

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'S MOTION FOR APPROVAL OF EMPLOYMENT OF
AVISON YOUNG-FLORIDA LLC AND FISHER AUCTION CO., INC.
AS REAL ESTATE ADVISORS AND BROKER TO THE RECEIVER**

Daniel J. Stermer, not individually, but solely in his capacity as Court-appointed Receiver (the "Receiver") for 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, respectfully moves for entry of the proposed order attached as **Exhibit "A,"** approving the employment of Avison Young-Florida LLC and Fisher Auction Co., Inc. (collectively "Avison Young-Fisher") as real estate advisors and/or sole agents/brokers to the Receiver. In support of this Motion, the Receiver states:

1. On April 16, 2024, the Plaintiff, Heron Pond Condominium Association, Inc. (the "Plaintiff"), commenced this action by the filing of a *Verified Petition For Appointment of a Receiver* against 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 Daniel J. Stermer as Receiver of all the assets belonging to the Association, including all 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. Heron Pond 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 (the “Declaration”), recorded on June 14, 2006, in Official Records Book 42216, Page 910, in the Public Records of Broward County, Florida. The Association is comprised of 304 individual units contained in 19 separate residential buildings (the “Buildings”) located in the City of Pembroke Pines (the “Property”). As of September 12, 2023, six out of the nineteen buildings located within the Association were declared unsafe structures by the City of Pembroke Pines (the “City”) and rendered uninhabitable. An additional 26 units in the remaining buildings have also been rendered uninhabitable.

4. On April 26, 2024, the Court entered an *Order Granting Verified Petition for Appointment of Receiver* (the “Order Appointing Receiver”), thereby appointing Daniel J. Stermer., as Receiver for the Association.

5. On July 3, 2024, the City issued Unsafe Structure Notices to Building 9 and the 16 Units that comprise Building 9 and required all residents of Building 9 to vacate their Units on or before July 15, 2024.

6. On July 23, 2024, the City declared the remaining 12 Buildings comprising the Association unsafe structures and required all residents to vacate their Units by no later than August 29, 2024. As of August 29, 2024, all Buildings comprising the Association will have been tagged as unsafe structures and the Property will be completely shuttered. Details regarding these issues are set forth in the *Receiver’s Third Monthly Report* filed on July 24, 2024, and the *Receiver’s Notice of Filing ACG Engineering, Services, Inc. Engineering Report* dated July 24, 2024, which are incorporated herein by reference.

7. On August 22, 2024, the Receiver filed a *Motion for Approval of Employment of Dennis D. Mele and Greenspoon Marder LLP as Special Counsel to the Receiver*. On September 4, 2024, the Court entered its *Order Granting Receiver's Motion for Approval of Employment of Dennis D. Mele and Greenspoon Marder LLP as Special Counsel to the Receiver*, Greenspoon will assist the Receiver in working through issues related to the establishment of a competitive sales process, particularly related to a detailed analysis and report related to the entitlements available to the Property for future development and construction. Such entitlements include zoning, density, design, use, and occupancy permits that will allow interested and potential developers and other bidders to better understand what intended uses and development can be constructed on the Property. The Entitlement Report will assist the Receiver in obtaining the highest and best sales price for the Property which will ultimately benefit each of the Unit Owners.

8. The Receiver intends to move forward with a condominium termination process, and is currently drafting same, with the goal of maximizing the value of the Property for the benefit of all constituents. The timeline for such process will be dependent upon the level of cooperation and consent of the unit owners and lien holders. The Receiver will seek to expedite the process to the extent he is able to do so, subject to the appropriate statutory requirements to ensure the ability to pass proper and clean title to the Property to a prospective purchaser.

9. The Receiver now seeks Court approval to retain Avison Young-Fisher as the Receiver's real estate advisors, and the Association's exclusive real estate Broker, to assist in the formulation and execution of a competitive marketing and sale process for the Property, subject to the termination of the Association which shall be brought forth separately by the Receiver. Attached hereto as **Exhibit "B"** is copy of the Exclusive Right to Sell Agreement between the Receiver, on the one hand, and Avison, on the other hand (the "Engagement Agreement").

10. Paragraph 24(j) of the *Order Appointing Receiver* provides that the Receiver is authorized to employ accountants, financial advisors and day to day managers, brokers, developers and other professionals, upon application and approval by the Court, to furnish advice and services to the Receiver, all for such purposes as may be reasonable and necessary during the term of the receivership.

11. The Receiver seeks Court approval to retain Avison Young-Fisher as advisors and exclusive real estate Broker to the Receiver, and the Association, in this case. Avison Young-Fisher will assist in running a court approved marketing and sale process and market the Property to secure satisfactory prospective purchasers for the Property on such terms as may be acceptable to the Receiver and the Court. The Receiver believes that employing Avison is in the best interests of the Association and Unit Owners because Avison Young-Fisher are widely recognized global real estate advisors, and are one of the top providers of integrated real estate services in South Florida.

12. The proposed compensation to be paid to Avison Young-Fisher and other terms are set forth in the Engagement Agreement. A summary of the salient terms of the Engagement Agreement is as follows:¹

1. **BUYER'S PREMIUM RATE:** A 5% Buyer's Premium shall be charged to the final sale/ bid price and included in the total contract price. Any Outside Broker involved shall be paid in accordance with a separate agreement with Brokers.

2. **GROSS SALE PRICE:** The commission shall be computed in accordance with the above rates based upon the gross sale price, which shall include any mortgages, loans or other obligations of Receiver which may be assumed by Purchaser or which Purchaser takes title "subject to," and any purchase money loans or mortgages taken back by Receiver.

3. **PURCHASE OPTION:** If Receiver grants a purchase option, Brokers will be paid a commission at the above rate on the option price as and when amounts are payable for the option (and for extensions thereof). Upon closing of the sale of the

¹ This Motion contains only a summary of the terms of Avison Young-Fisher's engagement. For complete terms, please refer to the Engagement Agreement.

Property to the Optionee, whether pursuant to the terms of said option or otherwise, Brokers will be paid a commission at the above rate on the total sale price (excluding any amount paid for the option and applied to the sales price).

4. **TIME OF PAYMENT:** The commission will be paid in full at the time of the closing or transfer of title to the Property. In the event of sale of the Property or an installment purchase contract, the entire sales commission are due Brokers at the execution of the installment sale contract.

5. **DEPOSIT:** In the event title does not close and the deposit is retained by the seller, the commission to be paid Brokers will be either one-half (1/2) of the amount of the deposit, or the regular commission computed as set forth above, whichever is less.

13. To the best of the Receiver's knowledge, Avison Young-Fisher does not hold or represent any interest adverse to the Association.

WHEREFORE, Daniel J. Stermer as Receiver, respectfully requests entry of the proposed Order attached as **Exhibit "A"**, (i) approving the employment of Avison Young-Florida LLC and Fisher Auction Co., Inc., as advisors and exclusive real estate Broker to the Receiver, and the Association, and (ii) for such other and additional relief as the Court deems just and proper.

Dated: September 12, 2024

Respectfully submitted,

BERGER SINGERMAN LLP
Counsel for Receiver
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By: /s/ Brian G. Rich

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 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.

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Exhibit A
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
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HERON POND CONDOMINIUM
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Defendant/Respondent

**ORDER GRANTING RECEIVER'S MOTION FOR APPROVAL OF EMPLOYMENT
OF AVISON YOUNG-FLORIDA LLC AND FISHER AUCTION CO., INC.
AS REAL ESTATE ADVISORS AND BROKER TO THE RECEIVER**

THIS CAUSE came before the Court for hearing on _____, 2024 at _____ .m., upon the *Receiver's Motion for Approval of Avison Young-Florida LLC and Fisher Auction Co., Inc. as Real Estate Advisors and Brokers to the Receiver* (the "Motion") filed by the Court-appointed Receiver, Daniel J. Stermer ("Receiver"). The Motion seeks to retain Avison Young-Florida LLC and Fisher Auction Co., Inc. as real estate advisors and/or sole agents/brokers to the Receiver in this case. 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**.
2. The Receiver is authorized to retain Avison Young-Florida LLC and Fisher Auction Co., Inc. as real estate advisors and/or sole agents/brokers to the Receiver in the captioned case.
3. Compensation paid to Avison Young-Florida LLC and Fisher Auction Co., Inc.

shall be in accordance with the Engagement Agreement, and more specifically the Commission Schedule, attached thereto.

4. As an agent of the Receiver, Avison Young-Florida LLC and Fisher Auction Co., Inc., shall be entitled to the judicial immunity protections set forth in Paragraph 29 of the Receivership Order.

DONE AND ORDERED in Chambers at Broward County, Florida on

_____.

Honorable Jack Tuter
Circuit Court Judge

cc: All counsel of record

Exhibit B
Engagement Agreement

**AVISON
YOUNG****EXCLUSIVE RIGHT TO SELL AGREEMENT**

Daniel J. Stermer (the “**Receiver**”), not individually, but solely in his capacity as Receiver of the Heron Pond Condominium Association, Inc.(the “**Association**”) and subject to Court approval, appoints Avison Young – Florida, LLC and Fisher Auction Co., Inc. (“**Brokers**”) as its sole real estate agent and grants to Brokers the exclusive right to sell the real property described below.

1. **PROPERTY:** Located at 8400 SW 1st Street, Pembroke Pines, FL 33025, including any and all buildings, improvements, fixtures and appurtenances thereto (collectively the “**Property**”), subject to the termination of the Association and all the rights that flow from such termination.
2. **TERM:** This Agreement begins on August 20, 2024, and will end at midnight on February 21, 2025 (“**Term**”). If during the Term: (i) an option or right of first refusal to purchase the Property or any interest therein is granted, (ii) an escrow is opened, or (iii) negotiations involving the sale, transfer, conveyance, or lease of the Property have commenced and are continuing upon the expiration of the Term, then the Term will automatically extend concurrently therewith. The Property will be considered off the market for any time period after a purchase and sale agreement, letter of intent, or other agreement is executed by Receiver and a buyer or tenant before the transaction is completed by such agreement is terminated by the Parties to such an agreement. In addition, if during the Term negotiations concerning a potential sale of the Property are commenced and those negotiations are continuing as of the expiration of the Term, the Term will automatically extend with respect to that potential transaction concurrently with such negotiations.
3. **SERVICES:** Subject to Court approval of this Agreement, approval of a sale process by the Court and applicable Court approvals, Brokers will enlist the efforts of their firms to secure satisfactory prospective purchasers for the Property on such terms as may be acceptable to the Receiver and the Court (as may be applicable). Brokers may solicit the cooperation of other licensed real estate brokers. Brokers will assist Receiver in its negotiation of the terms of a sale agreement and bid procedures procured hereunder.
4. **AGENCY RELATIONSHIP DISCLOSURE:** By entering into this Agreement, an exclusive agency relationship exists between Receiver as principal and Brokers as agent. Avison Young designates Michael T. Fay, Florida Real Estate License No. BK3033188, John K. Crotty, Florida Real Estate License No. SL3079722, David Duckworth, Florida Real Estate License No. SL699044, and Brian de la Fe, Florida Real Estate License No. SL3338170, and Philip Shapiro, Florida Real Estate License No. SL3563407, as Receiver’s designated agent(s) and Fisher Auction Co., Inc. designates Lamar Paul Fisher, Florida Real Estate License No. BK352765, Francis David Santos Florida Real Estate License No. BK614199, as Receiver’s designated agent(s) (“**Designated Agents**”). Other representatives may be substituted as Designated Agent(s) upon written notice.
5. **RECEIVER REFERRALS:** Receiver and his agents will refer to Brokers all inquiries and offers received by Receiver regarding the Property, and Brokers shall assist Receiver with negotiations in relation thereto.
6. **ADVERTISING:** Receiver authorizes Brokers to advertise the Property as a “Receivership Sale” or other description as may be agreed to by the Parties. Any additional advertising and promotion will be done at Receiver’s expense and Receiver agrees to reimburse Brokers, monthly, for all out-of-pocket marketing expenses incurred, not to exceed \$25,000.00. All advertising and promotion will be done pursuant to a program and approved budget agreed upon by the parties. Receiver consents to the collection, use, and disclosure of information and photographs of the Property by Brokers for the purpose of listing and marketing the Property. Subject to applicable Court orders and approvals, Receiver represents that it has all rights and authorizations necessary with respect to all advertising materials supplied to Brokers. Receiver grants to Brokers a nonexclusive, irrevocable, royalty-free license to use such material for marketing purposes.
7. **COMMISSION:** If during the Term, Receiver sells all or any interest in the Property through any means, the Receivership Estate will pay to Brokers a commission computed in accordance with the attached Commission Schedule. A commission shall be due and owing to Brokers if during the Term or any extension thereof: (i) the Property, Receiver, or portion of the Property, is sold, transferred or conveyed in any way; or (ii) any contract for sale, transfer or conveyance of the Property or any interest therein, including without limitation, the granting of an option or right of first refusal, is made directly or indirectly. The commission will be paid upon the earlier of ninety (90) days from the date of execution of the transaction agreement, or through escrow upon the closing of the transaction.

Within thirty (30) days from the end of the Term, Brokers will provide to Receiver a list of Prospects, as defined below (“List”) to whom the Property was submitted (by Brokers, Receiver, or any third party) during the Term. If during the Term, or within one hundred eighty (180) days of expiration or termination thereof, a prospective purchaser (or any subsidiary, parent, affiliate or other related party thereof) (each a “Prospect”) appearing on the List, either: (i) enters into a transaction agreement or option to purchase the Property; or (ii) negotiations to purchase the Property with such Prospect either continue, commence, or resume within such one hundred eighty (180) day period after the end of the Term, and the transaction thereafter closes, Brokers will be deemed to have earned, and Receiver will pay to Brokers, a commission as provided above as if such transaction had closed during the Term.

For purposes of this Agreement, the terms “sale,” “sell,” or “sold” refers to and includes any sale, transfer, or other disposition of the Property, or any interest therein, including but not limited to any sale, lease, ground lease, exchange, transfer, eminent domain, condemnation, joint venture, or conveyance of a direct or beneficial interest in a joint venture, partnership, trust, corporation, or other entity holding title to or controlling the Property.

8. **FLORIDA LIEN ACT NOTICE:** The Florida Real Estate Commission Lien Act provides that when a broker has earned a commission by performing licensed services under a brokerage agreement, the broker may claim a lien against the net sales proceeds for the broker’s commission. Lien rights under the act cannot be waived before the commission is earned.
9. **OUTSIDE BROKERS:** “Outside Broker” means any broker other than the Designated Agent(s). If an Outside Broker is representing a purchaser, Brokers will request such Outside Broker to agree to accept the commission computed and payable in accordance with the Commissions Schedule. If the Outside Broker agrees, Receiver will pay Brokers the full commission therefrom Brokers will pay to the Outside Broker its agreed upon portion of such commission. If the Outside Broker does not agree, Brokers may direct such Outside Broker to negotiate directly with Receiver.
10. **ALTERNATIVE TRANSACTION:** If a proposed sale evolves into any other transaction, including without limitation a lease, ground lease, exchange, option, development, installment sale, right of first refusal, or build-to-suit transaction, then Brokers will be deemed, without any further acts or amendment hereto, as Receiver’s sole and exclusive agent for such transaction, and Brokers will be entitled to a commission on such transaction under the terms hereof. In such transaction, the term “Receiver” herein shall mean the title of Receiver in the transaction.
11. **OTHER CLIENTS:** Brokers may represent other owners of property unrelated to this Property and Prospects, and Receiver consents to such dual representation. Brokers will not disclose the confidential information of one principal to the other.
12. **ATTORNEYS’ FEES:** In the event either party institutes legal action to enforce its rights under this Agreement, the prevailing party will be entitled to recover its reasonable attorneys’ fees and other costs so incurred from the non-prevailing party. Any portion of a commission not paid will bear interest at the maximum rate allowable by law.
13. **AUTHORITY:** Receiver represents and warrants to Brokers that: (a) Receiver has the legal authority to execute this Agreement and perform all actions herein, including such authority to convey the Property to a prospective purchaser; (b) no person or entity has any right to purchase or lease the Property or to acquire an interest therein by virtue of option, right of first refusal or right of first offer..
14. **PROFESSIONAL ADVICE:** Receiver represents and warrants that in determining the financial soundness and suitability of any Prospect, Receiver shall rely solely upon Receiver’s own investigation and evaluation, and that any decision by Receiver to enter into and close any sale or other transaction shall be a product of Receiver’s own investigation and evaluation and not upon any representation by, or opinion of, Brokers. Receiver covenants that it shall not rely upon on Brokers in the Receiver’s discharge of its investigation and evaluation of any Prospect.
15. **LIMITATION ON LIABILITY:** Except with respect to gross negligence, willful misconduct, or fraud, at no time will the total liability of Brokers for any breach or any violation of this Agreement, or for any error or omission in the performance provided for herein, exceed the amount of the commission paid from Receiver to Brokers for the subject transaction in which the alleged liability arose. In no event shall either party be liable to the other party for any punitive, exemplary, special, indirect, incidental or consequential damages (including but not limited to lost profits or lost business opportunities) arising out of or relating to this Agreement, regardless of the legal theory under which such damages are sought, and even if the party has been advised of the possibility of such damages or loss.

- 16. **TAX:** Internal Revenue Code Section 1445 requires that buyers of any interest in any real property located in the United States withhold and pay over the Internal Revenue Service a portion of the purchase price unless the buyer can adequately establish that the seller is not a foreign individual or entity.
- 17. **BANKRUPTCY:** If Receiver or the Property comes under the jurisdiction of a bankruptcy court, Receiver will seek court approval of Brokers' appointment as agent. In the event of the foregoing, Brokers may enter into a listing agreement with any receiver, the party initiating the foreclosure, Property purchaser.
- 18. **RECEIVERSHIP:** The Parties acknowledge that the Association is the subject of the Receivership action pending in the Circuit Court in and for Broward County, Florida (the "Court") Case Number CACE 24-005243 (the "Receivership Case").
- 19. **MISCELLANEOUS:** The failure by a party to exercise any right hereunder shall not operate as a waiver of such party's right to exercise such right or any other right in the future. This Agreement is binding upon the parties and their respective successors and assigns. The terms "Receiver" and "Prospect" include parents, affiliates, subsidiaries successors, assigns, and nominees. It is illegal for either Receiver or Brokers to refuse to present, sell, or lease real property to any person because of any class protected by applicable law. In the event that any provision of this Agreement shall be held to be invalid or unenforceable, such ruling shall not affect the validity or enforceability of the remainder of the Agreement in any respect whatsoever. Receiver consents to Brokers describing and publishing its role in any transaction executed pursuant to this Agreement, subject to Receiver's reasonable editorial approval of such publicity. Any authorization or approval of either party as required by the terms of this Agreement may be effectuated by an email from such party or its authorized designee, and such email approval shall be deemed written approval for the purposes of this Agreement. This Agreement may be executed in counterparts, each of which constitutes an original instrument and all of which constitute one and the same instrument. The parties may exchange electronic counterpart signature pages of this Agreement, and such electronic counterparts shall be considered an original counterpart.
- 20. **ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement between Receiver and Brokers and supersedes all prior discussions. Any amendment or modification to this Agreement must be in writing and executed by authorized representatives of each party. All terms of this Agreement have been determined by mutual negotiation between Brokers and Receiver.
- 21. **REPRESENTATION AND WARRANTY REGARDING TERRORISM:** Each party warrants and represents to the other party, that each party, and all persons and entities owning (directly or indirectly) an Receivership interest in each party: (a) is not, and shall not become, a person or entity with whom Brokers is restricted from doing business with under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury or under any statute, executive order, or other governmental action; and (b) is not knowingly engaged in, and shall not knowingly engage in, any dealings or transactions or be otherwise associated with such persons or entities described in provision (a) above.
- 22. **GOVERNING LAW:** This Agreement shall be governed by the laws of the state where the Property is located, and such state where the Property is located shall be the judicial forum for any litigation or other proceeding related to this Agreement and all matters related to this Agreement shall be subject to the Court in the Receivership Case.

Each party acknowledges that it has received and understands this Agreement and the attached Commissions Schedule.

RECEIVER:

BROKERS:

By: *Daniel J. Stermer*
 Name: Daniel J. Stermer, Receiver
 Its: Not Individually but solely in his capacity as Receiver for the
 Date: Heron Pond Condominium Association, Inc.

AVISON YOUNG – FLORIDA, LLC
 By: *Lisa Jesmer*
 Name: Lisa Jesmer
 Its: Principal
 Date: 8/30/24

FISH DocuSigned by: NC.
 By: *Lamar Fisher*
 Name: Lamar P. Fisher
 Its: CEO
 Date: 8/30/2024

9/3/2024

COMMISSION SCHEDULE

1. **BUYER'S PREMIUM RATE:** A 5% Buyer's Premium shall be charged to the final sale/ bid price and included in the total contract price. Any Outside Broker involved shall be paid in accordance with a separate agreement with Brokers.
2. **GROSS SALE PRICE:** The commission shall be computed in accordance with the above rates based upon the gross sale price, which shall include any mortgages, loans or other obligations of Receiver which may be assumed by Purchaser or which Purchaser takes title "subject to," and any purchase money loans or mortgages taken back by Receiver.
3. **PURCHASE OPTION:** If Receiver grants a purchase option, Brokers will be paid a commission at the above rate on the option price as and when amounts are payable for the option (and for extensions thereof). Upon closing of the sale of the Property to the Optionee, whether pursuant to the terms of said option or otherwise, Brokers will be paid a commission at the above rate on the total sale price (excluding any amount paid for the option and applied to the sales price).
4. **TIME OF PAYMENT:** The commission will be paid in full at the time of the closing or transfer of title to the Property. In the event of sale of the Property or an installment purchase contract, the entire sales commission are due Brokers at the execution of the installment sale contract.
5. **DEPOSIT:** In the event title does not close and the deposit is retained by the seller, the commission to be paid Brokers will be either one-half (1/2) of the amount of the deposit, or the regular commission computed as set forth above, whichever is less.