for the period of time set forth in the conveyance to the Association or, if no period of time is specified in such conveyance, for the duration of this Declaration; provided, however, that, notwithstanding the foregoing, the Association may assign, transfer, dedicate, convey, lease, sublease, license or create an easement over all or any part of such Common Areas to any utility company or any public or quasi-public agency or instrumentality upon obtaining the approval of all relevant governmental authorities having jurisdiction thereof and so long as any such assignment, transfer, dedication, conveyance, lease, sublease, license or easement is reasonably necessary for the development and improvement of the Property, and any Owner's development rights are not significantly adversely impacted by the same.

5.2 **"Restrictions on Right to Use Common Areas"** Except as otherwise provided below to the contrary, every Owner shall have a nonexclusive right to utilize the Common Areas in common with all other Owners; provided, however, that no Owner shall prevent, obstruct or interfere with the use and enjoyment of the Common Areas by Declarant, the Association or any other Owner. The right of any Owner to utilize any portion of the Common Areas shall be subject to the following, and any amendments or additions thereto:

5.2 (a) The Common Areas shall be used primarily by the Association for the construction, operation, repair, replacement and expansion of the storm water management, retention and detention system, roadways providing ingress and egress through the Property, utility lines and equipment, lighting, entrance areas, landscape irrigation and landscaped areas. All other uses of the Common Areas shall be secondary and subordinate to the above-described primary uses.

ISSUE #1

5.2 (b) The right of the Association to suspend the voting rights of an Owner for any period during which any Assessment against such Owner remains unpaid and for any other violation or infraction of this Declaration or the Articles of Incorporation or By-Laws by such Owner.

5.2 (c) The right of the Association to grant easements in, upon, over or under any portion of the Common Areas for the construction, installation, repair, maintenance, replacement or relocation of utility lines and equipment to any Person providing utility services to any portion of the Property or surrounding properties, including, without limitation, water, sewer collection, irrigation, power, telephone, cable television, security lines, or any other form or means of communication.

5.2 (d) The right of the Association to dedicate, assign, transfer, convey, lease or license all or any part of its right, title and interest in the Common Areas to any utility or to any governmental or quasi-governmental entity, agency or authority, such right being subject to the approval of all relevant governmental authorities.

5.2 (e) The right of the Association to grant access in, upon and over any portion of the Common Areas to police, fire, ambulance and emergency vehicles.

5.3 **"Right to Use Common Areas Not Divisible"** The rights and privileges of any Owner with respect to the Common Areas shall only be appurtenant to and only arise in conjunction with the ownership of any Property and such interest shall not be divisible from the ownership thereof. No Owner shall have any right, to separately convey, encumber, lease or license all or any part of such Owner's rights and privileges in the Common Areas, except as an ancillary to the assignment, transfer, sale, conveyance, encumbrance, lease or license of such Owner's Lot.

5.4 **"Conveyance of Common Areas to Utilities or Public Authorities"** Except as set forth below, in the event it shall become necessary or desirable for any utility company or public or quasi-public agency or instrumentality to acquire all or any part of the Common Areas for any public purpose, the Board, during the period this Declaration is in effect, is hereby authorized to negotiate with such



MARKUP #1 ->

**MARKUP #1 · CONFLICTS WITH MANDATORY STATE STATUTE** BOARD & COUNSEL REVIEW

**Sec. 5.2 (p. 5): Governing document purports to suspend a Member's voting rights for any unpaid assessment or covenant/rule violation without meeting the statutory threshold of more than $1,000 AND more than 90 days delinquent under Fla. Stat. § 720.305(4).**

**Statutory / Legal Reference: Fla. Stat. § 720.305(4)**

Statutory Comparison: Under Fla. Stat. § 720.305(4), an association may suspend the voting rights of a unit or parcel or member only for the nonpayment of a fee, fine, or other monetary obligation due to the association that is more than $1,000 AND more than 90 days delinquent, and such suspension must be approved by the Board at a properly noticed Board meeting with proof of such monetary obligation provided to the owner 30 days before the suspension takes effect. Voting rights may never be suspended for non-monetary rule violations or minor assessment delinquencies of $1,000 or less.

**CURRENT WORDING IN DOCUMENT:**

(b) The right of the Association to suspend the voting rights of an Owner for any period during which any Assessment against such Owner remains unpaid and for any other violation or infraction of this Declaration or the Articles of Incorporation or By-Laws by such Owner.

**SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):**

**Pursuant to Fla. Stat. § 720.305(4), a Member's voting rights may be suspended by the Board of Directors at a duly noticed Board meeting only if the Member is delinquent in the payment of a monetary obligation due to the Association of more than $1,000 AND more than ninety (90) days past due, following at least thirty (30) days' written notice of such monetary obligation. Voting rights shall not be suspended for non-monetary covenant or rule infractions.**