

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

DANIEL J. STERMER AS RECEIVER
OF THE HERON POND CONDOMINIUM
ASSOCIATION, INC.,

Case No. CACE-24-015112

Plaintiff,

v.

HERON POND CONDOMINIUM
ASSOCIATION, INC., AND ALL UNIT
OWNERS LISTED ON EXHIBIT "C" AND
OTHER INTERESTED PARTIES LISTED ON
EXHIBIT "D" TO THE COMPLAINT,

Defendant(s).

ANSWER AND AFFIRMATIVE DEFENSES

Defendant, U.S. Bank¹, by and through undersigned counsel, hereby answers the Complaint and asserts the following affirmative defenses.

INTRODUCTION

1. Admitted this is an action to terminate the condominium. U.S. Bank denies Plaintiff is entitled to any relief against U.S. Bank and demands strict proof thereof.

2. U.S. Bank states that this paragraph contains no allegations directed at U.S. Bank and therefore no response this paragraph is required. To the extent a response is required, U.S. Bank states that it does not know whether the document attached as Exhibit A is a true and correct copy of the Declaration. U.S. Bank further states that if Exhibit A is a true and correct copy of the

¹ U.S. Bank refers to U.S. Bank National Association, not in its Individual Capacity but Solely as Owner Trustee for Legacy Mortgage Asset Trust 2017-RPL2

Declaration, that it speaks for itself and to the extent the allegations in paragraph 2 contradict the actual Declaration, the language of the Declaration controls.

3. U.S. Bank states that this paragraph contains no allegations directed at U.S. Bank and therefore no response this paragraph is required. To the extent a response is required, U.S. Bank does not know whether the allegations in paragraph 3 are true, therefore denied.

4. U.S. Bank states that this paragraph contains no allegations directed at U.S. Bank and therefore no response this paragraph is required. To the extent a response is required, U.S. Bank does not know whether the allegations in paragraph 4 are true, therefore denied.

5. U.S. Bank states that this paragraph contains no allegations directed at U.S. Bank and therefore no response this paragraph is required. To the extent a response is required, U.S. Bank does not know whether the allegations in paragraph 5 are true, therefore denied.

6. U.S. Bank states that this paragraph contains no allegations directed at U.S. Bank and therefore no response this paragraph is required. U.S. Bank further states that the allegations in paragraph 6 appear to call for a legal conclusion to which no response is required. To the extent a response is required, U.S. Bank does not know whether the allegations in paragraph 6 are true, therefore denied.

THE PARTIES AND JOINING OWNERS

7. U.S. Bank states that this paragraph contains no allegations directed at U.S. Bank and therefore no response this paragraph is required. To the extent a response is required, U.S. Bank states that it does not know whether the document attached as Exhibit B is a true and correct copy of the Receivership Order. U.S. Bank further states that if Exhibit B is a true and correct copy of the Receivership Order, that it speaks for itself and to the extent the allegations in paragraph 7 contradict the actual Receivership Order, the language of the Receivership Order controls.

8. U.S. Bank states that this paragraph contains no allegations directed at U.S. Bank and therefore no response this paragraph is required. To the extent a response is required, U.S. Bank states that it does not know whether the document attached as Exhibit B is a true and correct copy of the Receivership Order therefore denied. U.S. Bank further states that if Exhibit B is a true and correct copy of the Receivership Order, that it speaks for itself and to the extent the allegations in paragraph 8 contradict the actual Receivership Order, the language of the Receivership Order controls.

9. U.S. Bank states that this paragraph contains no allegations directed at U.S. Bank and therefore no response this paragraph is required. To the extent a response is required, U.S. Bank does not know whether the allegations in paragraph 9 are true, therefore denied.

10. U.S. Bank states that this paragraph contains no allegations directed at U.S. Bank and therefore no response this paragraph is required. To the extent a response is required, U.S. Bank does not know whether the allegations in paragraph 10 are true, therefore denied.

11. U.S. Bank states that this paragraph contains no allegations directed at U.S. Bank and therefore no response this paragraph is required. To the extent a response is required, U.S. Bank does not know whether the allegations in paragraph 11 are true, therefore denied.

12. U.S. Bank admits only that Lilian Nesper is the owner of Unit 205 of Building 6 in Heron Pond. U.S. Bank denies the remaining allegations in paragraph 12.

13. U.S. Bank states that this paragraph contains no allegations directed at U.S. Bank and therefore no response this paragraph is required. To the extent a response is required, U.S. Bank does not know whether the allegations in paragraph 13 are true, therefore denied.

14. U.S. Bank states that this paragraph contains no allegations directed at U.S. Bank and therefore no response this paragraph is required. To the extent a response is required, U.S.

Bank states that it does not know whether the document attached as Exhibit C is a true and correct copy of the Written Consents of the Joining Owners therefore denied. U.S. Bank further states that if Exhibit C is a true and correct copy of the Written Consents of the Joining Owners and the Joining Owners consent is valid, the document speaks for itself and to the extent the allegations in paragraph 14 contradict the actual Written Consents of the Joining Owners, the Written Consents of the Joining Owners controls to the extent the joining owners actually consented and such consent was valid.

15. U.S. Bank states that this paragraph contains no allegations directed at U.S. Bank and therefore no response this paragraph is required. To the extent a response is required, U.S. Bank states that it does not know whether the document attached as Exhibit D is a true and correct copy of all Heron Pond Unit Owners, therefore denied.

16. U.S. Bank states that this paragraph contains no allegations directed at U.S. Bank and therefore no response this paragraph is required. U.S. Bank further states that the allegations in paragraph 16 appear to call for a legal conclusion to which no response is required. To the extent a response is required, U.S. Bank does not know whether the allegations in paragraph 16 are true, therefore denied.

17. U.S. Bank states that this paragraph contains no allegations directed at U.S. Bank and therefore no response this paragraph is required. U.S. Bank further states that the allegations in paragraph 17 appear to call for a legal conclusion to which no response is required. To the extent a response is required, U.S. Bank does not know whether the allegations in paragraph 17 are true, therefore denied.

18. Admitted this is an action to terminate the condominium. U.S. Bank denies Plaintiff is entitled to any relief against U.S. Bank and demands strict proof thereof.

19. U.S. Bank admits that it has an interest in the litigation and the property whose address is 356 SW 83 Way (Building 6, Unit 205), Pembroke Pines, Florida 33025, by virtue of its first position lien recorded in the Official Records of Broward County at Book 43228, Page 657. U.S. Bank is without knowledge of the remaining allegations in paragraph 19 therefore denied.

20. U.S. Bank states that this paragraph contains no allegations directed at U.S. Bank and therefore no response this paragraph is required. U.S. Bank further states that the allegations in paragraph 20 appear to call for a legal conclusion to which no response is required. To the extent a response is required, U.S. Bank does not know whether the allegations in paragraph 20 are true, therefore denied.

21. U.S. Bank states that this paragraph contains no allegations directed at U.S. Bank and therefore no response this paragraph is required. To the extent a response is required, U.S. Bank incorporates its response regarding Exhibit C above. U.S. Bank further states that it does know whether the remaining allegations in paragraph 21 are true, therefore denied.

JURISDICTION AND VENUE

22. Admitted for jurisdictional purposes only.

23. Admitted.

24. U.S. Bank denies the allegations in paragraph 24. Specifically, Plaintiff failed to comply with Section XXV Rights Reserved Unto Institutional First Mortgagees which requires the Association to give written notice of, among other issues, any damage or condemnation to condominium property and any items requiring mortgagee consent. Plaintiff further failed to comply with the Termination requirements set forth in Section X.

25. U.S. Bank states that this paragraph contains no allegations directed at U.S. Bank and

therefore no response this paragraph is required. To the extent a response is required, U.S. Bank states it has no knowledge of the allegations in paragraph 25, therefore denied.

26. U.S. Bank states that this paragraph contains no allegations directed at U.S. Bank and therefore no response this paragraph is required. To the extent a response is required, U.S. Bank states it has no knowledge of the allegations in paragraph 25, therefore denied.

TERMINATION

27. Admitted this is an action to terminate the condominium. U.S. Bank denies Plaintiff is entitled to any relief against U.S. Bank and demands strict proof thereof.
28. The allegations in paragraph 28 of the Complaint refer to documents or records which speak for themselves. To the extent the allegations in paragraph 28 contradict Section XI, the Declaration controls.
29. The allegations in paragraph 29 of the Complaint refer to the Florida Statutes which speak for themselves. To the extent the allegations in paragraph 29 contradict the Florida Statutes, the Florida Statutes control.
30. This paragraph calls for a legal conclusion to which no response is needed, to the extent a response is required, U.S. Bank denies the allegations in paragraph 30.
31. U.S. Bank lacks sufficient knowledge or information as to the allegations in paragraph 31 of the Complaint. To the extent a response is required, U.S. Bank denies the allegations in paragraph 31.
32. The allegations in paragraph 32 of the Complaint refer to documents or records which speak for themselves. To the extent the allegations in paragraph 32 contradict the referenced Receiver Motion filed in the Receivership Case, the Receiver Motion controls, subject to a finding that the allegations within are supported by competent, substantial

evidence. To the extent a further response is required, U.S. Bank denies the allegations in paragraph 32 because it does not know if they are true.

33. U.S. Bank lacks sufficient knowledge or information as to the allegations in paragraph 33 of the Complaint. To the extent a response is required, U.S. Bank denies the allegations in paragraph 33.

34. U.S. Bank lacks sufficient knowledge or information as to the allegations in paragraph 34 of the Complaint. To the extent a response is required, U.S. Bank denies the allegations in paragraph 34.

35. U.S. Bank lacks sufficient knowledge or information as to the allegations in paragraph 35 of the Complaint. To the extent a response is required, U.S. Bank denies the allegations in paragraph 35.

36. U.S. Bank states that it does not know whether the documents attached as Exhibit F is a true and correct copy of the City's Unsafe Structure Notices, therefore denied. U.S. Bank further states that if Exhibit F is a true and correct copy of the City's Unsafe Structure Notices, the document speaks for itself and to the extent the allegations in paragraph 36 contradict the City's Unsafe Structure Notices, the City's Unsafe Structure Notices control.

37. U.S. Bank states that it does not know whether the documents attached as Exhibit G is a true and correct copy of the ACG Engineering Report, therefore denied. U.S. Bank further states that if Exhibit G is a true and correct copy of the ACG Engineering Report, the document speaks for itself and to the extent the allegations in paragraph 37 contradict the ACG Engineering Report, the ACG Engineering Report controls. U.S. Bank denies the remaining allegations in paragraph 37 because it does not know if they are true.

38. The allegations in paragraph 38 of the Complaint refer to documents or records which

speak for themselves. To the extent the allegations in paragraph 38 contradict the ACG Engineering Report, the ACG Engineering Report controls.

39. The allegations in paragraph 39 of the Complaint refer to documents or records which speak for themselves. To the extent the allegations in paragraph 39 contradict the ACG Engineering Report, the ACG Engineering Report controls.

40. The allegations in paragraph 40 of the Complaint refer to documents or records which speak for themselves. To the extent the allegations in paragraph 40 contradict the City's Unsafe Structure Notices, the City's Unsafe Structure Notices control.

41. U.S. Bank lacks sufficient knowledge or information as to the allegations in paragraph 41 of the Complaint. To the extent a response is required, U.S. Bank denies the allegations in paragraph 41.

42. U.S. Bank lacks sufficient knowledge or information as to the allegations in paragraph 42 of the Complaint. To the extent a response is required, U.S. Bank denies the allegations in paragraph 42.

43. U.S. Bank lacks sufficient knowledge or information as to the allegations in paragraph 43 of the Complaint. To the extent a response is required, U.S. Bank denies the allegations in paragraph 43.

44. U.S. Bank lacks sufficient knowledge or information as to the allegations in paragraph 44 of the Complaint. To the extent a response is required, U.S. Bank denies the allegations in paragraph 44.

45. U.S. Bank lacks sufficient knowledge or information as to the allegations in paragraph 45 of the Complaint. To the extent a response is required, U.S. Bank denies the allegations in paragraph 45.

46. U.S. Bank lacks sufficient knowledge or information as to the allegations in paragraph 46 of the Complaint. To the extent a response is required, U.S. Bank denies the allegations in paragraph 46.
47. The allegations in paragraph 47 of the Complaint refer to documents or records which speak for themselves. To the extent the allegations in paragraph 47 contradict the 25-year inspection letters, the 25-year inspection letters control.
48. U.S. Bank lacks sufficient knowledge or information as to the allegations in paragraph 48 of the Complaint. To the extent a response is required, U.S. Bank denies the allegations in paragraph 48.
49. U.S. Bank lacks sufficient knowledge or information as to the allegations in paragraph 49 of the Complaint. To the extent a response is required, U.S. Bank denies the allegations in paragraph 49.
50. U.S. Bank lacks sufficient knowledge or information as to the allegations in paragraph 50 of the Complaint. To the extent a response is required, U.S. Bank denies the allegations in paragraph 50.
51. The allegations in paragraph 51 of the Complaint refer to the Florida Statutes which speak for themselves. To the extent the allegations in paragraph 51 contradict the Florida Statutes, the Florida Statutes control.
52. U.S. Bank lacks sufficient knowledge or information as to the allegations in paragraph 52 of the Complaint. To the extent a response is required, U.S. Bank denies the allegations in paragraph 52.
53. U.S. Bank lacks sufficient knowledge or information as to the allegations in paragraph 53 of the Complaint. To the extent a response is required, U.S. Bank denies the allegations in

paragraph 53.

54. U.S. Bank lacks sufficient knowledge or information as to the allegations in paragraph 54 of the Complaint. To the extent a response is required, U.S. Bank denies the allegations in paragraph 54.

55. U.S. Bank lacks sufficient knowledge or information as to the allegations in paragraph 55 of the Complaint. To the extent a response is required, U.S. Bank denies the allegations in paragraph 55.

56. U.S. Bank lacks sufficient knowledge or information as to the allegations in paragraph 56 of the Complaint. To the extent a response is required, U.S. Bank denies the allegations in paragraph 56.

57. U.S. Bank lacks sufficient knowledge or information as to the allegations in paragraph 57 of the Complaint. To the extent a response is required, U.S. Bank denies the allegations in paragraph 57.

58. This paragraph calls for a legal conclusion to which no response is needed, to the extent a response is required, U.S. Bank denies the allegations in paragraph 58.

59. U.S. Bank states that this paragraph contains no allegations directed at U.S. Bank and therefore no response this paragraph is required.

60. This paragraph calls for a legal conclusion to which no response is needed, to the extent a response is required, U.S. Bank denies the allegations in paragraph 60.

61. This paragraph calls for a legal conclusion to which no response is needed, to the extent a response is required, U.S. Bank denies the allegations in paragraph 61.

62. This paragraph calls for a legal conclusion to which no response is needed, to the extent a response is required, U.S. Bank denies the allegations in paragraph 62.

RESPONSE TO REQUEST FOR RELIEF CLAUSE

U.S. Bank denies Plaintiff is entitled to any relief against U.S. Bank in this action, denies Plaintiff is entitled to damages, costs, or attorney's fees from or against U.S. Bank, and demands strict proof thereof.

AFFIRMATIVE DEFENSES

U.S. Bank, having answered the Complaint, now asserts the following Affirmative Defenses thereto:

1. *Failure to State a Claim* – Plaintiff fails to state a claim against U.S. Bank upon which relief can be granted.
2. *U.S. Bank's First-Position Lien* – U.S. Bank holds first priority as the mortgagee under the mortgage attached to the subject property located at 356 SW 83 Way (Building 6, Unit 205), Pembroke Pines, Florida 33025. The mortgage was executed by borrower Lilian Nesper on November 8, 2006, and it was recorded in the Official Records of Broward County as Instrument No. 106651919. The total amount due to U.S. Bank under the mortgage will be provided under separate affidavit/notice of claim; however, the face value of the mortgage demonstrates an amount of \$124,000.00 lent to Ms. Nesper. To the extent the court orders the Heron Pond Condominium be terminated pursuant to Fla. Stat. § 718.118 and/or approves the sale of the Condominium or other activities that may generate proceeds or assets related to Unit 205, in whole or in part, U.S. Bank should be paid a proportionate share of the proceeds or assets based upon the value of Unit 205, as set forth in paragraph 11 of the mortgage, and any other applicable provisions thereof.
3. *Conditions Precedent* - Plaintiff failed to comply with conditions precedent to termination because it failed to comply with Section XXV Rights Reserved Unto Institutional First

Mortgagees which requires the Association to give written notice of, among other issues, any damage or condemnation to condominium property and any items requiring mortgagee consent. Plaintiff further failed to comply with the Termination requirements set forth in Section X.

4. *Right to Contest* – Should the court enter a termination plan, U.S. Bank reserves the right to contest pursuant to Fla. Stat. § 718.117(6).
5. *Full and Complete Payment* – Should the court enter a termination plan, U.S. Bank states that any termination plan sought must provide for the full and complete payment of U.S. Bank's mortgage to satisfy U.S. Bank's lien against Unit 205 from the proceeds resulting from the sale of Unit 205.
6. *Reservation of Rights* – U.S. Bank reserves its right to exercise any remedies it may have under the mortgage and subject note against Lilian Nesper to the extent the amount received under the termination plan is not sufficient to satisfy Lilian Nesper's obligations under the note and mortgage unless personal liability has been discharged.

U.S. Bank expressly reserves the right to amend, supplement, or otherwise add to these affirmative defenses as litigation progresses and additional information is discovered.

**TROUTMAN PEPPER HAMILTON
SANDERS LLP**

Dated: January 2, 2025

By: /s/ Anthony Calenzo, Esq.

Anthony Calenzo, Esq.

Florida Bar No. 1031903

Primary Email:

anthony.calenzo@troutman.com

Secondary Email:

christina.hill@troutman.com

600 Peachtree Street NE, Suite 3000

Atlanta, GA 30308-2216

Telephone: 470-832-5580

Attorneys for U.S. Bank

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 2, 2025, a true and correct copy was served by E-service on: **Brian G. Rich, Esq.**, Berger Singerman LLP, 201 East Las Olas Blvd., Suite 1500, Fort Lauderdale, FL 33301, brich@bergersingerman.com; jwertman@bergersingerman.com; mniles@bergersingerman.com; and **Alejandro “Alex” Alonso II, Esq.**, Eisinger Law, 4000 Hollywood Blvd., Suite 265 South, Hollywood, FL 3302, eisingerlitigation@gmail.com; astivelman@eisingerlaw.com; aalonso@eisingerlaw.com; krodriguez@eisingerlaw.com.

/s/ Anthony Calenzo, Esq.

Attorney