

officer or public agency; *provided, however*, that the orders contemplated in this subparagraph are only those which are the result of action initiated by public officers or agencies and which embody mandatory requirements with penalties for non-performance, and are not those orders which result from the application of private parties or are merely permissive.

ARTICLE XII **RIGHTS OF ENJOYMENT**

12.1 Members' Right of Enjoyment. Every Member shall have a nonexclusive easement for use and enjoyment in and to the Common Areas and such right shall be appurtenant to and shall pass with the interest of every Lot, subject to all of the easements, covenants, conditions, restrictions and other provisions of record or contained in this Declaration, including, without limitation, the following provisions:

- (a) the right of the Association to limit the number of guests of Members and to limit the use of the Common Areas by persons not in possession of a Lot, but owning a portion of the interest in a Lot required for Membership;
- (b) the right of the Association to establish reasonable rules and regulations pertaining to the use of the Common Areas;
- (c) the right of the Association to borrow money for the purpose of improving, replacing, restoring or expanding the Common Areas or adding new Common Areas and in aid thereof, to mortgage said property, provided that the prior affirmative vote or written approval of a majority of each of the Class A and the Class B Members has been obtained to mortgage said property, and provided further that the rights of the lender thereunder shall be subordinated to the rights of the Members. In the event of a default upon any such mortgage of the Common Areas, the lender's rights thereunder shall be limited to a right, after taking possession of such properties, to charge admission and other fees as a condition to continued enjoyment by the Members and, if necessary, to open the enjoyment of the Common Areas to a wider public until the mortgage debt is satisfied, whereupon the possession of such properties shall be returned to the Association and all rights of the Members hereunder shall be fully restored;
- (d) the rights of the Association to suspend the right of a Member to use the Common Areas or any portion thereof designated by the Board during any time in which any Assessment against his Lot remains unpaid and delinquent for a period not to exceed thirty (30) days for any single infraction of the rules and regulations of the Association; *provided*, that any suspension of such right to use such Common Areas, except for failure to pay Assessments, shall be made only by the Association or a duly appointed committee thereof, after notice and hearing given and held in accordance with the Bylaws. Notwithstanding the foregoing, the Association shall not have the right hereunder to suspend any Member's right to use any portion of the Covered Property necessary for such Member to gain access to his Lot;
- (e) the right of the Association subject to the approval rights of Institutional Mortgagees pursuant to the Article hereof entitled "*Rights of Lenders*," to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility or other entity. No such dedication or transfer, including, without limitation, the conveyance, lease or other transfer of any portion of the Common Areas to a special tax assessment district or to the County, shall be effective unless an instrument signed by Members entitled to cast two-thirds (2/3) of the

voting power of the Membership has been recorded, agreeing to such dedication or transfer. The certificate of the President and the Secretary of the Association attached to such instrument certifying that the Members signing such instrument represent two-thirds (2/3) of the voting power of the Association shall be deemed conclusive proof thereof;

(f) the right of the Association to establish, in cooperation with the County (or other appropriate governmental authority), a special tax assessment district for the performance of all or a portion of the maintenance and other functions now within the responsibility of the Association, together with the right of the Association to convey, lease or otherwise transfer, subject to the provisions of this Section, all or any portion of the Common Areas to said District; and

(g) the rights of Declarant set forth herein.

12.2 Delegation of Use. Any Member may delegate such Member's right of enjoyment to the Common Areas to the members of such Member's family or such Member's tenants who reside on such Member's Lot, or to such Member's guests, subject to this Declaration and to the Association Rules. In the event and for so long as an Owner delegates said rights of enjoyment to such Owner's tenants, said Owner shall not be entitled to said rights. Owner shall indemnify and hold harmless the Association for any claims, losses, liabilities, costs and expenses (including reasonable attorneys' fees and costs) suffered by the Owner's delegate pursuant to this Section.

12.3 Waiver of Use. No Member may exempt himself from personal liability for Assessments duly levied by the Association, nor release the Lot owned by them from the liens, charges or other provisions of this Declaration, the Articles, Bylaws and Association Rules, by waiver of the use and enjoyment of the Common Areas, or the abandonment of such Member's Lot.

ARTICLE XIII EASEMENTS

13.1 Amendment to Eliminate Easements. This Declaration cannot be amended to modify or eliminate the easements reserved to Declarant without prior written approval of Declarant and any attempt to do so shall have no effect. Any attempt to modify or eliminate this Section shall likewise require the prior written approval of Declarant.

13.2 Nature of Easements. Unless otherwise set forth herein, any easement reserved to Declarant herein shall be nonexclusive.

13.3 Certain Rights and Easements Reserved to Declarant.

(a) **Utilities.** Easements over the Covered Property for the installation and maintenance of electric, telephone, cable television, water, gas, sanitary sewer lines and drainage facilities as are needed to service the Covered Property are hereby reserved by Declarant, together with the right to grant and transfer the same; *provided, however,* such easements shall not unreasonably interfere with the use and enjoyment by the Members of their Lots or the Common Areas.

(b) **Cable Television.** There is hereby reserved to Declarant over the Covered Property, together with the right to grant and transfer the same, the right to place on, under