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Forest Lake Property Owners Association of Arenac County
c/o Daniel R. LeFevre, President
6180 Bobcat Tr.
Alger MI 48610

Re: Forest Lake Property Owners Association of Arenac County Special Assessment

Dear Mr. LeFevre:

This law firm represents Forest Lake Property Owners Association of Arenac County (the "Association"). The Board of Directors of the Association requested me to review an objection raised by a member of the Association relating to the special assessment levied by the Board of Directors of the Association for the cost to complete lake dredging, dock repairs, and spillway repairs necessitated by the unprecedented storm event on May 19, 2020.

The objection at issue states that the Board of Directors of the Association unlawfully imposed a Special Assessment on all its members outside of its authority and contrary to the By-Laws and Restrictive Covenants of the Association. The objection is misplaced because the Association, acting through its Board of Directors, is specifically authorized to approve and levy a special assessment. The Association was incorporated on August 21, 1970 to among other things perpetually hold, maintain, improve, and beautify the waterways held, established, or laid out by the Corporation for the perpetual use in common for all lawful purposes for which such property may be used of the active members. The Articles of Incorporation further provides that an active member is one who has acquired his property subject to the restrictive covenants providing for the establishment of the Forest Lake Property Owners Association, whose dues are currently paid, and who otherwise complies with the Articles and By-Laws of the Corporation.

The incorporators adopted By-Laws in connection with its Articles of Incorporation. The Association's Bylaws govern the future conduct of the entity and its members. Under Michigan law, the Association is statutorily authorized to adopt and amend By-Laws providing for the regulation and management of its affairs as long as they are consistent with its Articles of Incorporation. The By-Laws were validly promulgated and constitute a binding contractual agreement between the Association and its members.

It is important to note that this special assessment is not an annual assessment. The Board of Directors is specifically authorized to issue a special assessment pursuant to Article VI, Section 14 of the Revised By-Laws of the Association (the "By-Laws"), which provides as follows:

Special assessments may be levied upon a two-thirds (2/3) affirmative vote of the Board of Directors at an annual meeting or any special meeting called for that purpose, or upon the favorable vote of the members present in person or by proxy at an annual or special meeting of the membership.

Any suggestion that the Board of Directors was required to obtain a court order to revise the Restrictive Covenant's or the Association's By-Laws in order to levy a special assessment conflates the meaning of "annual assessment" and "special assessment" in the Association By-Laws. Annual assessments are referenced and governed by Section 6 of the Restrictive Covenants and ultimately Article V of the Association By-Laws. From a plain reading, the assessments referenced in Article V of the Association By-Laws refers to the "annual assessment to the Forest Lake Property Owners Association as outlined in Section 6 of the Restrictive Covenants". Unlike annual assessments, the Board or the members may also approve and levy a special assessment. The Articles of Incorporation of the Association impose no restriction on the Board or the Association from adopting a By-Law providing for or otherwise approving a special assessment.

At the July 10, 2021 Annual Meeting of the Association the Board of Directors informed the members of the Association that it decided to collect the assessments directly from the members instead of through the creation of the Moffat/Clayton Township Special Assessment District. The Board of Directors presented the revised special assessment and its reasoning to specially assess the members directly at the 2021 Annual Meeting. The decision of the Board of Directors was set forth in the Meeting Minutes for the Annual Meeting. One week after the Annual Meeting the Board of Directors mailed the Notice of Special Assessment to the members. The Board of Directors made abundantly clear that it approved the special assessment through its presentation at the annual meeting and the mailing of the Notice of Special Assessment to the members. But, in order to clarify any perceived lack of a formal vote of the Board of Directors, it unanimously ratified its approval of the special assessment at its October 12, 2021 meeting called for that purpose:

Motion (LeFevre) to formally approve the clear intent of the FLPOA Board to Levy the special Assessment as presented to FLPOA members at the July 10, 2021 Annual Meeting in which a Board quorum was present, and the July, 2021 Special Assessment Notice letter that was submitted to all Boord members for review prior to mailing. Further moved that the motion is effective July 16, 2021 to memorialize the clear intent of the Board. Support (Kelley). Motion passed (9-0).

The Board's unanimous written consent has the same effect as a vote of the Board as of July 16, 2021. Neither the Association nor the Board of Directors changed a rule or made a new rule. Rather, the Board of Directors unanimously approved a special assessment in accordance with Article VI Section 14 of the By-Laws.

Under Michigan law, the By-Laws are an enforceable contract between the Association and its members. Under the By-Laws, "[t]he business of the corporation shall be managed by its Board of Directors which may exercise all such powers of the corporation and do all such lawful acts and things as are not prohibited by law or Articles of Incorporation or by these By-Laws, or directed or required to be exercised or done by the shareholder/members." Under Article II Section 4 of the By-Laws, "[m]embership privileges shall only become valid upon payment of all annual and special assessments." Those privileges may be suspended, for among other things, non-payment of special assessments. However, the Board of Directors lacks the authority to record a lien against any property for the failure to pay a special assessment.

In conclusion, the Board of Directors is specifically authorized to approve and levy a special assessment, and did so pursuant to the By-Laws of the Association and Michigan law.

Very truly yours,

RHOADES McKEE PC

A handwritten signature in blue ink, appearing to read 'PRD', is positioned below the typed name. The signature is stylized and fluid.

Patrick R. Druke