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ARTICLE IV - PROPERTY RIGHTS IN THE COMMON PROPERTIES

Section 4.1 - Ownership. The Common Properties shall be conveyed or assigned to the Association for the joint and several use, in common, of the Owners of all Lots and Units that may from time to time constitute part of The Properties in the manner specified herein. When all improvements proposed by Developer to be constructed within The Properties have been completed and conveyed to purchasers (if applicable), or sooner at Developer's option exercisable from time to time as to any portion or all of the Common Properties, the Developer, or its successors and assigns, shall convey, assign and/or transfer the record fee simple title or such right, title and interest as shall then be owned by it to the Common Properties (except those areas lying within dedicated areas) to the Association, and the Association shall accept such conveyance and/or assignment, holding title and interest for the Owners as stated in the preceding sentence. Beginning upon the date the Common Properties are deeded and/or assigned to the Association, the Association shall be responsible for the maintenance and operation of all Common Properties in a continuous and satisfactory manner without cost to the general taxpayers of the City of Oviedo, or of Seminole County, Florida. It is intended that all real estate taxes against the Common Properties shall be proportionally assessed against and payable as part of the taxes of the Lots and Units within The Properties. However, in the event that any such taxes are assessed directly against the Common Properties, the Association shall be responsible for the payment of the same, including taxes on any improvements and any personal property thereon belonging to the Association. Developer shall have the right from time to time to enter upon the Common Properties during periods of construction upon adjacent properties, and for the purpose of construction of any facilities on the Common Properties that Developer elects to build, and Developer shall have the right to use the Common Properties for sales, displays and signs during the period of construction and sales of all of the land owned by Developer within The Properties.

Section 4.2 - Members' Easements. Each Member of the Association, and each tenant, agent and invitee of such Member, shall have a permanent and perpetual easement for the use and enjoyment of all Common Properties in common with all other such Members of the Association, their tenants, agents and invitees.

ISSUE #1

The rights of use and enjoyment are hereby made subject to the following superior rights:

(a) The right and duty of the Association to levy assessments against each Lot or Unit for the purpose of maintaining the Common Properties and facilities in compliance with the provisions of this Declaration, the PUD Restrictions and with the restrictions on the plats or portions of The Properties from time to time recorded by Developer.

(b) The right of the Association to suspend the voting rights and right to use the Common Properties and facilities of an Owner and his designees for any period during which any assessment against his Lot or Unit remains unpaid; and for a period not to exceed sixty (60) days for any infraction of lawfully adopted and published rules and regulations.

(c) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated on the Common Properties.

(d) The right of the Association to adopt at any time and from time to time and enforce rules and regulations governing the use of the Common Properties and all facilities at any time situated thereon, including the right to fine Members as provided in Section 8.3 hereof. Any rule and/or regulation so adopted

MARKUP #1 ->

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

Sec. 4.2 (p. 7): 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:
to suspend the voting rights and. right to use the Common Properties and facilities of an Owner and his designees for any period during which any assessment against his Lot or Unit remains unpaid; and for a .

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.