

**SECOND AMENDED AND RESTATED MASTER DECLARATION AND  
GENERAL PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR KENSINGTON PARK**

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**NOTE: SUBSTANTIAL AMENDMENT OF ENTIRE DECLARATION TO  
THE MASTER DECLARATION FOR KENSINGTON PARK**

**SECOND AMENDED AND RESTATED  
MASTER DECLARATION  
AND  
GENERAL PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
KENSINGTON PARK**

RECITALS

**WHEREAS**, on May 12, 1993, the original Master Declaration and General Protective Covenants, Conditions and Restrictions for Kensington Park was recorded in Official Record Book 1825, at Page 186 *et seq.*, of the Public Records of Collier County, Florida. On September 24, 2004, an Amended and Restated Master Declaration and General Protective Covenants, Conditions and Restrictions for Kensington Park was recorded in Official Records Book 3648, at Page 3709 *et seq.*, of the Public Records of Collier County, Florida. That Declaration, as it has previously been amended, is hereby further amended and is restated in its entirety.

**WHEREAS**, the land subject to this Declaration is legally described on Exhibit "A" attached hereto.

**WHEREAS**, the Master Association desires to continue the preservation and enhancement of property values, amenities and opportunities in Kensington Park and contributing to the general health, safety and welfare of residents and for the maintenance of the land and improvements thereon, and to this end desires to subject the Properties to the protective covenants, conditions, restrictions and other provisions hereinafter set forth in this Declaration;

**WHEREAS**, No additional land is being added by this instrument and no land is being removed by this instrument. The covenants, conditions and restrictions contained in this Declaration shall run with the land and be binding upon and inure to the benefit of all present and future Owners. The acquisition of title to a Lot or any other ownership interest in the Property, or the Lease, occupancy or use of any portion of a Lot or the Property constitutes an acceptance and ratification of all provisions of this Declaration, as hereafter amended, and an agreement to be bound by its terms.

**1. DEFINITIONS**

The following words and terms used in this Declaration or any of the Governing Documents (unless the context shall clearly indicate otherwise) shall have the following meanings:

**1.1 "Architectural Review Board" or "ARB"** means the committee established pursuant to Article 6 of this Declaration to review plans and specifications for the construction or modification of improvements and to administer and enforce the architectural controls described in Article 6.

**1.2 “Architectural Planning Criteria”** means the published guidelines and standards authorized by this Declaration and the Board of Directors from time to time concerning the location, size, type or appearance of any structure or improvement located on a Lot as defined herein.

**1.3 “Articles”** as used herein, means the Articles of Incorporation of Kensington Park Master Association, Inc., as amended from time to time. A copy of the Amended and Restated Articles of Incorporation is attached hereto as Exhibit “B”.

**1.4 “Assessments”** means a share of the funds required for the payment of Common Expenses and individual expenses which from time to time are assessed by the Master Association against an Owner as Regular, Supplementary, Special, Improvement and Service Assessments, as further defined herein and in the Bylaws.

**1.5 “Board” or “Board of Directors”** means the Directors responsible for the administration of the Master Association as further set forth in the Articles and Bylaws.

**1.6 “Bylaws”** as used herein, means the Bylaws of Kensington Park Master Association, Inc., as amended from time to time. A copy of the Amended and Restated Bylaws is attached hereto as Exhibit “C”.

**1.7 “Common Areas”** shall mean and refer to all real property, easements, rights of way, licenses, interest in real property, use rights and servitudes and improvements thereof, that are now or in the future owned, contracted for, or leased or otherwise held, maintained, repaired, or replaced by the Master Association for the common use and enjoyment of its Members. Common Area includes, but is not limited to, Conservation Lands, lakes, lake banks (including bulkheads and seawalls within the Common Areas associated therewith) sidewalks, the Roadways and gatehouses.

**1.8 “Common Expenses”** means the expenses incurred by the Master Association in the course of performing its duties under the Governing Documents and the law. Common Expenses of the Master Association include the costs of operating the Master Association, the costs of administration, maintenance, repair, replacement and operation of the Common Areas, expenses for administration and management of the Master Association, reasonable reserves in the discretion of the Board, and other expenses declared by the Governing Documents to be Common Expenses.

**1.9 “Conservation Buffer Easement”** shall mean and refer to an easement granted to the Board of County Commissioners of Collier County, Florida, over any portion of the Conservation Buffer Zone deeded to an Owner. The Master Association is responsible for the enforcement of all Conservation Buffer Easements in compliance with all applicable governmental regulations and permits.

**1.10 “Conservation Buffer Zone”** shall mean and refer to the 20 foot vegetation buffer required by the PUD, if any, which is located in the rearmost 20 feet of those Lots whose rear property line is adjacent to Conservation Lands. With the exception of exotic vegetation removal, a Conservation Buffer Zone may not be altered from its natural state.

**1.11 “Conservation Lands” or “Preserve Area”** shall mean and refer to all areas designated as such on the Plat. Conservation Lands are required to be kept in their natural state so as to prevent destruction of said areas or the alteration of the water flow at variance to the design standard for the Water Management System.

**1.12 “Country Club”** means Kensington Golf & Country Club, Inc., a Florida not for profit corporation, and the property and all improvements thereon, developed for use by members of the Country Club. The Country Club property shall include, without limitation, any property conveyed to the Country Club or declared to be Country Club property, which may include, but is not limited to, the clubhouse, tennis courts, pro shop, ancillary commercial establishments, cart barn, golf maintenance facilities, driving range, putting green and golf course or any easement, lease, license or use rights in such property. In no event shall any part of the Common Area be considered part of the Country Club or vice versa, except that easements, licenses or other use rights over portions of the Country Club, including, without limitation, lakes within the golf course, may be granted, conveyed or dedicated to the Master Association and the Master Association’s easements, licenses or other use right shall constitute Common Area, subject to the limitations imposed in such easements, licenses or other use rights and except that the Master Association or this Declaration may grant to or create for the benefit of the Country Club easements, licenses, or other use rights over portions of the Common Area, including without limitation, lakes, Water Management Systems, Conservation Lands, Conservation Buffer Easements or Conservation Buffer Zones. Except as otherwise provided in this Declaration and except as may be provided in any easements over the Country Club property, no person, other than the Members and invited guests of the Country Club, shall, by the recording of this Declaration, by the recording of any plat or by any permissive use, expressed or implied, have an easement to use or enjoy the Country Club, nor shall any Person acquire any other right, title or interest in or to said Country Club, it being intended that all rights in and to the Country Club property, or other use of the Country Club by the residents of Kensington Park, will be entirely at the pleasure of the members and board of directors of the Country Club in accordance with the governing documents of the Country Club, and the Country Club shall have no responsibility or obligation to provide such use.

**1.13 “Declaration”** means this Second Amended and Restated Master Declaration of the General Protective Covenants, Conditions and Restrictions for Kensington Park, as hereafter amended.

**1.14 “Family” or “Single Family”** shall refer to any one of the following:

(A) One natural person.

(B) Two or more natural persons who commonly reside together as a single housekeeping unit, each of whom is related by blood, marriage or adoption to each of the others. The determination of a single housekeeping unit shall be in the discretion of the Board.

(C) Two or more natural persons meeting the requirements of (B) above, except that there is among them one person who is not related to some or all of the others.



**1.15 “Governing Documents”** means this Declaration, the Articles and Bylaws of the Master Association and, in the case of a Neighborhood Association, the Neighborhood Covenants. In the event of conflict or inconsistency between the Master Association Governing Documents and the Neighborhood Covenants, the Master Association Governing Documents shall control. One Governing Document’s lack of a provision with respect to a matter for which provision is made in another Governing Document shall not be considered a conflict or inconsistency between such Governing Documents.

**1.16 “Guest”** means any person who is not the Owner or a Tenant of a Home or a member of the Owner’s or Tenant’s Family, who is physically present in, or occupies a Home on a temporary basis at the invitation of the Owner or other legally permitted Occupant, without the payment of consideration.

**1.17 “Home”** means any residential property within the Property for which a certificate of occupancy has been issued by the appropriate governmental authority and which is intended for residential habitation including, without limitation, a detached single family home, an attached townhouse or patio dwelling, duplex or other multiplex dwelling or any condominium or apartment type unit contained in any multi-unit, multi-story, residential building and regardless of whether any of the foregoing are subject to fee simple, condominium, rental or other form of ownership or possession.

**1.18 “Improvement”** means all buildings, parking areas, loading areas, fences, walls, hedges, plantings, lighting, poles, driveways, roads, ponds, lakes, trails, gates, signs, changes in any exterior color or shape, excavation and all other site work, including, without limitation, grading, road construction, utility improvements, removal of trees or plantings, and any new exterior construction or exterior improvement which may not be included in the foregoing.

**1.19 “Kensington” or “Kensington Park”** means all of the land generally depicted on the PUD and any additional land specifically declared as part of Kensington on the attached Exhibit “A”.

**1.20 “Lot”** means a discreet lot or parcel reflected on a recorded plat of lands forming a part of the Properties, or to a condominium unit within a condominium within the Properties, together with the undivided share of the common elements that are appurtenant to the condominium unit. The term “Lot” shall not include any land that is Common Area or Neighborhood Common Area.

**1.21 “Maintenance”** shall mean and refer to the exercise of reasonable care by the Master Association to keep Common Area and all improvements and fixtures on the Common Area which are owned, leased or otherwise held or used by the Master Association, in a condition comparable to their original conditions, normal wear and tear excepted, including the exercise of generally accepted garden management practices necessary to promote a healthy environment for reasonable plant growth in any of the Common Area owned or controlled by the Master Association.

**1.22 “Master Association”** means Kensington Park Master Association, Inc., a Florida

corporation not for profit, which is responsible for the maintenance and operation of the Common Areas and amenities of Kensington Park.

**1.23 “Members”** means and refers to those persons who are entitled to membership in the Master Association as provided in its Articles and Bylaws.

**1.24 “Neighborhood”** shall mean and refer to any portion of real property made a part of the Declaration, which has been granted Neighborhood status by the Master Association.

**1.25 “Neighborhood Association”** shall mean and refer to any property owners association, condominium association or other such similar entity, their successors and assigns, which may be formed for any particular Neighborhood within Kensington Park.

**1.26 “Neighborhood Common Area”** shall mean and refer to any real property, including any improvements and fixtures thereon, owned, leased or the use of which has been granted to a Neighborhood Association for the common use and enjoyment of its members.

**1.27 “Neighborhood Covenants”** shall mean and refer to any and all Declarations, covenants, conditions, restrictions, articles of incorporation, bylaws, and other provisions which may be imposed by recorded instrument applicable to any Neighborhood in Kensington Park.

**1.28 “Occupy” or “Occupant”** when used in connection with a Home, means the act of staying overnight in a Home. Occupant is a person who occupies a Home.

**1.29 “Owner”** means the record Owner of legal title to a Lot.

**1.30 “Permitted Vehicle”** means any vehicle which is not a Prohibited Vehicle or Recreational Vehicle.

**1.31 “Plat”** means those certain plats for Kensington Park 1 at Plat Book 21 Page 62, Kensington Park 2 at Plat Book 25 Page 82, Kensington Park 3A at Plat Book 26 Page 51, Kensington Park 3B at Plat Book 28 Page 5, Kensington Park 3C at Plat Book 30 Page 19, Kensington Park 4 at Plat Book 30 Page 42, and Kensington Park Replat 2E at Plat Book 35 Page 41, all recorded in the Official Records of Collier County, Florida.

**1.32 “Prohibited Vehicle”** means any vehicle which is inoperable, unregistered, commercial vehicles, any swamp buggy, stock car, or any other vehicle not normally used for highway travel, vehicles with body parts such as the hood, door, quarter panel, or bumper removed. As used herein the term “commercial vehicle” means trucks and other vehicles which are used for business purposes including but not limited to, any vehicle which displays a company name or logo on its exterior, is adorned with signs, flags, advertisements or any type of lettering or graphic of a commercial nature or any vehicle with racks, ladders, staging, or other equipment or attachments of a commercial nature, including supplies used for commercial purposes, on or visible in the vehicle. Additionally, and notwithstanding the foregoing, any vehicle, by whatever name designated, which is used for transporting goods, equipment or paying customers shall be considered a commercial vehicle regardless of any definition found elsewhere to the contrary.

**1.33 “Property” or “Properties”** means all the real property which is subject to this

Declaration.

**1.34 “PUD.”** shall mean and refer to Collier County Ordinance No. 92-25 establishing a Planned Unit Development zoning classification, adopted by the Board of County Commissioners of Collier County, Florida on April 28, 1992, as it may from time to time be modified or amended.

**1.35 “Recreational Facilities”** means those facilities or improvements constructed or placed on a Lot, including without limitation by specification, any play or recreation structures, such as swing sets, play houses, plastic play sets or any other kind of structures of a similar kind or nature referenced in this Declaration.

**1.36 “Recreational Vehicle”** means any boat, trailer, motor home, travel trailer, and camper or any similar vehicle or item as determined by the Board by resolution from time to time.

**1.37 “Roadway” or “Street”** means any street, highway or other thoroughfare constructed within the Properties dedicated to on the Plat or otherwise and/or owned by a governmental entity, the Master Association or a Neighborhood Association, whether the same is designated as a street, avenue, boulevard, drive, place, court, road, terrace, way, circle, land, walk or other similar designation, the maintenance, repair and replacement thereof set forth herein.

**1.38 “Rules and Regulations”** means the administrative rules and regulations governing the use, maintenance, management and control of the Common Areas, the Lots and the operation of the Master Association as adopted by the Board of Directors pursuant to the Bylaws.

**1.39 “Structure”** means that which is built or constructed, or any piece of work artificially built up or composed of parts joined together in some definite manner, the use of which requires a more or less permanent location on the ground. The term shall be construed as if followed by the words “or part thereof.” The term includes, without limitation swimming pools, fences, flagpoles, antennas and playground equipment.

**1.40 “Tenant”** means any Occupant who is physically present or occupying a Home for consideration.

**1.41 “Voting Interests”** means the voting rights distributed to the Master Association Members pursuant to the Bylaws.

**1.42 “Water Management Systems and Drainage Areas”** shall mean and refer to the surface and/or underground system and facility for the storage of surface water and sanitary sewer water throughout Kensington Park, including Conservation Lands, lakes and/or ponds designated, specified and/or described in a Plat or the PUD, as amended, and any system or part of a system for the preservation and maintenance of any environmentally sensitive parts of the Properties.

## **2. MASTER ASSOCIATION**

**2.1 Membership.** Every Owner of a Lot shall be a Regular Member of the Master Association, and by acceptance of a deed or other instrument evidencing his ownership interest, each Owner accepts Membership in the Master Association, acknowledges the authority of the Master Association as herein stated, and agrees to abide by and be bound by the provisions of this Declaration, the Articles and Bylaws, and the Rules and Regulations of the Master Association, as amended from time to time. Regular membership, as defined below and in the Bylaws, likewise automatically terminates upon the sale or transfer of an Owner's interest in a Lot, whether voluntary or involuntary. Regular membership shall be appurtenant to and may not be separated from the ownership of any Lot. Each Lot in the Master Association is subject by covenants of records to the jurisdiction and powers of the Master Association, and particularly to the Assessment and Assessment lien authority of the Master Association.

**2.2 Delegation of Membership and Responsibility.** A Member may delegate his right of use in the Common Area to members of his Family, to residential tenants who reside in a structure on the Member's Lot and to the Member's Guests, but only to the extent and subject to conditions, limitations and restrictions as may be provided for in the Articles and Bylaws and in accordance with the Master Association's Rules and Regulations. Each Member shall be responsible for the actions of any person to whom the Member has delegated his right to use the Common Area. Any unpaid charge against such person shall be charged against such Member personally and be assessed against such Member's Lot. Any infraction of the Master Association's Rules and Regulations by such person shall be deemed an infraction by such Member.

**2.3 Voting Rights.** In addition to those rights set forth in the Bylaws, there shall be two types of Memberships, "Regular Memberships" and "Limited Memberships".

(A) Regular Members shall be entitled to one (1) vote for each Home owned by such Regular Member. When there are multiple Owners of a Lot, only one (1) vote may be exercised for each Home which vote shall be exercised among the Owners of said Lot as provided for in the Bylaws. In the event the Country Club acquires title to a Lot, the Country Club shall be a Regular Member relative to the rights and responsibilities associated with the Lot, and shall be a Limited Member for all other purposes.

(B) Limited Members shall be all members of the Country Club. Limited Members are entitled to vote on matters coming before the Master Association directly related to the lakes and Water Management System and Drainage Areas serving the Property, and matters concerning the Conservation Lands and Conservation Buffer Easement. Any dispute as to which matters directly relate to the lakes, Water Management System and Drainage Areas, Conservation Lands or Conservation Buffer Easements shall be resolved by the Board of the Master Association. Subject to such limitations, Limited Members shall be entitled to the following number of votes and shall be required to cast all of their votes as set forth below:

(i) When voting on matters concerning the lakes, Water Management System and Drainage Areas, Conservation Lands and/or Conservation Buffer Easements, Members of the Country Club, as Limited Members, shall be entitled to an aggregate number of votes equal to seven and one-half (7.5) times the number of acres comprising the Country Club property. For purposes of calculating such voting, Country Club property acreage shall include all property

which is owned by the Country Club and completed for use by the Members of the Country Club, including tees, fairways, greens, practice greens, driving range, clubhouse site, maintenance site, but excluding lakes and conversation Lands.

(ii) The Country Club shall be required to designate one (1) of the members of the Country Club's board of directors as its representative to cast all of the votes of the Limited Members (the "Country Club Voting Representative"). The Country Club Voting Representative shall be exclusive agent for and hold the irrevocable proxy and authority to act for and vote on behalf of the Limited Members with respect to the affairs of the Master Association. The votes cast by the Country Club voting representative shall be conclusively binding on the Limited Members. Notwithstanding anything in the Master Association Governing Documents to the contrary, whenever the vote of Limited Members is required or requested under this Declaration or the Bylaws, or required by the Board of the Master Association, the Vote of the Limited Members shall be cast by the Country Club voting representative as a block vote, either all positive or all negative, as approve by the Limited Members.

**2.4 Delegation of Management.** The Master Association may contract for the management and maintenance of those portions of the Property it is required to maintain, and may authorize a licensed management agent to assist the Master Association in carrying out its powers and duties by performing functions which may include but are not limited to the submission of proposals, collection of Assessments, keeping of records, enforcement of rules and maintenance, repair and replacement of the Common Areas with funds made available by the Master Association for such purposes.

**2.5 Acts of the Master Association.** Unless the approval or affirmative vote of the Owners is specifically made necessary by the law or the Governing Documents, all approvals or actions permitted or required to be given or taken by the Master Association may be given or taken by its Board of Directors, without a vote of the Owners. The Officers and Directors of the Master Association have a fiduciary relationship to the Owners. An Owner does not have the authority to act for or bind the Master Association by reason of being an Owner.

**2.6 Powers and Duties.** The powers and duties of the Master Association include those set forth in Chapters 617 and 720, Florida Statutes, and the Governing Documents. The Master Association may contract, sue or be sued with respect to the exercise or non-exercise of its powers and duties. For these purposes, the powers of the Master Association include, but are not limited to,

(A) The Maintenance, management, and operation of the Common Areas.

(B) The power to enter into agreements to acquire leaseholds, memberships and other ownership, possessory, easement or use interests in lands or facilities for the use and enjoyment of the Owners.

(C) Subject to the provisions of this Declaration or any other applicable recorded instrument and the Master Association's Articles and Bylaws, the Master Association shall have the right, and the power, to develop, promulgate and enforce Rules and Regulations for the use and enjoyment of the Common Areas.

(D) The Master Association shall be responsible for enforcing all governmental regulations and monitoring responsibilities in the Conservation Land and Conservation Buffer Zone.

(E) The Master Association, through the Board of Directors, shall have the power to borrow money for the purpose of improvement and/or maintaining the Common Areas and providing the services authorized herein, and, in aid thereof, to mortgage and encumber said properties.

(F) The Master Association shall regulate and control the external design and appearance of the Common Area: (i) to promote a quality environment which will preserve the value of an Owner's Lot, and (ii) to foster the attractiveness and functional utility of Kensington Park as a place to live, work and play, including a harmonious relationship among structures, vegetation and topography.

**2.7 Official Records.** The Master Association shall maintain its official records as required by law. The records shall be open to inspection by Members or their authorized representatives' at all reasonable times. The Board shall have the right to adopt reasonable Rules and Regulations concerning the frequency, number and length of requests to inspect the official records as provided by Florida law.

**2.8 Purchase of Lots.** The Master Association has the power, but not the obligation, to purchase Lots in the community in connection with the foreclosure of a Master Association lien for Assessments, charges or fines or any other foreclosure of an interest that affects the Master Association's lien and to hold, lease, mortgage, encumber or convey them with such power to be exercised by the Board of Directors without prior approval of the Members.

**2.9 Interests in Real Property.** The Master Association has the power to acquire property, both real and personal. The power to acquire personal property shall be exercised by the Board of Directors. Except as otherwise provided in Sections 2.6 and 2.8 above and Section 2.12 below, the power to acquire, encumber or convey ownership interests in real property, including Recreational Facilities, whether or not contiguous with the Property, shall be exercised by the Board of Directors only after approval by at least a majority of the voting interests of the Master Association.

**2.10 Disposition of Personal Property.** Any personal property owned by the Master Association may be sold or otherwise encumbered or disposed of by the affirmative vote of a majority of the entire Board of Directors, without need for authorization by the Owners.

**2.11 Roster.** The Master Association shall maintain a current roster of names and mailing addresses of Owners, based upon information supplied by the Owners. Owners are responsible for notifying the Master Association of any change in their mailing address. All such notices shall be in writing.

**2.12 Conveyance and Use.** No Common Area shall be deemed dedicated for use by the general public but is, and shall be, deemed restricted for the common use and enjoyment of the

Members or to those parties to which any use right has been granted, subject to the terms of this Declaration.

**2.13 Bulk Agreements.** The Board of Directors of the Master Association, by a majority vote pursuant to the applicable provisions of the Bylaws, shall have the power to enter into an agreement with an entity providing cable television or other bulk service to obtain cable television or bulk service on a “bulk rate” basis. Pursuant to such “bulk rate” agreement, every residential unit within the property subject to this Declaration shall receive the cable television or other bulk service specified in such agreement and any “bulk rate” fee or payment provided for in any such agreement which is to be paid by the Master Association to the provider shall be a Common Expense of the Master Association.

### **3. ASSESSMENTS.**

The provision of this section shall govern Assessments payable by all Owners of Lots, for the Common Expenses of the Master Association not directly attributable to one of the Lots.

**3.1 Covenants to Pay Assessments.** Each Owner of a Lot by the act of becoming an Owner covenants and agrees, and each subsequent Owner of any Lot (including any purchaser at a judicial sale), by acceptance of a deed thereof, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Master Association the Owner’s proportionate share of Assessments as described below:

(A) **Regular Assessments.** The Board may levy Regular Assessments against the Owners and the Country Club (as provided herein) for the budgeted Common Expenses. The Board shall determine the amount and time for payment of Regular Assessments pursuant to the Articles and Bylaws. The Board may consider the current maintenance, operational and other costs of the Master Association and its future needs, including the need for reserves.

(B) **Supplementary Assessments.** The Board may levy Supplementary Assessments in addition to the Regular Assessment necessary to pay Common Expenses including, without limitation, amounts to cover non-recurring items of Common Expense, or amounts necessary to supplement Regular Assessments in order to defray Common Expenses of the budget. If the Board determines that the Regular or any Supplementary Assessment are, or will become, inadequate to meet all Common Expenses for any reason, it shall determine the approximate amount of such inadequacy and make a Supplemental Assessment against each Lot specifying the date or dates when due. A Supplementary Assessment may be added to and paid with installments of the Regular Assessment, or be otherwise payable as determined by the Board.

(C) **Special Assessments.** Special Assessments represent a “charge” against a particular Owner and his Lot necessary to reimburse the Master Association for costs in bringing the Owner or his Lot into compliance with the provisions of the Governing Documents. Special Assessments may be levied by the Board and given their nature and purpose, may be levied on a non-uniform basis. The Country Club shall not be responsible for payment of any Special Assessments unless consent to such Special Assessment is approved by the Country Club.

(D) **Improvement Assessments.** Improvement Assessments are levied against an Owner and his Lot representing the prorata share of the cost to the Master Association for the

installation or construction of any capital improvements to the Common Areas, the cost of the acquisition of additional Common Area, or the reconstruction of any portion or portions of the Common Area which the Master Association may from time to time authorize pursuant to the provisions of this Declaration, it being the specific intent of this section the Improvement Assessments shall exclude routine and non-routine maintenance of the Common Areas. All Improvement Assessments must first be approved by at least a majority of the Regular Members and the Master Association must provide at least sixty (60) days' notice of the meeting at which such Improvement Assessment will be considered by the Board. Improvement Assessments shall be payable at such times as may be determined by the Board and approved in accordance with the Governing Documents. All amounts collected as Improvement Assessments may only be used for capital Improvements and shall be deposited by the Board in a separate account to be held in trust for such purposes. Improvement Assessments shall not be commingled with any other funds of the Master Association and shall be considered a contribution to the capital account of the Master Association by the Members obligated to pay such Assessments. The Country Club shall not be responsible for payment of any Improvement Assessments unless consent to such Improvement Assessment is approved by the Country Club.

**(E) Service Assessments.** Service Assessments represent charges against a particular Owner and his Lot for any service, material or combination thereof which may be obtained by the Master Association for the use and benefit of such Owner or his Lot or an individual Neighborhood, but which can be accepted or not by the Owner of such Lots or by the Owners within such Neighborhood, such as contracting in bulk for repairs, services, materials or maintenance. Service Assessments may be levied on a non-uniform basis. The Country Club shall not be responsible for payment of any Service Assessments unless consent of such Service Assessment is approved by the Country Club.

**3.2 Liability of Payment.** Assessments and charges shall be established and collected as provided herein and elsewhere in the Governing Documents. The Owner of each Lot, regardless of how title was acquired, is liable for all Assessments and charges, together with interest, costs and reasonable attorney's fees, installments and any monetary obligation thereon coming due while he is the Owner. Multiple Owners are jointly and severally liable for all monetary obligations. Except as provided below, whenever title to a Lot is transferred for any reason, the transferee is jointly and severally liable with the transferor for all unpaid Assessments and all charges, including but not limited to, administrative and attorney's fees, against the transferor, regardless of when incurred, without prejudice to any right the transferee may have to recover from the transferor any amounts paid by the transferee. No Owner may waive or otherwise escape liability for the Assessments and charges provided for herein by waiver or non-use of the Common Areas, by abandonment, or otherwise. Except as provided elsewhere in the Governing Documents, no Owner may be excused from the payment of Assessments unless all Owners are similarly excused. Assessments and other funds collected by or on behalf of the Master Association become the property of the Master Association. No Owner has the right to claim, assign or transfer any interest therein except as an appurtenance to his Lot. No Owner can withdraw or receive distribution of his prior payments to the common surplus or Master Association reserves, except as otherwise provided herein or by law. The Board of Directors shall have discretion to compromise, as each situation may require, regarding late charges, interest, attorney fees, and other collection costs, but not as to Assessments. A compromise in one situation will not in any way require a compromise in any other situation.



**3.3 Country Club Responsibility.** The Country Club shall be solely assessed annually for access and patrol services plus any other services provided from time to time by the Master Association to the Country Club as agreed to by the parties in writing. The Assessment for access and patrol services shall be six and one-quarter percent (6.25%) of the access and patrol amounts included in the Regular Budget covering personnel, vehicles, uniforms and payroll services adopted by the Board for the current year. In the event the Country Club incurs access and patrol obligations in excess of the budgeted amount in any calendar month, the Country Club shall be responsible for the above 6.25% responsibility for said additional amounts incurred by the Master Association, and payment for said additional amounts shall be paid by the Country Club to the Master Association within ten (10) days of receipt by the Country Club of the actual amounts incurred by the Master Association for access and patrol. Unless the Country Club specifically consents to the payment thereof, the Country Club is obligated to pay to the Master Association only Regular Assessments, Supplementary Assessments and other charges made in accordance with this Declaration, the Articles, Bylaws and Rules and Regulations. Any Assessments levied against the Country Club, as applicable, shall be payable pursuant to this Article 3 and shall remain the obligation of the Country Club even if the Country Club conveys the Country Club Property to a third party and shall remain a lien on the Country Club Property.

**3.4 Payment Due Date.** Assessments shall be payable at such time as the Board determines. Receipt of a reminder or invoice is not a prerequisite or requirement for payment. The responsibility to timely pay any Assessment levied by the Master Association is independent of a receipt.

**3.5 Purposes of Assessments.** The Assessments levied by the Master Association shall be used for the purposes of promoting the general welfare of the Owners and residents of the Master Association, to operate, maintain, repair, improve, construct, and preserve the Common Areas for the benefit of its Members, their Guests, Tenants and invitees; and to perform all other duties and responsibilities by the Master Association as provided in the Governing Documents.

**3.6 Share of Assessments.** The annual budget, less any amounts assessed to the Country Club, shall be paid by the Members in the following manner: each Lot shall be assigned an Assessment Index. The Assessment Index shall be equal to the total number of votes assigned to such Lot. Each Owner of a residential Lot shall be obligated to pay a portion of the annual budget, which portion shall be no greater than a fraction, the numerator of which is that Lot's Assessment Index and the denominator of which is the total of Assessment Indexes for all Lots. Such portions allocated to residential Lots shall constitute the Regular Assessment allocable to such residential Lot for the fiscal year. In no event may the Assessment Index assigned to any Lot be less than the number of votes which may be exercised (notwithstanding the limited voting rights of Limited Members) by the Owners of such Lot. Supplementary and Improvement Assessments shall be levied in the same proportion as Regular Assessments (subject to limitations on Assessments to be paid by the Country Club). Regular, Supplementary and Improvement Assessments may be collected at such intervals as may be determined by the Board, subject to any prescribed membership approval. Special and Service Assessments need not be uniform in amount nor levied in a proportion to the Assessment Index due to their nature, but they shall be handled and processed in a uniform and nondiscriminatory manner with respect to any Lots similarly situated.

**3.7 Lien.** The Master Association has a lien on each Lot and/or Country Club Property, if applicable, for unpaid past due Assessments, and charges, together with interest, late payment penalties, costs and reasonable attorneys' fees incurred by the Master Association in enforcing this lien. The lien is perfected by recording a claim of lien in the public records of Collier County and shall relate back to the recording date of the original Declaration of the Master Association, which claim of lien shall state the description of the property encumbered thereby, the name of the record Owner, the amounts then due and the dates when due. The claim of lien must be signed and acknowledged by an Officer, agent, or attorney of the Master Association. The lien shall continue in effect until all sums secured by said lien have been fully paid, and the lien satisfied or discharged. The claim of lien shall secure all unpaid Assessments, fines and charges, interests, late fees, costs and attorney fees which are due and which may accrue or come due after the recording of the claim of lien and before the entry of a final judgment of foreclosure. Upon full payment, the person making payment is entitled to a satisfaction of the lien.

**3.8 Foreclosure of Lien.** The Master Association may bring an action in its name to foreclose its lien for unpaid Assessments or charges upon a Lot or the Country Club Property, if applicable, by the procedures and in the same manner as is provided in Section 720.3085 of the Florida Statutes, as amended from time to time. All unpaid Assessments and charges also constitute a personal obligation of the Owners and the Country Club and the Master Association may, in addition to any other remedy herein provided, bring an action at law against any Owner or the Country Club liable for unpaid monetary obligations, charges or Assessments. If final judgment is obtained, such judgment shall include interest on the Assessments as above provided and reasonable attorneys' fees to be fixed by the Court, together with the costs of the action, and the Master Association shall be entitled to recover any attorney fees in connection with any appeal of such action.

**3.9 Priority of Liens.** The Master Association's lien for unpaid charges, Assessments and all other amounts shall be subordinate to any recorded institutional first mortgage, unless the Master Association's claim of lien was recorded before the mortgage was recorded, but shall relate back to the date the original Declaration was recorded in the Collier County, Florida Public Record and be superior to, and take priority over, any other mortgage, lien or interest recorded after that date. The above subordination shall in no way extinguish the liability of an institutional first mortgagee for any monetary obligations owed to the Master Association. Any lease of a Lot shall be subordinate and inferior to the lien of the Master Association, regardless of when the Lease was executed.

**3.10 Application of Payments; Failure to Pay; Interest.** Assessments, charges and installments thereon paid on or before ten (10) days after the date due shall not bear interest, but all sums not so paid shall bear interest at the highest rate allowed by law, calculated from the date due until paid. In addition to interest the Master Association may also charge an administrative cost and a late payment fee in an amount not to exceed the maximum amount allowed by law. Any restrictive endorsement on or accompanying a payment notwithstanding, all payments made to the Master Association by or on behalf of an Owner and/or the Country Club shall be applied first to interest, then, to late fees, then to costs (including but not limited to collection charges imposed by the management company, attorney and court) then to attorney

fees, then to fines (if allowed by law), then to other charges, and then to the oldest outstanding unpaid Assessments, and no partial payment shall be deemed a satisfaction unless expressly acknowledged in writing by the Board of Directors. No payment by check is deemed received until the check has cleared.

**3.11 Acceleration.** If any installment of an Assessment as to a Lot and/or Country Club becomes more than thirty (30) days past due, and a claim of lien is recorded, the Master Association shall have the right to accelerate the due date of the entire unpaid balance of the Lot's Assessments for that fiscal year. The due date for all accelerated amounts shall be the date the claim of lien was recorded in the public records. The Master Association's claim of lien shall secure payment of the entire accelerated obligation, together with interest on the entire balance, attorney fees and costs as provided by law; and said claim of lien shall not be satisfied or released until all sums secured by it have been paid. The right to accelerate shall be exercised by sending to the delinquent Owner and/or Country Club a notice of the exercise, which notice shall be sent by certified or registered mail to the Owner and/or Country Club's last known address, and shall be deemed given upon mailing.

**3.12 Exempt Property.** The Common Areas and Neighborhood Common Area shall be exempt from all Assessments levied herein.

**3.13 Certificate as to Assessment, Mortgagee Questionnaires.** Within fifteen (15) days after request by an Owner or mortgagee, the Master Association shall provide a certificate or letter stating whether all Assessments and other monies owed to the Master Association by the Owner with respect to the Lot have been paid. Any person other than the Owner who relies upon such certificate shall be protected thereby. The Master Association may charge up to the maximum rate allowed by law to issue an estoppel letter, the amount to be determined by the Board in its sole and absolute discretion. The Master Association may but is not obligated to respond to mortgagee questionnaires. If the Master Association chooses to respond to a mortgagee questionnaire the Master Association may charge up to the maximum rate allowed by law (in addition to any charge for an estoppel letter) plus attorney's fees for doing so.

**3.14 Mortgage Foreclosure.** Unless otherwise provided by law, if the mortgagee of a first mortgage or an institutional mortgage of record acquires title to a Lot as a result of foreclosure of the mortgage, or as the result of a deed given in lieu of foreclosure, such acquirer or title shall be jointly and severally liable for all past due monetary obligations attributable to the Lot, or to the former Owner of the Lot, which came due prior to the mortgagee's acquisition of title or as required by Section 720.3085, Florida Statutes, including, but not limited to, Assessments, charges, interest, late fees, costs (including any administrative or collection costs) and attorneys' fees. Any unpaid share of Common Expenses for which such acquirer is exempt from liability becomes a Common Expense collectible from all Owners, including such acquirer and his successors and assigns. All other persons or entities acquiring title to a Lot as the result of a foreclosure or other court ordered sale shall be obligated to pay all past due Assessments, charges, interest, late fees, costs, and attorneys' fees due and owing at the time of sale regardless of whether or not the Master Association has filed a lien. No Owner or acquirer of title to a Lot by foreclosure, or by a deed in lieu of foreclosure, may be excused from the payment of any Assessments coming due during the period of his ownership.

**3.15 Collection of Assessments through Neighborhood Associations.** Assessments and other charges that are levied by the Master Association against any Lots within a Neighborhood may be collected from the Owners of the Lots within such Neighborhood through the Neighborhood Association responsible for operating such Neighborhood. In this event, the Master Association shall certify the amount and category of all Assessments and other charges against the Lots within such Neighborhood to the Neighborhood Association operating the same and the Neighborhood Association shall then be responsible for collecting the same as agent and on behalf of the Master Association. The provisions hereof are intended to serve as an accommodation to the Master Association and its Members and to the Neighborhood Associations but shall not make Neighborhood Associations liable for any Assessments and other charges beyond the amounts actually received by such Neighborhood Association or diminish or impair the obligation of each Owner for Assessments and other charges otherwise due from such Owner. The Master Association, in its sole discretion, shall determine whether to collect Assessments and other charges through Neighborhood Associations and such determination shall be binding on the Neighborhood Associations. Each Neighborhood Association shall remit the Assessments and other charges collected by the Neighborhood Association by the deadline established by the Master Association, along with a list of all Owners who fail to pay Assessments and other charges that were billed through the Neighborhood Association.

**3.16 Resale Capital Assessment.** The Master Association shall levy a Resale Capital Assessment upon the transferee of a conveyance of any Lot owned by an Owner to be maintained by the Master Association in its reserve account as provided for in this Declaration and in the Bylaws.. The amount of the Resale Capital Assessment shall be an amount equal to two (2) quarterly assessment installments as determined by the annual Master Association budget, including reserves, and may not be increased absent an amendment to this Section 3.16 and in accordance with Section 12.2 below. The due date shall be the date of the closing of the conveyance. The Resale Capital Assessment shall, unless the transferor and transferee otherwise expressly agree, be the obligation of the transferee. For the purposes of this section, the term “conveyance” shall mean the nonexempt transfer of record legal title to a Lot by deed or other authorized means of conveyance for or without valuable consideration, and shall also refer to the transfer of possession and beneficial ownership by means of an agreement for deed. The following conveyances shall be exempt from payment of the Resale Capital Assessment:

(A) a conveyance by any record title holder to any person or entity who was also a record title holder of the Lot being conveyed in the Master Association immediately prior to such conveyance;

(B) a conveyance to the Owner’s estate, surviving spouse, or other heirs resulting from the death of an Owner;

(C) a conveyance by an Owner to a trust, partnership, corporation, or other entity so long as such entity is and remains wholly-owned by the Owner or by such Owner and the Owner’s spouse and/or children for estate planning or tax purposes;

(D) a conveyance to the Master Association or Neighborhood Association pursuant to a final judgment of foreclosure or deed in lieu of foreclosure.

## **4. EASEMENTS**

### **4.1 Members Common Easements.**

(A) Subject to the provisions of the Governing Documents and Rules and Regulations of the Master Association, and any prior use rights granted in the Common Area, every Member, their successors and assigns and their families and every Guest, tenant, and invitee of such Member, is hereby granted a right and easement of ingress and egress and enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(i) The Members of the Country Club, their family Members, Guests, invitees and lessees, the players or users of the golf course, tennis courts, or other recreational facilities which are part of such Country Club, and the spectators at tournaments (the "Visitors") shall have a perpetual non-exclusive easement in their favor to use the Common Area for all normal purposes, including, but not limited to, ingress and egress and for the furnishing of services and facilities and for such other purposes for which the same are reasonably intended in accordance with the terms of this Declaration. However, this easement as it relates to the use of the Common Area by Members of the Country Club or Visitors shall be only as to that portion of the Common Area necessary for their use. Any disputes as to what constitutes a normal purpose or what portion of the Common Area is necessary for their use, shall, during the term of this Declaration, be determined by the Board in its sole and absolute discretion;

(ii) The Master Association may suspend the rights of any Regular Member to use the Common Area for any period during which any Assessment against such Member's Lot remains unpaid and delinquent;

(iii) The right of the Master Association, without further consent from Members or their mortgagees, to declare, grant and record perpetual easements granting the full free right, power and authority to lay, operate and maintain landscaping, drainage facilities, sanitary sewer lines, potable and irrigation water lines, storm sewers, gas and electric lines, communication lines, cable television lines, and such other further service facilities or other uses as the Board may deem necessary, along, through, in, over and under a strip of land up to ten (10) feet in width from all sides, from and rear lines of any Lot and along, through, in, over and under all Common Area. Such easements may benefit Properties within Kensington Park or Properties not within Kensington Park. Further, the Master Association shall have the right to acquire, extend, terminate or abandon such easement;

(iv) The right of all persons lawfully on and entitled to occupancy rights on any property within Kensington Park to have a non-exclusive perpetual right of ingress and egress over and across lands owned by the Master Association subject to this Declaration and the Articles and Bylaws;

(v) The right of the Master Association for ingress and egress over and across all Properties for the purpose of maintaining the Conservation Land and Conservation Buffer

Zone;

(vi) The right to take such steps as are reasonably necessary to protect the Common Area against foreclosure; and

(vii) The lakes, Water Management Systems, Conservation Lands and Conservation Buffer Easements are Common Area of the Master Association. No Regular Members or Limited Members of the Master Association and no Owner of a Lot shall have the right of access to or use of the lakes, Water Management Systems, Conservation Lands and Conservation Buffer Easements. Access to or entry upon such areas by Regular Members of the Master Association or Owners of Lots shall only be permitted for purposes of maintaining such areas under the direction and approval of the Board and supervision of the Country Club. The frequency of such access is to be limited to the absolute minimum access necessary to fulfill Maintenance obligations and shall be undertaken only under supervision of the Country Club.

(B) The Master Association and the Country Club shall have the authority to grant use rights in or access to lakes, Water Management, Conservation Lands and Conservation Buffer Easements but such right must be granted in writing by both the Master Association and the Country Club.

**4.2 Utility Easements.** The Master Association shall have the right to grant such electric, telephone, gas, water, sewer, irrigation, drainage, central service or other easements, and to relocate any existing easement in any portion of the Property as the Master Association shall deem necessary or desirable, for the proper operation and Maintenance of the Property, or any portion thereof, or for the general health or welfare of the Owners for the purpose of carrying out any provisions of this Declaration. Such easements or the relocation of existing easements may not prevent or unreasonably interfere with the use of the Lots. Each Lot, shall be subject to an easement in favor of all other portions of the Property to locate utilities and provide drainage and support and to use, maintain, repair, alter and replace structural supports, roofs, pipes, wires, ducts, vents, cables, conduits, public utility lines and other similar or related facilities serving other portions of the Property. Each Lot, shall be subject to all easements recorded in the Official Records of Collier County, whether by recorded instrument, Plat dedication or otherwise.

**4.3 Subordination.** Notwithstanding any of the foregoing to the contrary, it is understood that these covenants and restrictions are subordinate, and will be subordinate without the necessity of any other instrument, to any existing easement or easements to any public or quasi-public utility for the installation and maintenance of service lines in the Common Areas.

**4.4 Extent of Easements.** The rights and easements of enjoyment created hereby shall be subject to the following:

(A) The right of the Master Association, in accordance with its Bylaws, to borrow money for the purpose of improving and/or maintaining the Common Areas and providing the services herein, and, to aid thereof, to mortgage said Property;

(B) The right of the Master Association to impose Rules and Regulations governing the use of the Common Areas and Master Association property as further provided in Article 7 of the Bylaws; and

(C) Each Owner hereby grants to the Master Association a non-exclusive easement for ingress and egress over the Common Area and over the Owner's Lot, to enter upon the same at reasonable times to enforce the provisions of this Declaration, and the same shall not constitute a trespass.

(D) The Master Association shall have the right, but not the obligation, to enter upon any Lot for emergency, security, and safety reasons, to perform Maintenance pursuant to this Declaration, and to inspect for the purposes of ensuring compliance with this Declaration, any supplemental Declaration, Articles, Bylaws, and Rules and Regulations, which right may be exercised by any member of the Board, the Master Association, officers, agents, employees, and managers, and all law enforcement personnel, fire personnel, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after reasonable notice to the Owner. This right of entry shall include the right of the Master Association to enter upon any Lot to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Board, but shall not authorize entry into any Home without permission of the Owner, except by emergency personnel acting in their official capacities.

**4.5 Maintenance of Easement Area.** In the event the Master Association has landscape Maintenance obligations for any areas subject to any easement referenced in Section 4.1 herein, the Master Association shall only be obligated to Repair and Replace any landscaping over an easement area with sod cover. No Owner may install or construct any additional landscaping or Improvements on any Lot burdened by said easement without prior written approval of the ARB as provided for in Article 6 of this Declaration.

**4.6 Lateral and Subjacent Support.** Each Lot shall be burdened with an easement in favor of all adjoining Lots and Common Areas for lateral and subjacent support.

**4.7 Encroachments.** There shall be reciprocal appurtenant easements of encroachment as between each Lot and such portion or portions of the Common Area adjacent thereto or as between adjacent Lots due to the unintentional placement or settling or shifting of the Improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than one (1) foot, as measured from any point on the common boundary between each Lot and the adjacent portion of the Common Area or as between said adjacent Lot, as the case may be, along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of an Owner, tenant, or the Master Association.

**4.8 Lake and Water Rights.** The Master Association hereby reserves for itself and its designees all rights to ground water, lake water, surface water, and storm water runoff within the

Properties and each Owner agrees, by acceptance of a deed to a Lot, that the Master Association shall retain all such rights. No Person other than the Master Association and its designees shall claim, capture or collect rainwater, groundwater, surface water or storm water runoff within the Properties without prior written permission of the Master Association or its designees. The Master Association or its designees may establish programs for reclamation of storm water runoff and wastewater for appropriate uses within or outside the Properties and no Owner or occupant of Homes shall have any right to be compensated for water claimed or reclaimed from Homes. Owners and Neighborhood Associations may at their own discretion, or as directed by the Master Association in its reasonable discretion, add rain gutters and downspouts to the Homes or condominium buildings, if applicable. All such additions must be attached to a drainage system directing the water back into the Common Areas without causing contamination or erosion to the Common Areas. The plans for such additions must be submitted to the ARB for approval prior to installation and shall thereafter be maintained by the Owner or Neighborhood Association, as applicable.

(A) Unless otherwise assumed by Collier County or other regulatory or governmental agency, the Master Association is responsible for the operation, maintenance and management of the surface water and storm water management systems serving the Properties, in accordance with applicable codes, ordinances and regulations, as amended, and any applicable permits from the Florida Department of Environmental Regulation, U.S. Army Corps of Engineers and South Florida Water Management District. Any land used for surface water or storm water management or designated as preserve areas shall be placed under the control of the Master Association, either by direct conveyance of such land as Common Area, or the granting of an easement or license over such land to the Master Association.

(B) The Master Association may adopt Rules and Regulations governing the maintenance, conservation and preservation of the use of lands designated for water management and preserve areas; provided, however that said Rules and Regulations shall not contravene the provision of the ordinances, resolutions and permits referenced above and further provided that such Rules and Regulations shall not interfere with the use by the Country Club of such areas unless governmental authorities have caused such Rules and Regulations to be imposed.

(C) No Structure of any kind shall be constructed or erected, nor shall an Owner or Neighborhood Association in any way change, alter, impede, revise or otherwise interfere with the flow and the volume of water in any portion of a water management, lake or preserve area reserved for drainage ways, sluiceways or for the accumulation of runoff waters, as reflected in any plat or instrument of record, without the specific prior written permission of the Master Association. In addition, no Owner or Neighborhood Association shall permit the condition of their Lot or Home to cause damage to the Water Management System and the Master Association may require Owners and Neighborhood Associations to take reasonably corrective measures to prevent further damage in accordance with rules adopted by the Board from time to time and as otherwise approved in accordance with Article 6 below.

(D) The right of ingress and egress, and easements therefore, are reserved over the water management, lake and preserve areas in favor of the Master Association, Country Club and their Members and designees and any appropriate governmental or quasi-governmental agency that may reasonably require such ingress and egress. An Owner shall not prevent ingress and



gress by the Master Association, Country Club or any appropriate governmental or quasi-governmental agency to such water management, lake and preserve areas for Maintenance or landscape purposes.

(E) No Lot shall be increased in size by filling in any water management, lake or preserve area on which it abuts, nor shall an Owner fill, dike, rip-rap, block, divert or change the established water management, lake and preserve areas that have been or may be placed under Master Association control by conveyance, dedication, easement or license without the prior written consent of the Master Association.

(F) The Master Association shall have the power to require a Neighborhood Association to maintain any portion of a water management, lake or preserve area within the boundaries of such Neighborhood and to enforce such requirement pursuant to this Declaration. This maintenance is limited to normal and reasonable day to day activities such as mowing, weeding or irrigation and will not include any structural maintenance. The Neighborhood Associations shall not be required to repair any property referenced herein unless the damage or repair was necessitated by the act or inaction of the Neighborhood Association.

(G) The water management, conservation and preserve areas have been incorporated into and are a functional part of the Country Club property. Subject to regulation by the South Florida Water Management District or other applicable governmental entities, the Country Club shall have unlimited use rights for irrigation purposes of all water within the water management system at Kensington Park and unlimited easement in and access to the lake, Water Management System, Conservation Lands and Conservation Buffer Easements. The Master Association shall not undertake any activity in connection with or modification of the lakes, water management of the lakes, water management, conservation or preserve areas or Conservation Buffer Easements which may affect the integrity or operation of the Country Club without consent of the Country Club. This provision shall not limit the Master Association's ability or obligation to maintain the water management, conservation and preserve areas to the minimum extent required by governmental regulations, nor shall it limit the use of the water for irrigation of Lots, Common Areas and Neighborhood Common Areas. The Master Association shall coordinate maintenance activities with the Country Club and may contract with the Country Club for the operation and Maintenance of the water management, conservation and preserve areas and the Conservation Buffer Easement.

**4.9 Improvements on Lake.** In the event the Master Association shall construct any bridges, docks, or other Improvements which may extend over or into the lakes or construct any bulkheads or similar Improvements to support or enhance the lakes, the Master Association shall maintain any and all Improvements in good repair and condition. No Owner, except the Master Association, shall be permitted to construct any Improvement, permanent or temporary, on, over or under any lakes without the prior written consent of the Master Association, which consent may be withheld for any reason. Except as provided for in Section 2.3(B), any Owner and the Master Association must obtain written consent of the Country Club to construct any Improvement, permanent or temporary, on, over or under any lake, Water Management System, Conservation Land or Conservation Buffer Easements, which consent may be withheld for any reason.

#### **4.10 Water Management, Drainage and Conservation Lands Restrictions and Easements.**

(A) No structure, planting or other material (other than sod) of any kind shall be constructed, erected or installed, nor shall an Owner in any way change, alter, impede, revise or otherwise interfere with the flow and the volume of water in any portion of a water management drainage area as reflected in any plat or instrument of record, without the specific prior written permission of the Master Association and, if applicable, the Country Club. No Owner shall permit his property to remain in a condition that causes damage to Common Areas as a result of water flow from a Lot and the Association may require Owners to take reasonably corrective measures at the Owners' expense to mitigate or reduce damage to the Common Areas as a result of said water flow. No Owner shall introduce, or cause to be introduced, any chemicals, toxins, debris or any other material or chemical into the lakes for any reason.

(B) Neither the Country Club nor and Owner shall in no way deny or prevent ingress and egress by the Master Association to any water management and drainage areas for Maintenance or landscape purposes. The right of ingress and egress, and easements therefore, are hereby granted in favor of the Master Association or any appropriate governmental; or quasi-governmental agency that may reasonably require such ingress and egress and easements therefore are hereby specifically reserved and created.

(C) No Lot shall be increased in size by the filling in of any water retention or drainage areas on which it abuts. Owners shall not fill, dike, rip-rap, block, divert or change the established water retention and drainage areas that have been or may be created by easement, without the prior written consent of the Master Association. No Owner may draw water for irrigation (other than that provided for by the Master Association to Neighborhood Associations) or other purposes from any lake, pond or other water management area nor is any boating or swimming in such areas allowed, without the prior written consent of the Master Association and, if applicable, the Country Club.

(D) Subject to the provisions of Section 10.6 (f) hereof, the Conservation Land and Conservation Buffer Easement areas are hereby declared as Common Areas and they shall be the perpetual responsibility of the Master Association and may not be altered from their natural state other than to remove exotic vegetation or to provide the drainage as shown on the plat and approved construction plans for each phase. Activities prohibited within the Conservation Land and Conservation Buffer areas include, but are not limited to, construction or placing of structures on or above the ground, dumping or placing soils or other substances such as trash, removal or destruction of trees, shrubs or other vegetation, with the exception of exotic vegetation removal, dredging or removal of soil material, diking or fencing, and any other activities detrimental to drainage, flood control water conservation, erosion control, or fish and wildlife habitat conservation or preservation.

(E) All surface water management systems within Kensington Park will be the ultimate responsibility of the Master Association. The Master Association may enter any Lot or Common Area and make whatever improvements or repairs are deemed necessary to restore proper water management. The cost shall be an expense of the Master Association, unless such restoration was necessitated by the act of an Owner. For purposes of this section, the

Association shall be responsible for the maintenance, repair and replacements of bulkheads on Lots and Common Areas, unless the maintenance, repair or replacement is necessitated by the negligence, intentional act, or changing the grade or topography of a Lot.

(F) Nothing in this Section 4.10 shall be construed to allow construction of any new water management facility or alteration of water management systems without first obtaining the necessary permits from all governmental regulatory agencies having jurisdiction.

## **5. MAINTENANCE**

**5.1 Master Association Maintenance.** Except as otherwise provided in this Declaration, the Master Association shall, in addition to other maintenance obligations contained elsewhere herein, have the maintenance, repair and replacement responsibility for all Common Area property located within the Master Association as a Common Expense, including, without limitation:

(A) The landscaping and electrical fixtures serving the Common Areas

(B) All non-potable water lines up to and including the shut off valves to individual Lots or Neighborhood Association Common Area irrigation systems;

(C) The maintenance and resurfacing of the Roadway dedicated to the Master Association, it being specifically provided that the portions of the Roadway owned by, or dedicated to, any Neighborhood Association on any plat or otherwise shall be maintained and resurfaced by the applicable Neighborhood Association.

**5.2 Owner Maintenance.** The individual Owners shall, in addition to other obligations contained elsewhere herein, have the maintenance, repair and replacement responsibility of the following:

(A) The Home and all structural components, including gutters, downspouts, drain lines, courtyard walks, entry doors, garage doors, mailboxes and related components, roof components, windows, sliding glass doors, screens, screen doors and their hardware, frameworks, and locks serving the Home. The roofs and exterior of the structure and driveways shall be cleaned on a regular basis to remove and discourage mold growth.

(B) The complete interior of the Home including all interior walls, floors, ceilings, partitions, cabinets, plumbing and all other interior components.

(C) Interior and exterior electrical lines and hookups, all air conditioning components, appliances, TV cables and connections, telephone and other similar lines and connections and sewer pipes serving the individual Lot.

(D) All grounds, green areas, storm drains (excluding Common Area storm drains), drain courses, sprinkler systems and other portions of same located on the individual Lots including but not limited to all potable and non-potable water lines from the shut-off valve and serving the individual Lot. The Owner shall keep the appearance of the Lot and all landscaping

and improvements in a neat and clean condition at all times, with landscaping neatly trimmed for safety and appearance. The Owner shall be responsible for the maintenance, repair and replacement, including trimming, of the landscaping and improvements (including trees) located within the Roadway but which immediately abut the Owner's Lot. The Owner of a Lot may trim trees, roots and other vegetation which is not planted on his or her Lot but which encroaches upon his or her Lot and shall be permitted to trim to the property line. This shall include providing grass in appropriate areas, cutting the grass, removing the clippings or garbage and generally maintaining all Improvements in good condition. No refuse or unsightly objects shall be allowed to be placed or to remain anywhere on the Lot, nor shall trash burning be permitted. Owners are prohibited from having visible mold or mildew on the Home or other improvements, excessive fallen fruit or other debris in the yard, dead or dying landscaping, personal property in disrepair, or creating or maintaining any other condition which, in the Board's judgment or discretion, has a negative aesthetic or economic impact on the Property or constitutes a hazard to other property or to residents.

(E) The driveway, including any portion of the driveway or apron which may be located within the Roadway. The Owner shall be responsible for the maintenance, repair and replacement thereof, including the responsibility for any improvements or pavers thereon.

(F) Any modifications, alteration, installation or addition to the Lot or Common Areas made by the Owner or his predecessors in title with ARB or Board approval including but not limited to, any decks or concrete pads. The Owner shall be responsible for insurance, maintenance, repair and replacement of such modifications, installations or additions and the cost of removing and replacing or reinstalling such modifications if their removal by the Master Association becomes necessary in order to maintain, repair, replace or protect other parts of the properties for which the Master Association is responsible.

**5.3 Enforcement of Maintenance.** If the Owner of a Lot fails to maintain his Lot as required above, the Master Association shall have the right to fine and/or suspend the Owner as provided herein, or to institute legal proceedings to enforce compliance, or may take any and all other steps necessary to remedy such violation, including but not limited to entering the Lot and remedying the violation, with or without consent of the Owner but only after ten (10) days written notice of intent to do so. The Master Association may repair, replace or maintain any item in violation of the covenants contained in the Governing Documents or which constitutes a hazard or negative aesthetic impact to other property or residents, prevents the Master Association from fulfilling its maintenance responsibilities, or which has a materially adverse effect on the appearance of the Properties.

**5.4 Negligence; Damage Caused by Condition in Lot.** Each Owner shall be liable to the Master Association for all costs and expenses it incurs for maintenance, repair or replacement made necessary by the neglect or negligence of the Owner, any member of the Owner's family, or his or her Guests, employees, agents or Tenants.

**5.5 Reimbursement.** All costs and expenses incurred by the Master Association under Sections 5.3 and 5.4 above, including attorney fees and costs connected with such matters, shall be reimbursed to the Master Association by the Owner and shall constitute a Special Assessment against the Owner and his or her Lot.

**6. ARCHITECTURAL CONTROL TO PRESERVE THE BEAUTY, QUALITY AND VALUE OF THE COMMUNITY**

**6.1 Improvements Requiring Approval.** No building, Structure, roof, mailbox, enclosure or other Improvement shall be erected or altered, nor shall any grading, excavation, driveway, landscaping, change of exterior color, or other work which in any way alters the exterior appearance of any Structure or Lot shall occur unless and until complete and accurate plans, specifications and location of same shall have been submitted to, and approved in writing by, the ARB. All plans and specifications shall be evaluated as to harmony of external design and location in relation to surrounding Structures and topography. The ARB shall have thirty (30) days after delivery of all required information, complete and accurate plans and materials to approve or deny any such plan, and if not denied within such period, said plans shall be deemed approved unless within the same period the Board of Directors denies the plan in which case regardless of any action or inaction by the ARB the plan shall be deemed denied. The Board may adopt reasonable restrictions concerning the timely completion of various modification and Improvements based on the nature and scope of the modification or Improvement. The failure of an Owner to timely complete any approved modification of Improvement is a violation of the Governing Documents and the Master Association may enforce the violation as provided herein, including the right to enter the Lot and remedying the violation or removing any unapproved Improvements, with or without consent of the Owner, but only after reasonable notice of the Master Association's intent to do so. All changes, alterations or modifications to an approved plan must also be approved pursuant according to these same requirements.

**6.2 The ARB.** The architectural review and control functions of the Master Association shall be administered and performed by the ARB, which shall consist of at least three (3) persons, all of whom shall be Members of the Master Association. No more than one (1) Director may serve on the ARB at any time. All Members of the ARB shall be appointed by and shall serve at the pleasure of the Board of Directors of the Master Association. A majority of the ARB shall constitute a quorum to transact business at any meeting of the ARB, and the action of a majority present at a meeting at which a quorum is present shall constitute the action of the ARB. Any vacancy occurring on the ARB because of death, resignation, or other termination of service of any member thereof, shall be filled by the Board of Directors. The Members of the ARB shall receive no compensation for services other than reimbursement for actual expenses approved in advance by the Board of Directors incurred by them in the performance of their duties hereunder. The ARB shall, with the prior approval of the Board of Directors, have the power to engage the services of professionals for compensation for purposes of aiding the ARB in carrying out its functions. Notwithstanding anything to the contrary contained herein or elsewhere all decisions of the ARB are subject to review by the Board of Directors and the Board of Directors has the authority to overrule, void or otherwise modify in all respects any decision of the ARB.

**6.3 Powers and Duties.** The ARB shall have the following powers and duties:

(A) To recommend, from time to time, to the Board of Directors of the Master Association the creation or modification and/or amendments to the Architectural Planning Criteria. Any Architectural Planning Criteria or modifications or amendments thereto shall be consistent with the provisions of this Declaration, and shall not be effective until adopted by a

majority of the Members of the Board of Directors of the Master Association at a meeting duly called and noticed and at which a quorum is present. Notice of the adoption, modification or amendment to the Architectural Planning Criteria, including a verbatim copy of such adoption, change or modification, shall be delivered to each member. However, receipt of notice of a Board meeting concerning the Architectural Planning Criteria or a copy of any adoption of or modification or amendment to the Architectural Planning Criteria shall not affect the validity of such change or modification.

(B) To require submission to the ARB of two (2) complete sets of all plans and specifications for any Improvement, Structure of any kind or any other work which in any way alters the exterior appearance of any Structure, or Lot including without limitation, any fence, well, swimming pool, roof, driveway, paint color of any exterior Structure or Home, screen enclosure, drain, landscape material, object or other Improvement, the construction or placement of which is proposed upon the Properties. The ARB may also require submission of samples of building materials proposed for use on or as part of any Home, and may require such additional information as may reasonably be necessary to completely evaluate the proposed Structure or Improvement in accordance with this Declaration and the Architectural Planning Criteria. Any party aggrieved by a decision of the ARB or Board of Directors shall have the right to make written request to the Board of Directors of the Master Association within thirty (30) days of the decision, for a re-review thereof. The determination of the Board upon re-reviewing any such decision shall in all events be final.

(C) To adopt a procedure for inspecting approved changes during and after construction to insure conformity with approved plans. If it is determined by the ARB that the Improvement or work is not in compliance with the approved plans and specifications, then upon written demand from the ARB the work shall be suspended until such time as the ARB authorizes the work to be recommenced. Any inspection performed by the ARB is separate and distinct from the Owner's obligation to ensure all governmental permitting requirements and inspections are satisfied.

(D) Notwithstanding anything to the contrary contained herein, if an Owner is delinquent in the payment of Assessments, fines or other charges or has failed to correct a violation of these covenants or the rules of the Master Association for which they have been given notice, the processing of an application for approval of the ARB may be denied or withheld pending payment of the Assessments, fines or other charges or correction of the violation.

**6.4 Variances.** The ARB may authorize variances from compliance with any of the architectural provisions of this Declaration when circumstances such as topography, natural obstructions, hardship, aesthetic or the environment, which must be signed by at least two-thirds (2/3) of the ARB. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matters for which the variances were granted. The granting of such a variance shall not, however, operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular property and particular provisions hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting his use of the Lot, including, but not limited to, zoning ordinances and

setback lines or requirements imposed by any governmental or municipal authority. The Board of Directors may overrule and void any variance granted by the ARB if such action is taken within twenty (20) days from the date the variance is received by the Board.

**6.5 Non-liability of ARB Members.** Neither the ARB nor any member thereof, nor its duly authorized ARB representative, shall be liable to the Master Association or any Owner or any other person or entity for any loss, damage, or injury arising out of or in any way connected with the performance or nonperformance of the ARB's duties hereunder, unless due to the willful misconduct or bad faith of a member, and only that member shall be liable therefore. The ARB shall review and approve or disapprove all plans submitted to it for any proposed Improvement, alteration, or addition solely on the basis of aesthetic considerations and the overall benefit or detriment which would result to Kensington Park and the immediate vicinity. The ARB shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval from the standpoint of structural safety or conformance with building, health, or other codes.

**6.6 Violation.** In the event an Owner installs Improvements or modifies the Owner's Lot without obtaining approval as required in this Article, the Master Association shall have the right to institute legal proceedings to enforce compliance, or may take any and all other steps necessary to remedy such violation, including, but not limited to, entering the Lot and remedying the violation or removing any unapproved Improvements, with or without consent of the Owner, but only after reasonable notice of the Master Association's intent to do so. Any expense incurred by the Master Association shall be billed directly to the Owner of the Lot to which such services are provided, and shall be a Special Assessment charged against the Lot, secured by a lien against the Lot as provided herein. The Master Association shall not be required to provide the Owner with a hearing prior to enforcing this Article as provided herein.

**6.7 Construction.** The following provisions shall be applicable to any period of construction, which is defined broadly to incorporate significant remodeling, improvements or other installations or improvements as required by the ARB.

- (A) The Lot shall be maintained in a neat and orderly manner.
- (B) All parking of construction vehicles and placement of building materials must be confirmed to the construction site or to a site or location approved by the Master Association for such purpose.
- (C) Each construction site shall have a commercial trash receptacle located thereon which is emptied on a regular and timely basis.
- (D) No temporary trailers shall be placed on any construction site without the prior written approval of the ARB.
- (E) The Master Association shall have the right to require contractors to remove all debris and store all materials in a sightly fashion at the contractor's sole cost and expense.

(F) The failure by a contractor to abide by the contents of this Article 6 shall result in the Owner of the Lot whose residence is being constructed to be assessed and subject to the lien rights of the Master Association for all monies incurred by the Master Association for cleaning up the site. During any period of construction, the Lot Owner shall be liable and will be charged by the Master Association for any damage to the Common Areas, Roadway or sidewalks abutting the Owner's Lot, whether or not the perpetrator of the damage is known.

(G) Once construction has commenced, work thereon must be performed diligently and completed within one (1) year. If for any reason work is discontinued and there is no substantial progress towards completion for a continuous two (2) month period, then the Master Association shall have the right, but not the obligation, after ten (10) days' notice to the Owner of the Lot, to invade the premises, and take such steps as may be required to correct an undesirable appearance, specifically including the right to demolish a partially completed structure and remove the debris from the Lot. Further, the Master Association shall have the right, but not the obligation, to complete said improvements in substantial accordance with the plans and specifications previously approved by the ARB, allowing for such deviations from the plans as the Master Association, in its sole discretion, deems appropriate. The reason for such correction shall be solely in the discretion of the Master Association and may include, but not be limited to, purely aesthetic grounds. The Owner of the Lot shall be liable for all costs incurred in such action and the total costs thereof shall be enforced as a Special Assessment.

## **7. NEIGHBORHOOD ASSOCIATIONS**

**7.1 Neighborhood.** The Master Association, through its Board of Directors, reserves the right, in its sole discretion, to grant Neighborhood status to any portion of the Property. The Board may further designate a Neighborhood as a separate community within Kensington Park with ingress and egress to such community limited to Owners within such Neighborhood and reserves the right to form a property owner's association, condominium association or other such similar entity for a Neighborhood granted such status by the Master Association and as permitted under this Declaration.

### **7.2 Neighborhood Common Area and Expenses.**

(A) The cost and expense of maintaining the Neighborhood Common Area shall not be a Common Expense of all members of the Master Association but shall be borne by the Owners of the Lots located in the Neighborhood as set forth in the Neighborhood Covenants.

(B) The Master Association, through its Board of Directors, reserves the right to cause portions of the Common Area to become Neighborhood Common Area with the approval of the Members of the affected Neighborhood Association by recording an instrument containing such provision in the Public Records of Collier County, Florida. Upon recording such an instrument the real property described in such instrument shall no longer be Common Area and in lieu thereof, the use and easement rights and the obligations pertaining thereto, including, but not limited to, maintenance and administration obligations, shall be those pertaining to such Neighborhood Common Area and not Common Area of the Master Association, and the expense for maintenance and administration shall no longer be a Common Expense but shall be an



expense payable only by the Owners within the Neighborhood.

### **7.3 Neighborhood Covenants.**

(A) The Master Association reserves the right to amend specific provisions of this Declaration as it may apply to one or more Neighborhoods without amending those provisions with respect to all Neighborhoods and to supplement this declaration by recording separate covenant, conditions, restrictions and other provisions applying to any specific Neighborhood. Separate covenants, conditions and restrictions may be recorded as a supplement to this Declaration or as Neighborhood Covenants. The Master Association also reserves the right to determine the consistency of all Neighborhood Covenants in comparison with this Declaration and the plan of development of Kensington and to approve and consent to all Neighborhood Covenants, including amendments thereto, prior to the same being recorded in the Public Records of Collier County, Florida. Any Neighborhood seeking to dissolve its Neighborhood Association or terminate any Neighborhood Covenants governing a Neighborhood shall first obtain the written consent of the Master Association as a condition precedent to said dissolution or termination.

(B) Neighborhood Covenants shall be supplemental to this Declaration and the Master Association Governing Documents and in no way shall be construed to supersede or override the provisions of the Master Association Governing Documents.

(C) The Master Association shall have the power, but not the obligation, to enforce all rules and regulations promulgated by any Neighborhood, together with the terms and provisions of any Neighborhood Covenants.

## **8. USE RESTRICTIONS**

The Property may be used for those purposes as provided in the PUD and the Master Association reserves solely unto itself the right and the power to assign and reassign various land uses to real property within Kensington as provided by the PUD and to inaugurate and implement variations from, modifications to, or amendments of the PUD. The following rules and standards apply to Kensington Park and shall be enforced by the Master Association.

**8.1 Air Conditioning Units.** No window or wall air conditioning units shall be permitted on any Lot. Compressors and fans for central air conditioning or heat pump systems which are located outside the exterior of a building shall be adequately screened to prevent their being viewed from any Street.

**8.2 Antenna.** No antenna of any kind shall be placed or erected upon any Lot or affixed in any manner to the exterior of any building other than a satellite antenna less than one meter in diameter, an aerial designed to receive over-the-air television broadcast, or an antenna designed to receive multichannel, multi point distribution service which may be installed only at a location on a Lot approved by the ARB. In approving the installation and location of any antenna, the ARB shall comply with all applicable laws, whether state or federal.

**8.3 Aircraft and Drones.** Unless otherwise provided by law, the recreational operation of

any aircraft, manned or drone, is prohibited within the Master Association. The Board is authorized to adopt further Rules and Regulations governing all other uses of said aircraft in the Master Association, which may include a requirement that all permitted uses of aircraft in the Master Association require advanced written approval and that approval may be withheld in the sole discretion of the Master Association.

**8.4 Attached Maid/Guest Quarters.** Those certain single family detached, zero Lot line patio home and villa residences which are built on a Lot and which Lot is specifically identified by written instrument delivered to the ARB shall be permitted to construct an attached maid/guest quarters with secondary kitchen facilities (i.e.: kitchenette) subject to the following restrictions.

(A) Maid/guest quarters shall follow the common architectural theme and be an integral part of the main Home and must comply with all applicable governmental laws and regulations.

(B) Only single family detached, zero Lot line patio homes and villa residences which have 2,800 square feet or more of air conditioned living areas shall be eligible to have attached maid/guest quarters.

(C) Attached maid/guest quarters shall only be occupied by the Owner thereof, or domestic employees or guests of such Owner.

(D) Attached maid/guest quarters are not a separate dwelling unit, and therefore may not be sold, leased, rented, interest transferred or conveyed in any way so as to separate said quarters from the description of the Home.

(E) Any attached maid/guest quarters must be located at the rear of the Home, it being the intent that no maid/guest quarter may be located on the side or in front of the main Home. In the event a Home resides on a corner Lot, the rear of the Home shall be based on the perspective from the street facing the front door of the Home.

**8.5 Clotheslines.** Clotheslines or drying yards shall be located so as not to be visible from the streets or adjoining properties, or from the golf course.

**8.6 Drainage.** No Owner shall change or permit the elevations of any Lot or right-of-way to interfere with approved drainage or otherwise cause undue hardship to adjoining property or the Kensington Park Golf Course whether caused by the Owner or otherwise. The Master Association may reasonably require Owners to alter the drainage or make improvements to the Home or Lot to prevent damage to the Common Areas.

**8.7 Driveways.** All driveways and off street parking areas shall be constructed of pavers as approved by the ARB. Owners shall be responsible for the maintenance, repair and replacement of said driveway, including, but not limited to, peeling paint, cracks, and heaving concrete or pavers, whether located within the Lot or within the portions of the Roadway which are part of a driveway servicing a Lot.

**8.8 Excavation.** No excavation will be made except in connection with approved improvements as provided in this Declaration. For purposes of this section, “excavation” means any disturbance of the surface of the land which results in the removal of earth, rock or other substance, a depth of more than eighteen inches below the natural surface of the land.

**8.9 Fences and Hedges.** No fences, hedges or other obstruction shall be constructed at, or near the boundaries of the Country Club property which materially obstruct visibility of the Country Club and shall be installed only after receiving written approval of the Master Association and the Country Club, said approval subject to be reversed at any time. Fences and other structural screens located elsewhere must be visually attractive, in keeping with the architectural character of Kensington Park and must be approved by the Master Association through the ARB. No chain link fencing shall be allowed on any Lot unless approved by the ARB. The installation of an electronic dog fence which is buried in the ground and not visible on the Lot shall not be considered a fence.

**8.10 Garage Sale.** No garage sale, estate sale, flea market, auction, or similar event shall be held on any Lot.

**8.11 Garages.** No garage shall be erected which is separated from the Home. Each Home shall have a garage which shall accommodate no less than two (2) automobiles, except in the case of condominiums. Repairs of vehicles shall be permitted only inside the garage. All garage doors shall include an automatic closing device and shall be closed when not in use for ingress and egress. If an Owner has a golf cart or boat or trailer garage it too shall be equipped with an electric door opener and shall be closed when not in use for ingress and egress to the garage. A garage door opening on any Home shall not exceed ten feet (10’) in height. Carports are not permitted. No unenclosed storage area shall be permitted and no enclosed storage area shall be erected which is separate from the Home. No garage may be used for recreational occupancy or converted for use as a “man cave” or other similar use.

**8.12 Home.** Each Home shall be occupied by only one Family at any time. Each Home shall be used as a residence and for no other purpose. However, “no impact” or “low impact” Home based business in and from a Home, such as receiving mail at the Home or corresponding from a Home office, is allowed. Such uses are expressly declared customarily incident to residential use. Examples of businesses which are prohibited and are considered “impact” businesses are businesses or commercial activity or ventures that create excessive customer traffic to and from the Home, create noise audible from outside the Home, the use of a Home as a promotional item or commercial perk, using the Home as a temporary residence for employees of a Tenant or Owner, or generate fumes or odors noticeable outside the Home, including but not limited to, a home day care, beauty salon/barber, and animal breeding. Signs and other advertising material visible from the street are prohibited. This provision is intended to be and shall be retroactive to and effective from the date of recording of the original Declaration, however any persons in violation of this amended provision on the date it is recorded in the Public Record shall be given a grace period of up to ninety (90) days to comply before enforcement action shall be commenced. In order to avoid undue hardship the Board of Directors may, in its sole discretion, extend the grace period once for up to an additional ninety (90) days.

**8.13 Landscaping.** All areas of Lots not covered by Homes, walkways, driveways or other

improvements shall be maintained by their Owners as lawn or landscaped areas to the pavement edge or any abutting Streets and to the waterline of any abutting lakes, canals or water management areas. Stone, gravel, artificial turf, or paving may not be used as a substitute for grass in a lawn. Lawns must be regularly cut and mulched areas regularly re-mulched. The landscaping on Lots and portions of the Roadway maintained by the Owner, including without limitation, the trees, shrubs, lawns, flower beds, walkways and ground elevations, shall be properly trimmed and maintained by the Owner thereof in good and healthy condition, shall not be allowed to remain if diseased, dead or dying, and shall otherwise comply with the Architectural Review Criteria.

The Owner of a Lot shall be responsible for maintaining and keeping the landscaping irrigation system installed in or on the Owner's Lot in good working order. The Association shall be responsible for maintaining and keeping the landscaping irrigation system installed in or on the Common Area in good working order.

Surface water runoff must be properly handled and not cause ponding, erosion or unfavorable impact on adjacent Lots or Common Areas. No changes in the elevation of any Lot or right-of-way shall be made which will interfere with the approved drainage, or otherwise cause undue hardship to adjoining Lots, except with the prior written approval of the ARB.

No weeds, underbrush (other than indigenous growth), or other unsightly growths shall be permitted to grow or remain upon any part of the premises and no refuse pile or unsightly objects shall be allowed to be placed or remain anywhere thereon. Grass growth shall not exceed a maximum of four (4) inches above the ground at any time and all trees and shrubbery shall be appropriate trimmed as needed. If, for any reason, an Owner permits such weeds, high grass, underbrush or other unsightly growth to exist and fails to correct the same after five (5) days' notice from the Master Association, the Master Association shall have the right to enter upon the Lot and make such corrections and shall charge the Owner for the cost of the correction as a Special Assessment.

**8.14 Minors; Operation of Motor Vehicles on Common Area.** All persons under eighteen (18) years of age shall be closely supervised at all times by an adult to insure that they do not become a source of unreasonable annoyance, nuisance or hazard, to other residents. No person under the age of sixteen (16) may operate any motor vehicle, including but not limited to golf carts, cars, motor scooters, motorcycles, motorized bikes, or similar or dissimilar vehicle, on the Common Area. The Board of Directors shall be permitted to adopt a speed limit for the operation of any motorized vehicle of any kind on the streets or Common Areas. Except for lawn Maintenance equipment operated by or on behalf of the Master Association or the Kensington Park Country Club, Inc., no motorized vehicle of any kind shall be operated on the Property other than the Streets.

**8.15 Motor Vehicles and Boats.** No maintenance or mechanical repairs of vehicles or boats is permitted on the Properties outside of garages except in an emergency. No Recreational Vehicles shall be parked anywhere on the Properties outside of garages overnight. Any Prohibited Vehicle must be kept enclosed in a garage while in the Master Association so that it is not readily visible from any adjacent Street or Lot. All Permitted Vehicles belonging to an Owner must be parked overnight inside a garage, except that Homes with a single car garage

may park one (1) vehicle outside of the garage. The Master Association is authorized to issue fines and/or suspensions for violation of this Section and is authorized to tow any vehicle violating this Section, the Rules and Regulations, a law or any other restriction contained in the Governing Documents and the cost of towing shall be the obligation of the Owner of the vehicle.

**8.16 Nuisances.** No Owner shall use his Home, or permit it to be used, in any manner which constitutes or causes an unreasonable amount of annoyance or nuisance or hazard to the occupant of another Home, or which would not be consistent with the Maintenance of the highest standards for a first class residential community nor permit the premises to be used in a disorderly or unlawful way. The use of each Home shall be consistent with existing laws and the Governing Documents, and Occupants shall at all times conduct themselves in a peaceful and orderly manner. The Board of Directors determination as to what constitutes a nuisance or annoyance, for example, the use of fireworks, loud music, obnoxious activity, unreasonably loud motorcycles or cars, shall be final and shall control without regard to any legal definition of such terms.

**8.17 Obnoxious Activity.** No obnoxious or offensive activity shall be carried on within Kensington Park or upon any part, portion or tract thereof, nor shall anything be done which may be or become a source of unreasonable nuisance or annoyance to the Master Association or its residents. The determination of obnoxious activity shall be made by the Board of Directors of the Master Association, who may exercise legal action to correct any obnoxious behavior and charge the offending Owner the costs of legal fees incurred which shall be in the form of a Special Assessment and collected in the same manner.

**8.18 Outdoor Equipment.** All oil tanks, bottled propane or other gas tanks, swimming pool equipment and housing, air conditioning equipment, and other such outdoor equipment, must be placed underground, walled-in or placed in sight-screened or fenced-in areas so that they are not readily visible from the adjacent Street, Lots or the Common Areas. Otherwise, adequate landscaping shall be installed around these facilities so that they are not visible from adjacent Streets or Lots or the Common Area.

**8.19 Outside Lighting.** Outside lighting must be approved by the ARB prior to installation and in accordance with the Architectural Planning Criteria. No spotlights, floodlights, or other outdoor high intensity lighting shall be placed or utilized upon any Lot which in any way will allow light to be reflected on any other Lot or the improvements thereon constituting an annoyance to surrounding Homes. Time clock controls are permitted.

**8.20 Pets.** No more than two (2) commonly accepted household pets such as dogs, cats or birds and a reasonable number of fish may be kept by an Owner. Pets must be carried under the Owner's arm or leashed at all times when outside the Owner's property. The ability to keep pets is a privilege, not a right, and the Board of Directors is empowered to fine an Owner and/or order and enforce the removal of any pet that becomes a source of unreasonable annoyance or a danger to the health, safety and welfare to other residents in the Board's discretion. No reptiles, monkeys, rodents, amphibians, poultry, swine, rabbits, ferrets or livestock may be kept on the properties. All animals kept in the Home must be for personal family enjoyment as pets, no commercial breeding or boarding of animals of any type is allowed. The person walking the pet or the Owner shall clean up all matter created or caused by the pet. The Board is authorized to

adopt reasonable Rules and Regulations concerning the size and weight of pets as well as rules concerning the keeping of pets by Tenants in the Master Association. Pets are not allowed on Country Club property.

**8.21 Recreational Facilities.** All Recreational Facilities or improvements constructed or placed on a Lot, including without limitation by specification, any play or recreation structures, must first be approved by the Board or the ARB, which said approval shall be conditioned upon the Recreational Facility being adequately landscaped so it is not visible from the Street, the adjoining neighbor's yard, or the Country Club abutting said Lot. The Board or the ARB may adopt Rules and Regulations concerning the size, location and material of the Recreational Facilities in its discretion. The Owner is responsible to keep all Recreation Facilities maintained in a good manner. If upon inspection, the Owner has not maintained the Recreational Facilities the Board may order them removed.

**8.22 Roof.** Asphalt roofs or material of a similar nature are not permitted and all roofing materials must be approved by the ARB in accordance with the Architectural Review Criteria.

**8.23 Sidewalks.** The Master Association is responsible to maintain, repair and replace the sidewalks within the Roadway. No engine driven motor vehicle, motorcycle, or moped shall be used on the sidewalks. The Master Association shall assess an Owner for any and all damages caused by or derived from any activity related to the Owner as a Special Assessment.

**8.24 Signs.** No sign, advertisement or notice of any type or nature whatsoever may be erected or displayed upon any Lot or Home (including any window), and/or Common Area unless expressed prior written approval of the size, shape, content and location has been obtained from the ARB, which may be withheld in its discretion. Notwithstanding the above, an Owner may display one (1) "for sale" sign without ARB approval as long as the "for sale" sign complies with Architectural Planning Criteria.

**8.25 Solar Collectors.** Solar collectors are subject to the Architectural Review Criteria and must be approved by the ARB. Solar collectors shall not be visible from the Roadway.

**8.26 Solicitation.** The solicitation of charitable gifts, real or in kind, the solicitation for sale of products or services, by non-residents of the Master Association, is expressly prohibited. The Board of Directors may adopt reasonable Rules and Regulations governing solicitation in the Master Association by residents as well as solicitation concerning recognized charitable organizations.

**8.27 Subdivision and Regulation of Land.** No Lot shall be divided or subdivided without the express written consent of the Master Association, who may impose certain requirements of the Owner to comply with the provisions of the PUD or these Governing Documents. An Owner shall not inaugurate or implement any variation from, modification to, or amendment of the PUD or any other governmental plans, land development regulations, development orders or development permits applicable to Kensington, the Property or to any Lot without the express and prior written consent of the Master Association, which may be denied in the sole discretion of the Master Association.

**8.28 Swimming Pool.** Swimming pools and spas shall not be constructed or erected above ground and shall in all respects comply with the Architectural Planning Criteria and be approved by the ARB.

**8.29 Temporary and Factory Built Structures.** No temporary structures will be permitted except as may be determined to be necessary during construction and as specifically authorized in writing by the ARB. No factory built structures of any kind referred to as “factory built”, “modular” or “mobile home” type of construction shall be permitted on any Lot.

**8.30 Trash and Waste Disposal.** Trash, garbage and other waste shall be kept only in containers which shall be kept in a clean and sanitary condition and screened from view from neighboring Homes and the Roadway except when out for pick-up. Recycle bins and trash shall not be put on the curb, for pick-up, prior to 6:00 p.m., the night before the scheduled pick-up and shall be removed from the curb no later than 6:00 p.m., the day of pick-up. No garbage incinerators shall be permitted.

**8.31 Underground Wires.** All wiring providing service to Homes must be underground.

## **9. INSURANCE**

**9.1 Master Association; Required Coverage.** The Master Association shall maintain adequate property insurance covering all the Common Areas and all Master Association property. The Master Association shall also provide adequate general liability insurance. The amounts of coverage shall be determined annually by the Board of Directors and the premium on any policy purchased by the Master Association shall be paid as a Common Expense. The insurance carried by the Master Association shall afford at least the following provisions:

(A) Property. Loss or damage by fire, extended coverage (including windstorm), vandalism and malicious mischief, and other hazards covered by the standard “All Risk” property contract.

(B) Liability. Premises and operations liability for bodily injury and property damage in such limits of protection and with such coverage as are determined by the Board of Directors, with cross liability endorsement to cover liabilities of the Owners as a group to an Owner. The Country Club shall be named as additional insureds in any liability policy obtained by the Master Association as deemed appropriate by the Board.

(C) Automobile. Automobile liability for bodily injury and property damage for all owned and non-owned motor vehicles when used for Master Association business, in such limits of protection and with such coverage as may be determined by the Board of Directors.

(D) Compensation. The Master Association shall maintain workers’ compensation insurance if required by law.

(E) Fidelity Bond Coverage. The Master Association shall maintain insurance or a fidelity bond for all persons who control or disburse funds of the Master Association. The insurance policy or fidelity bond must cover the maximum funds that will be in the custody of

the Master Association or its management agent at any one time. The Master Association shall bear the cost of any insurance or bond.

(i) Such fidelity insurance or bonds shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of “employee” or a similar expression; and

(ii) Such insurance or bonds shall provide that they may not be cancelled or substantially modified (including cancellation for nonpayment or premiums) without at least thirty (30) days prior written notice of the servicer or the insured.

(F) Flood Insurance. If any part of the Common Areas are in a special flood hazard area, and are insurable as defined by the Federal Emergency Management Agency, the Master Association shall insure same. The coverage shall be one hundred (100%) percent of the current replacement cost of any Common Area improvements or structures and other insurable common property, or the maximum coverage available for such improvements, structures, or property under the National Flood Insurance Program, if less.

**9.2 Duty to Insure.** Each Owner is responsible for insuring the real and personal property within his or her own Lot and Home. Each Owner must recognize that he or she bears financial responsibility for any damage to his or her property or liability to others that would otherwise be covered by such insurance liability including all risk, flood, liability, etc.

**9.3 Duty to Reconstruct.** If any Home or other improvements located on any Lot and Home are destroyed or damaged as a result of fire, windstorm, flood, tornado, hurricane or other casualty, the Owner of such improvements shall cause repair or replacement to be commenced within ninety (90) days from the date that such damage or destruction occurred, and to complete the repair or replacement within twelve (12) months thereafter. The Board of Directors may, but shall not be required to, in its sole discretion grant extensions to the above reconstruction timeliness requirements upon a demonstration of hardship.

**9.4 Failure to Reconstruct.** If the Owner of any Home fails to commence or complete construction to repair or replace any damaged or destroyed improvements within the time periods provided for in Section 9.3 above, the Master Association shall give written notice to the Owner of his or her default. If after thirty (30) days the Owner has not made satisfactory arrangements to meet his or her obligations, the Master Association shall be deemed to have been granted the right by the Owner, as such Owner’s attorney-in-fact, to commence and/or complete the repairs sufficient to substantially restore the improvements to their original condition, according to the plans and specifications of the original improvements. If the Master Association exercises the rights afforded to it by this section, which shall be in the sole discretion of the Board of Directors, the Owner of the Home shall be deemed to have assigned to the Master Association any right he may have to insurance proceeds that may be available because of the damage or destruction of the improvement. The Master Association shall have the right to recover from the Owner any costs not paid by insurance, and shall have a lien on the Lot and Home to secure payment in the same manner as an Assessment.

**9.5 Optional Coverage.** The Master Association may purchase and carry other such



insurance coverage as the Board of Directors may determine to be in the best interest of the Master Association and Owners.

**9.6 Description of Coverage.** A detailed summary of the coverage included in the master policies, and copies of the master policies, shall be available for inspection by Owners or their authorized representatives upon request.

**9.7 Waiver of Subrogation.** If available and where applicable, the Board of Directors shall endeavor to obtain insurance policies which provide the insurer waives its right to subrogation as to any claim against the Owners, or their respective servants, agents or Guests, except for any claim based upon gross negligence evidencing reckless, willful or wanton disregard for life or property.

**9.8 Insurance Proceeds.** All insurance policies purchased by the Master Association shall be for the benefit of the Master Association, the Owners and their mortgagees as their interests may appear, and all proceeds shall be payable to the Master Association. The duty of the Master Association shall be to receive such proceeds as are paid, and to hold the same in trust, and disburse them for the purposes stated herein and for the benefit of the Owners and their respective mortgagees in the following share:

(A) Common Areas. Proceeds on account of damage to Common Areas shall be held in as many undivided shares as there are Lots, the shares of each Owner being the same as his or her share in the Common Areas.

(B) Mortgagee. If a mortgagee endorsement has been issued as to a Home, the shares of the mortgagee and the Owner shall be as their interests appear. In no event shall any mortgagee have the right to demand application of insurance proceeds to any mortgage or mortgages which it may hold against Lot or Lots, except to the extent that insurance proceeds exceed the actual cost of Repair or restoration of the damaged building or buildings. Except as otherwise provided, no mortgagee shall have any right to participate in determining whether improvements will be restored after casualty.

**9.9 Distribution of Proceeds.** Proceeds of insurance policies received by the Master Association shall be distributed to or for the benefit of the Owners in the following manner: The proceeds shall be paid to defray the costs of reconstruction or repair by the Master Association. Any proceeds remaining after defraying cost shall be distributed to the beneficial Owners, remittances to Home Owners and their mortgagees being paid jointly to them.

**9.10 Master Association as Agent.** The Master Association is hereby irrevocably appointed as agent for each Owner to adjust all claims arising under insurance policies purchased by the Master Association for damage or loss to the Homes, Lots or Common Areas.

**9.11 Damage to Common Areas.** Where loss or damage occurs to the Common Areas or Master Association property, it shall be mandatory for the Master Association to repair, restore and rebuild the damage caused by the loss, and the following procedures shall apply:

(A) The Board of Directors shall promptly obtain reliable and detailed estimates of the cost of repair and restoration, and shall negotiate and contract for repair and reconstruction.

(B) If the proceeds of insurance and available reserves are insufficient to pay for the cost of repair and reconstruction of the Common Areas, the Master Association shall promptly, upon determination of the deficiency, levy an Improvement Assessment against the Owners for the deficiency. Such Assessments need not be approved by the Owners despite any contrary requirement set forth in Article 3 or the Bylaws. If the damage or destruction involves any Neighborhood Common Area, only the Owners of the Lots in the affected Neighborhood shall be subject to such Improvement Assessment.

## **10. COUNTRY CLUB**

**10.1 Ownership and Operation of Country Club.** All persons, including all Owners, are hereby advised that no representations or warranties have been made by any person with regard to the continuing existence or operation of the Country Club, and no purported representation or warranty in such regard, either written or oral, shall ever be effective without an amendment to this Declaration executed or joined into by the Country Club. Further, the ownership and/or operation of the Country Club may change at any time and from time to time by virtue of, but without limitation, the sale or assumption of operation of the Country Club by an independent entity or entities; creation or conversion of the ownership and/or operating structure. No consent of the Master Association, any Neighborhood Association, or any Owner who is not a member of the Country Club shall be required to effectuate such transfer or conversion.

**10.2 Right to Use.** Neither Regular Membership in the Master Association nor ownership or occupancy of a Lot or Home shall confer any Membership in or right to use the Country Club. Rights to use the Country Club will be granted only to such persons, and on such terms and conditions as may be determined from time to time by the Members and/or board of directors of the Country Club in accordance with the governing documents of the Country Club. The Members and/or board of directors of the Country Club shall have the right, from time to time, in their sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of the Country Club, including, without limitation, eligibility for and duration of use rights, categories of use and extent of use privileges, number of users, and shall also have the right to reserve use rights and to terminate use rights altogether, subject to and in accordance with the provisions of the governing documents of the Country Club.

**10.3 View Impairment.** Neither the Master Association nor the Country Club guarantees or represents that any view over and across the Country Club property from any adjacent Lot or Home will be reserved without impairment. The Country Club shall have no obligation to prune or thin trees or other landscaping, and shall have the right, in its sole and absolute discretion, to add trees and other landscaping to the Country Club property from time to time. In addition, the Country Club may, in its sole and absolute discretion, change the location, configuration, size and elevation of trees, bunkers, fairways and greens on the Country Club property from time to time. Any such additions or changes to the Country Club property may diminish or obstruct any view from a Lot or Home and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

**10.4 Limitations on Amendments.** In recognition of the fact that the provisions of this Article 10 are for the benefit of the Country Club, no amendment to this Article 10, and no amendment in derogation of any material rights reserved or granted to the Country Club by other provisions of this Declaration, may be made without the written approval of the Country Club.

**10.5 Jurisdiction and Cooperation.** It is the intention of the parties that the Master Association and the Country Club shall cooperate to the maximum extent possible in the operation of the Properties, including the Country Club property. Each shall reasonably assist the other in upholding the community-wide standards. Except as specifically provided in the Master Association Governing Documents, the Master Association shall have no power to promulgate Rules and Regulations affecting activities on or use of the Country Club.

**10.6 Country Club Easements.** The Country Club hereby reserves for itself the following described easements:

(A) Golf Cart Path Easement. In connection with the development and maintenance of the Country Club property, there will be construction of Cart Paths which may cross or encroach upon Common Area or Neighborhood Common Area. The Master Association hereby grants and declares a non-exclusive easement for such Cart Paths and for their use by the Members of the Country Club over and across such areas of the Common Area and the Neighborhood Common Area as are subsequently developed and improved for such purpose. Nothing shall be placed or maintained in any Golf Cart Path Easement which shall interfere with utilization thereof as a Cart Path.

(B) Country Club Easement. Any Country Club Easement designated as such and developed a part of the Country Club property for purposes of landscaping or the placement of improvements.

(C) Country Club Setback. The right to utilize the area designated “Country Club Setback” either on the final plat map of the lots on both Lots and Common Area (where applicable) as part of the Country Club property or on plat maps site plans or diagrams maintained by the ARB; provided, however, that no permanent improvements in or alterations of the Lots and Common Area within any Country Club Setback shall be made or allowed (other than “out of bounds” markers or signs consistent with those utilized elsewhere in the connection with operation of the Country Club property) and no portion thereof shall be incorporated in any fairway, trap, water hazard or green and no paved Cart Path shall encroach upon any Lot. All areas lying within the out of bounds stakes shall be maintained by the Country Club, as applicable, with the balance of the Country Club Setback maintained by the Owner of the Lot, or the Master Association for Common Area, within the Country Club Setback. Nothing shall be placed or maintained in the Country Club Setback which shall interfere with utilization thereof as a playable part of the Country Club’s golf course, or any areas for gallery use.

(D) Tournament Galleries. The right to utilize areas of Lots and Common Area lying within the areas so designated on site plans or diagrams which are maintained by the ARB as an area for observation by tournament galleries. The foregoing grant of easement is made for use by the Country Club in conjunction with tournaments and special events on the

Country Club property by the Country Club's members, invited guests and the public attending such tournaments and special events.

(E) Above Ground Utilities. The right to utilize areas of Lots and Common Area lying within the areas so designed on site plans or diagrams which are maintained by the ARB as an area for observation by tournament galleries. The foregoing grant of easement is made for use by the Country Club in conjunction with tournaments and special events on the Country Club property by the Country Club's members, invited guests and the public attending such tournaments and special event.

(F) Special Management Property. Subject to Master Association's obligation and responsibility to maintain or repair the lakes, Water Management System and Drainage Areas, Conservation Land, Conservation Buffer Easements and Conservation Buffer Zones (hereinafter collectively called "Special Management Property"), it is recognized that the Special Management Property is integrated into and forms an inherent part of the Country Club. The Country Club is granted a non-exclusive easement, right to maintain, modify and/or enhance the Special Management Property in a manner which is beneficial to the aesthetic quality and competitive demeanor of the Country Club's golf course so long as such maintenance, modification and/or enhancement does not violate any governmental code or regulation applicable to this Special Management Property and that all applicable governmental approvals are obtained. No modification to the Special Management Property by the Country Club shall have a direct physical impact upon any Lot or Common Area.

(G) Additional Rights. The Country Club reserves the right to impose such additional restrictions on the Golf Cart Path Easement and Country Club Easement from time to time as may be reasonably required to effectuate the purposes of such easements. The reservation of the Golf Cart Path Easements and the Country Club Easements is made for the benefit of the Members and invited Guests of the Country Club, the reciprocal Members and invited Guests of any golf club associated with the Country Club, for associated Maintenance and service personnel, and for golf course and related recreational purposes.

#### **10.7 Easements for Country Club.**

(A) Every Lot and the Common Area, and the common property of any Neighborhood Association, are burdened with an easement permitting golf balls unintentionally to come upon such Lot, Common Area, or common property of a Neighborhood Association and for golfers at reasonable times and in a reasonable manner to come thereon or the exterior portions thereof to retrieve errant golf balls; provided, however, if any Lot or Common Area is fenced or walled, the golfer shall seek the Owner's or Master Association's permission before entry. The existence of this easement shall not relieve golfers of liability for damage caused by errant golf balls. Under no circumstances shall any of the following persons be held liable for any damage or injury resulting from errant golf balls or the exercise of this easement: the Master Association or its Members (in their capacity as such); the Country Club; any builder or contractor (in their capacities as such); and any officer, director, partner, successor, or assigns of any of the foregoing.

(B) The Country Club, its respective members, invited guests, agents, successors

and assigns, shall at all times have a right and non-exclusive easement of access and use over those portions of the Common Area reasonably necessary to the operation, maintenance, repair and replacement of the Country Club property.

(C) The Properties immediately adjacent to the Country Club property are hereby burdened with a non-exclusive easement in favor of the Country Club for overspray of water, fertilizer, weed killer, fungicide and pesticide from any irrigation system serving the Country Club property. Under no circumstances shall the Master Association or the Country Club be held liable for any damage or injury resulting from such overspray or the exercise of this easement.

(D) The Country Club, its respective members, invited guests, agents, successors and assigns, shall have a perpetual, exclusive easement of access over the Properties for the purpose of retrieving golf balls from the bodies of water within the Common Area lying reasonable within range of golf balls hit from the Country Club property.

**11. TRANSFER OF OWNERSHIP.** No Owner, or any other person acquiring title in and to any Lot shall dispose of his Lot without the prior approval of the Master Association. The approval of the Master Association that is required for the transfer of ownership of a Lot shall be obtained in the following manner: (i) an Owner intending to transfer title must give the Master Association written notice of such intention with the name and address of the intended transferee; (ii) failure to give written notice shall not relieve the Owner of the Lot responsibility to pay Assessments and other charges due and owing to the Master Association, including any fee pursuant to Section 3.16 above; (iii) within fifteen (15) days after receipt of said written notice, the Master Association must approve the transfer unless the Owner is delinquent in the payment of a monetary obligation to the Association, in which case the Master Association may require satisfaction of all outstanding obligations as a condition of approval.

## **12. AMENDMENTS; TERMINATION**

**12.1 Duration.** The covenants, conditions and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and be enforceable by the Master Association, the Country Club, and any Owner, their respective legal representatives, heirs, successors and assigns, for a period of thirty (30) years after the recording of the original Declaration, after which time these covenants shall automatically be extended for successive periods of ten (10) years, unless an instrument signed duly approved by at least two-thirds (2/3) of the Regular Members has been recorded, agreeing to change or terminate these covenants, conditions, restrictions or provisions in whole or in part.

**12.2 Amendments by Members.** Except as otherwise provided herein or by law, this Declaration may be amended by the affirmative vote of at least two-thirds (2/3) of all Regular Members. Before any proposed amendment to this Declaration is submitted to a vote of the Regular Members, a copy of the proposed amendment shall be provided to all Regular Members at least thirty (30) days prior to any vote on a proposed amendment.

A copy of each adopted amendment shall be attached to a certificate that the amendment was duly adopted as an amendment to the Declaration, which certificate shall identify the Book and

Page of the Public Records where the Declaration is recorded, and shall be executed by the President of the Master Association with the formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment are recorded in the Public Records of Collier County, Florida.

### **13. ENFORCEMENT; GENERAL PROVISIONS**

**13.1 Enforcement.** Enforcement of these covenants, conditions and restrictions may be by a proceeding at law or in equity and may be instituted by the Master Association, its successors or assigns, or by any Owner, against any person or persons violating or attempting to violate or circumvent any covenant, condition or restriction, either to restrain violation or to recover damages, and against any Lot to enforce any lien created by these covenants. Failure of the Master Association or any Owner to enforce any covenants, condition or restriction herein contained for any period of time shall not be deemed a waiver or estoppel of the right to enforce same thereafter.

**13.2 Owner and Member Compliance.** The protective covenants, conditions, restrictions and other provisions of the Governing Documents and the Rules and Regulations promulgated by the Master Association shall apply to Members and all persons to whom a Member has delegated his right of use in and to the Common Areas, as well as to any other person Occupying any Home under Lease from the Owner or by permission or invitation of the Owner or a Tenant (express or implied), and their invitees or Guests. Failure of any Owner to notify any person of the existence of the Rules and Regulations, or the covenants, conditions, restrictions, and other provisions of the Governing Documents shall not in any way act to limit or divest the Master Association of the power to enforce these provisions. Each Owner shall be responsible for any and all violations by his Tenants, invitees or Guests and by the Guests, and invitees of Tenants, at any time.

**13.3 Litigation.** Enforcement actions for damages, or for injunctive relief, or both, on account of any alleged violation of law, or of the Governing Documents or Master Association rules, may be brought by any Owner, or the Master Association against:

- (A) The Master Association;
- (B) The Owner;
- (C) Anyone who occupies or is a Tenant or Guest of a Lot; or
- (D) Any Officer or Director of the Master Association who willfully and knowingly fails to comply with these provisions.

Disputes set forth in Florida Statutes section 720.311(2)(a) [2015], as amended from time to time, between the Master Association and an Owner shall be the subject of a demand for presuit mediation served by an aggrieved party before the dispute may be filed in court. Presuit mediation proceedings must be conducted in accordance with the applicable Florida Rules of Civil Procedure.

**13.4 Attorney Fees.** In any legal proceeding arising out of an alleged failure of a Guest, Tenant, Owner, Officer, Director or the Master Association to comply with the requirements of the law, or the Governing Documents, as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such attorney fees as may be awarded by the court. The Master Association shall be entitled to recover any attorney's fees incurred to enforce any provision of the Governing Documents and Rules and Regulations as an Individual Assessment in the event any dispute is resolved without litigation.

**13.5 No Election of Remedies.** All rights, remedies and privileges granted to the Master Association or Owners under the law and the Governing Documents shall be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party from exercising any other rights, remedies, or privileges that may be available.

**13.6 Notices.**

(A) To Master Association. Notice to Master Association, as may be required herein or in the Bylaws of the Master Association, shall be in writing and delivered, mailed, or electronically transmitted to the Master Association at its principal place of business as shown by the records of the Secretary of State of Florida, or at any other location designated by the Master Association.

(B) To Regular Member. Notice to any Regular Member for Assessments and other charges, of a violation of any provision of the Master Association Governing Documents or Rules and Regulations, or any other notice as may be required herein, shall be in writing and shall be delivered, mailed or electronically transmitted to the Regular Member at the address shown on the tax rolls of Collier County, Florida, or if not shown thereon, to the address of the Regular Member as shown on the deed recorded in the public records of Collier County, Florida, or at any other location or electronic mailing address designated by the Regular Member.

(C) To Country Club. Notice to the Country Club, as may be required herein, shall be in writing and delivered or mailed to the Country Club at its principal place of business as shown by the records of the Secretary of State of Florida, or at any other location designated by the Country Club.

**13.7 Severability.** Should any covenant, condition or restriction herein contained, or any section, subsection, sentence, clause, phrase or term of this Declaration or its recorded exhibits be declared to be void, invalid, illegal, or unenforceable, for any reason, by any court having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no way affect the other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect. Nothing contained in this Declaration is intended to affect vested rights. If any provision contained herein is deemed by a competent court of law to have such affect, then such provision will be deemed null and void but have no effect on the remaining provisions herein.

**13.8 Interpretation; Disputes.** The Board of Directors is responsible for interpreting the provisions of this Second Amended and Restated Declaration, its exhibits and rules promulgated by the Board. Such interpretation shall be binding upon all parties unless wholly unreasonable.

A written opinion rendered by legal counsel retained by the Board that an interpretation adopted by the Board is not unreasonable shall conclusively establish the validity of such interpretation. In the event there is any dispute as to whether the use of the Property complies with the covenants and restrictions contained in this Declaration, its exhibits or the rules promulgated by the Board the matter shall be referred to the Board and the determination of the Board with respect to such dispute shall be dispositive on the issue and binding on all parties and shall be a condition precedent before an Owner may file any suit or proceeding at law or in equity against the Master Association concerning this Declaration or any amendments thereto.

**13.9 Access and Patrol.** The Master Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to monitor access within the Properties. The Master Association shall not in any way be considered insurers or guarantors of security within the Properties, nor shall it be held liable for any loss or damage by reason of failure to provide adequate security or of ineffectiveness of security, access control and patrol measures undertaken. No representation or warranty is made that any gatehouse, fence, buffer areas, fire protection system, burglar system, security camera system or other security, access control or patrol measures cannot be compromised or circumvented, nor that any such security systems or measures undertaken will in any or all cases prevent loss or provide the detection or protection for which the security systems or measures were designed or intended. Each Owner and member of the Country Club acknowledges, understands and covenants to inform its tenants and invited Guests that the Master Association, its Board of Directors, committees, and officers are not insurers and that each person using the Properties assumes all risks for loss or damage to Persons, to dwellings and to the contents of dwellings resulting from acts of third parties.

**13.10 Use of the Words “Kensington” or “Kensington Park”.** Except as otherwise permitted by law, no Person or entity shall use the words “Kensington” or “Kensington Park” or any derivative or any other term in any printed or promotional material without the Master Association’s prior written consent. However, Owners and the Country Club may use the words “Kensington” or “Kensington Park” in printed or promotional matter solely to specify that particular Lot or the Country Club property is located within the Properties

**13.11 Not-for-Profit Status.** Notwithstanding anything contained herein to the contrary, the Master Association will perform no act nor undertake any activity inconsistent with its non-profit status under applicable state or federal law.

**13.12 Use of Singular and Plural and Gender.** Whenever the context so permits, the use of the singular shall include the plural and the plural shall include the singular and the use of any gender shall be deemed to include all genders.

**13.13 Headings.** The headings used in the Governing Documents are for reference purposes only, and do not constitute substantive matter to be considered in construing the terms and provisions of these documents.

## **14. DISCLAIMER OF LIABILITY OF MASTER ASSOCIATION**



NOTWITHSTANDING ANYTHING CONTAINED HEREIN OR IN THE GOVERNING DOCUMENTS, THE MASTER ASSOCIATION SHALL NOT BE LIABLE OR RESPONSIBLE FOR, OR IN ANY MANNER A GUARANTOR OR INSURER OF, THE HEALTH, SAFETY OR WELFARE OF ANY OWNER, OCCUPANT OR USER OF ANY PORTION OF THE PROPERTIES INCLUDING, WITHOUT LIMITATION, RESIDENTS AND THEIR FAMILIES, GUESTS, INVITEES, AGENTS, SERVANTS, CONTRACTORS OR SUBCONTRACTORS OR FOR ANY PROPERTY OR ANY SUCH PERSONS, WITHOUT LIMITING THE FOREGOING:

**14.1** IT IS THE EXPRESS INTENT OF THE GOVERNING DOCUMENTS THAT THE VARIOUS PROVISIONS THEREOF WHICH ARE ENFORCEABLE BY THE MASTER ASSOCIATION AND WHICH GOVERN OR REGULATE THE USES OF THE PROPERTIES HAVE BEEN WRITTEN, AND ARE TO BE INTERPRETED AND ENFORCED, FOR THE SOLE PURPOSE OF ENHANCING AND MAINTAINING THE ENJOYMENT OF THE PROPERTIES AND THE VALUE THEREOF.

**14.2** THE MASTER ASSOCIATION IS NOT EMPOWERED, AND HAS NOT BEEN CREATED, TO ACT AS AN ENTITY WHICH ENFORCES OR ENSURES THE COMPLIANCE WITH THE LAWS OF THE UNITED STATES, STATE OF FLORIDA, COLLIER COUNTY AND/OR ANY OTHER JURISDICTION OR THE PREVENTION OF TORTUOUS ACTIVITIES.

**14.3** ANY PROVISIONS OF THE GOVERNING DOCUMENTS SETTING FORTH THE USES OF ASSESSMENTS WHICH RELATE TO THE HEALTH, SAFETY AND/OR WELFARE SHALL BE INTERPRETED AND APPLIED ONLY AS LIMITATIONS ON THE USES OF ASSESSMENT FUNDS AND NOT AS CREATING A DUTY OF THE MASTER ASSOCIATION TO PROTECT OR FURTHER THE HEALTH, SAFETY OR WELFARE OF ANY PERSON(S), EVEN IF ASSESSMENT FUNDS ARE CHOSEN TO BE USED FOR ANY SUCH REASON.

**14.4** EACH OWNER AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN UPON ANY PORTION OF THE PROPERTIES SHALL BE BOUND BY THESE DISCLAIMERS AND SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ANY AND ALL RIGHTS, CLAIMS, DEMANDS AND CAUSES OF ACTION AGAINST THE MASTER ASSOCIATION ARISING FROM OR CONNECTED WITH ANY MATTER FOR WHICH THE LIABILITY OF THE MASTER ASSOCIATION HAS BEEN DISCLAIMED HEREIN.