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Section 15. “Unimproved Lot” shall mean and refer to any Lot that is not an Improved Lot.

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:

ISSUE #1

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

(b) The right of the Association to suspend the voting rights and right to use of the Common Area 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 the Association’s published rules and regulations, provided that access to the Owner’s Lot over Common Area is not disturbed or interfered with;

(c) The right of the Association to dedicate or transfer all or any part of the Common Area, subject to the Declarant’s Utility Rights, to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Owners. No such dedication or transfer shall be effective and no mortgaging of the Common Area to secure a debt shall be effective, unless an instrument signed by two-thirds (2/3) of the members of each class of membership agreeing to such dedication, transfer or mortgaging has been recorded. If ingress or egress to any Lot is through the Common Area, any mortgage or conveyance of that portion of the Common Area shall be made subject to the Owner’s easement.

(d) The rights reserved to Declarant in Article VI, Section 1 (Reservation by Declarant) of this Declaration.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the Association’s By-Laws, his right of enjoyment to the Common Area and facilities thereon to the members of his family, his tenants, or contract purchasers who reside on the Lot. If an Owner leases a Lot to a Person, the Owner’s right of enjoyment of the Common Area and facilities thereon shall automatically transfer to the Person leasing the Lot, unless the Owner provides written notice to the Association stating that the Owner will maintain the sole right of enjoyment of the Common Area and facilities thereon. Either the Owner or the Person to whom the Owner is leasing the Lot, but not both, may enjoy the right of enjoyment of the Common Area and facilities thereon, provided, however, the transfer of the right of enjoyment to the tenant shall not disturb or interfere with the Owner’s access to the Lot over the Common Area.

MARKUP #1 ->

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

Sec. 1. (p. 4): Voting rights suspension clause lacks Virginia statutory notice, hearing due process, or delinquency safeguards (Va. Code §§ 55.1-1819, 55.1-1959 (\$50 Single / \$10 Per-Diem Cap & 14-Day Certified Notice) & 18 VAC 48-70).

Statutory / Legal Reference: Va. Code §§ 55.1-1819, 55.1-1959 (\$50 Single / \$10 Per-Diem Cap & 14-Day Certified Notice) & 18 VAC 48-70; Va. Code Ann. §§ 55.1-1800 to 55.1-1836 (Virginia Property Owners' Association Act) & 18 VAC 48-50 / 48-60 /...

Statutory Comparison: Under Virginia community association and nonprofit corporation statutes (Va. Code §§ 55.1-1819, 55.1-1959 (\$50 Single / \$10 Per-Diem Cap & 14-Day Certified Notice) & 18 VAC 48-70; Va. Code Ann. §§ 13.1-801 to 13.1-946 (Virginia Nonstock 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 Common Area 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 the Association's

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

Provided that any suspension of voting or membership privileges (to the extent permitted by Virginia law) shall require prior written notice to the Owner, a reasonable opportunity to be heard, and strict compliance with Va. Code §§ 55.1-1819, 55.1-1959 (\$50 Single / \$10 Per-Diem Cap & 14-Day Certified Notice) & 18 VAC 48-70 and Va. Code Ann. §§ 13.1-801 to 13.1-946 (Virginia Nonstock Corporation Act).