

May 2, 2024

*Via Email (kelly@rpglaw.com)*

Point Brittany Administrative  
Corporation, Inc.  
c/o Kelly Baker, Esq.  
2653 McCormick Dr.  
Clearwater, FL 33759

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

Dear Ms. Baker:

As you know, 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”).

We are in receipt of your April 15, 2024 response to our clients’ March 29, 2024 Statutory Offer to Participate in Pre-Suit Mediation, in which you appear to deny that PBAC has made any decision as to the future of the Commercial Buildings and, as a result, that the issues set forth in the March 29, 2024 Statutory Offer to Participate in Pre-Suit Mediation are not ripe for review. Nevertheless, you note that PBAC agrees to the offer to participate in the mediation process if PBAC “makes a formal decision to materially alter the Commercial buildings and approves the same without adhering to the voting thresholds outlined in the individual condominium declarations.”

Notwithstanding your client’s position regarding the ripeness of the issues regarding any potential material alteration to the Commercial Buildings, as your correspondence notes the mediation offer relates to “PBAC’s failure to hold a membership vote prior to taking *any* action to material[ly] alter *any* common area of property.” (emphasis added). As a result, while we highlighted the expected alterations to the Commercial Buildings as an example of the unauthorized material alterations, the request was not limited to these expected alterations.

Having said that, our clients would like to proceed to mediation regarding the material alterations that have been made without a membership vote. One such material alteration relates to the area previously containing the pool gazebo. To that end, in response to our written inquires, you asserted that PBAC advised that the City of St. Petersburg condemned the gazebo and demanded that it be removed. However, even if this were true, PBAC would not be permitted to

forgo rebuilding the gazebo without a membership vote. Put simply, a decision not to rebuild the gazebo in substantially the same form would constitute a material alteration such that a membership vote would be required. Yet, no such vote was held.

Moreover, even if PBAC has not made any formal decisions regarding Commercial Buildings, PBAC has filed to maintain the Commercial Buildings such that the nature and use of the Commercial Buildings have changed. To that end, it is our understanding that many offices have been maintained in a manner sufficient to allow tenants to rent the same. Because the nature of the common area has consequently changed, the failure to maintain the Commercial buildings constitutes a material alteration. *See Gethin v. Villa Vista Management, Inc.*, Arb. Case No. 99-1336 Final Order (November 30, 1999) (finding that the association's failure to repair or replace the air conditioning in the hallways constituted a material alteration of the common elements because the hallways were rendered less comfortable and were turned in to more of an exterior, patio-like area than an interior, climate-controlled one).

As we have previously noted, 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 an approval of 2/3 of the membership for alterations to common elements).*<sup>1</sup>

Based on this, approval of at least a majority of the voting interests of each of the Individual Condominium Associations was required to materially alter the areas addressed above. Yet, none of the Individual Condominium Associations have held a membership vote. As a result, it appears

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

Kelly Baker, Esq.

May 2, 2024

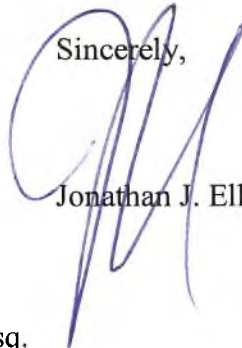
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that PBAC has or is currently materially altering association property or common elements in violation of Section 718.113(2)(a), Florida Statutes.

In light of the foregoing, please advise as to your client's willingness to participate in pre-suit mediation as to PBAC's failure to hold a membership vote prior to taking any action to materially alter any common area or property, including, but not necessarily limited to, the issues addressed above within ten (10) days of the date of this letter. If the Association agrees to participate in mediation, in accordance with our March 29, 2024 offer, please complete the Agreement to Mediate, which was attached to the March 29, 2024 offer. A copy of the Agreement to Mediation is enclosed for your convenience.

Should you have any questions or would like to discuss this matter, please feel free to contact me before the expiration of the ten (10) days. We look forward to your response.

Sincerely,

A handwritten signature in blue ink, appearing to read 'JJE', is written over the word 'Sincerely,'.

Jonathan J. Ellis, Esq.

JJE/CRM

cc: Colleen R. McNerney, Esq.

**AGREEMENT TO MEDIATE**

The undersigned hereby agrees to participate in pre-suit mediation and agrees to attend a mediation conducted by the following mediator [please check the mediator you wish to use] as someone who would be acceptable to mediate this dispute:

**Harold Oehler, Esquire**  
Oehler Mediation  
3225 MacDill Avenue, Suite 129-341  
Tampa, FL 33629  
Telephone: (813) 758-6284  
Reduced Rate: \$125.00/hour per party  
Email: [Harold@OehlerMediation.com](mailto:Harold@OehlerMediation.com)

**Bryan B. Levine, Esq.**  
Knox Levine, P.A.  
36354 U.S. Hwy 19 N  
Palm Harbor, FL 34684  
Telephone: (727) 223-6368  
Rate: \$125.00/hour per side  
(No Min/No Canc.)  
Available In-Person or Zoom  
[www.knoxlevine.com](http://www.knoxlevine.com)

**Brian M. Ross**  
Brian M Ross P A  
Post Office Box 172547  
Tampa, Florida 33672  
Telephone: (813) 505-2722  
Rate: \$220.00/hour (\$110.00/hour per side) Minimum of 2 hours for mediation

**Hon. Gregory Holder**  
Zinobar Diana & Monteverde, PA  
607 W Horatio Street  
Telephone: (813) 644-3736  
Rate: \$450.00/hour (\$225.00/hour per side) Minimum of 4 hours for mediation

**Rod Barrett Neuman**  
Gibbons, Neuman, Bello, Segall, Allen & Halloran, P.A.  
3321 Henderson Blvd  
Tampa, Florida 33609-2921  
Telephone: (813) 463-2809  
Rate: \$275.00/hour (\$137.50 per side)  
Available In-Person or Zoom

Date: \_\_\_\_\_

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Telephone contact information