

June 2, 2025

via email only to sbraten@rosenbaumpllc.com

Steven Braten, Esq.
250 South Australian Avenue, 5th Floor
West Palm Beach, FL 33401

Re: Our client: Concerned Jupiter Bay Condominium
Unit Owners
Your client: Jupiter Bay Condominium Association, Inc.

Dear Mr. Braten:

We are in receipt of your response letter dated May 28, 2025, regarding the Association's Concrete Restoration Project (the "Project"). Your response failed to address our clients' substantial concerns regarding independent inspections, timely Phase Two inspections, and notice requirements.

Furthermore, our clients believe that the current Association Board of Directors, under the leadership of President Jim Kalic, is acting irresponsibly and recklessly in their managing of this project and related Association finances.

Poor Project Management

1. No Business Case or Request for Proposal were provided explaining the Concrete Restoration Project's scope, objectives, requirements, timeframe, quality standards, vendor selection criteria, et cetera. This violates normal project management principles as defined by the Project Management Institute (PMI).
2. The Board has not properly discharged their fiduciary responsibilities and is not acting in the best interest of the Association as required under Section 617.0830(1)(a-c). The Board has provided no evidence or documentation to the Association members from the local enforcement agency or other reputable sources supporting the need for this expansive project.
3. A Board Meeting was called for April 3, 2025, with 48 hours' notice, to discuss a Concrete Remediation Project. At this meeting, the Board President said that seven (7) bids for a major Concrete Restoration Project were received, and that his committee selected one of the seven contractors to do the work. The Board Members then voted unanimously to

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approve the selected contractor, Custom Group, for the project. No information was provided on any of the bids ahead of the meeting, a possible violation of Section 718.112(2)(c)3, Florida Statutes. The Custom Group contract was not included with the meeting notice. In fact, this contract was not posted on the Association's website until 27 days later, on April 28, 2025.

4. A second Board of Directors meeting was noticed on April 28th and held on May 6, 2025, to "Consider Approval of the Custom Group Contract". At this meeting the Board voted to approve the \$6.86 million contract that was selected at the prior meeting. Members were told that funding for this project would mostly be through special owner assessments of \$15,000 to \$20,000. Although special assessments were discussed, a 14-day notice was not provided in violation of FL statute 718.112(2)(c)1.
5. Minutes for the May 6th Board Meeting were not posted on the Association's website in violation of Section 718.111(12)(g)(2)(e) Florida Statutes.
6. Six documents, referred to as bids, were posted on the Association website on May 1st, five (5) days prior to the \$6.86 million approval meeting. Only one of these documents (from Carousel Development & Restoration) was a signed bid. This violates the competitive bid requirements of Section 718.3026(1) Florida Statutes. The other documents were engineer-prepared spreadsheets showing cost details, presumably from the other five (5) contractors.
7. Only one (1) of the seven (7) bids required by Section 718.111(12)(a)(11)(e) Florida Statutes as official records was posted on the Association's website, and it was not the Custom Group bid.

Poor Fiscal Management

1. The Association is grossly underfunded to support the \$6.86 million Concrete Restoration Project even after transferring reserve investment interest into the concrete restoration accounts. This account has only has \$1.2 million (17.5% of what is needed) to pay for this Project.
2. The Board failed, at the May 6th Board Meeting to notify owners or obtain approval for the additional \$700,000 to \$1.3 million (10-20%) of engineering costs to oversee the construction project, conduct inspections, and interface with the Town of Jupiter Building Department.
3. Special assessments of \$15,000 to \$25,000 will be required to fund this Concrete Restoration Project. The Board has already imposed other special assessments on unit owners this year due to the Board's overspending income in 2024 causing a fund balance



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deficit of \$215,433 (according to the 2024 Audit Report). These large multiple special assessments are causing major financial burdens on Jupiter Bay's condominium unit owners. Already special assessments of \$23,630, \$22,026, and \$19,823 have been levied against owners in West Buildings A, B, and C respectively for the Concrete Restoration Project. Owner account delinquencies and foreclosures resulting from these assessments could substantially impact the Association's revenue and ability to meet its financial obligations.

4. Owner financial problems are worsened by the inability to rent units while under construction. Some owners are taking out loans or mortgaging or selling their units to make special assessment payments. When selling units, the Concrete Project's debt needs to be disclosed, reducing selling prices.
5. The purpose of the Board's recently completed Structural Integrity Reserve Study (SIRS) conducted by Global Solution Partners was to determine the amount of reserve funding necessary to keep Association buildings and other structures and elements properly maintained. Based on the number of units with "serious" and "moderate" concrete damage, the Reserve Study calculated a \$3.1 million replacement value, with a 10-year life and 2.0% annual inflation increase, for concrete and stucco repair of balconies, walkways, and other surfaces. The resultant \$301,000 annual funding beginning next year, together with the \$1.2 million current fund balance, will build reserves to fund future concrete remediation projects without requiring a \$6.86 million project and large special assessments.
6. Due to deficits in the Association's Operating Accounts, the Association failed to adequately fund reserves, and they used reserve funds to pay monthly bills in January and February potentially violating the prohibition against commingling under Section 718.111(14) Florida Statutes.
7. On April 30, 2025, the Association charged \$11,498 of attorney fees to the building restoration reserve account (30110) instead of to the legal fees account (51438) reducing the amount of these fees revealed to unit owners.

Fiduciary Responsibility Failure

1. Our client believes that restoring all East and West buildings and units to their original (as built) condition is a poor and irresponsible decision. This was never done before in the Association's 30+ year history. The Board has spent hundreds of thousands of dollars yearly to prevent having to spend this much money in a single year. Between 2007 and 2020, \$2.3 million was spent on building restoration/spalling (\$3.1 million in today's dollars). In the decade before 2020, \$159,778 was spent with engineering firms for



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building inspections and construction project oversight.

2. All the Milestone Inspection Reports state that:

The building is reasonably structurally safe for continued occupancy; however, there are concrete repairs that are required. Repairs are required at isolated areas of concrete deterioration of the building structure which includes the balcony slabs, walkway slabs, building walls and columns. The deterioration is the result of corrosion of the embedded reinforcing bars.

The Milestone Inspection Reports also say that there is no structural deterioration – i.e., no bulging, settlement, deflections, expansions, or contractions. Masonry bearing walls are “good”, and there are only hairline cracks in the stucco finish.

3. We cited in our May 16th letter that Section 553.899(7)(b) requires Phase Two inspections to be performed “if any substantial structural deterioration is identified during phase one of the Milestone Inspection.”
4. You said in your response that “Swaysland Professional Engineering Consultants, Inc. (SPEC), performed a more intensive inspection than the minimum required for the Phase One inspection; therefore, no further inspections were required to identify the best course of action to repair the distressed and damaged portions of the building. SPEC did not believe that such further testing was necessary based on past experience performing structural concrete repairs on multiple buildings at Jupiter Bay.”

However, the Association on May 29, 2025 posted nine (9) Phase Two Inspection Reports that were alleged to have been performed at the same date of the Phase One inspections. Despite the earlier date, they were signed by Swaysland V-P Stanley Swaysland on May 29, 2025. All reports contradict the previous Phase One reports and say that “the buildings have Substantial Structural Deterioration and are considered dangerous.” If these Phase Two results were available last year, why were not owners and the local enforcement agency (Jupiter Building Department) properly notified as required by Section 553.899(8) Florida Statutes which provides:

Upon completion of a phase one or phase two milestone inspection, the architect or engineer who performed the inspection must submit a sealed copy of the inspection report with a separate summary of, at minimum, the material findings and recommendations in the inspection report to the condominium association and to the building official of the local government which has jurisdiction.



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I also note that the new report states that “upon completion of the corrective action the Design Professional in charge of the Milestone Inspection must submit an amended Phase 1 Milestone Inspection Report per Chapter 18 of the Florida Building Code - Existing Buildings.” Please provide same as soon as possible.

5. Concrete Inspections of the ten (10) East and West buildings showed that 24 (5.7%) of the balconies have “severe” damage, 106 (25.4%) have “moderate” damage, and the remaining 288 (68.9%) have “minor” or “no” damage. Repairing just the units with “severe” or “moderate” damage would save the Association \$4.73 million. The remaining project cost, if spread out over three (3) years, could be funded through the aggressive reserve contributions mandated by SIRS.

Conclusion

It appears that the Association may have violated numerous Florida statutes as stated above. I note that five (5) DBPR Complaints have been filed against the Association in the past 12 months alone, including the most recent Complaint, filed on May 26, a copy of which is attached.

Our clients believe that the Board has not done due diligence in their request for bids or in the bid posting, evaluation, and selection processes. Communication with owners was lacking or nonexistent, and owners were excluded from participating via open board meetings in project justification, project requirements, vendor evaluations, and vendor selection. The Board has not acted in a fiduciary manner that is in the best interests of the community.

The same engineering firm (Swaysland) is being used for milestone inspections, bid review, and project inspections and construction oversight causing concern over a possible conflict of interest. (This is the same engineering firm that miraculously found nine (9) Phase Two Milestone Reports nearly a year after the Phase One inspections were completed with an inspection date of July 9, 2024.)

Our client is considering filing for injunctive and declaratory relief to seek to immediately stop work on the Concrete Restoration Project underway by Custom Group. The project needs to be renegotiated to focus on only those unit balconies with “severe” or “moderate” concrete damage. We believe that the contract provides flexibility for this. Our clients are also considering a recall of one or more Board Members who voted for this project, including the President, who spearheaded it.



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If you have any questions or concerns, please feel free to contact me.

Very truly yours,
LIPPES MATHIAS LLP

Michael J Posner

MJP/rl

cc: Jupiter Bay Owners