

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the properties with the exception of the Common Area.

Section 6. "Declarant" shall mean and refer to Biltmore Homes Company a Michigan Corporation, its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions

(a) the right of the Association to charge reasonable admission and other fees for the use of any recreationa1 facility situated upon the Common Area;

(b) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

(c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds of each class of members has been recorded and provided further, that no such dedication or transfer or determination as to the conditions thereof shall be effective unless the prior consent thereto of the City of Troy by and through it’s City Council shall have first been obtained.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the By-laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Sec. 1. (p. 3): Voting rights suspension clause lacks Michigan statutory notice, hearing due process, or delinquency safeguards (MCL § 559.206(c) (Notice & Hearing Required Before Fine)).

Statutory / Legal Reference: MCL § 559.206(c) (Notice & Hearing Required Before Fine); MCL Ch. 559 & MCL Ch. 450; MCL §§ 450.2101 - 450.3192 (Michigan Nonprofit Corporation Act)

Statutory Comparison: Under Michigan community association and nonprofit corporation statutes (MCL § 559.206(c) (Notice & Hearing Required Before Fine); MCL §§ 450.2101 - 450.3192 (Michigan Nonprofit Corporation Act)), member voting rights are a fundamental corporate governance right and may not be summarily suspended without strict compliance with statutory delinquency thresholds, prior written notice, and an opportunity to be heard.

CURRENT WORDING IN DOCUMENT:

(b) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;
(c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members.

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

Provided that any suspension of voting or membership privileges (to the extent permitted by Michigan law) shall require prior written notice to the Owner, a reasonable opportunity to be heard, and strict compliance with MCL § 559.206(c) (Notice & Hearing Required Before Fine) and MCL §§ 450.2101 - 450.3192 (Michigan Nonprofit Corporation Act).