

December 20, 2023

Via US Mail and Certified/Return Receipt

Point Brittany Administrative
Corporation, Inc.
c/o Mr. Pete Taylor, President and RA
5055 Brittany Drive S.
St. Petersburg, FL 33715

**Re: Point Brittany Administrative Corporation, Inc./Danielle and Timothy
Jenkins and Kevin Conzone**

Dear Board of Directors:

Please be advised that our firm represents Danielle and Timothy Jenkins, members Bay Isles Point Brittany Four Condominium Association, Inc., and owners of 5200 Brittany Dr., Unit 204, St. Petersburg, FL (the “Jenkins Unit”), Kevin Conzone, a member of Bay Isles Point Brittany Six Condominium Association, Inc. and owner of 4900 Brittany Dr., Unit 201, St. Petersburg, FL (the “Conzone Unit”), as well as a number of other owners within the Point Brittany Administrative Corporation (“PBAC”) (collectively, the “Owners”). The Owners are concerned that PBAC intends to alter demolition four commercial buildings which are owned jointly to Bayway Isles-Point Brittany One Condominium Corporation, Inc., Bayway Isles-Point Brittany Two Condominium Corporation, Inc., Bayway Isles-Point Brittany Three Condominium Corporation, Inc., Bayway Isles-Point Brittany Four Condominium Corporation, Inc., Bayway Isles-Point Brittany Five Condominium Corporation, Inc., and Bayway Isles-Point Brittany Six Condominium Corporation, Inc. (the “Individual Condominium Associations”),. Additionally, the Owners have concerns regarding the correctness of the reserve studies, sufficiency of the reserve funding, and whether special assessments levied for different purposes have been wrongfully used to fund reserves. Finally, the Owners have concerned regarding the number of change orders approved for projects awarded to Excelaron Construction, Inc. (“Excelaron”).

First, it has come to the Owners attention that PBAC intends to demolition four commercial buildings owned by jointly by the condominium associations with which PBAC is a party to a Management/Administration Agreement. Specifically, the Owners understand that PBAC intends to alter or demolish the buildings located following addresses: 5003 Brittany Dr. S. St. Petersburg, FL, 5400 Leeland St. S. St. Petersburg, FL, 5055 Brittany Dr. S. St. Petersburg, FL, and 5101 Brittany Dr. S. St. Petersburg, FL (the “Commercial Buildings”), all of which are deeded to the individual condominium associations. The Owners believe that the Commercial Buildings constitute “association property,” which is defined in Section 718.103(4), Florida Statutes as “property, real and personal, which is owned or leased by, or is dedicated by a recorded plat to, the association for the use and benefit of its members” or “common elements” defined in Section

718.103(4), Florida Statutes as “the portions of the condominium property not included in the units.” Or is otherwise owned by the Individual Condominiums. Assuming one or more of the Commercial Buildings constitute association property or common elements, PBAC does not have the right to demolish the property, except in the manner provided in the individual declarations.

The Management/Administrative Agreement provides that PBAC can repair, replace, or alter condominium property upon written direction and approval of the individual associations. *See* Point Brittany Administrative Corporation, Inc. Association Management Agreements, Section 2.(A). The individual declarations, in turn, require membership votes to make material alterations. *See* Certificate of Amendment to Declaration of Condominium and Bylaws of Bay Isles – Point Brittany One, A condominium (amending Section 5.1(b) to require approval by 2/3 of the membership and approval of a majority of the Board of Directors); Amended and Restated Declaration of Condominium of Bayway Isles – Point Brittany Two, a Condominium, Pinellas County, Florida, Section 5.1. (requiring a 75% vote of the membership and approval of a majority of the Board of Directors); Amended and Restated Declaration of Condominium of Bayway Isles – Point Brittany Three, a Condominium, Pinellas County, Florida, Section 5.1(b) (requiring approval of 60% of the membership and approval of a majority of the Board of Directors if a material alteration costs in excess of \$25,000); Amended and Restated Declaration of Condominium of Bayway Isles – Point Brittany Four, a Condominium, Pinellas County, Florida, Section 5.1(b) (requiring approval a majority of the membership and approval of a majority of the Board of Directors if a material alteration costs in excess of \$25,000); Amended and Restated Declaration of Condominium of Bayway Isles – Point Brittany Five, a Condominium, Pinellas County, Florida, Section 5.1(b) (requiring a 60% vote of the membership and approval of a majority of the Board of Directors for alterations to common elements); Amended and Restated Declaration of Condominium of Bayway Isles – Point Brittany Six, a Condominium, Pinellas County, Florida, Section 6.1(b) (requiring a approval of 2/3 of the membership for alterations to common elements);¹

Despite the Individual Condominium Associations’ obligations to obtain approval of at least a majority of the voting interests of each of the Individual Condominium Associations to materially alter or demolish the Commercial Buildings, if they are common elements none of the Individual Condominium Associations have held a membership vote and insists that no such vote is necessary. As a result, it appears that PBAC may be proceeding to materially alter association property or common elements in violation of Section 718.113(2)(a), Florida Statutes. Even if the Commercial Buildings do not constitute association property or common elements, our understanding is that the Individual Condominium Associations own the Commercial Buildings jointly. As a result, without obtaining the consent of each owner, PBAC does not have the authority to materially alter or demolish the Commercial Buildings. Mailed concurrently with this correspondence is both a request to inspect PBAC’s Official Records and a letter of inquiry in an attempt to determine the validity of the same. Nevertheless, the Owners demand that PBAC either provide documentation sufficient to support its position that a membership vote is not needed or otherwise cease and desist any actions taken in furtherance of the demolition of the commercial

¹ Nothing in The Management/Administrative Agreement appears to override the obligation that the Individual Condominium Associations obtain the required membership votes.

buildings unless and until PBAC obtains approval for the sale from the requisite number of owners from each of the Individual Condominium Associations.

Second, the Owners have concerns regarding PBAC's reserve studies and reserve accounts. Specifically, the Owners have concerns that the reserves studies may not be accurate, that the reserves may not be properly funded, and that unused special assessments, levied for projects which were never completed, were wrongfully added to the reserves. As a result, the Owners demand that PBAC make available all reserve studies and financial information regarding the reserve accounts. Mailed concurrently with this correspondence is both a request to inspect PBAC's Official Records and a letter of inquiry requesting information regarding the reserve accounts, the reserve studies, and the companies performing the reserve studies.

Third, the Owners have concerns regarding PBAC's relationship with Excelaron, the amount of contracts awarded to Excelaron, and the number and amount of change orders approved in projects awarded to Excelaron. Most notably, it has come to the attention of the Owners that numerous change orders, costing hundreds of thousands of dollars have been approved for the gazebo project and the structural project at Pools 1, 2 and 3. As a result, the Owners are concerned that the Board manipulated the bidding process by awarding Excelaron the project despite an unreasonably low contract price, with the intent to approve numerous change orders to ensure Excelaron is fully compensated. For example, the project at Pool 3 was initially estimated to cost \$178,400.00 and, as of July 27, 2023, eight change orders have been approved for a contract total of \$248,516.26. At the time of signing the contract for Pool 2, the cost was \$123,315.40, which amount included an initial change order of \$15,415.40.² As of March 4, 2023, the total cost of the Pool 2 project was approximately \$145,217.85. The cost of the Pool 1/gazebo project was initially estimated to be \$143,740.00 and, as of May 30, 2023, the cost is exceeds \$900,000.00.

The Owners are further concerned that the Board members may have personal relationships with individuals at Excelaron who would materially and personally benefit from this manipulation or that the Board may have otherwise breached the its fiduciary duties. Mailed concurrently with this correspondence is both a request to inspect PBAC's Official Records and a letter of inquiry in an attempt to assess the same.

Fourth, the Owners are concerned that special assessments have been used for a purpose other than the purpose for which they were levied. Specifically, the Owners have concerns that special assessments were levied for projects that were never completed and, rather than returning the funds to the individual Owners, PBAC used the special assessment funds to fund the reserve accounts or other purposes.

In light of the foregoing, the Owners request that PBAC review the concerns addressed above and responded to each within thirty (30) days of the date of this correspondence. Additionally, please consider this correspondence to be a formal demand that, within thirty (30) days of the date of this correspondence, either provide documentation sufficient to support its

² Notably, the other four companies who bid on the project in response to Karins Engendering Group, Inc.'s request bid no less than \$205,920.91 for the project.

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position that a membership vote is not needed or otherwise cease and desist any actions taken regarding the alteration or demolition of the Commercial Buildings and the gazebo unless and until the individual associations each obtain the requisite approvals for these changes.

Should you have any questions or would like to discuss this matter, please feel free to contact me before the expiration of the thirty (30) days. We look forward to your response within thirty (30) days.

Sincerely,

Jonathan J. Ellis

JJE/CRM

cc: Colleen R. McInerney, Esq.