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September 13, 2022

Via Email Only: kim@kbraham.com

Barefoot Pelican Condominium Association, Inc.
c/o Board of Directors
271 South Bay Drive
Naples, FL 34108

Re: **History of Boat Lot Units and Boat Docks/Finger Piers
Maintenance and Alterations**

Dear Kim:

As we discussed, I have compiled the “history” of how the boat lot units and the adjacent boat docks/finger piers have been treated with regard to maintenance and the allocation of costs for such maintenance. In light of the Board’s upcoming seawall/boat dock project, I have also clarified the requisite approval that will be needed for material alterations to the common elements and any resulting substantial change to the size or configuration of a boat lot unit.

1. 1984 On 3/8/84, the developer recorded the Declaration of Condominium (“Original Declaration”) at O.R. Book 1069, Page 1837 of the Collier County official records. The Condominium was to be developed in two phases ultimately consisting of 60 residential units and 44 boat lot units. The common elements were described to include 24 boat docks (or finger piers), a seawall and other recreational facilities. The Original Declaration provided that the Association was responsible to maintain, repair and replace (hereafter “maintain”) all the boat lot units, boat docks/finger piers, seawall and other common elements as a common expense to be shared by the 60 residential unit owners and the 44 boat lot unit owners in the percentages described on Exhibit 7.

2. 1996 On 12/20/96, the Association recorded an amendment to the Original Declaration at O.R. Book 2263, Page 1610 of the Collier County official records. This amendment was approved at a special membership meeting on 12/18/96 by a 32-5 vote. The amendment made significant changes to the Original Declaration and changed all references of a boat lot unit to a “boat slip” and required the Association to assign the 44 boat slips to the residential unit owners provided that no residential owner have more than one boat slip. The amendment also changed how the owners shared in the cost to maintain the boat “slips”, docks/finger piers and the seawall requiring that only the 60 residential unit owners share (equally) in these expenses. The amendment rescinded Exhibit 7 to the Original Declaration. These “1996 amendments” became the subject of a lawsuit

filed by a unit owner (Newsome) in 1996 challenging the amendments as being unenforceable. The lawsuit was eventually settled in 2001 requiring the Association to rescind the 1996 amendments.

3. **2001** The Association recorded a Notice of Rescission in the Collier County records which rescinded the 1996 amendments. The Association continued to maintain the boat lot units, boat docks/finger piers and seawall as a common expense shared by all 44 boat lot owners and 60 residential unit owners in the percentages described on Exhibit 7 to the Original Declaration.

4. **2004** The Association recorded an amendment to Article XII of the Original Declaration to limit ownership of boat lot units to residential unit owners only and no more than one boat lot per residential unit.

5. **2007** On 4/13/2007, the Association recorded an amendment to the Original Declaration at O.R. Book 4213, Page 1303 of the Collier County official records (a corrective certificate of amendment was recorded on 10/18/2007 to include an Exhibit that was mistakenly not previously recorded). This amendment purported to change the way the owners shared in the expenses to maintain the boat lot units, adjacent boat docks and the seawall by making the expenses “limited common expenses” shared only by the 44 boat lot owners. In essence, the “2007 amendment” declared the boat docks/finger piers and the seawall as limited common elements.

6. **2018** The Board engaged the law firm of Roetzel & Andress to assist in preparing an Amended and Restated Declaration of Condominium. The 2018 Amended and Restated Declaration was recorded on 3/21/18 at O.R. Book 5489, Page 1753 of the Collier County official records. The 2018 Amended and Restated Declaration went back to some of the rescinded provisions in the 1996 Amendments referring to boat lot units as “boat slips” and referring to boat lot owners as “boat lot assignees.” The 2018 Amended and Restated Declaration also removed the seawall as a limited common element but otherwise kept the way the owners shared in the costs for the Association to maintain the boat lot units, boat docks by keeping such costs as limited common expenses shared only by the 44 boat lot owners.

7. **2021** Many unit owners complained to the Board about the various inconsistencies with the 2018 Amended and Restated Declaration and the Board (Ted Ward) called me to look into the matter to determine whether there were inconsistencies and if so, to prepare amendments to correct the inconsistencies. The Board (Ted) also wanted to add incidental damage language for the residential and boat lot units and wanted to make clear that only the boat lot owners share in the costs to maintain the boat lot units and boat docks/finger piers. We (Becker) prepared and recorded (on 3/26/21 at O.R. Book 5915, Page 1903) Amendments to the 2018 Amended and Restated Declaration to “fix” the inconsistencies and to add incidental damage language. The 2021 Amendments also kept the provision from the 2018 Amended and Restated Declaration allocating the cost of maintenance for the boat lot units and boat docks/finger piers to only the 44 boat lot unit owners.

8. **2022** There remains much confusion about the boat lot units and boat docks/finger piers and how maintenance costs for the same are shared. Since 2007, only the boat lot unit owners have shared in the cost to maintain the boat lot units and the boat docks/finger piers. The Board engages the firm (Becker) to prepare a new Declaration to clarify these issues. The Board sends a survey to all of the owners asking whether the owners preferred to continue the current scheme of requiring only the boat lot owners to share in the cost of the expenses to maintain the boat lot units and boat docks/finger piers (and other questions.) A majority of those who returned the survey voted to require all 60 residential owners and 44 boat lot owners to share in the costs to maintain the boat lot units and boat docks/finger piers. These owners also voted in favor of a “no smoking” policy for the common elements. As a result, the proposed 2022 Amended Declaration went back to the language of the Original Declaration that required all of the owners (boat lot owners and residential unit owners) to share in the costs to maintain the boat lot units and boat docks/finger piers in the manner and percentages described on Exhibit 7 to the Original Declaration. The proposed new Declaration also included the “no smoking” language and other restrictions that the unit owners voted in favor for on the survey.

Sincerely,



KEVIN L. EDWARDS

For the Firm

KLE/lv