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MEMORANDUM

TO: Board of Directors, Ardissonne Condominium Association, Inc.
FROM: Steven M. Falk, Esq., Falk Law Firm, P.A.
DATE: October 5, 2020
RE: Owner (Boat Slip Assignee) Request to Install Boat Lift

We are writing to discuss boat lifts generally and address the specific issue of a Unit Owner's request to install a boat lift. We have copied the applicable Sections of your Declaration at the end of this memorandum.

Section 8.1(D) of the Declaration describes boat slips as Limited Common Elements. Limited Common Elements are a portion of the Common Elements that are reserved for the exclusive use of specific Units. Therefore, a Unit Owner who has an assigned boat slip (referred to herein as a "Boat Slip Assignee") has the exclusive right to moor a boat in his or her boat slip. Sections 8.1(D) and 8.3 of the Declaration obligate the Association to insure, maintain, repair and replace the dock structures, at the collective expense of the Boat Slip Assignees. Each Boat Slip Assignee must pay his or her pro rata share of such expenses (i.e., 1 divided by the total number of boat slips).

A Boat Slip Assignee wishing to install a boat lift must obtain the prior written approval of the Board, pursuant to Section 11.5 of the Declaration. The Boat Slip Assignee is obligated to install the boat lift, including any alterations to the pilings. Section 8.3 does not obligate the Association to install alterations. Rather, Section 11.3(E) obligates the Boat Slip Assignee to install, insure, maintain, repair and replace the boat lift. In addition, the Board can condition approval of the boat lift on the Boat Slip Assignee making such alterations to the pilings that are necessary.

Pursuant to Section 11.13, the Board can require the Boat Slip Assignee to provide plans and specifications for the boat lift. The Board has the authority to determine whether the proposed boat lift would be detrimental to the community and to impose reasonable conditions on the installation. Section 11.13 requires the Board to render its decision within 30 days of receipt of the Boat Slip Assignee's notice and plans and specifications. The Board can also condition approval upon the Boat Slip Assignee coordinating the installation with the adjacent Boat Slip Assignee – for example, to make sure that the alteration the Boat Slip Assignee makes to the pilings they share will not unreasonably interfere with the other Boat Slip Assignee's right to use his boat slip (you informed me that installation of a boat lift requires the addition and/or repositioning of pilings so that they can be configured to create a square or rectangle within which a boat lift can be installed) and the ability of other Boat Slip Assignees to use their boat slips.

The Board can also condition approval of a boat lift on the Boat Slip Assignee's contractor providing the Association with evidence of his license and an insurance certificate naming the Association as an additional insured.

Please note that Sections 11.5 and 11.6 Declaration distinguish alterations that a Unit Owner (and therefore a Boat Slip Assignee) makes from those that the Association makes. A material alteration made by a Unit Owner/Boat Slip Assignee may be approved by the Board, without approval from other Unit Owners, while material alterations the Association makes may require approval from 2/3 of all Voting Interests (i.e., 2/3 of all Units), depending on the cost and nature of the material alteration.

[applicable Declaration Sections on following pages]

Applicable Declaration Sections

Section 8.1(D)

(D) Boat Slips. There are designated on Exhibit “3” to the Declaration, certain boat slips as Limited Common Elements. These slips have been assigned to the exclusive use of specific Units. The insurance, maintenance, repairs and replacements of the dock structures is by the Association, as further provided in Section 8.3 below.

Section 8.3

8.3 Maintenance, Repair, Replacement and Insurance of Certain Limited Common Elements. The Limited Common Elements described in Section 8.1(D) above are available only to certain Units, and not to all Units generally. In order to provide for efficient, effective, and uniform maintenance of these Limited Common Elements, the cost of all insurance, maintenance, repairs and replacements shall be by the Association, but the expense thereof shall be borne only by the Units having the use of those Limited Common Elements. The share of these expenses, including the funds necessary to maintain adequate reserves for these expenses, payable by the Unit Owner of the Unit to which each slip is assigned shall be a fraction, the numerator of which is the number “one” and the denominator of which is the total number of boat slips.

Section 11.3(E)

(E) Modifications and Alterations. If a Unit Owner makes any modifications, alterations, installations or additions to his Unit, Limited Common Element or the Common Elements, the Unit Owner and his successors in title shall be financially responsible for the insurance, maintenance, repair and replacement of the modifications, installations, alterations or additions, as well as the cost of repairing any damage to the Limited Common Elements and/or Common Elements resulting from such modifications, installations or additions, and the costs of removing, replacing or reinstalling such modifications if their removal by the Association becomes necessary in order to maintain, repair, replace or protect other parts of the Condominium Property. The Board may not refuse the request of a Unit Owner for a reasonable accommodation for the attachment on the mantel or frame of the door of the Unit Owner of a religious object not to exceed 3 inches wide, 6 inches high, and 1.5 inches deep.

Section 11.5

5. Alteration of Units or Common Elements by Unit Owners. No Unit Owner shall make or permit the making of any structural or material alterations or substantial additions to his Unit or material alterations or substantial additions to his Limited Common Elements, or in any manner change the exterior appearance of any portion of the Condominium, without first obtaining the written approval of the Board, which approval may be denied if the Board determines that the proposed modifications or alterations would adversely affect, or in any manner be detrimental to, the Condominium in part or in whole. Any glass, screen, curtain, blind, shutter, awning, or other modifications, additions or installations which may be installed where visible from outside the Unit, are subject to prior approval by the Board and subject to the Condominium Documents. No Unit Owner may alter the Common Elements (except for his Limited Common Elements) in any way. The Association shall have the ability to impose reasonable Rules and Regulations on construction within Units, including without limitation: establishing permitted working hours; the requirements for a compliance bond or deposit; and the period of time

within a calendar year in which work that constitutes a structural or material alteration or substantial addition is permitted in Units.

Section 11.6

6. Alterations and Additions to Common Elements and Association Property. The protection, maintenance, repair, insurance and replacement of the Common Elements and Association Property is the responsibility of the Association and the cost is a Common Expense. Beyond this function, the Association shall make no material alteration of, nor substantial additions to, the Common Elements or the real property owned by the Association costing in excess of \$25,000.00 in any calendar year, without prior approval of at least two-thirds (2/3) of the Voting Interests. Alterations or additions costing less than this amount may be made with Board approval. If work reasonably necessary to protect, maintain, repair, replace or insure the Common Elements or Association Property or to comply with any local, state or federal law or regulation also constitutes a material alteration or substantial addition to the Common Elements, no prior Unit Owner approval is required.

Section 11.13

11.13 Board Approval of Alterations or Construction. In all cases in which the Board must approve construction in or alterations to a Unit or the Common Elements requested by a Unit Owner, the Unit Owner shall provide the Board with not less than thirty (30) days written notice of the Unit Owner's intention, together with plans and specifications indicating the proposed construction. The Board shall indicate its approval or disapproval of the proposed construction in writing within thirty (30) days of receipt of the notice and all required plans. The Board reserves the right to consult with a licensed Florida architect or professional engineer and to pass such costs on to the Unit Owner and to require that any plans and specifications be prepared by a licensed Florida architect or engineer. The Board may extend the time in which it must render its decision by an additional thirty (30) days in the event it determines a licensed Florida architect's or professional engineer's review is necessary.