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## **MASTER DECLARATION FOR LOST KEY MARINA & YACHT CLUB**

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**NOTICE:** As provided in Section 23.4 of this Declaration, each Owner, by virtue of taking title to a Unit or Parcel, hereby agrees that the deed of conveyance of the Unit or Parcel to a third party shall specifically state that the Unit or Parcel is subject to the terms of this instrument and shall state the recording book and page information for this instrument as recorded in the public records of the County. The intent of this provision is to defeat any potential argument or claim that Chapter 712, Florida Statutes, has extinguished the application of this instrument to each of the Units and Parcels.

Further, as provided in Section 23.19 of this Declaration, each Owner, by virtue of taking title to a Unit or Parcel, hereby agrees that the deed of conveyance of the Unit or Parcel to a third party shall specifically state that (1) the Unit or Parcel is located within a hurricane vulnerability zone, (2) the hurricane evacuation time for the Northwest Florida region is high and the Property is located within a mandatory hurricane evacuation zone, and (3) hurricane shelter space is limited.

**THIS MASTER DECLARATION FOR LOST KEY MARINA & YACHT CLUB** ("Declaration") is made by WCI Communities, Inc., a Delaware corporation, whose address is 24301 Walden Center Drive, Bonita Springs, Florida 34134.

**WITNESSETH:**

**WHEREAS**, WCI Communities, Inc. is the Declarant (defined in Article 1 hereof) and is the Declarant of a master planned development commonly known as Lost Key Marina & Yacht Club ("Community"), within which there is intended to be developed over time two high-rise condominiums, "for-sale" wet and dry boat slips and docks, and various other facilities and improvements, and the supporting infrastructure in accordance with the master plan and the respective approved site plans; and

**WHEREAS**, Declarant desires to insure the attractiveness and functionality of the Community and to prevent any future impairment thereof, to prevent nuisances, to preserve, protect and enhance the values and amenities of the Community and to provide for the maintenance of common property and other community facilities; and, to this end, desires to subject the property of the Community to the covenants, conditions, restrictions, provisions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of the Community and each owner of the portions thereof; and

**WHEREAS**, Declarant has deemed it desirable, for the efficient preservation, protection and enhancement of the values and amenities of the Community and to insure the enjoyment of the specific rights, privileges and easements in the common properties and community facilities, to create an association to exercise the powers of owning, maintaining, leasing and/or administering the common properties, administering and enforcing the covenants and restrictions contained hereinafter, collecting and disbursing the assessments and charges hereinafter created and otherwise fulfilling the tasks and expectations of such association as contemplated herein and Chapters 617 and 720, Florida Statutes; and

**WHEREAS**, Declarant has incorporated the Lost Key Marina & Yacht Club Master Association, Inc. under the laws of the State of Florida, as a not-for-profit corporation, for the purpose of exercising the functions, responsibilities, duties and other actions contemplated herein;

**NOW, THEREFORE**, the foregoing recitals are hereby incorporated as if fully set forth hereinafter, and Declarant hereby declares that the Property identified in Article 2 hereof shall be held, transferred, sold, conveyed, leased, mortgaged, used occupied and otherwise dealt with subject to the terms of the covenants, conditions, restrictions, provisions, easements, charges and liens hereinafter set forth, all of which are created in the best interest of the owners, residents and authorized users of the Property or lands appertaining thereto, and which will run with the land and shall be binding upon all persons having and/or acquiring any right, title or interest in the Property or any portion thereof, or shall occupy any portion of such Property, and shall inure to the benefit of each and every person, from time to time, owning or holding an interest in the Property, or any portion thereof.

**ARTICLE 1: DEFINITIONS**

Unless the context expressly requires otherwise, the following terms mean as follows wherever used in this Declaration:

1.1 "Act" means Chapter 720, Florida Statutes, as existing on the date of recordation of this Declaration.

1.2 "Amenities" means the Amenities Property together with the Amenities Facilities as defined in the Amenities Declaration (and the services provided) owned initially by Declarant or a related entity. The Amenities shall be located within the Community. The Amenities may be unilaterally named by the Amenities Owner at any time.

1.3 "Amenities Declaration" means the Amenities Declaration for Lost Key Marina & Yacht Club, as recorded in Official Records Book 6097, Page 1847, public records of the County, as has been or may be amended from time to time.

1.4 "Amenities Owner" means the owner(s) of all or portions of the Amenities Property, as more particularly described in the Amenities Declaration.

1.5 "Amenities Property" means the real property designated and defined as the Amenities Property under the Amenities Declaration.

1.6 "ARC" means the architectural review committee of the Master Association, as established in Article 8 hereof.

1.7 "ARC Guidelines" means the guidelines for development and/or renovation of the improvements contained or to be contained in the Community. A copy of the initial ARC Guidelines for the Community is contained in Exhibit H attached hereto and made a part hereof. Any amendments or modifications to the original ARC Guidelines need not be recorded in the public records of the County.

1.8 "Articles" means the Articles of Incorporation of the Master Association, as may be amended from time to time. Copies of the original Articles, as filed with the State of Florida Department of State, are attached hereto as Exhibit C. Any future amendments to the original Articles need not be recorded in the public records of the County.

1.9 "Assessment" or "Assessments" means those charges and obligations set forth in Article 16 hereof, including General Assessments, Special Assessments, Specific Assessments, Residential Assessments and Boating Assessments.

1.10 "Authorized User" means the tenants, guests and invitees of (a) a Homeowner and all authorized occupants of a Home other than the Homeowner(s) thereof, (b) a Boating Unit, or (c) a Wet Slip User authorized for such use by the Upland Buffer Lands Owner.

1.11 "Benefited Parties" means Declarant, Master Association and Owners, together with each of their respective successors and assigns, and the tenants, guests and invitees of the Owners, but excluding the general public.

1.12 "Board of Directors" or "Board" means the board of directors of the Master Association.

1.13 "By-Laws" means the By-Laws of the Master Association, as may be amended from time to time. A copy of the original By-Laws is attached hereto as Exhibit D. Any future amendments to the original By-Laws need not be recorded in the public records of the County.

1.14 "Common Property" or "Common Properties" means (i) any property now or hereafter owned or leased by the Master Association; (ii) any property maintained by the Master Association pursuant to agreement (whether or not such property constitutes a portion of the Property); (iii) any property designated in Exhibit B hereto as Common Property, (iv) any property designated by Declarant as Common Property elsewhere in this Declaration or in any amendment or supplement to this Declaration; (v) any portion of the Property designated as Common Property of the Master Association (or words to that effect) on any plot(s) of the Property, including subdivision plats and condominium drawings, recorded in the public records of the County ("Plat"), (vi) any property now or hereafter owned by Declarant but maintained by the Master Association, (vii) any property owned by a third party but maintained by the Master Association pursuant to written agreement; (viii) all buffer zones or other areas located on the Property which may be required to be maintained by the Master Association pursuant to any applicable development order, permit or approval from any governmental entity with authority over the Property, and (ix) any personal property acquired by the Master Association if said property is designated as "Common

Property" by the Master Association or Declarant to be Common Property. "Common Property" shall also include, but shall not be limited to, (a) landscaping, signage and recreational facilities which are contained within lands that are Common Property, (b) any lake areas or bodies of water for which the Master Association has maintenance responsibility, (c) all portions of the surface water management system located within the Community or pertaining to the Property for which the Master Association has responsibility pursuant to the surface water management permit (including, but not limited to, dedicated lake tracts, lake maintenance or drainage easements, and corresponding infrastructure), which shall be maintained in accordance with such surface water management permit, (d) utility easements or tracts for corresponding sewer or potable water, (e) all roads and road rights-of-way contained within the Community, whether or not yet conveyed to the Master Association, except for roads and road rights-of-way owned by the Boating Association; and (f) the Entry Features. Any land or personal property leased by the Master Association shall lose its character as Common Property upon the expiration of such lease. Common Property shall not by definition include any common elements contained with a Condominium, but could include such areas upon written agreement between the Master Association and a Condominium Association.

1.15 "Community" means the master planned community development project known as Lost Key Marina & Yacht Club.

1.16 "Community Wide Standards" means the standards of conduct, maintenance or other activity generally prevailing throughout the Property. Such standards may be more specifically determined by Declarant so long as Declarant owns one or more Homes or Parcels within the Community. Community Wide Standards shall be set forth in this Declaration or as a part of the Rules and Regulations.

1.17 "County" means Escambia County, Florida.

1.18 "Declarant" means initially WCI Communities, Inc. a Delaware corporation ("WCI"), and its successors, assigns, and designees, including, but not limited to, assigns by operation of law. The term "Declarant" shall not include any Person (including a joint venture involving Declarant) who purchases a Home or Parcel; provided, however, a subsequent owner of a portion of the Property may be specifically assigned a portion of the rights held by WCI as Declarant hereunder and such assignee shall be deemed a Declarant but limited to only exercise such rights of Declarant as WCI specifically assigned with respect to the portion of the Property identified in the assignment. If, however, such purchaser is specifically assigned all the rights held by WCI as Declarant hereunder, such assignee shall be deemed Declarant and may exercise all the rights of Declarant hereunder. Any full or partial assignment of Declarant's rights shall be by an express written assignment recorded in the public records of the County, specifically setting forth the description of the rights assigned and the specific property of assignee to which the assigned rights apply. Any partial assignment may be made on a non-exclusive basis and in the event of a dispute between WCI (and its successors or assignee of full Declarant's rights hereunder) and any assignee of a portion of Declarant's rights hereunder, the exercise of rights by WCI as Declarant hereunder (and its successors or assignee of full Declarant's rights) shall be controlling.

1.19 "Declaration" means this Master Declaration for Lost Key Marina & Yacht Club, as may be amended and supplemented from time to time.

1.20 "Dry Dock Association" means the Lost Key Marina & Yacht Club Dry Dock Condominium Association, Inc., a Florida not-for-profit corporation, which has been or shall be formed for purposes of overseeing the Dry Dock Condominium pursuant to the Dry Dock Declaration.

1.21 "Dry Dock Condominium" means the Lost Key Marina & Yacht Club Dry Dock Condominium, which has been or shall be created pursuant to the Dry Dock Declaration.

1.22 "Dry Dock Condominium Property" means that portion of the Property legally described in Exhibit A-2 attached hereto and made a part hereof.

1.23 "Dry Dock Declaration" means the Declaration of Condominium for Lost Key Marina & Yacht Club Dry Dock Condominium, as has been or shall be recorded in the public records of the County.

1.24 "Dry Dock Unit" means a condominium unit formed within a dry storage condominium facility and which is designed to contain a boat. A Dry Dock Unit is not a Home.

1.25 "Entry Features" means any and all the landscaping, structures, signage, facilities and other features, and access control devices and facilities, located at the entrance(s) to the Community. The Entry Features will be placed in such location(s) and elsewhere along the median and parkways within adjacent or nearby right(s)-of-way from time to time, or on Common Property or elsewhere on or off the Property at or near the entrance(s) to the Community.

1.26 "First Mortgage" means a valid mortgage having priority over all other mortgages on the same portion of the Property.

1.27 "First Mortgagee" means the holder or owner of a First Mortgage.

1.28 "Governing Documents" means collectively the Declaration, the Articles, the By-Laws, the Rules and Regulations, and any other instrument which governs the operation and/or use of the Property and the duties and obligations of the Master Association.

1.29 "Home" means a condominium unit contained within a Subdivision contained within the Community which (a) has been created for residential occupancy, (b) has had a certificate of occupancy issued therefore by the County, and (c) which has been conveyed to a Person other than Declarant.

1.30 "Homeowner" means the Owner of a Home. If more than one Person holds title to a single Home, all such Persons are Owners, jointly and severally.

1.31 "Institutional Lender" means the holder of a First Mortgage encumbering any portion of the Property, which holder in the ordinary course of business makes, purchases, guarantees, or insures mortgage loans, and which is not owned or controlled by the Owner of the Property encumbered. An Institutional Lender may include, but is not limited to, a bank, savings and loan association, insurance company, real estate or mortgage investment trust, pension or profit sharing plan, mortgage company, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, an agency of the United States or any other governmental authority, or any other similar type of lender generally recognized as an institutional-type lender. For definitional purposes only, an Institutional Lender also shall mean the holder of any mortgage executed by or in favor of Declarant, whether or not such holder would otherwise be considered an Institutional Lender.

1.32 "Marina Club Association" means the Lost Key Marina & Yacht Club Marina Club Association, Inc., a Florida not-for-profit corporation, which has been or shall be formed for purposes of overseeing the Dry Dock Condominium and the Wet Slips pursuant to the Marina Club Declaration.

1.33 "Marina Club Declaration" means the Marina Club Declaration for Lost Key Marina & Yacht Club, as has been or shall be recorded in the public records of the County.

1.34 "Master Association" means the Lost Key Marina & Yacht Club Master Association, Inc., a Florida not-for-profit corporation organized pursuant to Chapters 617 and 720, Florida Statutes, to administer certain common and designated functions for the Community pursuant to this Declaration.

1.35 "Member" means a member of the Master Association, as provided in this Declaration, the Articles or the By-Laws.

1.36 "Owner" means any Person who from time to time holds record fee simple title to any Parcel or any part thereof. "Owner" shall include a Homeowner and each other Owner, including Declarant as to any Parcel it owns.

1.37 "Parcel" means a portion of the land, other than as contained within a Subdivision or subject to the Dry Dock Declaration, which is owned by a party other than the Master Association.

1.38 "Person" means any natural person or artificial entity having legal capacity.

1.39 "Property" means and refers to that certain real property identified in Article 2 hereof.

1.40 "Residential Property" means that portion of the Property legally described in Exhibit A-1 attached hereto and made a part hereof.

1.41 "Residential Unit" means a Unit created within a Subdivision for residency occupancy purposes.

1.42 "Rules and Regulations" means the rules and regulations adopted by the Board as same may be amended from time to time.

1.43 "Subdivision" means a grouping of Homes contained within the Residential Property designated as a separate living area in which Owners may have common interests other than those common to all Members of the Master Association and for which a Subdivision Association has been formed to govern such Owners. A Subdivision may contain more than one type of residential housing and may be comprised of noncontiguous portions of the Residential Property. There may be several different types of Subdivisions in the Community. At the onset of the Community, the Subdivisions that Declarant contemplates to develop within the Community are two (2) high-rise condominium projects that are or shall be developed on portions of the Residential Property. Subsequent to recording of this Declaration, additional types of Subdivisions may be developed without requirement for amendment to this Declaration.

1.44 "Subdivision Association" means a corporation, other than the Master Association, the Dry Dock Association or the Boating Association, which has been or shall be formed pursuant to and in accordance with certain recorded restrictive covenants, deed restrictions or declaration of condominium affecting a portion of the Residential Property, and whose members consist, or will consist, of the Owners of the portion of the Residential Property affected by such recorded restrictive covenants, deed restrictions or declaration of condominium. For purposes of this Declaration, any portion of the Residential Property affected by any such recorded restrictive covenants, deed restrictions or declaration of condominium shall be deemed to be operated by and subject to the jurisdiction of such Subdivision Association; provided, however, that such portion of the Residential Property shall simultaneously remain subject to the jurisdiction of the Master Association to the extent applicable pursuant to this Declaration. In no manner shall the Boating Association or the Dry Dock Association be deemed to be a Subdivision Association.

1.45 "Subdivision Declaration" means any recorded restrictive covenants, deed restrictions or declaration of condominium establishing specific restrictions on and for certain portions of the Residential Property and for which a Subdivision Association is required and has been or shall be formed to oversee and govern such affected lands. For purposes hereof, this Declaration, the Marina Club Declaration and the Dry Dock Declaration shall not be deemed in any manner to be a Subdivision Declaration.

1.46 "Telecommunications Provider" means any party contracting with the Master Association to provide Owners with one or more Telecommunication Services. Declarant, its affiliates, subsidiaries, joint venturers, associates, and partners may be a Telecommunications Provider. With respect to any particular Telecommunications Services, there may be one or more Telecommunications Providers. By way of example, with respect to Multichannel Video Programming Service, one Telecommunications Provider may

provide the Master Association such service while another may own, maintain and service the Telecommunications Systems that allow delivery of such Multichannel Video Programming Service.

1.47 "Telecommunications Services" means local exchange services provided by a certified local exchange carrier or alternative local exchange company, intraLATA, and interLATA voice telephony and data transmission service and Multichannel Video Programming Service. Without limiting the foregoing, such Telecommunications Services may include the provision of the following services: Toll Calls, Data Transmission Services, Basic Service, Expanded Basic Service, Premium and Community Channels.

1.48 "Telecommunications Systems" means all facilities, items and methods required and/or used in order to provide Telecommunications Services to the Property. Without limiting the foregoing, Telecommunications Systems may include wires (fiber optic or other material), conduits, passive and active electronic equipment, pipes, wireless cell sites, computers, modems, satellite antennae site(s), transmission facilities, amplifiers, junction boxes, trunk distribution, drop cables, related apparatus, converters, connections, head-end antennae, earth station(s), appurtenant devices, network facilities necessary and appropriate to support provision of local exchange services and/or any other item appropriate or necessary to support provision of Telecommunications Services. Ownership and/or control of all of a portion of any part of the Telecommunications Services may be bifurcated among network distribution architecture, system head-end equipment, and appurtenant devices (e.g., individual adjustable digital units).

1.49 "Transfer of Control" means that date following conversion of Class "B" votes to Class "A" votes, upon which Declarant transfers majority control of the Board as provided in Article 14 hereof.

1.50 "Unit" means a condominium unit. There shall be two types of Units – Residential Units and Dry Dock Units.

1.51 "Upland Buffer Lands" means that portion of the Property legally described in Exhibit A-3 attached hereto and made a part hereof.

1.52 "Upland Buffer Lands Owner" means the owner of the Upland Buffer Lands.

1.53 "WMD" means the Northwest Florida Water Management District, the entity created to oversee certain water management requirements in connection with the Property, among others. To the extent the WMD has ceded its authority and responsibility for issuing water management permits and overseeing water management systems, the Department of Environmental Protection of the State of Florida shall for purposes herein be deemed to be included within the definition of "WMD."

1.54 "Wet Slip" means a boat slip contained within certain submerged lands lying adjacent to the Upland Buffer Lands.

1.55 "Wet Slip User" means an individual who is permitted to use a Wet Slip by the Upland Buffer Lands Owner.

All definitions contained in the Governing Documents other than this Declaration are hereby incorporated into this Declaration (most specifically the definitions contained in the exhibits to this Declaration).

## **ARTICLE 2: PROPERTY SUBJECT TO THIS DECLARATION; GENERAL PLAN OF DEVELOPMENT**

2.1 Subject Property. The Property which shall be held, transferred, sold, conveyed, leased, mortgaged, used and occupied subject to this Declaration is located within the County, and is more particularly described in the descriptions attached hereto as Exhibit A-1, Exhibit A-2, Exhibit A-3 and Exhibit B and incorporated by this reference as fully as if specifically repeated herein, together with any additions thereto and less any deletions therefrom pursuant to Article 12 hereof.

2.2 General Plan of Development. The Community is a mixed-use community including certain residential uses, together with certain boating, recreational and other ancillary uses and facilities. As the Community is progressively developed, the Property to which this Declaration shall apply may also progressively increase in land area.

The general plan of development for the Community includes proposed recreational amenities, including, but not limited to, a fitness room, associated locker rooms, a ship store, a resort pool, and certain other facilities and areas, which shall collectively constitute the Amenities. Declarant shall be the initial Amenities Owner. The Amenities Owner, in its sole discretion and from time to time (as applicable), shall (a) have the right and authority to determine the amenities and facilities to be contained in the Amenities, (b) not have any obligation to construct any or all of the specific amenities and facilities referred to above as proposed, and (c) have the right and authority to substitute different amenities and facilities, or construct additional amenities and facilities, from time to time. The Amenities are not a portion of the Property, and shall not be subject to the terms of this Declaration, except as otherwise specifically provided herein. The facilities of the Amenities shall be initially owned by Declarant, and every Owner shall be permitted to utilize the facilities and shall be obligated to pay for such usage pursuant to the Amenities Declaration. It should be noted that the Amenities Owner has the right, in its sole discretion, to permit individuals other than Owners to utilize the Amenities, as provided further in the Amenities Declaration. Membership in the Master Association does not, by itself, include any rights of use of the Amenities; provided, however, that every Owner shall have the rights and obligations with respect to the Amenities as set forth in the Amenities Declaration. The use of the Amenities may result in an increase in the number of persons using the roads and the parking facilities of the Community. Declarant, for itself and the benefit of the Amenities Owner, hereby reserves unto itself and also the right to unilaterally grant over, across and through the Property any non-exclusive easements which may be required for the use, operation and enjoyment of the Amenities. The Amenities Owner shall have the right to provide from time to time rules and regulations governing the use and operation of the Amenities. As a means of simplifying payment of dues, only, by Owners, the Master Association shall be permitted to collect monies due and owing to the Amenities Owner under the Amenities Declaration, provided that a contractual arrangement is entered into between the Amenities Owner and the Master Association, which specifies the terms and provisions for such collection (and such agreement shall specifically provide that the Master Association shall have no obligation to enforce collection of such monies and is only collecting Amenities Declaration monies as a matter of convenience).

2.3 Expansion of Community. Declarant has the right, acting in its sole discretion, but not the obligation, to expand the Community from time to time by adding additional land, or to change the number or kind of Parcels or Units, amenities or other features of the Community.

2.4 Long Term Development. Some areas of the Community may be under development for extended periods of time. Incident to the development process, the quiet enjoyment of the Community may be unavoidably interfered with to some extent by these construction operations and activities. From time to time, Declarant, builders and others may present to the public or display certain renderings, plans and models showing possible future development of the Community. Declarant does not warrant in any way that the schemes in these renderings, plans or models will actually be developed. Any such renderings, plans or models are primarily thematic and in no way represent a guaranteed final development plan for the Community.

### **ARTICLE 3: COMMUNITY DEVELOPMENT DISTRICT**

The Property is not presently subject to a community development district. However, the Declarant may in the future create a community development district to govern all or portions of the Community.

### **ARTICLE 4: COMMON PROPERTY**

4.1 Appurtenances. The benefit of all rights and easements granted by this Declaration with regard to the Common Property constitute a permanent appurtenance to, and will pass with, the title to



every portion of the Property enjoying such benefit. Whenever any such rights or easements are described as non-exclusive by this Article, its benefit nevertheless is exclusive to all Owners and other Benefitted Parties granted such benefit by this Article, unless this Article expressly grants such benefit to other Persons. In no event will the benefit of any such easement extend to the general public.

4.2 Conveyance by Declarant. Declarant shall have the right to convey title to all or any portions of the Property, or any easement or interest therein, to the Master Association as Common Property, and the Master Association shall be required to accept such conveyance (which shall be by quit-claim deed). Any such conveyance shall be effective upon recording the deed or instrument of conveyance in the public records of the County. Notwithstanding the foregoing, Declarant shall not have the obligation to develop and/or convey any portion of the Property to the Master Association as Common Property, and if Declarant desires to convey any portion of the Property to the Master Association, the timing of the conveyance shall be in the sole discretion of Declarant.

4.3 Conveyance by any Person. Any Person other than Declarant may convey title to all or any portions of the Property, or any easement or interest therein, to the Master Association as Common Property, but the Master Association shall not be required to accept any such conveyance, and no such conveyance shall be effective to impose any obligation for the maintenance, operation or improvement of any such property upon the Master Association, unless the Board expressly accepts the conveyance by having an officer of the Master Association acknowledge such acceptance on the deed or other instrument of conveyance or by recording a later written acceptance of such conveyance in the public records of the County. Such property shall be conveyed by quit-claim deed.

4.4 Use and Benefit. All Common Property owned or leased by Master Association shall be held by the Master Association for the use and benefit of the Master Association, the Benefited Parties, and any other Persons authorized to use the Common Property or any portion thereof by Declarant or the Master Association. All Common Property shall be used for all proper and reasonable purposes and uses for which the same are reasonably intended, subject to the terms of this Declaration, subject to the terms of any easement, restriction, reservation or limitation of record affecting the Common Property or contained in the deed or instrument conveying the Common Property to the Master Association, and subject to any rules and regulations adopted by the Master Association. The Master Association may restrict use of any Common Property when the nature of such property is not intended for the use of some of the Benefited Parties or may restrict the type of use or times of use in any way deemed appropriate by the Board. An easement and right for such use of the Common Property is hereby created in favor of all Benefited Parties, appurtenant to the title to their portion of the Property, subject to any rules and regulations promulgated by the Master Association. In addition, (a) Declarant shall have the right, in its sole discretion, to permit access to and use of the Common Property to and by individuals other than as so described herein, and (b) Declarant retains and reserves the right to grant easements and rights of way in, to, under and over the Common Property so long as Declarant is a member of the Master Association for such purposes as Declarant shall reasonably deem necessary or helpful in connection with the development, sale or operation of the Community.

4.5 Additions, Alterations or Improvements.

4.5.1 On or before Turnover, the Master Association shall have the right to make additions, deletions, alterations or improvements to the Common Property (if any) and to purchase any personal property as it deems necessary or desirable from time to time. The cost and expense of any such additions, deletions, alterations or improvements to the Common Property, or the purchase of any personal property, shall be a common expense.

4.5.2 Subsequent to Turnover, the Master Association shall have the right to make additions, alterations or improvements to the Common Property, and to purchase any personal property as it deems necessary or desirable from time to time; provided, however, that the approval of a majority of the Members present in person or by proxy at a duly called meeting of the Master Association shall be required

for any addition, alteration or improvement, or any purchase of personal property, for which the annual expense exceeds 10% of the annual budget in effect at the time the addition, alteration, improvement or purchase is contemplated by the Master Association. The foregoing approval shall in no event be required with respect to expenses incurred in connection with the maintenance, repair or replacement of existing Common Property, or any existing improvements or personal property associated therewith, or with respect to any property being conveyed to the Master Association by Declarant. The cost and expense of any such additions, alterations or improvements to the Common Property, or the purchase of any personal property, shall be a common expense.

4.5.3 So long as Declarant owns any portion of the Property, Declarant shall have the right to make any additions, alterations or improvements to the Common Property as may be desired by Declarant in its sole discretion from time to time, at Declarant's expense.

4.6 Dedications. Declarant hereby reserves the right to dedicate, grant or convey all or any portions of the Property owned by it, or any interest or easement therein, to any governmental or quasi-governmental agency or private or public utility company. Declarant also shall have the right to direct the Master Association to likewise dedicate, grant or convey any Common Property, or any interest or easement in any Common Property, owned by the Master Association whereupon the Master Association shall execute such documents as will be necessary to effectuate such dedication; provided, however, that this right of Declarant shall terminate when Declarant either is no longer a Member or has duly executed and recorded in the public records of the County a notice releasing and waiving this right, whereupon the right shall be vested solely within the Master Association. Any portion of the Property, or any interest or easement therein, which is dedicated, granted or conveyed pursuant to this provision shall not be subject to this Declaration, unless the instrument so dedicating, granting, or conveying such portion of the Property, interest or easement specifically provides that same shall remain subject to this Declaration.

4.7 Master Association Rights as to Common Property. The rights and easements of the Benefited Parties and, in general, the use of the Common Properties shall be subject to the following:

4.7.1 The right of the Master Association to limit the use of the Common Properties.

4.7.2 The right of the Master Association to suspend the enjoyment rights of an Owner, if and up to the maximum extent permitted by law, for any period during which any Assessment remains unpaid, or for any infraction of the Rules and Regulations or this Declaration.

4.7.3 The right of the Master Association to dedicate or transfer all or any part of the Common Property owned by the Master Association to any governmental body, quasi-governmental body, public agency, authority or utility for purposes associated with such entities. No such dedication or transfer shall be effective unless the Members entitled to cast at least 67% of the total Class A votes and all of the Class B votes agree to such dedication or transfer; provided, however, that this paragraph shall not preclude (a) the Master Association, on or before Turnover pursuant to Section 14.1 hereof, from dedicating or transferring all or any portion of the Common Property owned by the Master Association to any public agency, authority or utility for such purposes without the consent of the Owners; (b) the Board of Directors from granting specific easements for the installation and maintenance of electrical, telephone, special purpose cable for television and other uses, water and sewer, fire protection, trash collection and utilities and drainage facilities and other utilities or services of the like, upon, over, under and across the Common Property without the consent of the Members; or (c) prevent Declarant from granting such specific easements with regard to any portion of the Property owned by Declarant, including any Common Property, without the consent of the Members.

4.7.4 The right of the Master Association to impose reasonable Rules and Regulations with respect to the use of the Common Properties in addition to those set forth herein.

4.7.5 The restrictions and conditions of any applicable zoning ordinance or development order, or any other regulation, rule or statute.

4.8 Extension of Rights and Benefits. Every Owner shall automatically have the rights and easements of enjoyment vested in him under this Article extended to each of the applicable Benefited Parties, and to such other persons as may be permitted by the Master Association.

4.9 Lease and Operation. The Master Association shall have the right to enter into agreements for the lease or operation of all or a portion of the Common Property, whether or not for profit.

4.10 Maintenance Agreements. Declarant, and after Declarant no longer owns any portion of the Property, the Master Association, shall have the right to enter into agreements for lease, use, license, maintenance or easement with any governmental or quasi-governmental agency or private or public utility company in order to obligate the Master Association to maintain and/or upkeep certain real property not owned by Declarant or the Master Association and which may or may not constitute a portion of the Property, including, without limitation, any roads, right-of-ways, medians, swales and berms. All expenses to the Master Association shall be common expenses of the Master Association.

4.11 Mortgage and Sale of Common Property. Unless in connection with a specific provision of this Declaration, the Master Association shall not abandon, partition, subdivide, encumber, sell or transfer any Common Property owned by the Master Association without the approval of at least 67% of the total Class A votes and all of the Class B votes. If ingress or egress to any portion of the Property is through any Common Property, any conveyance or encumbrance of such Common Property shall be subject to an appurtenant easement for ingress and egress in favor of the Owner(s) of such portion of the Property, unless alternative ingress and egress is provided to the Owner(s).

#### **ARTICLE 5: NON-RESIDENTIAL ACTIVITIES**

5.1 General Exclusion for Non-Residential Activities. No non-residential (i.e., commercial) activity of any nature shall be permitted on the Property, except as specifically provided in this Article or otherwise specifically stated in other portions of this Declaration.

5.2 Specific Exemptions for and Reserved Rights to Declarant. Until such time as Declarant no longer owns any portion of the Property, Declarant shall be entitled to:

5.2.1 develop and construct Homes in the Community as it deems necessary or desirable from time to time, and to modify the general plan of development as Declarant desires in its sole discretion from time to time;

5.2.2 conduct any and all sales and marketing activities deemed necessary or desirable in Declarant's sole discretion for the sale and resale of the Homes and Parcels within the Community or in other communities being developed Declarant or its related entities;

5.2.3 construct on any portion of the Common Property or any lands owned or leased by Declarant portable, temporary or accessory structures to be used for Declarant's sales, marketing, construction or general office purposes or as may be otherwise deemed necessary or desirable in Declarant's sole discretion;

5.2.4 allow guests or potential purchasers of a Home in the Community to occupy on a short-term, temporary or guest basis a Home owned or leased by Declarant (so as to further Declarant's sales and marketing activities);

5.2.5 conduct tours of the Community to any persons as desired by Declarant;

5.2.6 conduct commercial enterprises on the Property as deemed necessary or desirable by Declarant;

5.2.7 construct, maintain and use maintenance facilities and buildings as may be needed from time to time for the proper operation of the Community and to permit the Master Association to perform its duties hereunder;

5.2.8 temporarily deposit, store, dump or accumulate materials, trash, refuse and rubbish in connection with the development or construction of any portion of the Community;

5.2.9 post, display, inscribe or affix to the exterior of any portion of the Common Property, or other portions of the Community owned by Declarant, signs or other materials used in developing, constructing, selling or promoting the sale of any portion of the Community, including, without limitation, Homes;

5.2.10 excavate fill from any lakes or waterways within and/or contiguous to the Community by dredge or dragline, store fill within the Community and remove and/or sell excess fill, and grow or store plants and trees within, or contiguous to, the Community and use and/or sell excess plants and trees;

5.2.11 construct, maintain and use buildings and offices necessary for the management of the Community and the Master Association by a related or third party property management company;

5.2.12 undertake, promote and hold marketing, promotional and/or special events within the Community from time to time as deemed or desirable by Declarant in its sole discretion; and

5.2.13 undertake any other activities which, in the sole opinion of Declarant, are necessary for the promotion, development and sale of any portion of the Community or any other projects owned or developed by Declarant or its affiliated entities.

5.3 Specific Exemptions Allowing for Commercial Activities. Notwithstanding any provision of this Article 5 to the contrary, the following commercial activities shall be permitted:

5.3.1 Amenities Owner. The Amenities Owner shall be entitled to conduct commercial enterprises on the Amenities Property in conjunction with or are related to the operation of the Amenities, which enterprises are deemed and necessary and desirable by the Amenities Owner in its sole discretion. Such commercial enterprises may, but shall not necessarily, include, (a) the operation of a ship store in conjunction with the Amenities or the adjacent marina facilities, (b) the operation of restaurants and bars, (c) the provision of fitness and luxury services such as a masseuse or personal trainer, (d) the provision of valet and concierge services to the Owners, and (e) the operation of maintenance facilities as may be needed from time to time.

5.3.2 Dry Dock Condominium. The Owners of Dry Dock Units and the Dry Dock Association shall be entitled to conduct commercial enterprises on the Property in connection with or related to the Dry Dock Condominium, which enterprises are deemed and necessary and desirable by Declarant for so long as it is in control of the Dry Dock Association (and thereafter the Dry Dock Association) in its sole discretion. Such commercial enterprises may, but shall not necessarily, include, (a) the operation of a boating storage and use facility, and (b) related services. Notwithstanding any provision herein to the contrary or contained within the Dry Dock Declaration, no commercial enterprise shall be permitted within or pertaining to the Dry Dock Condominium without the prior written consent of Declarant for so long as Declarant owns any portion of the property contained within the Community.

5.3.3 Upland Buffer Lands Owner. The Upland Buffer Lands Owner shall be entitled to conduct commercial enterprises on the Property in connection with or related to the Wet Slips, which

enterprises are deemed and necessary and desirable by the Upland Buffer Lands Owner in its sole discretion. Such commercial enterprises may, but shall not necessarily, include, (a) the operation of a wet boating use facility, and (b) related services. Notwithstanding any provision herein to the contrary or contained within the Marina Club Declaration, no commercial enterprise shall be permitted within or pertaining to the Wet Slips or in the waters lying adjacent to the Upland Buffer Lands without the prior written consent of Declarant for so long as Declarant owns any portion of the property contained within the Community.

#### **ARTICLE 6: USE AND ARCHITECTURAL RESTRICTIONS**

6.1 General Applicability of this Article to the Property. All use and development of the Property shall conform to the provisions of this Declaration and any other restrictive covenants recorded against all or a portion of the Property, as may be amended from time to time, including, without limitation, any Subdivision Declaration. The Residential Property shall be used only for residential and related purposes. Additional covenants imposed on that portion of the Residential Property within any Subdivision Association by a Subdivision Declaration may impose stricter standards than those contained in this Article. The Master Association, acting through its Board of Directors, shall have standing and the power to enforce standards imposed by the Subdivision Declarations, and each Owner, by virtue of taking title to a Home, and each Subdivision Association hereby agrees and consents, and shall be deemed to agree and consent, to the Master Association's powers under this Section 6.1. The Dry Dock Condominium Property and the Upland Buffer Lands shall be used for the purposes intended therefore.

This Article contains provisions and restrictions which permit or prohibit certain conduct or uses and which may require certain permitted uses to be approved by the ARC pursuant to this Declaration. The provisions and restrictions of this Article are illustrative only and shall in no event be deemed a comprehensive list of items subject to approval hereunder.

6.2 Specific Exemption for Declarant. Notwithstanding anything to the contrary herein, Declarant shall be exempt from application of the terms and provisions of this Article so long as it owns any portion of the Property. This Section 6.2 may not be amended without the prior written consent of Declarant.

6.3 Rules and Regulations. The Master Association, acting through its Board of Directors, shall have the authority to make and to enforce reasonable Rules and Regulations which provide standards governing the use of the Property, in addition to those contained herein.

#### 6.4 Owners and Authorized Users Bound; Owner's Liability.

6.4.1 In General. Use restrictions shall be binding upon all Owners and Authorized Users of Homes and other portions of the Property. All provisions of the Governing Documents which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Authorized Users. Every Owner shall cause his or her Authorized Users to comply with the Governing Documents, and shall be responsible for all violations and losses to the Property caused by such Authorized Users, notwithstanding the fact that such Authorized Users are fully liable and may be sanctioned for any violation of the Governing Documents.

#### 6.4.2 Right to Cure. Should any Owner do any of the following:

6.4.2.1 Fail to perform its responsibilities as set forth herein or otherwise violate or breach the provisions of the Governing Documents; or

6.4.2.2 Cause any damage to any improvement or to any portion of the Residential Property or the Common Property; or

6.4.2.3 Impede Declarant or the Master Association from exercising its rights or performing its responsibilities hereunder, including obligations under any applicable permits; or

6.4.2.4 Undertake unauthorized improvements or modifications to a Home or Unit, the Residential Property or the Common Property; or

6.4.2.5 Impede Declarant from proceeding with or completing the development of the Community,

Declarant and/or the Master Association, where applicable, after fifteen (15) days' prior written notice (except that in the event of an emergency as determined by the Master Association's president or by the Board, no prior written notice shall be required), shall have the right, through its agents and employees, to cure such violations or breaches, including, but not limited to, by entering upon the Unit or Parcel and causing the violation or breach to be remedied and/or the required repairs or maintenance to be performed, or as the case may be, remove unauthorized improvements or modifications. The cost of curing such violations or breaches, plus reasonable overhead costs and attorneys' fees and paraprofessional fees at all levels, including appeals, collections and bankruptcy, shall be assessed against the Owner as a Specific Assessment.

6.4.3 Non-Monetary Defaults. In the event of a violation or breach by any Owner, other than the nonpayment of any Assessment or other monies, of any of the provisions of this Declaration, Declarant or the Master Association shall notify the Owner of the violation, by written notice. If such violation is not cured as soon as practicable and in any event within 7 days after receipt of such written notice, the party entitled to enforce same may, at its option:

6.4.3.1 Commence an action to enforce the performance on the part of the Owner or to enjoin the violation or breach or for equitable relief as may be necessary under the circumstances, including injunctive relief; and/or

6.4.3.2 Commence an action to recover damages; and/or

6.4.3.3 Take any and all actions reasonably necessary to correct the violation or breach.

All expenses incurred in connection with the violation or breach, or the commencement of any action against any Owner, including reasonable attorneys' fees and paraprofessional fees at all levels, including appeals, collections and bankruptcy, shall be assessed against the Owner as a Specific Assessment, and shall be immediately due and payable without further notice.

6.4.4 No Waiver. The failure to enforce any right, provision, covenant or condition in this Declaration, shall not constitute a waiver of the right to enforce such right, provision, covenant or condition in the future.

6.4.5 Rights Cumulative. All rights, remedies, and privileges granted to Declarant, the Master Association and/or the ARC pursuant to any terms, provisions, covenants or conditions of this Declaration, or the ARC Guidelines, shall be deemed to be cumulative, and the exercise of any one or more of same shall neither be deemed to constitute an election of remedies, nor shall it preclude any of them from pursuing such additional remedies, rights or privileges as may be granted or as it might have by law.

6.4.6 Enforcement By or Against Other Persons. In addition to the foregoing, this Declaration or the ARC Guidelines may be enforced by Declarant and/or, where applicable, the Master Association by any procedure at law or in equity against any person violating or attempting to violate any provision herein or contained in the ARC Guidelines, to restrain such violation, to require compliance with

the provisions contained herein, to recover damages, or to enforce any lien created herein or in the ARC Guidelines. The expense of any litigation to enforce this Declaration or the ARC Guidelines shall be borne by the person against whom enforcement is sought, provided such proceeding results in a finding that such person was in violation of this Declaration or the ARC Guidelines.

6.4.7 Fines. Except to the extent prohibited by law, in the event of a violation or breach of the provisions contained herein by an Owner or a person acting by, through, or under an Owner, the Rules and Regulations, the ARC Guidelines, or other rules and regulations promulgated by the ARC or the Master Association (as may be applicable), the Master Association shall have the right to levy reasonable fines or suspend the privileges of the Owner or any person acting by, through, or under an Owner. Each fine shall be a Specific Assessment and enforceable pursuant to the provisions of this Declaration and the By-Laws. Each day of an Owner's failure to comply with this Declaration, the Rules and Regulations, the ARC Guidelines, or other rules and regulations promulgated by the ARC shall be treated as a separate violation and shall be subject to a separate fine. The decisions of the Master Association as to the levying of a fine shall be final. Fines shall be in such reasonable and uniform amounts as the Master Association shall determine from time to time in its sole discretion. Suspensions and fines shall be imposed in the manner provided in Section 720.305, Florida Statutes, as amended from time to time. The Board shall have the authority to promulgate additional procedures regarding the levying and enforcement of fines from time to time.

6.5 Parking and Vehicular Restrictions. No vehicle shall be parked anywhere but on paved areas intended for that purpose. Parking on lawns or landscaped areas is prohibited, unless specifically approved or designated for such purpose. Automobiles shall be parked in the parking spaces contained within the property of a Subdivision as determined by the Subdivision Declaration for such property, or as otherwise designated for parking. No unlicensed vehicle or vehicle which cannot operate on its own power shall remain in the Community for more than 12 hours. No repair, except for emergency repair, of vehicles shall be made within the Community, except as otherwise permitted on the property of a Subdivision. No "commercial vehicle" (i) shall be permitted to be parked in the Community for a period of more than 4 hours per day unless such commercial vehicle is temporarily present and necessary in the actual construction, maintenance or repair of a Unit or other improvements in the Community, or (ii) shall be permitted to be parked overnight or stored in the Community unless fully enclosed within a garage (which shall be deemed to include any enclosed parking areas contained within a Subdivision). For the purposes of this Declaration, "commercial vehicle" means a vehicle which is determined by the Master Association to be for a commercial purpose (and the Master Association shall take into consideration, among other factors, lettering, graphics or signage located on or affixed to the exterior of the vehicle which identifies a business or commercial enterprise, but the existence of such lettering, graphics or signage shall not be dispositive). No boats, jet skis, wave runners, boat trailers, trailers of any kind, campers, motor homes, mobile homes, truck campers, mopeds, motorcycles or buses shall be permitted to be parked in the Community, unless parked in an area designated by Declarant for such purposes. Specific provisions pertaining to electric carts are contained in Section 6.34 hereof. No vehicle shall be used as a domicile or residence, temporarily or permanently. This Section does not apply to vehicles utilized for sales, construction or maintenance operations of or by Declarant, the Master Association, the Dry Dock Association, the Upland Buffer Lands Owner and the Boating Association. No amendment or modification to this Section shall be effective without the prior written consent of Declarant for so long as Declarant owns any portion of the Property.

6.6 Driveways. All driveways in the Community shall be paved and of stable and permanent construction. Unless prior written approval of the ARC is obtained, the driveway base shall be concrete or brick pavers. No driveway surface shall be painted, repainted, or otherwise artificially colored or recolored without the prior written approval of the ARC.

6.7 Traffic Regulation. The Master Association may, but shall not be obligated to, employ individuals, enter into one or more agreements to enforce rules and regulations concerning operation of

