

be effective from and after the recording of a claim of lien in the public records of the County in which the SUBJECT PROPERTY is located.

7.3. Fines. The amount of any fine shall be determined by the BOARD, and shall not exceed FIFTY DOLLARS (\$50.00) for the first offense, and ONE HUNDRED DOLLARS (\$100.00) for a second or subsequent similar offense. Notwithstanding the foregoing, if any violation is of a continuing nature, the BOARD may impose a fine not to exceed TEN DOLLARS (\$10.00) per day for each day that the violation continues. Prior to imposing any fine, the OWNER or PARCEL ASSOCIATION shall be afforded an opportunity for a hearing after reasonable notice to the OWNER or PARCEL ASSOCIATION of not less than 14 days, which notice shall include (i) a statement of the date, time and place of the hearing, (ii) a statement of the provisions of the DECLARATION, BYLAWS or Rules and Regulations which have allegedly been violated, and (iii) a short and plain statement of the matters asserted by the COMMUNITY ASSOCIATION. The OWNER or PARCEL ASSOCIATION shall have an opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge and respond to any material considered by the COMMUNITY ASSOCIATION. At the hearing, the BOARD shall conduct a reasonable inquiry to determine whether the alleged violation in fact occurred, and if the BOARD so determines, it may impose such fine as it deems appropriate by written notice to the OWNER or PARCEL ASSOCIATION. If the OWNER or PARCEL ASSOCIATION fails to attend the hearing as set by the BOARD, the OWNER or PARCEL ASSOCIATION shall be deemed to have admitted the allegations contained in the notice to the OWNER or PARCEL ASSOCIATION. Any fine imposed by the BOARD shall be due and payable within ten (10) days after written notice of the imposition of the fine, or if a hearing is timely requested within ten (10) days after written notice of the BOARD'S decision at the hearing. Any fine levied against an OWNER shall be deemed an ASSESSMENT, and if not paid when due all of the provisions of this DECLARATION relating to the late payment of ASSESSMENTS shall be applicable. Notwithstanding the foregoing, the COMMUNITY ASSOCIATION shall not have the right to impose any fine against DECLARANT or against any other builder/developer of any portion of the SUBJECT PROPERTY.

7.4. No Waiver. The failure of the COMMUNITY ASSOCIATION to enforce any right, provision, covenant or condition which may be granted by this DECLARATION, the ARTICLES, or the BYLAWS, shall not constitute a waiver of the right of the COMMUNITY ASSOCIATION to enforce such right, provision, covenant or condition in the future.

7.5. Rights Cumulative. All rights, remedies, and privileges granted to the COMMUNITY ASSOCIATION pursuant to any terms, provisions, covenants or conditions of this DECLARATION, the ARTICLES or the BYLAWS, shall be deemed to be cumulative, and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude the COMMUNITY ASSOCIATION thus exercising the same from executing such additional remedies, rights or privileges as may be granted or as it might have by law.

7.6. Enforcement By or Against other Persons. In addition to the foregoing, this DECLARATION may be enforced by DECLARANT, or the COMMUNITY ASSOCIATION, by any procedure at law or in equity against any PERSON violating or attempting to violate any provision herein, to restrain such violation, to require compliance with the provisions contained herein, to recover damages, or to enforce any lien created herein. The expense of any litigation to enforce this DECLARATION shall be borne by the PERSON against whom enforcement is sought, provided such proceeding results in a finding that such PERSON was in violation of this DECLARATION. In addition to the foregoing, any PARCEL ASSOCIATION or OWNER shall have the right to bring an action to enforce this DECLARATION against any PERSON violating or attempting to violate any provision herein, to restrain such violation or to require compliance with the provisions contained herein, but no PARCEL ASSOCIATION or OWNER shall be entitled to recover damages or to enforce any lien created herein as a result of a violation or failure to comply with the provisions contained herein by any PERSON, and the prevailing party in any such action shall be entitled to recover its reasonable attorneys' fees.

7.7. Certificate as to Unpaid ASSESSMENTS or Default. Within 15 days after written request by any OWNER or INSTITUTIONAL LENDER holding or making a mortgage encumbering any PROPERTY, the COMMUNITY ASSOCIATION shall provide such OWNER or INSTITUTIONAL LENDER with a written certificate as to whether or not the OWNER, and any applicable PARCEL ASSOCIATION having jurisdiction over the OWNER'S PROPERTY, is in default with respect to the payment of ASSESSMENTS or with respect to compliance with the terms and provisions of this DECLARATION. Any person who relies on such certificate in purchasing or making a mortgage encumbering any PROPERTY shall be protected thereby.

7.8. Enforcement of Obligations of COMMUNITY ASSOCIATION. DECLARANT, regardless of whether or not it is a member of the COMMUNITY ASSOCIATION, and any controlling governmental authority, shall have the right to enforce the obligations of the COMMUNITY ASSOCIATION to properly maintain and operate any property as required by this DECLARATION, and in the event the COMMUNITY ASSOCIATION defaults with respect to any of its obligations to operate or maintain any

MASTER DECLARATION-20

MARKUP #1 ->

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

Sec. 7.2.3 (p. 21): Fining clause allows board to levy fines without statutory 14-day notice or independent committee hearing.

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

Statutory Comparison: Under the Florida Homeowners' Association Act (Fla. Stat. § 720.305(2)), no fine or suspension may be imposed without at least 14 days' written notice to the owner and an opportunity for a hearing before an independent committee of at least three (3) members who are not board members, officers, employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee.

CURRENT WORDING IN DOCUMENT:

the BOARD may impose a fine not to exceed TEN DOLLARS (\$10.00) per day for each day that the violation continues. Prior to imposing any fine, the OWNER or PARCEL ASSOCIATION shall be afforded an opportunity for a hearing after reasonable notice to the OWNER or PARCEL ASSOCIATION of not

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

Pursuant to Fla. Stat. § 720.305(2), a fine or suspension may not be imposed without at least 14 days' written notice to the owner and an opportunity for a hearing before an independent committee of at least three (3) members appointed by the board who are not officers, directors, or employees of the association, nor the spouse, parent, child, brother, or sister of an officer, director, or employee. If the committee does not approve the proposed fine or suspension by a majority vote, the proposed fine or suspension may not be imposed.

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