

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

IN RE:

CASE NO.: CACE 24-005243

HERON POND CONDOMINIUM
ASSOCIATION, INC.

Petitioner.

v.

HERON POND CONDOMINIUM
ASSOCIATION, INC.,

Defendant/Respondent

**RECEIVER, DANIEL J. STERMER'S MOTION FOR AUTHORITY
TO ENTER INTO INSURANCE POLICIES AND THE TO BE FILED
INSURANCE PREMIUM FINANCE AGREEMENT**

It is imperative that the Receiver obtain authority to enter into the Insurance Policies and the to be filed Insurance Premium Finance Agreement as quickly as practicable, and prior to the current expiration of the general liability insurance policy, June 20, 2024. The Receiver will file the Insurance Premium Finance Agreement prior to the hearing.

Daniel J. Stermer, not individually, but solely in his capacity as Receiver (the "Receiver") of Heron Pond Condominium Association, Inc. (the "Association"), pursuant to the Court's *Order Granting Verified Petition for Appointment of Receiver*, entered on April 26, 2024 ("Order Appointing Receiver"), respectfully moves for entry of the proposed order attached as **Exhibit "A,"** authorizing the Receiver to enter into the Insurance Policies (as defined below) and the to be filed Insurance Premium Finance Agreement (as defined below) on an expedited basis to avoid any lapse in general liability insurance, in support thereof, the Receiver states as follows:

Summary and Background

1. On April 16, 2024, the Association commenced this action by the filing of a *Verified Petition For Appointment of a Receiver* for the Association.

2. On April 16, 2024, the Association filed an *Ex Parte Verified Emergency Motion For Appointment of a Receiver Court* seeking the appointment of the Receiver for all the Association, including all of the Association's tangible assets, real estate, receivables, and financial accounts; and appointing the Receiver as the "sole Board member for the Association with full power to act for the Association until this Court relieves the Receiver."

3. The Association is an "Association" as defined in Chapter 718, Florida Statutes, located within Broward County and is governed by the Declaration of Condominium Establishing Heron Pond Condominium, recorded on June 14, 2006 in Official Records Book 42216, Page 910, in the Public Records of Broward County, Florida (the "Declaration").

4. The property within the Heron Pond community is comprised of 304 individual residential units ("Units") contained in 19 separate buildings along with all common property elements (collectively, the "Property"). As of September 12, 2023, six out of the nineteen buildings located within the Property were declared unsafe structures by the City of Pembroke Pines (the "City") and declared to be uninhabitable. An additional 26 Units in seven of the remaining buildings have also been declared to be uninhabitable by the City. These Units that have been declared to be uninhabitable have been vacated and secured.

5. On April 26, 2024, the Court entered the *Order Appointing Receiver* appointing the Receiver.

6. Since his appointment, the Receiver, in conjunction and coordination with his court approved professionals, has acted swiftly to get up to speed regarding the current operations and state of affairs of the Association and to protect and preserve the Property.

7. The Declaration requires the Association to maintain property and liability insurance covering the common elements.

8. Article XIV. Insurance and Condemnation Provision of the Declaration provides, in part:

The Association shall use its best efforts to obtain and maintain adequate insurance to protect the Association, the Association property and the condominium Property required to be insured by the Association pursuant to paragraphs 14.01 and 14.02 below.

Section 14.01.

The Board of Administration of the Association shall obtain public liability and property damage insurance covering all of the Common Elements of the Condominium, and insuring the Association and the Unit Owners, as its and their interests appear, in such amount as the Board of Administration of the Association may determine from time to time. Said insurance shall include, but not be limited to, water damage, legal liability, hired automobile, non-owned automobile, and off-premises employee coverages. All liability insurance shall contain a cross-liability endorsement to cover liabilities of the Unit Owners as a group to a Unit Owner. Premium for payment of such insurance shall be paid by the Association and charged as a Common Expense.

Section 14.02

Purchase of Insurance. The Association shall obtain fire and extended coverage insurance and vandalism and malicious mischief insurance, insuring all of the insurable improvements within the Condominium, including personal property owned by the Association, in and for the interest of the Association and all Unit Owners and their mortgagees, as their interests may appear, from a company acceptable to the Board of Administration of the Association, in an amount equal to the maximum insurable replacement value, as determined annually by the Board of Administration.

9. Immediately following his appointment, the Receiver was advised by the Association that the insurance the Declaration requires the Association to maintain was in place and in good standing.

10. On May 1, 2024, the Receiver learned that the Association does not currently maintain property and casualty, windstorm and/or flood insurance coverage on the Property. The Association's property insurance policies were terminated on April 8, 2024¹.

11. The Association maintains general liability insurance which will remain in place through June 20, 2024. The Association also maintains an excess general liability umbrella policy which is set to expire in July 2024.

- a. General Liability #MGL0195000- issued by Mt. Hawley Insurance Company. It provides Commercial General Liability Insurance from June 20, 2023 through June 20, 2024 in the amount of \$1 Million for each occurrence and up to \$2 Million in the aggregate. (the "GCL Policy")
- b. Excess # UMBFLF167650231- issued by Ace Property & Casualty Insurance Company provides \$1 Million in coverage for each occurrence and up to \$2 Million in excess coverage to the General Liability Policy issued by Mt. Hawley Insurance Company from July 29, 2023 through July 29, 2024. This is an excess liability policy providing coverage for bodily injury or property damage caused by the insured. (the "Umbrella Policy")

12. Since learning of the property insurance cancellation of May 1, 2024, and the impending expiration of the GCL Policy and Umbrella policy, the Receiver and his court approved advisors have been actively pursuing new insurance coverages.

13. On May 6, 2024, the Receiver filed a Notice of Status Of Insurance Policies advising the Court and Unit Owners of the insufficient insurance coverage for the Property. The Receiver posted the Notice on his website and emailed it to all Unit Owners and Residents utilizing the email list provided by the Association.

¹ The Notice of Cancellation of Insurance received from WKFC Underwriting Managers provided the reason for cancellation is "a building that is Covered Property has been declared unsafe by a governmental authority."

14. The legion of issues presented by the Property, coupled with the lack of available insurance products to insure the Property (*i.e.*, including “fire and extended coverage insurance and vandalism and malicious mischief insurance, insuring all of the insurable improvements within the Condominium”) (*see infra.* at Article XIV. Insurance and Condemnation Provision, Section 14.02 of the Declaration) and the lack of sufficient funds on hand to properly operate the Association, are of grave concern to the Receiver.

15. Section 24(e) of the Order Appointing Receiver provides as follows:

Insurance. The Association shall continue in existence all current insurance policies it has on the Receivership Entity and/or the Receivership Estate. If the Receiver determines that insurance has lapsed or is about to lapse or there is not insurance coverages needed to insure the Receivership Estate, then the Receiver shall obtain or maintain casualty insurance regarding the Receivership Entity and/or the Receivership Estate, and liability, windstorm and/or flood insurance regarding any Property, and if reasonably necessary, professional liability and workers’ compensation insurance for the Receivership Entity, all in such amounts and with such coverages as the Receiver deems necessary. The Receivership Entity shall cooperate and assist the Receiver to obtain or retain all such insurance policies which shall name the Receiver and any property.

16. In addition to the Declaration, and Order Appointing Receiver, pursuant to §718.111 (11), Fla. Statutes, the Association must maintain insurance:

(11) INSURANCE.—In order to protect the safety, health, and welfare of the people of the State of Florida and to ensure consistency in the provision of insurance coverage to condominiums and their unit owners, this subsection applies to every residential condominium in the state, regardless of the date of its declaration of condominium. It is the intent of the Legislature to encourage lower or stable insurance premiums for associations described in this subsection.

a) Adequate property insurance, regardless of any requirement in the declaration of condominium for coverage by the association for full insurable value, replacement cost, or similar coverage, must be based on the replacement cost of the property to be insured as determined by an independent insurance appraisal or update of a prior appraisal. The replacement cost must be determined at least once every 36 months.

17. On May 30, 2024, Assured Partners, the Association’s Insurance Broker (“Insurance Broker”) after a full and diligent search of the insurance market, presented the Receiver with the following insurance options.



**Heron Pond Condominium Association, Inc.
Property Coverage Options 2024-2025**

Coverage Item	Option I	Option II	Option III	Option IV	Option V
Carriers (A.M. Best Rating)	Lloyds et. al. (A- or above)	Lloyd’s, Renaissance Re, et. al. (A- or above)	Lloyds et. al. (A- or above)	Lloyd’s, Renaissance Re, et. al. (A- or above)	Renaissance Re, et. al. (A- or above)
Total Insured Value	\$ 24,338,305	\$ 24,338,305	\$ 24,338,305	\$ 24,338,305	\$ 24,338,305
Policy Limit	\$ 2,500,000	\$ 5,000,000	\$ 2,500,000	\$ 5,000,000	\$ 5,000,000
DEDUCTIBLES					
Wind	5% Per Building (\$100,000 Minimum)	5% Per Building (\$100,000 Minimum)	5% Per Building (\$100,000 Minimum)	5% Per Building (\$100,000 Minimum)	7.5% of Total Insured Value (\$1,825,373)
All Other Perils	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000
VALUATION					
Coinsurance	100%	100%	100%	100%	100%
Valuation	Actual Cash Value	Actual Cash Value	Replacement Cost, except: Roofs Older Than 12 Years	Replacement Cost, except: Roofs Older Than 12 Years	Actual Cash Value
COVERAGE ENHANCEMENTS					
Ordinance or Law	Coverage A: Included Coverages B/C: 20% Per Building	Coverage A: Included Coverages B/C: 20% Per Building	Coverage A: Included Coverages B/C: 20% Per Building	Coverage A: Included Coverages B/C: 20% Per Building	Coverage A: Included Coverage B/C: \$1,000,000
Equipment Breakdown	Included	Included	Included	Included	Not Covered
Property Premium:	\$ 289,804.00	\$ 473,727.27	\$ 351,150.00	\$ 522,488.00	\$ 387,581.00
All Other Lines Premium*:	\$ 85,823.16	\$ 85,823.16	\$ 85,823.16	\$ 85,823.16	\$ 85,823.16
TOTAL PREMIUM:	\$ 375,627.16	\$ 559,550.43	\$ 436,973.16	\$ 608,311.16	\$ 473,404.16

*Includes General Liability, Crime, Directors & Officers, If-Any Workers Comp, \$5M Excess Liability

NOTE: All options have 100% earned premium clause upon inception.

This summary contains only a general description of the coverage(s) and does not constitute a policy/contract. In the event of a difference between this summary and the policy, the policy will prevail.

18. Based upon discussions with the Insurance Broker, it is apparent to the Receiver that the insurance market has spoken, and the insurance policies presented, represent the best available coverage to the Association given the myriad of issues plaguing the Buildings and Property.

19. In the Receiver’s business judgment, and his obligations set forth in the Receivership Order, the Declaration, and Florida Statutes, the Receiver has elected Option IV to obtain the following coverage for the benefit of the Association:

A. The Insurance Policies:

Property and Casualty Insurance

- a. The Lloyd’s Renaissance Re, et al, policy will provide coverage to the Association’s Real Property located in Pembroke Pines, FL (the “Property and Casualty Insurance Policy”). The Total Insured Value of the Property covered is

\$24,338,305, however the policy provides for a Policy Limit of \$5,000,000.

- b. The total annual premium for the Property and Casualty insurance is \$522,488.00. The policy requires a 100% earned premium clause upon inception. The term of the Property and Casualty Insurance is June 21, 2024 through June 21, 2025.
- c. The Property and Casualty Insurance Policy will not insure the pre-existing conditions of the Buildings.

General Liability Insurance:

- a. The General Liability Insurance Policy with Mt Hawley Insurance C0. (Policy No. MGL0198596, the “General Liability Policy”).
- b. The total annual premium for the Excess Liability Policy is \$43,709.40. The term of the General Liability Policy is June 20, 2023 through June 20, 2024.
- c. The General Liability Policy will provide coverage for claims involving bodily injury, property damage and medical expenses for the Property.

Crime Policy Insurance:

- a. The Crime Insurance Policy with Travelers Casualty & Surety Company of America (Policy No. 107693201, the “Crime Policy”).
- b. The total annual premium for the Crime Policy is \$289.88. The term of the Crime Policy is August 29, 2023 through August 29, 2024.
- c. The Crime Policy provides additional coverage of \$25,000 for: Employee Dishonesty.

\$1M Excess Liability Insurance

- a. The Excess Liability Insurance Policy with _ACE Property & Casualty Insurance Co (Policy No. UMBFLF167550231, the “Excess Policy”).

- b. The total annual premium for the Excess Liability Policy is \$4,195.79. The term of the Excess Policy is July 29, 2023 through July 29, 2024.

The Excess Policy provides additional coverage of \$1,000,000 Collectively, the Property and Casualty Insurance Policy, the General Liability Policy, the Crime Policy, the D&O Policy, and the Excess Policy is defined as the “Insurance Policies”. The Insurance Policies will be filed with the Court pursuant to a Notice of Filing prior to the hearing.

20. The Receiver seeks authority, in the exercise of his professional business judgment, to enter into the Insurance Policies and pay certain claims, deductibles and/or premiums if and to the extent any may become due and payable according to the terms of the Insurance Policies. The Receiver further requests authority to pay certain amounts as they come due under the Insurance Policies in the ordinary courts of its business, if and to the extent such amounts become due.²

21. It is essential for the Receiver to enter in to and maintain the Insurance Policies, which provide a comprehensive range of coverage for the Association. If the Insurance Policies are allowed to lapse, the Association could be exposed to substantial liability for any damages resulting to persons or property of the Association and others, and the Association would have to bear the costs and expenses of defense litigation. Moreover, maintenance of the Insurance Policies is mandatory under the Declaration, the Order Appointing Receiver and Florida Statutes.

B. Premium Finance Agreement

22. The Receiver is obtaining a Premium Finance Agreement (the “Premium Finance Agreement”) quote through Assured Partners for the financing of the Association’s Insurance

² Section 24(d) of the Order Appointing Receiver provides “The Receiver need not obtain Court approval prior to the disbursement of the funds of the Receivership Estate for expenses in the ordinary course of the administration and operation of the Receivership Entity and/or the Receivership Estate, including filing fees, costs of litigation, emergency acts deemed necessary by the Receiver to maintain the Receivership Estate and/or comply with the terms of this Order. The Receiver is also authorized to make payments and disbursements from the Receivership Estate that are necessary or advisable for carrying out the directions of, or exercising the authority granted by, this Order.

Policies. The Receiver has been advised that the Association should not have any issues obtaining premium financing at terms and conditions that are customary and within normal market conditions. Upon receipt of the Premium Finance Agreement, the Receiver will provide Notice of Filing of the Premium Finance Agreement seeking approval of the Quote concomitantly with the Insurance Policies. Given the current finances of the Association, it is not financially feasible to pay the annual premiums in full at this time, as the Association is in critical need of all available cash flow to fund the operations of the Association and the Receivership. The repercussions of continuing to operate and permit residents to live in the Association and guests to enter on to the Property with no insurance in place could be catastrophic. The potential of an injury or accident claimed against an uninsured Association after June 20, 2024, could be devastating not just for the Association but for a potential injured resident, guest or invitee. Notwithstanding, it is vital for Unit Owners to continue to pay their monthly condominium assessments, in order for the Association to be able to afford these Insurance Policies on a go forward basis.

23. Neither the Association nor the Receiver should undertake the risk of injury or property damage to the residents where there is no insurance available to protect against those losses.

24. While the Insurance Policies set forth herein may not meet the requirements set forth in the Declaration and Florida Statutes, the Insurance Policies represent the best insurance products available to the Association, based upon the guidance of the Insurance Broker. Therefore, the Receiver, via the instant Motion, seeks authority pursuant to Section 24(e) and (n) of the *Order Appointing Receiver*, authorizing the Receiver to enter into the Insurance Policies and Premium Finance Agreement, pursuant to the terms set forth herein.

WHEREFORE, the Receiver respectfully requests that this Court enter an Order substantially in the form attached as Exhibit A, which order would (a) authorize the Receiver to enter into the Insurance Policies; (b) authorize the Receiver to pay certain amounts as they come due under the Insurance Policies in the ordinary course of its business, if and to the extent such amounts become due; (c); authorize the Receiver to enter into the to be filed Premium Finance Agreement; (d) authorize the Receiver and Assured Partners to take all actions necessary or appropriate to affect said agreement; and (e) any other and further relief as the Court deems proper.

Dated: June 12, 2024

Respectfully submitted,

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By: /s/ Michael J. Niles

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on June 12, 2024, the foregoing was filed using the Florida Court's E-Filing Portal, which will, in turn, send notice of electronic filing to all electronic service parties.

By: /s/ Michael J. Niles
Michael J. Niles

EXHIBIT A
(Proposed Order)

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

In re:

CASE NO.: CACE 24-005243

HERON POND CONDOMINIUM
ASSOCIATION, INC.

Petitioner.

v.

HERON POND CONDOMINIUM
ASSOCIATION, INC.,

Defendant/Respondent

**ORDER GRANTING RECEIVER, DANIEL J. STERMER'S MOTION
FOR AUTHORITY TO ENTER INTO INSURANCE POLICIES AND
INSURANCE PREMIUM FINANCE AGREEMENT**

THIS CAUSE came before the Court for hearing on _____, 2024 at 10:00 a.m., upon the *Receiver's Emergency Motion For Authority To Enter Into Insurance Policies and Insurance Premium Finance Agreement* (the "Motion") filed by the Court-appointed Receiver, Daniel J. Stermer ("Receiver"). The Motion seeks authority to enter into the Insurance Policies³ and Insurance Premium Finance. The Court, having considered the Motion and having reviewed the Court file, including the *Order Granting Verified Petition For Appointment of Receiver* (the "Receivership Order"), and being otherwise fully advised in the premises, it is hereupon,

ORDERED AND ADJUDGED that:

1. The Motion is hereby **GRANTED**.

³ Capitalized terms used herein shall have the same meaning as in the Motion.
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2. The Receiver, in his reasonable business judgment, is authorized to enter into the Insurance Policies and to pay certain amounts as they come due under the Insurance Policies in the ordinary course of its business, if and to the extent such amounts become due.

3. The Receiver, in his reasonable business judgment, is authorized to enter into the Premium Finance Agreement as filed on June ____, 2024 and pay the down-payment of \$_____.

4. The Receiver and _____ are authorized to take all actions necessary or appropriate to affect said agreement and this Order.

DONE AND ORDERED in Chambers at Broward County, Florida on

_____.

Honorable Jack Tuter
Circuit Court Judge

cc: All counsel of record