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VIA ELECTRONIC MAIL

Beatriz M. Till
12301 Pathway Ct.
Riverview, FL 33569

Re: Boyette Springs Homeowners' Association, Inc.

Dear Beatriz:

We are providing you this letter in response to your request that we evaluate the recent efforts of the Boyette Springs Homeowners' Association, Inc. (the "BSHA"), to amend and restate the existing Declaration of Restrictions applicable to your home in the Boyette Springs neighborhood of Riverview, Florida. For the reasons explained in this letter, we do not believe that the Restated and Amended Declaration of Covenants, Restrictions and Assessments of Boyette Springs in the form proposed by the BSHA (the "Proposed Amendment") would be valid or enforceable against you under the circumstances as a matter of law.

You acquired your home at 12301 Pathway Court by a Warranty Deed dated December 30, 1987, and recorded on January 4, 1988, at Official Records Book 5306, Page 1580, the Public Records of Hillsborough County, Florida. The Warranty deed was executed on behalf of Centex Real Estate Corporation in favor of you and your husband, John E. Till. Prior to your purchase Devco Development Corporation ("Devco"), the original developer of your portion of Boyette Springs, recorded a Declaration of Restrictions dated August 14, 1986, and recorded on August 18, 1986, at Official Records Book 4889, Page 193, in the Public Records of Hillsborough County, Florida (the "Devco Declaration"). The Devco Declaration contained a series of architectural restrictions applicable to your lot and all others located within Section B, Unit 3, of Boyette Springs. The developer retained certain review authority, and vested the authority to enforce the Devco Declaration in the other lot owners subject thereto. Importantly, the Devco Declaration did not identify or even appear to contemplate any owner association that would be vested with any rights under the Devco Declaration, and the lots were not subjected to either a mandatory association or periodic assessments.

A series of substantially similar declarations were later recorded by Devco with respect to subsequent phases of the Boyette Springs development, and a version with slight modification was also later used by Suarez Housing Corporation. These declarations are listed in the recitals of the Proposed Amendment. More recently, the BSHA recorded that certain Revised Declaration of Covenants, Conditions and Restrictions of Boyette Springs, dated September 20, 2004, and

recorded June 15, 2005, at Official Records Book 15126, Page 1642, in the Public Records of Hillsborough County, Florida (the "2005 Declaration"). The 2005 Declaration appears to include several defects, notably including the failure to bear any signature or to include the exhibit identifying the property to which it was to apply. Regardless, it reflected a desire to expand the scope of the covenants, conditions, and restrictions to include assessments and more detailed use restrictions. However, even under the 2005 Declaration, membership was voluntary. "Member" is defined as "every person or entity who holds membership in the Association or who has agreed to membership..." and Article III provides with respect to BSHA membership that "Every Owner of a Lot, who is current on his or her dues, is a member of the Association in good standing." Similarly, Article IV provides with respect to assessments that "... each Owner covenants, and agrees by the signature attached to this Declaration, to pay to the Association [assessments]." Accordingly, to the extent it was ever valid or enforceable, no part of the 2005 Declaration attempted to impose mandatory membership and assessments.

The Proposed Amendment takes a decidedly different approach, mandating membership in the BSHA and granting it assessment and collection authority. Specifically, Section 4.3 states that "Every Owner of a Lot shall be deemed to have a membership in the association for each lot owned," and Section 8.1 provides that "Each Owner, by acceptance of a deed or instrument of conveyance for the acquisition of title in any manner ... shall hereafter be deemed to have covenanted and agreed to pay to Association ... assessments..." Section 4.1 of the Proposed Amendment purports to similarly bind any lot owner by virtue of lot ownership to the balance of its terms and conditions. The scope of authority claimed by the BSHA in the Proposed Amendment is consistent with that vested in the types of mandatory associations found in FishHawk Ranch and other master planned communities, but far exceeds what was authorized in the Devco Declaration to which your property is subject.

Amendments to restrictive covenants are subject to a requirement that they be reasonable and not destroy the general plan of development. In Holiday Pines Property Owners Ass'n v. Wetherington, 596 So. 2d 84 (Fla. 4th DCA), a copy of which is enclosed with this letter, the court was asked to determine the validity of an amendment that "added to enforcement mechanisms of the covenants by making membership in the homeowner's association mandatory, requiring the payment of dues to the association, allowing the collection of attorney's fees by the association for enforcing covenant restrictions, providing for the association to perform maintenance on lot owner's property, and allowing the creation and enforcement of liens against the lot owner's property upon their failure to pay fees, dues or other charges or assessments." In short, the amendment at issue in the Holiday Pines case involved substantially the same expansion in scope as that of the Proposed Amendment.

The court in Holiday Pines explained that such an amendment would in effect change a platted typical subdivision into a quasi-condominium development, and that the imposition of a mandatory association with increased powers of regulation, management, and lien authority would significantly restrict an owner's use of their property. Accordingly, the amendment at issue was found not to be a permissible continuation of the existing scheme of development, but rather constituted a "radical change of plans, altering the relationship of lot owners to each other and the

right of individual control over one's own property," and the court affirmed the lower court ruling that the subject amendment was unenforceable.

There is no substantive difference between the Proposed Amendment and that at issue in the Holiday Pines case. The case remains good law, and has since been cited by other appellate courts and the Florida Supreme Court for the proposition that amendments to restrictive covenants are limited by a reasonableness test. However, it appears that the BSHA's legal counsel has either not considered or not disclosed this established limitation in advocating for the Proposed Amendment. Regardless, as a fundamental matter of property rights, the BSHA cannot unilaterally subject your property to later conditions of which you had no notice at the time of your purchase without your affirmative approval.

Under current law, and regardless of whether a majority or more of the owners in Boyette Springs approve it, the Proposed Amendment exceeds any authority of the BSHA or the owners within Boyette Springs to amend the Devco Declaration to which your property is subject. If recorded, the Proposed Amendment would be unenforceable as against your property. Should the Proposed Declaration be recorded and the BSHA seek to enforce it against you or your property, please give me a call.

Very truly yours,



Robert W. Bivins

Enclosure