



**GOREN CHEROF
DOODY & EZROL P.A.**
ATTORNEYS AT LAW

October 18, 2023

Via Email and U.S. Mail

Benjamin A. Solomon, Esq.
Association Law Group, Attorneys at Law
1101 Brickell Avenue, Suite N1101
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Re: Heron Pond Condominium Association, Inc. ("Client") / Property Located at 8400 SW 1st Street, Pembroke Pines, FL. 33025 ("Property" or "Heron Pond") / Response

Dear Mr. Solomon:

This letter serves as a response on behalf of the City of Pembroke Pines ("City") to the letter we received from your office on October 16, 2023 (the "October Letter"). In the October Letter, you request the following:

1. An acknowledgement from the City that certain units within Heron Pond do not need to be vacated pursuant to the structural reports submitted to the City by your Client's engineer, Henry S. Kreh (the "Engineer"), on October 9, 2023; and
2. A 10-day extension to the 30-Day Notice issued to your client by the City's Fire Marshal and Chief Building Official requiring your Client to provide structural reports for the remaining occupied buildings within the Property by October 21, 2023 (the "Notice")

I. Structural Reports Background

The October Letter describes the City's structural concerns as having been "recently raised". The City finds this description of its ongoing concerns, which have been communicated verbally and in writing to your Client repeatedly to be untrue. As communicated to your Client in the City's 30-Day notice posted on the Property on September 21, 2023, the City requested on May 18, 2023 that your Client provide an updated technical analysis detailing the structural conditions within buildings on the Property as well as any other details required for evaluations

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under the Florida Building Code and the Florida Existing Building Code. Further, the City and your Client met at the Property on May 25, 2023 to discuss the City's significant and well-founded concerns over the life, health, and safety of every resident of Heron Pond, your Client's lack of responsiveness to the City's requests for additional reports, and the immediate actions that your Client would be required to take in order to protect its residents and avoid the issuance of future orders to vacate additional units.

After the meeting on May 25, 2023, your Client did **not** submit a structural report to the City until August 14, 2023. The reports your Engineer submitted on August 14, 2023 for buildings 2,3, and 10 did not meet the standard of the technical structural analysis that the City's Chief Building Official and Fire Marshal requested, mostly consisting of a summary of the engineer's observations and a list of recommendations based on the Engineer's observations. However, based on the contents of the reports, the City's Chief Building Official and Fire Marshal made the decision based on the applicable portions of the Florida Building Code, the Broward County Amendment to the Building Code, and the Florida Fire Prevention Code, which have been attached hereto as **Exhibit "A"**, to deem buildings 2, 3, and 10 as "Unsafe to Occupy" and provide residents with a 10-day notice to vacate each residential unit within the three buildings.

On September 1, 2023, the City received structural reports for buildings 5, 14, and 16. Once again, the reports did not provide a detailed analysis of the structural issues facing the respective buildings, but a summary based on the Engineer's continuing limited observations. Based on a review of the reports for buildings 5, 14, and 16, the Chief Building Official and Fire Marshal designated buildings 5,14, and 16 as "Unsafe to Occupy" and provided residents within those buildings with a 10-day notice to vacate pursuant to the Florida Building Code and Fire Prevention Code.

After the Engineer submitted the reports for buildings 5, 14, and 16 on September 1, 2023, the City did not receive another report from your Client until October 9, 2023, when the City received summary structural reports from the Engineer for buildings 9, 11, and 12. The October reports also failed to provide a comprehensive technical analysis of the structural conditions within the respective buildings. However, unlike past reports, the reports submitted on October 9, 2023 recommended to evacuate certain specific units and proposed that the remaining units were safe to occupy.

II. Request to Acknowledge that Units are Safe to Occupy

You have requested that the City acknowledge that residents may remain living within all units in buildings 9, 11, and 12 that the Engineer did not recommend to be vacated. After discussion between the City Administration and the City's Fire Marshal and Chief Building Official, the City cannot agree with your request due to the overtly qualified language employed by your

Engineer when attesting to the safety of the units in his reports and subsequent response to the Chief Building Official and Fire Marshal's request to provide a professional engineering basis as to why those units should be considered safe.

The reports received for buildings 9, 11, and 12 highlight many similar or identical concerns noted by the Engineer for all three (3) buildings including, but not limited to signs of damage to sections of exterior walls that appear to carry significant roof loads", weakened floor joists and structures, and the need to assess and immediately address "damages extending into the building's interior", all of which may result in the need to vacate additional units. In fact, the Engineer notes no less than 180 areas of damage within every unit and across all three (3) buildings. Further, the Engineer makes several notes that detail the measurable state of disrepair of buildings 9, 11, and 12, including but not limited to the significant amount of unpermitted and unauthorized repair work that has been done to each building.

The City notes that the Engineer's recommendation that units are safe to occupy is not provided to the City without reservation. The Engineer clearly qualifies his assertion that units are safe to occupy by asserting that they are only deemed safe "to the best of [his] knowledge, based on our **visual inspection** of finishes, are deemed to be safe as of this date". The Engineer further declares in each report that "based on our **limited observations**, we do not know with any level of certainty, how many additional conditions may exist that currently remain hidden under floors, above ceilings, and behind walls."

Upon receiving the Engineer's report, the Chief Building Official and Fire Marshal requested in good faith to receive additional details to provide clarification and a professional engineering basis as to the safety of the units within building 9, 11, and 12. The response provided to the Chief Building Official and Fire Marshal by the Engineer on October 16, 2023 expands on the original report by providing that "the damages observed at the exterior walls do not appear to have reached the same levels of member section compromise (as the balconies)". However, the response then provides the following:

"The likelihood that balcony damages may have extended into the interior of the units has not been confirmed except for those cases where the floors have been noted as 'soft.'"

The Engineer's response then reiterates the same qualified and reserved language reflected within the Reports for buildings 9, 11, and 12 by providing the following consideration:

"[i]n the remainder of the cases where damage has been identified, in my professional opinion, to the best of my knowledge and based on what can be seen, it does not rise, at this time, to the level of posing an obvious safety concern."

The Engineer's Reports and subsequent response to the City's request for clarification continue to support the City's significant concerns over the structural conditions of the buildings within Heron Pond. The inability of your Client's Engineer to provide the City with direct and clear assurances as to the safety of any unit(s) on the Property is of great concern to the City and its Chief Building Official and Fire Marshal. The City Administration cannot understand why your Client's engineer of record is still limited to conducting only visual inspections of the buildings on the Property despite consistent requests by the City for comprehensive analyses, the orders to vacate that have been issued to six (6) buildings thus far, and the City's communications expressing its sincere and significant concerns over the conditions inside of the buildings within Heron Pond.

In light of the foregoing, based on the unsatisfactory nature of the limited visual inspections on the Property and the lack of response to the Fire Marshal and Building Official's request for clarification, the City cannot in good faith acknowledge that any unit within buildings 9, 11, and 12 is safe to occupy.

III. 30-Day Notice and Extension Request

The October letter requests a 10-day extension to the City's 30-Day Notice, which was issued on September 21, 2023 and runs through Saturday, October 21, 2023. In your letter, you reference your Client's "significant progress" throughout what you refer to as a "short period". We would like to point out that the City has repeatedly requested structural analyses from your Client for the buildings within Heron Pond since May 2023. Moreover, our office has drafted several letters to you expressing the City's deep concern over your Client's lack of responsiveness to the City's requests for reports necessary to be able to begin the permitting process as well as your Client's delays in complying with the requests and deadlines whether requested by the City or voluntarily proffered by your Client.

For instance, The Chief Building Official and Fire Marshal Issued the Notice in part due to your Client's failure to provide a single additional structural report for any building on the Property since September 1, 2023. Despite the Notice, your Client failed to submit structural reports to the City for an additional eighteen (18) days from the date that the Notice was issued and 38 days from the date that the last structural reports were submitted to the City.

On September 25, 2023, in a presumed response to the Notice, the City received an email from Heron Pond Property Manager, Laura Serrano (the "Property Manager"), that provided a revised timeline for submittal of structural reports that more closely complied to the timeline provided within the Notice. The Property Manager advised that the Engineer had "committed" to perform two (2) inspections a week and that reports would be completed the week following an

inspection. Based on this timeline, as of this writing, the City should be in receipt of reports for buildings 7, 8, 13, 15, and 17, **none** of which have been submitted to the City.

The October 2023 Letter states that building inspections on those buildings have occurred, but it did not provide context as to when those inspections occurred or why the reports were not submitted to the City within your Client's own timeline.

It is the City's opinion that your Client's continued pattern of missed deadlines to submit information that the City has requested in good faith for months to address a significant and serious life, health, and welfare concerns only serves to benefit the majority property owners of the units on the Property, who make up the most of the Property's Homeowner's Association. Further, such inaction on behalf of your Client continues only serves to subordinate the life, health, and safety of Heron Pond's residents who remain on the Property at continuing greater risk.

Based on your Client's continuing failure to timely address the serious nature of the City's requests or its own timelines, the City has no reason to believe that your Client will be able to comply with providing reports for more buildings within the next thirteen (13) days to the City than it has within the last five (5) months. As such, the City is not able to grant your Client the requested ten (10) day extension and will proceed with the terms of the Notice. Your Client, however, may submit structural reports in the interim, but please note that the City is closed on Fridays.

IV. Building Permit Applications

Your Client submitted online Building permit applications for buildings 2, 3, and 10 to the City on Thursday, September 21, 2023, at 5:06 PM. Due to the very specific and significant nature of the City's concerns over the structural conditions of the Property, the City Administration had asked your Engineer to provide an email to staff upon submittal of permit applications to allow staff to prioritize and expedite its review. Your office provided notice to the City on September 22, 2023 that permits were submitted. Despite being closed on Fridays, the City submitted initial comments to your Client on Monday, September 25, 2023, and formal comments on October 1, 2023, four (4) business days after the City was notified of the building permit submittals.

Your client submitted the revised permit applications on October 4, 2023 and the City completed its review the following day. The final revised building permit applications and building plans were submitted on Wednesday, October 11, 2023, and the City began reviewing those plans the following day and completed its review on Monday, October 16, 2023.

Despite the City's best efforts to provide comprehensive and expedited reviews of the submitted building permit applications and subsequent revisions, the City is unable to issue the

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building permits at this time due to your Client's failure to provide Broward County with the asbestos certificates required for all three permit applications prior to the issuance of a building permit. The City has informed your client that an asbestos certificate is required to receive a building permit, but as of this writing, the required asbestos certificates have **not** been submitted to Broward County.

Further, the Property Manager's September 25, 2023 email to the City provided that building permit applications for buildings 5, 14, and 16 would be submitted to the City on Friday, September 29, 2023. As of this writing, the City has **not** received any additional building permit applications from your Client, including those that were supposed to be submitted on September 29, 2023.

The City remains committed to ensuring the life, health, and safety of the residents of Heron Pond with hopes that your Client will be able to address the serious and significant structural conditions on the Property in a measurable and expedited manner. Should you have any questions regarding this matter, please do not hesitate to call our office.

Sincerely,

Samuel S. Goren

SAMUEL S. GOREN
City Attorney

Paul B. Hernandez

PAUL B. HERNANDEZ
Assistant City Attorney

cc: Frank C. Ortis, Mayor
Members of the City Commission
Charles F. Dodge, City Manager
Michael Stamm, Assistant City Manager and Director of Planning and Economic
Development
Jonathan Bonilla, Assistant City Manager
Daniel Almaguer, Fire Marshal
Steve Pizzillo, Chief Building Official

Enclosures

Exhibit "A"

Heron Pond Unsafe Structure Codes

Florida Building Code Broward County Chapter 1

116.2 Criteria. When any one (1) of the following conditions exist, a building may be deemed unsafe or a fire hazard:

116.2.1 Physical Criteria.

116.2.1.1.3 The building condition creates hazards with respect to means of egress and fire protection as provided herein for the particular occupancy.

116.2.1.2 A building shall be deemed unsafe when:

116.2.1.2.1 There is a failure, hanging loose or loosening of any siding, block, brick, or other building material.

116.2.1.2.2 There is a deterioration of the structure or structural parts.

116.2.1.2.4 There is an unusual sagging or leaning out of plumb of the Building or any parts of the building and such effect is caused by deterioration or over-stressing.

116.2.1.2.5 The electrical or mechanical installations or systems create a hazardous condition in violation of this Code.

116.2.1.3.1 The construction, installation of electrical, plumbing or other equipment therein or thereon, or the partial construction or installation of equipment has been commenced or completed without a permit therefore having been obtained or the permit therefore expired prior to completion and a Certificate of Occupancy issued.

NFPA

NFPA 1: 1.7.16.1 When, in the opinion of the AHJ, an imminent danger exists, the AHJ shall be authorized to order the occupants to vacate, or temporarily close for use or occupancy, a building, the right-of-way, sidewalks, streets, or adjacent buildings or nearby areas.

NFPA 1: 1.7.16.2 The AHJ shall be authorized to employ the necessary resources to perform the required work in order to mitigate the imminent danger.

NFPA 1: 1.7.16.3 Costs incurred by the AHJ in the performance of emergency work shall be the responsibility of the property owner or other responsible party creating such imminent danger.

NFPA 1:10.3.3 Buildings or portions of buildings, except for routine maintenance or repair, shall not be occupied during construction, repair, or alteration without the approval of the AHJ if required means of egress are impaired or required fire protection systems are out of service.

NFPA 1:10.1.4.1 Where structural elements have visible damage, the Authority Having Jurisdiction (AHJ) shall be permitted to require a technical analysis prepared in accordance with Section 1.15 to determine if repairs are necessary to restore structural integrity.

NFPA 1:10.2.4 The owner, operator, or occupant of a building that is deemed unsafe by the AHJ shall abate, through corrective action approved by the AHJ, the condition causing the building to be unsafe either by repair, rehabilitation, demolition, or other corrective action approved by the AHJ.

Florida Statute 633

Florida Statute 633.228 Violations; orders to cease and desist, correct hazardous conditions, preclude occupancy, or vacate; enforcement; penalties.

(1) If it is determined by the department that a violation specified in this subsection exists, the State Fire Marshal or her or his deputy may issue and deliver to the person committing the violation an order to cease and desist from such violation, to correct any hazardous condition, to preclude occupancy of the affected building or structure, or to vacate the premises of the affected building or structure. Such violations are:

(a) Except as set forth in paragraph (b), a violation of any provision of this chapter, of any rule adopted pursuant thereto, of any applicable uniform fire safety standard adopted pursuant to s. 633.206, which is not adequately addressed by any alternative requirements adopted on a local level, or of any minimum fire safety standard adopted pursuant to s. 394.879.

(b) A substantial violation of an applicable minimum fire safety standard adopted pursuant to s. 633.208, which is not reasonably addressed by any alternative requirement imposed at the local level, or an unreasonable interpretation of an applicable minimum fire safety standard, and which violation or interpretation clearly constitutes a danger to life safety.

(c) A building or structure which is in a dilapidated condition and, as a result thereof, creates a danger to life, safety, or property.

Broward County Local Amendments to the Florida Fire Prevention Code

F-103.2.5 Right of Entry. Upon presentation of proper credentials, the Fire Chief, Fire Marshal/Fire Code Official, or their duly authorized representative may enter, at any reasonable

time, any building, structure or premises for the purpose of making any inspection or investigation, which under the Fire Protection Provisions of this Code and the FFPC.

F-103.2.6 Stop-Work Orders. If the Fire Chief becomes aware of a hazardous condition, which presents immediate danger to life, work being done contrary to this Code or FFPC, work without permit, they shall be authorized to order the hazard removed or remedied immediately, and shall be empowered to order the closing of the building or place where such danger to life violation exists, until such time as same has been corrected. Any failure of immediate compliance shall empower the Fire Chief, or their duly authorized representative finding such hazardous condition creating immediate danger to life, to close such building or cause same to be closed and the people herein evacuated and barred from reentering until such time as such immediate danger to life, work being done contrary to this Code or FFPC, work without permit, has been corrected. The Fire Chief, or their duly authorized representative is given the authority to order any gas company, power company, or other utility company, to disconnect its service to any building or buildings containing gas or power installations, where such installations, in the opinion of the Fire Chief, or their duly authorized representative creates an immediate danger to life, work being done contrary to this Code or FFPC, work without permit, and to otherwise close or evacuate such building and to bar reentry thereto, until such installation is repaired or replaced and such hazard to life ceases to exist. Rejections shall include specific reference to the Code Section upon which rejection is based in writing.

F-103.2.7 The Fire Chief or their duly authorized representative upon the complaint of any person or whenever they shall deem it necessary, shall inspect any buildings and premises within their jurisdiction.