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MARKUP #1 ->

March 6, 2023

Via E-mail Only

Peter F. Valori, Esq.
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1000 Brickell Avenue, Suite 1020
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Re: Legal Opinion on Untenantable Condominium Units

Dear Peter:

This in response to your request for an opinion letter regarding whether New World Condominium Apartments Condominium Association, Inc. ("New World Condo") has become "untenantable" within the context of its Declaration of Condominium.

I am qualified to provide this opinion. I am an attorney licensed to practice law in the State of Florida. In addition, my professional experience makes me uniquely qualified to provide this legal opinion. I have focused my practice on community association law for over thirteen (13) years. During this time, I have become familiar with legal issues uniquely applicable to condominium associations.

We discussed that New World Condo is under a receivership, that Judge David M. Gersten (Ret.) is the court-appointed receiver, and that the City of Miami Gardens declared New World Condo an unsafe structure as a result of a fire. I studied the Declaration of New World Condo and quoted the relevant portion below. I reviewed public records relevant to New World Condo including recorded governing documents, secretary of state filings, and public dockets. I reviewed applicable statutes including Chapter 718 (Florida Condominium Act) and Chapter 83 (Florida Landlord and Tenant Act). I examined the satellite imagery of the Condominium Property before the fire and news coverage of the aftermath. The news depicted images of New World Condo in a destroyed state after the fire. Based on the foregoing, and the following applicable law, I believe New World Condo is 100% "untenantable" within the meaning of its Declaration.

ISSUE #1

MARKUP #1 · OUTDATED STATUTE LOCK

BOARD & COUNSEL REVIEW

Sec. 12.8 (p. 3): Declaration references Florida Statutes without express Kaufman language ("as amended from time to time"), risking unconstitutional impairment of contract challenges upon statutory changes.

Statutory / Legal Reference: Kaufman v. Shere, 347 So. 2d 627 (Fla. 3d DCA 1977); Cohn v. Grand Condo. Ass'n, 62 So. 3d 1120 (Fla. 2011)

Statutory Comparison: Under Florida Supreme Court precedent (Cohn), legislative amendments that impair vested contract rights cannot be applied retroactively to an existing community unless the Declaration contains express language adopting the statute "as amended from time to time" (the Kaufman doctrine).

CURRENT WORDING IN DOCUMENT:

of state filings, and public dockets. I reviewed applicable statutes including Chapter 718 (Florida Condominium Act) and Chapter 83 (Florida Landlord and Tenant Act). I examined the satellite imagery of the Condominium Property before the fire and news coverage of the aftermath.

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

In accordance with Kaufman v. Shere, amend the governing law clause to read: "...governed by Chapter 718 [or 720], Florida Statutes, as the same exists on the date hereof and as the same may be amended from time to time."