

AGENDA  
ESCAMBIA COUNTY PLANNING BOARD  
March 4, 2013–8:35 a.m.  
Escambia County Central Office Complex  
3363 West Park Place, Room 104

1. Call to Order.
2. Invocation/Pledge of Allegiance to the Flag.
3. Proof of Publication.
4.
  - A. **RECOMMENDATION:** That the Planning Board review and approve the Meeting Resume' Minutes of the February 4, 2013 Planning Board Meeting.
  - B. Planning Board Monthly Action Follow-up Report for February 2013.
  - C. Planning Board 6-Month Outlook for March 2013.
5. Public Hearings.
  - A. Comprehensive Plan Text Amendment CPA-2013-01  
  
A Public Hearing Concerning the Review of an Ordinance Amending Comprehensive Plan Policy Mob 1.1.8 and OBJ CIE 1.2.  
  
That the Board review and recommend approval to the Board of County Commissioners (BCC), for transmittal to the Department of Economic Opportunity, (DEO), an Ordinance to amend Comprehensive Plan Policy Mob 1.1.8 and OBJ CIE 1.2. to allow certain documents incorporated by reference to be updated in the Code of Ordinances without amendment to the Comprehensive Plan.
  - B. WCI Amended Development Agreement  
  
A Public Hearing Concerning the Review of an Amended Development Agreement for WCI  
  
That the Board review and recommend to the Board of County Commissioners (BCC) for approval, an amended Development Agreement between WCI Communities LLC and Escambia County; to review it for consistency with the Comprehensive Plan; to vest certain conditions agreed to by both parties in

accordance with procedures and requirements of Florida Statutes; to include any changes to be made to the Agreement; and to authorize the Agreement for execution.

6. Discussion Items.
  - A. DPZ Presentation for Perdido Key Master Plan
7. Public Forum.
8. Director's Review.
9. County Attorney's Report.
10. Scheduling of Future Meetings.

The next Regular Planning Board meeting is scheduled for **Monday, April 1, 2013 at 8:35 a.m.** , in the Escambia County Central Office Complex, Room 104, First Floor, 3363 West Park Place, Pensacola, Florida.

11. Announcements/Communications.
12. Adjournment.



**BOARD OF COUNTY COMMISSIONERS**  
Escambia County, Florida

**Planning Board-Regular**  
**Meeting Date:** 03/04/2013

**4.**

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**Agenda Item:**

- A. **RECOMMENDATION:** That the Planning Board review and approve the Meeting Resume' Minutes of the February 4, 2013 Planning Board Meeting.
- B. Planning Board Monthly Action Follow-up Report for February 2013.
- C. Planning Board 6-Month Outlook for March 2013.

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**Attachments**

Planning Board Regular Mtg Resume  
Monthly Action Follow-Up  
Six Month Outlook

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# DRAFT

## RESUMÉ OF THE ESCAMBIA COUNTY PLANNING BOARD February 4, 2013

CENTRAL OFFICE COMPLEX  
3363 WEST PARK PLACE, BOARD CHAMBERS  
PENSACOLA, FLORIDA  
(8:31 A.M. – 9:38 A.M.)

Present: Wayne Briske, Chairman  
Tim Tate, Vice Chairman  
David Luther Woodward  
Dorothy Davis  
Robert V. Goodloe  
Karen Sindel  
Alvin Wingate  
Patty Hightower, School Board (non-voting)  
Stephanie Oram, Navy (Non voting)

Staff Present: Allyson Cain, Urban Planner, Planning & Zoning  
Andrew Holmer, Senior. Planner, Planning & Zoning  
Juan Lemos, Senior Planner, Planning & Zoning  
Kayla Meador, Sr Office Assistant  
Stephen West, Assistant County Attorney  
Horace Jones, Division Mgr., Planning & Zoning

1. Call to Order.
2. Invocation was given by Mr. Alvin Wingate and the Pledge of Allegiance to the Flag was given by Ms. Karen Sindel.
3. Proof of Publication was given by the board clerk.
4.
  - A. **RECOMMENDATION:** That the Planning Board review and approve the Meeting Resume' Minutes of the January 3, 2013 Planning Board Meeting.
  - B. Planning Board Monthly Action Follow-up Report for January 2013.
  - C. Planning Board 6-Month Outlook for February 2013.

Motion by Dorothy Davis, Seconded by Robert V. Goodloe  
Motion was made to approve minutes from January 3, 2013 Planning Board meeting.

**Vote:** 7 - 0 Approved

5. Public Hearings.

A. LDC Article 13.12 "Alternative To The Center One Third Regulation for Piers Or Docks On Pensacola Beach"

Motion by Karen Sindel, Seconded by Dorothy Davis  
Motion was made to recommend approval of the LDC Article 13.12 "Piers, Basins, Marinas".

**Vote:** 7 - 0 Approved

B. LDC Ordinance Article 13.01 "Administration"

Motion by Karen Sindel, Seconded by Robert V. Goodloe  
Motion was made to recommend approval of the LDC Article 13.01 "Administration".

**Vote:** 7 - 0 Approved

6. Discussion and Info Items.

LDC Re-Write

At the January 8, 2013 Committee of the Whole, Larry Newsom, Assistant County Administrator, recommended hiring a consultant to do a comparative analysis of the Comprehensive Plan and the proposed LDC with Santa Rosa, Okaloosa and Bay counties' respective plans.

The Planning Board recommended that the qualifications of the consultant for the LDC comparative analysis be qualified in planning and land use issues.

The Board also discussed the current JLUS inter-local agreement. Staff will meet with Navy personnel and bring the issue to the March Planning Board meeting.

7. Public Forum.

8. Director's Review.

9. County Attorney's Report

Sunshine Law Training Refresher

Stephen West conducted a Sunshine Law training and Public Records Act review.

10. Scheduling of Future Meetings.

The next Regular Planning Board meeting is scheduled for **Monday, March 4, 2013 at 8:30 a.m.** , in the Escambia County Central Office Complex, Room 104, First Floor, 3363 West Park Place, Pensacola, Florida.

11. Announcements/Communications.

12. Adjournment.



# BOARD OF COUNTY COMMISSIONERS ESCAMBIA COUNTY, FLORIDA

DEVELOPMENT SERVICES DEPARTMENT  
3363 WEST PARK PLACE  
PENSACOLA, FLORIDA 32505  
PHONE: 850-595-3475  
FAX: 850-595-3481  
www.myescambia.com

## Memorandum

**TO:** Planning Board  
**FROM:** Kayla Meador  
Planning & Zoning Division  
**DATE:** February 13, 2013  
**RE:** Monthly Action Follow-Up Report for February 2013

Following is a status report of Planning Board (PB) agenda items for the prior month of **February**. Some items include information from previous months in cases where final disposition has not yet been determined. Post-monthly actions are included (when known) as of report preparation date. Items are listed in chronological order, beginning with the PB initial hearing on the topic.

## PROJECTS, PLANS, & PROGRAMS

- PERDIDO KEY MASTER PLAN**

01/12/12	BCC directed staff to send out a Request for Letters of Interest
06/28/12	BCC selected Duany Plater-Zyberk & Company, LLC.
08/15/12	Site Visit – Duany Plater-Zyberk & Company, LLC.
09/13/12	Workshop was held at Perdido Bay Community Center
10/15-10/22	Charrette
3/4/13	Presentation - Duany Plater-Zyberk & Company, LLC

## COMMITTEES & WORKING GROUP MEETINGS

### COMPREHENSIVE PLAN AMENDMENTS

- **Text Amendments:**

- Comprehensive Plan Text Amendment- Ordinance amending the Escambia County Comprehensive Plan: 2030, as amended; repealing and replacing in its entirety ordinance No. 2012-18. (CPA-2015-05)**

07/09/12	PB reviewed and forwarded to the Board of County Commissioners the proposed Comprehensive Plan Text Amendment repealing and replacing Ordinance 2012-18.
08/09/12	BCC transmitted to DEO
09/13/12	Response letter from DEO
12/06/12	BCC adopted

2. **Comprehensive Plan Text Amendment – FLU 5 OSP (CPA 2012-03) Ordinance amending the Escambia County Comprehensive Plan 2030, amending policy FLU 5.5.2 regarding the locational criteria for traditional urban neighborhoods, new suburban neighborhoods and conservation neighborhoods in specific area plans.**

07/09/12 PB reviewed and forwarded to the Board of County Commissioners the proposed Comprehensive Plan Text Amendment.  
08/09/12 BCC approved transmittal to DEO.  
10/05/12 Response letter from DEO  
12/06/12 BCC adopted

3. **Comprehensive Plan Text Amendment - House Bill 503, amending the Comprehensive Plan 2030 consistent with Chapter 2012-205, Laws of Florida; removing references from the Comprehensive Plan 2030 requiring an applicant to obtain a permit or approval from any State of Federal agency as a condition of processing a development permit under certain conditions.**

08/13/12 PB reviewed and forwarded to the Board of County Commissioners the proposed Comprehensive Plan Text Amendment CPA 2012-04.  
09/06/12 BCC approved transmittal to DEO  
10/12/12 Response letter from DEO  
12/06/12 BCC adopted

4. **Comprehensive Plan Text Amendment – amending the Escambia County Comprehensive Plan: 2030; amending future land use element MU-PK; removing certain restrictions on development, height, and density; increasing the floor area ratio. (CPA 2012-06)**

11/05/12 PB reviewed and forwarded to the Board of County Commissioners the proposed Comprehensive Plan Text Amendment CPA 2012-06.  
12/06/12 BCC approved transmittal to DEO

5. **Comprehensive Plan Text Amendment – CIE (CPA 2012-07), amending the Escambia County Comprehensive Plan 2030 consistent with Chapter 2011-139.**

12/10/12 PB reviewed and forwarded to the Board of County Commissioners the proposed Comprehensive Plan Text Amendment  
01/03/13 BCC approved transmittal to DEO

- **Map Amendments:**

6. **Comprehensive Plan Map Amendment – Large Scale Amendment (CPA-2012-02) amending Part II of the Escambia County Code of Ordinances (1999), the Escambia County Comprehensive Plan, as amended; amending the Future Land Use Map designation.**

08/13/12 PB reviewed and forwarded to the Board of County Commissioners the proposed Comprehensive Plan Map Amendment CPA-2012-02.  
08/23/12 BCC approved transmittal to DEO  
09/28/12 Response letter from DEO  
01/03/13 BCC adopted



7. **Comprehensive Plan Map Amendment- Small Scale Amendment (SSA-2012-02) amending Part II of the Escambia County Code of Ordinances (1999), the Escambia County Comprehensive Plan, as amended; amending the Future Land Use Map designation.**

08/13/12 PB reviewed and forwarded to the Board of County Commissioners the proposed Comprehensive Plan Map Amendment SSA 2012-02.

08/23/12 BCC adopted

8. **Comprehensive Plan Map Amendment- Small Scale Amendment (SSA-2012-03) amending Part II of the Escambia County Code of Ordinances (1999), the Escambia County Comprehensive Plan, as amended; amending the Future Land Use Map designation.**

10/08/12 PB reviewed and forwarded to the Board of County Commissioners the proposed Comprehensive Plan Map Amendment SSA 2012-03.

11/01/12 BCC adopted

9. **Comprehensive Plan Map Amendment- Small Scale Amendment (SSA-2012-04) amending Part II of the Escambia County Code of Ordinances (1999), the Escambia County Comprehensive Plan, as amended; amending the Future Land Use Map designation.**

11/05/12 PB reviewed and forwarded to the Board of County Commissioners the proposed Comprehensive Plan Map Amendment SSA 2012-04.

12/06/12 BCC adopted

10. **Comprehensive Plan Map Amendment- Small Scale Amendment (SSA-2012-05) amending Part II of the Escambia County Code of Ordinances (1999), the Escambia County Comprehensive Plan, as amended; amending the Future Land Use Map designation.**

11/05/12 PB reviewed and forwarded to the Board of County Commissioners the proposed Comprehensive Plan Map Amendment SSA 2012-05.

12/06/12 BCC adopted

11. **Comprehensive Plan Map Amendment – Large Scale Amendment (CPA-2012-04), amending Part II of the Escambia County Code of Ordinances, the Escambia County Comprehensive Plan: 2030, as amended; amending Chapter 7, “The Future Land Use Element,” providing for an amendment to the 2030 Future Land Use Map, changing the future land use category of a parcel within Section 4, Township 1S, Range 31W, Parcel Number 1101-000-000, totaling 241.9 (+/-) acres, located at 4810 West Nine Mile Road, from Recreation (REC) to Mixed-Use Urban (MU-U).**

12/10/12 PB reviewed and forwarded to the Board of County Commissioners the proposed Comprehensive Plan Map Amendment CPA-2012-04.

01/03/13 BCC approved transmittal to DEO

## **LAND DEVELOPMENT CODE ORDINANCES**

1. **Article 2 Appeals**
  - 09/10/12 PB rejected the ordinance to the BCC
  - 10/04/12 BCC meeting- Administrator pulled and sent back to PB
  - 10/08/12 PB to review and make recommendation to BCC
  - 11/01/12 BCC voted to leave ordinance as is
  
2. **Article 7 Barrier Island Lighting**
  - 10/08/12 PB discussed ordinance
  
3. **Article 13 SRIA Signage**
  - 01/07/13 PB recommended adoption of ordinance
  - 02/07/13 BCC adopted
  
4. **Article 13.01 Administration**
  - 02/04/13 PB recommended adoption of ordinance
  - 04/02/13 BCC meeting
  
5. **Article 13 Docks and Piers**
  - 02/04/13 PB recommended adoption of ordinance
  - 04/02/13 BCC meeting

## **REZONING CASES**

1. **Rezoning Case Z-2012-25**
  - 10/08/12 PB recommended denial of rezoning
  - 11/01/12 BCC remanded back to PB, to consider R-6
  - 01/07/13 PB recommended approval for 7008 W. Jackson St ONLY
  - 02/07/13 BCC Approved 7008 W. Jackson St ONLY
  
2. **Rezoning Case Z-2012-26**
  - 11/05/12 PB voted to move case to 12/10 PB meeting, Mr. Page was absent
  - 12/10/12 PB recommended approval of rezoning
  - 01/03/13 BCC Approved
  
3. **Rezoning Case Z-2012-28**
  - 12/10/12 PB recommended approval of rezoning
  - 01/03/13 BCC Approved
  
4. **Rezoning Case Z-2012-29**
  - 12/10/12 PB recommended approval of rezoning
  - 01/03/13 BCC Approved

# PLANNING BOARD MONTHLY SCHEDULE SIX MONTH OUTLOOK FOR MARCH 2013

(Revised 11/20/12)

A.H. = Adoption Hearing      T.H. = Transmittal Hearing      P.H. = Public Hearing

\* Indicates topic/date is estimated—subject to staff availability for project completion and/or citizen liaison

Meeting Date	LDC Changes and/or Public Hearings	Comprehensive Plan Amendments	Rezoning	Reports, Discussion and/or Action Items
<b>Monday, December 10, 2012</b>	<ul style="list-style-type: none"> <li>• LDC Re-write</li> </ul>	<ul style="list-style-type: none"> <li>• CPA-2012-04 MAP</li> <li>• CPA-2012-07 TEXT</li> </ul>	<ul style="list-style-type: none"> <li>• Z-2012-09</li> <li>• Z-2012-26</li> <li>• Z-2012-28</li> <li>• Z-2012-29</li> </ul>	
<b>Monday, January 7, 2013</b>	<ul style="list-style-type: none"> <li>• LDC SRIA Signage</li> </ul>		<ul style="list-style-type: none"> <li>• Z-2012-25</li> </ul>	
<b>Monday, February 4, 2013</b>	<ul style="list-style-type: none"> <li>• LDC SRIA Admin</li> <li>• LDC SRIA Docks and Piers</li> </ul>			
<b>Monday, March 4, 2013</b>	<ul style="list-style-type: none"> <li>• WCI Dev. Agreement</li> </ul>	<ul style="list-style-type: none"> <li>• CPA-2013-01</li> </ul>	<ul style="list-style-type: none"> <li>• Z-2013-01</li> <li>• Z-2013-02</li> <li>• Z-2013-03</li> </ul>	<ul style="list-style-type: none"> <li>• PK MP DPZ Presentation</li> </ul>
<b>Monday, April 1, 2013</b>	<ul style="list-style-type: none"> <li>• LDC Ord.-Chickens</li> <li>• Flood Plain Ord.</li> </ul>	<ul style="list-style-type: none"> <li>• Comp Plan Annual Report</li> </ul>		
<b>Monday, May 6, 2013</b>				<ul style="list-style-type: none"> <li>• <b>JLUS</b></li> </ul>
<b>Monday, June 3, 2013</b>				

Disclaimer: This document is provided for informational purposes only. Schedule is subject to change. Verify all topics on the current meeting agenda one week prior to the meeting date.



**BOARD OF COUNTY COMMISSIONERS**  
Escambia County, Florida

**Planning Board-Regular**

**5. A.**

**Meeting Date:** 03/04/2013

**Issue:** Comprehensive Plan Text Amendment CPA-2013-01

**From:** T. Lloyd Kerr, AICP, Department Director

**Organization:** Development Services

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**RECOMMENDATION:**

A Public Hearing Concerning the Review of an Ordinance Amending Comprehensive Plan Policy Mob 1.1.8 and OBJ CIE 1.2.

That the Board review and recommend approval to the Board of County Commissioners (BCC), for transmittal to the Department of Economic Opportunity, (DEO), an Ordinance to amend Comprehensive Plan Policy Mob 1.1.8 and OBJ CIE 1.2. to allow certain documents incorporated by reference to be updated in the Code of Ordinances without amendment to the Comprehensive Plan.

**BACKGROUND:**

The two documents are part of the Capital Improvements Element and are updated continuously by the originating agencies outside of the jurisdiction of the Board of County Commissioners. Florida Statute 163.3177(3)(b) states that the capital improvements element must be reviewed by the local government on an annual basis. Modifications to update the 5-year capital improvement schedule may be accomplished by ordinance and may not be deemed to be amendments to the local comprehensive plan.

**BUDGETARY IMPACT:**

No budgetary impact is anticipated by the adoption of this Ordinance.

**LEGAL CONSIDERATIONS/SIGN-OFF:**

The attached Ordinance has been reviewed and approved for legal sufficiency by Stephen West, Assistant County Attorney. Any recommended legal comments are attached herein.

**PERSONNEL:**

No additional personnel are required for implementation of this Ordinance.

**POLICY/REQUIREMENT FOR BOARD ACTION:**

The proposed Amendment is consistent with the Board's goal "to increase citizen involvement in, access to, and approval of, County government activities."

**IMPLEMENTATION/COORDINATION:**

Implementation of this Ordinance will consist of an amendment to the Comprehensive Plan and distribution of a copy of the adopted Ordinance to interested citizens and staff.

The proposed Ordinance was prepared in cooperation with the Development Services Department, the County Attorney's Office and all interested citizens. The Development Services Department will ensure proper advertisement.

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**Attachments**

CPA-2013-01

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ORDINANCE NUMBER 2013-\_\_\_\_\_

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF ESCAMBIA COUNTY, FLORIDA, AMENDING THE ESCAMBIA COUNTY COMPREHENSIVE PLAN: 2030, AS AMENDED, TO ALLOW CERTAIN DOCUMENTS INCORPORATED BY REFERENCE TO BE UPDATED IN THE ESCAMBIA COUNTY ORDINANCES WITHOUT AMENDMENT TO THE COMPREHENSIVE PLAN; AMENDING POLICY MOB 1.1.8 TO ALLOW UNCODIFIED UPDATES TO THE FLORIDA-ALABAMA TRANSPORTATION PLANNING ORGANIZATION FISCAL YEARS 2010-2014 TRANSPORTATION IMPROVEMENT PROGRAM; AMENDING OBJECTIVE CIE 1.2 TO ALLOW UNCODIFIED UPDATES TO THE FIVE-YEAR SCHEDULE OF CAPITAL IMPROVEMENTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Escambia County Board of County Commissioners adopted the Escambia County Comprehensive Plan: 2030 (Comprehensive Plan) on January 20, 2011; and

WHEREAS, the Comprehensive Plan incorporates by reference certain supporting documents that are frequently updated; and

WHEREAS, the Board of County Commissioners finds it appropriate to amend its Comprehensive Plan to allow uncodified updates to certain supporting documents to be incorporated in its ordinances without amendment to the Comprehensive Plan;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF ESCAMBIA COUNTY, FLORIDA, AS FOLLOWS:

**Section 1. Purpose.**

This ordinance amends the Escambia County Comprehensive Plan: 2030, as amended, to allow uncodified updates to certain supporting documents incorporated by reference to be updated in the Escambia County ordinances without amendment to the Comprehensive Plan.

**Section 2. Comprehensive Plan Amendment.**

The Escambia County Comprehensive Plan: 2030 is amended as shown in the attached Exhibit A (additions are underlined).

**Section 3. Severability.**

It is declared the intent of the Board of County Commissioners that if any subsection, sentence, clause. Provision or phrase of this Ordinance is held to be invalid or unconstitutional by a Court of competent jurisdiction, such invalidity or unconstitutionality shall not be construed as to render invalid or unconstitutional the remaining provisions of this Ordinance.

1 **Section 4. Inclusion in the code.**  
2

3 The Board of County Commissioners intends that the provisions of this Ordinance will be  
4 codified as required by Section 125.68, Florida Statutes, and that the sections of this ordinance  
5 may be renumbered or relettered and the word "ordinance" may be changed to "section,"  
6 "article," or such other appropriate word or phrase in order to accomplish its intentions.  
7

8 **Section 5. Effective date.**  
9

10 Pursuant to Section 163.3184(3)(c)4, Florida Statutes, this ordinance shall not become  
11 effective until 31 days after the Department of Economic Opportunity notifies Escambia County  
12 that the plan amendment package is complete. If timely challenged, this ordinance shall not  
13 become effective until the Department of Economic Opportunity or the Administration  
14 Commission enters a final order determining the ordinance to be in compliance.  
15

16 DONE AND ENACTED this \_\_\_\_\_ day of \_\_\_\_\_, 2013.  
17

18 BOARD OF COUNTY COMMISSIONERS  
19 ESCAMBIA COUNTY, FLORIDA  
20

21 By: \_\_\_\_\_  
22 Gene M. Valentino, Chairman  
23

24 ATTEST: Pam Childers  
25 Clerk of the Circuit Court  
26

27 By: \_\_\_\_\_ Date Executed: \_\_\_\_\_  
28 Deputy Clerk  
29

30  
31 (SEAL)  
32

33 ENACTED:  
34

35 FILED WITH THE DEPARTMENT OF STATE:  
36

37 EFFECTIVE DATE:  
38  
39

40  
41  
42 ATTACHMENTS: Relevant portions of the Escambia County Comprehensive Plan 2030  
43

1 MOB 1.1.8 **Future Transportation Corridors.** Escambia County shall preserve future transportation  
2 corridors as identified in the TPO Fiscal year (FY) 2010-2014 Plan Maps MOB 2A-C. The TPO FY 2010-  
3 2014 Plan is attached herein to this ordinance as Exhibit F. However, modifications to update the TPO FY  
4 2010-2014 Plan may be accomplished by ordinance and may not be deemed amendments to the  
5 Comprehensive Plan. Due to the frequency of the updates, these ordinances shall not be codified but  
6 shall be recorded in a book kept for that purpose and maintained by the clerk of the board of county  
7 commissioners in accordance with Section 125.68, Florida Statutes.

8



1 **OBJ CIE 1.2 Five-Year Schedule**

2

3 Maintain a Five-Year Schedule of Capital Improvements as the specific guide the County will use to  
4 determine construction of capital facilities and maintenance of LOS standards. The Five-Year Schedule of  
5 Capital Improvements is attached herein to this ordinance as Exhibit R. However, modifications to  
6 update the Five-Year Schedule of Capital Improvements may be accomplished by ordinance and may not  
7 be deemed amendments to the Comprehensive Plan. Due to the frequency of the updates, these  
8 ordinances shall not be codified but shall be recorded in a book kept for that purpose and maintained by  
9 the clerk of the board of county commissioners in accordance with Section 125.68, Florida Statutes.

LEGAL REVIEW

(COUNTY DEPARTMENT USE ONLY)

Document: CPA-2013-01

Date: 01/128/13

Date requested back by: 01/28/2013

Requested by: JC Lemos

Phone Number: 595-3467



(LEGAL USE ONLY)

Legal Review by 

Date Received: Jan 30, 2013

Approved as to form and legal sufficiency.

Not approved.

Make subject to legal signoff.

Additional comments:

*See my email of Jan 25<sup>th</sup>.*



**BOARD OF COUNTY COMMISSIONERS**  
**Escambia County, Florida**

**Planning Board-Regular**

**5. B.**

**Meeting Date:** 03/04/2013

**Issue:** WCI Amended Development Agreement

**From:** T. Lloyd Kerr, AICP, Department Director

**Organization:** Development Services

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**RECOMMENDATION:**

A Public Hearing Concerning the Review of an Amended Development Agreement for WCI

That the Board review and recommend to the Board of County Commissioners (BCC) for approval, an amended Development Agreement between WCI Communities LLC and Escambia County; to review it for consistency with the Comprehensive Plan; to vest certain conditions agreed to by both parties in accordance with procedures and requirements of Florida Statutes; to include any changes to be made to the Agreement; and to authorize the Agreement for execution.

**BACKGROUND:**

The Developer owns certain lands in Escambia County, Florida, of approximately 400 acres in size which is known as the Lost Key Golf and Beach Club, and more particularly described in Exhibit "A" attached hereto and made a part hereof (the "Property").

Under the terms of the Development Agreement dated September 9, 2004 between the County and the Developer (the "Original Agreement"), the Developer began on the property of a planned development for destination-type mixed uses including resort/commercial areas, residential units and hotel units known as Lost Key Golf and Beach Club (the "Development"). The development plan is set forth in the WCI-Lost Key Master Plan, which remains in effect.

**BUDGETARY IMPACT:**

No budgetary impact is anticipated by the approval of this Agreement.

**LEGAL CONSIDERATIONS/SIGN-OFF:**

The attached Agreement has been reviewed and approved for legal sufficiency by Stephen West, Assistant County Attorney. Any recommended legal comments are attached herein.

**PERSONNEL:**

No additional personnel are required for implementation of this Agreement

**POLICY/REQUIREMENT FOR BOARD ACTION:**

The proposed Agreement is consistent with the Board's goal "to increase citizen involvement in, access to, and approval of, County government activities."

**IMPLEMENTATION/COORDINATION:**

Implementation of this Agreement will consist of an amendment to the LDC and distribution of a copy of the adopted Ordinance to interested citizens and staff.

The proposed Agreement was prepared in cooperation with the Development Services Department, the County Attorney's Office and all interested citizens. The Development Services Department will ensure proper advertisement.

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**Attachments**

[Lost Key Amendment Development Agreement - Redline](#)

[Lost Key Amendment Development Agreement - Draft](#)

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September 9, 2004, 2013

**LOST KEY GOLF AND BEACH CLUB  
AMENDED DEVELOPMENT AGREEMENT**

**Between**

**ESCAMBIA COUNTY**

**And**

**WCI COMMUNITIES, ~~INC.~~ LLC  
24301 Walden Center Drive  
Bonita Springs, Florida 34134**

**For**

WCI-Lost Key

THIS AMENDED AND RESTATED DEVELOPMENT AGREEMENT (“Amended Agreement”) is made and entered into this 9<sup>th</sup> day of September, 2004, 2013 between **Escambia County**, a political subdivision of the State of Florida (“**County**”) and its successors and **WCI Communities, ~~LLC~~ LLC ~~Inc.~~ (formerly WCI Communities, Inc.)**, 24301 Walden Center Drive, Bonita Springs, Florida 34134 (“**Developer**”), its successors and assigns.

**RECITALS**

A. The Developer ~~owns~~ purchased for development certain lands in Escambia County, Florida, of approximately 400 acres in size which is known as the Lost Key Golf and Beach Club, and more particularly described in Exhibit “A” attached hereto and made a part hereof (the “Property”); and,

B. Under the terms of the Development Agreement dated September 9, 2004 between the County and the Developer (the “Original Agreement”), ~~The Developer intends to construct~~ began construction on the Property of a planned development for destination-type mixed uses including resort/commercial areas, residential units and hotel units ~~to be~~ known as Lost Key Golf and Beach Club (the “Development”). The development plan is set forth in the WCI-Lost Key Master Plan, which remains in effect; and,

C. The Development consists of distinct components and phases as indicated on the WCI-Lost Key Master Plan (Exhibit “B” attached hereto) and has received permits and

approvals from a number of governmental/regulatory agencies including: Escambia County; the Florida Department of Environmental Protection; the Northwest Florida Water Management District; the U.S. Army Corps of Engineers; and, the Escambia County Utilities Authority.

D. The Development initially received Escambia County approval for a Planned Unit Development (the "PUD") on February 17, 1995 for development of the portions of the Property north of Semmes Road. A portion of that PUD has been recorded in a plat (Plat Book 15, page 80). Subsequently the Development received approval of the WCI-Lost Key Master Plan on March 10, 2004, which incorporates the PUD and the plans for the areas of the Property south of Semmes Road into one overall plan.

E. In 2004, Developer released for sale 135 units in accordance with the Original Agreement but was unable to meet subsequent sales release goals due to the impact of Hurricane Ivan and economic changes in the market for second home communities, all deemed to be conditions beyond Developer's control under section 7.9.5 of the Original Agreement.

F.E. The County encourages the utilization of a "Development Agreement" for master planned or multi-planned projects in order to regulate the timing of construction and development of large projects, and the Developer ~~desires to enter~~ed into the Original Development Agreement, and now desires to enter into this Amended Agreement, with the County in order to clarify and formalize its development rights, and ~~to proceed~~ continue with the development of the Property in an orderly, planned and consistent manner.

NOW, THEREFORE, in consideration of the foregoing recitals of fact, the mutual benefits and burdens contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

**ARTICLE I. PARTIES AUTHORITY TO ENTER INTO  
AMENDED AGREEMENT**

The County and the Developer represent the following:

- 1.1 The above recitals are true and correct and shall be incorporated by reference herein.
- 1.2 Escambia County, a political subdivision of the State of Florida, has authority to enter into this Amended Agreement.
- 1.3 The Developer warrants that it has the authority to enter into this Amended Agreement and that the Developer is the fee simple owner of the Property.
- 1.4 On the 2<sup>nd</sup> day of October 1997, Escambia County enacted Ordinance 97-51 which establishes procedures and requirements as set forth in section 163.3220-

163.3243, Fla. Stat. (201203), authorizing the County to consider and enter into a Development Agreement with any person having a legal or equitable interest in real property located within the unincorporated area of Escambia County.

1.5 It is the intent of the County and Developer to be bound by the terms of this [Amended](#) Agreement.

1.6 The relationship between the County and the Developer is contractual only. The Developer is not affiliated with the County in any manner, nor an agent of the County.

## ARTICLE II. MUTUAL BENEFITS AND BURDENS

2.1 The County finds and declares that the lack of certainty in the approval of development can result in a waste of economic and land resources, discourage sound capital improvement planning and financing, escalate the cost of housing and development, and discourage commitment to comprehensive planning.

2.2 The County finds and declares the Developer may proceed in accordance with the terms and conditions of the [Amended](#) Agreement, which strengthens the public planning process, encourages sound capital improvement planning and financing, assists in assuring there are adequate capital facilities for the Development, and encourages private participation in comprehensive planning.

2.3 The County finds and declares that the process of properly planned developments, such as the Development herein, can preserve, promote, protect and improve the public health, safety, comfort, appearance, convenience, law enforcement and fire prevention, and general welfare; facilitate the adequate and efficient provision of transportation, water, sewerage, schools, parks, recreational facilities, housing, and other requirements and services; and conserve, develop, utilize, and protect natural resources.

2.4 The County finds and declares that the Development is consistent with the Escambia County Comprehensive Plan and the land development regulations in effect as of the date of this [Amended](#) Agreement.

2.5 The Developer shall be allowed to proceed with the Development as a planned resort development that will provide for destination type mixed uses including resort/commercial areas as identified in the WCI-Lost Key Master Plan.

## ARTICLE III. NOTICE AND HEARING

3.1 Notice of intent to consider this [Amended](#) Agreement was advertised on the ~~23<sup>rd</sup>~~ ~~and 29<sup>th</sup>~~ day of ~~August~~ ~~February~~, ~~2013~~~~2004~~, in the *Pensacola News Journal* a newspaper of general circulation.

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- 3.2 The two public hearings required by section 163.3225, Florida Statutes, were held on the ~~11th~~4th day of ~~March~~August, ~~2013~~2004, and on the ~~21st~~9th day of ~~March~~September, ~~2013~~2004, before the Escambia County Planning Board and the Escambia County Board of County Commissioners.

#### ARTICLE IV. LEGISLATIVE ACT

- 4.1 This Amended Agreement is deemed to be a legislative act by the Board of County Commissioners as authorized by sections 125.01 and 163.3223, Fla. Stat. (2012).

#### ARTICLE V. APPLICABLE LAND USE REGULATIONS

- 5.1 The County and the Developer agree that the WCI-Lost Key Master Plan approval was received on March 10, 2004, and as such was based upon the Escambia County Land Development Regulations in effect at that time.
- 5.2 Notwithstanding any current or future action of the County, and except for future development approvals for additions to the Property, during the term of this Amended Agreement the County rules, regulations and official policies applicable to and governing the Development and the Property shall be those in existence as of the effective date of this Amended Agreement.
- 5.3 The County and the Developer agree that the eighteen (18) month effective period of the WCI-Lost Key Master Plan, set forth in paragraph 2 of the Standard Project Conditions in the Master Plan Development Order approved on March 10, 2004, is superseded by the ~~ten (10)~~ thirty (30) year term of this Amended Agreement; provided, however, site plans approved under the terms of this Amended Agreement for components of the Development shall be subject to the eighteen (18) month effective period set forth in section 4.06.11 of the Land Development Code.
- 5.4 Pursuant to section 163.3233 (2) (a) through (e), Florida Statutes, a local government may apply subsequently adopted laws and policies to a development that is subject to a development agreement only if the local government has held a public hearing and determined:
- (a) They are not in conflict with the laws and policies governing the development agreement and do not prevent development of the land uses, intensities, or densities in the development agreement;
  - (b) They are essential to the public health, safety, or welfare, and expressly state that they shall apply to a development that is subject to a development agreement;



- (c) They are specifically anticipated and provided for in the development agreement;
- (d) The local government demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of the development agreement, or
- (e) The development agreement is based on substantially inaccurate information supplied by the developer.

#### **ARTICLE VI. APPROVAL AND PERMIT PROCEDURES**

- 6.1 The Developer received the Planned Unit Development approval (the “PUD”) on February 16, 1995. Unrecorded portions of the PUD (Plat Book 15, page 80) have expired.
- 6.2 The Developer received Master Plan approval from Escambia County on March 1, 1999 (since expired).
- 6.3 The Developer received Preliminary Plat approval for Phases I and II on March 5, 1999 (since expired).
- 6.4 The Developer received Preliminary Plat approval for Phase III on March 17, 1999 (since expired).
- 6.5 The Developer received approval of the WCI-Lost Key Master Plan from Escambia County on March 10, 2004 (currently active and the basis for this [Amended](#) Agreement).
- 6.6 Developer shall, in accordance with the Master Plan and Article 4 of the Land Development Code, submit and obtain approval of site plans for each component of the Development.
- 6.7 Minor changes to the Development which do not substantially change the overall development plan, such as but not limited to changes in the location of components, units or improvements, may be made through the site plan approval process or if necessary through amendment to the WCI-Lost Key Master Plan. Any future amendments to the WCI-Lost Key Master Plan shall be submitted for review by the County in accordance with the procedures for Master Plan approval set forth in section 4.02.04 of the Land Development Code. Such amendments shall be reviewed for compliance with the terms and conditions of this [Amended](#) Agreement. The development of any land added to the Development through an amendment to the Master Plan shall be governed by the terms and conditions of this [Amended](#) Agreement; provided, however, the land added by an amendment will be subject to the County land development regulations in effect as of the date of the amendment. Development of land covered by the original Master Plan will

continue to be subject to regulations in effect as of the date of this [Development Amended](#) Agreement.

- 6.8 Except as specifically set forth in this [Amended](#) Agreement, Developer shall comply with all existing state, local and federal requirements governing approval and permitting of the proposed Development. Developer and County agree that nothing herein shall alter or waive any federal or state regulations or permitting requirements.
- 6.9 The failure of this [Amended](#) Agreement to address a particular permit, condition, term or restriction shall not relieve the Developer of the necessity of complying with the law governing said permitting requirements, conditions, term or restriction.

#### ARTICLE VII. PERMITTED USES UNDER THE [AMENDED](#) AGREEMENT

- 7.1 County agrees that with the improvements required under section 8.4 of this [Amended](#) Agreement, the Developer meets concurrency requirements and the County hereby allocates, as set forth in section 8.4, concurrency for the following:

18 Hole Golf course (existing)

[189 Existing Residential Units](#)

~~1900~~ [1148 Proposed](#) Resort Residential Units (maximum)

[Commercial Development](#)

~~300~~ ~~200~~ Room Hotel (lodging units)

[20,000 sq. ft. of Commercial/Retail Floor Space](#)

~~Prior to the effective date of this Agreement Developer received a Master Plan Development Order (Exhibit B) for the above described entitlements and site plan approval and entitlement to 135 Resort Residential Units, which 135 units are included within the 1900 units allocated for concurrency hereunder. Subject to meeting all other requirements of this [Amended](#) Agreement, Developer is entitled to obtain building permits for 4000 additional the proposed 1148 Resort Residential Units, and all permits for the Hotel and Commercial [Development/Retail square footage](#), at any time during the [thirty \(30\) ten \(10\)](#) year term of this [Amended](#) Agreement. ~~Developer is further entitled to obtain building permits for up to 365 additional Resort Residential Units, to count towards the maximum of 1900 units, and to develop those 365 units under the terms of this Agreement if (a) those units are available under the Perdido Key~~~~

~~residential dwelling unit cap in effect at the time Developer applies for site plan approval for any or all of the additional 365 units or (b) the units are otherwise available under some other circumstances such as, but not limited to, recalculations, completion or funding of transportation improvements, or other means; and, during the last four (4) years of the term of this Agreement, to obtain building permits for up to an additional 400 units to reach the maximum of 1900 units. While this Agreement allocates concurrency for up to 1900 Resort Residential Units, Developer and the County agree that the Agreement initially entitles Developer to building permits for only the Hotel and Commercial/Retail square footage referenced above and 1000 Resort Residential Units, which are in addition to the 135 Resort Residential Units previously approved, and only allows and entitles Developer to the additional 365 Resort Residential Units as provided for in (a) and (b) above, and to the additional 400 units during the last four years of the Agreement as provided for in (a) and (b) above.~~

- 7.2 The Development will also include open green space, conservation areas, hiking and bicycle paths.
- 7.3 The permitted uses for the Development will be as defined in the Escambia County Land Development Regulations Sec. 6.05.1.03 (d) PRPK Planned Resort District (Perdido Key), Sec. 6.05.13.01 (b) CCPK Commercial Core district (Perdido Key) and 6.05.13 (b) C-1PK Commercial District (Perdido Key). These sections are incorporated by reference as of the date of this Amended Agreement, and will not be affected by future Land Development Code revisions.
- 7.4 The intensity of use and the maximum height and size of the proposed buildings will be as defined in the Escambia County Land Development Regulations section 6.05.13.03 (h) PRPK Planned Resort District (Perdido Key), section 6.05.13.01 (f) CCPK Commercial Core District (Perdido Key) and section 6.05.13 (h) C-1PK Commercial District (Perdido Key). Development within these zoning categories will be in compliance with the referenced regulations as of the effective date of this Amended Agreement.
- 7.5 The Developer shall be allowed the flexibility to cluster, transfer, locate, move, and arrange the developed units set forth in section 7.1 over the ~~properties owned by WCI Communities, Inc. Property~~ as necessary to increase open space, preserve environmentally sensitive lands and provide innovative and resourceful use of the properties of the Developer provided that the total developed units does not exceed the total resort residential and hotel units (or the equivalent thereof) specified in section 7.1 of this Amended Agreement, 1,900 units, 200 resort hotel units and 20,000 square feet of commercial/retail floor space.
- 7.6 The Developer, in accordance with this Amended Agreement, may distribute the density and type of Development throughout the Property. Further, Development quantities of land use types set forth herein may be increased or decreased, or advanced or deferred in phasing, so long as: (i) such alterations constitute minor

changes, which do not substantially change the overall development plan; otherwise, approval shall be conditioned upon Development Review Committee approval; and (ii) with each increase of Development quantity and external impacts for a particular land use type there is a corresponding decrease in the Development quantities and external impacts for another land use in the Development, with each increase and decrease of external impacts being measured in terms of total number of distributed trips generated to SR 292.

7.7 The Developer shall be allowed to include additional properties purchased by the Developer contiguous to the Property in the overall development concept of the Development by amendment to the Master Plan. The development of any land added to the Master Plan through an amendment shall be governed by the terms and conditions of this [Amended](#) Agreement; provided, however, the land added by an amendment will be subject to the County land development regulations in effect as of the date of the amendment. Development of land covered by the original Master Plan will continue to be subject to regulations in effect as of the date of this [DevelopmentAmended](#) Agreement.

7.8.1 The Developer shall comply with Section 6.05.153.L of the Escambia County Land Development Code prohibiting transfer of density south of Perdido Key Drive; provided, however the County acknowledges that certain transfer of density rights established under the Declaration of Transfer of Density and Restrictive Covenant, dated April 19, 2000 and recorded in the County records at O.R. Book 4570, page 1635-1647 (the “[2000](#) Declaration” - copy attached to Master Plan Development Order documents [as](#)—Exhibit “B” [thereto](#)), predate Section 6.05.153.L and run with the land. Nothing herein shall affect the Developer’s right to exercise the right to transfer density south of Perdido Key Drive under the [2000](#) Declaration or to exercise the right to transfer density south of Perdido Key Drive in the event of a change in the Land Development Code allowing such transfer.

[7.8.2 In accordance with its vested right to transfer density south of Perdido Key Drive under the 2000 Declaration, Developer desires to transfer, and the County hereby approves the transfer of 254 lodging units to Component 17 \(“C-17”\) as shown on Exhibit “E” to this Amended Agreement \(C-17 includes Lots 31 and 32, Gulf Beach Subdivision, according to Plat recorded in Plat Book 4 at page 52 of the Public Records of Escambia County, Florida, which lots are included in the property covered by the 2000 Declaration, as described on Exhibit “B” to the 2000 Declaration\). The density being transferred will combine with the original 46 lodging unit density on C-17 to allow for construction of the 300 Room Hotel specified in section 7.1. A Declaration of Transfer of Density and Restrictive Covenant setting forth the density transfer approved herein shall be adopted by the County, attached as Exhibit “L” to this Amended Agreement, and recorded in the County records within fourteen \(14\) days of the effective date of this Amended Agreement.](#)

7.9.1 The unit entitlements set forth in section 7.1 ~~of this Amended Agreement~~ above will be located within the eighteen separate components, as identified by numbers 1 through 18 on the drawing attached hereto as a part of Exhibit “E”. These same components are shown on Figure C3.0 of Exhibit B, the Master Plan, where they are further identified by phases, ranging from phase A through F, within each component. The numbers on Exhibit “E” and numbers and letters on Figure C3.0 are for identification only and do not reflect the sequence of development.

7.9.2 The anticipated sequence of development is reflected in the Developer’s anticipated annual schedule for releasing units, within each component, for sale to the general public through dissemination of marketing materials and the taking of reservations, in accordance with state and/or federal regulatory requirements, as set forth in the table attached hereto as a part of Exhibit “E”. Developer intends to release for sale in each year of the term of this Agreement, at least seventy-five percent (75%) of the anticipated number of units released shown on the Exhibit “E” table for such corresponding year; provided, however, the County and Developer acknowledge that in the last four (4) years of the term of this Agreement, Developer’s ability to meet the seventy-five percent (75%) requirement depends upon the number of Resort Residential Unit building permits available under the Perdido Key residential dwelling unit cap, or otherwise available under section 7.1 of this Agreement, and Developer shall not be bound to meet these requirements if the building permits are not available. Nothing herein shall prohibit Developer from accelerating the schedule on the Exhibit “E” table in a given year provided that all other conditions for development of additional units in a given year, such as site plan approval and road improvements, are met. Units released for sale over and above the required seventy-five percent (75%) for a given year shall count toward meeting the seventy-five percent (75%) requirement for the next year.

~~7.9.3 Market conditions may require adjustment of the number of units and the particular components to be released according to the Exhibit “E” sales release schedule. The location of components on the Exhibit “E” drawing is also subject to adjustment to accommodate requirements such as those for protection of environmentally sensitive lands and endangered species. Developer shall provide, in the annual report required under section 7.8.6 below, an updated Exhibit “E” showing any changes in the number of anticipated units to be released, and the development sequence and location of components.~~

7.9.4 The Exhibit “E” table also sets out the schedule for required road improvements. Developer shall adhere to the road improvement schedule set out in Exhibit “E” if permitted by FDOT, the County, and other regulatory authorities as required, regardless of any allowable adjustments in the number of units released for sale. The schedule for road improvements may be extended, through the approval of the County Engineer, if necessary to accommodate delays in permitting; provided, however, the County and Developer agree and understand that the concurrency allocations set forth in sections 7.1 and 8.4 of this Agreement are contingent upon

Developer's implementation of the road improvements and if a permit for the required improvements is finally denied, or in the event Developer is otherwise unable to complete all or a portion of the improvements, ~~corresponding~~ concurrency allocations ~~for the project may shall~~ be withdrawn or subject to modification through an amendment to this Agreement.

7.9.5 Developer shall not be deemed to be out of compliance with the requirements set forth herein if failure to meet the requirements is due to conditions beyond Developer's control, including, without limitation, acts of God, war or terrorism, floods, hurricanes, strikes, riots, labor conditions or shortages, inability to obtain materials, moratoria or any preventative action taken by any applicable governmental authority, including but not limited to actions relating to permitting, or any other acts of any branch of federal, state or local government or any of their political subdivisions or agencies; provided, however, the County and Developer agree that it may be necessary to amend this Amended Agreement to modify entitlements and requirements impacted by conditions beyond Developer's control.

7.9.6 In each year in which this Amended Agreement is in effect, Developer shall submit to the County, on or before the anniversary date of the effective date of the Amended Agreement, an annual report on the progress of the Development. Developer shall submit as a part of the annual report, a new Exhibit "E" showing any changes in anticipated number of units and particular components to be released.

#### **ARTICLE VIII. PUBLIC FACILITIES**

8.1 Public facilities and services under the authority of Escambia County and serving the permitted development include mass transit, transportation, solid waste management, and recreation/open space land. Pursuant to this Amended Agreement, the permitted use of the Property shall be allocated sufficient capacity for the purpose of maintaining the adopted levels of service for these systems on Perdido Key for the duration of this Amended Development Agreement. It is incumbent upon the County to reserve sufficient capacity for these systems under its authority on Perdido Key until the Development identified by this Amended Agreement proceeds to secure all other required approvals for development.

8.2 The Development is located entirely within the area served by Escambia County Utilities Authority for water, wastewater and solid waste service. The project will have access to potable water and wastewater service along Semmes Road and Perdido Key Drive. Potable water service will be provided by connection to each of the existing 12-inch water mains on Perdido Key Drive and/or Semmes Road. Sanitary sewer service will be provided by a combination of gravity flow and lift stations for sewer service connection to an existing 12-inch main on Perdido Key Drive.

- 8.3 The Development is located entirely within the Gulf Power Company service area. Electric utility service within the Development will be located underground.
- 8.4 The Traffic Study attached hereto as Exhibit “C” provides estimates of the traffic impacts of the Development. Developer agrees to undertake and implement the design and construction of the improvements shown on Exhibits “D” and “F” attached hereto in accordance with the schedule set forth on Exhibit “E” attached hereto. Of the ~~825839~~ total pm peak hour new external trips generated, the impact to SR 292 Segment 3 after trip distribution will be ~~432445~~. The Developer shall be allocated a minimum of ~~432445~~ trips for the purpose of traffic concurrency over the period of time allowed by this ~~AmendedDevelopment~~ Agreement. The County shall allocate a minimum of 185 peak hour trips immediately upon approval of this ~~Amended~~ Agreement (see Traffic Study – Exhibit “C”). The County will commit an additional ~~247260~~ peak hour trips once the improvements indicated on Exhibits "D", "E" and "F" are implemented, bringing the total to ~~432455~~ peak hour trips over the life of this ~~Amended~~ Agreement.
- 8.5 In order to provide support for public facilities and infrastructure on Perdido Key, Developer agrees to pay into a fund to be established by the County, and to be known as the “Perdido Key Public Improvements Fund”, three hundred dollars (\$300) for each Resort Residential Unit for which a building permit is obtained under this ~~Amended~~ Agreement. The monies will be paid into the fund at the time of issuance of a permit. The monies placed into the fund shall be used by the County for public improvements solely on Perdido Key, including but not limited to, improvements such as bike paths, recreational facilities, lighting, walkways and improvements designed to protect wildlife, endangered species and environmentally sensitive lands. The monies shall be spent at the direction of the County Administrator or his/her designee. The County shall submit an annual report to the Perdido Key Chamber of Commerce on expenditures made and planned from the fund. The County and Developer acknowledge and understand that the payment obligations contained herein are being voluntarily established under this ~~Amended~~ Agreement and do not otherwise constitute an impact fee or other requirement under the law.

#### **ARTICLE IX. DEDICATIONS AND RESERVATIONS**

- 9.1 The Developer will protect, conserve or enhance wetlands (Comprehensive Plan Objective 11.1.01) and promote the natural function of identified wetlands (Comprehensive Plan Policy 7.A.5.1) by providing mitigation and conservation easements for environmentally sensitive lands to the extent required by the permits issued to Developer by the U.S. Army Corps of Engineers (Permit No. 199404539 – Exhibit “G” – and all modifications thereto) and the Florida Department of Environmental Protection (Permit No. 17-0161382-DF - Exhibit “H”<sub>3</sub>; Permit No. 172570501 – Exhibit “I”<sub>3</sub>; Permit No. 173000721 - Exhibit “J”). The County acknowledges that ACOE and/or FDEP may approve extensions

and/or amendments to the ACOE and/or FDEP permits and such extensions and/or amendments will not require a review under County regulations governing development in wetlands and environmentally sensitive lands. However, if the ACOE or FDEP permits lapse or expire entirely so as to require new permits, then the County will have jurisdiction, under the Land Development Code in effect at the time new permit applications are filed, as to wetlands and environmentally sensitive lands previously protected by the expired ACOE and/or FDEP permits. Additional parcels added to the Development through amendment of the Master Plan may require further mitigation and conservation easements depending on the extent of environmentally sensitive lands on the parcels added. The Developer will seek amendments to the permits referenced herein or new permits as necessary to address any wetlands issues arising from the acquisition and incorporation of additional parcels into the Development. All approved amendments and/or new permits will be attached as exhibits to this [Amended Agreement](#). Parcels added by amendment to the Master Plan will also be subject to the County regulations on wetlands and environmentally sensitive lands in effect as of the date of the amendment.

9.2 [Developer has worked with the U.S. Fish and Wildlife Service \(“USFWS”\) since 2005 to address USFWS concerns regarding the Perdido Key Beach Mouse \(“PKBM”\), an endangered species. On August 13, 2012, the Panama City Field Office of the USFWS issued its “Biological Opinion – Lost Key Golf and Beach Club, WCI Communities, LLC, Perdido Key, Escambia County, Florida,” which concludes as follows:](#)

[After reviewing the current status of the PKBM, the environmental baseline for the Lost Key Development, the effects of the activities, proposed protective, avoidance, and minimization measures, as well as the expected cumulative effects, it is the Service’s biological opinion that the Projects, as proposed, will not jeopardize the continued existence of PKBVM, and will not destroy or adversely modify critical habitat.](#)

[Based on this biological opinion, the U.S. Army Corps of Engineers permit for the Development is now being modified and will be made a part of Exhibit “G” attached hereto.](#)

#### **ARTICLE X. TRANSFER AND ASSIGNMENTS**

10.1 The rights and interest provided herein to Developer benefit and are appurtenant to the Property. Developer has the right to sell, assign and transfer all of its duties and obligations hereunder; provided, however, that such rights and interest may not be transferred or assigned except in strict compliance with the following conditions precedent:



- (i) Rights, obligations and interests, in whole or in part, may be transferred along with assignment of the portions of the Property to which they relate, including any transfer or assignment pursuant to any foreclosure of a Mortgage or a deed in lieu of such foreclosure; and
  - (ii) Contemporaneously with any assignment or transfer of interest in the Property, Developer shall specify the portions of the Property to which the assignment or transfer is appurtenant, and designate the Development rights which are included within the transfer. Any attempt to assign or transfer any right, obligation or interest in this [Amended](#) Agreement except in strict compliance with this Section, shall be null and void and of no force and effect until such compliance has occurred.
  - (iii) Notwithstanding the foregoing, the Developer may transfer or assign this [Amended](#) Agreement and the rights hereunder to an affiliate or subsidiary of the Developer in connection with a corporate re-organization or restructuring.
- 10.2 Following an assignment or transfer of any of the rights and interest of the Developer under this [Amended](#) Agreement, the exercise, use and enjoyment thereof shall continue to be subject to the terms of this [Amended](#) Agreement to the same extent as if the assignee or transferee was the Developer. Without limiting the generality of the foregoing:
- (i) The further assignment or transfer of any of the rights, obligations or interests under this [Amended](#) Agreement shall be made only in accordance with and subject to the terms of this Section.
  - (ii) The rights, obligations and interests assigned or transferred are subject to termination in accordance with this [Amended](#) Agreement.
- 10.3 The assignee or transferee of any of the rights and interests of the Developer shall have no duty or obligation to perform the Developer's obligations or other affirmative covenants of Developer under this [Amended](#) Agreement unless such obligations and covenants are expressly assumed in connection with the conveyance of said rights and interests.
- 10.4 Notwithstanding the assignment or transfer of portions or all of the Property or rights or interests under this [Amended](#) Agreement, Developer shall continue to be obligated under this [Amended](#) Agreement unless released or partially released by the County with respect to Developer's obligations and the other duties and obligations of Developer under this [Amended](#) Agreement, which release or partial release shall be provided by County upon the satisfaction by Developer of the following conditions:
- (i) Developer is not in default under this [Amended](#) Agreement;

(ii) Developer has provided County with the written notice of such Assignment;

(iii) The assignee or transferee has assumed the duties and obligations as to which Developer is requesting to be released and has provided County with reasonable assurances demonstrating that Developer's obligations and other duties and obligations of Developer under this Amended Agreement for which Developer is being released will be fully performed.

10.5 Notwithstanding any provisions of this Amended Agreement to the contrary, and subject to the provisions of this section, the limitations of this Amended Agreement shall terminate as to any lot or parcel which has been subdivided, individually leased (for a period of longer than one year), or sold to a purchaser unless the conveyance instrument or lease provides otherwise and makes the transfer subject to this Amended Agreement. Thereafter, and without the execution and recordation of any further document or instrument, such lot or parcel shall be released from and no longer be subject to or burdened by the provisions of this Amended Agreement; provided, however, that the benefits to the parcel developer or tenant of this Amended Agreement shall continue to run (as to any such lot or parcel) until all the buildings have been constructed thereon, or until the termination of this Amended Agreement, if earlier. Parcels may be withdrawn from the Development by amendment to the WCI-Lost Key Master Plan, with mutual consent of the parties to this Amended Agreement or by their successors in interest.

#### **ARTICLE XI. DURATION OF THE AMENDED AGREEMENT**

11.1 The term of this Amended Agreement shall begin on the date last executed by the parties and shall terminate ~~ten (10)~~ thirty (30) years there from or when all construction of the improvements authorized under this Amended Agreement is completed by the Developer, whichever occurs first; provided, however, that where Developer has initiated work on the Property and the work is continuing in good faith, the terms of this Amended Agreement shall, with the mutual consent of the parties and subject to the public hearing requirements of Section 163.3225, Florida Statutes (2003), be extended by amendment to allow for completion of the Development. Environmental mitigation work, for which a guarantee of success is required under environmental permits, shall be considered initiated work and will extend through required mitigation monitoring periods even if those periods exceed the ~~ten (10)~~ thirty (30) year term of this Amended Agreement.

11.2 After termination, no party shall have any further right or obligation hereunder except with respect to any obligation which should have been performed prior to termination or with respect to any default in the performance of the provisions of this Amended Agreement occurring prior to termination.

#### **ARTICLE XII. DEFAULT**

- 12.1 Upon default hereunder, the non-defaulting party shall have such rights and remedies as are provided by law or equity; provided, however, that where Developer has initiated work on the Property and the work is continuing in good faith, the terms of this Amended Agreement shall, with the mutual consent of the parties and subject to the public hearing requirements of Section 163.3225, Florida Statutes (2003), be extended by amendment to allow for completion of the Development.

### **ARTICLE XIII. ESTOPPEL CERTIFICATE**

- 13.1 Either party may, at any time, and from time to time, deliver written notice to the other party requesting certification in writing that, to the knowledge of the certifying party (i) this Amended Agreement is in full force and effect and a binding obligations of the party (ii) this Amended Agreement has not been modified or amended either orally or in writing, or if amended, identifying the amendments, and (iii) the requesting party is not in default, or if in default, to describe therein the nature and amount of any such defaults.

### **ARTICLE XIV. EFFECT OF AMENDED AGREEMENT ON TITLE**

- 14.1 Subject to the protections afforded mortgages hereunder:
- (i) All of the provisions, rights, terms, covenants, obligations contained in this Amended Agreement shall be binding upon the parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons acquiring any rights or interests in the Property, or any portion thereof, whether by operation of laws or in any manner whatsoever and shall inure to the benefit of the parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns;
  - (ii) All of the provisions of this Amended Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law.
  - (iii) Each covenant to do or refrain from doing some act on the Property (or a specific portion thereof) hereunder: (A) is for the benefit of and is a burden upon the applicable portions of the Property, (B) runs with the Property, and (C) is binding upon each party and each successive owner during its ownership of such properties or any portion thereof, and each person having any interest therein derived in any manner through any owner of such lands, or any portion thereof, and shall benefit each party and its lands hereunder, and each other person succeeding to an interest in such lands.

14.2 Any assignee or transferee or mortgagee which acquires rights or interest in or with respect to the Property or any portion thereof shall take and hold such rights and interests subject to this [Amended](#) Agreement, but shall not have been deemed to have assumed the Developer's obligations or the other affirmative duties and obligations of Developer (which Developer obligations and other affirmative duties shall be retained by Developer pursuant to this [Amended](#) Agreement) hereunder, except:

- (i) To the extent that any such assignees, transferees or mortgagees have expressly assumed any of the duties or obligation of Developer hereunder; or;
- (ii) To the extent that the performance of any duty or obligation by developer is a condition precedent to the performances of a covenant by County, it shall continue to be a condition to County's performance hereunder.

14.3 Subject to section 10.5 above, As provided herein, without the requirement of any further writing or action on the part of any party hereto, this [Amended](#) Agreement shall terminate as to specific conveyed lot or parcel.

**ARTICLE XV. AMENDMENTS AND CANCELLATION,  
MODIFICATION OR REVOCATION**

15.1 This [Amended](#) Agreement may be amended, in accordance with the procedures set forth in section 163.3225, Florida Statutes (2003), or canceled by mutual consent of the County and Developer.

15.2 If state or federal laws are enacted after the execution of this [Amended](#) Agreement which are applicable to and preclude the parties' compliance with the terms of the [Amended](#) Agreement, the County and Developer agree to modify this [Amended](#) Agreement as is necessary to comply with relevant state or federal laws. Any modification shall be the minimum necessary to comply with the state or federal law. Such modifications shall to the extent possible be tailored to preserve the intent of the [Amended](#) Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this [Amended](#) Agreement on the day and year first set forth above.

ESCAMBIA COUNTY

By: \_\_\_\_\_  
Chairman, Board of County Commissioners

ATTEST: Clerk, Board of  
County Commissioners

By: \_\_\_\_\_  
Deputy Clerk

WCI COMMUNITIES, INC.

By: \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST: \_\_\_\_\_

By: \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Title: \_\_\_\_\_

DRAFT

\_\_\_\_\_, 2013

**LOST KEY GOLF AND BEACH CLUB  
AMENDED DEVELOPMENT AGREEMENT**

**Between**

**ESCAMBIA COUNTY**

**And**

**WCI COMMUNITIES, LLC  
24301 Walden Center Drive  
Bonita Springs, Florida 34134**

**For**

WCI-Lost Key

THIS AMENDED AND RESTATED DEVELOPMENT AGREEMENT (“Amended Agreement”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 2013 between **Escambia County**, a political subdivision of the State of Florida (“**County**”) and its successors and **WCI Communities, LLC (formerly WCI Communities, Inc.)**, 24301 Walden Center Drive, Bonita Springs, Florida 34134 (“**Developer**”), its successors and assigns.

**RECITALS**

A. The Developer purchased for development certain lands in Escambia County, Florida, of approximately 400 acres in size which is known as the Lost Key Golf and Beach Club, and more particularly described in Exhibit “A” attached hereto and made a part hereof (the “Property”); and,

B. Under the terms of the Development Agreement dated September 9, 2004 between the County and the Developer (the “Original Agreement”), the Developer began construction on the Property of a planned development for destination-type mixed uses including resort/commercial areas, residential units and hotel units known as Lost Key Golf and Beach Club (the “Development”). The development plan is set forth in the WCI-Lost Key Master Plan, which remains in effect; and,

C. The Development consists of distinct components and phases as indicated on the WCI-Lost Key Master Plan (Exhibit “B” attached hereto) and has received permits and approvals from a number of governmental/regulatory agencies including: Escambia

County; the Florida Department of Environmental Protection; the Northwest Florida Water Management District; the U.S. Army Corps of Engineers; and, the Escambia County Utilities Authority.

D. The Development initially received Escambia County approval for a Planned Unit Development (the “PUD”) on February 17, 1995 for development of the portions of the Property north of Semmes Road. A portion of that PUD has been recorded in a plat (Plat Book 15, page 80). Subsequently the Development received approval of the WCI-Lost Key Master Plan on March 10, 2004, which incorporates the PUD and the plans for the areas of the Property south of Semmes Road into one overall plan.

E. In 2004, Developer released for sale 135 units in accordance with the Original Agreement but was unable to meet subsequent sales release goals due to the impact of Hurricane Ivan and economic changes in the market for second home communities, all deemed to be conditions beyond Developer’s control under section 7.9.5 of the Original Agreement.

F. The County encourages the utilization of a “Development Agreement” for master planned or multi-planned projects in order to regulate the timing of construction and development of large projects, and the Developer entered into the Original Agreement, and now desires to enter into this Amended Agreement, with the County in order to clarify and formalize its development rights, and to continue with the development of the Property in an orderly, planned and consistent manner.

NOW, THEREFORE, in consideration of the foregoing recitals of fact, the mutual benefits and burdens contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

**ARTICLE I. PARTIES AUTHORITY TO ENTER INTO  
AMENDED AGREEMENT**

The County and the Developer represent the following:

- 1.1 The above recitals are true and correct and shall be incorporated by reference herein.
- 1.2 Escambia County, a political subdivision of the State of Florida, has authority to enter into this Amended Agreement.
- 1.3 The Developer warrants that it has the authority to enter into this Amended Agreement and that the Developer is the fee simple owner of the Property.
- 1.4 On the 2<sup>nd</sup> day of October 1997, Escambia County enacted Ordinance 97-51 which establishes procedures and requirements as set forth in section 163.3220-163.3243, Fla. Stat. (2012), authorizing the County to consider and enter into a

Development Agreement with any person having a legal or equitable interest in real property located within the unincorporated area of Escambia County.

- 1.5 It is the intent of the County and Developer to be bound by the terms of this Amended Agreement.
- 1.6 The relationship between the County and the Developer is contractual only. The Developer is not affiliated with the County in any manner, nor an agent of the County.

## **ARTICLE II. MUTUAL BENEFITS AND BURDENS**

- 2.1 The County finds and declares that the lack of certainty in the approval of development can result in a waste of economic and land resources, discourage sound capital improvement planning and financing, escalate the cost of housing and development, and discourage commitment to comprehensive planning.
- 2.2 The County finds and declares the Developer may proceed in accordance with the terms and conditions of the Amended Agreement, which strengthens the public planning process, encourages sound capital improvement planning and financing, assists in assuring there are adequate capital facilities for the Development, and encourages private participation in comprehensive planning.
- 2.3 The County finds and declares that the process of properly planned developments, such as the Development herein, can preserve, promote, protect and improve the public health, safety, comfort, appearance, convenience, law enforcement and fire prevention, and general welfare; facilitate the adequate and efficient provision of transportation, water, sewerage, schools, parks, recreational facilities, housing, and other requirements and services; and conserve, develop, utilize, and protect natural resources.
- 2.4 The County finds and declares that the Development is consistent with the Escambia County Comprehensive Plan and the land development regulations in effect as of the date of this Amended Agreement.
- 2.5 The Developer shall be allowed to proceed with the Development as a planned resort development that will provide for destination type mixed uses including resort/commercial areas as identified in the WCI-Lost Key Master Plan.

## **ARTICLE III. NOTICE AND HEARING**

- 3.1 Notice of intent to consider this Amended Agreement was advertised on the 23<sup>rd</sup> day of February, 2013, in the *Pensacola News Journal* a newspaper of general circulation.



- 3.2 The two public hearings required by section 163.3225, Florida Statutes, were held on the 4th day of March, 2013, and on the 21st day of March, 2013, before the Escambia County Planning Board and the Escambia County Board of County Commissioners.

#### **ARTICLE IV. LEGISLATIVE ACT**

- 4.1 This Amended Agreement is deemed to be a legislative act by the Board of County Commissioners as authorized by sections 125.01 and 163.3223, Fla. Stat. (2012).

#### **ARTICLE V. APPLICABLE LAND USE REGULATIONS**

- 5.1 The County and the Developer agree that the WCI-Lost Key Master Plan approval was received on March 10, 2004, and as such was based upon the Escambia County Land Development Regulations in effect at that time.
- 5.2 Notwithstanding any current or future action of the County, and except for future development approvals for additions to the Property, during the term of this Amended Agreement the County rules, regulations and official policies applicable to and governing the Development and the Property shall be those in existence as of the effective date of this Amended Agreement.
- 5.3 The County and the Developer agree that the eighteen (18) month effective period of the WCI-Lost Key Master Plan, set forth in paragraph 2 of the Standard Project Conditions in the Master Plan Development Order approved on March 10, 2004, is superseded by the thirty (30) year term of this Amended Agreement; provided, however, site plans approved under the terms of this Amended Agreement for components of the Development shall be subject to the eighteen (18) month effective period set forth in section 4.06.11 of the Land Development Code.
- 5.4 Pursuant to section 163.3233 (2) (a) through (e), Florida Statutes, a local government may apply subsequently adopted laws and policies to a development that is subject to a development agreement only if the local government has held a public hearing and determined:
- (a) They are not in conflict with the laws and policies governing the development agreement and do not prevent development of the land uses, intensities, or densities in the development agreement;
  - (b) They are essential to the public health, safety, or welfare, and expressly state that they shall apply to a development that is subject to a development agreement;
  - (c) They are specifically anticipated and provided for in the development agreement;

- (d) The local government demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of the development agreement, or
- (e) The development agreement is based on substantially inaccurate information supplied by the developer.

## **ARTICLE VI. APPROVAL AND PERMIT PROCEDURES**

- 6.1 The Developer received the Planned Unit Development approval (the “PUD”) on February 16, 1995. Unrecorded portions of the PUD (Plat Book 15, page 80) have expired.
- 6.2 The Developer received Master Plan approval from Escambia County on March 1, 1999 (since expired).
- 6.3 The Developer received Preliminary Plat approval for Phases I and II on March 5, 1999 (since expired).
- 6.4 The Developer received Preliminary Plat approval for Phase III on March 17, 1999 (since expired).
- 6.5 The Developer received approval of the WCI-Lost Key Master Plan from Escambia County on March 10, 2004 (currently active and the basis for this Amended Agreement).
- 6.6 Developer shall, in accordance with the Master Plan and Article 4 of the Land Development Code, submit and obtain approval of site plans for each component of the Development.
- 6.7 Minor changes to the Development which do not substantially change the overall development plan, such as but not limited to changes in the location of components, units or improvements, may be made through the site plan approval process or if necessary through amendment to the WCI-Lost Key Master Plan. Any future amendments to the WCI-Lost Key Master Plan shall be submitted for review by the County in accordance with the procedures for Master Plan approval set forth in section 4.02.04 of the Land Development Code. Such amendments shall be reviewed for compliance with the terms and conditions of this Amended Agreement. The development of any land added to the Development through an amendment to the Master Plan shall be governed by the terms and conditions of this Amended Agreement; provided, however, the land added by an amendment will be subject to the County land development regulations in effect as of the date of the amendment. Development of land covered by the original Master Plan will continue to be subject to regulations in effect as of the date of this Amended Agreement.

- 6.8 Except as specifically set forth in this Amended Agreement, Developer shall comply with all existing state, local and federal requirements governing approval and permitting of the proposed Development. Developer and County agree that nothing herein shall alter or waive any federal or state regulations or permitting requirements.
- 6.9 The failure of this Amended Agreement to address a particular permit, condition, term or restriction shall not relieve the Developer of the necessity of complying with the law governing said permitting requirements, conditions, term or restriction.

## **ARTICLE VII. PERMITTED USES UNDER THE AMENDED AGREEMENT**

- 7.1 County agrees that with the improvements required under section 8.4 of this Amended Agreement, the Developer meets concurrency requirements and the County hereby allocates, as set forth in section 8.4, concurrency for the following:

18 Hole Golf course (existing)

189 Existing Residential Units

1148 Proposed Resort Residential Units (maximum)

Commercial Development

300 Room Hotel (lodging units)

Subject to meeting all other requirements of this Amended Agreement, Developer is entitled to obtain building permits for the proposed 1148 Resort Residential Units, and all permits for the Hotel and Commercial Development/, at any time during the thirty (30) year term of this Amended Agreement.

- 7.2 The Development will also include open green space, conservation areas, hiking and bicycle paths.
- 7.3 The permitted uses for the Development will be as defined in the Escambia County Land Development Regulations Sec. 6.05.1.03 (d) PRPK Planned Resort District (Perdido Key), Sec, 6.05.13.01 (b) CCPK Commercial Core district (Perdido Key) and 6.05.13 (b) C-1PK Commercial District (Perdido Key). These sections are incorporated by reference as of the date of this Amended Agreement, and will not be affected by future Land Development Code revisions.

- 7.4 The intensity of use and the maximum height and size of the proposed buildings will be as defined in the Escambia County Land Development Regulations section 6.05.13.03 (h) PRPK Planned Resort District (Perdido Key), section 6.05.13.01 (f) CCPK Commercial Core District (Perdido Key) and section 6.05.13 (h) C-1PK Commercial District (Perdido Key). Development within these zoning categories will be in compliance with the referenced regulations as of the effective date of this Amended Agreement.
- 7.5 The Developer shall be allowed the flexibility to cluster, transfer, locate, move, and arrange the developed units set forth in section 7.1 over the Property as necessary to increase open space, preserve environmentally sensitive lands and provide innovative and resourceful use of the properties of the Developer provided that the total developed units does not exceed the total resort residential and hotel units (or the equivalent thereof) specified in section 7.1 of this Amended Agreement.
- 7.6 The Developer, in accordance with this Amended Agreement, may distribute the density and type of Development throughout the Property. Further, Development quantities of land use types set forth herein may be increased or decreased, or advanced or deferred in phasing, so long as: (i) such alterations constitute minor changes, which do not substantially change the overall development plan; otherwise, approval shall be conditioned upon Development Review Committee approval; and (ii) with each increase of Development quantity and external impacts for a particular land use type there is a corresponding decrease in the Development quantities and external impacts for another land use in the Development, with each increase and decrease of external impacts being measured in terms of total number of distributed trips generated to SR 292.
- 7.7 The Developer shall be allowed to include additional properties purchased by the Developer contiguous to the Property in the overall development concept of the Development by amendment to the Master Plan. The development of any land added to the Master Plan through an amendment shall be governed by the terms and conditions of this Amended Agreement; provided, however, the land added by an amendment will be subject to the County land development regulations in effect as of the date of the amendment. Development of land covered by the original Master Plan will continue to be subject to regulations in effect as of the date of this Amended Agreement.
- 7.8.1 The Developer shall comply with Section 6.05.15.L of the Escambia County Land Development Code prohibiting transfer of density south of Perdido Key Drive; provided, however the County acknowledges that certain transfer of density rights established under the Declaration of Transfer of Density and Restrictive Covenant, dated April 19, 2000 and recorded in the County records at O.R. Book 4570, page 1635-1647 (the "2000 Declaration" - copy attached to Master Plan Development Order documents as Exhibit "B" thereto), predate Section 6.05.15.L and run with the land. Nothing herein shall affect the Developer's right to

exercise the right to transfer density south of Perdido Key Drive under the 2000 Declaration or to exercise the right to transfer density south of Perdido Key Drive in the event of a change in the Land Development Code allowing such transfer.

- 7.8.2 In accordance with its vested right to transfer density south of Perdido Key Drive under the 2000 Declaration, Developer desires to transfer, and the County hereby approves the transfer of 254 lodging units to Component 17 (“C-17”) as shown on Exhibit “E” to this Amended Agreement (C-17 includes Lots 31 and 32, Gulf Beach Subdivision, according to Plat recorded in Plat Book 4 at page 52 of the Public Records of Escambia County, Florida, which lots are included in the property covered by the 2000 Declaration, as described on Exhibit “B” to the 2000 Declaration). The density being transferred will combine with the original 46 lodging unit density on C-17 to allow for construction of the 300 Room Hotel specified in section 7.1. A Declaration of Transfer of Density and Restrictive Covenant setting forth the density transfer approved herein shall be adopted by the County, attached as Exhibit “L” to this Amended Agreement, and recorded in the County records within fourteen (14) days of the effective date of this Amended Agreement.
- 7.9.1 The unit entitlements set forth in section 7.1 of this Amended Agreement will be located within the eighteen separate components, as identified by numbers 1 through 18 on the drawing attached hereto as a part of Exhibit “E”. These same components are shown on Figure C3.0 of Exhibit B, the Master Plan, where they are further identified by phases, ranging from phase A through F, within each component. The numbers on Exhibit “E” and numbers and letters on Figure C3.0 are for identification only and do not reflect the sequence of development.
- 7.9.2 The anticipated sequence of development is reflected in the Developer’s anticipated annual schedule for releasing units, within each component, for sale to the general public through dissemination of marketing materials and the taking of reservations, in accordance with state and/or federal regulatory requirements, as set forth in the table attached hereto as a part of Exhibit “E”. Developer intends to release for sale in each year of the term of this Agreement, at least seventy-five percent (75%) of the anticipated number of units released shown on the Exhibit “E” table for such corresponding year; provided, however, the County and Developer acknowledge that in the last four (4) years of the term of this Agreement, Developer’s ability to meet the seventy-five percent (75%) requirement depends upon the number of Resort Residential Unit building permits available under the Perdido Key residential dwelling unit cap, or otherwise available under section 7.1 of this Agreement, and Developer shall not be bound to meet these requirements if the building permits are not available. Nothing herein shall prohibit Developer from accelerating the schedule on the Exhibit “E” table in a given year provided that all other conditions for development of additional units in a given year, such as site plan approval and road improvements, are met. Units released for sale over and above the required

seventy-five percent (75%) for a given year shall count toward meeting the seventy-five percent (75%) requirement for the next year.

- 7.9.4 The Exhibit “E” table also sets out the schedule for required road improvements. Developer shall adhere to the road improvement schedule set out in Exhibit “E” if permitted by FDOT, the County, and other regulatory authorities as required, regardless of any allowable adjustments in the number of units released for sale. The schedule for road improvements may be extended, through the approval of the County Engineer, if necessary to accommodate delays in permitting; provided, however, the County and Developer agree and understand that the concurrency allocations set forth in sections 7.1 and 8.4 of this Agreement are contingent upon Developer’s implementation of the road improvements and if a permit for the required improvements is finally denied, or in the event Developer is otherwise unable to complete all or a portion of the improvements, concurrency allocations for the project may be withdrawn or subject to modification through an amendment to this Agreement.
- 7.9.5 Developer shall not be deemed to be out of compliance with the requirements set forth herein if failure to meet the requirements is due to conditions beyond Developer’s control, including, without limitation, acts of God, war or terrorism, floods, hurricanes, strikes, riots, labor conditions or shortages, inability to obtain materials, moratoria or any preventative action taken by any applicable governmental authority, including but not limited to actions relating to permitting, or any other acts of any branch of federal, state or local government or any of their political subdivisions or agencies; provided, however, the County and Developer agree that it may be necessary to amend this Amended Agreement to modify entitlements and requirements impacted by conditions beyond Developer’s control.
- 7.9.6 In each year in which this Amended Agreement is in effect, Developer shall submit to the County, on or before the anniversary date of the effective date of the Amended Agreement, an annual report on the progress of the Development. Developer shall submit as a part of the annual report, a new Exhibit “E” showing any changes in anticipated number of units and particular components to be released.

## **ARTICLE VIII. PUBLIC FACILITIES**

- 8.1 Public facilities and services under the authority of Escambia County and serving the permitted development include mass transit, transportation, solid waste management, and recreation/open space land. Pursuant to this Amended Agreement, the permitted use of the Property shall be allocated sufficient capacity for the purpose of maintaining the adopted levels of service for these systems on Perdido Key for the duration of this Amended Agreement. It is incumbent upon

the County to reserve sufficient capacity for these systems under its authority on Perdido Key until the Development identified by this Amended Agreement proceeds to secure all other required approvals for development.

- 8.2 The Development is located entirely within the area served by Escambia County Utilities Authority for water, wastewater and solid waste service. The project will have access to potable water and wastewater service along Semmes Road and Perdido Key Drive. Potable water service will be provided by connection to each of the existing 12-inch water mains on Perdido Key Drive and/or Semmes Road. Sanitary sewer service will be provided by a combination of gravity flow and lift stations for sewer service connection to an existing 12-inch main on Perdido Key Drive.
- 8.3 The Development is located entirely within the Gulf Power Company service area. Electric utility service within the Development will be located underground.
- 8.4 The Traffic Study attached hereto as Exhibit "C" provides estimates of the traffic impacts of the Development. Developer agrees to undertake and implement the design and construction of the improvements shown on Exhibit "D" and "F" attached hereto in accordance with the schedule set forth on Exhibit "E" attached hereto. Of the 825 total pm peak hour new external trips generated, the impact to SR 292 Segment 3 after trip distribution will be 432. The Developer shall be allocated a minimum of 432 trips for the purpose of traffic concurrency over the period of time allowed by this Amended Agreement. The County shall allocate a minimum of 185 peak hour trips immediately upon approval of this Amended Agreement (see Traffic Study – Exhibit "C"). The County will commit an additional 247 peak hour trips once the improvements indicated on Exhibits "D", "E" and "F" are implemented, bringing the total to 432 peak hour trips over the life of this Amended Agreement.
- 8.5 In order to provide support for public facilities and infrastructure on Perdido Key, Developer agrees to pay into a fund to be established by the County, and to be known as the "Perdido Key Public Improvements Fund", three hundred dollars (\$300) for each Resort Residential Unit for which a building permit is obtained under this Amended Agreement. The monies will be paid into the fund at the time of issuance of a permit. The monies placed into the fund shall be used by the County for public improvements solely on Perdido Key, including but not limited to, improvements such as bike paths, recreational facilities, lighting, walkways and improvements designed to protect wildlife, endangered species and environmentally sensitive lands. The monies shall be spent at the direction of the County Administrator or his/her designee. The County shall submit an annual report to the Perdido Key Chamber of Commerce on expenditures made and planned from the fund. The County and Developer acknowledge and understand that the payment obligations contained herein are being voluntarily established under this Amended Agreement and do not otherwise constitute an impact fee or other requirement under the law.

## ARTICLE IX. DEDICATIONS AND RESERVATIONS

- 9.1 The Developer will protect, conserve or enhance wetlands (Comprehensive Plan Objective 11.1.01) and promote the natural function of identified wetlands (Comprehensive Plan Policy 7.A.5.1) by providing mitigation and conservation easements for environmentally sensitive lands to the extent required by the permits issued to Developer by the U.S. Army Corps of Engineers (Permit No. 199404539 – Exhibit “G” – and all modifications thereto) and the Florida Department of Environmental Protection (Permit No. 17-0161382-DF - Exhibit “H”; Permit No. 172570501 – Exhibit “I”; Permit No. 173000721 - Exhibit “J”). The County acknowledges that ACOE and/or FDEP may approve extensions and/or amendments to the ACOE and/or FDEP permits and such extensions and/or amendments will not require a review under County regulations governing development in wetlands and environmentally sensitive lands. However, if the ACOE or FDEP permits lapse or expire entirely so as to require new permits, then the County will have jurisdiction, under the Land Development Code in effect at the time new permit applications are filed, as to wetlands and environmentally sensitive lands previously protected by the expired ACOE and/or FDEP permits. Additional parcels added to the Development through amendment of the Master Plan may require further mitigation and conservation easements depending on the extent of environmentally sensitive lands on the parcels added. The Developer will seek amendments to the permits referenced herein or new permits as necessary to address any wetlands issues arising from the acquisition and incorporation of additional parcels into the Development. All approved amendments and/or new permits will be attached as exhibits to this Amended Agreement. Parcels added by amendment to the Master Plan will also be subject to the County regulations on wetlands and environmentally sensitive lands in effect as of the date of the amendment.
- 9.2 Developer has worked with the U.S. Fish and Wildlife Service (“USFWS”) since 2005 to address USFWS concerns regarding the Perdido Key Beach Mouse (“PKBM”), an endangered species. On August 13, 2012, the Panama City Field Office of the USFWS issued its “Biological Opinion – Lost Key Golf and Beach Club, WCI Communities, LLC, Perdido Key, Escambia County, Florida,” which concludes as follows:

After reviewing the current status of the PKBM, the environmental baseline for the Lost Key Development, the effects of the activities, proposed protective, avoidance, and minimization measures, as well as the expected cumulative effects, it is the Service’s biological opinion that the Projects, as proposed, will not jeopardize the continued existence of PKBVM, and will not destroy or adversely modify critical habitat.



Based on this biological opinion, the U.S. Army Corps of Engineers permit for the Development is now being modified and will be made a part of Exhibit "G" attached hereto.

#### **ARTICLE X. TRANSFER AND ASSIGNMENTS**

- 10.1 The rights and interest provided herein to Developer benefit and are appurtenant to the Property. Developer has the right to sell, assign and transfer all of its duties and obligations hereunder; provided, however, that such rights and interest may not be transferred or assigned except in strict compliance with the following conditions precedent:
- (i) Rights, obligations and interests, in whole or in part, may be transferred along with assignment of the portions of the Property to which they relate, including any transfer or assignment pursuant to any foreclosure of a Mortgage or a deed in lieu of such foreclosure; and
  - (ii) Contemporaneously with any assignment or transfer of interest in the Property, Developer shall specify the portions of the Property to which the assignment or transfer is appurtenant, and designate the Development rights which are included within the transfer. Any attempt to assign or transfer any right, obligation or interest in this Amended Agreement except in strict compliance with this Section, shall be null and void and of no force and effect until such compliance has occurred.
  - (iii) Notwithstanding the foregoing, the Developer may transfer or assign this Amended Agreement and the rights hereunder to an affiliate or subsidiary of the Developer in connection with a corporate re-organization or restructuring.
- 10.2 Following an assignment or transfer of any of the rights and interest of the Developer under this Amended Agreement, the exercise, use and enjoyment thereof shall continue to be subject to the terms of this Amended Agreement to the same extent as if the assignee or transferee was the Developer. Without limiting the generality of the foregoing:
- (i) The further assignment or transfer of any of the rights, obligations or interests under this Amended Agreement shall be made only in accordance with and subject to the terms of this Section.
  - (ii) The rights, obligations and interests assigned or transferred are subject to termination in accordance with this Amended Agreement.
- 10.3 The assignee or transferee of any of the rights and interests of the Developer shall have no duty or obligation to perform the Developer's obligations or other affirmative covenants of Developer under this Amended Agreement unless such

obligations and covenants are expressly assumed in connection with the conveyance of said rights and interests.

10.4 Notwithstanding the assignment or transfer of portions or all of the Property or rights or interests under this Amended Agreement, Developer shall continue to be obligated under this Amended Agreement unless released or partially released by the County with respect to Developer's obligations and the other duties and obligations of Developer under this Amended Agreement, which release or partial release shall be provided by County upon the satisfaction by Developer of the following conditions:

- (i) Developer is not in default under this Amended Agreement;
- (ii) Developer has provided County with the written notice of such Assignment;
- (iii) The assignee or transferee has assumed the duties and obligations as to which Developer is requesting to be released and has provided County with reasonable assurances demonstrating that Developer's obligations and other duties and obligations of Developer under this Amended Agreement for which Developer is being released will be fully performed.

10.5 Notwithstanding any provisions of this Amended Agreement to the contrary, and subject to the provisions of this section, the limitations of this Amended Agreement shall terminate as to any lot or parcel which has been subdivided, individually leased (for a period of longer than one year), or sold to a purchaser unless the conveyance instrument or lease provides otherwise and makes the transfer subject to this Amended Agreement,. Thereafter, and without the execution and recordation of any further document or instrument, such lot or parcel shall be released from and no longer be subject to or burdened by the provisions of this Amended Agreement; provided, however, that the benefits to the parcel developer or tenant of this Amended Agreement shall continue to run (as to any such lot or parcel) until all the buildings have been constructed thereon, or until the termination of this Amended Agreement, if earlier. Parcels may be withdrawn from the Development by amendment to the WCI-Lost Key Master Plan, with mutual consent of the parties to this Amended Agreement or by their successors in interest.

#### **ARTICLE XI. DURATION OF THE AMENDED AGREEMENT**

11.1 The term of this Amended Agreement shall begin on the date last executed by the parties and shall terminate thirty (30) years there from or when all construction of the improvements authorized under this Amended Agreement is completed by the Developer, whichever occurs first; provided, however, that where Developer has initiated work on the Property and the work is continuing in good faith, the terms of this Amended Agreement shall, with the mutual consent of the parties and

subject to the public hearing requirements of Section 163.3225, Florida Statutes (2003), be extended by amendment to allow for completion of the Development. Environmental mitigation work, for which a guarantee of success is required under environmental permits, shall be considered initiated work and will extend through required mitigation monitoring periods even if those periods exceed the thirty (30) year term of this Amended Agreement.

- 11.2 After termination, no party shall have any further right or obligation hereunder except with respect to any obligation which should have been performed prior to termination or with respect to any default in the performance of the provisions of this Amended Agreement occurring prior to termination.

#### **ARTICLE XII. DEFAULT**

- 12.1 Upon default hereunder, the non-defaulting party shall have such rights and remedies as are provided by law or equity; provided, however, that where Developer has initiated work on the Property and the work is continuing in good faith, the terms of this Amended Agreement shall, with the mutual consent of the parties and subject to the public hearing requirements of Section 163.3225, Florida Statutes (2003), be extended by amendment to allow for completion of the Development.

#### **ARTICLE XIII. ESTOPPEL CERTIFICATE**

- 13.1 Either party may, at any time, and from time to time, deliver written notice to the other party requesting certification in writing that, to the knowledge of the certifying party (i) this Amended Agreement is in full force and effect and a binding obligations of the party (ii) this Amended Agreement has not been modified or amended either orally or in writing, or if amended, identifying the amendments, and (iii) the requesting party is not in default, or if in default, to describe therein the nature and amount of any such defaults.

#### **ARTICLE XIV. EFFECT OF AMENDED AGREEMENT ON TITLE**

- 14.1 Subject to the protections afforded mortgages hereunder:
- (i) All of the provisions, rights, terms, covenants, obligations contained in this Amended Agreement shall be binding upon the parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons acquiring any rights or interests in the Property, or any portion thereof, whether by operation of laws or in any manner whatsoever and shall inure to the benefit of the parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns;

- (ii) All of the provisions of this Amended Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law.
  - (iii) Each covenant to do or refrain from doing some act on the Property (or a specific portion thereof) hereunder: (A) is for the benefit of and is a burden upon the applicable portions of the Property, (B) runs with the Property, and (C) is binding upon each party and each successive owner during its ownership of such properties or any portion thereof, and each person having any interest therein derived in any manner through any owner of such lands, or any portion thereof, and shall benefit each party and its lands hereunder, and each other person succeeding to an interest in such lands.
- 14.2 Any assignee or transferee or mortgagee which acquires rights or interest in or with respect to the Property or any portion thereof shall take and hold such rights and interests subject to this Amended Agreement, but shall not have been deemed to have assumed the Developer's obligations or the other affirmative duties and obligations of Developer (which Developer obligations and other affirmative duties shall be retained by Developer pursuant to this Amended Agreement) hereunder, except:
- (i) To the extent that any such assignees, transferees or mortgagees have expressly assumed any of the duties or obligation of Developer hereunder; or;
  - (ii) To the extent that the performance of any duty or obligation by developer is a condition precedent to the performances of a covenant by County, it shall continue to be a condition to County's performance hereunder.
- 14.3 Subject to section 10.5 above, As provided herein, without the requirement of any further writing or action on the part of any party hereto, this Amended Agreement shall terminate as to specific conveyed lot or parcel.

**ARTICLE XV. AMENDMENTS AND CANCELLATION,  
MODIFICATION OR REVOCATION**

- 15.1 This Amended Agreement may be amended, in accordance with the procedures set forth in section 163.3225, Florida Statutes (2003), or canceled by mutual consent of the County and Developer.
- 15.2 If state or federal laws are enacted after the execution of this Amended Agreement which are applicable to and preclude the parties' compliance with the terms of the Amended Agreement, the County and Developer agree to modify this Amended Agreement as is necessary to comply with relevant state or federal laws. Any modification shall be the minimum necessary to comply with the state

or federal law. Such modifications shall to the extent possible be tailored to preserve the intent of the Amended Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Amended Agreement on the day and year first set forth above.

ESCAMBIA COUNTY

By: \_\_\_\_\_  
Chairman, Board of County Commissioners

ATTEST: Clerk, Board of  
County Commissioners

By: \_\_\_\_\_  
Deputy Clerk

WCI COMMUNITIES, INC.

By: \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST: \_\_\_\_\_

By: \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Title: \_\_\_\_\_