

MEETING NOTES- CONFIDENTIAL FOR UNIT OWNERS USE

RECEIVER/UNIT OWNER MEETING

JULY 30, 2024

Good Evening and welcome everyone.

- **On the Zoom:**
 - Daniel Stermer, Receiver
 - George Shoup from DSI
 - Brian Rich/Michael Niles from Berger Singerman, LLP
 - Alessandra Stivelman/Alex Alonso from Eisinger Law
 - City of Pembroke Pines: ACM Stamm/CBO Pizzillo/FM Almauger/CAO Sam Goren

- If you wish to use the closed captioning function, please click on same at the bottom of the screen and choose the language of your choice.

- This Meeting is being recorded and will be posted on the Receiver's website.

- As an initial matter, I want to remind everyone that we have created and continue to update a website with all of the pleadings filed in Receiver's Case including monthly reports of the work performed by the Receiver and his team. I invite and encourage everyone to monitor this website: www.heronpondreceiver.com.

- In addition, we continue to build and refine our email Distribution List which is one of the ways I use to communicate with you – if you are not receiving my emails, please send me an email and provide me with your email address and I will add you to our Distribution List – you can send me an email at: heronpondreceiver@dsiconsulting.com

Let's turn to the issue of the Buildings and their related status

- As of September 12, 2023, six out of the nineteen buildings (2, 3, 10, 5, 14, and 16) were declared unsafe structures by the City of Pembroke Pines (the "City") and thus rendered uninhabitable and residents were required to vacate those structures. Prior to the commencement of this case, an additional 26 units in a number of the remaining buildings were also rendered uninhabitable by the City and residents in those Units were required to vacate.
- I engaged Specialty Engineering Consultants to provide an independent assessment of each of the 19 Buildings to confirm and double check the work and conclusions of ACG and to take a deeper dive into the structural foundations of the Buildings. The engineer started his review with Building 9 and found significant structural issues within the interior supports of the Buildings that were not previously discovered by ACG because ACG's scope of work did not include such inspection. While some of these issues relate to damage cause by either prior unsatisfactory

repairs or failure to repair, there were significant structural issues dating back to the original construction of the Buildings where proper supports and fasteners were not used. It is believed that these issues permeate through all 19 buildings.

- On July 3, 2024, my structural engineering and construction team and I met with the Chief Building Official and Fire Marshal for the City of Pembroke Pines and showed them both the exterior and interior structural issues that were found during the course of our investigation into Building 9.
- Later in the day on July 3, 2024, the City of Pembroke Pine independently declared Building 9 unsafe, resulting in the displacement of additional residents requiring that residents vacate Building 9 on or before July 15, 2024.
- On July 16, 2024, my structural engineering team and I met with ACG Engineering professionals to discuss the investigation into Building 9 and the significant structural issues observed both on the exterior and interior of the Building understanding that ACG did not perform any intrusive investigation into the internal structure of the Buildings.
- On July 22, 2024, ACG Engineering Services, the engineering firm engaged by the Association to oversee the rehabilitation project proposed and approved by the Board of Directors of the Association, submitted an updated engineering report to my team and the City highlighting severe structural deficiencies. Specifically, the report identifies critical issues with the lateral load resistance of the buildings, which poses a grave risk during storm events. Consequently, ACG recommended the vacating of all 19 buildings until the end of hurricane season or until necessary repairs are completed and the buildings are once again deemed to be habitable;
- ACG also wrote:
 - In addition to the change in pace which has resulted in most of the buildings remaining in their damaged, unrepaired conditions, we have discovered existing conditions, as part of our repair process, that speak to the concern regarding the lateral load resistance of the buildings in the case of a storm event. While the damages to the structure that affect the building's vertical (gravity) load support strength were in line with our initial findings, much about the building's lateral (wind) load support has been discovered as part of the repair process we have designed and observed and as part of discoveries made by an independent engineering firm, Specialty Engineering Consultants, Inc. (SPEC).
 - We observed and corrected deficiencies in the lateral load resistance structural components that were discovered during the repair processes in Buildings #2, #3, and #10. SPEC has discovered a number of deficiencies in Building #9 as well. The lateral load deficiencies are different from the structural damages that have been the focus of the year-long repair project. While the repair details in the permit documents include proper connections for the lateral load conditions, and while those connections have been applied throughout the first three buildings where the absence of proper connections were discovered, the other 16 buildings, where repairs have not yet started, likely have the same wind load resistance deficiencies.
 - The structural damage, discovered during our survey and described in our reports, are a result of long-term exposure to the elements (moisture, termites,

etc.). However, the lateral load deficiencies, such as the absence or under-sizing of necessary connections, are the result of some combination of inadequate design and inadequate construction practices. The lateral load deficiencies, hidden in the structures, the “bones” of the buildings, are not detectable by visual examination of the buildings’ interiors or exteriors and they are not the cause of the visual signs of damage that led to the concerns about the structures and the commencement of the repair project.

- On July 23, 2024, my independent engineer submitted correspondence that concurred with ACG’s recommendation that vacating all 19 buildings until the end of hurricane season or until necessary repairs are completed stating that they believe the structural damage comes from three origins: original construction defects, incomplete or improper repair procedures, and environmental conditions stating that much of the damage was non-location specific and that the damage to Building 9 was universally bad.
 - SPEC wrote:
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ORIGINAL CONSTRUCTION DEFECTS

We noted structural issues or items that were not in compliance with the approved drawings or the building code at time of construction. It appears that mistakes were made during the original construction and were not noted or corrected at that time prior to obtaining a certificate of occupancy for this building. These mistakes included missing J bolts at the sill plate of the bearing walls, missing stud clips at the wall stud to top plate or sill plate, missing flat straps at the header beams, and some incomplete fire wall installations missing drywall and incorrect assembly construction.

INCOMPLETE OR IMPROPER REPAIR PROCEDURES

Some of the locations we investigated had been previously repaired. Some of these repairs had provided a path for moisture infiltration the effects of which are noted in other sections of this document. Some of the repairs had simply not been performed correctly. Some of the repairs were so badly damaged that you could not tell where the original construction started, and the more recent repair ended.

ENVIRONMENTAL CONDITIONS

Most of the damage to the exterior of the building was the result of moisture intrusion and/or termite damage. The damage was found in the exterior vertical load bearing walls, floor joists, floor trusses, wood beams, exterior sheathing, roof trusses and metal connectors. Entire structural members have been damaged or eliminated completely. It is impossible to tell at this juncture if the water damage was caused by original construction defects, design defects, or poor maintenance. What was obvious was that the damage was consistent in many areas with respect to the source and member affected. Many of the windows leaked and were significant contributors to the damage noted.

This would explain why exterior and interior areas around the bay windows were all failing. Leak locations were consistently found at the 2nd floor gable end to wall joint, at the building corners, at the balcony corners, at many of the wall joints, and at all windows. We also noted roof leaks at the wall to roof juncture over the stair areas.

Termite damage and active infestations were noted in many of our test locations. Termite damage without water damage was also found in many of the larger dimensional lumber members.

CONCLUSIONS

Much of the damage was non-location specific. Typical location specific damage would include design defects, or isolated member failures and can usually be contributed to a single isolated or individual source. The damage to Building 9 is universally bad. Consequently, it is reasonable to assume that similar mistakes were made throughout the community and that a lack of maintenance was similar throughout the community, and that the environmental effects would be similar throughout the community.

We have only inspected building 9. We will not offer an opinion on any structure we have not specifically inspected. It is reasonable to assume that the remainder of the buildings are in similar condition, and we would recommend that a similar program be instituted on those buildings if absolute verification of the existing condition of those buildings is required.

Thank you for allowing us to be of service in this matter. Should you have any questions please do not hesitate to contact the undersigned.

- On July 24, 2024, the City of Pembroke Pines did in fact issue Unsafe Structure Notices to all of the remaining 12 Buildings in Heon Pond, giving residents until August 29, 2024 to vacate their Units; The City independently made the decision to issue the Unsafe Structure Notices giving residents until August 29, 2024 to vacate the property; the City recognized that should there be a weather event that the Buildings would need to be vacated at that time even if it is prior to August 29, 2024
 - **My Team and I recognize that this impacts each of you and your families and we appreciate the hardship that this has caused.**
- On July 24, 2024, my Team filed the Receiver's Notice of Filing ACG Engineering Service, Inc. Engineering Report Dated July 22, 2024, the Receiver's Emergency Motion for Status Conference and the Receiver's Request for Emergency Relief and the Court set the Status Conference for Thursday, July 25, 2024 and the Receiver prepared and filed his Notice of Hearing for the July 25, 2024 Status Conference – all of these filings were posted on the Receiver's website on Wednesday, July 24, 2024 by 6:00 p.m. Also on July 24, 2024, the Receiver filed his Receiver's Third Monthly Report.

Emergency Status Hearing – 7/25/2024

- The Receiver's request for the Emergency Status Conference with Judge Tuter was granted and proceeded via Zoom on Thursday, July 25, 2024, so as to provide the Court with an update pertaining to the ACG Engineering Report received on July 22, 2024 and the City of Pembroke Pines Response. Many of you were in attendance for this Status Conference.

- At the hearing, the Chief Judge Jack Tuter, who oversees this matter and the Complex Business Court, and is fully familiar with matters such as this, was sympathetic to the position the Unit Owner's and residents resulting from the City's independent decision but recognized and agreed that life, health and safety of the residents are of utmost importance and concern.
- While the Judge commended the Receiver for the work done to date, he echoed the need to get to a swift informed decision and to keep the Unit Owners and residents informed.
- We reiterated at the hearing that the Receiver's team is working expeditiously to get all of the information necessary for Unit Owners to make an informed decision as to whether the Buildings should be rehabilitated or sold.
- As set forth in the Receiver's Third Report, it is apparent that the cost of rehabilitation and the time that it would take to complete is likely not feasible but full investigation on all options will be done
- Each unit Owner is in a different position, and as a fiduciary, I must respect that each Unit Owner wants as much information as possible so that we can collectively come to an informed decision that is based upon all information available.
- Chief Judge Tuter did announce at the hearing that assessments must continue to be paid until he orders otherwise. If Assessments are not made, the Association continues to have the right to enforce collection.
- The Court asked many questions on its own and also monitored the Chat where Unit Owners were participating and the Court asked questions from the Chat, including regarding securing the Property to which I responded:
 - After August 29, 2024, the Condominium Property will be closed and will be secured by additional fencing and other structures to lock down the property to help deter and prevent theft and other issues.
 - We will continue employing security for the property at night and have requested the Pembroke Pines Police department to increase patrols and appearances at the property and they have done so since the request was made.
 - The Court offered Unit Owners the opportunity to speak directly to the Court but no Unit Owner did so.

Updated Rehabilitation Cost Estimate

- The Receiver engaged BBS Contracting to assist its independent engineer, Specialty Engineering Consultants, in assessing the structural soundness of the Buildings and to provide a cost estimate for performing the Rehabilitation Work necessary to bring each of the 19 buildings up to code based upon the City's requirements.
- You may recall that the City's requirements do not include interior finish repairs, miscellaneous mechanical, electrical, or plumbing issues discovered, or costs peripheral to the project such as engineering, testing, or inspection costs. Further, the cost does not include roof repairs and replacements, HVAC Costs, landscaping

costs, irrigation costs. This work will need to be done prior to residents returning to the Property.

- BBS has conducted a review of the various ACG Engineering correspondence and projections and provided a Cost Proposal to rehabilitate the Buildings, which includes: balconies, bay windows, stairs, and removal, repair, and replacement of the exterior walls of the Building as necessary and in conformity with the ACG March 2024 Scope of Work and Base Bid Detail **PLUS** interior work that would need to be done to rectify the original construction defects and projects that cost to be \$585,000.00 per Building which would equate to \$11,115,000.00 for all 19 Buildings; for 17 of the Buildings that would total \$9,945,000.00; please be mindful that Buildings 2 and 3 will need to have the same interior rehabilitation work performed as that was not included in the ACG Scope of Work and was not performed previously.
- In addition to this, putting on a new roof, just the shingles and felt paper, without any wood sheeting/facia board replacement or other potential work, would be \$61,600 per roof or \$1,179,400.00 for all 19 Buildings.
- If you combined the 2 proposals, they would total \$12,294,400.00 for all 19 Buildings or \$11,124,400.00 for 17 Buildings
- Using a straight line computation, that would equate to Special Assessments of \$40,442 for all 19 of the Buildings/Roof and \$36,593 for the 17 Building/Roof computation

Discuss Competitive Sale Process

- As promised, the Receiver's team has had discussions with the City, developers, and sales brokers to discuss what the sales process may look like to be sure the Receiver is maximizing the value of the Property for the benefit of all Unit Owners. As you may imagine, we have received many calls after the hearing and press was released regarding the closure of the community. While we are considering all avenues, its important for me and my team to take a pragmatic and structured approach to this process. This process is further detailed in the Receiver's Third Report.
 - I have been working with the City to get an understanding of the entitlements available to the 25 acres encompassing the Association Property and what it would take to modify the entitlements to make sure Unit Owners can received the highest and best value for the Property. We have received initial information from the City and will work with them as this process continues.
 - We have had initial discussions with certain developers to gauge their interest and understand what would be necessary from their perspective to pay top dollar for the Property.
 - Further, we have had discussions with sales brokers who work on a national level to understand what would be involved in a national marketing process for the Property and the documents and information that will be necessary to efficiently and effectively run a competitive sales process and to understand the fees, costs, and timing of such sale process. We are currently

- awaiting proposals from these brokers. These include firms that have experience in the types of matters including condo termination and high-profile matters in the State involving difficult circumstances
- Included in this decision is a timeline for the sale/marketing process. A longer process with more certainty on zoning issues could result in a higher sale process, but that comes with a longer time frame and likely cost.
 - Based upon these discussions we are developing the outline of what a competitive and arm's length sales process will look like and preparing the necessary procedures to put the Association in a position to collectively sell the real property and equitably distribute the proceeds therefrom.

We would like to make a prompt decision on this as time is not going to make this situation better.

At this point the bottom line is likely that the cost to rehab and get through a process could be least \$12 Million and may be higher. At that amount, the assessments would be close to \$40,000 per unit (if not more). That would need to be paid IN FULL AT ONE TIME. WE CANNOT AND WILL NOT START REHAB WITHOUT THE FUNDS AVAILABLE TO PAY FOR IT.

WE HAVE NO IDEA WHAT A SALE PROCESS COULD BRING. THE MARKET WILL ULTIMATELY TELL US. THERE WAS A [REDACTED]-non-binding Letter of Intent received in March 2024 by the BOD, but that had some contingencies so that could be the floor or the price could be lower. Our goal would be to maximize the value. But as many of you heard from the Judge, this is not a good situation and your expectations need to be tempered with the realities here.

Special Assessments:

- Due to the uncertainty of the Rehabilitation Project, I have made the decision to forbear from collecting the Special Assessment Installment Payments owed for August 2024 and December 2024. I recognize and appreciate the hardship this is on Unit Owners, especially while the Buildings are uninhabitable and for many of you cannot generate income on a monthly basis. However, this is not a release of those payment obligations.
- Notwithstanding, the Association still is obligated to pay for the work performed by Tri-Star Construction and other vendors that was authorized and approved by the Association's board along with additional work that was necessary to stabilize and further protect the Buildings during the Receivership. This includes the fencing around the closed Buildings and the Shoring on all bay windows and balconies.
- The Special Assessment Installments for January and April 2024 still need to be paid in order for the Receiver to fund these obligations.
- The first two installments of the Special Assessment totaled \$1,729,026.71 and the outstanding balance of the Special Assessment is \$1,228,083.75.
- Please remit your Special Assessments and ongoing Monthly Assessments as soon as possible.

- While we can appreciate the circumstances, both monthly and special assessments must be funded in order for the Association to continue to operate and move forward with either the rehabilitation or sale of the Property. These expenses are further disclosed in the Receiver's Third Report.
- TRI-STAR CONSTRUCTION: The Association currently owes Tri-Star Construction \$330,207.26 for four open invoices related to the rehabilitation work performed;
- There are currently monthly expenses of \$14,000 for the necessary fencing and shoring requirements. This expense will increase in order to obtain the additional fencing necessary to secure and close the remaining Buildings.
- As such, we must continue to enforce the Condominium Covenants and require the payment of Special and Monthly Assessments. Eisinger Law will be following up with all delinquent Unit Owners to collect these outstanding assessments.
- As you may recall from the hearing, Judge Tuter, who appointed me as Receiver, announced at the hearing, assessments must continue to be paid until he orders otherwise.
- As you know, in December 2023, the BOD imposed a Special Assessment in the amount of \$3.4MM for the repair of the balconies, bay windows, and stairs which equated to roughly \$10,000/Unit understanding the rehabilitation cost was projected to be \$179,666 Per Building which equates to \$539,000.00 which was the first contract entered into with Tri-Star; this was PRIOR to the City of Pembroke Pines requiring that additional work be performed on the exterior walls of the Buildings and remove and replace a significant portion of the first floor exterior wall and some of the second;
 - While the contract with TriStar referenced above was for a fixed price (which it was for the balcony, bay window, and steps), the City of Pembroke Pines advised the Association's Engineer (ACG Engineering) that further and additional significant work needed to be performed on the exteriors of the Buildings and ACG Engineering wrote the Board of Directors the following on December 18, 2023:

Based on this process, the Contractor, as of today, has provided projections of costs for making the required repairs at Buildings #2 and #3. Based on his estimates and my representatives' observations to date, we believe that the average cost per building for making all identified necessary exterior repairs, application of stucco, and application of paint will be \$350,000+/- . We highly recommend, based on experience, that the Association include a 20% contingency on top of that estimate, thus bringing our recommended estimate to be \$420,000+/- per building. Our recommended estimate per building results in a total, for all 19 buildings, of \$7,980,000.

Our estimated cost presented herein is meant to cover only the projected exterior repairs. It does not include interior repairs (drywall, tile, carpet, interior paint, etc.), electrical corrections, HVAC adjustments, plumbing issues, or any other unforeseen interior-related items.

- In a March 4, 2024, correspondence to the Board of Directors, ACG Engineering wrote:

Based on the quantities already completed and the work yet to be done to enclose the exterior of the building, the projected costs for Building #2 are \$407,000. Out of the 19 buildings, we believe that Building #2 is slightly worse than what the average will turn out to be. Therefore, if \$407,000 is slightly above what the median building cost will be, we would recommend that the Association base decisions on an estimated project cost of \$400,000 per building for all of the structural repair work. This estimate does not include interior finish repairs, any miscellaneous mechanical, electrical, or plumbing issues discovered, or costs peripheral to the project such as engineering, testing, or inspection costs.

- Based upon this latest projected cost of \$400,000.00 for each of the 19 Buildings at Heron Pond, the overall projected cost of the now Expanded Rehabilitation Project would be \$7,600,000.00.
- If the Expanded Rehabilitation Project Cost Estimate above is computed equally across the 304 Units as opposed to the formula set forth above in the chart, the potential Special Assessment would have needed to be \$25,000.00 per each Unit.

In a March 11, 2024, correspondence to the Board of Directors, ACG Engineering provided recommendations on how the BOD could go get updated/revised Bids for the expanded rehabilitation project and provided certain specifics for same and detailed the Scope of Work to be performed.

Does this Expanded Rehabilitation Project Cost Estimate include everything needed to allow for the Buildings to reopen: NO – this Expanded Rehabilitation Project Cost Estimate is for all structural repair work on the exterior of the Buildings. It does not include interior finish repairs, miscellaneous mechanical, electrical, or plumbing issues discovered, or costs peripheral to the project such as engineering, testing, or inspection costs. Additionally, this Expanded Rehabilitation Project Cost Estimate also does not include: any roof work needed, HVAC costs, landscaping costs, irrigation costs, just to name a few.

LONG LITIGATION DOESN'T BENEFIT ANYONE- THE FASTER A PATH IS SELECTED AND EXECUTED ON THE MORE LIKELY IT IS TO MAXIMIZE VALUE.

But we ask that you remain patient. We assure you that we are working as your fiduciary and looking to get to an end result sooner rather than later.

We also have a situation where gaining the agreement of 100% of unit owners may be difficult. If there is a group that wishes to rehab the project and pay the expenses, perhaps they can buy all the other units that want to sell. Any such process like that would need to occur immediately and with no contingencies

- **INSURANCE HAS BEEN PLACED** - I was able to secure appropriate insurance, but that also is expensive and depending on the path, we will need to examine that on an ongoing basis.
- **Professional Fees.** We know people are concerned about professional fees. We remain mindful of that issue and continue to work in an efficient manner. But note this is a complex matter that requires attention and detail. We have filed a Motion seeking the payment of a portion of the fees.
- We have been asked about getting a loan to do the rehab. We can explore that but based upon the funds needed and the values of the land, we think such a prospect is unlikely.

- I have been asked whether the power can remain on after the August 29, 2024 date by which the most recent Buildings are to be vacated; the decision of whether to turn off power has been made in the past by FPL and I will confer with them
- My Team and I have been in contact with the Broward County Property Appraiser with regard to those Units what were shuttered in 2023 relative to the ability to receive a tax rebate/refund for taxes that were collected – I will be sending out a Form DR-465 that I received from the Broward County Property Appraiser that you will need to complete and submit in order to receive a tax refund for that period of the year that the Unit was uninhabitable – It is important to note the Tax Collector's Office would issue any refund to whoever paid the 2023 property taxes (escrow agency or individual) - that will be emailed over the next few days
- Lastly, my Team and I are preparing correspondence which we will be providing to Unit Owners for forwarding to your bank/financial institution advising about the status of this matter, providing particulars of it, and requesting that the bank/financial institution forbear from taking action against a Unit Owner under their existing mortgage.

QUESTIONS TAKEN FROM CHAT

Adjournment