

## **Memorandum of Understanding**

This Memorandum of Understanding is entered into by and between **Realmark Group, LLC**, a Florida limited liability company (referred to herein as “Realmark”) and **Punta Gorda Isles, Section 22 Homeowners Association, Inc.**, a Florida not-for-profit corporation (the “Association”) as of this \_\_\_\_ day of December, 2005.

### **Preliminary Statement**

Realmark has contracted with WCI Communities, Inc., a Delaware corporation (“WCI”) to acquire from WCI the golf course amenities, irrigation facilities and other property within the Burnt Store Marina community (collectively, the “Amenities”). As a condition to Realmark’s willingness to proceed with the acquisition of the Amenities, Realmark has requested that the Association agree to certain concessions, as set forth in this Memorandum of Understanding.

### **Agreement**

Now therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Association, for itself and its members, hereby agrees as follows:

1. Effective upon the closing of the sale of the Amenities to Realmark, the Association agrees to terminate the Declaration of Covenants and Standards, which was recorded in OR Book 3344 at Page 2804, as amended by that certain Amendment to Declaration of Covenants and Standards, which was recorded in OR Book 4575 at Page 3308, of the Public Records of Lee County, Florida. In order to effectuate the termination, the Association agrees to execute and deliver at the closing the Termination of Declaration of Covenants and Standards in the form attached as Exhibit “A” hereto.

2. The Association acknowledges that, as part of the acquisition of the Amenities, WCI has agreed to assign to Realmark its rights as the developer under that certain Assignment and Assumption of Grantor’s Rights between WCI and the Association, which was recorded in OR Book 4345 at Page 3263 of the Public Records of Lee County (the “Assignment”). The Association agrees to execute and deliver at the closing the First Amendment to Assignment and Assumption of Grantor’s Rights in the form attached as Exhibit “B” hereto (the “First Amendment”).

By executing the First Amendment, the Association further acknowledges that: (i) the exclusion for “the properties still owned by WCI”, as set forth in the first paragraph of the First Amendment, applies to all properties owned by Realmark or its affiliates, including without limitation, those properties previously acquired by Realmark or its affiliates from WCI; and (ii) WCI retains, and Realmark does not assume, any of the obligations of WCI as the developer under the Section 22 Deed Restrictions. Realmark expressly assumes those obligations of WCI that are set forth on Exhibit “C” hereto.

3. Effective upon the closing of the sale of the Amenities to Realmark, the Association waives its right of first refusal to acquire from WCI the irrigation facilities and land within the Burnt Store community as set forth in the Residential Irrigation System Right of First Refusal recorded in OR Book 4345 at Page 3286 of the Public Records of Lee County, Florida.

4. The Association shall take no action to impede, oppose or object to any efforts on behalf of Realmark, or its affiliates, in its rezoning, permitting, planning or development efforts within the Burnt Store community, including without limitation the construction of one or more hotels within the community, the reconfiguration of the golf course, the potential reduction of the golf course from 27 to 18 holes and the construction of up to 330 residential units upon the golf course property; provided that Realmark's development is substantially in accordance with the proposed development plan presented by Realmark to the Association at the meeting held on December 6, 2005 (the "Presentation"). Realmark shall provide the Association with an electronic and paper copy of the Presentation.

5. Realmark agrees that the owner of each residential unit that may be developed on the "Section 22 Lands" or the "Adjacent Lands" (as both terms are defined in the Assignment) shall be a member of the Association, with the same rights, privileges and duties as all other residential members of the Association, including without limitation equal voting rights and assessment obligations, and that once constructed the land upon which each such residential unit is constructed shall be subject to the Section 22 Deed Restrictions (but subject to the Assignment and First Amendment).

For purposes of this Agreement, each condominium unit or timeshare unit (as defined in Section 721.05(39), Florida Statutes), each single-family residence and each hotel suite sold or occupied as a single unit shall be considered to be a single residential unit. The owners of each timeshare unit shall designate one representative to receive all notices from the Association and to vote on all Association matters on behalf of all owners of the timeshare unit.

6. The Association agrees to grant appropriate easements to Realmark over Association owned property for any existing encroachments of golf cart paths onto Association owned property.

7. The Association currently uses an above-ground fuel tank and a storage shed at the Golf Course Maintenance Area. The Association shall remove the fuel tank and storage shed from the Golf Course Maintenance Area within six (6) months and shall indemnify and hold Realmark harmless from any liability, loss, claim or damage arising from the existing of those items upon property owned by Realmark, including without limitation, any potential environmental contamination.

8. All references in this Memorandum of Understanding to Realmark shall include all of its affiliated entities, successors and assigns.

9. Although this Memorandum of Understanding is intended to be a self-operative agreement, fully binding upon the parties, Realmark and the Association agree to execute such further documents as may be requested by the other from time to time to effectuate the terms of this Memorandum of Understanding.

In Witness Whereof, we have executed this Memorandum of Understanding as of the date first above written.

**Realmark Group, LLC**, a Florida  
limited liability company

By: \_\_\_\_\_  
William J. Stout, Jr., Manager

**Punta Gorda Isles, Section 22  
Homeowners Association, Inc.**,  
a Florida not-for-profit corporation

By: \_\_\_\_\_  
Carl R. Winger, as President

## **Index of Exhibits**

- A. Form of Termination of Declaration of Covenants and Standards
- B. Form of First Amendment to Assignment and Assumption of Grantor's Rights
- C. List of Assumed Obligations
- D. Marina Site

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**Exhibit “C”**  
(List of Assumed Obligations)

1. Obligation to repair damaged pavement areas and potholes and to resurface a portion of Matecumbe Key Road as set forth in paragraph 14 of the Settlement Agreement between the Association and WCI dated June 18, 2004 (the “Settlement Agreement”). Paragraph 14 of the Settlement Agreement shall be amended to provide that the Repaving Deadline shall be six (6) months after the certificate of occupancy for the final condominium building at the Sales Center Site and the Marina Site has been issued by the appropriate governmental authority. For purposes hereof, the Marina Site shall mean the real property described on Exhibit “D” hereto. At all times while construction is taking place on the Sales Center Site and/or the Marina Site, Realmark agrees that it shall keep Matecumbe Key Road in good repair at its sole cost and expense; provided, however, that Realmark shall not be responsible for any damage to the road that was in existence prior to the commencement of construction activities or for any damage caused by breakage of water or sewer pipes (unless the breakage was caused by Realmark’s construction activities) or by flooding or other inclement weather.

2. Obligation to repair damaged pavement areas and potholes and to resurface a portion of Matecumbe Key Road as set forth in paragraph 15 of the Settlement Agreement. Paragraph 15 of the Settlement Agreement shall be amended to provide that, within six (6) months after the certificate of occupancy for the final condominium building at the Tract 1 Site and the Marina Site has been issued by the appropriate governmental authority, Realmark shall, at its expense, commence the repair and resurfacing of Matecumbe Key Road from the South Shore Gate to the westernmost part of the Sale Center Site in accordance with the specifications and time requirements described in paragraph 14. At all times while construction is taking place on the Tract 1 Site and/or the Marina Site, Realmark agrees that it shall keep Matecumbe Key Road in good repair at its sole cost and expense; provided, however, that Realmark shall not be responsible for any damage to the road that was in existence prior to the commencement of construction activities or for any damage caused by breakage of water or sewer pipes (unless the breakage was caused by Realmark’s construction activities) or by flooding or other inclement weather.

3. Obligation to supply electric power to the Cape Cole Boulevard Gate as set forth in paragraph 17 of the Settlement Agreement, which obligation shall continue for so long as Realmark or an affiliate of Realmark owns the Burnt Store Marina golf course.

4. Obligation to reimburse the Association for security guards at the Vincent Gate as set forth in paragraph 16 of the Settlement Agreement, except that: (i) the obligation to make the Vincent Gate Cost Reimbursement payments shall be temporarily postponed at the request of Realmark during times of no construction activity at the Sales Center Site or Marina Site; and (ii) Realmark agrees that it may not cancel the Agreement without cause. The Association hereby consents to the assignment of the Vincent Avenue Construction Gate Security Cost Reimbursement Agreement by WCI to Realmark.

5. Obligations relating to the Access Driveway to the Golf Course Maintenance Area as set forth in paragraph 20 of the Settlement Agreement, including without limitation, the restriction on the material alteration of the nature or intensity of the use of the Access Driveway from that which currently exists and the obligation to construct the fence and landscaping described therein which as of this date has not been constructed by WCI. The Association acknowledges that Realmark's planned use of the Golf Course Maintenance Area for boat and trailer storage to serve the community is not a material alteration of the nature or intensity of the use of the Access Driveway from that which currently exists.

**Exhibit “D”**

**Description of Marina Site**