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Our Ref: LFH17/LIT

30th May, 2022

Dentons Delany
Attorneys-at-Law
Burnham Court
Bishop's Court Hill
Upper Collymore Rock
St. Michael

BY EMAIL AND HAND

Attention – Mr. Michael Koeiman

Dear Sirs

Re: In the matter of Apes Hill Development: Apes Hill Homeowners Association Inc. (HOA), Apes Hill Club, Apes Hill Golf & Beach Club and Plantation Sanctuary Inc. (PSI) and in the matter of Mandatory Membership and other issues

Reference is made to the following:-

- My letter of 24th September 2021, jointly addressed to the Chairmen of the Board of Directors of Apes Hill Homeowners Association Inc. and Plantation Sanctuary Inc. and others;
- Dentons Delany's response by way of letter dated 4th October 2021;
- My letter to Dentons Delany of 17 January 2022;
- Dentons Delany letter of 27 January 2022 in response to my letter of 17 January 2022;
- My letter to Dentons Delany 9 March 2022;
- Dentons Delany letter of 11 April 2022 in response to my letter of 9 March 2022; and
- Dentons Delany letter of 10 May 2022 subsequent to our virtual (counsel) meeting of 22 April 2022.

My clients' concerns are set out in the letters aforementioned. These concerns have not changed. What I expressed in the virtual 22 April 2022 meeting, was that counsel for the HOA and PSI should look at the realities of the remedies available to my clients if were they to go to Court and make a proposal settling those concerns.

I have put the following proposal as set forth in your letter of 10 May 2022 to my clients:

“We have taken our clients' instructions, and confirm that they are in agreement with the proposed Board appointment subject to the following stipulations:

- i) *The Members propose 3 names and the Developer have the opportunity to select one of the proposed persons to join the Board; and*

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ii) If the Developer declines the first 3 individuals proposed, then another 3 names be proposed until one is accepted.”

The proposal is not acceptable to any of my clients. They do not agree that PSI has, or should have, the right to appoint any Director of the HOA. Instead, they believe that the Bylaws of the HOA should be followed and that the Board of the HOA should cause an election to be held where the Membership of the HOA can elect 3 to 5 eligible candidates to the Board. They believe that no Board Member should be appointed by PSI; that the HOA should be run by a Board of Directors that has been elected by its members (including PSI); and that all Directors should have fiduciary obligations to all members of the HOA.

The proposal also fails to resolve several issues raised and referred to in my previous correspondence as well as the sixty-five (65) questions raised by Paul Lamb. In particular, the issues that remain and affect the validity of the actions of the Board of the HOA are:

- (i) the current 2021 HOA Rules that purport
 - a. to make all members of the HOA dues paying members of the Apes Hill Club, a golf club to be formed by PSI; and
 - b. to relieve the Board of Directors appointed by PSI of their statutory and fiduciary duties to all members of the HOA.
- (ii) the invalidity of the assignment of Developer Rights in the HOA to PSI by A. H. Development, SRL, the Developer, without PSI assuming the obligations of the Developer to the HOA giving rise to such rights, if any.
- (iii) the proposed subdivision of the Apes Hill Development to add an additional golf course, new facilities and fifty (50) new lots thereby changing the scheme of the development for the Apes Hill Development without the consent of the existing homeowners and lot owners.

1. 2021 HOA Rules

Mandatory membership

- a. - Reference is made to my previous correspondence and in particular my letter of 24 September 2021 and Dentons Delaney response of 4 October 2021 in which your clients undertaking was given “*not to implement the mandatory membership fee and initiation fee on our clients on 1 October 2021 as stated;*”.
- a. My advice to my clients remains and continues that these Rules (Rules 3.4 and 7.9) are *ultra vires*, null void and of no effect and should be revoked by the Board of Directors at the earliest possible opportunity.

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Statutory and Fiduciary duties

- a. Under the Companies Act, Chapter 308 of the Laws of Barbados, section 95 of the Act provides:

“95. (1) Every director and officer of a company in exercising his powers and discharging his duties must

(a) act honestly and in good faith with a view to the best interests of the company; and

(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

(2) In determining what are the best interests of a company, a director must have regard to the interests of the company's employees in general as well as to the interests of its shareholder.

(3) The duty imposed by subsection (2) on the directors of a company is owed by them to the company alone; and the duty is enforceable in the same way as any other fiduciary duty owed to a company by its directors.

(4) Every director and officer of a company must comply with this Act and the regulations, and with the articles and by-laws of the company, and any unanimous shareholder agreement relating to the company.”

Under the Bylaws of the HOA and 2006 HOA Rules:

- (i) only the First Directors, appointed by the incorporator of the HOA, can appoint successor First Directors.
- (ii) First Directors and successor First Directors act with fiduciary duties only to the Developer.
- (iii) the Developer, or its assignee, has no authority to appoint First Directors or any director of the HOA.
- (iv) all directors whether elected by the members of the HOA or invalidly appointed by the Developer or an entity acting as the Developer, act with fiduciary duties to the HOA (Company) and to all members of the HOA (shareholders).

By reason of the above, the directors must act in the interests of the HOA, and not in their own interests nor those of PSI or engage in transactions that involve a conflict of interest. In this instance, it is my understanding that all current directors of the HOA are appointed and are employed, in one way or another, by PSI. Thus, in any transaction involving PSI, each director has a conflict of interest that cannot be waived or overcome, and any actions taken by such director involving PSI subjects that director to liability for violating his duty of loyalty to the HOA and its members under the Companies Act.

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2. Assignment to PSI

Under the 2006 HOA Rules, the Developer, Apes Hill Development SRL could assign its Rights as the Developer of the Apes Hill Development to PSI provided PSI assumed the obligations of the Developer to the HOA. PSI has disclaimed any of the obligations of the Developer to the HOA. Therefore, the Assignment of HOA Developer Rights by the Developer to PSI is not effective and PSI has no HOA Developer Rights in the Apes Hill Development.

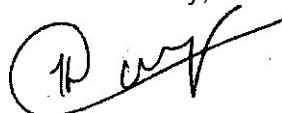
3. Proposed Subdivision of Common Property to be Conveyed to the HOA

Our clients have instructed that they are presently seeing works being carried out on lands designated as Common Property to be conveyed to the HOA, and are concerned , that the areas in question are being further subdivided to create additional lots within the Apes Hill Development, that will not conveyed to the HOA in accordance with the approved Subdivision Plan for the Apes Hill Development.

To date, none of your communications have addressed this issue and on behalf of my clients, we request that this issue of further subdivision be addressed without delay.

We continue to await a proposal addressing our clients' concerns. In the interim, please let me have a copy of the recording of the AGM which many members of the Owners Group were unable to attend.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'L. Haynes', written over a circular stamp or mark.

Leslie F. Haynes Q.C.