



OFFICE OF THE VILLAGE MANAGER

NO. 026-2015

LETTER TO COUNCIL

TO: Mayor Martin Packer and Members of the Village Council

FROM: Jorge M. Gonzalez, Village Manager

DATE: February 11, 2015

A handwritten signature in blue ink, appearing to read "Jorge", is written over the printed name of the Village Manager.

SUBJECT: Church by the Sea - Deed Restrictions

The purpose of this Letter to Council (LTC) is to transmit the attached memorandum reference the right to terminate Deed restrictions applicable to the Church by the Sea property, provided by Weiss Serota Helfman Cole Bierman & Popok, P.L..

Should you have any questions or require additional information, please feel free to call the Richard Weiss or me directly.

Attachment

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February 9, 2015

Mayor Martin Packer
Members of the Bal Harbour Village Council
Bal Harbour Village Hall
655 - 96th Street
Bal Harbour, Florida 33154

**Re: Right to Terminate Deed Restrictions applicable to Church by the Sea
Property**

Dear Mayor Packer and Council Members:

You have been provided with a Memorandum dated November 19, 2014 (“**Katz Memo**”) from Michael D. Katz, Esq., attorney for Bal Harbour Shops, LLLP (“**LLLP**”) regarding the property owned by the Church by the Sea (“**Church**,” the property owned by the Church is the “**Church Site**”). The Katz Memo references the various deeds that conveyed the Church Site and the deed restrictions applicable to the Church Site (“**Deed Restrictions**”). The Katz Memo concludes that “Bal Harbour Shops, LLLP (“**LLLP**”) owns and controls the Deed Restrictions on the Church site.”

At your request, we have reviewed the Katz Memo and the copies of deeds attached to it. We have also reviewed Fidelity National Title Insurance Company Commitment Order No. 4981206 dated October 6, 2014 (“**Title Commitment**”) provided to us by Mr. Katz.

Miami Beach Heights, Inc. (“**MBH**”) conveyed the Church Site to the Church by two separate Warranty Deeds in 1947 and 1951 (collectively, “**Deeds**”).¹ Both Deeds contain the same Deed Restrictions, the most significant of which reads as follows:

The lands above described shall be used exclusively for church, religious, and religious educational purposes, and by Caucasian followers of the Christian faith only.

The Deeds expressly gave MBH the right to enforce the Deed Restrictions², as well as the right to assign its rights, obligations and privileges under the Deeds to Bal Harbour Club, Inc. or any other person or corporation.³

In 1955, MBH quitclaimed to Harbour Square, Inc., a Florida corporation, all of MBH’s rights, obligations and privileges set forth in the Deed Restrictions.⁴ In 1957, Harbour Square changed its name to Bal Harbour Shops, Inc. (“**BHS**”).⁵

BHS was voluntarily dissolved on January 19, 1973.⁶ Forty-one years later, on July 29, 2014, Stanley Whitman executed a quitclaim deed (“**2014 QCD**”) conveying to the LLLP the right to enforce the Deed Restrictions. The 2014 QCD recites that Stanley Whitman is the sole surviving member of the last Board of Directors of Bal Harbour Shops, Inc., a dissolved corporation.⁷

Section.608.30 of the Florida Statutes, in effect at the time BHS was voluntarily dissolved in 1973, authorized the conveyance of a dissolved corporation’s property by a majority of the surviving directors of the corporation as trustees, and provided for an optional affidavit to be appended to the deed identifying the trustees.

¹ Warranty Deeds from Miami Beach Heights, Inc. to Church by the Sea dated June 5, 1947 and recorded in Deed Book 2836, Page 198; and dated October 10, 1951 and recorded in Deed Book 3505, Page 170. (Note: all recording references are to the Public Records of Miami-Dade County, Florida).

² Deeds, Paragraph 10.

³ Deeds, Paragraph 13.

⁴ Quitclaim Deed from Miami Beach Heights, Inc. to Harbour Square, Inc. dated February 25, 1955 and recorded in Deed Book 4050, Page 315.

⁵ Florida Department of State, Division of Corporations, name history for Bal Harbour Shops, Inc. from Sunbiz.org.

⁶ Florida Department of State, Division of Corporations, listing for Bal Harbour Shops, Inc. on Sunbiz.org.

⁷ Quitclaim Deed from Bal Harbour Ships Inc. to Bal Harbour Shops, LLLP, dated July 29, 2014 and recorded on November 20, 2014 in Official Records Book 29399, Page 2971.

(2)(a) The directors of the corporation at the time of dissolution or expiration shall be and constitute a board of trustees for the property owned by the dissolved or expired corporation. In the event of vacancies in the board of directors at the time of dissolution or expiration the remaining directors, as trustees, may fill them from among the stockholders. Subsequent vacancies may be filled by the surviving trustees in like manner. Acts of a majority of the trustees or of a majority of the surviving trustees shall be acts of the board of trustees.

(3)(c) The trustees may do all acts necessary and proper to the final settlement of all the affairs of the corporation, including but not limited to the following: They may convey, assign, release, subordinate and satisfy any right, title, interest, claim, lien or demand in, to or upon real property standing of record in this state in the name of such dissolved corporation. It shall not be necessary for any stockholder to execute such deed, but execution thereof by a majority of the trustees or a majority of the surviving trustees shall be adequate. All deeds or other instruments so executed in the past are hereby validated in all respects. The trustees so executing any such instrument may append thereto an affidavit stating in substance that they are duly qualified to act as such trustees, and that they constitute a majority of the trustees then existing. Such affidavit, as to purchasers without notice, shall be taken and held to be conclusive as to the facts therein stated. The trustees shall continue as trustees of the property of such dissolved corporation so long as it holds of record in this state any right, title, interest, claim, lien or demand in, to, or upon real property.
⁸[emphasis added]

The records for BHS on Sunbiz, the website for the Florida Department of State, Division of Corporations (“**FDOS**”) reflect that the last directors of BHS were Stanley Whitman, William F. Whitman, and Dudley Whitman. William Whitman died in 2007, and Dudley Whitman died in 2011.⁹ Assuming that the FDOS records for BHS are accurate and current, Stanley Whitman is the sole surviving director with authority to execute conveyances that serve to settle the affairs of the dissolved corporation.

We have requested copies of the last corporate filings by BHS to confirm the time between the filing of the last annual report and the January 19, 1973 date of dissolution.¹⁰ We will advise you once we obtain the requested information if it causes us to change any of the matters

⁸ Section 608.30(3)(c), Florida Statutes.

⁹ Bill Whitman, 92, is Dead; Scoured the Earth for Rare Fruit, New York Times, June 4, 2007; Dudley passed away on Friday, July 15, 2011, Tributes.com.

¹⁰ Documents filed with FDOS prior to 1996 are not available online.

set forth in this letter. However, there is no reliable way to confirm from any public records the identity of surviving directors of a corporation. Although a Florida corporation's annual report filed with the FDOS will show the officers and directors at the time of filing, there is no requirement for the corporation to update the filing to reflect changes that occur during the year.

While no affidavit was appended to it, the 2014 QCD affirmatively states that Stanley Whitman is the sole surviving member of the last Board of Directors of BHS. The Title Commitment obtained by the LLLP for the Church Site includes an exception stating that the Deed Restrictions are in effect "unless terminated by Bal Harbour Shops, LLLP," indicating that the title company is satisfied that the LLLP is the current holder of the right to terminate the Deed Restrictions.

In the course of our research for this letter, we noted that a new corporation with the name Bal Harbour Shops, Inc. was formed on July 28, 2014, with Stanley F. Whitman, Randall A. Whitman, and Matthew W. Lazenby as the initial directors of the corporation. In response to our question about the formation of a new corporation with the same name as the one dissolved in 1973, on the day before the dissolved corporation conveyed its rights with regard to the Deed Restrictions, we were advised by Michael Katz that the new corporation was formed solely to control the name (Bal Harbour Shops, Inc.) so that it cannot be used by anyone else.¹¹

Based on our review of the series of conveyances described in this letter and the Title Commitment, we believe that the LLC holds the right to enforce, waive, modify or terminate the Deed Restrictions.

Respectfully yours,

Weiss Serota Helfman Cole Bierman & Popok, P.L.



Gail D. Serota

GDS/
027109

cc: Richard Jay. Weiss, Esq.

¹¹ According to the FDOS website, the name of a voluntarily dissolved Florida corporation becomes available for use by another party 120 days after dissolution. In the case of a corporation that is administratively dissolved, the name becomes available one year after dissolution.