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## MEMBERSHIP PLAN



## CEDAR BAY YACHT CLUB

### MEMBERSHIP PLAN OVERVIEW

#### MEMBERSHIP OPPORTUNITY

This Membership Plan and its exhibits (the “Membership Documents”) offer you an opportunity to become an equity member in Cedar Bay Yacht Club, Inc., a Florida not-for-profit corporation (the “Club”). The Club is a private equity membership club, located on Marco Island, Florida.

#### MEMBERSHIP CATEGORIES

Each “Equity Member” who acquires an “Equity Membership” in the Club has an ownership interest in the Club and is entitled to vote on matters affecting the Club in accordance with the Membership Documents. Each Equity Member is entitled to use the Club Facilities as provided hereinafter. The Club offers one category of Equity Membership: Equity Yacht Club Memberships. The Club also may offer non-equity memberships as hereinafter provided.

The use privileges associated with membership are more fully described in the Membership Documents.

#### SPECIAL MEMBERSHIP BENEFITS

In addition to exceptional Club Facilities, membership in the Club currently offers a number of attractive benefits. A brief description of some of these benefits follows and they are described in greater detail in this Membership Plan:

- **Refundable Membership Contribution.** Members are entitled to a refund of the membership contribution equal to 95% of the membership resale price charged by the Club upon resignation and re-issuance of their membership to a new member, as provided for in the Membership Plan Documents.
- **Resigned Memberships Reissued Prior to Membership Sell-Out.** Resigned members can have their membership reissued by the Club and receive their refund without waiting for all of the new memberships to be issued by the Club, as provided for in the Membership Plan Documents.
- **Transferability of Memberships to Subsequent Purchaser of Member’s Property.** Memberships are transferable through the Club to a subsequent purchaser of the resigning member’s residence in Lee or Collier Counties who desires to acquire the



resigning member's membership. Upon approval by the Club, this individual will not be subject to a waiting list in acquiring the resigned membership.

- **Control of Club Operations and Policies.** Members will be entitled after turnover to elect the members of the Board of Directors, which governs the Club.
- **Ownership Interest in Club.** Each Equity Member has an ownership interest in the Club and is entitled to vote on matters affecting the Club in accordance with the Membership Documents.
- **Immediate Family Privileges.** A member, his or her spouse and their unmarried children, under the age of 23 who are living at home, attending school on a fulltime basis or serving in the military are entitled to membership privileges without having to pay additional membership dues.
- **Extended Family Privileges.** The parents, adult children, grandparents and grandchildren of the member and spouse and the spouses of such family members are also entitled to use the Club Facilities upon payment of reduced fees.
- **Inheritability.** Upon the death of a member, the membership can be transferred to his or her spouse, as described further in the Membership Plan Documents.
- **Club Newsletter.** Members will receive a periodic newsletter containing information about events and activities at the Club and other items of interest.
- **Website.** The Club's website located at [www.cedarbayyachtclub.com](http://www.cedarbayyachtclub.com) provides members with access to important, up-to-date club information.

## CAREFULLY REVIEW ALL DOCUMENTS

Every person who desires to obtain a membership should carefully read this Membership Plan and all of the attached or referenced exhibits and should seek professional advice to evaluate these documents. Please refer to the Bylaws and the Club Transfer Agreement for the meanings of terms that are not defined in this Membership Plan.

## RELY ONLY ON WRITTEN INFORMATION PROVIDED

NO PERSON HAS BEEN AUTHORIZED TO GIVE ANY INFORMATION OR MAKE ANY REPRESENTATIONS NOT CONTAINED IN THIS MEMBERSHIP PLAN AND THE REFERENCED DOCUMENTS AND, IF GIVEN OR MADE, SUCH INFORMATION MUST NOT BE RELIED UPON AS HAVING BEEN AUTHORIZED BY THE CLUB. IN THE EVENT OF A CONFLICT BETWEEN THE TERMS OF MEMBERSHIP CONTAINED IN THE MEMBERSHIP DOCUMENTS AND ANY OTHER PRINTED MATERIALS, THE MEMBERSHIP DOCUMENTS SHALL GOVERN.



## **MEMBERSHIPS OFFERED ONLY FOR RECREATIONAL PURPOSES**

MEMBERSHIPS AT THE CLUB ARE BEING OFFERED EXCLUSIVELY FOR THE PURPOSE OF PERMITTING PERSONS THE RECREATIONAL USE OF THE CLUB FACILITIES. MEMBERSHIPS SHOULD NOT BE VIEWED AS AN INVESTMENT AND NO MEMBER SHOULD EXPECT TO DERIVE ANY ECONOMIC PROFITS FROM MEMBERSHIP AT THE CLUB.

NO FEDERAL OR STATE AUTHORITY HAS PASSED UPON OR ENDORSED THE MERITS OF THE MEMBERSHIP DOCUMENTS.

## **APPLICATION PROCEDURES**

Each person who desires to become a member must mail or deliver to the Membership Director a fully completed and signed Membership Purchase Agreement, along with a check for the required membership contribution. In the event the agreement is not acted upon favorably, the membership contribution will be fully refunded, without interest.

## **MEMBERSHIP DIRECTOR AVAILABLE TO ANSWER INQUIRIES**

All inquiries regarding membership in the Club or the Membership Documents should be directed to Richard Fonte at Cedar Bay Yacht Club, Inc. or by calling (239) 394-9333. You may call or visit the Membership Office, conveniently located at 705 E. Elkcam Circle, Marco Island, Florida 34145. No appointment is necessary. You may also visit our website at [www.cedarbayyachtclub.com](http://www.cedarbayyachtclub.com)



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## MEMBERSHIP FEATURES AND FACILITIES

### INTRODUCTION

The Membership Documents set forth the rights and privileges of membership in the Club.

### CLUB FACILITIES

Club members will have access to all of the “Club Facilities”. The Club Facilities and related membership benefits include the following:

- A multi-level rack system with an initial maximum of 356 dry slips for storage of members' boats; the number of dry slips may be increased up to a total of 568 dry slips in the Company's sole discretion, subject to obtaining the necessary permits
- Marina Manager and crew to assist all members
- Boat rental available for specialized use
- Unlimited in/out service
- Flush and wash down after every use
- Members' price for fuel
- Complete boat mechanical and appearance service
- Ship's Store
- Restaurant and lounge with take out for members
- Preferred pricing on food for members at the restaurant
- Shower and rest room facilities
- 24 hour surveillance
- Fifteen to twenty minutes to the Gulf
- Pump out service if required
- A dockside valet launch service that enables members to call ahead and have their boat placed in the water and ready to go when they arrive
- Members may arrange to have their boat stocked by the Club with food and beverages for a fee
- The Club will load and unload a member's gear upon request

The Club, in its sole discretion, may increase or decrease the number of dry slips, as it determines appropriate from time to time. If additional dry slips are added to the Club Facilities, the number of memberships issued in the Club may be increased.

### OWNERSHIP OF CLUB FACILITIES

Nautical Ventures of Marco Island, LLC, a Florida limited liability company, referred to as the “Company”, has arranged for the Club to acquire the Company's interest in the Club



Facilities. As a result, the Club now owns or will own the Company's interest in the Club Facilities. In consideration for the transfer of the Company's interest in the Club Facilities, the Company will receive all of the Equity Memberships to be issued in the Club. Control of the operation of the Club will initially be retained by the Company and will ultimately be turned over to the Equity Members on the Turnover Date, as hereinafter provided.

## **MEMBERSHIP CATEGORIES AND PRIVILEGES**

### **CATEGORIES OF MEMBERSHIP**

The Club is offering one category of membership called Equity Yacht Club Memberships.

Membership includes the privilege of having the member's boat stored by the Club in a dry slip of a sufficient volume (based on the length and number of cubic feet of space) to accommodate the member's boat. The Club shall determine which dry slip to store a member's boat in from time to time and the boat may be stored in any dry slip large enough to accommodate the boat. Membership does not grant the member any rights or privileges to have the member's boat stored in a particular dry slip. Members are requested to give the Club at least 7 days advance notice of the time periods that their boat will not be stored at the Club since dry slips that are placed in the Club's rental program may be leased by the Club when they are not being used by members. Members may also use all of the other Club Facilities, subject to the Club Rules and Regulations. The Club, which will be owned by its Equity Members, will own the Club Facilities.

The Club may offer certain other memberships and use privileges as described in the "Other Memberships and Use Privileges" provision in this Membership Plan.

### **RULES AND POLICIES**

In order to enhance the recreational and social pleasure of members and their guests, the Club reserves the right to establish or modify rules, regulations, policies, guidelines, or systems governing access to the Club Facilities.

### **EQUITY MEMBERSHIP VOTING RIGHTS**

On all matters to be voted upon by the Equity Members of the Club, Equity Yacht Club Members are entitled to one vote per membership. The Company is not entitled to vote unissued Equity Memberships which it holds for sale on matters submitted to the vote of the members, except it may vote those Equity Memberships which it has purchased from the Club, as hereinafter provided. The Board of Directors will have the final authority to



determine which categories of Equity Members are entitled to vote on matters put to a vote of the members.

## **NUMBER OF MEMBERSHIPS**

### **LIMIT ON NUMBER OF MEMBERSHIPS**

The maximum number of equity memberships permitted in the Club will be equal to the number of dry slips.

The Club, in its sole discretion, may further limit the number of memberships available as the Club determines appropriate from time to time.

## **FAMILY AND GUEST PRIVILEGES**

### **IMMEDIATE FAMILY PRIVILEGES**

A member's immediate family will be entitled to use the Club Facilities on the same basis as the member. A member's immediate family will include the member's spouse and their unmarried children under the age of 23 who are living at home, attending school on a full-time basis or serving in the military.

### **PRIVILEGES FOR INDIVIDUAL LIVING WITH MEMBER**

An unmarried member living together with another individual in the same household as a family unit may designate the other individual on a membership year basis to use the Club Facilities as an immediate family member, upon completion of the appropriate forms provided by the Club. The member and the designated user shall be individually and jointly responsible for the payment of all charges and fees incurred by the designated user. The Club reserves the right to establish such fees and other rules it deems appropriate.

### **EXTENDED FAMILY PRIVILEGES**

A member's extended family will be permitted to use the Club Facilities provided the member makes arrangements with the Marina Manager. The extended family shall include the parents, children who do not fall within the definition of immediate family, grandparents, grandchildren and great-grandchildren of the member and spouse and the spouses of such family members. The Club may modify or terminate this privilege and establish such rules with respect thereto as it may determine from time to time.



## **GUEST PRIVILEGES**

Members may have guests use the Club Facilities in accordance with the Rules and Regulations of the Club and the Club's guest policies. The Club may limit the number of guests and the number of times a particular guest may use the Club Facilities during each membership year. The member will be responsible for the payment of charges incurred but not paid by his or her guests including any applicable daily guest fees established by the Club from time to time. Members will also be responsible for the deportment of their guests.

## **OFFERING OF MEMBERSHIPS**

### **OFFERING OF MEMBERSHIPS**

Equity Memberships will be offered to such persons as the Club or the Company determines appropriate from time to time. The membership contribution for the Equity Yacht Club Membership depends upon the size of the dry slip. The dry slip desired must accommodate the length, width and height of the vessel, including all appurtenances, as specified by the Club.

### **WAITING LIST**

If a person desires to acquire a membership and a membership is not available the Club will establish a waiting list.

### **MEMBERSHIP HELD IN NAME OF ENTITY**

For the convenience of members, a membership may be held in the name of a corporation, partnership, trust or other form of multiple ownership (collectively, the "entity"). The entity must designate one individual or family who will have the right to use the membership. The entity may change the designated user prior to the start of each membership year in accordance with the rules and regulations of the Club and upon payment of the redesignation fee established by the Club. The designated user must submit such forms as required by the Club and will be subject to the approval of the Club. The designated user must be a bona fide director, officer, partner, shareholder or employee of the entity, or a beneficiary, trustee or settlor of the entity if the membership is held in the name of a trust, and must pay the required dues and charges. No person other than the designated user and his or her immediate family will be entitled to simultaneously use the membership. The Club may establish from time to time the rules governing the designated user of a membership, including a limit on the number of times the designated user may be changed.



## **MEMBERSHIP CONTRIBUTION**

### **MEMBERSHIP CONTRIBUTION REQUIRED TO ACQUIRE MEMBERSHIP**

Persons desiring to be members of the Club must pay the membership contribution established for memberships on the date of application for a membership.

### **SETTING OF MEMBERSHIP CONTRIBUTION**

The membership contribution for all memberships in the Club will be set by the Company from time to time at any level it deems appropriate in its sole discretion, until the initial issuance of all of the Equity Memberships. The membership contribution for Equity Yacht Club Memberships which are available for re-issuance by the Club will be equal to the membership contribution set by the Company for unissued memberships. After the initial sale of all of the Equity Yacht Club Memberships, the membership contribution will be set by the Board of Directors of the Club as determined from time to time.

To be considered an Equity Member of the Club, the member must pay the membership contribution, within the time period listed in his or her Membership Purchase Agreement. If the member does not pay the membership contribution when due, the member will not be entitled to any use privileges. In addition, the membership of such person can be terminated, without refund of any membership contribution previously paid. In the event a membership is terminated due to non-payment of the membership contribution, the membership will revert to the Company and not the Club, and the Company may issue the membership to any applicant approved by the Company, in its sole discretion.

### **REFUND OF MEMBERSHIP CONTRIBUTION UPON TRANSFER OF MEMBERSHIP**

A resigning Equity Member is entitled to be paid within 30 days after the re-issuance of the membership by the Club to a new member, an amount equal to ninety-five percent (95%) of the amount of the membership contribution then charged by the Club for the resigning member's membership.

### **DEDUCTION OF AMOUNTS OWED**

The Club will deduct from any amount to be repaid to the member any amount which the member owes the Club or the Company.

### **PROCEEDS FROM REISSUANCE OF MEMBERSHIPS**

Five percent (5%) of the membership contributions paid upon the re-issuance of resigned Equity Memberships will be retained by the Club as an administrative fee and may be utilized as determined by the Board of Directors.



## **TRANSFER OF MEMBERSHIP**

### **TRANSFER OF MEMBERSHIP THROUGH CLUB**

A member may resign his or her membership and arrange for the Club to reissue the membership by giving 30 days notice to the Club. Should a member desire to resign from the Club, the member shall be required to give written notice to the Club. Resignation of a member is irrevocable, unless otherwise determined by the Club. A member may not transfer or sell his or her membership directly to any person or entity. All resales must go through the Club and the Club will set the resale price (membership contribution) to be charged to the new member when the resigned membership is resold by the Club. All amounts owed to the Club must be paid by the member before the Club will transfer any membership.

### **TRANSFER UPON SALE OF RESIDENCE OR HOMESITE**

A member who resigns from the Club upon the sale of his or her residence or homesite in Lee or Collier Counties may arrange for the Club to reissue his or her membership to the subsequent purchaser of his or her residence or homesite regardless of whether all of the memberships have been issued and regardless of whether there are any resigned memberships on the waiting list. The subsequent purchaser desiring the resigned membership will be required to submit a Membership Purchase Agreement, will be subject to the approval of the Club and will be required to pay the membership contribution which is then in effect. The subsequent purchaser must acquire the membership within 30 days of the real estate closing, or the membership will go on the waiting list and will be available by the Club on the open market.

### **TRANSFER THROUGH WAITING LIST**

A resigned membership will be placed on a waiting list and will be reissued as follows, unless the member arranges for the subsequent purchaser of his or her residence or homesite in Lee or Collier Counties to acquire his or her membership. The resigned membership will be reissued by the Club to the first person who desires to acquire that particular membership and is approved by the Club for membership.

### **REPURCHASE OF MEMBERSHIPS UNDER OTHER CIRCUMSTANCES**

The Club is not obligated to repurchase a membership under any circumstances, other than the circumstances specifically described in this Membership Plan. The Company or the Club may, in its sole discretion, repurchase a resigned membership, which is not being transferred to the subsequent purchaser of the resigning member's residence in Lee or Collier Counties, on terms agreed to by the Company or the Club and the member. Any



membership so purchased shall be added to the Company or Club's reserved memberships.

#### **TRANSFER DURING MEMBER'S LIFETIME**

An Equity Yacht Club Member can request the transfer of his or her membership to an adult child or grandchild who is approved for membership in the Club. In order to effectuate a transfer to an adult child or grandchild, the member shall resign the membership and the Club shall pay to the member the amount of the membership contribution previously paid by the member. The adult child or grandchild will then purchase the membership from the Club for the amount of the membership contribution previously paid by the resigning member. The transfer of the membership to an adult child or grandchild shall not be subject to the waiting list.

#### **TRANSFER OF MEMBERSHIP UPON DEATH OF MEMBER**

Upon the death of a member, the membership will be transferred to the member's surviving spouse without the payment of any additional membership contribution. The member's spouse is automatically approved for membership in the Club. All others must be approved for membership, including the member's new spouse, if applicable.

Upon the death of a member, the surviving spouse, if any, may elect to: (i) continue the membership privileges without having to pay any additional membership contribution; (ii) resign the membership; or (iii) designate one adult child to acquire the membership, subject to the approval of the adult child for membership in the Club, by giving written notice to the Club within 60 days after the death of the member. Failure of the surviving spouse to elect one of said alternatives within the prescribed time period shall be deemed an election to continue the membership privileges. If there is no surviving spouse, and the deceased member has not designated one adult child as the beneficiary of the membership, the children of the member may designate one adult child to acquire the membership, subject to the approval of the Club. In the event there is no surviving spouse, or the surviving spouse does not desire to continue membership privileges, the membership will be deemed resigned and will be reissued by the Club on the same basis as any other resigned membership, whereupon the membership contribution paid for the membership will be refunded to the estate of the deceased member.

Only one transfer of the membership to an adult child shall be permitted. In order to effectuate a transfer to an adult child, the member's estate or surviving spouse, as the case may be, shall arrange for the Club to transfer the membership to the adult child for no additional membership contribution. The transfer of the membership to an adult child shall not be subject to any waiting lists.



## **LEGAL SEPARATION OR DIVORCE OF MARRIED MEMBERS**

In the event of the divorce or separation of spouses having membership privileges, the membership, including all of its rights and benefits, will vest in the spouse awarded the membership by an agreement of separation or a decree of divorce. Until the award of the membership and written notice thereof is provided to the Club, both spouses will be jointly and severally liable for all dues and charges and may both continue to enjoy membership privileges so long as such amounts are timely paid. The Club reserves the right, in its sole discretion, not to transfer the membership to either spouse if the Club, in its sole discretion, is unable to determine the person who is lawfully entitled to receive the membership. In the case of divorce, if the Club has been unable to determine which spouse is legally entitled to the membership within six months after the date of the divorce decree, the membership shall automatically be deemed resigned.

## **DUES AND ASSESSMENTS**

### **MEMBERSHIP YEAR**

The Club's membership year will constitute the 12 month period commencing September 1 and ending August 31, unless otherwise established by the Club from time to time.

### **DUES, FEES AND CHARGES**

Dues shall be payable on a monthly basis, unless otherwise determined by the Club from time to time. The Board of Directors may set the amount of dues at any level deemed appropriate. The current dues for use of the Club Facilities are indicated on the Schedule of Dues, Fees and Charges. The amount of dues, fees and other charges is subject to change from time to time by the Club.

### **OPERATING ASSESSMENTS**

Members of the Club will not be assessed for operating deficits prior to the Turnover Date. Members will only pay membership dues, fees and other charges established from time to time. The Club operating budget and the calculation of dues may include a reserve for capital replacements and improvements, and such reserve shall not be deemed an assessment. After the Turnover Date, the Board of Directors of the Club may find it necessary to make assessments, in addition to dues, to cover any operating deficits which may occur. Any assessments to cover operating deficits will be prorated among Equity Members of the Club based on the amount of dues charged during the year in which the deficit occurs.



## **CAPITAL ASSESSMENTS**

There will be no assessments for capital expenditures unless approved by a majority vote of Equity Members as provided in the Bylaws, except that assessments required to pay “extraordinary repairs or replacements” do not require member approval and may be imposed by the Board of Directors. In the event of any assessment for extraordinary repairs or replacements which is not voted on by the Equity Members, the Company will pay its proportionate share of the assessment based upon the number of unissued Equity Memberships held by the Company. The assessment shall be apportioned among the issued and unissued Equity Memberships in accordance with the terms of the following paragraph. Assessments for capital improvements made prior to the Turnover Date shall be subject to the approval of the Company, in its sole discretion. “Extraordinary repairs or replacements” shall mean repairs or replacements to the Club Facilities which result from acts of God, natural disasters, pestilence, weather, fires, the need to replace turf and landscaping on the Club property due to disease or other unanticipated cause, requirements imposed by governmental authorities after the date hereof and any events beyond the reasonable control of the Company or the Club.

Any assessment for capital expenditures which must be voted on by the Equity Members shall be voted on and paid as follows:

Assessments for capital expenditures to the Club Facilities shall be voted on by and prorated among all of the Equity Yacht Club Members based on the member’s dry slip size.

## **MEMBERSHIPS HELD BY COMPANY ARE NOT SUBJECT TO ASSESSMENTS OR DUES**

The Club will not make any capital or operating assessments or impose any dues or other charges on any Equity Membership during the period while the Equity Membership is held for sale by the Company except for the Company’s obligation to pay its share of any assessment for extraordinary repairs or replacements that are not voted on by the Equity Members. A member acquiring an Equity Membership from the Company shall not be subject to payment of any capital or operating assessment imposed or incurred prior to their becoming a member.

## **PAYMENT OF DUES BY RESIGNED MEMBER**

A resigned member shall be obligated to continue to pay dues, fees and other charges associated with the resigned membership until the reissuance of the membership by the Club. A resigned member shall be permitted to use the Club Facilities as long as the dues, fees and other charges continue to be paid by the resigned member. In the event that there are any amounts owing to the Club by a resigned member which are past due, the Club



reserves the right to move the resigned membership to the bottom of the reissuance waiting list until such amounts have been paid in full.

## **PRORATED DUES AND FEES UPON REISSUANCE OF MEMBERSHIP**

If a membership is reissued during a membership year, the resigned member shall be entitled to a refund of a pro rata portion of any dues and other fees paid in advance for which services have yet to be rendered.

## **MEMBERSHIP AGREEMENT**

### **APPLICATION PROCEDURE**

Each person who desires to become a member must mail or deliver to the Membership Director a fully completed and signed Membership Purchase Agreement and a check for the required membership contribution.

### **REVIEW OF APPLICATION**

After the Club has received the required materials, a determination will be made whether the applicant has satisfied the relevant conditions of membership. The determination of whether an applicant is approved for membership is made by the Company for all applicants for memberships being sold by the Company and all applicants acquiring a membership from the Club must be approved by the Board of Directors. If the application is not acted upon favorably, the applicant will receive a refund of any amount previously paid, without interest. The Club is under no obligation to give any reason for denying an application.

### **RIGHTS GOVERNED BY MEMBERSHIP DOCUMENTS**

Members of the Club agree to be bound by the terms and conditions of the Membership Documents, as amended from time to time, and irrevocably agree to fully substitute the membership privileges acquired pursuant to the Membership Documents for any present or prior rights or privileges in or to use the Club Facilities.

### **OTHER MEMBERSHIP PRIVILEGES AND USE PRIVILEGES**

The Club has the following additional membership and use privileges, in addition to the Equity Memberships:



## **EXISTING LESSEES OF DRY SLIPS**

Existing lessees of dry slips who do not acquire an Equity Yacht Club Membership may continue to lease the dry slip on a recallable basis. The existing lessees of dry slips will have no ownership interest in the Club or any voting rights.

## **LEASING A DRY SLIP**

Prior to the initial sale of all Equity Yacht Club Memberships, the Company may lease its dry slips through the Club. Equity Yacht Club Members may lease their amount of dry slip storage space through the Club's rental program if they desire to do so. All persons leasing a dry slip must be (i) approved by the Club, and (ii) must be sponsored by the Club, a member or the Company. The sponsor of a dry slip lessee will be responsible for the conduct of the lessee and for all charges and costs incurred by the Lessee which remain unpaid after the customary billing period and collection procedures by the Club.

## **HONORARY AND SEASONAL MEMBERSHIPS**

The Club may issue Honorary and Seasonal Memberships to persons designated by the Club. An Honorary or Seasonal Membership will entitle the Honorary or Seasonal Member to such privileges as may be determined by the Club, subject to the Club Rules. Honorary and Seasonal Members will not be required to pay a membership contribution but may be required to pay user and service fees established by the Club. The Club will determine the other terms and conditions of each Honorary and Seasonal Membership from time to time in its discretion, including whether or not dues will be paid. An Honorary or Seasonal Membership will not be assignable or transferable, except that the Club may, at any time, terminate an Honorary or Seasonal Membership and issue such membership to another person, without the payment of any fee.

## **RECIPROCAL PRIVILEGES**

The Club may, in its sole discretion, enter into reciprocal use privileges and access agreements with other clubs, as the Board of Directors determines appropriate from time to time, in its discretion.

## **COMPANY'S RIGHT TO DESIGNATE INDIVIDUALS TO USE CLUB FACILITIES PRIOR TO TURNOVER DATE**

The Company and its designees shall have the right to designate persons to use any or all of the Club Facilities, prior to the Turnover Date for any purpose and upon such terms and conditions as are determined from time to time by the Company. The persons designated by the Company shall include, without limitation, persons who are employees of the Company, the Club, persons who are prospective members in the Club, and persons



who are involved in special events held at the Club. The individuals designated by the Company are subject solely to approval by the Company. Use of the Club Facilities by the Company and its designees may not unreasonably interfere with the members' use of the Club Facilities.

#### **COMPANY'S RIGHT TO USE CLUB FACILITIES AFTER TURNOVER DATE**

After the Turnover Date, the Company and its designees will have the right to use the Club Facilities for the purpose of entertaining initial or resale purchasers of memberships upon payment of the use fees charged guests of members. Use of the Club Facilities by the Company and its designees may not unreasonably interfere with the members' use of the Club Facilities.

#### **RESTAURANT AND LOUNGE**

The restaurant and lounge at the Club will be open to the general public along with Club members. Equity Members will receive the benefit of preferred pricing on food.

### **CLUB TRANSFER AGREEMENT**

#### **TRANSFER OF CLUB FACILITIES TO CLUB**

The Company has transferred or will transfer to the Club all of its right, title and interest in the Club Facilities, in accordance with the terms and conditions of the Club Transfer Agreement, a copy of which is attached hereto as Exhibit A.

#### **CONSIDERATION FOR CLUB FACILITIES**

In consideration for the transfer of the Club Facilities, the Club has transferred to the Company all of the Equity Memberships to be issued in the Club. In addition to these memberships, the Club will pay to the Company on the Turnover Date, the book value of all supplies, inventories and other items held for resale on hand as of the Turnover Date. All membership contributions received from the initial sale of all Equity Memberships will belong to the Company and may be used by the Company in any manner whatsoever in its sole and absolute discretion.

#### **CLUB FACILITIES MAINTAINED IN GOOD WORKING ORDER**

The Club Facilities will be maintained by the Club until the Turnover Date in good working order, ordinary wear and tear excepted. The members of the Club are responsible for the costs of any capital improvements which they vote to make, and any extraordinary repairs or replacements, as provided herein.



## **CLUB ACCEPTS CLUB FACILITIES AS IS**

The Club Facilities were and will be acquired by the Club in their “where is, as is” condition. The Company and the Club make no representations concerning the final design, fitness, condition, construction, accuracy, completeness, location, date of completion, adequacy of the size or capacity in relation to the utilization or the future economic performance of, or the materials, furniture or equipment which are or will be used in, the Club Facilities, except as specifically set forth in the Membership Documents.

## **OPERATION OF CLUB**

### **BOARD OF DIRECTORS**

The Club will be governed by a Board of Directors in accordance with the Membership Documents. The Board of Directors will be responsible for the government and administration of the affairs and property of the Club, set dues and charges for members, establish rules and regulations and, in general, control the management and affairs of the Club, except as otherwise provided herein. The Board of Directors may not, however, operate the Club in contravention of the terms and conditions of the Membership Documents.

Decisions made by the directors appointed by the Company shall be in good faith and in a manner reasonably believed to be in the best interest of the Club and its members.

### **DESIGNATION OF DIRECTORS**

Prior to the Turnover Date, the Company shall appoint the members of the Board of Directors who shall serve until the Turnover Date or replaced by the Company. All directors must be Equity Members, except for the directors appointed by the Company. After the Turnover Date, all members of the Board of Directors will be elected by the Equity Members.

### **TURNOVER DATE**

The Turnover Date will be 60 days after the earlier of: (i) the initial sale of all of the Equity Memberships permitted to be issued in the Club, or (ii) August 31, 2012, provided that at least 90% of the total number of Equity Memberships have been initially sold, or (iii) any earlier date determined by the Company in its discretion, provided the Club’s accounting firm has reviewed the operating results of the Club and confirmed that the Club operated during the preceding 12 month period without an operating deficit.



Prior to the Turnover Date, the Company will fund all operating deficits and be entitled to retain any operating profits of the Club. The Club will be responsible for all operating deficits, and will be entitled to retain all operating profits, which result from the operation of the Club Facilities after the Turnover Date.

## **MANAGEMENT AGREEMENT**

The Club Facilities will be managed prior to the Turnover Date by the Company pursuant to a management agreement (the "Management Agreement"). The term of the Management Agreement shall expire on the Turnover Date. A copy of the Management Agreement is available upon request.

## **LIABILITY OF COMPANY AND ITS DESIGNEES**

Neither the Company nor any of its affiliates, successor and assigns or any of their employees, partners, shareholders, members, agents, officers and directors, nor the Club's incorporator or any of the members of the Board of Directors or officers appointed by the Company, shall have any liability to the Club or the members of the Club for decisions or actions taken regarding the operation of the Club or the Club Facilities, in accordance with and pursuant to the Membership Documents, on account of any mistakes of fact or any alleged errors of judgment made in good faith or for decisions or actions made under the business judgment rule, except where the same are guilty of a bad faith breach of an express provision of the Club Transfer Agreement.

## **BOARD OF GOVERNORS**

The Club may establish an advisory Board of Governors comprised of members whose purpose includes fostering good relations between the members and management of the Club, providing the Club with input on programs, plans and activities of the Club, and advising on the Club's policies and rules and regulations. The management of the Club shall meet with the Board of Governors on a periodic basis to discuss the operation of the Club Facilities. The Company will designate all of the members of the Board of Governors, may establish their terms as governors and may replace governors from time to time in its sole discretion. The Board of Governors shall have no duty or power to negotiate or otherwise act on behalf of the Club, its management or the members of the Club, and shall serve only in an advisory capacity. The management of the Club will have the final authority on all matters concerning the Club Facilities and the members of the Club.



## **MODIFICATION OF MEMBERSHIP DOCUMENTS**

### **BEFORE TURNOVER DATE**

The Company reserves the right prior to the Turnover Date to waive or modify the terms of the Membership Documents as long as the waivers and modifications are not materially adverse to the rights of the members. Any waiver or modification which is materially adverse must be approved by a majority vote of the Equity Members, in accordance with the Bylaws.

### **AFTER TURNOVER DATE**

After the Turnover Date and until the sale of all of the Equity Memberships, the Membership Documents of the Club may not be changed without the Company's written consent, which may be withheld by the Company for any reason whatsoever.

After the Turnover Date, subject to the immediately preceding paragraph, the Membership Documents may be altered, amended, or repealed or new Membership Documents may be adopted, only by: (a) a majority vote of all of the members of the Board of Directors, and (b) a majority of the votes cast by the Equity Members in person or by proxy at any duly called and constituted annual or special meeting of the members of the Club at which a quorum of the Equity Members is present either in person or by proxy. The proposed amendment must be set forth in the notice of the meeting.

After the Turnover Date, the Club Transfer Agreement may be changed only upon obtaining the Company's written consent, which may be withheld by the Company for any reason whatsoever.

### **DISPUTE RESOLUTION**

Any dispute between the Company and the Club or the Club members shall be submitted to mediation and, if necessary, arbitration in accordance with the terms of the Club Transfer Agreement.