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September 28, 2018

Board of Directors  
PINE ISLAND COVE  
HOMEOWNERS ASSOCIATION, INC.  
c/o Tom Andrus, President  
7290 Ladyfish Drive  
St. James City, FL 33956-273

Re: Use of Unallocated Funds Held in General "Reserves" for Repair of Boat Lift

Dear Board Members:

It is my understanding that the Board is planning to use some of the general unallocated reserves to repair the boat lift. An owner has challenged the Board's authority to use the unallocated funds held in reserve for this purpose without a vote of the owners. You have asked if a vote of the owners is required in order to use the unallocated funds held in reserve to repair the boat lift? The short answer to this question is, no, a membership vote is not required to use the unallocated funds held in reserve for this purpose and the Board may make the decision to do so. Below I will explain the basis for my opinion.

Section 7.1.3 of the Declaration of Covenants, as amended, provides in pertinent part that

"The reserves for deferred maintenance and capital expenditures include, but are not limited to, roof replacement, building painting, and pavement resurfacing. A capital expenditure is an expense which results from the replacement of an asset whose life is greater than one (1) year in length or the addition of an asset which extends the life of the previously existing asset for a period of more than one (1) year."

Based on this Section you may collect money in reserve for capital items in addition to roof replacement, building painting, and pavement resurfacing. The boat lift is a capital item and, therefore, the use of the unallocated funds held in reserve for this purpose is proper and within the discretion of the Board of Directors.

Reference has been made to Section 7.2. of the Declaration of Covenants, as somehow restricting the Board's use of the reserves for the repair of the boat lift. Section 7.2.3 provides that

"For non-budget expenditures, except in the case of required replacement or repair of existing facilities or equipment, or refinancing corporate debt, any expenditure in excess of \$2,500 shall be approved by a majority of the members voting at a meeting." The

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limitation contained in this section does not apply to "required replacement or repair of existing facilities or equipment."

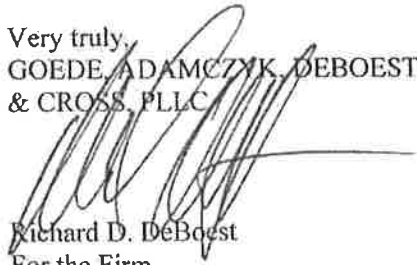
The Boat lift is an existing facility/equipment and it requires replacement and repair. Therefore, Section 7.2.3 does not require that the expenditure of the funds above \$2,500 be approved by a majority of the members.

Finally, reference has also been made to Section "720.3032(h)", Florida Statutes, as somehow pertaining to this issue. There is no Section 720.303(2)(h) in the Florida Statutes. I believe the proper reference is to Section 720.303(6)(h) which limits the use of reserves approved by a vote of the Owners to only the purpose intended unless the Owners by a vote approve an alternate use. The unallocated funds held in reserve were established by the Board of Directors not by a vote of the owners. Therefore, the Statute restricting their use does not apply. Moreover, even if it did apply since the funds are "unallocated", meaning not earmarked for a specific capital item, they can be used for any capital item or facility as provided in Sections 7.1.3 and 7.2.3 of the Bylaws.

In summation, it is my opinion that the Board of Directors has the authority without further approval of the membership to expend any and all funds necessary to repair the boat lift whether those funds come from the operating budget or the unallocated funds held in reserve.

I trust the foregoing is responsive to your inquiry, however, if you should have any questions, please do not hesitate to contact me.

Very truly,  
GOEDE, ADAMCZYK, DEBOEST  
& CROSS, PLLC



Richard D. DeBoest  
For the Firm

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