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MEMORANDUM

TO: Board of Directors, Harbour Walk Homeowners' Association, Inc. (the "Association")

FROM: Tilden & Prohidney, P.L. 

DATE: December 4, 2018

SUBJECT: Maintenance Obligations – Sidewalks and Median Landscaping

You have requested a legal opinion from our firm regarding whether the Board's interpretation of the Association's governing documents is reasonable that it is the individual homeowners, and not the Association, who are required to maintain the sidewalks and median landscaping adjacent to the homeowner's lots within the Harbour Walk community. Based on the governing documents of the Association, it is our opinion that it is reasonable to conclude that it is the homeowner's responsibility to maintain the sidewalks and medians in front of their individual lots, as discussed below.

Article 7 of the Declaration of Covenants, Restrictions and Easements for Harbour Walk, recorded November 26, 2002 in Official Records Book 1786, Page 1635 of the Public Records of Manatee County, Florida, as amended (the "Declaration"), entitled Repair and Maintenance, delineates the Association's maintenance responsibilities vis-à-vis the Owner's maintenance responsibilities. Section 7.01 of the Declaration describes the repair and maintenance responsibilities of the Association, and Section 7.02 describes the repair and maintenance responsibilities of the Owner.

Section 7.01 of the Declaration provides, in pertinent part:

7.01. Repair and Maintenance by the Association. The ASSOCIATION shall have the **primary responsibility** for the maintenance, repair and replacement of the following:

(a) The ASSOCIATION PROPERTY.

...
(f) The **guard house**, gate and any SIGNS and **attendant** lighting, sidewalks, irrigation systems, landscaping and other improvements on ASSOCIATION PROPERTY, in medians or on any easement granted to the DECLARANT or the ASSOCIATION, and any street signs installed by DECLARANT or the

ASSOCIATION, as well as public signs to the extent not maintained by public authorities to a level deemed acceptable by the BOARD.

Section 7.02 of the Declaration provides as follows:

7.02 Repair and Maintenance by Owner. Each OWNER shall be responsible for the maintenance of his PARCEL and all IMPROVEMENTS thereto, including the landscaping and lawn. **Each OWNER shall be responsible** for routine mowing and lawn care of any drainage facility or swale located upon his PARCEL and **shall maintain such lawn or landscaping as may exist in the portion of the street right-of-way adjacent to an OWNER'S PARCEL between the front line of the PARCEL and the edge of the curb or paving of the street notwithstanding that responsibility for maintenance of the swale as a drainage facility and the maintenance of all areas within the street rights-of-way rests with the ASSOCIATION.** Each OWNER shall maintain such PARCEL and IMPROVEMENTS at his sole expense, and such maintenance shall extend to and include all STRUCTURES, fixtures, equipment and appliances each to be maintained in good condition and repair and in an attractive condition and in keeping with the standards of maintenance throughout HARBOUR WALK. Maintenance by the OWNER shall further include painting, repair and replacement and care of roofs, gutters, down spouts, exterior building surfaces, screening and caging, walks and other exterior IMPROVEMENTS. All such maintenance and repairs shall conform to such maintenance standards as may be promulgated from time to time by the ASSOCIATION in accordance herewith.

OWNERS of PARCELS located directly adjacent to boat lifts shall be responsible for irrigating the landscaping adjacent to the boat lifts. Such areas are located upon MASTER ASSOCIATION property but outside the boundaries of the PARCELS. These OWNERS shall have an easement across and under the MASTER ASSOCIATION property for the installation and maintenance of the irrigation system as provided for in the MASTER DOCUMENTS. Said landscaping shall otherwise be maintained by the MASTER ASSOCIATION as provided for in the MASTER DOCUMENTS. (Emphasis Added).

The Declaration defines "Improvements" or "Structures" as follows:

1.13 "IMPROVEMENTS" or "STRUCTURES" shall mean and include, dwellings, outbuildings, parking areas, driveways or sidewalks, storage areas, fences, walls, poles, signs, automatic

irrigation systems and all other structures of any kind located above or below the ground level of any PARCEL and any replacements, additions, repairs, or alterations thereto of any kind whatsoever. (Emphasis added).

Further, Section 13.04(d) requires that OWNERS are responsible for the construction of "that portion of the sidewalk immediately adjacent to the OWNER'S PARCEL." Further, if the OWNER failed to install the required sidewalk, the DECLARANT had the "authority and legal right to install the required sidewalk and seek reimbursement for the cost of the installation of the sidewalk and all costs incurred in collecting such amounts expended by the DECLARANT from the OWNER of the adjacent PARCEL."

Based on the above provisions, Sections 7.01 and 7.02 of the Declaration appears to provide that it is the homeowner's responsibility to maintain the sidewalk and median landscaping in front of their lot, and the Association maintains sidewalks and medians on purely Association Property (sidewalks that run along Common Areas, trees and landscaping on Common Areas not adjacent to a lot, etc.). Section 7.02 discusses the homeowner maintaining all lawn and landscaping on Association Property in front of their lot to the street edge, and also mentions that the homeowner must maintain "walks and other exterior improvements." Since the homeowner had to install the sidewalk, and they are maintaining any grass and landscaping beyond the sidewalk to the street edge, the Declaration appears to place the maintenance and replacement obligations on the homeowner for the sidewalks and landscaping in front of their lot, even if it is technically on Association Property or any easement.

In summary, it is reasonable for the Board to require the maintenance and repair of the sidewalks, grass, trees and other landscaping in the medians adjacent to a homeowner's lot to the edge of the street, to be completed by the adjacent homeowner. While the governing documents are not entirely clear on the matter, and could be subject to alternative interpretations, it appears that the Board's interpretation is reasonable based on the language used throughout the Declaration. Finally, please note that Board decisions are generally protected by the "business judgment rule," which rule provides that courts should not substitute their judgment for the judgment of the elected or appointed board members, so long as the members of the board acted in compliance with established standards of conduct and in a reasonable manner. *See, e.g., Hollywood Towers Condo. Ass'n v. Hampton*, 40 So.3d 784 (Fla. 4th DCA 2010).

If you have any questions or need anything further, please do not hesitate to contact us.