

**AMENDED AND RESTATED
MASTER DECLARATION OF COVENANTS, CONDITIONS
RESTRICTIONS, EASEMENTS AND RESERVATIONS
FOR
KISSIMMEE BAY**

WHEREAS, Kissimmee Bay Community Association, Inc. (hereinafter referred to as "Association"), a not for profit corporation, is the homeowners' association created pursuant to Chapter 720, Florida Statutes, and the Master Declaration of Covenants, Conditions, Restrictions, Easements and Reservations For Kissimmee Bay, recorded at Official Records Book 964, Page 48, Public Records of Osceola County, Florida (the "Original Declaration"), to govern that certain real property situated in Osceola County, Florida, which is legally and more particularly described as follows, to wit:

All lands comprising that certain subdivision identified as: KISSIMMEE BAY, as recorded in Plat Book 6, Pages 76, of the Public Records of Osceola County, Florida; and

All lands comprising that certain subdivision identified as: M3 AT KISSIMMEE BAY, A REPLAT OF TRACT M3 KISSIMMEE BAY as recorded in Plat Book 13, Pages 85, of the Public Records of Osceola County, Florida; and

All lands comprising that certain subdivision identified as: M2 AT KISSIMMEE BAY, A REPLAT OF TRACT M2 KISSIMMEE BAY as recorded in Plat Book 15, Pages 125, of the Public Records of Osceola County, Florida; and

Any and all other lands previously made subject to the Original Declaration through recording in the Public Records of Osceola County, Florida;

(Hereinafter referred to as the "Subject Property").

WHEREAS, the Association desires to amend and restate the Original Declaration as amended, to provide for the preservation and enhancement of the property values and quality of life within the Subject Property; and

WHEREAS, the Subject Property is to be maintained as subdivided, developed, improved, occupied, used and enjoyed as an exclusive, unique and attractive single family golf community; and

WHEREAS, the Association desires to insure that the Subject Property is maintained as subdivided, developed, improved, used and enjoyed pursuant to the uniform plan of development which established architectural, ecological, environmental and aesthetic standards which creates a unique, pleasant, attractive and harmonious physical environment which will contribute to and enhance the quality of life for all residents of and visitors to Kissimmee Bay; and

WHEREAS, pursuant to Section 17.2 of the Original Declaration, as amended, the Original Declaration may further be amended by not less than a majority of the total voting power of the Members of the Association; and

WHEREAS, the necessary vote was obtained by the Membership to adopt this Amended and Restated Master Declaration of Covenants, Conditions, Restrictions, Easements and Reservations for Kissimmee Bay (hereinafter referred to as "Master Declaration").

NOW, THEREFORE, pursuant to the amendment procedure set forth in the Original Declaration as amended, the Original Declaration is hereby amended in part and restated in its entirety such that this Master Declaration shall supersede the Original Declaration and any amendments thereto to govern the Subject Property.

ARTICLE I

DEFINITIONS

For purposes of this Master Declaration, the following terms shall have the following definitions and meanings:

- 1.1 **“Assessment”** shall mean any assessment of an Owner by the Association for Common Expenses and other items pursuant to, in accordance with and for the purposes specified in Article X of this Master Declaration.
- 1.2 **“Association”** shall mean Kissimmee Bay Community Associations, Inc., a corporation not-for-profit or its successors and assigns.
- 1.3 **“CATV”** shall mean Kissimmee Bay Community signal delivery system or services provided by such system which may be developed or authorized within Kissimmee Bay.
- 1.4 **“City”** shall mean Kissimmee, Florida, a municipal entity of the State of Florida.
- 1.5 **“Common Expenses”** shall mean those costs and expenses of the Association more particularly identified and described in Section 10.2 of this Master Declaration.
- 1.6 **“Common Property”** shall mean all real and personal property from time to time owned by the Association for the common use, enjoyment and benefit of all Owners, including, without limitation, the Common Streets and Roads, the Surface Water Management System and such other portions of the Subject Property as are conveyed to the Association by the original developer pursuant to and as more particularly provided in Article IX of this Master Declaration. Common Property shall not include the Golf Course Property as hereinafter defined.
- 1.7 **“Common Streets and Roads”** shall mean the rights-of-way of all streets, roads, drive, courts, ways and cul-de-sacs on the Plat and all paving, curbs and other improvements, facilities and appurtenances located therein, including street lights and utility lines, which are conveyed by the original developer to the Association as Common Property pursuant to the provisions of Article IX of this Master Declaration; and not including such utility lines and other property as located within such rights-of-way as may be owned by private or public utility companies or governmental agencies from time to time providing utility services to Kissimmee Bay, including, without limitation, water lines, electric power lines, telephone lines, natural gas lines and cable television lines.
- 1.8 **“County”** shall mean Osceola County, a political subdivision of the State of Florida, specifically including each and all of its departments and agencies.
- 1.9 **“Design Review Committee”** shall mean the committee of the Association created, established and authorized by and pursuant to this Master Declaration which is responsible for the review and approval of all plans, specifications and other materials describing or depicting improvements proposed to be constructed on the Subject Property and which is also responsible for the administration of those provisions of Article XV of this Master Declaration involving Architectural and Landscape Control.

- 1.10 “Design Standards Manual”** shall mean that document or those documents adopted, promulgated and published by the Design Review Committee upon the approval of the Association’s Board of Directors, and the same shall be amended from time to time, setting forth architectural and landscape design standards, specifications and other criteria to be used as the standard for determining compliance with this Master Declaration.
- 1.11 “Development Plan”** shall mean the planned unit development for Kissimmee Bay, recorded in the Public Records of Osceola County, Florida, or which has been approved by the Board of County Commissioners of the County, including any comprehensive development plans, site plans or plats or other approvals issued by the County or other governmental agency with respect to the development of Kissimmee Bay.
- 1.12 “Golf Course Lease”** shall mean that certain Ground Lease between Kissimmee Golf Group, Inc. and the original developer dated July 29, 1989, and any amendments thereto.
- 1.13 “Golf Course Owner”** shall mean the legal owner of that portion of Kissimmee Bay on which is being or has been designed and developed an 18 hole championship golf course.
- 1.14 “Golf Course Property”** shall mean that portion of the Subject Property which is the subject of the Golf Course Lease (regardless of whether or not the Golf Course Lease is in effect), which is more particularly described in the preliminary plat for Kissimmee Bay and parcel number (PIN) 17-25-30-3617-0001-0G10 as recorded by the Osceola County Appraiser.
- 1.15 “Improvements”** shall mean, be defined as and include any buildings, structures, driveways, swimming pools, patios, decks, fences, walls, landscaping and any and all other appurtenances of any kind, nature or description constructed, erected, placed, installed or located on the Subject Property and any replacements thereof and all additions or alterations.
- 1.16 “Governmental Regulations”** shall mean all applicable laws, statutes, codes, ordinances, rules, regulations, limitations, restrictions, orders, judgments or other requirements of any governmental authority having jurisdiction over the Subject Property.
- 1.17 “Institutional Lender”** shall mean any state or federal savings bank, commercial bank or savings and loan association, any real estate investment trust, any insurance company, any mortgage banking company, any mortgage company, any pension and/or profit sharing plan or any other lending or investing institution generally and customarily recognized as being engaged, in the ordinary course of its business, in making, holding, insuring or guaranteeing first lien priority real estate mortgage loans.
- 1.18 “Irrigation System”** shall mean the system or systems developed in conjunction with the City of Kissimmee, Osceola County or any other governmental agency which provides for any one or a combination of (i) effluent reuse, (ii) well water, or (iii) standard water and sewer usage, for purpose of irrigating any part of or all of the Subject Property.
- 1.19 “Kissimmee Bay”** shall mean the residential golf club community planned for and developed on the Subject Property as reflected on the Development Plan, including Residential Units, properties are defined and described in this Master Declaration and on the Development Plan.
- 1.20 “Master Declaration”** shall mean this Master Declaration of Covenants, Conditions, Restrictions, Easements and Reservations for Kissimmee Bay and all amendments thereto and modifications thereof as are from time to time recorded among the Public Records of the County.
- 1.21 “Owner”** shall mean one or more persons or entities who or which are alone or collectively the

record owner of fee simple title to any portion of the Subject Property, including the original developer and its successors and assigns (including the Golf Course Owner), but excluding those having an interest in any such property merely as security for the payment of a debt or the performance of an obligation.

1.22 “Residential Property” shall mean all of the Subject Property other than Common Property and the Golf Course Property.

1.23 “Residential Unit” shall mean each separately described portion or parcel of the Subject Property which is intended to be occupied as a single family residence or household, including without limitation, each residential lot (together with the residence, if any, constructed thereon), townhouse, villa, condominium unit or zero lot line dwelling, or any other form of residential occupancy or ownership now existing or hereinafter created.

1.24 “Supplemental Declaration” shall mean any declaration of covenants and restrictions which extends the provisions of this Master Declaration to additional property.

1.25 “Surface Water Management System” shall mean and be defined as all land, easements and other facilities and appurtenances which together constitute and comprise the master surface water management and drainage system of Kissimmee Bay as reflected on the plans on file with and approved by the County and South Florida Water Management District which are conveyed by the original developer to the Association as Common Property pursuant to the provisions of Article IX of this Master Declaration or otherwise dedicated to the Association as Common Property pursuant to the Plat.

ARTICLE II

OBJECTS & PURPOSES

The covenants, conditions, restrictions, easements and reservations set forth in this Master Declaration are hereby imposed upon the Subject Property for the following objects and purposes:

- (a) To establish Kissimmee Bay as the premier residential golf community in Osceola County, Florida;
- (b) To create, develop, foster, maintain, preserve and protect within Kissimmee Bay a unique, pleasant, attractive and harmonious physical environment which will contribute to and enhance the quality of life for all residents of and visitors to Kissimmee Bay;
- (c) To ensure that the development of Kissimmee Bay will proceed pursuant to a uniform plan of development with consistently high architectural, environmental, ecological and aesthetic standards;
- (d) To ensure the proper and appropriate subdivision, development, improvement, occupation, use and enjoyment of Kissimmee Bay;
- (e) To encourage the development, construction, maintenance and preservation of architecturally and aesthetically attractive and harmonious improvements appropriately designed for and property located within Kissimmee Bay;
- (f) To guard against the development and construction of improper, undesirable, unattractive or inappropriate improvements and the use of improper, undesirable, unsuitable or unsightly materials;

- (g) To provide for the future ownership, management, administration, improvement, care, maintenance, use, regulation, preservation and protection of all of the Subject Property, specifically including the Common Streets and Roads, the Surface Water Management System, the Irrigation System, CATV, and to provide for and assured the availability of the funds required therefore; and
- (h) To establish a method or procedures and the authority to negotiate, contract for or otherwise develop common services within Kissimmee Bay.

ARTICLE III

EFFECT OF MASTER DECLARATION

- 3.1 **Covenants running with Land.** This Master Declaration and each and every one of the covenants, conditions, easements, restrictions and reservations set forth herein are hereby declared to be, and shall hereafter continue as, covenants running with the title to those portions of the Subject Property upon which the same are hereby imposed as an encumbrance.
- 3.2 **Property Affected.** This Master Declaration and the covenants, conditions, restrictions, easements and reservations set forth herein shall be binding upon, inure to the benefit of and constitute a burden upon all of the Subject Property in accordance with the terms set forth herein.
- 3.3 **Parties Affected.** Except as hereinafter specifically provided, this Master Declaration shall be binding upon and inure to the benefit of all owners of the property affected and encumbered by this Master Declaration, the Association, the Golf Course Owner, and all other persons having or claiming any rights, title or interest in such Subject Property.

ARTICLE IV

PROPERTY SUBJECT TO MASTER DECLARATION

- 4.1 **Subject Property.** The property which shall be subject to, and encumbered, governed, benefited and burdened by this Master Declaration shall be all of the Subject Property as the same is herein defined and described.
- 4.2 **Addition of Property.** The Association may annex real property to the provisions of this Master Declaration and the jurisdiction of the Association. Such annexation shall require the affirmative vote of Members representing a majority of the total voting power of the members of the Association. The Association may also own property or lease property through the action of the Board of Directors without annexing the property to the provisions of this Master Declaration.
- 4.3 **Method of Annexation.** Additions authorized under this Article to make property subject to the terms of the Master Declaration shall be made by recording a Supplemental Declaration, extending the scheme of this Master Declaration, which shall state that it is being made pursuant to the terms of this Master Declaration for the purpose of annexing property to the scheme of this Master Declaration and extending the jurisdiction of the Association to the additional property. Said Supplemental Declaration may contain such terms and provisions not inconsistent with this Master Declaration, as may be desirable to reflect the different character, if any, of the real property being annexed or the various housing or community

style characteristics and development approaches being implemented. Upon the recording of any Supplemental Declaration, the Owners shall also have the right and a non-exclusive easement to the use and enjoyment in and to the common properties, if any, and an obligation to contribute to the cost of operating, maintaining and insuring the additional common properties. Any Supplemental Declaration recorded in accordance with the terms hereof shall be conclusive in favor of all persons who rely thereon in good faith. From and after the recording of any Supplemental Declaration, the additional property described herein shall be subject to the provisions of this Master Declaration and the jurisdiction of the Association. Alternatively, the Association may also own property or lease property through the action of the Board of Directors without annexing the property to the provisions of this Master Declaration.

ARTICLE V

USE CLASSIFICATIONS

- 5.1 **Classifications of Subject Property.** All real property within the boundaries of the Subject Property and shown on either the Development Plan or on the plat for Kissimmee Bay shall be classified by category of use as Residential Property, Common Property, Golf Course Property.
- 5.2 **Residential Property.** Residential Property shall mean all of the Subject Property other than the Golf Course Property and the Common Property as reflected on the Development Plan or on the plat for Kissimmee Bay.
- 5.3 **Golf Course Property.** Golf Course Property shall include those tracts of land shown on the Development Plan and designated in this Master Declaration for use as a golf course, golf clubhouse, golf practice range, golf course maintenance, and other golf course improvements.
- 5.4 **Common Property.** Common Property shall include all tracts of land shown on the Development Plan for use as street and road rights-of-way, gate houses and entry features, landscape areas, parks, perimeter security and buffer walls and fences, the surface water management system and its appurtenant easements facilities, including drainage retention areas, utility systems (not including, however, the potable water distribution system of the County, the electric power lines and facilities of any utility providing service to the Subject Property, the telephone lines, natural gas lines and cable television lines).

ARTICLE VI

PERMITTED USES

- 6.1 **Generally.** To the extent that a particular use shall otherwise be in compliance with governmental regulations, uses of the Subject Property must also comply with this Master Declaration.
- 6.2 **Residential Property.** Except as hereinafter provided in Article XIV of this Master Declaration, Residential Property shall be improved as and used, occupied and enjoyed solely and exclusively for residential purposes for owners, their families, guests, lessees, and invitees.

- 6.3 **Golf Course Property.** Golf Course Property shall be improved as and used, occupied and enjoyed exclusively for golf and other recreational activities customarily associated with golf and golf club operations, commercial activities reasonably incidental to or customarily associated with golf club operations, including food and beverage services, and the recreation and entertainment of club members and guests, commercial activities reasonably incidental to or customarily associated with golf pro shops, amateur and professional golf tournaments, and such concessions and other commercial activities as are reasonable incidental to or customarily associated with conventions or resort activities.
- 6.4 **Common Property.** Common Property shall be improved, maintained, used and enjoyed for the common recreation, health, safety, welfare, benefit, and convenience of all Owners and residents of Kissimmee Bay and their guests and invitees. The Association has the right to grant to others non-exclusive easements and licenses to use the Common Property.
- 6.5 **Additional Uses.** The Common Property, Golf Course Property, and lawns and grass areas on the Residential Property may be used by the Association as spray fields for disposal of treated waste and effluent for such similar uses pertaining to the reclamation, recycling and treatment of waste and wastewater provided such use does not substantially impair the use of the properties as set forth in this Master Declaration.

ARTICLE VII

USE RESTRICTIONS – RESIDENTIAL PROPERTY

The use, occupation, and enjoyment of Residential Property shall be subject to and governed by the following covenants, conditions, and restriction.

- 7.1 **Residential Use.** Except as specifically provided in Article XIV of this Master Declaration, no use shall be made of Residential Property other than for residential purposes for owners, their families, guests, lessees, and invitees.
- 7.2 **Ownership and Leasing.** Ownership of Residential Property shall be for residential purposes only. Residential Properties may be rented or leased. No “Time Sharing Plan,” as that term is defined in Section 721.05 Florida Statutes, or any similar plan of fragmented or interval ownership of Residential Property shall be permitted. Notwithstanding the foregoing, the Owner of a Residential Unit shall be entitled to rent or lease such a Unit only if:
- (a) There is a written and signed rental or lease agreement specifying that (i) the tenant shall be subject to all provisions of this Master Declaration, the Rules and Regulations, and the Governing Documents; (ii) the Owner provides the tenant with a copy of this Master Declaration, the Rules and Regulations, and the Governing Documents; and (iii) a failure to comply with any provision of this Master Declaration, the Rules and Regulations, and/or the Governing Documents shall constitute default under the rental or lease agreement;
 - (b) The period of rental or lease is not less than twelve (12) months; and
 - (c) The Owner gives notice of the tenancy to the Association and is otherwise in compliance with the terms of this Master Declaration, the Rules and Regulations, and/or the Governing Documents, and further that the Owner is current as to all monetary obligations to the Association.

7.3 **Commercial Activity.** No trade, business, profession or other type of commercial activity may be conducted within any Residential Unit. Notwithstanding the foregoing and subject to applicable statutes and ordinances, an Owner may maintain a home business office within a Residential Unit for such Owner's personal use; provided however, business invitees, customers and clients shall not be permitted to meet with Owners in the Residential Unit unless the Board provides for otherwise in rules and regulations. No Owner may actively engage in any for-profit solicitations for commercial purposes within the residential community. No solicitors of a commercial nature shall be allowed within the Subject Property without the prior written consent of the Association. No day care or facility may be operated out of a Residential Unit. Single Family shall mean no more than three (3) adults unrelated through blood, marriage, or adoption occupying a single Residential Unit living as a single housekeeping, economic unit. Leasing and rental activities of Residential Property in Kissimmee Bay, operation of a clubhouse and conducting other activities directly related to the operation of the Golf Course Property and improvement, maintenance of recreational vehicle storage areas, operation of a CATV or of an Irrigation System or of a boat storage, yacht club or similar facility, shall not be considered commercial activities.

7.4 **Offensive Activity.** No illegal, noxious, unpleasant, unsightly or offensive activity shall be carried on or conducted upon or from Residential Property nor shall anything be done thereon which may be or tend to become or cause an unreasonable annoyance or nuisance, whether public or private, to residents in the immediate vicinity or to the Kissimmee Bay community in general or which may be or tend to become an interference with the comfortable and quiet use, occupation or enjoyment of any other Residential Property, or the Golf Course Property or any Common Property. Any noise which exceeds the maximum noise levels permitted by local ordinances shall be considered a nuisance. Tag sales may be permitted once a year on a designated date as approved by the Association pursuant to Board adopted guidelines.

7.5 **Animals and Pets.** No reptiles, livestock, poultry or animals of any kind, nature or description shall be kept, bred or raised upon Residential Property, except for service animals as defined by Section 413.08(1)(d), Florida Statutes, as amended from time to time, dogs, cats, birds or other usual and customary household pets which may be kept, raised and maintained upon Residential Property, provided that the same are not kept, raised, or maintained thereon for business or commercial purpose or in number deemed unreasonable by the Association, in the exercise of their reasonable discretion. No customary household pet shall be permitted to roam on the Subject Property unrestrained, and each such pet must be kept on a leash, the owner thereof being responsible for the cleanup of any waste matter deposited by such pet when walking the pet about the Subject Property or Common Property.

7.6 **Commercial and Recreational Vehicles.**

(a) No truck, bus, trailer or other "commercial vehicle" (as that term is hereinafter defined) and no mobile home, motor home, house trailer, camper, van, boat, boat trailer, horse trailer or other recreational vehicle, including motorcycles, or the like shall be permitted to be parked or stored on Residential Property unless the same shall be parked or stored entirely within and fully enclosed by a garage, with the garage door required to be closed except during time of removal or insertion of the vehicle in the garage; nor shall any such commercial or recreational vehicle or the like be permitted to be parked or stored on any street in front of or adjacent to Residential Property. Notwithstanding the foregoing, however, it is expressly provided that recreational and commercial vehicles shall be permitted to be parked on, in front of, or adjacent to Residential Property on which bona fide ongoing construction activity is taking place or at such locations which are specifically designated for such use; nor shall the foregoing provisions of this subparagraph (a) apply to parking on "a temporary or short term basis" (as that term is hereinafter defined).

- (b) No passenger automobile, commercial, recreational or other motorized vehicle, or the like, shall be dismantled, serviced, rebuilt, repaired, or repainted on Residential Property. Notwithstanding the foregoing provisions of this subparagraph (b), however, it is expressly provided that the foregoing restriction shall not be deemed to prevent or prohibit those activities normally associated with and incident to the day-to-day washing, waxing, and polishing of such vehicles.
- (c) In the context of this Section 7.6, parking on “a temporary or short-term basis” shall mean and be defined as parking, on a non-recurring basis and for a single period not exceeding twenty-four (24) hours in duration, of commercial or recreational vehicles belonging to guests of owners, commercial vehicles used in connection with the furnishing of services and /or the routine pick-up and delivery respectively, of material from and to Residential Property (including those commercial vehicles used in connection with and bona fide current on-going construction of Improvements on Residential Property) and commercial or recreational vehicles belonging to or being used by owners or their families, guests and invitees for loading and unloading purposes only. Excepting as stated above, no other overnight on-street parking is permitted between the hours of 10 p.m. and 6 a.m. Parking after 10 p.m. may be permitted if security is notified in advance pursuant to Board adopted guidelines.
- (d) In the context of this Section 7.6 the term “commercial vehicle” shall mean:
- (i) a truck, delivery van, service van or bus (except that trucks not in excess of 3/4 ton are permitted, provided they have no camper top, bed enclosure, or other appendage attached to it);
 - (ii) a vehicle bearing lettering, graphics or other commercial insignia;
 - (iii) a recreational vehicle (RV) including a camper, mobile and motor home, all-terrain vehicle (ATV or ATC) or dune buggy;
 - (iv) a trailer of any type;
 - (v) a boat; or
 - (vi) a derelict vehicle, including a vehicle with no current license plate or a vehicle incapable of self-propulsion.
- (e) The Association shall be entitled and is hereby empowered to adopt additional reasonable rules and regulations governing the admission to and parking, use and storage of commercial and recreational vehicles within Kissimmee Bay, and if so adopted the same shall be binding upon all Residential Property and all Owner’s and their guest’s invitees. Any such rules and regulations shall not materially or unreasonably cause or require the alteration of the manner in which the Golf Course Property is operated.
- (f) Any commercial, recreational, or other vehicle parked or stored in violation to these restrictions or in violation of any rules and regulations adopted by the Association concerning the same may be towed away or otherwise removed by or at the request of the Association and at the sole expense of the owner of such commercial, recreational or other vehicle in violation of those restrictions or such rules and regulations. In the event of such towing or other removal, the Association and its employees or agents shall not be liable or responsible to the owner of such vehicle for trespass, conversion, or damage incurred as an incident to or for the cost of such removal or otherwise; nor shall the Association, its employees or agents be guilty of any criminal act or have any civil liability by reason of such towing or removal, and neither its towing or removal nor the

failure of the owner of the towed or vehicle to receive any notice of the violation of the provisions of this Section 7.6 shall be grounds for relief of any kind.

- 7.7 **Golf Carts.** No golf carts other than those used in connection with the operation of the Golf Course Property shall be permitted for use on the Subject Property. Any golf carts used in the connection with the Golf Course Property must use golf cart designated areas and pathways, and may not be used in non-designated common areas or sidewalks. Golf carts must utilize lights during non-daytime hours. All Golf Cart Drivers must possess a valid driver's license.
- 7.8 **Maintenance.** Each parcel of the Subject Property and all Improvements, including landscaping, located thereon shall at all times be kept and maintained in a safe, clean, wholesome and attractive condition and shall not be allowed to deteriorate, fall into disrepair or become unsafe or unsightly. In particular, no weeds, underbrush or other unsightly growth and no trash, rubbish, refuse, debris or unsightly objects of any kind shall be permitted or allowed to accumulate on Residential Property. Enforcement of the provisions of this Section shall be in accordance with the provisions of Section 7.20 of this Master Declaration and such other provisions of this Master Declaration as shall be applicable to its enforcement generally. Each Owner shall also be responsible for the maintenance of the grassy area between the sidewalk and the curb which abuts each parcel by mowing, edging, irrigating, and weeding this area. Each Owner shall also be responsible for the maintenance of irrigation lines and sprinkler heads in the grassy area between the sidewalk and the curb which abuts each parcel.
- 7.9 **Reconstruction of Damaged Improvements.** In the event that a residential dwelling or other Improvements on Residential Property or the Golf Course Property shall be damaged or destroyed by casualty, hazard or other cause, including fire or windstorm, then, within a reasonable period, not exceeding sixty (60) days following the occurrence of the offending incident; the Owner of the affected Residential Property shall cause the damaged or destroyed Improvements to be repaired, rebuilt or reconstructed or to be removed and cleared from such Residential Property. Any such repair, rebuilding or reconstruction shall be approved and accomplished as otherwise required pursuant to the provisions of this Master Declaration. An extension of a sixty (60) day "reasonable period" may be granted by the Association in the event of catastrophe preventing the timely acquisition of materials or contractors. Enforcement of the provisions of this Section shall be in accordance with the provisions of Section 7.20 of this Master Declaration and such other provisions of this Master Declaration as shall be applicable to its enforcement generally.
- 7.10 **Garbage and Garbage Container.** All garbage and trash containers and their storage areas and the like shall be kept inside the garage or behind opaque walls attached to and made a part of the single family residential dwelling constructed on each parcel and otherwise in conformity with the applicable provisions of the Design Standards Manual so that they are stored out of street view. Further, all garbage and trash containers and their storage areas shall be designed and maintained so as to prevent animals from gaining access thereto.
- 7.11 **Burning.** No burning of leaves, trash, rubbish, garbage or other waste materials of any type shall be permitted or conducted on the Golf Course Property or on the Residential Property. Nothing herein contained, however, shall be deemed to prohibit the burning of wood, logs or charcoal in properly constructed or installed fireplaces, barbecue cookers or the like, whether inside or outside of any building or other structure located on the Golf Course Property or the Residential Property.
- 7.12 **Storage Tanks.** No storage tanks, including but not limited to, those for water, oil, propane gas, or other liquid, fuels or chemicals, including those used for swimming pools, water filtration systems, or the like, shall be permitted outside of a building on Residential Property or on Golf Course Property unless the same shall be underground or placed inside

of walls, fences, landscaping screens or similar type enclosures in conformity with the applicable provisions of the Design Standards Manual. In no event shall any of the same be visible from any adjacent or neighboring property, whether Residential Property, Golf Course Property or Common Property, including the Common Streets and Roads.

- 7.13 **Laundry and Clothes Drying.** All outdoor clothes hanging and drying activities shall be done in a manner so as not to be visible from any front street or Side Street or any adjacent or abutting property. All clothes lines shall be removed by the Owner when not in actual use for clothes drying purposes.
- 7.14 **Radio Transmission Equipment.** No radio, microwave or other electronic transmission equipment, including ham radios, citizens band radios, walkie-talkies and the like, shall be operated on Residential Property or on the Golf Course Property without the prior written consent of the Association, and such consent, once given, may be revoked by the Association in the event that the operation of any such equipment interferes with ordinary radio and television reception or equipment, including the Kissimmee Bay CATV and security systems or any communication system utilized in connection with golf club operations conducted on the Golf Course Property
- 7.15 **Signs.** No sign of any kind shall be displayed to the public view on any Residential Unit except for one professionally lettered and constructed temporary sign not more than twenty-four (24) inches in size approved by the Design Review Committee the purpose of which is to indicate the sale or rental of a Residential Unit.
- 7.16 **Trees.** No trees shall be added or removed from any lot without the prior written consent of the Design Review Committee.
- 7.17 **Drainage.** All storm water from any lot shall drain into or onto contiguous or adjacent street right-of-way, drainage easements, retention areas, the Golf Course Property or Common Property in accordance with any plan approved by the County and the South Florida Water Management District under the letter's Permit No. 880504-3 as modified and any replacement substituted permits issued by the South Florida Water Management District. Storm water from any lot shall not be permitted or allowed to drain or flow unnaturally onto, over, under, across or upon any contiguous or adjacent parcel of the Subject Property or the Golf Property unless a drainage easement shall exist, therefore. No owner shall be permitted to alter the grade of the original drainage plan for any lot or change the direction of abstract or retard the flow of surface water drainage nor shall any owner alter or remove any drainage or environmental berm or swale on any lakefront lot or divert any storm water drainage over, under, through or around any such berm or swale.
- 7.18 **Pesticides, Herbicides, and Fertilizers.** No pesticides insecticides, fungicides, herbicides, fertilizers or other deleterious substances shall be applied to the area below the top of the berm nearest the shore of any lakefront lot.
- 7.19 **Rules and Regulations.** In addition to the foregoing restrictions on the use of Residential Property, the Association shall have the right, power and authority, to promulgate and impose reasonable rules and regulations governing and/or restricting the use of Residential Property and to thereafter change, modify, alter, amend, rescind and augment any of the same; provided, however, that no rules or regulations so promulgated shall be in conflict with the provisions of this Master Declaration. Any such rules and regulations so promulgated by the Association shall be applicable to and binding upon all Residential Property and the Owners thereof and to their successors and assigns, as well as all guests or invitees of all parties claiming by, through or under such owners.
- 7.20 **Enforcement.** In the event of a violation of or failure to comply with the foregoing requirements of this section , the owner of the affected lot or unit shall have fourteen (14)

days following written notice by the Association of such violation or non-compliance and the nature thereof, to cure or remedy such violation; then the Association or its duly appointed employees, agents or contractors, shall have and are specifically granted the right and privilege of an easement and license to enter upon the affected lot or unit or any portion or thereof or Improvements thereon, without being guilty of any trespass therefor, for the purpose of undertaking such actions as may be reasonably necessary to cure or eliminate such violation; all at the sole cost and expense of the owner of the affected lot or unit. Such cost and expenses, together with overhead expenses to the Association of fifteen percent (15%) of the total amount thereof shall be assessed by the Association to the affected lot or unit and the owner thereof. Any such individual lot or unit Assessment shall be payable by the owner of the affected lot or unit to the Association within ten (10) days after written notice of the amount thereof. Any such Individual Assessment not paid within said ten (10) day periods shall become a lien on the affected lot or unit in accordance with the provisions of Section 10.5 of this Master Declaration.

7.21 **Precedence over Less Stringent Governmental Regulations.**

In those instances where the covenants, conditions, and restrictions set forth in this Article VII set or establish minimum standards or limitations or restrictions on use in excess of Governmental Regulations, the covenants, conditions and restrictions set forth in this Article VII shall take precedence and prevail over less stringent Governmental Regulations.

ARTICLE VIII

BUILDINGS RESTRICTIONS – RESIDENTIAL PROPERTY

- 8.1 **Generally.** The erection, placement, construction and installation of all Improvements on the Golf Course Property and the Residential Property shall be subject to and governed by the following covenants, conditions, restrictions, and reservations, to wit:
- 8.2 **Building Type.** The use of Residential Property, as defined in paragraph 6.2, is limited to residential dwelling purposes only and no building or structure or other Improvements shall be placed, located, erected, constructed or installed or permitted to remain on Residential Property except for such purpose.
- 8.3 **Approved Plans.** All Improvements must be constructed in accordance with detailed plans and specifications prepared by licensed architects and designs approved by the Design Review Committee for Kissimmee Bay in conformance with all applicable Governmental Regulations and approved by the Design Review Committee prior to the commencement of construction as more particularly provided in Article XV of this Master Declaration.
- 8.4 **Governmental Regulations.** All Improvements placed, located, erected, constructed and installed upon Golf Course Property and Residential Property shall conform to and comply with all applicable Governmental Regulations, including, without limitations, all building and zoning regulations of the County; particularly those applicable to the site plan of Kissimmee Bay approved by Osceola County, Florida.
- 8.5 **Standards Manual.** All Improvements shall be placed, located, erected, constructed, installed and maintained in conformation with the Design Standards Manual for which provision is made in Article XV of this Master Declaration, as the same may be changed, amended or modified from time to time.
- 8.6 **Construction.** The construction of all Improvements must be performed by such builders, general contractors, and subcontractors as are (a) licensed in the State of Florida and the

County to engage in the business of residential building and Construction and (b) approved in writing by the Association as being qualified and otherwise acceptable to the Association to perform construction work within Kissimmee Bay and all construction shall otherwise comply with the Builders Agreement and the Design Review Standards Manual for Kissimmee Bay.

8.7 **Construction Time.** Unless otherwise approved by the Design Review Committee in writing, construction of Improvements must be commenced not later than thirty (30) days from the date that the Design Review Committee issues its written approval of the final plans and specifications therefor. If construction shall not commence within such thirty (30) day period the plans and specifications for any proposed construction must once again be reviewed and approved by the Design Review Committee in accordance with the provisions of Article XV of this Master Declaration and any prior approval of the same by the Design Review Committee shall no longer be binding on the Design Review Committee. Upon commencement of construction, such construction shall be prosecuted diligently, continuously and without interruption to completion within a reasonable time; but in no event more than one (1) year from the date of the commencement of such construction. However, the Design Review Committee shall have the power and authority to extend the period permitted for construction, as aforesaid; provided that the owner and general contractor involved make written application for such extension stating the reasons for the requested extension of time and provided further that the Design Review Committee, in the exercise of its reasonable discretion, determines that the request is reasonable, and the extension is warranted.

8.8 **Height Limitation.** No improvement on Residential Property shall exceed the lesser of (1) thirty (30) feet in height, as measured from the finished grade of first floor (i.e., excluding basement, if any) to the roof peak (not including crawl spaces) at its highest point, except as expressly permitted by the Design Review Committee; or (2) the building regulations of the appropriate governmental entity having jurisdiction. Each residential dwelling on a lot shall consist of not more than two (2) full stories (not including basement) unless otherwise approved in writing by the Design Review Committee.

8.9 **Building Setback Lines.** No structural part of any building shall be constructed, erected placed or installed any closer to the property boundary lines of Residential Property, by lot subclassification, than as follows, to wit:

8.9.1 **Residential Units.** No closer than twenty-five (25) feet to the front yard boundary line (street side property boundary line; fifteen (15) feet to the rear yard property boundary line and seven and one-half (7 ½) feet to the side yard property boundary lines.

8.9.2 **Corner lots.** Notwithstanding the side yard building setback lines established elsewhere in this Section 8.9, the side yard building setback line on the side yard of corner lots (i.e., on the street side of a lot which is not the front of the residential dwelling constructed thereon shall likewise be twenty-five (25) feet.

8.9.3 **Exclusions.** Those Improvements specified in Section 8.10 below shall be excluded from the building setback lines established in this Section 8.9

8.9.4 **Other Setback Lines.** Improvements other than the main residential dwelling on a lot shall be placed, located, erected, constructed or installed no closer to the property boundary lines of Residential Property by type of Improvement, as follows, to wit:

8.9.5 **Driveways.** No closer than five (5) feet to any side yard property boundary line.

- 8.9.6 **Walkways.** No closer than five (5) feet to any side yard property boundary line.
- 8.9.7 **Swimming Pools and Decks.** No closer than the otherwise established side yard building setback line.
- 8.9.8 **Dwelling Size.** Each single family residential dwelling construction on Residential Property shall have a minimum heated and cooled living area, as follows:
- 8.9.9 **Single Family Residential Unit.**
- (a) Lots 1-70 of the Subdivision. A minimum of two thousand two hundred (2,200) square feet living area (exclusive of the garage).
 - (b) Lots 71-193 of the Subdivision. A minimum of two thousand (2,000) square feet of living area (exclusive of the garage).
 - (c) Villa Lots 1-64 minimum living square footage is 1,400 (exclusive of the garage).
- 8.10 **Governmental Requirements.** In the event governmental regulations require restrictions more stringent than as set forth herein, the governmental regulations shall control.
- 8.11 **Temporary Improvements.** No buildings, structures, improvements or other facilities of a temporary nature, including trailers, or shacks shall be permitted on Residential Property; provided, however, that temporary improvements or facilities used solely in connection with and during the period of the construction of approved permanent improvements may be permitted by the Design Review Committee, in its discretion, during the period of the construction of such permanent Improvements so long as the same are located as inconspicuously as possible and are removed immediately following the completion of such construction. The location of such temporary improvements during construction shall be approved in writing by the Design Review Committee.
- 8.12 **Garage and Carports.** Upon the recording of this Master Declaration, no carports shall be placed, erected, constructed installed or maintained on Residential Property except for those constructed prior to the recording of this Master Declaration. Each detached single family residential dwelling constructed and maintained on Residential Property shall have a garage for at least two (2) cars as an appurtenance thereto. Garages for more than two (2) automobiles must be specifically approved by the Design Review Committee. Each garage shall have a minimum width as measured from inside walls, of ten (10) feet per car and a minimum depth for each car of twenty-two (22) feet. Garages may also contain appropriately sized storage rooms, recreational workshops and tool rooms as approved by the Design Review Committee. All garages must have garage doors that are operated by electric door openers kept in operable condition and all garage doors shall remain closed at all times save and except for the temporary opening of same in connection with the ingress and egress of vehicles and the loading or placement and unloading or removal of other items customarily kept or stored therein. No garage shall be converted to another use (e.g., living space) without the substitution, on the lot involved, of another garage meeting the requirements of this Section 8.14 of this Master Declaration and the approval of the Design Review Committee as otherwise provided in this Master Declaration.
- 8.13 **Curb Cuts.** Vehicular access to each lot on Residential Property shall be through or over such driveway or driveways and curb cut or curb cuts as shall be approved by the Design Review Committee prior to construction. The location, size, and angle of the approach of

all driveways and curb cuts shall be subject to the approval of the Design Review Committee.

- 8.14 **Driveways.** All driveways, turnarounds and parking areas shall be concrete or constructed with a hard dust-free material approved by the Design Review Committee or otherwise specified in the Design Standards Manual. Each driveway shall extend the entire distance from the garage door to the paved portion of the street or roadway in front of or adjacent to the lot on which such driveway is constructed.
- 8.15 **Roof Structures.** No antennas, windmills, appliances or other rooftop installation or structure of any type shall be placed, located, erected, constructed, installed or maintained upon the exterior roof of any building or structure unless the same shall first be approved in writing by the Design Review Committee and shall otherwise be erected, constructed, installed and maintained, but not on the front elevation. It is expressly provided, however, that rooftop attic ventilators and fans and solar collector panels which are designed and architecturally treated in an aesthetically acceptable manner and otherwise in conformance with guidelines, therefore, if any, set forth in the Design Review Committee within its reasonable discretion. All residential structures shall have tile roofs, except that detached single family residences located on lots may replace tile roofs with either tile or shingles, subject to the approval the Design Review Committee. Monaco Villas roofs may be replaced with a similar product if the tile roofs are no longer available and subject to the approval of the Design Review Committee and the Monaco Villas at Kissimmee Bay Homeowners Association, Inc.
- 8.16 **Antennas, Etc.** No radio or television signals nor any other form of electromagnetic radiation shall be permitted to originate from any Residential Unit, which interferes with the reception of television or radio signals received upon any other Residential Unit. No exterior antennas, to include without limitation satellite dishes larger than thirty-nine inches (39") in diameter and short wave radio antennas, shall be permitted on any Residential Unit or improvement thereon, except that Owners may install one normal rooftop television antenna or one satellite dish thirty-nine inches (39") or smaller in diameter as approved by the Design Review Committee.
- 8.17 **Windows.** The front windows of all buildings on Residential Property shall have frames and muttons, if any, constructed of wood, painted aluminum or anodized aluminum window (in a color acceptable to the Design Review Committee), or such other materials as shall be in conformance with the applicable provisions of the Design Standards Manual. In no event shall raw or silver or brushed aluminum windows be permitted.
- 8.18 **Reflective or Mirrored Glass.** No tinted windows or doors shall be permitted unless first approved by the Design Review Committee in writing, taking into account the degree of tinting and the aesthetics of the Improvements involved. No Residential Unit shall have reflective windows or doors, or any reflective signage.
- 8.19 **Awnings, Shutters and Window Coverings.** Unless first approved by the Design Review Committee, no window of any building or other Improvements constructed upon Residential Property shall be covered by any awnings, canopies, shutters, (including hurricane or storm shutter), boards, or similar type window coverings; except such as may be required for protection from storm and only then during the period of any such storm. Nor shall any such windows be covered by or coated with any foil or other reflecting or mirrored materials. The foregoing restriction shall not be construed as a prohibition against decorative exterior shutters located to the side of window openings
- 8.20 **Exterior Air Conditioning Equipment.** All air conditioning compressors and other equipment located outside of a residential dwelling shall be approved by the Design Review Committee. Absolutely no window air conditioning units shall be permitted.

- 8.21 **Fences, Walls, and Screen Enclosures.** Other than those constructed by the Association within the Wall and Landscape Easements established pursuant to Section 14.7 of this Master Declaration, no fences or walls shall be erected on residential Property or the Golf Course Property unless approved in writing by the Design Review Committee. The height of all fences or walls shall be subject to the control and approval of the Design Review Committee. All fences and walls shall be constructed of wrought iron, brick, stucco or other masonry materials (except uncovered concrete block, painted or not) and shall conform to guidelines and specifications otherwise set forth in the Design Standards Manual. The exception to such specifications may be permitted by the Design Review Committee, in its discretion; provided, however, that in no event shall uncovered or exposed chain link or prefabricated wooden fences be permitted. The limitations contained herein shall not be construed as prohibiting the construction of screen enclosures around swimming pools, in a design and of a material approved by the Design Review Committee.
- 8.22 **Exterior Building Materials, Finished, and Colors.** All exterior building materials, finishes, and colors shall be in conformance with the applicable provisions of the Design Standards Manual or as otherwise approved by the Design Review Committee. Uncovered or exposed (whether painted or not) concrete or concrete block shall not be permitted as the exterior finish of any building structure or wall unless approved by the Design Review Committee; the foregoing restriction shall be equally applicable to the initial as well as any subsequent painting of any Improvement's located on Residential Property.
- 8.23 **Exterior Lighting.** Exterior lighting or illumination of buildings, yards, parking areas, sidewalks and driveways on a lot shall be designed and installed so as to avoid visible glare (direct or reflected) from street and road rights-of-way, other Residential Property, Common Property or Golf Course Property. All exterior lighting shall conform to the applicable provisions of the Design Standards Manual. Special exceptions to such specifications may be approved by and within the discretion of the Design Review Committee upon a showing of good cause therefor.
- 8.24 **Underground Utilities.** All utility lines and facilities shall be located and installed underground or concealed under or within a building or other on-site improvements approved by the local governmental entities; provided, however, that the foregoing restriction shall not be deemed to prohibit the following: (a) temporary electric power and telephone service poles and water lines which are incident to the ongoing construction of approved permanent Improvements, and provided further, that the same are removed immediately following the completion of such construction; (b) above-ground electric transformers, meters and similar apparatus properly screened and as otherwise approved by the local governmental entities; (c) permanent outdoor safety light poles located and installed as otherwise approved by local governmental entities.
- 8.25 **Cable Television Systems.** Each dwelling constructed on Residential Property shall be wired to receive CATV service from the Kissimmee Bay which has been or is to be installed throughout Kissimmee Bay. The cost of the installation and maintenance of the cable wiring for each residential dwelling on Residential Property shall be borne by the CATV System Operator. The cost of installation and maintenance of the CATV to the Golf Course Property shall be borne by the Golf Course Owner. The Regular Assessment may include fees for standard cable service. It is expressly provided, however, that neither the Association nor the Design Review Committee shall have any responsibility or liability to anyone whomsoever or whatsoever, including, without limitation, any owner, for any failure, deficiency or malfunction of any individual cable television system or the CATV.
- 8.26 **Precedence Over Less Stringent Governmental Regulations.** In those instances where the covenants, conditions and restriction set forth in this Article VIII set or establish minimum standards in excess of Governmental Regulations, including, without limitation,

building and zoning regulations, the covenants, conditions and restrictions set forth in this Article VIII of this Master Declaration shall take precedence and prevail over less stringent Governmental Regulations.

ARTICLE IX

COMMON PROPERTY

9.1 **Encumbrance as Security.** The Association shall have the right in accordance with this Master Declaration and its Articles of Incorporation and By-Laws to (a) borrow money for the purpose of improving, replacing, restoring or expanding the Common Property and to mortgage or otherwise encumber the Common Property solely as security for any such loan or loans and (b) engage in purchase money financing with respect to personal property and equipment purchased by the Association in connection with the performance of its duties and obligations pursuant to this Master Declaration and to secure the payment of the purchase price therefor by the encumbrance of the personal property and equipment so purchased; it being expressly provided, however, that any such mortgage or other encumbrance shall be subject in all respects to these terms and provisions of this Master Declaration and any amendments hereto and, provided further, that in no event shall the Association be entitled or empowered to mortgage or otherwise encumber the Common Streets and Roads, the Surface Water Management Systems or any other easements granted to it.

9.2 **Use by Owners.** Subject to any reasonable rules and regulations adopted and promulgated by the Association pursuant to and in accordance with the provisions of Section 9.7 of this Master Declaration, and subject always to any and all easements granted by or reserved to the Association in this Master Declaration, each and every Owner, (including the Golf Course Owner), shall have the non-exclusive right, privilege and easement to use and enjoy the Common Property for the purpose or purposes for which the same is conveyed, designated and intended by the original developer and maintained by the Association, and such non-exclusive right, privilege, and easement shall be an appurtenance to and shall pass with the title to each parcel within the Subject Property; subject, however, at all times to the terms, provisions, covenants, conditions, restrictions, easements and reservations set forth in this Master Declaration including, without limitation, the following, to wit:

- (a) The right of the Association to suspend the right, privilege and easement of any owner and the members of his family, tenants, guests or other invitees to use the Common Property or any portion thereof designated by the Association during any time in which any Assessment levied by the Association against such Owner and his lot remains unpaid and delinquent for a period of thirty (30) days for more or for a period not to exceed thirty (30) days for any single infraction of the Rules and Regulations of the Association with respect to the use of the Common Property. The Association shall have no right, power or authority hereunder to suspend or otherwise unreasonably interfere with any Owner's right, privilege and easement to use the Common Streets and Roads for ingress and egress to and from such Owner's lot.
- (b) The right of the Association to establish, promulgate and enforce reasonable Rules and Regulations pertaining and with respect to the use of the Common Property.
- (c) The right of the Association to take such steps as are reasonably necessary to maintain, preserve and protect the Common Property.

- 9.3 **Waiver of Use.** No owner may exempt himself from personal liability for or exempt his lot or Unit from any Assessments duly levied by the Association or release the lot or Unit owned by him from the liens, charges, encumbrance and other provisions of this Master Declaration, or the Rules and Regulations of the Association by (a) the voluntary waiver of the right, privilege and easement for the use and enjoyment of the Common Property, (b) the abandonment of his lot or unit, or (c) by conduct which results in the Association's suspension of such right, privilege and easement as provided in Section 9.4 of this Master Declaration.
- 9.4 **Administration and Care.** The administration, regulation, care, maintenance, repair, restoration, replacement, preservation and protection of the Common Property shall be the responsibility of the Association.
- 9.5 **Rules and Regulations.** In addition to the foregoing reactions on the use of Common Property, the Association shall have the right, power and authority, to promulgate and impose reasonable Rules and Regulations governing and/or restricting the use of Common Property and to thereafter change, modify, alter, amend, rescind and augment any of the same; provided, however, that no rules or regulations so promulgated shall be in conflict with the provisions of this Master Declaration. Any such Rules and Regulations so promulgated by the Association shall be applicable to and binding upon all Common Property and all Owners and their successors and assigns, as well as upon all members of their families, their tenants, guests, and other invitees and upon all other parties claiming by, through or under such Owners.
- 9.6 **Exculpation from Liability and Responsibility.** All common streets and roads within and the Surface Water Management system for Kissimmee Bay are private, not public. They have not been dedicated to or accepted or maintained by any governmental authority, including the county. It is contemplated that title to or easements for the common streets and roads and surface water management system for Kissimmee Bay have heretofore been or shall hereafter be granted and conveyed by the original developer to the Association. Following such conveyance the Association shall, subject to the terms and provisions of this Master Declaration, have sole and exclusive jurisdiction over and responsibility for the ownership, administration, management, regulation, care, maintenance, repair, restoration, replacement, improvement, preservation and protection of the common streets and roads and surface water management within Kissimmee Bay unless subsequently dedicated. Accordingly, each Owner, by the acceptance of a deed or other conveyance to his lot or unit shall be deemed to have agreed that neither the original developer, the County nor any other governmental agency shall have any liability or responsibility whatsoever (whether financial or otherwise) with respect to the common streets and roads and the surface water management for Kissimmee Bay and each Owner shall be deemed to have further agreed to look solely and exclusively to the Association with respect to any such liability or responsibility.
- 9.7 **Use of Interior Lake.** Subject to regulations and ordinances imposed by all governmental and quasi-governmental bodies or agencies, the Association shall have the sole right (with the consultation of the Golf Course Owner) to control the water level and maintenance of all lakes, ponds, water courses, drainage control services and all other areas and apparatus comprising the master drainage system for Kissimmee Bay. Subject to the regulations, ordinances, and agreements imposed by or made with any governmental or quasi-governmental body or agency, the Golf Course Owner shall have the non-exclusive right to use the water in all lakes, ponds and water courses for irrigation on any golf course in Kissimmee Bay. Boats or other vehicles (including jet skis) containing gas, diesel or other form of combustion engines, are prohibited upon water areas, other than East Lake Tohopekaliga. The Association shall specifically designate the portion of the water areas and the corresponding shoreline and beach areas if any upon which boats and other vehicles may be stored, docked or launched, and within which swimming may be permitted. Any proposed use of interior lakes shall be only with the consent of the Golf Course Owner, whose consent shall not be unreasonably withheld. No vegetation

may be removed or altered except as provided by a plan approved by the South Florida Water Management District.

9.8 Drainage Area.

- 9.8.1 No structure of any kind shall be constructed or erected, nor shall the owner in any way change, alter, impede, revise or otherwise interfere with the flow and volume of water in any portion of the drainage areas without the prior written consent of the Association.
- 9.8.2 An Owner shall in no way deny or prevent ingress and egress by, the Association or the Golf Course Owner to the drainage areas or lakes or ponds for maintenance or landscape purpose. The right of ingress and egress and easements therefore are hereby specifically reserved and created in favor of the Association, the Golf Course Owner or any appropriate governmental or quasi-governmental agencies as may reasonably require such ingress and egress.
- 9.8.3 No parcel shall be increased in size by filling any drainage area on which it abuts. No owner shall fill, alter, plot, or otherwise change or dredge the established drainage areas that have been or may be created by easements without the prior written consent of the Association.
- 9.8.4 Any wall, fence, planting or other improvement by an owner within a drainage easement, including, but not limited to, easements for maintenance or ingress and egress, shall be removed, if required by the Association, the cost of which shall be paid for by such owner as a special assessment.

ARTICLE X

ASSESSMENTS

- 10.1 **Assessments for Common Property.** In order to provide for and assure the availability of the funds necessary to pay Common Expenses associated with the ownership, administration, management, regulations, care, maintenance, repair, restoration, replacement, preservation and protection of the Common Property and such additional Common Expenses as may be associated with and obligation pursuant to and in accordance with this Master Declaration and its Articles of Incorporation and By-Laws and to otherwise carry out and accomplish the object and purpose for which the Association has been created and established each owner shall, by the acceptance of a deed or other conveyance of title to a portion of the Subject Property, whether or not it shall be expressly stated in any such deed or other conveyance, be obligated for and be deemed to have covenanted and agreed to pay to the Association all Assessments, whether Regular Assessments, Capital Expenditure Assessments, Special Assessments or Individual lot Assessments, established, levied, made and imposed by the Association pursuant to this Master Declaration. All such Assessments shall be established, levied, made, imposed, enforced and collected pursuant to the provisions of this Master Declaration and the Articles of Incorporation, By-Laws and Rules and Regulations of the Association. All Regular Assessments shall be the same amount for each Residential Unit and for Golf Course Property.
- 10.2 **Common Expenses.** The Common Expenses for which Assessments shall be established, made, levied, imposed, enforced and collected by the Association pursuant to this Master Declaration shall be all costs and expenses incurred by the Association in the discharge

and performance of the duties and obligations of the Association pursuant to this Master Declaration and the Articles of Incorporation and By-Laws of the Association and in furtherance of the objects and purposes for which the Association has been formed, created and established, including reasonable reserves therefor.

- 10.3 **Use of Assessments.** The funds received and derived from any and all Assessments made by the Association shall be used exclusively for the performance of the duties and obligation, the payment of Common Expenses, the improvement of the Common Property, the operation and administration of the Association and the promotion of the health, safety, and general welfare of the residents of Kissimmee Bay and for the benefit of Kissimmee Bay generally.
- 10.4 **Lien for Assessments.** All Assessments established, made, levied, and imposed by the Association pursuant to this Master Declaration, together with interest, late charges, costs and expenses, including attorneys' fees associated with the collection thereof (whether suit be brought or not), shall be a charge and a continuing lien upon the parcel against or with respect to which any such Assessment is made or levied.
- 10.5 **Personal Liability for Assessments.** In addition to the foregoing lien for such Assessments, each such Assessment, together with interest, late charges, costs and expenses, including attorneys' fees associated with the collection thereof whether suit be brought or not, as aforesaid, shall also be the personal obligation and liability of the Owner of the parcel against or with respect to which any such Assessment is made, levied or imposed at the time such Assessment is so made, levied or imposed.
- 10.6 **Types of Assessments.** The Association is hereby authorized and empowered to establish, make, levy, impose, enforce and collect those Regular Assessments, Capital Expenditure Assessments, Special Assessments and Individual Residential Unit Assessments for which provision is made in this Master Declaration.
- 10.7 **Regular Assessments.** The Association shall be an is hereby authorized, empowered and directed to establish levy, make, impose, enforce and collect during each calendar year a Regular Assessment for Common Expenses to be incurred by the Association during such calendar year in the performance of its duties and obligations pursuant to this Master Declaration. Such Regular Assessments shall be established, made, levied, imposed, enforced, collected and otherwise governed by the following provisions to wit:

Initial Regular Assessment. The Initial or first Regular Assessment for the calendar year 1990 was established by the original developer. The Golf Course Property shall at all times be subject to a Regular Assessment equal to that of one Residential Unit.

- 10.7.1 **Rate of Regular Assessments.** Subsequent to the calendar year 1990 the amount of the Regular Assessment for each calendar year shall be established and determined by the Board of Directors of the Association not later than thirty (30) days prior to the beginning of each calendar year. The Board shall establish the Regular Assessment for each calendar year based upon a pro forma operating statement or estimated budget for such calendar year which in turn shall be based, among other things, upon an estimate of the total Common Expenses likely to be incurred during operating history of any surplus funds (not including reserves) held by the Association, and the establishment of reasonable reserves for the maintenance and replacement of and repairs to the Common Property, including the Common Streets and Roads and the Surface Water Management System.
- 10.7.2 **Notice of Regular Assessments.** Not later than fifteen (15) days prior to the beginning of each calendar year, the Association shall provide written notice to

each Owner of the amount of the Regular Assessment established, made, levied and imposed for the next succeeding calendar year and the dates upon which installments for the same shall become due and payable.

- 10.7.3 **Insufficient Regular Assessments.** In the event that the Association shall determine during any calendar year that the Regular Assessment established for such calendar year is or will become inadequate or insufficient to meet all Common Expenses for such calendar year, for whatever reason, the Association shall be entitled to immediately determine the approximate amount of the deficiency or inadequacy of the Regular Assessment for such fiscal year, issue a supplemental estimate of Common Expenses to all members of the Association and within thirty (30) days thereafter establish, make, levy, impose, enforce and collect a supplemental or revised Regular Assessment for such calendar year.
- 10.7.4 **Payment of Assessments.** Regular Assessments shall be due and payable in advance in monthly, quarterly or yearly installments as determined by the Board of Directors of the Association, in its reasonable discretion. Such installments shall be due and payable without any further notice other than that notice specified in Section 10.7.3 above.
- 10.8 **Capital Expenditure Assessments.** In addition to the other Assessments for which provision is made in the Master Declaration, the Association shall be and is hereby authorized and empowered to establish, make, levy, impose, enforce and collect from time to time Capital Expenditure Assessments for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction or the unexpected repair or replacement of any capital improvement to or upon the Common Property or the cost of the initial property purchase, repaired or replaced by the Association in furtherance or the discharge of its duties and obligations pursuant to this Master Declaration; provided, however, that any such Capital Expenditure Assessment shall have the prior approval of two-thirds (2/3) of all members who are voting in person or by proxy at a meeting of the Association duly called for such purpose and of which written notice specifying the nature of the proposed capital expenditure and the amount of the proposed Capital Expenditure Assessment is sent to all members of the Association at least thirty (30) days in advance of such meeting. All sums collected as Capital Expenditure Assessments shall be used only for the capital improvements or purchases for or with respect to which such Capital Expenditure Assessment has been approved, and such sums shall be deposited by the Association in a separate interest bearing bank amount, no commingled with any other funds of the Association, to be held in trust by the Association for such purpose.
- 10.9 **Special Assessments.** In addition to other Assessments for which provision is made in this Master Declaration, the Association shall be and hereby is authorized and empowered to establish, make, levy, impose, enforce and collect from time to time Special Assessments for any purpose directly related to the discharge of its duties and obligations pursuant to this Master Declaration, provided, however, that any such Special Assessment shall have the prior approval of two-thirds (2/3) of all members of the Association who are voting in person or by proxy at a meeting of the Association duly called for such purpose and of which written notice specifying the nature and amount of the proposed Special Assessment is sent to all members of the Association at least (30) days in advance of such meeting. All sums collected as Special Assessments shall be used only for the purpose for which such Special Assessment is established, made, levied, imposed, enforced and collected and shall be deposited in a separate interest-bearing bank account, not commingled with any other funds of the Association, and held in trust by the Association for such purpose.

- 10.10 **Individual Owner Assessments.** In addition to any other Assessments for which provisions are made in this Master Declaration, the Association shall be and hereby is authorized and empowered to establish, make, levy, impose, enforce and collect against and from the Golf Course Owner or a particular Residential Unit and the Owner of such Residential Unit an Individual Residential Unit Assessment for:
- (a) costs and expenses incurred by the Association in bringing the Golf Course Owner, the Golf Course Property, or a particular Owner or his particular Residential Unit into compliance with the provisions of this Master Declaration, including any action taken or cost or expense incurred by the Association to cure and eliminate any violation of or noncompliance with the provisions of this Master Declaration, following the failure of such owner, within fourteen (14) days following written notice from the Association of the nature of the violation of or non-compliance with this Master Declaration, to cure or remedy such violation or noncompliance;
 - (b) costs and expenses, including reasonable attorneys' fees, whether or not suit be brought, incurred by the Association in the enforcement of the provisions of this Master Declaration against the Golf Course Owner or a particular Residential Unit or the owner thereof and/or for any issued fines against Residential Units for non-compliance with the Master Declaration, the Rules and Regulations, or any other governing document of the Association;
 - (c) costs and expenses incurred by the Association in furnishing or providing labor, services and materials which benefit the Golf Course Owner or a particular Residential Unit or the Owner of a particular Residential Unit provided that such labor, services or materials can be accepted or rejected by such Golf Course Owner or particular Owner in advance of the Association's furnishing or providing the same such that upon such Owner's acceptance of any such labor, service or material such Owner shall be deemed to have agreed that the costs and expenses associated therewith shall be made, levied, imposed, collected and enforced as an Individual Residential Unit Assessment against such Golf Course Owner or particular Owner and his particular Residential Unit; and
 - (d) reasonable overhead expenses of the Association associated with any Owner Assessment, established, made, levied, imposed, collected and enforced pursuant to this Section 10.10, in an amount not to exceed fifteen percent (15%) of the actual costs and expenses incurred by the Association for any Individual Residential Unit Assessment specified in subparagraph (a), (b) or (c) of this Section 10.10.
- 10.11 **Uniformity of Assessments.** Except for Individual Owner Assessments for which provision is made in Section 10.10 of this Master Declaration, all Assessments shall be uniformly fixed at an equal amount for each Residential Unit and the Golf Course Property.
- 10.12 **Exempt Property.** Notwithstanding anything to the contrary set forth in or otherwise implied from the terms and provisions of this Master Declaration, the Common Property shall be and is hereby made exempt from all Assessments of any kind, nature, type or character whatsoever.
- 10.13 **Subordination of Assessment Lien.** The lien of and for all Assessments provided for in this Master Declaration shall be and is hereby made junior, inferior and subordinate in all respects to the lien of any bona fide first mortgage held by an institutional lender upon a particular Residential Unit or upon the Golf Course Property, subject to Chapter 720,

Florida Statutes, as may be amended from time to time. The sale, transfer or conveyance of title to a particular Residential Unit shall not affect the effectiveness, viability or priority of any Assessment lien or the personal liability of the owner of such Residential Unit for the payment of any Assessment; provided, however, that the sale, transfer or conveyance of title to a particular Residential Unit pursuant to judicial proceedings in foreclosure of a bona fide first mortgage or deed in lien of foreclosure to an institutional lender on such Residential Unit held by an Institutional Lender shall extinguish the lien of such Assessments (but not the personal liability of the owner of such Residential Unit) as to payments on account thereof which become due and payable prior to such foreclosure sale, transfer or conveyance, except to the extent past due assessments shall be permitted to be collected per Chapter 720, Florida Statutes, as may be amended from time to time. However, no such foreclosure sale, transfer or conveyance shall relieve such Residential Unit or the Owner of that Residential Unit from the personal obligation or liability for the payment of any Assessment accruing or becoming due and payable subsequent to such sale, transfer or conveyance from the lien thereof.

- 10.14 **Certificate of Assessments Due.** The Association shall, upon the request of an owner or any other interested party authorized by the owner, furnish a certificate executed by the President, Secretary, Treasurer or any other officer thereunto duly authorized, setting forth whether Assessments payable with respect to a particular Residential Unit have been paid, the amount of the delinquency, if any, and the amounts of any outstanding and unpaid interest, late charges, penalties, costs of collection, including attorneys' fees and court costs, if any, associated with any such delinquent Assessments. A properly executed certificate of the Association as to the status of Assessments, as aforesaid, shall be binding upon the Association as conclusive evidence of the status of the payment of any Assessment therein stated to have been paid or to be delinquent as of the date of the issuance of such certificate. The Association shall be entitled to charge and collect a reasonable fee for and as a condition precedent to the issuance of any such certificate.
- 10.15 **No Defenses or Offsets.** All Assessments shall be payable in the amounts and at the times specified in any notice of Assessment and no defenses or offsets against the payment of such amounts shall be permitted for any reason whatsoever, including without limitation, a claim by an owner that (i) the Association has not properly exercised its rights and powers or performed or discharged its duties and obligations as provided in this Master Declaration or in the Articles of Incorporation or the By-Laws of the Association; (ii) an owner and his family has made or elected to make no use of the Common Property; (iii) the owner and his family have otherwise waived or elected to waive their membership in the Association; or (iv) the Association has suspended the right, privilege and easement of such owner and his family to use the Common Property as provided in Section 9.6 of this Master Declaration.
- 10.16 **Waiver of Homestead and other Exemptions.** Each owner, by the acceptance of a deed or other conveyance to his lot, shall, to the extent permitted by applicable law, be deemed to have waived, to the extent of any lien for Assessments at any time imposed upon such Residential Unit pursuant to this Master Declaration, the benefit of any homestead or similar exemption laws of the State of Florida or the United States of America now in effect or hereafter enacted.
- 10.17 **Replacement Reserve Assessment.** In addition to and not by way of limitation of any other assessment to which the Association may be entitled under this Article X, the Association does hereby make, establish and impose, and is hereby entitled to enforce and collect a replacement reserve assessment ("Replacement Reserve Assessment") in the amount of \$100.00 per Residential Unit. The Replacement Reserve Assessment shall be charged to each Residential Unit at the time of initial conveyance of such Residential Unit by the original developer or a builder or to a third-party. The Replacement Reserve Assessment shall be a one-time assessment with respect to each Residential Unit.

- 10.18 **Working Capital Assessment at Time of Transfer.** Upon the transfer of record title of a Residential Unit, a Working Capital Assessment shall be due and collected from the new record title owner by the Association in the amount of three months' worth of assessments. Said Working Capital Assessment may be used by the Association for any purpose not expressly prohibited by this Master Declaration or Florida Law, including defraying the operating budgets.

ARTICLE XI

NON-PAYMENT OF ASSESSMENTS

- 11.1 **Delinquency.** Any Assessment established, made, levied or imposed by the Association pursuant to and in accordance with this Master Declaration which is not paid on its due date shall be delinquent. If the delinquent Assessment is not paid within the first ten (10) business days of the month, the Association, in its discretion, shall be entitled to immediately impose a reasonable late charge of \$25.00 per month associated with the administration of such delinquent Assessment. Additionally, any such unpaid Assessment shall bear interest from the date of delinquency at the highest rate then allowed by the laws of the State of Florida or such lesser rate as shall be determined by the Board of Directors of the Association, in its discretion.
- 11.2 **Notice of Lien.** The Association shall be entitled to cause a Claim of Lien for such delinquent Assessments to be filed among the Public Records of Osceola County, Florida upon the expiration of proper notice as required per Florida Law. Any such Claim of Lien shall, among other things, state and identify the legal description of the portion of the Subject Property against or with respect to which the lien is claimed, the name of the record owner of such property as best known to the Association as determined from its records, the amount of the lien claimed, including interest, late charges, and costs and expenses associated with collection, including attorneys' fees, if any, accrued to the date of the execution of such Claim of Lien. Such Claim of Lien shall be executed by the President, Secretary, Treasurer or another officer of the Association thereunto duly authorized by the Association or by the attorney for the Association. Within seven (7) days of the recording of the same, a copy of such Claim of Lien shall be sent to the owner of the property against or with respect to which such lien is claimed by either: (a) United States certified or registered mail or other commercial delivery with return receipt requested and with postage prepaid or (b) hand delivery to the mailbox of the residential dwelling situated on such lot.
- 11.3 **Foreclosure of Assessment Lien.** The Association shall, at any time subsequent to the filing of the aforesaid Claim of Lien among the Public Records of Osceola County, Florida against or with respect to a particular Residential Unit (or the Golf Course Property in the case of a lien against the Golf Course Property), be entitled to bring an action in the Circuit Court in and for Osceola County, Florida to foreclose the lien of the Association, for delinquent Assessments evidenced by such Claim of Lien in the same manner as mortgage liens are foreclosed. Any judicial sale pursuant to such foreclosure action shall be conducted as ordered by the Court or in accordance with the provisions of Section 45.031 Florida Statutes, as amended or replaced from time to time. The Association shall have the right and power to bid at any foreclosure sale with respect to any lien foreclosed by it using its judgment for the delinquent Assessment, Association funds, or funds otherwise borrowed by the Association for that purpose, and if the successful bidder at such foreclosure sale, to acquire, own, hold, lease, sell, mortgage and convey any lot upon or with respect to which it has foreclosed its lien for delinquent Assessment.

- 11.4 **Collection from Owner.** The Association shall at any time following the delivery of the aforesaid notice of delinquency, also be entitled to bring an action at law for the recovery and collection of such delinquent Assessment in the Circuit Court in and for Osceola County, Florida against the owner personally obligated for the payment of such delinquent Assessment. The Golf Course Owner and each owner of a Residential Unit, by the acceptance of a deed or other conveyance of the Residential Unit owned by him shall be deemed to have agreed and consented to the jurisdiction of said Court over the person of such owner for purposes of any action at law for the recovery and collection of any delinquent Assessment for the payment of which he is personally obligated.
- 11.5 **Judgment Amount.** Whether in an action at equity to foreclose the lien of the Association for delinquent Assessments or in an action at law for the recovery and collection of any such delinquent Assessment from the owner of the Residential Unit or the Golf Course Owner personally obligated for the payment of the same, the Association shall be entitled to recover in such proceedings the amount of such delinquent Assessment, together with late charges and interest thereon, if any, and such costs and expenses, including reasonable attorneys' fees, associated with the enforcement, recovery and collection thereof as may be awarded by the Court.
- 11.6 **Remedies Cumulative.** The remedies herein provided for the Collection and enforcement of Assessments and the foreclosure of the lien therefor shall be cumulative and not alternative; it being expressly provided that any suits brought for the collection of assessment against the Owner personally obligated and liable for the payment of the same and for the foreclosure of the lien herein provided against the Residential Unit involved may be brought simultaneously as separate counts in the same action.
- 11.7 **Satisfaction of Lien.** Upon payment or other satisfaction of (a) all delinquent Assessments specified in the Claim of Lien, (b) interest, late charges, costs and expenses of collection, including attorneys' fees, as aforesaid, which have accrued to the date of such payment or satisfaction, and (c) all other assessments which have become due and payable with respect to the lot with respect to which a Claim of Lien has been recorded, the President, Secretary, Treasurer or another officer of the Association thereunto duly authorized, or the attorney for the Association, shall cause an appropriate release of such Claim of Lien to be filed and recorded among the Public Records of Osceola County, Florida upon the payment by the owner of the lot with respect to which such Claim of Lien was recorded of a reasonable fee to be determined by the Association, but not to exceed TWENTY-FIVE AND NO/100 DOLLARS (\$25.00) to cover the costs associated with the administration of the satisfaction of such lien including, without limitation, the cost of preparing and recording such release.

ARTICLE XII

ASSOCIATION: PURPOSE, DUTIES & POWERS

- 12.1 **Objects and Purposes and Function.** The Association has been created and established for the objects and purposes of and shall have exclusive jurisdiction over and the sole responsibility for the ownership, administration, management, operation, regulation, care, maintenance, repair, restoration, replacement, preservation and protection of the Common Property, the establishment, levy, imposition, enforcement and collection of all Assessments for which provisions is made in this Master Declaration, the payment of all Common Expenses, as defined in this Master Declaration, the Development, maintenance and operation of (or the contracting for the development, maintenance and operation of) an Irrigation System, and the promotion and advancement of the health, safety and general

welfare of the members of the Association; all as more particularly provided in this Master Declaration and in the Articles of Incorporation, By-Laws and Rules and Regulations of the Association.

- 12.2 **Duties and Powers, Generally.** In addition to those duties and powers conferred by law and those specified and enumerated in its Articles of Incorporation and By-Laws, the Association shall also have such duties and powers as are, respectively, imposed and conferred upon it pursuant to this Master Declaration, including, without limitation, such duties and powers as may be reasonably implied from, necessary for and incidental to the accomplishment of the objects and purposes for which the Association has been created and established.
- 12.3 **Duties of Association.** The Association, acting by and through its Board of Directors, shall, in addition to those general and specific duties, responsibilities and obligations imposed upon it by law and those specified in its Articles of Incorporation and By-Laws, have the following specific duties, responsibilities, and obligations, to wit:
- 12.3.1 **Ownership and Management of Common Property.** To own, hold, control, administer, manage, operate, regulate, care for, maintain, repair, replace, restore, preserve and protect all Common Property.
- 12.3.2 **Payment of Common Expenses.** To pay all Common Expenses associated with the ownership, administration, management, operation, regulation, care maintenance, repair, replacement, restoration, preservation and protection of the Common Property.
- 12.3.3 **Levy and Collection of Assessments.** To establish, make, levy, impose, enforce and collect all Assessments for which provision is made in this Master Declaration or which shall otherwise be necessary to provide and assure the availability of such funds as may be reasonably necessary to pay all Common Expenses or otherwise conduct the business and affairs of the Association.
- 12.2.4 **Security Services.** To protect the exclusivity of and provide internal protection and security services for and within Kissimmee Bay as the Association deems appropriate.
- 12.3.5 **Irrigation System.** To either (i) own, maintain, repair, replace and operate either alone or as a joint venturer, or (ii) to exclusively contract on behalf of all Owners with third parties for the development, maintenance and operation of an Irrigation System for and within Kissimmee Bay as the Association deems appropriate.
- 12.3.6 **Other Services.** To provide and perform such other services and tasks, the responsibility for which has been expressly or impliedly delegated to the Association pursuant to this Master Declaration.
- 12.3.7 **Insurance.** To provide adequate insurance protection on and for the Common Property and, consistent with their respective duties, responsibilities and liabilities, provide adequate insurance protection on and for the Association itself and on and for its members, officers and directors, as well as for the members of the Design Review Committee established pursuant to this Master Declaration.
- 12.3.8 **Preserve and Enhance Beauty of Kissimmee Bay.** To preserve, protect, maintain and enhance the appearance and natural beauty of the Common Property and Kissimmee Bay.

- 12.3.9 **Promotion of Health, Safety & Welfare**. To advance, promote, enhance and protect the health, safety and general welfare of the members of the Association, the residents of Kissimmee Bay and the Kissimmee Bay community generally; provided, however, that the Association shall be and hereby is specifically prohibited from engaging in any political activity or any other activity whereby its status as a corporation not-for-profit or its exemption from Federal or state income taxation, if any, shall be forfeited or jeopardized.
- 12.3.10 **Enforcement of Master Declaration**. To assure compliance with and adherence to and otherwise to enforce the provisions of this Master Declaration.
- 12.3.11 **Establish and Enforce Rules and Regulations**. To make, establish, promulgate and publish, and to enforce such Rules and Regulations for the protection and governing the use of the Common Property as the Board of Directors of the Association deems to be in the best interest of the Association and its members.
- 12.3.12 **Other Activities**. To engage in any and all other activities permitted to be engaged in by a corporation not-for-profit under the laws of the State of Florida as may be necessary or appropriate for the achievement of the objects and purposes for which the Association has been created, formed and established.
- 12.3.13 **Operate Without Profit**. To operate without profit for the sole and exclusive benefit of its members and the Kissimmee Bay community.
- 12.4 **Powers of Association**. The Association, acting by and through its Board of Directors, shall have those general and specific powers conferred upon it by law and those powers specified in its Articles of Incorporation and By-Laws.

ARTICLE XIII

ASSOCIATION: MEMBERSHIP AND VOTING RIGHTS

- 13.1 **Membership**. Every Owner shall automatically, and mandatory be a member of the Association upon becoming an Owner. Additionally, the Golf Course Owner shall automatically, and mandatory be a member of the Association. Membership may not be refused, waived or surrendered, but a member's voting rights and use and enjoyment of the Common Property may be regulated or suspended as provided in this Master Declaration and the Articles of Incorporation, By-Laws and Rules and Regulations of the Association. The Golf Course Owner shall become a member of the Association upon the execution of the Master Declaration.
- 13.2 **Method of Effecting Membership**. Each new member of the Association shall deliver to the Association a true and correct copy of the recorded deed or other instrument conveying title to the lot, parcel, piece or tract or land within Kissimmee Bay the fee simple ownership of which is a prerequisite for membership in the Association.
- 13.3 **Transfer of Membership**. Membership in the Association shall be appurtenant to and may not be separated from the ownership interest of an Owner of land within the Subject Property. The membership of an Owner in the Association shall not be transferred, pledged or alienated in any way, except that such membership shall automatically be transferred and assigned to a transferee upon the transfer of the ownership interest required for membership

in the Association. The Association shall have the right to record any such automatic transfer upon the books and records of the Association without any further action or consent by the transferring Owner or any transferee Owner. Any attempt to make a prohibited transfer of membership, however, shall be void and of no force and effect and will not be reflected upon the books and records of the Association.

13.4 **Members, Rights.** The rights of every member of the Association shall be subject to and governed by the terms and provisions not only of this Master Declaration, but, in addition, shall at all times be subject to the terms and provisions of the Articles of Incorporation, By-Laws and Rules and Regulations of the Association.

13.5 **Voting Rights.** An Owner's right to vote shall vest immediately upon such Owner's qualification for membership as provided in this Master Declaration and the Articles of Incorporation and By-Laws of the Association. All voting rights of a member shall be exercised in accordance with and subject to the restrictions and limitations provided in this Master Declaration and in the Articles of Incorporation, By-Laws and Rules of the Association. In the event more than one individual or entity owns a Residential Unit, the majority of ownership of such Residential Unit shall designate the person to cast the vote for such Residential Unit. No more than one vote shall be cast for each Residential Unit.

13.6 **Approval by Members.** Unless elsewhere otherwise specifically provided in this Master Declaration or the Articles of Incorporation or By-Laws of the Association, any provision of this Master Declaration or the Articles of Incorporation and By-Laws of the Association which requires the vote or approval of a majority or other specified fraction or percentage of the total voting power of the Association shall be deemed satisfied by either, both or a combination of the following:

- (a) The vote in person or by proxy of the majority or other specified fraction or percentage of the membership at a meeting duly called and noticed pursuant to the provisions of the By-Laws of the Association dealing with annual or special meetings of the members of the Association.
- (b) Written consents signed by the majority or other specified fraction or percentage of members.

13.7 **Number of Votes.**

- (a) Each Owner of a Residential Unit shall be entitled to cast one vote for each residential Unit owned; provided, however, that no more than one vote shall be cast each such unit.
- (b) The Golf Course Owner shall be entitled to cast ten votes.

ARTICLE XIV

EASEMENTS

14.1 **Easements Generally.** The original developer of the Subject Property on behalf of itself and for the benefit, where so stated, of the County, all Owners, the Association and other specified parties, and also for the benefit of all real property from time to time included within the Subject Property, did create the following non-exclusive easements upon those affected portions of the Subject Property hereinafter specified.

- 14.2 **Ingress, Egress and Passage Easements.** There was created, declared, granted and reserved for the benefit of the Association and each Owner of each Residential Unit, piece, parcel and tract of land within the Subject Property, including the Golf Course Owner, and their respective employees, guests and invitees, and governmental bodies, and also for the benefit of all private persons and public agencies, providing pickup and delivery, fire protection, law enforcement, utility and other governmental services, including the United States Postal Service, a non-exclusive easement for pedestrian and vehicular ingress, egress and passage over and upon the rights-of-way of and for all Common Streets and Roads as the same are shown on the Plat.
- 14.3 **Utility Easements.** There was created, declared, granted and reserved for the benefit of the County, the Association, all Owners and any public or private providers of utility services to the Subject Property and their respective successors and assigns a non-exclusive easement for utility purposes over, under, within and upon the rights-of-way of and for all Common Streets and Roads and over, under, within and upon all other utility easements and easement areas shown on the Plat or otherwise reserved, declared or created pursuant to this Master Declaration for the purpose of constructing, installing, inspecting, maintaining, repairing and replacing from time to time any and all utility line, systems and facilities from time to time located therein or thereon. The utilities contemplated to be served by such utility easements shall include, without limitation, those providing electric power, natural gas, telephone, sanitary sewer and potable water. This easement shall include access to the Golf Course Property for the purpose of servicing, operating or maintaining any Irrigation System.
- 14.4 **Drainage Easements.** There was created, declared and served for the benefit of the Association, the Golf Course Property and all Owners a non-exclusive easement for storm water collection, retention, detention and drainage over, upon and within the rights-of-way of all Common Streets and Roads and the Golf Course Property and all other drainage easements shown on the Development Plan or otherwise reserved, declared or created pursuant to this Master Declaration, together with an easement and license to enter upon such easements and easement areas for the purpose of constructing, installing, inspecting, maintaining, repairing and replacing any and all storm water drainage systems, improvements and facilities from time to time located therein or thereon. Additionally, for the benefit of the Association and all Owners was reserved easements over any and all other portions of the Subject Property as may be reasonably required from time to time in order to provide storm water drainage to all or any portions of the Subject Property; provided, however, that any such additional drainage easements shall not unreasonably interfere with the use and enjoyment by any owners of the particular lots, or the Common Property affected thereby or any Improvements from time to time places, located, constructed, erected or installed thereon. The easements hereinabove created, declared and reserved contemplate the construction of all storm water drainage improvements and facilities shown on the plans for the Surface Water Management Systems for Kissimmee Bay as approved by the County and the South Florida Water Management District pursuant to the latter's Permit No. 890504-3 as modified, and any replacement or substitute permits issued by the South Florida Water Management District, and such additional or supplemental facilities as may reasonably be required to provide adequate storm water drainage and surface water management to all portions of the Subject Property. The easement created was to be construed to include but shall not be limited to a non-exclusive easement for the benefit of, the County or any governmental or quasi-governmental agency or body for the establishment and maintenance of any mandatory or voluntary water reuse system (including an effluent spray system) or the Irrigation System which is installed for the benefit of all residents of Kissimmee Bay.
- 14.5 **Emergency Access and Drainage Easement.** There was created, declared, granted and reserved for the benefit of the County, a non-exclusive easement over and upon the Common Streets and Roads and all drainage easements comprising and appurtenant to the

Surface Water Management System for the purpose of undertaking emergency maintenance and repairs to the Surface Water Management System in the event that inadequate maintenance or repair of the Surface Water Management System shall create a hazard to the public health, safety or general welfare. It was expressly provided, however, that the creation, declaration, and reservation of such Emergency Access and Drainage Easement shall not be deemed to impose upon the County any obligation, burden, responsibility or liability to enter upon the Subject Property or any portion thereof to take any action to maintain or to repair the Surface Water Management System or any portion or portions thereof.

- 14.6 **Side Yard Drainage and Utility Easements.** There was created, declared, granted and reserved for the benefit of the Association, all Owners and all public or private providers of utility services to the Subject Property and their respective successors and assigns a non-exclusive easement for drainage and utility purposes in that area which is adjacent to and within seven and one-half (7.5) feet on either side of any side boundary or lot line of any Residential Unit. It is expressly provided, however that to the extent that any two (2) or more contiguous lot or boundary line are owned in common by a single owner and are combined, developed and improved by the owner thereof as a single unified residential home site, any Side Yard Drainage and Utility Easement lying adjacent to the boundary between the lots so combined shall automatically be terminated, cancelled and extinguished without the requirements of any separate instrument and without the necessity for the joiner of the Association or the County; provided and to the extent that any such side yard Drainage and Utility Easement is not then in use.
- 14.7 **Wall and Landscape Easements.** There was created, declared, granted and reserved for the benefit of the Association an easement over and upon all Wall and Landscape Easement areas shown on the Developmental Plan together with the easement and license to enter upon such Wall and Landscape Easement areas for the purposes of erecting, constructing, installing, inspecting, maintaining, repairing and replacing any and all security or screening walls or fences, and the installation and irrigation of any landscaping therein, which may be required by the County and/or deemed to be necessary or desirable by the Association.
- 14.8 **Landscape easements.** There was created, declared, granted and reserved for the benefit of the Association an easement for landscaping purposes over and upon all Landscape Easement areas shown on the Development Plan, if any, or hereafter declared by the original developer, together with the easement and license to enter upon such Landscape Easement areas for the purposes of installing, maintaining, inspecting, repairing and replacing any and all landscaping, including trees, grasses, shrubs, bushes, ground covers and other plant materials and irrigation systems of any kind, whether the same shall be required by the County and/or deemed necessary or desirable by the Association.
- 14.9 **Sidewalk Easements.** There was created, declared and reserved for the benefit of the Association and all Owners an Easement for sidewalk purposes over, within and upon all Sidewalk Easement areas and more particularly located within ten (10) feet of and immediately adjacent to all of the Common Streets and Roads within Kissimmee Bay for the purposes of constructing, installing, maintaining, repairing and replacing from time to time the sidewalk systems of Kissimmee Bay, if any. All of such benefited parties have a non-exclusive easement for pedestrian ingress, egress and passage over and upon any sidewalks from time to time located constructed, installed and maintained within said Sidewalk Easement areas. The Sidewalk Easements and the sidewalks from time to time constructed, installed, repaired and located therein, if any, are Common Property; notwithstanding that the same are located upon lots the fee simple title to which is vested in the Owners of the affected lots. The Owner of each lot shall be obligated, at his expense, to install initially that portion, if any, of the Kissimmee Bay sidewalk system which is to be located on such lot. However, no sidewalks shall be installed by any owner within any such Sidewalk Easement area unless and until the Association shall first make the determination

that sidewalks are to be constructed in particular areas or adjacent to particular streets within Kissimmee Bay. Provided that such determination is first made by the Association as aforesaid, sidewalks shall be constructed at the location within any such Sidewalk Easement and pursuant to such specifications as shall be designated by the Design Review Committee. Following the initial construction and installation of any sidewalks within the Sidewalk Easement areas, the maintenance, and repair of the Kissimmee Bay sidewalk system shall be the responsibility of the Association. In that regard, each Owner is hereby advised that, notwithstanding the creation, declaration and reservation of the Sidewalk Easements, sidewalks may not ever be constructed within the Sidewalk Easement areas unless the Association shall determine that sidewalks shall be constructed thereon. It is expressly provided that the construction and installation of driveways or driveway approaches within the Sidewalk Easement areas shall be permitted encroachments into such Sidewalk Easement areas. Notwithstanding each Owner shall maintain the grassy area between the sidewalk and the roadway which abuts their Lot, including mowing, irrigation, edging, and weeding the grass.

- 14.10 **Golf and Recreation Easement.** There was hereby created, declared, granted and reserved for the benefit of the original developer, the Owners and any lessee from time to time of the Golf Course Property and their respective employees, agents, invitees, members and guests a non-exclusive easements for ingress and egress, to, from, over and upon all portions of the Subject Property, including all Residential Property and Common Property, which are located nearby and adjacent to the Golf Course Property for the purpose of allowing golf balls to travel over and into and to come to rest upon and be retrieved from any and all portions of the Subject Property located nearby and adjacent to the Golf Course Property. Inasmuch as it is not uncommon and, indeed, quite usual in the course of the playing of the game of golf for golf balls which are struck during the course of play to be hit beyond and leave the boundaries of the golf course being played and in so doing for such golf balls to travel over and come to rest upon or within properties nearby and adjacent to the Golf Course Property, neither the Association nor any other Owner their respective employees, agents, invitees, members or guests shall have any liability or responsibility whatsoever for any property damage occasioned by or personal injury to any person, whether an owner, a member of such Owner's family or any employee, guest or invitee of such Owner, who or which is accidentally or negligently struck by a golf ball which shall travel beyond the boundaries of the golf course located on the Golf Course Property. Moreover, the travel, entry within and coming to rest of golf balls over, upon or within any property nearby or adjacent to the Golf Course Property shall not be deemed to be or constitute a nuisance or hazard to the health, safety or welfare of the owner of any property near or adjacent to the Golf Course Property and no injunctive relief or damages, therefore, shall be recoverable by any party or granted by any court; it being expressly agreed by any Owner of property nearby or adjacent to the Golf Course Property has been assumed by such Owner on behalf of himself, the members of his family and his acceptance of a deed or other conveyance to his lot. This in no way permits those exercising the rights of this easement to traverse Residential Property with any mechanized means of travel.
- 14.11 **Lake, Berm and Swale Easements.** There is hereby created, declared, granted and reserved for the benefit of the County, the Association and the Golf Course Owner a drainage easement over and upon all Berm, and Swale Easement areas shown on the Plat, together with an easement and license to enter upon such Lake, Berm and Swale Easement areas for the purposes of constructing, installing, inspecting, maintaining, repairing or replacing environmental berms and swales constituting a part of the Surface Water Management System for the Subject Property. Alteration and/or removal of the berm, swale and associated storm water retention/detention system constructed and installed within such berm and swale Easement areas shall be prohibited.
- 14.12 **Common Property Easement.** There is hereby created, declared, granted and reserved for the benefit of the Association and each Owner a non-exclusive easement upon and the right

and privilege of using any or all of the Common Property, including, without limitation, the Common Streets and Roads for ingress, and egress, and for the passive recreation, health, safety and welfare of the residents of and visitors to Kissimmee Bay. The easement and rights to use and enjoy the Common Property, however, shall be subject to regulations by the Association, including the right of the Association to suspend such use and enjoyment as more particularly provided in this Master Declaration.

- 14.13 **Association Easement.** There is hereby created, declared and granted to the Association, such easements over and upon all or any portion of the Subject Property, other than the Golf Course Property, as may be reasonably necessary to permit the Association to carry out and discharge its duties, obligations and responsibilities under and pursuant to this Master Declaration and the Articles of Incorporation, By-Laws and Rules and Regulations of the Association.
- 14.14 **Future Easements.** There is hereby reserved to the Association, the County or any other parties such other further and additional easements as may be reasonably necessary or desirable, in the sole opinion and within the sole discretion of the Association for the future orderly operation and maintenance of Kissimmee Bay in accordance with the objects and purposes set forth in this Master Declaration. It is expressly provided, however, that no such further or additional easements shall be granted or created over and upon Residential property pursuant to the provisions of this Section if any such easement shall unreasonably interfere with the presently contemplated or future use and enjoyment of a particular lot as a single family residential home site.
- 14.15 **Assignments.** The granting of easements reserved by the original developer are assigned in whole or in part to the Association, the County or any state government or agency thereof, or duly licensed or franchised public or quasi-public utility, or any other designee of the original developer. Specifically, the Association shall have the right to grant the easements described in this Article after the original developer no longer owns any portion of the Property. Notwithstanding this provision, any contract entered into by the original developer or respecting CATV shall be exclusive, to the maximum extent provided by law.
- 14.16 **Limitation on Easements.** The rights and easements of enjoyment created in this Article XIV shall be subject to the right of the Association to suspend the rights and easements of enjoyment of any Member or any tenant of any Member for any period during which any assessment remains unpaid, and for any period, not to exceed sixty (60) days, for any infraction of its published rules and regulations, it being understood that any suspension for either non-payment of any assessment or breach of any rules and regulations of the Association shall not constitute a waiver or discharge of the Member's obligation to pay the assessment.

ARTICLE XV

ARCHITECTURAL AND LANDSCAPE CONTROL

- 15.1 **Reservation of Architectural and Landscape Control.** In order to ensure that the development of Kissimmee Bay will proceed pursuant to a uniform plan of development and construction of the highest quality, and in accordance with consistently high architectural, ecological, environmental and aesthetic standards which are designed and calculated to bring about the achievement and creation of and to thereafter maintain, preserve and protect within Kissimmee Bay a unique, pleasant, attractive and harmonious physical environment, the Association shall have and hereby reserves unto itself, for the

duration hereinafter specified, the right, privilege, power and authority to review, approve and control the design, placement, construction, erection and installation of any and all buildings, structures and other Improvements of any kind, nature or description, including landscaping, upon all Residential property, the Golf Course Property, and all Common Property.

- 15.2 **Design Review Committee.** The architectural and landscape review and control functions is expressly reserved for the Association. The Design Review Committee composed of not less than three (3) nor more than seven (7) persons appointed from time to time as hereinafter provided in Section 15.3 of this Master Declaration. The members of the Design Review Committee must be owners or members of the Association. Three (3) members of the Design Review Committee shall constitute a quorum for the transaction of any and all business of and the rendition of any and all decisions by the Design Review Committee. The action of a majority of such members as are present at a meeting of the Design Review Committee shall determine the action taken by the Design Review Committee at such meeting.
- 15.3 **Appointment of Design Review Committee.** Notwithstanding anything to the contrary set forth in or which may otherwise be implied from this Master Declaration or the Articles of Incorporation, By-laws or Rules and Regulations of the Association, the Association hereby reserves unto itself and shall hereafter have and contain the right to appoint and replace from time to time all members of the Design Review Committee.
- 15.4 **Purpose and Function of Design Review Committee.** The purpose and function of the Design Review Committee shall be to (a) create, establish, develop, foster, maintain, preserve and protect within Kissimmee Bay a unique, pleasant, attractive and harmonious, physical environment grounded in and based upon a uniform plan of development and construction of the highest quality and with consistently high architectural, ecological, environmental and aesthetic standards, and (b) review, approve the design of any and all buildings, structures and other Improvements of any kind, nature or description, including landscaping, to be constructed upon all Residential Property, the Golf Course Property and all Common Property within Kissimmee Bay. Neither the Design Review Committee, or any of its members, shall have any liability or obligation to any person or party whomsoever or whatsoever to check every detail of any plans and specifications or other material submitted to and approved by it or to inspect any improvements constructed upon Residential Property, the Golf Course Property or Common Property to assure compliance with any plans and specifications approved by it or to assure compliance with the provisions of the Design Standards Manual prepared and adopted by the Design Review Committee from time to time.
- 15.5 **Standards for Review and Approval.** Any such review by and approval or disapproval of the Design Review Committee shall take into account the objects and purposes of this Master Declaration and the purposes and functions of the Design Review Committee. Such review by and approval of the Design Review Committee shall also take into account and include the type, kind, nature design, style, shape, size, height, width, length, scale, color, quality, quantity, texture and materials of the proposed building, structure or other Improvement under review, both in its entirety and as to its individual or component parts, in relation to its compatibility and harmony with other, contiguous, adjacent and nearby structures and other improvements and in relation to the topography and other physical characteristics of its proposed community in general. The Design Review Committee shall have the right to refuse to give its approval to the design, replacement, construction, erection or installation of any improvement on Residential Property, the Golf Course Property or Common property which it, in its sole and absolute discretion, deems to be unsuitable, unacceptable or inappropriate for Kissimmee Bay. An Owner may file an appeal to the Board of Directors of the Association within ten (10) days of the receipt of a denial letter from the Design Review Committee, and the Board of Directors shall make a

final determination based upon the existing Design Standards Manual, this Master Declaration, and the Association's governing documents.

- 15.6 **Design Standards and Design Standards Manual.** The Design Review Committee shall develop, adopt, promulgate, publish with the approval of the Association's Board of Directors and make available to all Owners and others who may be interested, either directly or through the Association, at a reasonable charge, and may from time to time change, modify and amend, a manual or manuals setting forth detailed architectural and landscape design standards, specifications and criteria to be used by the Design Review Committee as a guide or standard for determining compliance with this Master Declaration and the acceptability of those components of development, construction and improvement of any Residential Property, the Golf Course Property or Common Property requiring review and approval by the Design Review Committee. Any such Design Standards Manual must be approved by the Association's Board of Directors prior to its adoption and promulgation. Any such single Design Standards Manual or separate Architectural Design Standards Manual and separate Landscape Design Standards Manual may include a detailed interpretation or explanation of acceptable standards, specifications and criteria for a number of typical design elements, including, without limitation, site planning, architectural design, building materials, building construction, landscaping, irrigation, and such other design elements as the Design Review Committee shall, in its discretion, determine. Such a Design Standards Manual shall be used by the Design Review Committee and other affected persons only as a guide and shall not be binding upon the Design Review Committee in connection with the exercise of its review and approval functions and ultimate approval or refusal to approve plans and specifications submitted to it pursuant to this Master Declaration.
- 15.7 **Procedure for Design Review.** Upon the approval of the Association's Board of Directors, the Design Review Committee shall develop, adopt, promulgate, publish, and make available to all Owners and other who may be interested, either directly to through the Association, at a reasonable charge, and either included within or separate and apart from the Design Standards Manual, reasonable and practical rules and regulations governing the submission of plans and specifications to the Design Review Committee for its review and approval. Unless such rules and regulations are complied with in connection with the submission of plans and specifications requiring review and approval by the Design Review Committee, plans and specifications shall not be deemed to have been submitted to the Design Review Committee.

In the absence of other rules, regulations and procedures, two (2) copies of the following materials, as appropriate, all drawn to scale, shall be submitted to the Design Review Committee, to wit:

- (a) Preliminary and final architectural plans for all proposed buildings, structures and other Improvements proposed to be constructed or installed on a particular site.
- (b) Floor plans, cross sections, and elevations of all sides of any proposed buildings, structures or any other Improvements proposed to be constructed on the site.
- (c) Samples or representative samples of all materials proposed for use on exterior surfaces of all buildings, structures, and any other Improvements, including colors and textures.
- (d) An accurate artist's rendering of the proposed buildings, structures and improvements depicting the location of adjacent buildings, landscaping, screening, signs and other Improvements.
- (e) Appropriate specifications for all construction to be undertaken on the site.

- (f) A grading, paving & drainage plan, and a planting or landscaping plan, including the location of all screening walls and fences for analysis of adequacy of visual screening, erosion control, and landscape architectural design, including a plan showing natural grades and natural growth prior to the commencement of any site work or other construction.
- (g) A site plan showing the proposed location of all on-site utility lines, facilities, and easements, and all driveways, walkways, etc. and the “footprint” of all other Improvements to be located on the site.
- (h) Any other information reasonably required by the Design Review Committee in order to ensure compliance with the covenants, conditions, restrictions and other requirements contained in this Master Declaration or in the Design Standards Manual promulgated pursuant hereto.

15.8 **Time Limitation on Review.** The Design Review Committee shall either approve or disapprove any plans, specifications or other materials submitted to it within thirty (30) days after the same have been duly submitted in accordance with any rules and regulations regarding such submission as shall have been adopted by the Design Review Committee. The failure of the Design Review Committee to either approve or disapprove the same within such thirty (30) day period shall be deemed to be and constitute disapproval of such plans, specifications, and other materials.

15.9 **Duration of Approval.** Any approval of plans, specifications, and other materials, whether by the Design Review Committee, or the Board of Directors of the Association following an appeal, shall be effective for one (1) year from the effective date of such approval. If construction or installation of the building, structure or other improvement for which plans, specifications, and other materials have been approved, has not commenced within said one (1) year period, such approval shall expire, and no construction shall thereafter commence without a resubmission and approval of the plans, specifications and other materials previously approved. The prior approval shall not be binding upon the Design Review Committee on resubmission in any respect.

15.10 **Inspection of Constructions.** The Design Review Committee may appoint a Compliance Manager to, or in the alternative, any member of the Design Review Committee may, but shall not be obligated to, at any reasonable time enter upon, without being deemed guilty of trespass, any Residential Property or Common Property and any building structure or other Improvements located thereon, in order to inspect any building, structure or other Improvements constructed, erected or installed or then being constructed, erected or installed thereon in order ascertain and determine whether or not any such building, structure or other Improvements has been or is being constructed, erected, made, placed or installed in compliance with this Master Declaration and the plans, specifications and other materials approved by the Design Review Committee.

15.11 **Evidence of Compliance.** Upon a request therefore from, and at the expense of, any Owner upon whose lot the construction, erection, placement or installation of any building, structure or other Improvements has been completed or is in the process, the Design Review Committee shall cause an inspection of and the Improvements to be undertaken by its Compliance Manager, or any Member of the Design Review Committee, within thirty (30) days, and if such inspection reveals that the buildings, structures or other Improvements are not in compliance with plans, specifications and other materials approved by the Design Review Committee, the Design Review Committee direct the Association through its President, Secretary or another officer of the Association thereunto duly authorized, upon the payment by the requesting Owner of a reasonable fee

approximating the actual costs associated with such inspection and the preparation of such notice, to provide to such Owner a written statement of such noncompliance.

- 15.12 **Interior Alternations Exempt.** Nothing contained in this Article XV shall be construed so as to require the submission to or approval of the Design Review Committee of any plans, specifications or other materials for the reconstruction or alteration of the interior of any building, structure or other Improvement constructed on Residential Property, the Golf Course Property or Common Property after having been previously approved by the Design Review Committee, unless any proposed interior construction or alteration will have the effect of changing or altering the exterior appearance of such building, structure or other Improvements.
- 15.13 **Golf Course Property Not Exempt.** The provisions of this Article shall apply to the Golf Course Property, and the construction, erection, placement and installation of any buildings, structures and other Improvements on the Golf Course Property shall not be exempt from compliance with the provisions of this Article XV.
- 15.14 **Exculpation for Approval or Disapproval of Plans.** Any and all members of the Design Review Committee and any and all officers, directors, employees, agents and members of the Association and the Compliance Manager shall not, either jointly or severally, be liable or accountable in damages or otherwise to any Owner or other person or party whosoever or whatsoever by reason or on account of any decision, approval or disapproval of any plans, specifications or other materials required to be submitted for review and approval pursuant to the provisions of this Article XV, or for any mistake in judgment, negligence, misfeasance or nonfeasance related to or in connection with any such decision, approval or disapproval. Each person who shall submit plans, specifications or other material to the Design Review Committee for consent or approval pursuant to the provisions of this Article XV, by the submission thereof, and each Owner by acquiring title to any lot or any interest therein, shall be deemed to have agreed that he or it shall not be entitled to and shall not bring any action, proceeding or suit against the Design Review Committee, the Association nor any individual member, officer, director, employee or agent of any of them or the Compliance Manager for the purpose of recovering any such damages or other relief on account of any such decision, approval or disapproval. Additionally, plans, specifications and other materials submitted to and approved by the Design Review Committee or Board of Directors of the Association on appeal, shall be reviewed and approved only as to their compliance with the provisions of this Master Declaration and their acceptability of design, style, materials, approval specified in this Master Declaration and the Design Standards Manual, and shall not be reviewed or approved for their compliance with any applicable Governmental Regulations, including, without limitation, any applicable building or zoning laws, ordinances, rules or regulations. By the approval of any such plans, specifications or materials, neither the Design Review Committee, the Association, nor any individual member, officer, director, employee or agent of any of them, nor the Compliance Manager shall be deemed to have assumed or incurred any liability or responsibility whatsoever for any violation of Governmental Regulations or any defect in the design or construction of any building, structure or other Improvements, constructed, erected, placed or installed pursuant to or accordance with any such plans, specifications or other materials approved pursuant to this Article XV.

ARTICLE XVI

CATV

The original developer caused to be installed a central cable communication system for Kissimmee Bay. The Association may decide at a future date to develop its own central television system, a central alarm system, a central telephone system or other communication or electric system which could be used within all or parts of Kissimmee Bay, so long as such use complies with all local, state and federal guidelines, rules, regulations, ordinances, laws, and statutes. All Residential Units and other buildings located in Kissimmee Bay shall have the availability to connect on an individual basis with the local cable carrier. All components of the system shall be kept in operable condition at all time by the respective Owners. Each Owner hereby grants to the Association, its successors, and assigns, an easement of ingress and egress to enter upon the Owner's property for the purpose of installation, maintenance or repair of any equipment, wire or other component comprising part of the CATV or otherwise owned by the system operator.

ARTICLE XVII

AMENDMENT

- 17.1 **Amendment by Association.** Subject to the provisions of Section 17.4 of this Master Declaration, the terms and provisions of and the covenants, conditions, restrictions, easements and reservations set forth in this Master Declaration may be changed, amended, or modified at any time and from time to time by the Association upon the vote of not less than a majority of the total voting power of the members of the Association.
- 17.2 **Manifestation of Requisite Consent.** In the case of any change, amendment or modification of this Master Declaration by the Association which requires the affirmative written consent or vote of members of the Association as hereinabove provided in Section 17.1, the acquisition of the requisite written consent or instrument in a certificate duly executed and sworn to before a Notary Public by the President and Secretary of the Association affirmatively stating that such required affirmative written consent or vote has, in fact, been acquired or obtained prior to the recordation of such amending instrument among the Public Records of the County. Such certificate shall be and constitute conclusive evidence of the satisfaction of the provisions of Section 17.1 of this Master Declaration with respect to the change, amendment or modification of this Master Declaration affected by the amending instrument of which such certificate is made a part.
- 17.3 **Effectiveness of Amendments.** All changes, amendments or modifications of this Master Declaration shall be manifested in a written amending instrument duly executed by the Association, as may from time to time be required pursuant to the provisions of this Article XVII, and shall be duly recorded among the Public Records of the County. Such change, amendment or modification of this Master Declaration shall be effective as of the date of such recordation of such later date as may be specified in the amending instrument itself.
- 17.4 **Limitation on Amendments.** Notwithstanding anything to the contrary set forth in this Master Declaration, the rights of the Association to change, amend or modify the terms and provisions of and the covenants, conditions, restrictions, easements and reservations set forth in this Master Declaration restricted as follows, to wit:
- (a) To the extent that particular rights or interest are expressly conferred upon or granted to the County pursuant to this Master Declaration, the particular terms and provisions of this Master Declaration pursuant to which any such rights and interests are conferred upon and granted to the County shall not be changed, amended or modified without the prior written consent and Joinder Agreement of the County.

- (b) To the extent that any term or provisions of this Master Declaration may be included herein in satisfaction of the conditions to approval of the Land Use Plan as such conditions to approval may, from time to time, be changed, amended or modified by the County pursuant to appropriate law or by the action of the Board of County Commissioners, such terms or provisions of this Master Declaration shall not be changed, amended, or modified or otherwise deleted or eliminated from this Master Declaration without the prior written consent and joinder of the County.
- (c) This Master Declaration may not be changed, amended or modified in such manner as to terminate or eliminate any easements granted or reserved herein to the Golf Course Owner, the Association or the County, respectively, without the prior written approval of the Golf Course Owner, the Association or the County, as the case may be, and any attempt to do so shall be void and of no force and effect.
- (d) This Master Declaration may not be changed, amended or modified in any fashion which will result in or facilitate the dissolution of the Association or the abandonment or termination of the obligation of the Association to maintain the Common Property, including specifically the Common Streets and Roads or the Surface Water Management System, and or the obligation of the Association to establish, make, levy, enforce and collect Assessments for such purpose.
- (e) This Master Declaration may not be changed, amended or modified in any fashion which would affect the Surface Water Management System, or its maintenance by the Association, without the prior written consent and approval of the South Florida Water Management District.
- (f) This Master Declaration may not be amended in such a manner to affect adversely the rights of institutional lenders who have mortgages on some or all of the Subject Property without the consent of the institutional lender.

ARTICLE XVIII

DURATION

The terms and provisions of and covenants, conditions, restrictions and reservations set forth in this Master Declaration shall continue and be binding upon the Association and upon each Owner and all Owners from time to time of any portion of the Subject Property and their respective successors and assigns and all other persons, parties or legal entities having or claiming any right, title or interest in the Subject Property, by, through or under any of them, for a period of thirty (30) years from the date this Master Declaration is recorded among the Public Records of the County, after which time this Master Declaration and the covenants, conditions, restrictions and reservations set forth herein, as the same shall have been changed, amended or modified from time to time, shall be automatically extended for successive periods of thirty (30) years unless an instrument of termination executed by the affirmative written consent or the vote of not less than ninety-five percent (95%) of the total voting power of the members of the Association (certified as provided in Section 17.2 of this Master Declaration, with the consent and joinder of the County, shall be recorded among the Public Records of the County at least one (1) year prior to the end of the initial term or any subsequent extension term of this Master Declaration. Each of the easements herein declared to be created, granted or reserved shall continue to be binding upon the Association and upon each Owner and all Owners from time to time of any portion of the Subject

Property and their respective successors and assigns and all persons, parties and legal entities claiming by, through or under any of them in perpetuity, unless any such easement shall have been changed, amended, modified, released or terminated by the execution and recordation among the Public Records of the County of a written instrument or Court order, as the case may be, which, in either case, in otherwise legally sufficient in all respects to effect any such change, amendment modification, release or termination of any such easement.

ARTICLE XIX

ENFORCEMENT

19.1 **Parties Entitled to Enforce.** Subject to the provisions of Section 19.2 of this Master Declaration, the terms, provisions, covenants, conditions, restrictions, easements and reservations set forth in this Master Declaration, as changed, amended or modified from time to time, shall be enforceable by the Association and any Owner. Additionally, to the extent that particular rights or interests are expressly conferred upon or granted to the County pursuant to this Master Declaration, the particular terms, and provisions of this Master Declaration conferring or granting such rights or interests to the County shall also be enforceable by the County. Those so entitled to enforce the provisions of this Master Declaration shall have the rights to bring proceedings at law or in equity against the party or parties violating or attempting to violate any of said covenants, conditions, restrictions, easements or reservations or against the party or parties defaulting or attempting to default in his, its or their obligations hereunder in order to (a) enjoin any such violation or attempted violation or any such default or attempted default, (b) cause any such violation or attempted violation or default or attempted default to be cured, remedied or corrected, (c) recover damages resulting from or occasioned by or on account of any such violation or attempted violation including attorneys' fees, incurred in connection with the enforcement of this Master Declaration.

19.2 **Limitations on Enforcement Rights.** Notwithstanding the foregoing provisions of Section 19.1 of this Master Declaration, the right to enforce the provisions of this Master Declaration shall be subject to and limited by the following provisions, to wit:

- (a) The Association shall have the exclusive right to collect Assessments and enforce Assessment liens.
- (b) Only the Association shall have the right to enforce the provisions of Articles XV of this Master Declaration with respect to Architectural and Landscape Control. It is expressly provided, however, that if the Association fails, refuses or is unable to commence enforcement of such provisions within thirty (30) days following written demand to do so from any Owner, any Owner who makes such demand and who otherwise has standing to do so, shall have the right to enforce the provisions of said, Article XV; provided, however, that such right of enforcement shall not include the right to seek judicial review of discretionary decisions made either by the Association or the Design Review Committee where the discretion to make such decision is expressly conferred pursuant to this Master Declaration.
- (c) To the extent that specific rights, interest or reservations are conferred upon or granted or reserved to specific parties pursuant to this Master Declaration only those parties upon or to whom or which such rights, interests or reservations are conferred, granted or reserved shall have the right to enforce the provisions of this Master Declaration relating to such rights, interests or reservations.

- 19.3 **Attorneys' Fees.** In the event that legal or equitable proceedings are instituted or brought to enforce any of the provisions set forth in this Master Declaration, as changed, amended and modified from time to time, or to enjoin any violation or attempted violation or default or attempted default of the same, the prevailing party in such proceeding shall be entitled to recover from the losing party such reasonable attorneys' fees and court costs as may be awarded by the Court rendering judgment in such proceedings, including any appeals and/or bankruptcy proceedings. An Owner shall be liable for attorneys' fees for any action requiring the enforcement of this Master Declaration, the Association's Rules and Regulations, and/or the Association's governing documents, regardless of whether legal proceedings are brought.
- 19.4 **No Waiver.** Failure by the Association, any Owner or the County (only to the extent any right of enforcement is otherwise granted to or conferred upon the County pursuant to this Master Declaration) any term, pursuant to this Master Declaration), to enforce any term, provision, covenant, condition, restriction, easement or reservation herein contained in any particular instance or on any particular occasion shall not be deemed a waiver of the right to do so upon any subsequent violation or attempted violation or default or attempted default of the same or any other term, provision, covenant, condition, restriction, easement or reservation contained herein.
- 19.5 **Nuisance.** The result of every act or omission, where any term or provision of, or covenant, condition, restriction, easement, or reservation set forth in, this Master Declaration is violated, breached or in default in whole or in part, is hereby declared to be and constitute a nuisance, and every remedy allowed by law or equity against every such result, and may be exercised by the Association or any Owner.
- 19.6 **Cumulative Rights and Remedies.** In connection with the enforcement of this Master Declaration, all rights, remedies of the Association, the Owners and the County, to the extent provided herein, shall be cumulative, and no single right or remedy shall be exclusive of any other, and the Association, the Owners, and the County, to the extent, specifically provided in this Master Declaration, shall have the right to pursue any one or all of such rights or remedies or any other remedy or relief which may be provided by law, whether or not expressly stated in this Master Declaration or otherwise.
- 19.7 **Effect of Invalidation.** If in the course of an attempt to enforce this Master Declaration, any particular provision of this Master Declaration is held to be invalid by any court, the invalidity of such provisions shall not affect the validity of the remaining provisions hereof.
- 19.8 **Exculpation.** The Association, the Design Review Committee, and the individual members, officers, directors, employees or agents of any of them, shall not, jointly or severally, be liable or accountable in damages or otherwise to any Owner or other party affected by this Master Declaration, or to anyone submitting plans or other materials of any required consent or approval hereunder, by reason or on account of any decision, approval or disapproval required to be made, given or obtained pursuant to the provisions of this Master Declaration, or for any mistake in judgment, negligence or nonfeasance related to or in connection with any such decision, approval or disapproval. Each person who shall submit plans or other material for consent or approval pursuant to this Master Declaration, by the submission thereof, and each Owner of any lot, by acquiring title thereto or an interest therein, shall not bring any action, proceeding or suit against the Association, the Design Review Committee, or any individual member or members or officer or officers, director or directors, employee or employees or agent or agents of any of them for the purpose of recovering any such damages or other relief on account of any such decision, approval or disapproval.

ARTICLE XX

MISCELLANEOUS PROVISIONS

- 20.1 **Constructive Notice and Acceptance.** Every person, corporation, partnership, limited partnership, trust, association or other legal entity, who or which shall hereafter have, claim, own or acquire any right, title, interest or estate in or to any portion of the Subject Property, whether or not such interest is reflected upon the Public Records of Osceola County, Florida, shall be conclusively deemed to have consented and agreed to each and every term, provisions, covenant, condition, restriction, easement and reservation contained or by reference incorporated in this Master Declaration (including those matters set forth in the Design Standards Manual), whether or not any reference to this Master Declaration is contained in the document or instrument pursuant to which such person, corporation, partnership, limited partnership, trust, association or other legal entity shall have acquired such right, title, interest or estate in the Subject Property or any portion thereof.
- 20.2 **Personal Covenants.** To the extent that the acceptance or conveyance of lot creates a personal covenant between the Owner of such lot and the Association or any other Owner or Owners, such personal covenant shall terminate and be of no further force of effect from or after the date when a person or entity ceases to be an Owner, except to the extent that this Master Declaration may provide otherwise with respect to the personal obligation of such Owner for the payment of Assessments for which provision is expressly made in this Master Declaration.
- 20.3 **Governing Law.** This Master Declaration and the interpretation and enforcement of the same shall be governed by and construed in accordance with the laws of the State of Florida.
- 20.4 **Construction.** The provisions of this Master Declaration shall be liberally construed so as to effectuate and carry out the objects and purposes specified in Article II of this Master Declaration.
- 20.5 **Articles and Section Headings.** Articles and Section headings contained in this Master Declaration are for convenience and reference only and in no way define, describe, extend or limit the intent, scope or content of the particular Articles or Sections in which they are contained or to which they refer and, accordingly, the same shall not be considered or referred to in resolving question of interpretation or construction.
- 20.6 **Singular Includes Plural, Etc.** Whenever the context of this Master Declaration requires the same, the singular shall include the plural and the plural the singular and the masculine shall include the feminine and the neuter.
- 20.7 **Time of Essence.** Time is of the essence of this Master Declaration and in the performance of all covenants, conditions and restrictions set forth herein. Whenever a date or the expiration of any time period specified herein shall fall on a Saturday, Sunday or legal holiday, the date shall be extended to the next succeeding business day which is not a Saturday, Sunday or legal holiday.
- 20.8 **Notice.** Any notice required or permitted to be given pursuant to the provisions of this Master Declaration shall be in writing and may be delivered as follows:
- (a) Notice to an Owner shall be deemed to have been properly delivered when delivered to the owner's lot or property, whether said Owner personally receives said notice or not, or placed in the first class United States mail, postage prepaid, to the most recent address furnished by such Owner in writing to the Association for the purpose of giving notice, or if no such address shall have been furnished, then to the street address of such Owner's lot or property. Any notice so deposited in the mail within

the County shall be deemed delivered forty-eight (48) hours after such deposit. In the case of co-owners, any such notice may be delivered or sent to any one of the co-owners on behalf of all co-owners and shall be deemed to be and constituted delivery on all such co-owners. Notice may also be deemed to have been properly delivered if sent via electronic email to an Owner, who consented to receive notices via electronic mail to a specified email address in writing.

- (b) Notice to the Association shall be deemed to have been properly delivered when placed in the first class United States mail, postage prepaid to the address furnished by the Association or to the address of its principal place of business, or if sent via electronic email to an Owner who consented to receiving notices via electronic mail to a specified email address in writing.
- (c) The affidavit of an officer or authorized agent of the Association declaring under penalty of perjury that notice has been mailed to any Owner or Owners to the address or addresses shown on the records of the Association shall be deemed conclusive proof such mailing, whether or not such notices are actually received.

20.9 **No Warranties.** This Master Declaration is made for the objects and purposes set forth in Article II of this Master Declaration and the Association makes no warranties or representations, express or implied as to the binding effect or enforceability of all or any portion of the terms and provisions of or the covenants, conditions, restrictions, easements and reservations set forth in this Master Declaration, or as to the compliance of any of the same with public laws ordinances and regulations applicable thereto.

ARTICLE XXI

GOLF COURSE PROPERTY

- 21.1 **No Impairment.** Notwithstanding anything contained herein to the contrary, neither action taken by the Association or any successor thereto shall (i) materially or unreasonably cause or require the alteration or the manner in which the Golf Course Property is operated, or (ii) impose additional financial obligations on the Golf Course Owner or restrict or alter the nature or use of the Common Property which may have the effect of impairing the rights of the Golf Course Owner with respect thereto.
- 21.2 **Standards.** As a standard for operation and management of the golf course, the golf course clubhouse and all amenities relating to the golf course operation (“Golf Course Improvements”), it is expressly understood and agreed that the Golf Course Improvements shall be operated, managed and maintained in the manner comparable with the operations, management and maintenance of the Golf Course Improvements at the Walt Disney World Resort, (Magnolia, Lake Buena Vista and Palm Golf), the Champions Gate and Falcon’s Fire.
- 21.3 **Maintenance of Lakes.** The Golf Course Owner, its lessees and assignees, shall be responsible for the maintenance and upkeep of the lakes and ponds or portions within the Golf Course Property. Maintenance will include, but not be limited to keeping the lakes and ponds free of debris, controlling weed growth and erosion and maintaining grass areas in a manner comparable to the waterways at the Walt Disney Resort Golf Courses. Cost for maintenance of the lakes and ponds required or associated with the mitigation requirement shall be divided between the Golf Course Owner, its lessees and assignees and the Association pro-rata with the Golf Course Owner, bearing that portion of the cost as the total area of the Golf Course Property bears to the total area of the Subject Property. Other

costs for maintenance of the lakes, ponds and waterways and the remaining Golf Course Property shall be paid by the Golf Course Owner, its lessees and assigns.

- 21.4 **Management Obligations.** The Golf Course Owner, its lessees, and assignees, shall manage the Golf Course Property and Golf Course Improvements in strict accordance with all governmental requirements, the Master Declaration and all covenants, conditions, restrictions, easements or reservation now or hereafter imposes upon the property. In addition, membership will always be made available to Owners at a cost not to exceed that available to members of the general public.
- 21.5 **Application of Ground Lease.** The Golf Course Lease, being subject only to matters set forth in Exhibit "B" thereof, is specifically subject to the terms and provisions of this Master Declaration. The parties hereto acknowledge that it is agreed, except as otherwise provided herein, that in the case of inconsistency or a conflict between the Golf Course Lease and the Master Declaration, the terms and provisions of the Golf Course Lease shall, in each and every case, prevail.

To this end, the following are intended to serve as interpretive guidelines in construing the terms and provisions of the Golf Course Lease when read in conjunction with the Master Declaration but shall in no event be construed as amending the Ground Lease or otherwise modifying other provisions of this Master Declaration. The following provisions of this paragraph and Article XXII through XXIV shall survive the terms of the Golf Course Lease and at all times apply to the then applicable Golf Course Owner.

All proper terms in this paragraph and Articles XXII through XXIV shall carry the definitions given to those terms in the Golf Course Lease.

21.5.1 **Casualty Insurance.** The Golf Course Owner shall keep and maintain (or cause to be kept and maintained) in force policies of:

- (a) insurance on the Golf Course Improvements and any replacements or substitutions therefore with deductibles in an amount which Lessee may reasonably desire (not exceeding five percent (5%) of the face amount of such insurance policy unless the Association approves a larger deductible), from and after commencement of construction of the Golf Course Improvements, against Insurable Risks, and in builder's risk completed value form during construction, in amounts sufficient to provide coverage for the full insurance value of the Golf Course Improvements, or the policy for which Insurance shall have a replacement cost endorsement or similar provisions. The term "full insurable value" shall mean actual replacement value and the "full Insurable value" shall be determined from time to time (but not more frequently than once in any twelve (12) calendar months) at the request of Lessor, by one of the insurers or, at the option and the expense of the Association, by an appraiser, engineer, architect or contractor approved in writing by Association (which approval shall not be unreasonably withheld); provided, however, Association shall not have the right to require such a determination if within twelve (12) calendar months preceding Association's request therefor such a determination has been made for or on behalf of and accepted by, the Leasehold Mortgage holding the Leasehold Mortgage of first priority. No omission on the part of Association to request any such determination shall relieve the Golf Course Owner of any of its obligations under this Article. "Insurable Risks" shall mean those risks covered by the Florida Standard Form, Fire and Extended Coverage Policy (including fire and direct loss by windstorm, hurricane, hail, explosion, riot, civil commotion, smoke, aircraft and land vehicles); sonic shock wave; and leakage from fire protective equipment;

- (b) a policy of rent loss insurance (either as a separate policy for Lessor or in conjunction with Golf Course Owner's casualty insurance) in an amount not less than the Ground Rent and Impositions payable by the Golf Course Owner for a period of twelve (12) months; and
- (c) such other insurance on the Golf Course Improvements or any replacement or substitutions therefore and in such amount as may from time to time be reasonably required by Lessor against other insurable hazards which at the time are commonly insured against in the case of premises similarly situated, due regard being given to the location, use, and occupancy.

Such insurance shall be secured and maintained in a company or companies reasonably satisfactory to the Association. The Golf Course Owner agrees to furnish the Association with duplicate originals or copies of all such policies (or certificates evidencing such insurance), and to furnish and maintain such parties, at all times, a certificate or certificates of the insurance carrier or carriers certifying that such insurance will not be cancelled without at least thirty (30) days prior written notice to each of such parties.

21.5.2 **Indemnity.** The Golf Course Owner shall indemnify and hold harmless the Association and its directors, officers, employees, agents and contractors, and their respective successors, heirs, executors and administrators, (herein called "Indemnified Parties"), from all claims, suits, actions and proceedings (herein called "Claims"), whatsoever which may be brought or instituted on account of or growing out of any and all injuries or damages, including death, to persons or property relating to the use or occupancy of the Golf Course Property (including, without limitation, the construction, maintenance, operation and management of the Golf Course Improvements), and all losses, costs, penalties, damages and expenses, including, but not limited to, attorneys, fees and other costs of defending against, investigating and settling any claims: provided, however, that the indemnity agreement contained herein shall not include indemnity with respect to injuries or damages solely caused by the negligence of the Association, its agents or employees. Golf Course Owner shall assume on behalf of the Indemnified Parties and conduct with reasonable diligence and in good faith the defenses of all Claims against the Indemnified Parties, whether or not Lessee is joined therein; provided, however, without relieving the Golf Course Owner of its obligation hereunder, the Indemnified Parties or any of them, at their election, may defend or participate in the defense of any or all of the claims with attorneys and representatives of their own selection. Maintenance of the insurance referred to shall not affect the Golf Course Owner's liability under this section; provided, however, that the Golf Course Owner shall be relieved of its aforesaid obligation of indemnity to the extent and only to the extent of the amount actually recovered from one or more of the insurance carriers of the Golf Course Owner and either (a) paid to the Indemnified Parties or (b) paid for the Indemnified Parties, benefit in reduction of any liability, penalty, damage, expense or charge imposed upon the Indemnified Parties in connection with the Claims. The Association covenants and agrees that the Golf Course Owner shall have the right to consent the validity of any and all such claims of and kind and character and by whomsoever claimed, in the name of the Golf Course Owner or the Association, as the Golf Course Owner may deem appropriate, provided that the expenses thereof shall be paid by the Golf Course Owner, or Golf Course Owner shall cause the same to be paid by its insurer.

21.5.3 **Liability Insurance.** Golf Course Owner agrees to secure and maintain in force, at Golf Course Owner's own cost and expenses, comprehensive general liability insurance issued by a company or companies reasonably satisfactory to the Association with limits of not less than \$5,000,000.00 with respect to bodily injury

or death to any number of persons in any one accident or occurrence, nor less than \$1,000,000.00 with respect to property damages in any one accident or occurrence. Each of the above policies shall name the Association and Golf Course Owner as co-insureds; and Golf Course owner agrees to furnish and thereafter maintain with the Association certificates of insurance to the effect that the above policies of insurance are in force, and that same will not be cancelled without thirty (30) days prior written notice to the Association.

21.5.4 **Subrogation.** The Association and the Golf Course Owner (on behalf of themselves and anyone claiming through or under them by way of subrogation or otherwise) each hereby releases the other from any and all liabilities, rights of recovery, claims, actions or causes of action, against the other, its agents, officers, or employees, for any injury, death, loss or manage hat may occur to persons or the Golf Course Improvements, or any part thereof, or any personal property of such party therein, by reason of fire, the elements, or any other cause which is insured against under the terms of the policies of casualty insurance Golf Course Owner is required to maintain hereunder, regardless of cause or origin, including negligence of the other party hereto, its agents, officers or employees. All casualty insurance to be maintained by Golf Course Owner hereunder, expressly including the casualty insurance described in this article, shall contain, at Golf Course Owner's sole cost and expense, provisions whereby the insurer releases all right of subrogation against the Association.

21.5.5 **Blanket Policies.** The insurance required to be maintained herein by Lessee may not be effected under blanket insurance policies relating to the Golf Course Property and other properties without the prior written approval of the Association.

21.5.6 **Failure to Insure.** In the event of the failure of Golf Course Owner to maintain insurance required by the Lease or by this Master Declaration, the Association may (but shall not be obligated to) procure such insurance as may be necessary to comply with the above requirements, and Golf Course Owner agrees to repay the cost of same, with interest thereon at the eighteen percent (18%) per annum until paid, to the Association on demand.

ARTICLE XXII

DESTRUCTION OF IMPROVEMENTS

Golf Course Owner's Obligation to restore. In the event the Golf Course Improvements are wholly or partially destroyed or damaged by fire, wind, rain or any other casualty whatsoever at any time, the Golf Course Owner shall, within a reasonable time but in no event exceeding sixty (60) days after the cost of the repairs, restoration and reconstruction is known to the Golf Course Owner, repair, replace, restore and reconstruct the same in substantially the form in which the same existed prior to any such casualty and using workmanship and quality as good as the Golf Course Improvements being repaired or replaced, and shall diligently prosecute the completion thereof, but with such alterations or medications as to the restored Golf Course Improvements as may be consistent with the further terms and provisions hereof.

ARTICLE XXIII

USE, REPAIRS, AND ALTERATIONS

- 23.1 **Use of and Repairs to Golf Course Property.** The Golf Course owner shall keep all the Golf Course Improvements, and all appurtenances thereunto belonging, in good and safe condition and repair, and Golf Course Owner shall conform to and comply with all Governmental Requirements, and shall indemnify and hold the Association harmless from any and all penalties damages, expenses and charges imposed or incurred by the Association for any violation of such Governmental Requirements. It is understood, however, that Golf Course Owner shall be relieved of its aforesaid obligation of indemnity to the extent and only to the extent of the amount actually recovered from one or more of the insurance carriers of Golf Course Owner, and (a) paid to the Association or (b) paid for the Association's benefit in reduction of any such penalties, damages, expenses or charges imposed upon the Association.
- 23.2 **Alterations.** The Golf Course Owner shall have the right, from time to time, to make additions, alterations and/or change (hereinafter sometimes collectively called "alterations") in or to the Golf Course Improvements (which term shall, when used in this Section, include any replacement or substitution therefore), subject however, to the following;
- (a) No exterior alterations shall be commenced except after receipt of the Design Review Committee's written approval of such alterations;
 - (b) No alteration shall be undertaken until Golf Course Owner shall have procured and paid for, so far as the same may be required from time to time, all permits, licenses and authorizations of all municipal departments and governmental subdivisions having jurisdiction. The Association shall join, but without expense to the Association, in the application for such permits, licenses or authorization whenever such action is necessary and is requested by Golf Course Owner;
 - (c) No alterations shall be made which would be in violation of the terms and provisions of the Master Declaration affecting the Golf Course Property or any Governmental Requirement;
 - (d) Any alterations shall be made within a reasonable time (subject to Unavoidable Delays) and in a good and workmanlike manner and in compliance with all Governmental Requirements;
 - (e) if any liens for labor and material supplied or claimed to have been supplied to the Lease Premises shall be filed, Golf Course Owner shall give the Association immediate written notice thereof (if notice thereof has not been previously delivered by the lienor) and shall pay or bond such liens to the Association's reasonable satisfaction or otherwise obtain the release or discharge thereof at least sixty (60) days prior to the time that the Association's interest in the Land and/or Improvements may become subject to forced sale with respect to such liens;
 - (f) Golf Course owner shall maintain (or cause to be maintained) Workmen's Compensation insurance covering all persons employed in connection with the work and with respect to whom death or bodily injury claims could be asserted against the Association, Golf Course Owner or the Golf Course Property; and
 - (g) Golf Course Owner will upon demand by the Association give reasonable satisfaction proof or assurances to the Association that the funds required to pay for such alterations are or will be available to Golf Course Owner for such purpose.

ARTICLE XXIV

EASEMENTS AND ADDITIONAL USE OF THE GOLF COURSE PROPERTY

The Golf Course Owner, at the Association's request agrees to permit the Golf Course Property to be used as spray fields for disposal of treated waste and effluent and for such other similar uses pertaining to the reclamation, recycling and treatment of waste and wastewater and for drainage of other area, provided such use does not substantially impair the use of the Golf Course Property as a golf course. Golf Course Owner, at the Association's request, will execute and join in such easement, dedications, and other agreements to permit such use of the Lease Premises. Any additional cost to implement such use shall not be borne by Golf Course Owner.

The Golf Course Owner further agrees, with the approval of the Association whose approval shall not be unreasonably withheld, to make minor adjustments to the legal description of the Golf Course Property should such adjustments be necessary or desirable to allow improvements constructed on those lots and Multi-family areas as shown on the Preliminary Plat of Kissimmee Bay dated July 21, 1989, as prepared by Arrington-Hobbs and Associates, Inc., to comply with governmental requirements, provided such adjustments do not substantially affect design of the Golf Course Improvements.