

MARKUP #1 ->

ARTICLE X

RIGHTS AND OBLIGATIONS OF THE BCA

Section 10.1 Common Area.

10.1.1 Property interests transferred to the BCA by the CDD may include fee simple title, easements, leasehold interests and licenses to use. Any fee simple interest in property transferred to the BCA by the CDD shall be transferred to the BCA by special warranty deed, free and clear of all liens (other than the lien for property taxes and Assessments not then due and payable), but shall be subject to the terms of this Declaration, and any and all easements, rights-of-way, reservations, covenants, conditions, restrictions, equitable servitude and other encumbrances of record or reserved by the CDD in the instrument of conveyance. The property or interest in property transferred to the BCA by the CDD may impose special restrictions governing the uses of such property and special obligations on the BCA with respect to the maintenance of such property.

10.1.2 The BCA, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the management and control of the Areas of Common Responsibility and shall maintain and keep the Areas of Common Responsibility in good repair and in accordance with the Baytree Building Standards, such maintenance to be funded as hereinafter provided. This maintenance shall include, but not be limited to, maintenance, repair and replacement, subject to any insurance then in effect, of all landscaping and other flora, (which shall be governed by the requirements and regulations for landscaping as set forth in the Baytree Building Standards as promulgated by the BCA and as same may be amended from time to time) structures, and improvements. All Owners, by the acceptance of title to any property or the deed to any Lot, release and indemnify the BCA from all claims arising from its actions pursuant to this Section.

Section 10.2 Rules and Regulations. The BCA, through its Board of Directors, may make and enforce reasonable rules and regulations governing the use of the Properties, (exclusive of the Golf Course) ~~which rules and regulations shall be consistent with the rights and duties established~~ by this Declaration. Sanctions may include reasonable monetary fines which shall constitute a lien upon the Owner's Lot or Lots and suspension of the right to vote and the right to use any recreational facilities on the Common Area, and exclusion from the Properties of any contractor, subcontractor, agent or other invitee who fails to comply with the provisions of such rules and regulations. The Board shall, in addition, have the power to seek relief in any court for violations or to abate unreasonable disturbances. Imposition of sanctions shall be subject to the procedures for disciplinary action provided in the By-Laws of the BCA. Fines shall constitute Benefit Assessments subject to the lien rights provided in this Declaration.

The BCA, through the Board, by contract or other agreement shall have the right to enforce all applicable federal, state and local laws, ordinances and regulations to permit the CDD, Brevard County, the SJRWMD or any other governmental agency having jurisdiction to enforce such rules and ordinances on the Properties.

MARKUP #1 · CONFLICTS WITH MANDATORY STATE STATUTE

BOARD & COUNSEL REVIEW

Sec. 10.2 (p. 21): HOA clause permits placing a lien on a parcel for unpaid fines without the statutory \$1,000 minimum threshold.

Statutory / Legal Reference: Fla. Stat. § 720.305(2)

Statutory Comparison: Under Fla. Stat. § 720.305(2), a fine of less than \$1,000 may not become a lien against a parcel.

CURRENT WORDING IN DOCUMENT:

by this Declaration. Sanctions may include reasonable monetary fines which shall constitute a lien upon the Owner's Lot or Lots and suspension of the right to vote and the right to use any recreational facilities on the Common Area, and exclusion from the Properties of any contractor, subcontractor, agent or other invitee who fails to comply with the provisions of such rules and regulations.

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

Pursuant to Fla. Stat. § 720.305(2), a fine of less than \$1,000 may not become a lien against a parcel.

ISSUE #1