

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

This Master Declaration is made and executed this 20<sup>th</sup> day of February 1990, by KISSIMMEE BAY INVESTORS, a Florida general partnership, whose address is 22 West Monument Avenue, Kissimmee, Florida 34741 (hereinafter referred to as the "Developer").

WITNESSETH:

WHEREAS, Developer is the record owner of fee simple title to certain real property situate in Osceola County, Florida which is legally and more particularly described as follows, to wit:

All lands comprising than certain subdivision identified as:

KISSIMMEE BAY, as recorded in Plat Book 6, Pages 76-82, of the Public Records of Osceola County, Florida.

hereinafter referred to as the "Subject Property"; and

WHEREAS, Developer intends that the Subject Property be subdivided, developed, improved, occupied, used and enjoyed as an exclusive, unique and attractive single family and multi-family residential golf community; and

WEREAS, the Developer desires to insure that the Subject Property is subdivided, developed, improved, occupied, used and enjoyed pursuant to a uniform plan of development with established architectural, ecological, environmental and aesthetic standards so as to create 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, the Developer desires that the lands within and comprising Kissimmee Bay shall be subject to these uniform covenants, conditions, restriction, easements and reservations; and

WHEREAS, to provide a means for meeting the purpose and intent herein set forth, the Developer deems it advisable to create a non-profit corporation to which may be conveyed legal title to Common Property and delegated and assigned powers of

maintaining such Property and administering and enforcing covenants and restrictions and collecting and disbursing the assessments and charges hereinafter set forth;

NOW, THEREFORE, for and in consideration of the premises hereof, Developer does here by declare that the Subject Property shall be and is hereby encumbered by and made subject to those covenants, conditions, restrictions, easements and reservations hereinafter set forth.

## 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 Association, Inc., a corporation not-for-profit or its successors and assigns.

1.3 “CATV” shall mean any closed circuit audio and video signal delivery system or services provided by such system which may be developed or authorized within Kissimmee Bay, and which system includes a community channel.

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 Developer pursuant to and as more particularly provided in Section 9.1 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, drives, courts, ways and cul-de-sacs within Kissimmee Bay as the same are described in and depicted 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 Developer to the Association as Common Property pursuant to the provisions of Section 9.1 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 Board” 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 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 Mater 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 Board, as 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 “Developer” shall mean Kissimmee Bay Investors, a Florida general partnership, and its successors and assigns by merger, consolidation or by purchase of all or substantially all of its assets or of the partnership interests Kissimmee Bay Investors.

1.12 “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.

1.13 “Golf Course Lease” shall mean that certain Ground Lease between Kissimmee Golf Group, Inc. and the Developer dated July 29, 1989, and any amendments thereto.

1.14 “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 which, at the time of the execution and recordation of this Master Declaration is the subject of the Golf Course Lease, except until such

time as the Golf Course Lease is terminated, the term shall mean the Lessee pursuant to the Golf Course Lease.

1.15 “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.

1.16 “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 thereto.

1.17 “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.

1.18 “Institutional Lender” shall mean, a) 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 and b) the Developer, to the extent that the Developer shall hold a mortgage upon any portion of the Subject Property, and all successors, assigns, assignees and transferees of the Developer who shall own or hold any mortgage upon the Subject Property or any portion thereof which was originally executed and delivered to and owned and held by the Developer.

1.19 “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, a) effluent reuse, b) well water, or c) standard water and sewer usage, for purposes of irrigating any part of or all of the Subject Property.

1.20 “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, Common Property and Golf Course Property as those terms and such properties are defined and described in the Master Declaration and on the Development Plan.

1.21 “Master Declaration” shall mean this Master Declaration of Covenants, Conditions, Restrictions, Easements and Reservations of Kissimmee Bay and all

amendments thereto and modifications thereof as are from time to time recorded among the Public Records of the County.

1.22 “Multi-Family Area” shall mean all areas within the Subject Property designated as multi-family on the comprehensive plan approved by the County for the development of Kissimmee Bay, as the same may be amended from time to time.

1.22(a) “Neighborhood” shall mean each separately developed and denominated residential area comprised of one or more housing types subject to this Declaration, whether or not governed by an additional owners association, in which owners may have common interests other than those common to all Association members, such as a common theme, entry feature, development name, and/or common areas and facilities which are not available for use by all Association Members. For each condominium, townhome development, cluster home development shall constitute a Neighborhood, subject to division into more than one Neighborhood upon development. {Amend. 1}

1.22(b) “Neighborhood Association” shall mean a condominium cooperative or homeowners’ association formed to operate and maintain a number of Residential Units and property common to such Residential Units. {Amend. 1}

1.22(c) “Neighborhood Committee” shall mean the committee in a particular Neighborhood which is authorized by the Association to act with respect to matters in a particular Neighborhood which does not have a Neighborhood Association. {Amend. 1}

1.22(d) “Neighborhood Representative” shall mean the senior elected officer (e.g. Neighborhood Committee chairman or Neighborhood Association president) from each Neighborhood who shall be the person responsible of casting all votes attributable to the Residential Units in the Neighborhood. The next senior officer of each Neighborhood committee/Association shall be the alternate Neighborhood Representative. {Amend. 1}

1.23. “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 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.

1.24. “Residential Property” shall mean all of the Subject Property other than Common Property, Commercial Property (as described in Section 5.6) and the Golf Course Property.

1.25. “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.

1.26. “Subject Property” shall mean all lands included within and comprising of approximately 272 acres, as hereinabove described on Page 1 of this Master Declaration.

1.27. “Supplemental Declaration” shall mean any declaration of covenants and restrictions executed by the Developer and by the Owner of the effected lands if the same were not owned by the Developer, which extends the provisions of this Master Declaration to additional property.

1.28. “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 therefore on file with and proved by the County and South Florida Water Management District which are conveyed by the Developer to the Association as Common Property pursuant to the provisions of Section 9.1 of this Master Declaration or otherwise dedicated to the Association as Common Property pursuant to the Plat.

## ARTICLE II

### OBJECTS & PURPOSES

2.1 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. To establish Kissimmee Bay as the premier mixed use residential golf community in Osceola County, Florida;

2.2 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;

2.3 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;

- 2.4 To ensure the proper and appropriate subdivision, development improvement, occupation, use and enjoyment of Kissimmee Bay;
- 2.5 To encourage the development, construction, maintenance and preservation of architecturally and aesthetically attractive and harmonious Improvements appropriately designed for and properly located within Kissimmee Bay;
- 2.6 To guard against the development and construction of improper, undesirable, unattractive or inappropriate Improvements and the use of improper, undesirable, unsuitable or unsightly materials;
- 2.7 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 assure the availability of the funds required therefore;
- 2.8 To provide the Developer with effective control over the development, management, administration, care, maintenance, use, appearance, marketing and sale of and the construction of Improvements upon the Subject Property for so long as the Developer shall own substantial portions of the Subject Property;
- 2.9 To establish a method or procedure and the authority to negotiate, contract for or otherwise develop common services within Kissimmee Bay.

### ARTICLE III

#### EFFECT OF DECLARATION

- 3.1 Covenanting 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, easement 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, including the Developer, the Association, the Golf Course Owner, and all other persons having or claiming any right, title or interest in such Subject Property.

#### ARTICLE IV

##### PROPERTY SUBJECT TO 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 Developer hereby reserves to itself and shall hereafter have the , but not the obligation, at any time and from time to time, in its sole and absolute discretion, and without notice to or the approval of any party or person whomsoever or whatsoever, to impose this Master Declaration or a substantially similar declaration upon additional property adjacent or contiguous to the Subject Property which is now or may hereafter be owned by the Developer, by the filing of an appropriate instrument to the effect among the Public Records of the County.

4.3 Withdrawal of Property. The Developer hereby reserves unto itself and shall hereafter have the right, at any time and from time to time, in its sole and absolute discretion, and without notice to or the approval of any other person or party whomsoever or whatsoever, to withdraw any property, including portions of the Subject Property, from the purview, operation and effect of this Master declaration, including any property previously subjected to and encumbered by this Master Declaration, which shall be owned by the Developer at the time of such withdrawal, by the filing of an appropriate instrument to that effect among the Public Records of the County.

#### ARTICLE V

##### USE CLASSIFICATIONS

5.1 Classifications of the 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 or Commercial Property.

5.2 Residential Property. Residential Property shall mean all of the Subject Property other than the Golf Course Property, the Common Property, and the Commercial Property as reflected on the Development Plan or on the plat for Kissimmee Bay.

5.3 Multi-Family Area. All Residential Property within the Subject Property designated as townhouse, multi-family, patio or villa areas on the plat for Kissimmee.

5.4 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.

5.5 Common Property. Common Property shall include all tract 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 and 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).

5.6 Commercial Property. Commercial Property shall include all tracts of land shown on the Development Plan for use as other than Residential Property, Common Property or Golf Course Property.

## ARTICLE VI

### PERMITTED USES

6.1 Generally. To the extent that a particular use shall otherwise be in compliance with Governmental Regulations and this Declaration, the following

uses shall be permitted on the respective classifications of the Subject Property specified in Article V of 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 recreation and entertainment of club members and guest, 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 reasonably 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. Developer 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 and Multi-Family Areas may be used by the Developer and those authorized by the Developer or the Association as spray fields for disposal of treated waste and effluent and 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 restrictions.

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 of the 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 Unit only if:

1) There is a written rental or lease agreement specifying that (i) the tenant shall be subject to all provisions of this Declaration, and (ii) a failure to comply with any provision of this Declaration shall constitute default under the rental or lease agreement;

2) The period of the rental or lease is not less than seven (7) months; and

3) The Owner gives notice of the tenancy to the Association and is otherwise in compliance with the terms of this Declaration. {Amend. 2}

7.3 Commercial Activity. No business, commercial, industrial, trade, professional or other non-residential activity or use of any nature, type, kind or description shall be conducted upon or from Residential Property or within any Improvements located or constructed thereon, except in areas designated as Commercial Property on the Development Plan. 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 Improvements, 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.

7.5 Animal 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 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 purposes or in number deemed unreasonable by the Developer or the Association, in the exercise of their reasonable discretion. No customary household pet shall be permitted to roam on the Subject Property.

7.6 Commercial and Recreational Vehicles.

a) No truck, bus, trailer or other “commercial vehicle” (as hereinafter defined) and no mobile home, motor home, house trailer, camper, van, boat, boat trailer, horse trailer or other recreational vehicle, including motorcycles (with engine size greater than 75 cubic centimeters), 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 location which are specifically designated for such use; nor shall the foregoing specifically designated for such use; nor shall the foregoing provisions of the subparagraph 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 the subparagraph, 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, 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 materials from and to the 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 of their families, guests and invitees for loading and unloading purposes only.

d) In the context of this Section, the term “commercial vehicle” shall mean and be defined as a truck, motor home, bus or van of greater than three-quarter (3/4) ton capacity and any vehicle, including a passenger automobile, with a sign displayed on any part thereof

advertising any kind of business or on or within which any commercial materials and/or tools are visible.

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 guests and 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 of 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 these 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 removal nor the failure of the owner of the towed or removed vehicle to receive any notice of the violation of the provisions of the Section 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.

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.

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) day 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 the Master Declaration. Enforcement of the provisions of this Section shall be in accordance with the provisions of Section 7.20 of the Master Declaration and such other provisions of this Master Declaration as shall be applicable to its enforcement generally.

7.10 Garbage and Garbage Container(s). All garbage and trash containers and their storage areas and the like shall be kept below ground level or placed inside of 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. 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 any of the Common Streets and Roads except when placed out on the day of trash removal. 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 material 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 on 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 or the, 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 form any adjacent or neighboring property, whether Residential Property, Golf Course Property or Common Property, including the Common Streets and Roads.

7.13 Laundry & Clothes Drying. No laundry or clothes drying lines or areas shall be permitted outside of any building on the Subject Property.

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, billboard or advertising of any kind shall be displayed to the public view on Residential Property without the written consent of the Design Review Board. Notwithstanding this provision, the Developer and the Golf Course Owner may agree independently of the Design Review Board the type of signage, billboard and other advertising material relating to the Golf Course signage, and any such agreement shall be binding upon the parties.

The Design Review Board shall have the right to establish guidelines so as to require a uniform standard (or standards) for signs to be displayed on Residential Property. In the event a sign is placed upon the Residential Property without the approval of the Design Review Board, the Design Review Board may, after giving notice of the violation of this Section to the Owner of the Residential Property in question, together with twenty four (24) hours to cure the same, enter onto the Residential property and remove the unapproved sign without being guilty of any trespass. Any costs or expenses incurred by the Design Review board in removing the sign shall be assessed by the Association to the affected Lot and the Owner thereof and shall be treated as an Individual Owner Assessment (as provided for in Section 10.10 of the Declaration) with all of the rights and remedies of the Association for nonpayment of the assessment being applicable thereto. {Amend. 2}

7.16 Trees. No trees shall be removed from any lot without the prior written consent of the Design Review Board.

7.17 Drainage. All storm water from any lot shall drain into or onto contiguous or adjacent street rights-of-way, drainage easements, retention area, 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 latter's Permit No. 890504-3 as modified and any replacement or 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 allowed to drain or flow unnaturally onto, over, under, across or upon any contiguous or adjacent parcel of the Subject Property or the Golf Course Property unless a drainage easement shall exist therefore. No Owner shall be permitted to alter the grade of or original drainage plan for any lot of 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, subject to the prior written consent and approval of the Developer, 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 regulation 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 their successors and assigns, as well as all guests or invitees of and 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 and the failure of the Owner of the affected lot or unit, within 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 and an easement and license to enter upon the affected lot or unit or any portion or portions thereof or Improvements thereon, without being guilty of any trespass therefore, for the purpose of undertaking such acts or actions as may be reasonably necessary to cure or eliminate such violation at the sole cost and expense of the Owner of the affected lot or unit. Such costs and expenses, together with an overhead expense 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 period shall become a lien on the affected lot or unit in accordance with the provisions of Section 10.5 of the 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 on the Residential Property shall be subject to and governed by the following covenants, conditions, restriction 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 purposes.

8.3 Approved Plans. All Improvements must be constructed in accordance with detailed plans and specifications prepared by licensed registered architects and designs approved by the Design Review Board for Kissimmee Bay in conformance with all applicable Governmental Regulations and approved by the Design Review Board 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 limitation, 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 conformance with the Design Standards Manual for which provision is made in Article XV of this Master Declaration, as the same may be changed, amend 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 by the State of Florida and the County to engage in the business of residential building and construction and b) approved in writing by the Developer as being qualified and otherwise acceptable to the Developer to perform construction work within Kissimmee Bay and all construction shall other wise comply with the Builders' Agreement and the Design Review Standards of Kissimmee Bay. The latter approval shall be within the sole and absolute discretion of the Developer.

8.7 Construction Time. Unless otherwise approved by the Design Review Board in Writing, construction of Improvements must be commenced not later than thirty (30) days from the date that the Design Review Board issues its written

approval of the final plans and specifications therefore. 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 Board in accordance with the provisions of Article XV of this Master Declaration and any prior approval of the same by the Design Review Board shall no longer be binding on the Design Review Board. 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 commencement of such construction. However, the Design Review Board 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 Board, 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 the 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 Board; 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 basements unless otherwise approved in writing by the Design Review Board).

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 sub-classification, than as follows, to wit:

8.9.1 Residential Units Other Than Designated as Multi-Family. 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, 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.

8.10 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:

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

8.10.2 Walkways. No closer than five (5) feet to any side yard property boundary line.

8.10.3 Swimming Pools and Decks. No closer than the otherwise established side yard building setback line.

8.11 Dwelling Size. Each single family residential dwelling constructed on Residential Property shall have a minimum of heated and cooled living area, by lot size as follows, to wit:

8.11.1 Single Family Residential Unit. A minimum of two thousand two hundred (2,200) square feet living area (exclusive of the garage).

8.11.2 Multi-Family Residential Unit. A minimum of one thousand (1,000) square feet.

8.12 Governmental Requirements. In the event governmental regulations require restrictions more stringent than as set forth herein, the governmental regulations shall control.

8.13 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 Board, 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 Board.

8.14 Garages and Carports. No carports shall be placed, erected, constructed installed or maintained on Residential Property. This restriction shall not apply to Multi-Family Property which may seek approval by the Design Review Board of some form of sheltered parking. Each single family residential dwelling constructed and maintained on Residential Property other than the areas designated as multi-family 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 Board. 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 Board. 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 ingress and egress of vehicles and the loading or placement and unloading or removal of other items customarily kept or stored therein. Each garage shall also have a service door to the outside. 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 of this Vaster Declaration and the approval of the Design Review Board as otherwise provided in this Master Declaration.

8.15 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 Board 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 Board.

8.16 Driveways. All driveways, turnarounds and parking areas shall be concrete or constructed with a hard dust-free material approved by the Design Review Board 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.

8.17 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 Board and shall otherwise be erected, constructed, installed and maintained on the rear yard side of the roof or otherwise in such manner and at such location that the same shall not be visible from any street, neighboring residence, or the Golf Course Property. 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 Standards Manual may be permitted if approved by the Design Review Board within its reasonable discretion. All residential structures shall have tile roofs.

8.18 Antennas, Etc. No antennas, aerials, television receivers only antennas, downlinks, dishes, or other devices for the transmission or reception of radio, television or satellite delivered signal or any other form of electro-magnetic

radiation or communication shall be erected, constructed, installed, used or maintained outside of any building or structure on Residential Property whether or not the same is attached to or detached from a building or a structure except those specifically approved by the Developer for purposes of supplying cable television service to the site for commercial purposes or as otherwise approved the Developer in its sole discretion.

8.19 Windows. The windows of all buildings on Residential Property shall have frames and muttoms, if any, constructed of wood, painted aluminum or anodized aluminum window (in a color acceptable to the Design Review Board), or such other materials as shall be in conformance with the applicable provision of the Design Standards manual. In no event shall raw or silver or brushed aluminum windows be permitted.

8.20 Reflective or Mirrored Glass. No reflective or mirrored glass shall be used on, in or for the windows or doors of any buildings or other Improvements constructed upon Residential Property. No tinted windows or doors shall be permitted unless first approved by the Design Review Board in writing taking into account the degree to tinting and the aesthetics of the Improvements involved.

8.21 Awnings, shutters and Window Coverings. Unless first approved by the Design Review Board, no window of any building or other Improvements constructed upon Residential Property shall be covered by any awnings, canopies, shutter, (including hurricane or storm shutter), boards, or similar type window coverings; except such as may be required for protection from storms 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.

8.22 Exterior Air Conditioning Equipment. All air conditioning compressors and other equipment located outside of residential dwelling shall be screened from the view of the street and road rights-of-way, adjacent lots and the Golf Course Property by opaque walls attached to and made a part of each single family residential dwelling and otherwise in conformity with the applicable provisions of the Design Standards Manual or as otherwise approved by the Design Review Board. Absolutely no window air conditioning units shall be permitted.

8.23 Fences, Walls, and Screen Enclosures. Other than those constructed by the Developer and/or the Association within the Wall and Landscape Easements established pursuant to Section XIV of this Mater Declaration, no fences or walls shall be erected on Residential Property or on the Golf Course Property unless approved in Writing by the Design Review Board. The height of all fences or

walls shall be subject to the control and approval of the Design Review Board. 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. Exception to such specifications may be permitted by the Design Review Board, 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 Board.

8.24 Exterior Building Materials, Finishes, 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 Board. 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 Board and the Developer. The Foregoing restriction shall be equally applicable to the initial as well as any subsequent painting of any Improvements located on Residential Property.

8.25 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 Board upon a showing of good cause therefore.

8.26 Garbage and Trash Storage Areas. All exterior garbage and trash storage areas shall be enclosed by opaque walls attached to and made part of each single family residential dwelling and otherwise in conformity with the applicable provisions of the Design Standards manual or as otherwise approved by the Design Review Board.

8.27 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 Design Review Board; 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 as specified in the Design Standards Manual or as otherwise approved by the Design Review Board; c) permanent

outdoor safety light poles located and installed in conformance with the applicable provisions of the Design Stands Manual, or as otherwise approved by the Design Review Board.

8.28 Cable Television System. Each dwelling constructed on Residential Property shall be wired to receive CATV service from the Kissimmee Bay CATV which has been or is to be installed throughout Kissimmee Bay. The plans and specifications for each residential dwelling within Kissimmee Bay which are submitted to the Design Review Board for its review and approval shall include plans and specification which provide for the connection of the dwelling to the CATV. 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 shall include fees for basic cable service and a community channel. It is expressly provided, however, that notwithstanding any Design Review Board approval of the plans and specifications therefore, neither the Developer, the Association nor the Design Review Board shall have any responsibility or liability to anyone whomsoever whatsoever, including, without limitation any Owner, for any failure, deficiency or malfunction of any individual cable television system or the CATV.

8.29 Commencement of Construction on Unimproved Residential Units.

a) Within eighteen (18) months from the date of the sale of an improved Residential Unit (sometimes referred to in this Section as a "Lot") from the Developer to an Owner, construction of a single family residence shall commence. Commencement of construction shall mean the pouring of footings and the foundation for the residence. In the event the commencement of construction has not occurred within that period, the Developer shall have the right and option, but not the obligation, to repurchase the Lot at any time prior to commencement of the construction. The price for which the Developer may repurchase the Lot shall be the lesser of the purchase price paid by the person or entity acquiring the Lot directly from the Developer, or the purchase price paid by the Owner who owns the Lot at the time the Developer exercises its right of repurchase, less real estate commissions and closing expenses paid by the Developer. The Developer may exercise its right of repurchase by notifying the Owner, in writing, to appear at a closing within fifteen (15) working days of such notice, at which time the Owner will be given a cashier's check for the repurchase price. It is the intent of this provision that the Developer be able to exercise its remedies hereunder against any Owner who is the owner of Residential Property at the time when the Developer is entitled to exercise its right to repurchase hereunder.

b) Once construction has commenced on a Lot, the Owner shall diligently prosecute construction of improvements and shall complete the same within one (1) year from the time of commencement of construction. Completion of construction shall mean receipt of a certificate of occupancy from the appropriate governmental authority. In the event construction is not diligently prosecuted or in the event construction is not timely completed, the Developer shall have the right and option, but not the obligation, to repurchase the Lot and improvements. The price for which the Developer may repurchase the Lot and improvements after commencement of construction shall be either of the following:

1) If the Owner has not caused the Lot to be encumbered by any mortgage or other security instrument securing any indebtedness, the purchase price shall be the lesser of the purchase price paid by the person or entity acquiring the Lot directly from the Developer or the purchase price paid by the Owner who owns the Lot at the time the Developer exercises its right of repurchase, less real estate commissions and closing expenses paid by the Developer, plus the actual out-of-pocket cost paid by the Owner for any of the improvements erected on such Lot (but only if such improvements were erected in accordance with the approved plans for the Lot); or

2) If the Owner has encumbered the Lot with a construction or other mortgage, the Lot shall be conveyed either 1) as aforesaid, free and clear of such mortgage (in which event the Owner shall be entitled to the amount calculated by a) above if the Lot was never so encumbered), or b) with the consent of such mortgagee, subject to such mortgage (in which case Owner shall assign to the Developer all of the Owner's rights in and to such construction or other mortgage and any rights to demand future funding there under). The foregoing right to repurchase shall be subordinate to any construction mortgage placed on the Lot by the Owner.

c) For any purchase contemplated by subsection (b) above, the Developer may exercise its right of repurchase by notifying the affected Owners to appear at a closing within fifteen (15) working days of such notice, at which time the Owner will be given a cashier's check for the cash portion of the purchase price. In the event of any sale contemplated by (a) or (b) above, title to the Lot shall be conveyed to the Developer by the Owner by a Special Warranty Deed free and clear of all liens, charges, or encumbrances that have been created by, through, or under the Owner. The Owner shall also pay the cost for documentary stamps on the transfer and a title insurance policy insuring the Developer for the purchase price and the amount of the construction loan, if any. Any cash otherwise

payable to the Owner for the repurchase contemplated hereunder shall first be used to pay the release price for the Lot from the lien of any existing acquisition and development loan. {Amend. 2}

8.30 Precedence Over Less Stringent Governmental Regulations. In those instances where the covenants, conditions and restrictions set forth in this Article set 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 of the Master Declaration shall take precedence and prevail over less stringent Governmental Regulations.

8.31 Waivers, Exceptions and Variances by Developer. Notwithstanding anything to the contrary set forth in or which may otherwise be implied from the terms and provisions of this Master Declaration, the Developer specifically reserves exclusively unit itself, for the duration hereinafter specified, the right and privilege (but Developer shall have absolutely no obligation), upon a showing of good cause therefore, to: a) grant waivers with respect to any existing or proposed future deviation from, or violation or infraction of, the building restrictions specified in this Article of this Master Declaration where, in the reasonably exercised good faith judgment and discretion of the Developer, the Developer shall determine or decide that such deviation, violation or infraction is de minimis, minor, or insignificant, b) grant waivers of, exceptions to, or variances from, the building restrictions specified in this Article of this Master Declaration where special conditions and circumstances exist which are peculiar to a particular Owner and not generally applicable to other Owners (e.g. because of its interpretation or application of any such building restriction to a particular lot would be inappropriate, inequitable, or otherwise work or result in a hardship or deny such Owner thereof specific rights which are generally enjoyed by other lots and Owners; it being expressly provided, however, that, in all cases, the Developer, in its exercise of such right and privilege shall, in its reasonably exercised and good faith judgment and discretion determine or decide that its grant of any such waiver, exception or variance shall not result in, represent, be or constitute a significant deviation of or derogation from 1) the uniform plan of development for Kissimmee Bay, 2) the high architectural, ecological, environmental and aesthetic standards otherwise established for Kissimmee Bay or 3) the objects and purposes of this Master Declaration as hereinabove enumerated in Article II of this Master Declaration. The Developer shall have such right and privilege to grant waivers, exceptions and variances, as aforesaid, until either aa) the expiration of a period of fifteen (15) years from the date of the recordation of the Master Declaration among the Public Records of the Country or bb) the sale by the Developer or its successors or assigns in the ordinary course of business, and not in build, of ninety-five percent (95%) of all lots in Kissimmee Bay, whichever shall last occur. Following the occurrence of the last of the foregoing events to occur, the right and privilege of the Developer to grant waiver, exceptions and variances, as aforesaid, shall be delegated and assigned by

the Developer to and thereafter vest, in the Design Review Board. To the extent that any such waiver, exception or variance is granted in a particular instance or with respect to any particular lot or Improvement, pursuant to the provisions of this Section, as aforesaid, the same shall not be deemed to be a precedent for the granting of such or any similar waiver, exception or variance in any other particular instance or any other particular lot or Improvement.

## ARTICLE IX

### COMMON PROPERTY

9.1 Conveyance by the Developer. On or before the date of the first conveyance of any lot by the Developer to any third party Owner, the Common Property hereinabove described in Section 5.5 shall be conveyed by the Developer to the Association free and clear of any and all liens, encumbrances, exception or qualifications whatsoever, save and except only for a) real property taxes for the year of such conveyance, b) title exceptions or record, if any, c) the covenants, conditions, restrictions, easements and reservations set forth in this Master Declaration and any amendments hereto, and d) any special covenants, conditions, restrictions, easements, and reservations which may be contained to the instrument of conveyance pursuant to which title to such Common Property is conveyed by the Developer to the Association.

9.2 Additional Property. In addition to the Common Property described in Section 5.5 of this Master Declaration, the Developer, in its sole discretion, shall have the right to convey to the Association and the Association shall be obligated to accept any other portion of the Subject Property owned by the Developer so long as such property is used or useful for any of the objects and purposes for which the Association has been created and established. Should the Developer so convey any such additional property, the same shall thereupon become and thereafter continue to be Common Property which shall be subject to all covenants, conditions, restrictions, easements and reservations set forth in this Master Declaration with respect to all other Common Property. This paragraph shall not be construed as permitting the Developer to convey the Golf Course Property to the Association so long as the Golf Course Lease is in effect.

9.3 Encumbrance as Security. The Association shall have the right in accordance with this Master Declaration and its Articles of Incorporations 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 therefore 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 the 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 System or any other easements granted to it.

9.4 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 Developer 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 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 member 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 or 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 Street 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.

9.5 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, encumbrances and

other provision 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.

9.6 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.

9.7 Rules and Regulations. In addition to the foregoing restrictions on the use of Common Property, the Association shall have the right, power and authority, subject to the prior written consent and approval of the Developer, 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 regulation 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.

9.8 Creation of Municipal Service Taxing Unit. The Association may permit the creation of a municipal service taxing or benefit unit as contemplated by Section 125.01, Florida Statutes, and is authorized to work in conjunction with the Developer and the County with respect thereto.

9.9 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 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

STREET AND ROADS AND SURFACE WATER MANAGEMENT SYSTEM 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 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 SYSTEM FOR KISSIMMEE BAY AND EACH SUCH OWNER SHALL BE DEEMED TO HAVE FURTHER AGREED TO LOOK SOLELY AND EXCLUSIVELY TO THE ASSOCIATION WITH RESPECT TO ANY SUCH LIABILITY OR RESPONSIBILITY.

9.10 Use of Lake and Lake Access. Only the owners of Residential lots 100 through 124, as numbered on the plat of Kissimmee Bay shall be permitted to use the lake access (should it become available) located on the property for purposes of ingress, egress and access to East Lake Tohopekaliga or for dockage or launching of boats.

9.11 Use of Interior Lakes. Subject to regulations and ordinances imposed by all governmental and quasi-governmental bodies or agencies, and further subject to any written agreements entered between the Developer and/or the Association and any governmental and quasi-governmental bodies or agencies, the Developer or 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, the Developer, and any assigns of the Developer 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 and for other irrigation purposes as determined by the Developer and such other persons as the Developer may designate. 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 Developer or the Association shall specifically designate the portion of the water areas and the corresponding shoreline and beach area, 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.

9.12 Drainage Areas.

9.12.1. 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 Developer and the Association.

9.12.2. An Owner shall in no way deny or prevent ingress and egress by the Developer, the Association or the Golf Course Owner to the drainage areas or lakes or ponds for maintenance or landscape purposes. The right of ingress and egress and easements therefore are hereby specifically reserved and created in favor of the Developer, the Association, the Golf Course Owner or any appropriate governmental or quasi-governmental agencies as may reasonably require such ingress and egress.

9.12.3. 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 Developer or the Association.

9.12.4. Any wall, fence, planting or other improvement by an owner with 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 Expenses. In order to provide for and assure the availability of the funds necessary to pay Common Expenses associated with the ownership, administration, management, regulation, care, maintenance, repair, restoration, replacement, preservation and protection of the Common Property and such additional Common Expenses as may be associated with and other wise necessary for the Association to perform its duties and obligations 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 objects and purposes 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 Regulations of the Association. All Regular Assessments shall be the amount for each Residential Unit and for the Golf Course Property. Regular Assessments shall include costs and fees relating to the maintenance and operation of the CATV and the Irrigation System.

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 therefore.

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 obligations of the Association pursuant to this Master Declaration, the payments 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 and 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:

10.7.1. Initial Regular Assessment. The initial or first Regular Assessment for calendar year 1990 shall not exceed \_\_\_\_\_ (\$\_\_\_\_\_) per Residential Unit. The Golf Course Property shall at all times be subject to a Regular Assessment equal to that of one Residential Unit.

10.7.2. Rate of Regular Assessments. Subsequent to 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 such calendar year, taking into account the previous operating history of and 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.

10.7.3. 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.

10.7.4. Commencement of Regular Assessments. Unless otherwise determined by the Board of Directors of the Association, regular Assessments shall commence as to all Residential Units those including Residential Units in areas designated as Multi-family, on the first day of the month following the conveyance of the Residential Unit by the Developer to any third-party Owner. In the event a conveyance to a third-party by the Developer is made of an area which, on the Development Plan, is comprised of more than one (1) Residential Unit, the assessment shall nevertheless be due on such number of units as are reflected on the Development Plan for such area conveyed regardless of whether or not the

numbers of units so designated on the Development Plan are constructed by the third-party. Regular Assessments on all other Residential Units shall commence when a certificate of occupancy has been issued for such unit. Regular Assessments on the Golf Course Property commence in 1990.

10.7.5. 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 to 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 (3) days thereafter establish, make, levy, impose, enforce and collect a supplemental or revised Regular Assessment for such calendar year.

10.7.6. 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 this 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 purchase of any subsequent unexpected repair or replacement of any fixtures, equipment or personal property purchased, repaired or replaced by the Association in furtherance of 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 account, not commingled with any other funds of the Association, to be held in trust by the Association for such purposes.

10.9 Special Assessments. In addition to other Assessments for which provision is made in this Master Declaration, the Association shall be 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 the 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 thirty (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 and 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) day following written from the Association of the nature of the violation of or noncompliance 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;

(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, services or materials 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 as 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 and the Commercial 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 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. The sale, transfer or conveyance of title to a particular Residential Unit shall not affect the effectiveness, liability or priority of an 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 in lieu of foreclosure to an institutional lender on such Assessments (but not the personal liability of the Owner of such Residential Unit) as to payments on account thereof which became due and payable prior to such foreclosure sale, transfer or conveyance. 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 Assessments 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 its 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 the 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.

## 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. With reasonable promptness after any Assessment becomes delinquent, the Association shall provide written notice of such delinquency to the Owner with respect to which such delinquent Assessment has been made, levied and imposed. If the delinquent Assessment is not paid within ten (10) days following the delivery of such notice of delinquency,

the Association, in its discretion, shall be entitled to immediately impose a reasonable late charge 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, at any time following the expiration of a period of ten (10) days following the aforesaid delivery of the notice of delinquency, be entitled to cause a Claim of Lien for such delinquent Assessments to be filed among the Public Records of Osceola County, Florida. 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 other 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 with return receipt requested and with postage prepaid or (b) hand delivery to the mail box of the residential dwelling situate on such lot.

11.3 Foreclosure of Assessment. 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, upon or with respect to which it has foreclosed its lien for delinquent Assessments.

11.4 Collection from Owner. The Association shall at any time following the delivery of the afore said 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 for the recovery and collection of any such delinquent Assessment from the Owner of the Residential Unit of 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, recover 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 foreclosure of the lien therefore shall be cumulative and not alternative, it being expressly provided that any suits brought for the collection of assessments against the Owner personally obligated and liable for the payments 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 of 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 other 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: PURPOSES, 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 provision 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) and 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 the Association. The Association, acting by and through its Board of Director, 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.

12.3.4. 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 venture, or (ii) to exclusively contract on behalf of all Owners with third parties for the development, maintenance and operations of an Irrigation System for and within Kissimmee Bay as the Association deems appropriate and subject to Developer consent.

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 Board established pursuant to this Master Declaration.

12.3.8. Preserve and Enhance the 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 Declaration. To assure compliance with and adherence to and other wise 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 generally.

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 mandatorily be a member of the Association upon becoming an Owner. Additionally, the Developer and the Golf Course Owner shall automatically and mandatorily be members 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 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 the 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 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 other than a Residential Unit in an area designated as Multi-family and other than the Developer shall be entitled to cast one vote for each Residential Unit owned; provided however, that no more than one vote shall be cast for each such unit.
- (b) Each Owner of a Residential Unit in an area designated as Multi-family (other than the Developer) shall be entitled to cast one vote for

each Residential Unit for which a certificate of occupancy has been issued; provided however, that no more than one vote shall be cast for each such unit.

(c) The Developer shall be entitled to cast five (5) votes for each Residential Unit other than a Residential Unit designated as Multi-family and five votes for each Residential Unit in an area designated as Multi-family and for which a certificate of occupancy has been issued provided, however, that subsequent to January 1, 1995, the Developer shall be entitled to cast one vote per Residential Unit described above.

(d) The Owner of a Residential Unit in an area designated as Multi-family and for which a certificate of occupancy has not been issued shall not be entitled to cast a vote for such unit.

(e) The Golf Course Owner shall be entitled to cast ten votes. If more than one entity is entitled to possession, the total votes cast for the Golf Course Property shall not exceed ten.

#### ARTICLE XIV

#### EASEMENTS

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

14.2 Ingress, Egress, and Passage Easement. There is hereby created, declared, granted and reserved for the benefit of the Developer, 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 rights-of-way of and for all Common Streets and Roads as the same are shown on the Plat.

14.3 Utility Easements. There are hereby created, declared, granted and reserved for the benefit of the Developer, 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 purposes of constructing, installing, inspecting, maintaining, repairing and replacing from time to time any and all utility lines, 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 and potable water. This easement shall include access to the Golf Course Property for purposes of servicing, operating or maintaining any Irrigation System.

14.4 Drainage Easements. There is hereby created, declared and reserved for the benefit of the Developer, 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 purposes 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, the Developer, for the benefit of itself, the Association and all Owners hereby reserves 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 placed, 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 System 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 hereby shall be construed to include but shall not be limited to a non-exclusive easement for the benefit of the Developer, 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 may be installed for the benefit of all residents of Kissimmee Bay.

14.5 Emergency Access and Drainage Easement. There is hereby 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 is 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 is hereby created, declared, granted and reserved for the benefit of the Developer, 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 easements 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 other than in the Multi-family area. It is expressly provided, however that to the extent that any two (2) or more contiguous lots or portions of contiguous lots which share a common side yard 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 requirement of any separate instrument and without the necessity for the joinder of the Developer, 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 is hereby created, declared, granted and reserved for the benefit of the Developer and the Association and easement over and upon all Wall and Landscape Easement areas shown on the Development Plan together with the easement and license to enter upon such Wall and Landscape Easement areas for the purposes of erecting, construction, 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 Developer or the Association.

14.8 Landscape Easements. There is hereby created, declared, granted and reserved for the benefit of the Developer and 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 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 Developer or the Association.

14.9 Sidewalk Easements. There is hereby created, declared and reserved for the benefit of the Developer, 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 system of Kissimmee Bay, if any. All of such benefited parties shall 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 sidewalks from time to time constructed, installed and located therein, if any, are hereby declared and shall hereafter be deemed to be 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 initially install 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 Developer 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 Developer, 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 Board. 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 in creation, declaration and reservation of the Sidewalk Easements, sidewalks may not ever be constructed within the Sidewalk Easement areas unless the Developer 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.

14.10 Golf and Recreation Easement. There is hereby created, declared, granted and reserved for the benefit of the 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 easement 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 playing 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 Developer, nor any other Owner or any lessee from time to time of the Golf Course Property nor their respective employees, agents, invitees, member 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 with 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 constitute a nuisance or hazard to the health, safety or welfare of the Owner of property nearby or adjacent to the Golf Course Property that the risk of such personal injury or damage to property has been assumed by such Owner on behalf of himself, the members of his family and his employees, guests and other invitees at the time of the acceptance of a deed or other conveyance to his lot.

14.11 Lake, Berm, and Swale Easements. There is hereby created, declared, granted and reserved for the benefit of the Developer, 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 and their associated storm water drainage retention/detention areas 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 Construction and Sales Easements. There is hereby created, declared, granted and reserved for the benefit of the Developer together with the right to grant, assign and transfer the same to the Developer's sales agent and sales representatives as well as to builders or building contractors approved by Developer for the construction of residences within Kissimmee Bay, and easement for construction activities upon Residential Property and an easement for sales activities and signs on Residential Property and for the maintenance on Residential Property from time to time of a Sales and Administrative Center in which and from which the Developer and its authorized sales agents and sale

representatives and approved builders and building contractors may engage in exhibit, sales and administrative activities of a commercial nature on a temporary bases during the period of the development of and construction within Kissimmee Bay.

14.13 Common Property Easement. There is hereby created, declared, granted and reserved for the benefit of the Developer, 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 right to use and enjoy the Common Property, however, shall be subject to regulation by the Association, including the right of the Association to suspend such use and enjoyment as more particularly provided in this Master Declaration.

14.14 Association Easement. There is hereby created, declared and granted to the Association, such easement 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, obligation and responsibilities under and pursuant to this Master Declaration and the Articles of Incorporation, By-Laws and Rules and Regulations of the Association.

14.15 Future Easements. There is hereby reserved to the Developer and its successors and assigns, together with the right to grant and transfer the same, the right, power and privilege to , at any time hereafter, grant to itself, 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 Developer, for the future orderly development 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 development of a particular lot as a single family residential home site.

14.16 Assignments. The granting of easements reserved by the Developer may be assigned by the Developer in whole or in part to the Association, the County or any state government or public utility, or any other designee of the Developer. Specifically, the Association shall have the right to grant the easements described in the Article after the Developer no longer owns any portion of the Property. Notwithstanding this provision, any contract entered into by the Developer or respecting CATV shall be exclusive, to the maximum extent provided by law.

## 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 Developer 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 an 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. Such right and control of the Developer shall be exercised in the manner hereinafter provided in this Article XV. The Developer may also in its discretion assign these rights to the Association.

15.2 Design Review Board. The architectural and landscape review and control functions expressly reserved by and unto to the Developer pursuant to Section 15.1 of this Master Declaration shall be and are hereby delegated by Developer to and shall be administered and performed on behalf of Developer by a Design Review Board 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 Board need not be Owners or members of the Association. Three (3) members of the Design Review Board 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 Board. The action of a majority of such members as are present at a meeting of the Design Review Board shall determine the action taken by the Design Review Board at such meeting.

15.3 Appointment of Design Review Board. 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 Developer hereby reserves unto itself and shall hereafter have and retain the right to appoint and replace from time to time all members of the Design Review Board until either (a) the expiration of a period of five (5) years from the date of the recordation of this Master Declaration among the Public Records of the County, or (b) the sale by the Developer or its successors or assigns in the ordinary course of business, and not in bulk, of ninety-five percent (95%) of the Subject Property (other than the Common Areas) within Kissimmee Bay, whichever shall last occur. Following the occurrence of the last of the

foregoing events to occur, the architectural and landscape review and control functions hereinabove reserved by and unto the Developer shall be delegated and assigned by the Developer to the Association and thereafter the Association, acting by and through its Board of directors, shall have the right to appoint and replace from time to time all members of the Design Review Board.

15.4 Purpose and Function of Design Review Board. The purpose and function of the Design Review Board 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 and control 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 Developer, nor the Design review Board, 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 specification or other materials 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 by the Developer and to be adopted by the Design Review Board from time to time.

15.5 Standards for Review and Approval. Any such review by and approval or disapproval of the Design Review Board shall take into account the objects and purposes of this Master Declaration and the purposes and function of the Design Review Board. Such review by and approval of the Design Review Board 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 location and in relation to the character of the Kissimmee Bay community in general. The Design Review Board shall have the right to refuse to give its approval to the design, placement, 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.

15.6 Design Standards and Design Standards Manual. The Design Review Board shall develop, adopt, promulgate, publish 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 Board as a guide and 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 Board. Any such Design Standards Manual must be approved by the Developer in writing 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 Board shall, in its discretion, determine. Such Design Standards Manual shall be used by the Design Review Board and other affected person only as a guide and shall not be binding upon the Design Review Board in connection with the exercise of its review and approval functions and ultimate approval or refusal to approve plans and specification submitted to it pursuant to this Master Declaration.

**15.7 Procedure for Design Review.** The Design Review Board shall develop, adopt, promulgate, publish and make available to all Owners and others who may be interested, either directly or 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 regulation governing the submission of plans and specification to the Design Review Board for its review and approval. Unless such rules and regulation are complied with in connection with the submission of plans and specification requiring review and approval by the Design Review Board, plans and specification shall not be deemed to have been submitted to the Design Review Board. Additionally, the Design Review Board shall be entitled, in its discretion, to establish, determine, charge and assess a reasonable fee in connection with and for its review, consideration and approval of plans and specifications pursuant to the Article, taking into consideration actual costs and expenses incurred during the review process, including the fees of professional consultants, if any, to and members of the Design Review Board pursuant to Section 15.7 of this Master Declaration. The initial Design Review Fee shall be established by the Design Review Board and such Design Review Fee may be increased or decreased by the Design Review Board from time to time.

In the absence of other rules, regulations and procedures, three (3) copies of the following materials, as appropriate, all drawn to scale, shall be submitted to the Design Review Board, 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 building, landscaping, screening, signs and other Improvements.

(e) Appropriate specifications for all construction to be undertaken on the site.

(f) A grading, paving and 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 onsite utility lines, facilities and easements, septic tanks and all driveways, walkways, etc. and the "foot print" of all other improvements to be located on the site.

(h) Any other information reasonably required by the Design Review Board 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 Staged Review. The rules and regulations adopted by the Design Review Board pursuant to Section 15.7 of this Declaration may provide for its review and approval functions to be accomplished in one (1) or more than one (1) stages. Any preliminary or conceptual review and approval of formative or initial concepts or designs by the Design Review Board shall only be advisory in nature and shall not be binding upon the Design Review Board in connection with its review and ultimate approval or disapproval of the preliminary and final plans and specifications submitted to it as provided in this Master Declaration.

15.9 Time Limitation on Review. The Design Review Board shall either approve or disapprove any plans, specifications or other materials submitted to it within ten (10) 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 Board. The failure of the Design Review Board to either approve or disapprove the same within such ten (10) day period shall be deemed to be and constitute disapproval of such plans, specifications and other materials.

15.10 Duration of Approval. Any approval of plans, specifications and other materials, whether by the Design Review Board, or by the Developer or the Board of Directors of the Association following appeal, shall be effective for a period of 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 Board on resubmission in any respect.

15.11 Inspection of Construction. Any member of the Design Review Board may, but shall not be obligated to, at any reasonable time, enter upon, without being deemed guilty of trespass, and Residential Property or Common Property and any building structure or other Improvement located thereon, in order to inspect any building, structure or other Improvement constructed, erected or installed or then being constructed, erected or installed thereon in order to ascertain and determine whether or not any such building, structure or other Improvement 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 Board.

15.12 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 Improvement has been completed or is in the process, the Design Review Board shall cause an inspection of and the Improvements to be undertaken 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 material approved by the Design Review Board, the Design Review Board shall direct the Association through its President, Secretary or other 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 proved to such Owner a written statement of such noncompliance.

15.13 Interior Alterations Exempt. Nothing contained in this Article XV shall be construed so as to require the submission to or approval of the Design Review Board 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 Board, unless any proposed interior construction or alteration will have the effect of changing or altering the exterior appearance of such building , structure or other Improvement.

15.14 Developer Exempt. The Developer shall be exempt from compliance with the provisions of this Article XV.

15.15 Golf Course Property Not Exempt. The provisions of this Articles 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.

15.16 Exculpation for Approval or Disapproval of Plans. The Developer, any and all members of the Design Review Board, and any and all officers, directors, employees, agents and members of the Association, shall not, either jointly or severally, be liable or accountable in damages or otherwise to any Owner or other person or party whomsoever 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 materials to the Design Review Board for consent or approval pursuant to the provisions of the 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 Developer, the Design Review Board, the Association nor any individual member, officer, director, employee or agent of any of them 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 material submitted to and approved by the Design Review Board, or by Developer 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, appearance and location in light of the standards for review and 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 Developer, the Design Review Board, the Association, nor any individual member, officer, director, employee or agent of any of them 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 Improvement, constructed, erected, place or installed pursuant to or in accordance with any such plans, specifications or other materials approved pursuant to this Article XV.

## ARTICLE XVI

### CATV

The Developer, as of the date hereof, is contemplating the development of a central cable communication system for Kissimmee Bay. The Developer, may decide at a future date to develop a central television system, a central alarm system, a central telephone system or other communication or electronic system which could be used within all or parts of Kissimmee Bay, so long as such sue complies with all local, state, and federal guidelines, rules, regulations, ordinances, laws and statutes. All Residential Units (and other buildings located in Kissimmee Bay which Developer shall specifically designate) shall be wired and equipped for a CATV as determined by the Developer, and shall connect to and utilize the communications cable or other equipment installed by a s system operator selected by the Developers. All components of the system shall be kept in operable condition at all times by the respective Owners. Each owner hereby grants to the Developer and the Association, its successors and assigns, and 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 Developer. Subject to the provision of 17.5 of this Master Declaration until September 1, 1991 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 from time to time by the Developer in its sole, but reasonable discretion, and without requiring the joinder or consent of any person or party whomsoever, including the Association or any Owner or Owners, provided that no such change shall adversely affect the rights of an institutional lender.

17.2 Amendment by Association. Subject to the provisions Section 17.5 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 affirmative written consent or the vote of not less than seventy-five (75%) of the total voting power of the members of the Association; provided, however, that until five (5) years after the date of the recording of this Master Declaration in the public records of Osceola County, Florida, no such change, amendment, or modification by the Association shall be effective without the Developer's express written joinder and consent.

17.3 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 17.2, the acquisition of the requisite written consent or vote of members shall be manifested on the face of the amending 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 requisite 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 17.2 of this Master Declaration with respect to the change, amendment or modification of this Master Declaration effected by the amending instrument of which such certificate is made a part.

17.4 Effectiveness of Amendments. All changes, amendments or modifications of this Master Declaration shall be manifested in a written amending instrument duly executed by the Developer or the Association, or both, as may from time to time be required pursuant to the provisions of the 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 or such later date as may be specified in the amending instrument.

17.5 Limitations on Amendments. Notwithstanding any thing to the contrary set forth in this Master Declaration, the rights of the Developer and 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 shall at all times be subject to and limited and restricted as follows, to wit:

(a) 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 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 of the County.

(b) To the extent that any term or provision of this Master Declaration may be included herein in satisfaction of the conditions to approval of the Land Use Plan as such condition to approval may, from time to time, be changed, amended or modified by the County pursuant to appropriate law or by 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 Developer, the Golf Course Owner, the Association or to the County, respectively, without the prior written approval of the Developer, 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 purposes.

(e) This Master Declaration may not be change, 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 changed, amended or modified in such fashion as to change, amend, modify, eliminate or delete the provisions of this Section 17.5 or this Master Declaration without the prior written consent and joinder of the Developer, in any case, and to the extent of any proposed change, amendment or modification which shall affect the rights of the County or the South Florida Water Management District or the Golf Course Owner hereunder, the same shall require the written consent and joinder of the County or the South Florida Water Management District or the Golf Course Owner, as the case may be.

(g) This Master Declaration may not be amended in such a manner to adversely affect 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 Developer and 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 person, 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 sixty (60) 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 ten (10) 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 17.3 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 Developer and 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 recording among the Public Records of the County of a written instrument or Court order, as the case may be, which, in either case, is 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 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 Developer, 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 his Declaration shall have the right 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 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 or default or attempted default and (d) recover costs and expenses, 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 Developer and the Association shall have the right to enforce the provisions of Article XV of this Master Declaration with respect to Architectural and Landscape Control. It is expressly provided, however, that if both the Developer and the Association fail, refuse or are 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 Developer, the Association or the Design Review Board where the discretion to make such decision is expressly conferred pursuant to this Master Declaration.

(c) To the extent that specific rights, interests 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.

19.4 No Waiver. Failure by the Developer, 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), 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 of 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 a nuisance, either public or private, shall be applicable against every such result, and may be exercised by the Developer, 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 developer, the Association, the Owners and the County, to the extent provided herein, shall be cumulative, and single right or remedy shall be exclusive of any other, and Developer, 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 provision shall not affect the validity of the remaining provisions hereof.

19.8 Exculpation. The Developer, the Association, the Design Review Board, 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 material for 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 materials 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 be deemed to have agreed that he or it shall not be entitled to bring and shall not bring any action, proceeding or suit against the Developer, the Association, the Design Review Board, or any individual member or members or officer or officers, director or directors, employee or employees or agent or agents of any of the for the purpose of recover 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 a lot creates a personal covenant between the Owner of such lot and the Developer, the Association or any other Owner or Owners, such personal covenant shall terminate and be of no further force or effect from or after the date when a person or entity ceases to be and 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 Article and Section Headings. Article and Section heading contained in the 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 questions 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 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 any 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 such notice, or if no such address shall have been furnished, the to the street address of such Owner's lot or property. Any notice 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 constitute delivery on all such co-owners.

(b) Notice to the Association shall be deemed to have property delivered when place 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.

(c) Notice to the Developer 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 Developer to the Association or the address of its principal place of business.

(d) The affidavit of an officer or authorized agent of the Association declaring under penalty of perjury that a 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 of such mailing, whether or not such notices are actually received.

20.9 Development and Construction by Developer. Nothing set forth in this Master Declaration shall be deemed, either expressly or impliedly, to limit the right of the Developer to change, alter or amend its development plan or plans for the Subject Property, or to construct such improvements as the Developer deems advisable prior to the completion of the development of all of the Subject Property. Developer reserves the right to alter its development and construction plans and designs as it deems appropriate from time to time; subject, however, to all applicable Governmental Regulations, including, without limitation, those of the County.

20.10 Assignment of Developer's Rights and Interests. The rights and interests of the Developer under this Master Declaration may be transferred and assigned by the Developer to any successor or successors to all or part of the Developer's interest in the Subject Property by an express transfer, conveyance or assignment incorporated into any recorded deed or conveyance or assignment incorporated into any recorded deed or other instrument, as the case may be, transferring, conveying or assigning such rights and interests to such successor.

20.11 No Warranties. This Master Declaration is made for the objects and purposes set forth in Article II of this Master Declaration and the Developer 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 take by the Developer nor action taken by the Association or any successor thereto shall (i) materially or unreasonably cause or require the alteration or 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 operation, management and maintenance of the Golf Course Improvements at the Walt Disney World Resort, (Magnolia, Lake Buena Vista and Palm Golf), Hunter’s Creek Golf Club, and the Metro West Golf Country Club.

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 Golf Courses. Cost for the 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 or assigns.

21.4 Management Obligations. The Golf Course Owner, its lessees and assignees, shall manage the Golf Course Property and the golf course Improvements in strict accordance with all governmental requirements, the Master Declaration and all covenants, conditions, restrictions, easements or reservations now or hereafter imposed upon the property. In addition, memberships will always be made available to owners at a cost not to exceed that available to the general public. {Amend. 3}

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 an 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 of Articles 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 in 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 replacement 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 insurable value of the Golf Course Improvements, or the policy for which insurance shall have a replacement cost endorsement or similar provision. 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 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 therefore such a determination has been made for or on behalf of , and accepted by, the Leasehold Mortgagee 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); conic shockwave; and leakage from fire protective equipment;

(b) a policy of rent loss insurance (either as 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 replacements or substitutions therefore and in such amounts 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 with each of 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 defense of all Claims against the Indemnified Parties, whether or not Lessee is joined therein; provided, however, without relieving 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 Golf Course Owner's obligations under this section and the limits of such insurance shall not constitute a limit on Golf Course Owner's liability under this section' provided, 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 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 Golf Course Owner shall have the right to contest the validity of any and all such claims of and kind and character and by whomsoever claimed, in the name of Golf Course Owner or the Association, as Golf Course Owner may deem appropriate, provided that the expenses thereof shall be paid by

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 expense, 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 damage in any one accident or occurrence. Each of the above policies shall name the Association and Golf Course Owner as co-insureds; and the 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 damage that 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, 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 rights 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 Mater 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 of same, with interest thereon at eighteen percent (18%) per annum until paid, to the Association on demand.

## ARTICLE XXII

### Destruction of Improvements

22.1 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 anytime, the Golf Course Owner shall, within a reasonable time but in no event exceeding sixty days after the cost of 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 and modification 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. 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. Golf Course Owner shall have the right, from time to time, to make additions, alterations and/or changes (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 Board's written approval of such alterations;

(b) no alterations 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 authorizations 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 Requirements'

(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 materials supplied or claimed to have been supplied to the Leased 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 person 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

(f) Golf Course Owner will upon demand by the Association give reasonably satisfactory 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 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 areas, 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 easements, dedications, and other agreements to permit such use of the Leased Premises. Any additional cost to implement such use shall not be borne by Golf Course Owner.

Golf Course Owner further agrees, at the Developer's request and with the approval of Golf Course Owner, 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 Associated, Inc., to comply with governmental requirements, provided such adjustments do not substantially affect design of the Golf course Improvements.

IN WITNESS WHEREOF the Developer has caused this Master Declaration to be made and executed as of the day and year first above written.

Signed, sealed and delivered in the presence of :

KISSIMMEE BAY INVESTORS  
BY: HAS DEVELOPMENT, INC., a  
General Partner

BY: Signed Donald R. Kriz ,  
Vice President

AND

BY: ACKLEY CONSTRUCTION AND  
DEVELOPMENT COMPANY,  
INC., a General Partner

BY: Signed O. Sam Ackley .  
President

STATE OF FLORIDA  
COUNTY OF OSCEOLA

The foregoing instrument was executed and acknowledged before me this 20<sup>th</sup> day of February, 1990, by Donald R Kriz, Vice President of HAS

DEVELOPMENT, INC., a Florida corporation, on behalf of the corporation, a General Partner of KISSIMMEE BAY INVESTORS.

Signed Patricia A Bessey

Notary Public

My Commission Expires:

NOTARY PUBLIC, STATE OF FLORIDA  
MY COMMISSION EXPIRES: JULY 8, 1991  
SIGNED THRU NOTARY PUBLIC UNDERWRITERS

STATE OF FLORIDA  
COUNTY OF OSCEOLA

The foregoing instrument was executed and acknowledged before me this 20<sup>th</sup> day of February, 1990, by O. Sam Ackley, as President of ACKLEY CONSTRUCTION AND DEVELOPMENT COMPANY, INC., a Florida corporation, on behalf of the corporation, a General Partner of KISSIMMEE BAY INVESTORS.

Signed Patricia A Bessey

Notary Public

My Commission Expires:

NOTARY PUBLIC, STATE OF FLORIDA  
MY COMMISSION EXPIRES: JULY 8, 1991  
SIGNED THRU NOTARY PUBLIC UNDERWRITERS