proof of Service
- 30 – 40 day Response period within which defendant must respond
- Prepare & send Monthly Status Report to Client
- Prepare & file Request for Default
- Review, revise and update accounting to include accrued attorneys fees and interest
- Prepare & file Declaration of A.S.A.P. Account Manager in Support of Request for Default Judgment by the Court (attesting to collection services and fees therefore)
- Prepare & file Declaration of HOA Management Company Account Manager in Support of Request for Default Judgment by the Court (attesting to existence and authenticity of CC&Rs, facts and history of account, collection efforts and services and fees therefore)
- Prepare & file Request for Dismissal of DOES
- Prepare & file Request for Default Judgment by the Court (if no responsive pleading filed)
- Prepare & submit proposed Judgment
- Prepare for and attend Case Management Conference set by the Court (there may be more than one CMC set, depending on the duration of the case)
- Prepare Closing Report with transmittal of Judgment to Client

ADDENDUM 2 – Continued

Default Judgment by the Court with Prove-up Hearing & Personal Appearance Required:

Occasionally the Court will require the personal appearances of witnesses and counsel at a Prove-up Hearing on request for Default Judgment by the Court. If mandatory appearance is ordered, this will occur after the Request for Default Judgment by the Court has been submitted and therefore the additional fixed fee of \$500 shall be paid to the firm in advance of the assigned attorney's preparation for and appearance at the Prove-up Hearing, **and is in addition to the fee paid for Request for Default Judgment by the Court.**

SAMPLE