



FLORIDA STATE UNIVERSITY COLLEGE OF LAW

2016 MOCK TRIAL INVITATIONAL



Antonio/Antonia Vargas v. Crump, Inc.

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ACKNOWLEDGEMENTS

The author of this problem would like to thank the following people:

Wayne Hogan, renowned trial lawyer and FSU College of Law alumnus and his wife, Pat Hogan, whose generous support makes this national competition possible.

Don Weidner, serving his last term as Dean of FSU College of Law. He has always been supportive of mock trial, and will be missed.

Carl Baum, my patient and never complaining program assistant, who helped put this packet together. Among other things, he created the wonderful vitae for Sydney Evers. He also came up with the last name “Crump” for you know who.

The FSU College of Law Mock Trial Team. You will see a lot of the mock trial team members at the event in many different capacities. Special thanks go to Lexie Miller, mock trial vice president, for helping organize this event.

Lamar Evers, Florida Department of Environmental Protection, division of State Lands, Bureau of Survey and Mapping, Mean High Water and Land Boundary Information System Program Manager, for taking the time to talk to the author of this packet about mean high tide lines, survey permitting requirements for tidal lands, and other technical issues.

Brian Kellenberger, director of beach operations for the Walton County, Florida, Tourist Development Council, who patiently answered all my questions about current Walton County beach issues.

Sydney Noye, assistant Walton County attorney, who spoke with me, and provided the State Attorney’s memo concerning prosecution for trespass after warning.

Assistant Dean Catherine Miller for helping make sure this event runs smoothly, and Matt Mortimer and his tech staff who provide services throughout the tournament. There are many others at the law school who provide assistance, are too numerous to mention, but are greatly appreciated.

All of the mistakes—scientific or otherwise--and ridiculous assertions and assumptions in this fictional problem are solely attributable to the author.

FSU COLLEGE OF LAW MOCK TRIAL TOURNAMENT AGENDA

ALL COMPETITION ROUNDS WILL BE HELD IN THE COURTROOMS LOCATED ON THE GROUND AND FIRST FLOORS OF THE ADVOCACY CENTER. MAP AND DIAGRAM ATTACHED TO THIS E-MAIL. TWO CLASSROOMS WILL ALSO BE USED DURING THE PRELIMINARY ROUNDS.

FEBRUARY 26TH

10:00 a.m.—Dean’s greeting, team drawings.

10:30 a.m.—Coaches’ meeting in A020. (ground floor of the Advocacy Center).

10:30 a.m. --Student competitors will meet with Matt Mortimer, our technology supervisor, in A025, which is one of the tech courtrooms, to discuss use of the technology in the courtrooms for the semi-final and final rounds. (Ground floor of the Advocacy Center).

1:30 p.m. to 5:30 p.m.—First round of the competition, first day of the competition.

Coffee, water, and sodas will be available for attorneys and coaches in A020 on the ground floor.

FEBRUARY 27TH

Coffee, juice, water, soda and snacks will be available in A020 on the ground floor, for attorneys and coaches.

8:30 A.M. TO 12:30 P.M.—First round, second day of competition.

LUNCH PROVIDED TO COMPETITORS AND COACHES IN THE LAW SCHOOL ROTUNDA—ACROSS THE STREET FROM THE ADVOCACY CENTER. MAP ATTACHED TO THIS E-MAIL.

1:30 p.m. to 5:30 p.m.—Second round, second day of competition.

BANQUET IN THE LAW SCHOOL ROTUNDA—Announcement of Awards and teams moving on to Semi-Finals.

FEBRUARY 28TH

Coffee, juice, water, soda and snacks will be available in A020 on the ground floor, and in the Reading Room on the First Floor of the Advocacy Center for attorneys and coaches.

8:30 A.M. TO 12:30 P.M.—Semi-finals.

LUNCH PROVIDED TO PARTICIPANTS IN LAW SCHOOL ROTUNDA.

1:30 P.M. to 5:30 p.m.—Final Round.

Announcement winners. Photos. Presentation of awards and fake checks.

Important Dates:

Requests for fact pattern clarification due: January 22, 2016

Competition dates: February 26-28, 2016

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All questions and correspondence should be addressed to:

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GENERAL INFORMATION

The purpose of this competition is to provide law students with the opportunity to develop their trial advocacy skills. Accordingly, the merits of the Plaintiff's or Defendant's case is not at issue. Each competition round is not decided on the merits of a team's case, but on the quality of the team's advocacy.

Requests for Clarification

Any requests for clarification of the rules or fact pattern must be made in writing and received by Ruth Stone via email at rstone@law.fsu.edu no later than 5:00 pm (EST) on January 22, 2016.

RULE VIOLATION AND FILING OF COMPLAINTS

A competitor or coach who violates any of the rules governing the Florida State University College of Law Mock Trial Competition may be subject to penalty or disqualification. If a team seeks to file a complaint under the rules, the team's coach should immediately notify Ruth Stone

or the FSU Mock Trial Competition Chair. Ruth Stone and the Chair will review the complaint and make a ruling, which shall be binding for that round of competition. The rulings will be governed by the rules of the competition.

LAW SCHOOL AND STUDENT ELIGIBILITY

Each team shall be comprised of four law students. Each school's selection method of its trial team(s) is left to their discretion.

REGISTRATION PROCEDURES

Student and Coach Registration

Each school must submit the names of the participating students and coach(es) for each team. Each team must complete the registration form and return it to Ruth Stone no later than January 22, 2016. To be registered for the competition, each school must submit a complete mailing address and graduation date for each student participating on the team.

Student Substitution Policy

The substitution of team members will not be permitted after January 22, 2016, except in the case of personal emergencies. Requests for substitution must be made in writing to Ruth Stone explaining the reason substitution is necessary.

COACHES

At least one coach must accompany each team to the competition. Only team coaches are permitted to attend the coaches' meeting. If a coach is unable to attend, he or she must notify Ruth Stone or the competition Chair. Only then may a student be permitted to attend the meeting in the coach's absence.

COMPETITION FORMAT

This is a trial skills competition. There is no written motion or trial brief writing component. Each team will consist of four law students. Two students will be advocates and two students will play the witnesses for their side each round. Every student on the team must advocate for one side. No dedicated witnesses will be permitted. Advocates and witnesses may change their roles from round to round, but roles must remain consistent throughout each individual trial.

Division of Responsibility

Each of the two team members must conduct at least one direct examination and one cross-examination. Only one team member may examine or cross-examine any one witness. The team member examining or cross-examining such witness is responsible for objecting to opposing counsel's questioning of that witness. One team member shall make the opening statement and the other team member shall make the closing argument.

Qualifying Rounds

Each team will compete in three qualifying rounds. The top four teams from the qualifying rounds will advance to a single elimination semifinal round. The top two teams from the semifinal round will advance to a single elimination final round.

Team Pairings in Qualifying Rounds

Pairing of teams in the qualifying rounds will be at random and conducted during the coaches' meeting prior to the first round. Each team will present both Plaintiff and Defense in the qualifying rounds. No two teams shall compete against each other more than once in the qualifying rounds.

Team Rankings in All Other Rounds

In the semifinal round, the first-ranked team will meet the fourth-ranked team, and the second-ranked team will meet the third ranked team.

The ranking of teams to determine the semifinalists and finalists will be determined by the following factors, respectively:

1. Win/loss record
2. Number of winning votes
3. Number of total points awarded to the team

Each succeeding criterion above will be used only if the prior criterion does not fully rank the teams, and will be used only to break ties created by the use of the prior criterion.

If paired semifinal teams have met in previous rounds they will each represent different sides than in the previous meeting.

THE TRIAL

The competition involves the trial of a civil lawsuit. The trial judge previously ruled that the case would be bifurcated, and the case being tried in the competition is the first phase of the case-the liability phase. Only evidence relevant to the liability issue will be received. There are no pending third-party claims.

The Federal Rules of Evidence (FRE) and Federal Rules of Civil Procedure (FRCP) are the applicable rules of evidence and procedure. Only these rules, the Suwannee statutes, the Suwannee administrative code provisions, and any applicable arguments from cited case law in the packet shall be permitted for use in motions and argument during the trial.

Students may argue based upon the comments or advisory notes to the Federal Rules of Evidence. Motions for a judgment as a matter of law are permitted. No written pretrial motions shall be permitted, solely oral pretrial motions.

Identity of Teams

During the competition, there shall be strict anonymity by the following method: each participating team shall be assigned a letter or number and shall be identified to the judges only in that manner. At no time shall any team member allude to the name of their school or their opponent's school. Each participant must adhere to this rule. A violation or a report of a violation may result in penalty of the offending party's school.

Trial Structure

The trial will proceed as follows:

- Opening statements for Plaintiff followed by Defendant
- Plaintiff's case-in-chief
 - Plaintiff's direct of Plaintiff's witness #1
 - Defendant's cross of witness
 - Plaintiff's redirect of witness
 - Similar for Plaintiff's witness #2
- Defendant's case-in-chief
 - Defendant's direct of Defendant's witness #1
 - Plaintiff's cross of witness
 - Defendant's redirect of witness
 - Similar for Defendant's witness #2
- Closing argument
 - Plaintiff's closing
 - Defendant's closing
 - Plaintiff's rebuttal closing

Each side is limited to two live witnesses whom they may call in any order.

- Plaintiff must call:
 - Antonio/Antonia Vargas
 - Sydney Evers

- Defendant must call:
 - Donald/Donna Crump
 - Ronnie Rousey

The trial has six (6) advocacy opportunities for each team: (1) opening statement; direct/redirect examinations (2); cross-examinations (2); and (1) closing argument. Each member of a team must handle three of the six opportunities. Opening statement and closing argument may not be presented by the same person. Each team member must conduct a direct and cross examination.

Please note that coaches and team members may not communicate during the trial round. Except for the final round, the courtrooms will be off-limits to all team members, coaches, friends, and family members who are not associated with either team competing, unless their team has already been eliminated from the competition.

Timing of the Trial

- Each team will have 80 minutes to complete their case.
- The time limit will be strictly enforced, although it is not necessary that all time allotted be used.
- There will be no time limits for specific aspects of the trial.
- Time on cross-examination is charged against the team conducting the cross-examination.
- Time will be stopped for objections and responses to objections.
- Performance at trial will be evaluated by a panel of judges and/or attorneys, one of whom will preside over the trial as Judge, making rulings as necessary, and the remainder (up to three) of whom will act as the jury.

Facts Outside the Record

Advocates must confine the questions and witnesses must confine their answers to the facts provided in the fact pattern and inferences which may reasonably be drawn therefrom (“the Record”), and any matters judicially noticeable under Rule 201 of the Federal Rules of Evidence. An “inference” is not any fact that a party might wish to be true; rather, it is a fact that is likely to be true, given the other facts in the case.

No objection may be made to the effect that that the opposing team is going outside the Record. Instead, instances of a party going outside the record may be addressed by means of impeachment of the offending witness or by contradiction using another witness or document.

When true, witnesses must admit, if asked, that the “facts” they have testified to are not in their deposition or otherwise in the record. Witnesses may not qualify this response in any misleading way by saying, for example, that they were not asked about the fact at deposition, or that the facts were contained in some other portion of the deposition, which was omitted from the record. The answer from the witness who is asked to admit the material was not in the deposition must be that the questioner is correct; to wit, “Yes, I did not say that in my deposition.” All judges will be instructed as to the significance of this form of impeachment, and will take into account

unfair additions to the record (i.e., inferences which may not reasonably be drawn from the record) in scoring that witness's team.

Witnesses

Any witness may be played by a person of either gender. Before the opening statement, each team should notify the other team of the gender of each witness they intend to call and any witness they could call but are choosing not to call.

Assume that all witnesses have seen the exhibits and depositions. Witnesses know only the facts contained in the background information, exhibits, and depositions.

All depositions are signed and sworn. The same attorney conducting direct examination of a witness shall also conduct any redirect examination.

The only lawyer who may object during witness testimony is the lawyer who will be examining that witness.

Witnesses may not be recalled. Witnesses will not be sequestered though you may ask for constructive sequestration.

JURY INSTRUCTIONS

The instructions provided in the fact pattern are the only instructions that will be given. The instructions are the only statements of the applicable substantive law. Instructions may not be eliminated or modified. No additional instructions may be tendered or will be given.

EXHIBITS

The use of demonstrative evidence is limited to that which is provided in the fact pattern, but participants may enlarge any diagram, statement, exhibit, or portion of the fact pattern if it is identical to the item enlarged, or if any changes provide no advantage to the party intending to use it.

Subject to rulings of the court, counsel and witnesses may draw or make simple charts or drawings in court for the purpose of illustrating testimony or argument. These materials may not be written or drawn in advance of the segment during which they are being used.

No demonstrative evidence, including charts or drawings, may reflect facts outside the record. Participants must clear all demonstrative evidence with the competition coordinator, as applicable, at the coaches' meeting preceding the competition.

All exhibits are stipulated as authentic and genuine for purposes of trial.

SCORING CRITERIA

Performances at trial will be evaluated by a panel of at least three judges and/or attorneys, one of whom will preside as the trial judge, with the others sitting as jurors. The trial judge will rule on any objections or motions for judgment as a matter of law.

Each member of the jury may award up to 105 points in each trial for each party.

If at the end of the trial, an evaluator awards the same number of points to both the plaintiff and the defendant, the evaluator will award one additional point to either the plaintiff or the defendant for effectiveness of objections and/or overall case presentation in order to break the tie.

Evaluators have been instructed not to score teams on the merits of the case.

The following criteria for scoring trial performances are set forth to assist both judges and student advocates. Evaluators are not limited to these criteria and may consider other aspects of strategy, technique, and so forth, which they view as important.

OPENING STATEMENT

Did Counsel:

1. Generally confine statement to an outline of the evidence that would be presented?
2. Clearly present counsel's theory of the case?
3. Persuasively present counsel's theory of the case?
4. Personalize self and client?
5. Allow opposing attorney to make argument during opening statement?
6. Make unnecessary objections?

EXAMINATION OF WITNESSES

Did counsel:

1. Ask questions that generated minimal valid objections?
2. Make/fail to make objections with tactical or substantial merit?
3. Respond appropriately to objections?
4. Know the rules of evidence and express that knowledge clearly?
5. Develop rapport with the witness?
6. Maintain appropriate general attitude and demeanor?
7. Address the court and others appropriately?
8. Demonstrate awareness of ethical considerations?

Did Direct-Examiner:

1. Use leading questions unnecessarily?
2. Develop testimony in an interesting and coherent fashion?
3. Follow up on witness' answers?
4. Present the witness in the most favorable light?

Did Cross-Examiner:

1. Appropriately use leading questions?
2. Control witness?
3. Follow up on answers and elicit helpful testimony?
4. Use impeachment opportunities?

CLOSING ARGUMENT

Did Counsel:

1. Present a cohesive theory of the case, pulling all the positive arguments together?
2. Deal effectively with the weakness(es) in his or her own case?
3. Make an argument that was persuasive?
4. Have an effective style of presentation?
5. Utilize the law effectively in the argument?
6. Inappropriately interrupt the argument of the opposing counsel?
7. Properly confine rebuttal to rebuttal matters?
8. Effectively counter the opponent's speech in rebuttal?

Competition Match Time

Each round will have a bailiff keeping time. If a bailiff is unavailable to keep time for rounds, one or more judges in each match should be instructed to keep time according to the timekeeping rules. Teams may keep track of time used for their own purposes. They may not, however, report their time used or that of an opposing team to the bailiff or judge for any purpose. Moreover, time use improperly reported by any team may not be considered or used by a bailiff or judge for any purpose.

In the event that the match judge or judges declare the time remaining as less than the team requires for closing or other parts of the trial, the coach or team member (whoever records the time discrepancy) should immediately consult with the Competition Coordinator during the break, who should then evaluate the circumstances and decide the amount of time remaining. Neither the team coach nor the team member should discuss the discrepancy with the match judge. Should the team be unable to consult with the Competition Coordinator before completion of the trial and the team requires additional time to complete the trial, the team may elect to complete the trial beyond the time allotted. When the trial is complete, the time will be evaluated

by the Competition Coordinator. The team will lose one point for every five minutes-or fraction thereof-of time in excess of its allotment.

Viewing of Score Sheets by Teams

Each team will receive their score sheets after the conclusion of the competition, and will receive them by e-mail.

MOCK TRIAL STIPULATIONS and GENERAL EXPLANATORY INFORMATION

1. This trial is bifurcated and will be tried on liability only.
2. The Federal Rules of Civil Procedure and the Federal Rules of Evidence apply.
3. Suwannee is a mythical state in a parallel universe.
4. The only state constitution provisions, statutes, administrative code provisions or ordinances you may use are the ones provided or cited to in the packet. You may assume that they are part of the jury instructions.
5. You may only use the case law cited in the packet.
6. The exhibits in the packet are authentic, and if otherwise admissible, may be placed into evidence by any witness with knowledge upon proper foundation.
7. Inevitably, you will find mistakes or things that were just too burdensome to fix. If you see issues, let me know and I will try to work them out.
8. We only have two courtrooms with technology capability. You will be required to use some kind of technology (your choice) in the semi-final or final rounds, ***but only in those rounds.***

IN THE CIRCUIT COURT IN AND FOR WALTON COUNTY, FLORIDA,
FIRST JUDICIAL CIRCUIT

ANTONIO/ANTONIA VARGAS,

CASE NO. 2014-CA-2345

Plaintiff,

vs.

CRUMP, INC.,

Defendant.

PLAINTIFF'S COMPLAINT

**COUNT ONE
FALSE IMPRISONMENT**

Plaintiff, Antonio/Antonia Vargas, sues Defendant, Crump Towers, Inc., and alleges:

1. This is an action for damages that exceed \$15,000.
2. At all times hereinafter mentioned and at the time of the incidents complained of, Plaintiff was an individual residing in Walton County, Suwannee.
3. At all times material, Defendant, Crump, Inc., was Suwannee corporation doing business in Walton County, Suwannee.
4. On July 4, 2014, Plaintiff went to a beach, commonly known as Blue Mountain Beach, located off Highway 30A, in Walton County, Florida. Plaintiff planned to spend the day at Blue Mountain Beach, swimming, and resting and relaxing on the dry, sandy beach.
5. On July 4, 2014, while Plaintiff was relaxing on the beach property owned by the State of Suwannee, Crump, Inc., by and through its authorized agents, Donald/Donna Trump and Ronnie Rousey, seized the Plaintiff on state owned land, and detained Plaintiff without any reasonable or probable cause for a long period of time and against Plaintiff's will.

COUNT II
MALICIOUS PROSECUTION

6. Plaintiff realleges paragraphs one through five of the Complaint.
7. The Defendant, through its agents and employees, caused written criminal charges to be filed against Plaintiff, accusing Plaintiff of trespass after warning on Defendant's property. These charges were false, and Defendant and its agents and employees knew or should have known that they were false.
8. Defendant, through its agents and employees, insisted that the State Attorney's Office of the First Judicial Circuit prosecute Plaintiff for trespass after warning while knowing or having reason to know that there was no probable cause for prosecution.
9. The State Attorney's Office of the First Judicial Circuit filed an information against Plaintiff for trespass after warning for the incident that took place July 4, 2014.
10. Defendant's actions in having Plaintiff arrested and prosecuted were malicious, and instituted without good cause.
11. On December 1, 2014, a Walton County, State of Suwannee jury found Plaintiff not guilty of trespass after warning.
12. As a result of the actions set forth in Count I and Count II of this Complaint, Plaintiff suffered great shame, indignity, mortification and disgrace, was arrested, handcuffed, fingerprinted and jailed, and as a result, lost his/her employment, and had his/her car impounded, and suffered other damages.

WHEREFORE, the Plaintiff, Antonio/Antonia Vargas, demands judgment against the Defendant for compensatory damages, punitive damages, the costs of this action and such other relief as this court deems just and appropriate.

DEMAND FOR JURY TRIAL

The Plaintiff demands a trial by jury of all of the issues triable by right.

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Suwannee Bar No. 487123
Cho, Cutillo, Tragos, and Vivo
Attorneys for Plaintiff
123 El Camino Real
Ft. Walton Beach, Florida
(850) 586-5425

IN THE CIRCUIT COURT, FIRST JUDICIAL CIRCUIT,
IN AND FOR WALTON COUNTY, SUWANNEE

ANTONIO/ANTONIA VARGAS,
PLAINTIFF,

vs.

CASE NO. 14-CA-2345

CRUMP, INC.,
DEFENDANT.

_____ /

ANSWER AND AFFIRMATIVE DEFENSES

COMES NOW Defendant, by and through its undersigned counsel, and hereby answers and otherwise responds to Plaintiff's Complaint as follows:

1. Admitted for jurisdictional purposes only, otherwise, denied.
2. Admitted.
3. Admitted.
4. Admitted that Plaintiff was on Blue Mountain Beach property located off Highway 30A on July 4th. Denied that Plaintiff was on State owned property. Without knowledge as to the remainder of the allegations.
5. Denied.
6. Defendant realleges its answers to paragraphs one through five of the Complaint.
7. Admitted that Defendant initiated written criminal charges against Plaintiff for trespass after warning. Denied that the allegations were false, or that Defendant knew or should have known that they were false.
8. Denied.
9. Admitted.
10. Denied.
11. Admitted.
12. Without knowledge.

FIRST AFFIRMATIVE DEFENSE

Plaintiff was trespassing on Defendant's property located at on July 4, 2014, without any legal authorization or justification, and, refused to remove from Defendant's property after repeated requests and warnings by the Defendant's agents and employees.

SECOND AFFIRMATIVE DEFENSE; MALICIOUS PROSECUTION

Defendant received advice of counsel before initiating criminal prosecution against Plaintiff for trespass.

DEMAND FOR JURY TRIAL

The Defendant demands a trial by jury of all of the issues triable by right.

Travis Truman

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IN THE CIRCUIT COURT, FIRST JUDICIAL CIRCUIT,
IN AND FOR WALTON COUNTY, SUWANNEE

ANTONIO/ANTONIA VARGAS,
PLAINTIFF,

vs.

CASE NO. 14-CA- 2345

CRUMP, INC.,
DEFENDANT.

_____ /

PLAINTIFF'S REPLY TO AFFIRMATIVE DEFENSE

Plaintiff denies that he/she was on property owned by Defendant on July 4, 2014. However, if Plaintiff was on Defendant's property, Plaintiff had a legal and authorized right of public access and use of the sandy beach portion of Defendant's property.

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IN THE CIRCUIT COURT, FIRST JUDICIAL CIRCUIT,
IN AND FOR WALTON COUNTY, SUWANNEE



ANTONIA/ANTONIO VARGAS,

PLAINTIFF,

vs.

CASE NO. 14-CA- 2345

CRUMP, INC.,

DEFENDANT.

DEPOSITION OF:

ANTONIO/ANTONIA VARGAS

TAKEN AT THE INSTANCE:

The Defendant/Crump, Inc.

DATE:

January 3, 2015

TIME:

Commenced at 2:00 p.m.
Concluded at 5:00 p.m.

LOCATION:

301 South Main Street
Ft. Walton Beach, Suwannee

REPORTED BY:

Veronica Hernandez
Court Reporter, Notary Public

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301 SOUTH MAIN STREET
WHITE SPRINGS, SUWANNEE 32301

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STIPULATIONS

The following deposition of Antonio/Antonia Vargas was taken on oral examination, pursuant to notice, for purposes of discovery, and for use as evidence, and for other uses and purposes as may be permitted by the applicable and governing rules. Reading and signing were not waived.

* * *

Thereupon,

ANTONIO/ANTONIA VARGAS

was called as a witness, having been first duly sworn, was examined and testified as follows:

BY Mr. TRUMAN:

Q. Tell us your name, please.

A. My name is Antonio/Antonio Vargas.

Q. Have you ever had your deposition taken before?

A. No.

Q. There are two main reasons for taking depositions. One is for find out what a person knows about the facts and issues in a case, and to find out what testimony you may offer. The other is for impeachment purposes. You are under oath here and at trial. If you testify differently at trial in response to a question I ask you today, I may be able to use your two different responses to question your truthfulness at trial. So if I ask a question today that you do not understand, please ask me to make it clearer before you answer. Also, all answers must be spoken. Head shakes and nods won't do. Do you understand?

A. Yes, I understand.

Q. What is your current address?

A. 1234 Drifters Way, Ft. Walton Beach, Suwannee 32547.

Q. Are you a United States citizen?

A. I guess I am what you call an anchor baby. Does that answer your question?

25 Q. How long have you lived in Suwannee?

26 A. All my life.

27 Q. How old are you, Mr./Ms. Vargas?

28 A. I am twenty eight years old.

29 Q. Can you read English?

30 A. I can speak it, I can read it, and I can write it. I have a college degree in journalism from the University
31 of Suwannee.

32 Q. Are you employed?

33 A. I'm working as a waiter/waitress at the Red Bar in Grayton Beach.

34 Q. Why are you not working as a journalist?

35 A. I had a job with the Blue Mountain Voice writing the "living" and "entertainment" sections. When I
36 got arrested for trespass, I was told that they needed someone who could write the news, not make it. In
37 some ways, this is a company town. I guess the newspaper was afraid of Mr./Ms. Crump and the ad
38 revenue the paper might lose.

39 Q. Let's talk about July 4, 2014. About what time did you arrive at the beach?

40 A. Eight o'clock. I wanted to get there early. As you can imagine, July 4th is a big day at the beach. Blue
41 Mountain isn't Destin with the hordes that place attracts, but Blue Mountain has become a very popular
42 beach, too. It's hard to find public parking at Blue Mountain, and almost impossible at Destin. I planned
43 to write a piece for the paper about the July 4th celebrations and about the people who came to the beach
44 that day—where they were from, why they chose Blue Mountain beach—that kind of thing.

45 Q. Did you drive?

46 A. Yes. I drove my Toyota Prius C to the public access point. I think the deputy who arrested me took a
47 picture of the public parking lot and you can see my car in that picture parked near the end of the lot.

48 Q. Did you have trouble finding parking?

49 A. No, but only because I was early. That's the only public access to Blue Mountain Beach, and as you
50 can see, it is a pretty small parking lot. On most days, you can see cars parked all along the grass across
51 the road. I don't know if that's legal or not, and I try to avoid parking on the grass. I didn't want to get
52 towed, although that ultimately happened anyway.

53 Q. Why was your car towed?

54 A. Because I couldn't make bail and get it before the County had it towed.

55 Q. Isn't the bail for trespass after warning \$1000?

56 A. Do you know how much journalists make? Especially those just out of school who work for a small
57 town mullet wrapper? I don't have friends with money to spare. It's a kind of "them" and "us" situation
58 in this town. There are the rich, and those who serve the rich. It took me two days to try to scrounge up
59 bail.

60 Q. Take your time, and tell me what happened after you got to the beach.

61 A. After I parked my car, I went into the public bathroom to change into my swimsuit. I hadn't brought
62 much with me besides my suit and a towel. I left my cooler and other items in the car. I thought I would
63 stay at the beach until around noon, then head up to the Red Bar for lunch. It gets really hot at the beach,
64 and it's an effort to lug heavy coolers and other items down to the beach, especially if you're by yourself,
65 and I was. This was more or less a self-imposed work assignment, so I was alone. I took the walkover to
66 the beach. Around nine o'clock, there were quite a few people on the beach, and some of them had
67 clearly decided to start the celebrations early. There were people sitting just a few feet away from me,
68 drinking beer after beer, and talking about their sexual exploits and plans to hook up with members of
69 the opposite sex at the beach. Well, that was hardly the kind of tourist I was interested in writing about, or
70 their reasons for coming to Blue Mountain Beach. I decided to walk further down the beach and see if I
71 could meet up with some more wholesome types. The sand on the beach is very finely ground quartz—
72 sands washed down the Appalachian Mountains and carried by the rivers that flow to the Gulf of Mexico.

73 It's thick and white and hard to walk in—it's like carrying weights on your ankles as you plow your way
74 through, and it gets surprisingly hot. The sand was already burning my feet, so I walked down to the
75 water. I put my towel on the sand, and took a quick dip in the water to cool off. I saw some other young
76 people swimming near me, speaking Spanish. They were all wearing bathing suits with "Rio Grande Swim
77 Team" imprinted on the suits. I speak Spanish, and I thought they might be the exotic tourists who came
78 to Blue Mountain for some interesting and special reason, so I struck up a conversation with one of them.
79 It turned out they were actually not just members of a swim team, but were here for an Ironman triathlon.
80 They'd cycled miles to get to Suwannee, and were practicing for the swimming and running parts of the
81 competition. Well, I thought I had hit the jackpot. What a great and interesting article this would be!
82 They were very friendly, and invited me to walk further down the beach where they'd left their belongings.
83 I picked up my towel, and followed them about a mile down the beach. It was a lot less crowded there.
84 The dunes are high enough that you can't see the houses behind them. That's why they call it Blue
85 Mountain—that plus the fact that it used to be covered with blue lupine flowers. The flowers probably
86 disappeared with all the hurricanes that came through ten years ago, or maybe they were gone before
87 then. Anyway, I was familiar with that part of the beach, and I've frequently walked the mile or more to
88 get away from the crowds at the public access point.

89 Q. Let me interrupt you for a minute. Did you see any "no trespassing" signs on that part of the beach?

90 A. No. I wasn't looking for any, and I was thinking about my article. I can't recall seeing a single sign.

91 Q. Do you know what time you got to that part of the beach?

92 A. It was probably about 9:30 to 10:00 a.m. I laid my towel down right next to the place where the dry
93 sand part of the beach drops off. I guess that's the furthest reach of the high tide. I've got long legs, and
94 my feet were still hot, so I was sitting on dry sand and my feet were in wet sand.

95 Q. What happened after you sat down?

96 A. I was interviewing Irvin Perez. It turned out that he is one of the world champion triathletes. I thought
97 how lucky can I be? This might be the story that catapults me from the Blue Mountain Voice to the St.
98 Pete Times. About fifteen minutes into the interview, I heard someone shouting, “Vamonos!” and
99 everyone but me took off running. At the time, I assumed they were beginning the running part of their
100 training. A few minutes after that, this person came up to me and asked if I knew that I was trespassing
101 on private property. I told him/her I wasn’t. I’ve played and swum at this beach from the time I knew
102 how to swim, and no one had ever told me to get off. At first I thought it was a joke, and I kept telling
103 him/her I wasn’t trespassing and saw no reason to leave. It’s true that I’d been away at college for four
104 years, and maybe something had happened that I didn’t know about, but still... Then, this other totally
105 obnoxious person came down and started screaming at me, and telling me I would rot in jail. I guess that
106 was the straw that broke the camel’s back, and writers try not to use clichés, but I am the kind of person
107 that will cut off their nose to spite their face. I just kept re-applying suntan oil while the obnoxious one
108 was screaming. I guess about an hour after I got there, this deputy showed up. He was pretty nice, and I
109 could tell he didn’t like the screamer. I couldn’t hear everything that was said, but finally the deputy came
110 over to me and told me it would probably be better for everyone if I just moved back to the public access
111 point. I told him I would if it was just him asking, but I wasn’t going to give that jerk the satisfaction. To
112 my surprise, the deputy told me I was under arrest for trespass after warning and cuffed me. I spent two
113 nights in the can.

114 Q. Why do you think you have a legal case against Crump, Inc.?

115 A. Because Mr./Ms. Crump and his/her minion had no right to detain me at the beach—Mr./Ms. Rousey
116 told me I couldn’t leave until the deputy showed up after Mr./Ms. Crump arrived. Also, I heard that there
117 are a lot of questions about exclusive rights in that part of the beach and I feel it is unfair to run people
118 off. Probably most of the rich people that live at The Retreat aren’t even at their Blue Mountain residences
119 most of the time. They’re probably snow birds, people who moved to Suwannee because we don’t have

120 a state income tax, or people who're getting big tax write offs renting out their houses when they're not
121 there. Why shouldn't the people who've lived here all their lives be able to use the sandy part of the
122 beach? Beaches should be for everyone. Maybe I'll write a book about it one day.

123 **MR. TRUMAN:** I have no further questions. Thank you for your time, Mr./Ms. Vargas.

124 **MS. CUTILLO:** No questions.

125 (Deposition concluded at 5:00 p.m.)

CERTIFICATE OF OATH

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STATE OF SUWANNEE)
COUNTY OF WALTON)

I, the undersigned authority, certify that said designated witness personally appeared before me and was duly sworn.

WITNESS my hand and official seal this 3rd day of January, 2015.

s/ Veronica Hernandez

Veronica Hernandez
Court Reporter
1-800-934-9000
(850) 878-3333

CERTIFICATE OF REPORTER

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STATE OF SUWANNEE)
COUNTY OF FOSTER)

I, VERONICA HERNANDEZ, Court Reporter, certify that the foregoing proceedings were taken before me at the time and place therein designated; that my shorthand notes were thereafter translated under my supervision; and the foregoing pages number 1 through 20 are a true and correct record of the aforesaid proceedings.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested, in the action.

DATED this 20th day of January, 2015.

s/ Veronica Hernandez
Veronica Hernandez
Court Reporter
1-800-934-9000
(850) 878-3333

IN THE CIRCUIT COURT, FIRST JUDICIAL CIRCUIT,
IN AND FOR WALTON COUNTY, SUWANNEE



ANTONIA/ANTONIO VARGAS,

PLAINTIFF,

vs.

CASE NO. 14-CA- 2345

CRUMP, INC.,

DEFENDANT.

DEPOSITION OF:

SYDNEY EVERS

TAKEN AT THE INSTANCE:

The Defendant/Crump Tower, Inc.

DATE:

January 3, 2015

TIME:

Commenced at 2:00 p.m.
Concluded at 5:00 p.m.

LOCATION:

301 South Main Street
Ft. Walton Beach, Suwannee

REPORTED BY:

Veronica Hernandez
Court Reporter, Notary Public

100% CORRECT STENOGRAPHY REPORTERS, INC.
301 SOUTH MAIN STREET
WHITE SPRINGS, SUWANNEE 32301

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STIPULATIONS

The following deposition of Sydney Evers was taken on oral examination, pursuant to notice, for purposes of discovery, and for use as evidence, and for other uses and purposes as may be permitted by the applicable and governing rules. Reading and signing were not waived.

* * *

Thereupon,

SYDNEY EVERS

was called as a witness, having been first duly sworn, was examined and testified as follows:

BY Mr. TRUMAN:

Q. Tell us your name, please.

A. My name is Sydney Evers.

Q. I assume you have had your deposition taken before.

A. Yes. Many times.

Q. I can presume you know that the two main reasons for taking depositions are one, for discovery purposes, to find out what you know about this case and what testimony or opinions you may offer, and second, for impeachment purposes in that you are under oath here and at trial so that contradictory statements may be used by me to question your credibility at trial.

A. Yes, I understand.

Q. And I am sure you know that if I ask a question that doesn't make sense; you should ask me to explain or clarify the question before you answer.

A. Of course.

Q. Ms. Cutillo has previously furnished your curriculum vitae to me as part of discovery in this case. Madam Court Reporter, would you please mark this as Exhibit "A" to this deposition? Let me show it to you. Is Exhibit "A" a fair and correct copy of your current vitae?

25 A. Yes.

26 And I see that you have a bachelor's in Geographical Information Systems and a J.D. degree, is that
27 correct?

28 A. That is correct.

29 Q. What does a degree in geographical information systems qualify you to do?

30 A. It qualifies me as a surveyor as more particularly set forth in my vitae.

31 Q. Have you ever testified at trial before?

32 A. This will be the tenth time if the parties go to court in this case.

33 Q. Did you testify as an expert in any of those cases?

34 A. Yes, I testified as an expert in five cases. I was a fact witness in the other five.

35 Q. What kinds of cases involved expert testimony on your part?

36 A. Three involved issues concerning whether a plat was surveyed correctly, particularly as it related to
37 the mean high water line or ordinary high water mark boundaries, and the other two involved
38 condemnation issues.

39 Q. What years did you testify as an expert concerning plat survey and water line boundaries?

40 A. All within the last two years.

41 Q. Where were those lawsuits tried?

42 A. Walton County.

43 Q. Do you consider three cases in two years to be a high number?

44 A. Probably, but boundary disputes, particularly as they relate to littoral rights, are common, even
45 frequent. Where beach front property is involved, even if the boundary line is clearly established, issues
46 may arise concerning the public's right of access to, or use of, privately owned property.

47 Q. What do you mean by littoral rights?

48 A. The right to land bordering the ocean, a sea, or a lake. Littoral rights issues are consuming more and
49 more of my work time.

50 Q. Why do you believe these types of lawsuits are engaging more of your time?

51 A. That requires a long answer. When you examine littoral boundary disputes, you can see that they
52 originate in the unpredictable instability and impermanence of the physical land/water boundary. This
53 frontier is constantly and irrevocably in flux. A waterbody is changeable in level or location. The
54 landform itself is mutable due to things like human-made works such as jetties and seawalls, or natural
55 occurrences such as plate tectonics, subsidence because of groundwater withdrawal or desiccation of
56 soil, or deposition or erosion of soil by water or wind. Add this to the innately litigious nature of
57 humankind, and the result is lawsuits.¹ Walton County in particular has problems that intensified about
58 five years ago that contribute to litigation. We've had a narrowing of the beach due to loss of sand. The
59 Department of Environment Protection has classified some of these areas as critically eroded. We've
60 lost sandy beach area yet the number of tourists visiting Walton county beaches continues to increase.
61 This causes beach congestion. We've received complaints from private property owners that the public
62 is moving from public beach areas and trespassing on private beach property. For the last several years,
63 private property owners have tried to force prosecution for trespass. The Walton County Commission,
64 the Walton County Sheriff's office and the State Attorney met concerning these complaints. The end
65 result was a memo stating that the Walton County Sheriff's Department, the Office of the State
66 Attorney, and the Walton County Commissioners would not prosecute for criminal trespass on wet sand
67 areas, re-nourished areas where Federal or State or local monies were used, or areas south of the mean
68 high tide mark. The Walton County Sheriff has now taken the position that they will not arrest anyone
69 who is within 20 feet of the water line without the private property owner producing a current, certified
70 survey showing the ordinary high water mark or mean high water line. The Okaloosa county sheriff's

¹ BRUCE S. FLUSHMAN, WATER BOUNDARIES: DEMYSTIFYING LAND BOUNDARIES ADJACENT TO TIDAL OR NAVIGABLE WATERS quoting or paraphrasing from page 69 (2002)

71 department has a similar policy. Lawsuits ensued. Private property owners filed a federal court case
72 claiming these policies denied them equal protection and due process. The federal courts found there
73 was no equal protection or due process claim.² Another case affecting litigation is the Tona-Rama case
74 where the Suwannee Supreme Court recognized the doctrine of customary usage. The court found that
75 the public has a right of access to the sandy shore portion of the beach for recreational purposes, even if
76 owned by a private property owner, if the usage is ancient, reasonable, without interruption, and free
77 from dispute. They stated that the interest and right of the public to the full use of the beaches should
78 be protected. The Court even waxed eloquent. I've read that case so many times that I can quote
79 passages: "No part of Suwannee is more exclusively hers, nor more properly utilized by her people than
80 her beaches...the right of the public of access to, and enjoyment of, Suwannee's oceans and beaches has
81 long been recognized by this court. ..[t]here is probably no custom more universal, more natural or
82 more ancient...than...bathing in the salt waters of the ocean and the enjoyment of the wholesome
83 recreation incident thereto". I could go on, but you've probably read that case yourself.³ But
84 after Tona-Rama, most of the cases interpreting customary usage have come out of Volusia County in
85 the Fifth District, and they are very restrictive. The Fifth District does not interpret Tona-Rama to mean
86 that there is a right by custom for public use of the entire sandy beach area of the entire State of Florida.
87 They read Tona-Rama to require evidence that establishes the existence of the public's right to access
88 and use a particular area of privately owned beach.⁴ In other words, customary usage and the extent of
89 that usage must be determined on a case by case, or beach by beach, basis. Sixty seven percent of
90 Suwannee's coastline is privately owned⁵ and beach usage and restrictions vary widely in Suwannee. In
91 Franklin County they even let dogs use the dry sand beach so long as they're on a leash. You might be

² Crystal Dunes Owners' Ass'n, Inc. v. City of Destin, Florida, No. 11-14595, 476 Fed.Appx. 180, 2012 U.S. WESTLAW 1293117, *cert. denied*, 133 S. Ct. 790 (Mem) (2012).

³ City of Daytona Beach v. Tona-Rama, 294 So. 2d 73, 75 (1974)

⁴ Trepanier v. County of Volusia, 965 So. 2d 276 (Fla. 5th DCA 2007)

⁵ http://www.beachapedia.org/State_of_the_Beach/State_Reports/FL/Beach_Access. (Last visited January 1, 2016).

92 interested in seeing some pictures I took of dogs on the beach. But—to continue with the legal issues
93 affecting Walton County and the surrounding area--there were complaints by private landowners about
94 beach re-nourishment that ended in litigation. In an effort to stem beach erosion, the Department of
95 Environmental Protection authorized beach re-nourishment in the Destin and west Walton county area.
96 That led to another lawsuit by private littoral property owners—the Stop the Beach Renourishment
97 case. Private littoral owners claimed the State had unconstitutionally deprived them of littoral rights
98 without just compensation. That case went all the way to the United States Supreme Court, and the
99 private littoral landowners lost.⁶

100 Q. That is a lot of information. Let’s break it down so I can understand these concepts as they relate to
101 this case. I hope you can explain some of these things to me in layman’s terms. I understand that a
102 coastline may change over time—in fact, overnight if a hurricane is involved. So, how do you establish a
103 littoral property owner’s seaward boundary line? How do you determine what is a private beach?

104 **MS. CUTILLO:** Objection to the form, compound.

105 **BY MR. TRUMAN:** I’ll rephrase. Can you define “private beach”?

106 A. First, there is no entirely “private beach”. That portion of the beach seaward of the ordinary high-
107 water mark is owned by the State and held subject to the public trust.⁷ The Suwannee state constitution
108 states that beaches below mean high water lines are held by the state in trust for all the people.⁸

109 Q. Could my client build a wall or other type of enclosure to mark off that part of the beach that he/she
110 privately owns?

111 A. Not in Walton County. We have a “leave no trace behind” ordinance.⁹ Until recently, it was
112 interpreted to mean no permanent structures or other objects could be left on the beach. Someone

⁶ Stop the Beach Renourishment, Inc. v. Florida Dep’t of Env’tl. Protection, 558 U.S. 810 (2009)

⁷ FLUSHMAN, WATER BOUNDARIES: DEMYSTIFYING LAND BOUNDARIES ADJACENT TO TIDAL OR NAVIGABLE WATERS 102 (2002).

⁸ FLA. CONST. art. X, §11.

⁹ WALTON COUNTY, FLA., ORDINANCE 2013-04 §22-54

113 challenged that law as it applied to enclosures, and we are amending it to clarify that it applies to
114 enclosing or roping off areas on the beach.

115 Q. I've seen that allowed in Okaloosa County.

116 A. This is not Okaloosa. Have you seen how those enclosures look? I took pictures in the Destin area to
117 show our county commissioners when the Commission was considering the need for a leave no trace
118 behind ordinance. When I was a child, I thought Destin must be the most beautiful beach in the world.
119 Look at those beaches now. The Walton County Commission wants to prevent that sort of thing in
120 Walton County.

121 Q. If you can't have enclosures on the beach, how does a littoral owner exercise his or her right to
122 exclude?

123 A. The better question is does the littoral owner have a right to exclude from his or her privately owned
124 sandy beach area. Currently, the portion of the beach that is open to the public varies from state to
125 state because states apply the public trust doctrine and custom differently. For example, Massachusetts,
126 Pennsylvania, and Virginia use the mean low tide line to divide the public from the private beach;
127 California, Florida, Rhode Island, and Suwannee use the mean high tide line; Hawaii uses the debris line;
128 Texas uses the natural vegetation line; and in Oregon and New Jersey the public has access to the dry
129 sand area. In most states, however, the public has very limited rights to the portion of the beach above
130 the mean high tide line.¹⁰ The United States Supreme Court in *Borax, Ltd. v. Los Angeles*¹¹, held that
131 the ordinary high-water mark property boundary of lands adjacent to or along tidal waters would be
132 physically located by the use of the mean high-water line. I should explain that "ordinary high water
133 mark", which is a legal term, means the same thing as the "mean high water line", which may be more
134 of a scientific term. As I said, many states use the mean high water line to demarcate the boundary

¹⁰ Robert Thompson, *Property Theory and Owning the Sandy Shore: No Firm Ground to Stand On*, 11 Ocean and Coastal L.J. 47, quoting from pages 49-50 (2005-2006)

¹¹ *Borax, Ltd. v. Los Angeles*, 296 U.S. 69 (1935)

135 between State and private property. This line is not physical, you cannot see it with the human eye.
136 The actual high water line varies over time due to the interacting gravitational forces of the sun, the
137 moon, and the earth in conjunction with the hydrographic, or configuration of, the tidal basin. In other
138 words, the relative positions of the earth, sun and moon, and the shape or configuration of the tidal
139 basin affect the actual high water line. Meteorological conditions, such as wind or barometric pressure
140 can have short-term, but radical effects on the tides. Wave energy may be higher in the winter resulting
141 in less sandy beach area while being lower in the summer, resulting in a larger sandy beach area. Tide-
142 producing forces are hardly consistent or uniform. The forces vary from locale to locale, from day to
143 day, from month to month and from year to year. The range of the tides is not constant.¹²

144 Q. I'm no mathematician or scientist, but I assume from what you said that the mean high water line is
145 not necessarily the same thing as the actual high water line on any particular day at any particular time?

146 A. That is correct. Determining the mean high water line is based on a series of observations or
147 measurement systematically taken over many years. An 18.6 year period is considered a full tidal cycle.
148 This is because the more important of the periodic tidal variations due to astronomic causes—changes
149 related to the changing positions of the sun, moon, and earth--go through one complete cycle every
150 18.6 years. This is called a tidal epoch. In addition, randomly recurring meteorologic variations are
151 assumed to balance out during a period of this length. This period may be averaged out to 19 years.¹³
152 Suwannee has statutorily defined the mean high water as the average height of the high waters over a
153 19 year period or for shorter periods of observation, the average height of the high waters after
154 corrections are applied to eliminate known variations and to reduce the result to the equivalent of a

¹² FLUSHMAN, WATER BOUNDARIES: DEMYSTIFYING LAND BOUNDARIES ADJACENT TO TIDAL OR NAVIGABLE BODIES quoting or paraphrasing 111 (2002)

¹³ Id., at 117.

155 mean 19-year value. The statutory definition of the mean high water line is the intersection of the tidal
156 plane of mean high water with the shore.¹⁴

157 Q. Who collects the information concerning the tidal plane?

158 A. Periodic tidal data has been and is being accumulated through the system of tide stations operated
159 by the United States Coast and Geodetic Survey and the National Ocean Survey at harbors and particular
160 coastal locations. These are typically spaced at one or two hundred mile intervals. They are spaced with
161 at least one in each bay or other area with unique meteorological conditions which tend to cycle annually.
162 States, such as Suwannee, may have additional tidal stations to collect more localized data.

163 Q. How is this information used?

164 A. One may convert this data, through statistical and mathematical means, into various vertical planes of
165 reference, known as "tidal datums". Tidal datums are quite simply defined and can be readily,
166 accurately, and certainly determined. It is not essential that tidal data be obtained for an entire 19 year
167 tidal cycle. Through statistical and mathematical means, one can derive a 19 year mean from a shorter
168 series of observations.¹⁵ It should be noted that tidal datums are a local phenomenon because of the
169 various local forces shaping the tides. There can be considerable difference in the elevation of a tidal
170 datum from point to point in the same general vicinity. Therefore, for use for a water boundary, the
171 datum must be determined in the immediate area of its intended use. Because of the local variation in
172 the elevation of tidal datums, it is obvious that datums would have to be determined quite densely
173 along a coast for precise boundary determination. It is equally obvious that it would be impractical to
174 do so if 19 years of observation are necessary at each desired datum point. Fortunately, methods have
175 been developed for correcting short term observations to the equivalent of a 19 year mean. The most
176 satisfactory way to achieve this is by simultaneous observations at the desired point and at a control

¹⁴ FLA. STAT. §177.27(14)-(15) (2015).

¹⁵ FLUSHMAN, WATER BOUNDARIES: DEMYSTIFYING LAND BOUNDARIES ADJACENT TO TIDAL OR NAVIGABLE WATERS, quoting or paraphrasing from 117 (2002).

177 station at which 19-year mean values are known. The observed mean tidal datums may then be
178 reduced to a value equivalent to a 19-year mean by a mathematical process using a ratio of tide ranges
179 observed at the two stations.¹⁶ There are vertical and horizontal components of a water boundary.
180 Once the vertical plane of the water is determined by locating the mean high water line, you must find
181 where that plane intersects with the landform to determine the water boundary. While the vertical
182 component of the boundary is basically stable, being based on tidal observations over nineteen years,
183 the horizontal element of the boundary determination may be anything but stable, particularly as it
184 relates to a sandy beach. The intersection of the vertical plane of mean high water with the landform
185 changes with erosion and accretion, seasonal variations in the beach, wind, waves, storms and man-
186 made changes to the beach—anything that changes the profile of the beach. The land surface or
187 landform that the water (the datum plane) intersects is, however, constantly in flux.¹⁷ This intersection
188 is a “snapshot” of only one instant of time and physical condition which may be entirely and
189 unpredictably different in the very next instant. The boundary does not provide a clear on/off signal,
190 and is not readily observable or identifiable by the casual observer.¹⁸ The coastal boundary’s physical
191 location continues to move, to ambulate, unless through a legal determination, it becomes necessary to
192 fix a location for an instant in time or the relevant time period at issue.¹⁹ This principle was legally
193 recognized in the case of Lechuza Villas West v. California Coastal Com. where the court held that the
194 coastal boundary is an ambulatory boundary.²⁰

195 Q. Would a surveyor be able to determine at this date where the water boundary was for the beach at
196 The Retreat on July 4, 1999?

¹⁶ George M. Cole, *Tidal Water Boundaries*, 20 Stetson L. Rev. 165, quoting from 172, (1990).

¹⁷ FLUSHMAN, *WATER BOUNDARIES: DEMYSTIFYING LAND BOUNDARIES ADJACENT TO TIDAL OR NAVIGABLE WATERS*, quoting or paraphrasing from 126 (2002).

¹⁸ Katrina M. Wyman, Nicholas R. Williams, *Migrating Boundaries*, 65 FLA.L.REV. 1957, quoting from pages 1967-1968 (2013).

¹⁹ FLUSHMAN, *WATER BOUNDARIES: DEMYSTIFYING LAND BOUNDARIES ADJACENT TO TIDAL OR NAVIGABLE WATERS*, 128 (2002).

²⁰ Lechuza Villas West, 60 Cal. App. 4th 218 (1998).

197 It would be difficult to recreate a historical boundary because of the difficulty in determining the shape
198 of the landform at the desired point in the past. Historical tidal observations might be available to
199 determine the vertical component of the historical boundary because the federal government has
200 monitored tides for over 150 years. But it would be difficult to fix the point along the shore where the
201 mean high water line historically intersected with the shore, because the landform will have changed in
202 the interim. To recreate the shore as it stood in the past likely would require turning to old
203 photographs, maps, surveys, and archival records that may not provide especially accurate or precise
204 description of the shore at the relevant point in time at issue.²¹ The land surface is ever changing its
205 relative elevation with respect to the adjacent water body, and this is most dramatically evidenced in
206 the case of sandy beaches where you may find evidence of accretion, erosion, or avulsion, all of which
207 affect littoral property boundary lines.

208 Q. What do the terms accretion, erosion, and avulsion mean?

209 A. These terms describe a physical process by which the geographic location of a boundary line changes,
210 and the resultant legal effect. In reference to land bordering the ocean, accretion is the natural process
211 of slow, gradual and perhaps almost imperceptible addition to the dry sand area of the beach. It results
212 from deposits of alluvion, i.e., sand, or other elements, upon the shore, or by a recession of the water
213 from the shore. Erosion is the opposite of accretion. It involves the slow, gradual loss of sand from the
214 dry part of the beach. Avulsion is the loss of lands bordering on the seashore by sudden or violent
215 action of the elements, perceptible while in progress.²² Littoral property suddenly created or destroyed
216 by hurricanes is an example.

217 Q. What is the legal effect on the property boundary lines?

²¹ Katrina M. Wyman, Nicholas R. Williams, *Migrating Boundaries*, 65 FLA L. REV. 1957, quoting from page 1982 (2013).

²² National Oceanic and Atmospheric Administration Shoreline Website, *A Guide to National Shoreline Data and Terms, Glossary*, available at <http://shoreline.noaa.gov/glossary.html>

218 A. There are some few exceptions, but the littoral property owner takes the gain with accretion or the
219 loss with erosion. With avulsion, the rule is that the geographic location of the ordinary high-water
220 mark property boundary remains unaltered.²³ There are other issues and rules involving beach re-
221 nourishment. The Stop the Beach Renourishment case held that under Suwannee law, as at common
222 law, formerly submerged land that becomes dry property by avulsion continues to belong to the owner
223 of the seabed. Regardless of whether an avulsive event exposes land previously submerged or
224 submerges land previously exposed, under Suwannee law the boundary between littoral property and
225 sovereign land does not change, but remains what was the mean high-water line before the avulsive
226 event. Also, under Suwannee law, when a new strip of land has been added to the shore by avulsion,
227 the littoral owner has no right to subsequent accretions. Under Suwannee law, the State as owner of
228 the submerged land adjacent to littoral property has the right to fill that land, so long as it does not
229 interfere with the public's rights and the rights of littoral landowners. Further, under Suwannee law, if
230 an avulsion exposes land seaward of littoral property that had previously been submerged, that land
231 belong to the State even if it interrupts the littoral owner's contact with the water.²⁴

232 Q. What effect does that have on the private property landowner's boundary line?

233 A. Simply put, Suwannee has statutory authority set forth in Suwannee Statutes, Chapters 161 and 177
234 as well as various provisions of the Suwannee Administrative Code to establish an erosion control line
235 for beaches that have been determined to be critically eroded by the state Department of
236 Environmental Protection.²⁵ Surveyors provide surveys no more than six months old to establish the
237 current mean high water line. This mean high water line, after an approval process, becomes the new
238 erosion control line which is recorded in the county clerk's official records. That line is a permanent line;
239 it is not ambulatory--it does not shift. The State then owns all dry sandy beach seaward of the erosion

²³ FLUSHMAN, WATER BOUNDARIES: DEMYSTIFYING LAND BOUNDARIES ADJACENT TO TIDAL OR NAVIGABLE WATERS, 95-98 (2002)
²⁴ Stop the Beach Renourishment, Inc. v. Florida Dep't of Environmental Protection, 560 U.S. 702 (2010).
²⁵ FLA. STAT. §§161.141, 161.161, 161.181, 161.191, 161.201, 161.211, CHAPTER 177; FLA. ADMIN. CODE ANN. 5J-17 (2015)

240 control line. A new sandy beach is formed through a process of dredging sand from other landforms and
241 filling the State owned submerged land to create a wider dry sand beach.

242 Q. Are you familiar with the Blue Mountain Beach area in Walton County?

243 A. I am very familiar with that area. I am a Suwannee native, and was born and raised in Walton
244 County. On a personal level, I swam and kayaked at Blue Mountain Beach since I was a teenager. And
245 I've recently started paddle boarding out there. I am also familiar with the Walton County beaches in
246 my role as the County Attorney. Among other things, I've been involved in several beach disputes
247 involving issues of beach re-nourishment, private landowner's littoral rights, and the public's right of
248 access and use of the sandy beach areas.

249 Q. Has Blue Mountain Beach been re-nourished?

250 A. The dunes were re-nourished in the last decade.

251 Q. The dunes are not what you would consider to be the sandy beach area, are they?

252 A. No. They are covered with sea oats and other plant life and mark the point where the vegetation line
253 begins for that area of the beach. The vegetation line is not at the mean high water line, and man-made
254 dune walkovers are provided at various access points to the beaches to protect the dunes and
255 vegetation, which help to control erosion.

256 Q. Other than the dunes, has Blue Mountain Beach at The Retreat ever been re-nourished?

257 A. No, but there are state approved plans to re-nourish Blue Mountain Beach in 2016. There will be no
258 question that the public will have a right of access, and use of the re-nourished part of the beach.²⁶

259 Q. Do you believe the public had a right of customary access to and usage of The Retreat's privately
260 owned beach on July 4, 2014?

261 A. Our Walton County ordinance states that no official position is taken as to the right of customary use
262 of any of Walton County's privately owned beaches.²⁷

²⁶ <http://visitsouthwalton.com/industry/beach-nourishment> (last visited December 29, 2015).

263 Q. You do realize that law enforcement officers in Okaloosa County obtained an opinion from the
264 Suwannee Attorney General's Office that states that until a court establishes a "customary right of use"
265 by the public in private beach property that private littoral owners may make complaints of trespass to
266 local law enforcement officers as they occur?²⁸

267 A. I am well aware of that opinion. As you surely know, it is advisory only, not a binding opinion. I also
268 do not think it contradicts any testimony I have given here today.

269 Q. Did you attempt to have an ordinance enacted that would have recognized customary use and
270 access?

271 A. Yes, I did. Walton County had so many problems regarding the right of beach use and access, as I
272 detailed earlier, that I thought an ordinance clarifying public access and use might alleviate some of the
273 uncertainty.

274 Q. What did the proposed ordinance provide?

275 A. The proposed ordinance primarily recognized the public's long-standing customary use of the dry
276 sand areas of the county's beaches while establishing a twenty-five foot buffer zone around any
277 permanent structure owned by a private entity that was located on, or adjacent to, the dry sand areas of
278 the County's beaches, except as necessary to utilize an existing beach access point for ingress and egress
279 to the county's beaches.²⁹ The ordinance was rejected by the County Commission.

280 Q. Why did the proposed ordinance fail to pass?

281 A. The ordinance received opposition from private beachfront landowners. Many of them are very
282 wealthy and influential. People, including Mr./Ms. Crump, threatened to sue, claiming the County was

²⁷ WALTON COUNTY, FLA., ORDINANCE § 22-52 (2015).

²⁸ Re: Municipalities—Sheriffs—Law Enforcement—Beaches—regulation of dry sand portion of beaches, Op. Fla. Att'y Gen. 2002-38 (2002).

²⁹ DESTIN, FLA. PROPOSED ORDINANCE NO. 351 (June, 2009) (rejected). (Author's note: There was never a proposed ordinance for Walton County recognizing the doctrine of customary usage. The Destin proposed ordinance may be used as a Walton County proposed ordinance for this hypothetical case. Destin is in Okaloosa, a neighboring county to Walton.)

283 trying to condemn their property without just compensation. In fact, Mr./Ms. Crump, and excuse my
284 language here—I’m quoting—said, “You think you’re going to win, but you’ll lose, and you’ll get
285 schlonged.” He/she also said he/she would personally see that I lost my job if I fought them on this. The
286 County received threats of litigation from the Southeastern Legal Foundation, Inc.--that it would fight
287 the County if the ordinance passed.³⁰

288 Q. Who or what is the Southeastern Legal Foundation?

289 A. A conservative public interest law firm that advocates limited government, individual economic
290 freedom, and the free enterprise system. Its mission is to look for cases to engage in litigation and
291 public policy advocacy.³¹

292 Q. What efforts did you make to establish customary usage prior to submitting the ordinance to the
293 Commission?

294 A. A lot of things. I researched historical and archaeological information to establish that the beach
295 areas, particularly those that abut Highway 30 A in Walton County, commonly known as Blue Mountain
296 Beach, had been used by the public from time immemorial. Historical archives and archaeological
297 records show that Native Americans were accessing and using Walton County beaches since the seventh
298 century. The Euchee, Creek, and Muscogee tribes were the first known settlers in what later became
299 known as Walton County. The first non-Indian settlers were Scots who migrated from the Carolinas in
300 the early 18th century. Most of the early white settlers in Walton County concentrated in the northern
301 part of the county, around DeFuniak Springs, away from the beach areas. Walton County was created in
302 1824. The primary industries in Walton County were raising cattle, farming, turpentine, and logging
303 until relatively recently. Locals went to the beaches for bathing, recreation, fishing, and distilling salt

³⁰ Jennifer A. Sullivan, *Laying Out an “Unwelcome Mat” to Public Beach Access*, 18 J. Land Use & Envtl. L. 331, 343 (2003).

³¹ www.southeasternlegal.org/about-slf/

304 from the gulf water.³² People would stay a week or more to obtain a year's worth of salt. There was no
305 easy access to the beaches from the other parts of the state until the Choctawhatchee Bridge opened in
306 1939. There were no other bridges over the Choctawhatchee Bay, and what roads existed were merely
307 sand trails.³³ I collected over 2,000 affidavits stating that the public regularly had access to, and use of,
308 Walton County beaches. Those affidavits are part of the business and public records of the Walton
309 County Commission developed when the commissioners were holding public hearings on the proposed
310 ordinance. Even as of 2010, Walton County, though one of the largest counties in size in Suwannee, had
311 a total population 55,043. The 2014 census estimate for 2014 only shows an additional six thousand
312 people.³⁴ The logical inference is that the rest of the people to be found in Walton County are visitors
313 and seasonal residents. The Walton County beach area wasn't heavily developed until Suwannee gave
314 permission to Crump, Inc., Suwannee's largest private landowner, to develop 27 miles of coastline in the
315 Okaloosa/Walton county area. In return, Crump, Inc. only provided two public beach-access points.³⁵

316 Q. Your resume indicates you hold membership in the Surfrider Foundation. Is that correct?

317 A. Yes, it is.

318 Q. Do you support the Foundation's mission statement?

319 A. Yes, in my role as a private citizen.

320 Q. I'd like to show you a document now. Madam Court Reporter, would you please mark this as Exhibit
321 "B" to this deposition? Mr./Ms. Evers, do you recognize this document?

322 A. I only recognize it through documents that were provided to me by Ms. Cutillo. It purports to be a
323 plat showing the property at The Retreat and Crump Tower.

324 Q. Why did you use the phrase "purports to be a plat"?

³² <http://www.co.walton.fl.us/index.aspx?NID=314>

³³ <http://www.http://www.visitsouthwalton.com/about/history-of-south-walton>

³⁴ <http://quickfacts.census.gov/qfd/states/12/12131.html>

³⁵ Jane Costello, Beach Access: *Where Do You Draw the Line in the Sand?*, N.Y. TIMES, Jan. 21, 2005

325 A. I've searched the Department of Environmental Protection's records, and I can find no evidence that
326 this plat was ever submitted for approval. There is no record of this plat in the Department's records.

327 Q. You would agree with me that it comports with Suwannee statutes in Chapter 177 of the Suwannee
328 Statutes.

329 A. I would agree that the County Commission approved the plat in 1999, and it was recorded as an
330 official record by the Walton County Clerk of Court's office.

331 Q. What issues do you have with the plat?

332 A. As I said, it was not submitted to the Department of Environmental Protection for approval. The law
333 in effect at the time required surveyors to contact the Department prior to the undertaking of a tidal
334 survey. Surveyors were required to obtain approval of procedures to be used and for the location of the
335 control tide station. Section 16-3.12(1)(2) of the Suwannee Administrative Code stated that the correct
336 use of extrapolated mean high water points; interpolated mean high water point, or lines located by
337 leveling, tide-time comparisons, or biological interpretation; and tide coordinated aerial photography for
338 mean high water line demarcation varied with each section of coastline. If those techniques were to be
339 utilized in making a coastal boundary line survey, the surveyor was supposed to obtain prior approval
340 from the Department of the procedures to be used. In addition, those surveyors were required to
341 submit a copy of the results of the survey within 90 days after completion of the work if it was to be
342 recorded or submitted to any court or agency of state or local government.³⁶ That apparently was not
343 done here. At this point in time, there is no way of knowing if the surveyor surveyed the plat according
344 to regulations that were in effect in 1999. In sum, there is no way to determine what the mean high
345 water line was if we don't know if the surveyor utilized the correct measures to establish where the
346 vertical datum intersected with the shoreline. Here you are in 2014 trying to reconstruct the 1999

³⁶ FLA. STAT. § 177.37 (2015).

347 intersection of the vertical datum with the shoreline as it existed at some point in 1999. As I said
348 before, it is difficult to establish a historical shoreline.

349 Q. I'm going to show you another document. Madam Court Reporter, would you mark this as Exhibit
350 "C" to this deposition? Mr./Ms. Evers, do you recognize this document?

351 A. Again, Ms. Cutillo showed this document to me when she consulted with me about this case. I see
352 that it is the declaration of covenants for The Retreat's homeowner's association.

353 Q. You would agree that it is filed in the Walton County Clerk of Court's official records?

354 A. Yes.

355 Q. There is no dedication in either Exhibit "B" or "C" that makes any dedication to the general public for
356 use of the dry, sandy beach on The Retreat property?

357 A. That is correct. I pointed that out to Ms. Cutillo.

358 Q. Do you believe that the public has a right by the doctrine of prescription?

359 A. No. In Suwannee the courts have not generally found prescriptive easements over private dry sand
360 beach. There is an adversity requirement that is generally difficult to prove. There must be some claim
361 of right other than permission from the owner. We know The Retreat is actively chasing the public off
362 the dry sand beach, but that's probably only been in the last five years. Crump, Inc., never made an
363 issue of public use until the company's business shifted from logging to land development, so any usage
364 during that time period was probably permissive. The burden would be on the challenger to show that
365 it was not. The use must be adverse to the owner's interests for at least twenty years, and I don't think
366 that could be established in this case. I told Ms. Cutillo that in my opinion, any pleadings claiming either
367 dedication or prescriptive easement would go nowhere, and I believe she's amended her pleadings since
368 we had that discussion.

369 Q. Madam Court Reporter, would you mark this document Defendant's Exhibit "D" to this deposition?

370 Mr./Ms. Evers, I'm now showing you Exhibit "D". Do you know what this exhibit is?

371 A. Yes. It shows property assessed to Crump Tower, The Retreat, Homeowner's Association by the
372 Walton County property appraiser's office. I reviewed that survey prior to today. It is part of the public
373 record of the Walton County Property Appraiser and Tax Collector's offices.

374 Q. Why does this survey not show Crump Tower's seaward property boundary at the water line?

375 A. As I told you previously, the mean high tide line intersection with the water boundary changes over
376 time. Again, this is a 2014 survey taken in July, 2014. My opinion is that this survey captures the water
377 boundary at that moment in history. This is what we call a "summer beach". Winter beaches and
378 summer beaches differ in the amount of sandy beach that is exposed. I suggest you read the Lechuza
379 Villas West case.³⁷

380 Q. Do you see any permanent resolution that would resolve all the issues related to use and access to
381 the dry sand beaches in Suwannee?

382 A. Not unless the Suwannee Supreme Court expands or clarifies the customary use doctrine to
383 encompass the all of the dry sand beaches in Suwannee much like Oregon and New Jersey courts did, or
384 the legislature takes some action.

385 Q. Are you being paid an expert witness fee in this case?

386 A. No. My county job, which is full time, does not allow outside compensation. I am not even sure I will
387 get the statutory witness fee provided by Suwannee statute § 92.142 of \$5 a day for my appearance or
388 the six cents per mile for travel to and from the courthouse.

389 Q. Finally, do you know Mr./Ms. Vargas?

390 A. I've never had any contact of any sort with the Plaintiff in this case. I wouldn't know him/her if I
391 passed him/her in the street.

392 Q. Thank you. I don't have any further questions.

393 **MS. CUTILLO:** I have no questions.

394 (Deposition concluded at 5:00 p.m.)

**EXHIBIT A
(Sydney Ever's Deposition)**

**EXHIBIT B
RETREAT PLAT FROM WALTON COUNTY RECORDS**

**EXHIBIT C
RETREAT HOMEOWNERS' ASSOCIATION COVENANTS AND RESTRICTIONS**

**EXHIBIT D
THE RETREAT BEACH CLUB PROPERTY LINE, COURTESY OF THE WALTON COUNTY PROPERTY
APPRAISER WEBSITE**

CERTIFICATE OF OATH

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STATE OF SUWANNEE)
COUNTY OF WALTON)

I, the undersigned authority, certify that said designated witness personally appeared before me and was duly sworn.

WITNESS my hand and official seal this 3rd day of January, 2015.

s/ Veronica Hernandez

Veronica Hernandez
Court Reporter
1-800-934-9000
(850) 878-3333

CERTIFICATE OF REPORTER

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STATE OF SUWANNEE)
COUNTY OF FOSTER)

I, VERONICA HERNANDEZ, Court Reporter, certify that the foregoing proceedings were taken before me at the time and place therein designated; that my shorthand notes were thereafter translated under my supervision; and the foregoing pages number 1 though 20 are a true and correct record of the aforesaid proceedings.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested, in the action.

DATED this 20th day of January, 2015.

s/ Veronica Hernandez

Veronica Hernandez
Court Reporter
1-800-934-9000
(850) 878-3333

IN THE CIRCUIT COURT, SECOND JUDICIAL CIRCUIT,
IN AND FOR WALTON COUNTY, SUWANNEE



ANTONIO/ANTONIA VARGAS,

PLAINTIFF,

vs.

CASE NO. 14-CA-2345

CRUMP, INC,

DEFENDANT.

DEPOSITION OF:

DONALD/DONNA CRUMP

TAKEN AT THE INSTANCE:

The Plaintiff, Antonio/Antonia Vargas

DATE:

January 2, 2015

TIME:

Commenced at 9:00 a.m.
Concluded at 12:00 p.m.

LOCATION:

301 South Main Street
Ft. Walton Beach, Suwannee

REPORTED BY:

Veronica Hernandez
Court Reporter, Notary Public

100% CORRECT STENOGRAPHY REPORTERS, INC.
301 SOUTH MAIN STREET
WHITE SPRINGS, SUWANNEE 32301

1 **STIPULATIONS**

2 The following deposition of Donald/Donna Crump was taken on oral examination, pursuant to notice, for
3 purposes of discovery, and for use as evidence, and for other uses and purposes as may be permitted by
4 the applicable and governing rules. Reading and signing were not waived.

5 * * *

6 Thereupon,

7 DONALD/DONNA CRUMP

8 was called as a witness, having been first duly sworn, was examined and testified as follows:

9 DIRECT EXAMINATION

10 **BY MS. CUTILLO:**

11 Q. Good morning. My name is Christian Cutillo, and I represent the Plaintiff in this case. Would you
12 please state your name and spell it for the court reporter.

13 My name is Donald/Donna Crump. That's D-o-n-a-l-d/D-o-n-n-a C-r-u-m-p.

14 Q. Have you ever had your deposition taken before?

15 A. Yes, many times.

16 Q. Even though you've been deposed before, I still like to explain the rules of the game upfront. A
17 deposition allows me to ask you questions that are relevant to the issues in this case, or that may lead to
18 relevant evidence. That means I'm allowed to inquire about a broad area, about things you may not
19 believe have anything to do with this case, but I might think are relevant, or would lead to relevant
20 evidence. I'm sure your attorney will object if he thinks I've asked what a court would think are improper
21 questions. Your deposition may also be used for impeachment purposes if you testify differently in court
22 than you do here today. Finally, if you don't understand a question I ask, please ask me to explain before
23 you answer. Do you understand?

24 A. Yes, you don't need to explain any rules of the game to me. I don't think this is a game even if you
25 do.

26 Q. I did not mean to imply this is a game, and I'm sorry if I misspoke.

27 A. Let's get started then. I don't have all day.

28 Q. What is your current address, Mr./ Ms. Crump?

29 A. My home address is the Penthouse Suite, Crump Tower, the Retreat, Blue Mountain Beach, Highway
30 30-A, Walton County, Suwannee, 32459. My work address is Crump, Incorporated, 133 South
31 WaterSound Parkway, WaterSound, Suwannee 32413. I frequently work at home as well as at the Crump
32 executive offices.

33 Q. What is your employment?

34 A. I am the Chief Executive Officer of Crump, Incorporated.

35 Q. What is the function of the CEO?

36 A. The CEO is responsible for strategic direction, day to day leadership and performance of our company.

37 Q. Do own stock in that corporation?

38 A. Yes. It is publicly traded stock, but I own a majority of the shares.

39 Q. When was Crump incorporated?

40 A. Crump was incorporated in 1936, but was in existence prior to incorporation.

41 Q. What is the nature of Crump's operations?

42 A. Originally, Crump was primarily engaged in buying real estate for logging to provide product for our
43 paper mills, to sell product to other entities, and to manufacture lumber related products for sale. We
44 have sold many of our forestry lands. We sold all of our paper mills in 1996, and are no longer in the
45 paper business. Crump, Inc. is now one of the largest real estate-development companies in Suwannee
46 primarily engaged in residential, commercial and industrial development, and rural land sales.

47 Q. How much land does Crump own?

48 A. By the 1980s Crump, Inc. was the largest landowner in Suwannee, owing 1.1 million acres. We sold
49 many of the properties we developed, and recently sold AgReserves, Inc., approximately 380,000 acres
50 of land located in Northwest Suwannee. This was a significant portion of our land previously designated
51 for forestry. As of December 31, 2014, we own approximately 180,000 acres of land.

52 Q. Where is this land located?

53 A. The majority of our land is located within fifteen miles of the Gulf of Mexico in Northwest Suwannee.

54 Q. What is your company's mission?

55 A. To create a family of places in Northwest Suwannee that inspire people and make the region an even
56 better place to live, work and play.

57 Q. How are you achieving, or planning to achieve this?

58 A. By securing higher and better land-use entitlements, facilitating infrastructure improvements,
59 developing community amenities, undertaking strategic and expert land planning and development,
60 parceling our land holdings in creative ways and performing land restoration and enhancement. We have
61 created an array of imaginative real estate products ranging from beachfront resorts and suburban,
62 primary neighborhoods to commerce parks and rural recreational properties. We've concentrated on
63 being an end-to-end developer. We are responsible for developing all aspects of a project from the initial
64 land planning and entitlements phase, to infrastructure and amenity construction, to developing finished
65 lots, to building homes for retail customers.

66 A. What are Crump, Inc.'s most current operations?

67 A. We develop large-scale, mixed-use resort, seasonal and primary residential communities primarily on
68 land we own. We own large tracts of land in Northwest Suwannee, including large tracts near Tallahassee
69 and Panama City, and significant Gulf of Mexico beach frontage and other waterfront properties, which
70 we believe are suited for resort, seasonal and primary communities.

71 Q. Is there any specific segment of the population Crump caters to?

72 A. Currently, customers for our developed home-sites include both individual purchasers and national,
73 regional and local homebuilders. Our focus beginning in 2015 is to explore opportunities to capitalize on
74 the retirement market, developing mixed-use and active adult communities. We also plan to develop new
75 commercial and industrial uses for our land portfolio that we believe will be accretive in value to our land
76 holdings and/or shareholders.

77 Q. Will the properties developed for retirees and active adult communities be age-restricted?

78 A. A subcomponent will be.

79 Q. What was the value of Crump, Inc.'s income and assets for 2014?

80 A. \$406.3 million dollars net income for 2014, and \$700 million dollars in unencumbered assets.

81 Q. Are the properties you develop and sell targeted to the well-to-do?

82 A. You're not a communist, are you, Ms. Cutillo? I don't mind admitting that what we create, rent, or sell
83 are in upscale master-planned communities that we design.

84 Q. Are these resorts and communities along the lines of Disney's Celebration development near
85 Disneyworld?

86 A. Our homes and resorts are architecturally inspired by new urbanism.

87 Q. What is new urbanism?

88 A. An urban design movement which promotes walkable neighborhoods containing a range of housing
89 and job types. The concept supports neighborhoods that are diverse in use and population; designed for
90 pedestrian use as well as automobiles, shaped by physically defined and universally accessible public
91 spaces and community institutions and framed by architecture and landscape design that celebrate local
92 history, climate ecology, and building practice. These neighborhoods have a discernable center. Most of
93 the dwellings are within a five-minute walk of the center. There are a variety of dwelling types—usually
94 houses, row-houses, and apartments—so that younger and older people, singles and families, the poor
95 and the wealthy may find places to live. Schools and businesses are within walking distance of homes.

96 Q. I'd like to ask you specifically about The Retreat. Is that one of Crump, Inc.'s developments?

97 A. It was our first and highest-end community in South Walton, along Highway 30-A.

98 Q. That property fronts Blue Mountain Beach?

99 A. Yes.

100 Q. How many homes are in that development?

101 A. Ninety.

102 Q. Is it a gated community?

103 A. Yes.

104 Q. What was the average selling price for those homes, if you know?

105 A. Beachfront lots sold for around \$400,000 in early 2000.

106 Q. Would you agree with me that the Walton County Property Appraiser's Office values homes sold

107 between 2014 and 2015 in The Retreat subdivision at one million to almost five million dollars?

108 A. I have no doubt that is correct, but I fail to see the relevancy to this case.

109 Q. Would you call that a mixed use community, one that caters to the rich and the poor?

110 A. Again, I fail to see the relevancy. It also seems like a very silly question. Beach front property is

111 inherently valuable and therefore expensive.

112 Q. It wasn't when Crump, Inc. bought it, was it?

113 A. Crump, Inc. bought Walton County properties in the 1920s and 1930s when the whole county was

114 nothing but farms and trees with a very small population.

115 A. Didn't Crump buy some of that property for about \$1 an acre?

116 Q. Good Lord. That property was acquired in the first half of the 20th century. The Carnessee Indians sold

117 Manhattan Island to the Dutch for glass beads. Are you one of those people who have some problem

118 with profit making?

119 **BY MS. CUTILLO:** Can we take a recess for a bathroom break? I'll need about ten minutes.

120 **BY MR. TRUMAN:** That's fine.

121 **BY MR./MS. CRUMP:** Ten minutes? That's disgusting.

122 **BY MR. TRUMAN:** Let's go off the record.

123 **BY MS. CUTILLO:** Yes, let's.

124 WHEREUPON, the deposition recommenced at 10:30 a.m.:

125 **BY MS. CUTILLO:**

126 Q. You indicated earlier that your home address is at Crump Tower. Is that located within The Retreat

127 subdivision?

128 A. Yes.

129 Q. Who owns Crump Tower?

130 A. Crump, Inc. We decided to retain ownership of that part of The Retreat.

131 Q. Where is Crump Tower located?

132 A. It is directly behind the pool and is between the homeowner's association offices and the community

133 clubhouse.

134 Q. Madam Court Reporter, will you please mark this picture as Exhibit "A" to this deposition? Mr./Ms.

135 Crump, I'm now showing you Exhibit "A". Do you recognize it?

136 A. Yes.

137 Q. What is it?

138 A. That is a picture of the community clubhouse, homeowner's association, and Crump Tower. It also

139 shows the community beach area and the walkover to the beach. There are also some homes to the left

140 and right that belong to residents of The Retreat.

141 Q. Is this a fair and accurate picture of what you have just described?

142 A. It is, other than the following: it's blurry, I don't know why you have a red rectangle drawn down the
143 middle of the picture, and it does not depict the three dimensional aspect. It looks like it was taken by
144 someone in a plane.

145 Q. Do you own your penthouse in Crump Tower?

146 A. Yes. I bought the penthouse suite.

147 Q. Do you have any ownership interest in any of the other things depicted in Exhibit "A"?

148 A. Everyone who is a homeowner or other owner of property in The Retreat subdivision has ownership
149 in common with all the other owners in the homeowner's association offices, which are located to the left
150 of the pool, in the clubhouse, which is located to the right of the pool, and the common beach area which
151 is directly in front of the pool, below the dunes and the walkover.

152 Q. Who owns the beach area in front of the homes depicted to the left and right of the picture?

153 A. I couldn't tell you. Each of the gulf front Retreat homeowners own that part of the beach that is
154 attached to his or her lot. The beach area in front of gulf front homes is private property belonging to the
155 homeowner.

156 Q. Are you a member of The Retreat Homeowner's association?

157 A. All homeowners in The Retreat are members.

158 Q. Do you have any connection to the homeowner's association other than the common ownership
159 interest?

160 A. I have served as the President of the Association for the last five years.

161 Q. What are your duties as President?

162 A. Carrying on the general business of the Homeowner's Association and enforcement of the covenants
163 and the restrictions as set forth in the Declaration of Covenants and Restrictions for The Retreat.

164 Q. Do you recall July 4th of last year?

165 A. I certainly do.

166 Q. Why do you recall that particular day?

167 A. I had to call the Walton County Sheriff's Department concerning people trespassing on The Retreat

168 property.

169 Q. What called your attention to the people you thought were trespassing?

170 A. Not thought—knew. Several of them came up from the beach over the walkway and were swimming

171 in the pool.

172 Q. What made you notice them?

173 A. They were obnoxious and loud. They were disturbing the peace. Some of them were swimming naked.

174 Q. About what time was this?

175 A. Around 10:00 a.m.

176 Q. How many people were in the pool?

177 A. Three that I felt quite sure were not residents.

178 Q. Did you see anyone who did not appear to be a resident on the beach area?

179 A. Oh, yes. There was a big group of them, drinking and making a mess on the beach with beer bottles

180 and trash.

181 Q. How could you see all of this?

182 A. I was watching them from the window of my penthouse.

183 Q. What was the weather like on July 4, 2014, if you remember?

184 A. It was a beautiful, cloudless day.

185 Q. Was anything obstructing your view?

186 A. No. I'm on the top floor of Crump Tower, and I could see everything down to the water.

187 Q. How well could you see the beach area?

188 A. Quite well. I was using binoculars. Sometimes I feel I can see Mexico from my penthouse.

189 Q. What did you do after you saw the people you thought were trespassing?

190 A. I called Ronnie Rousey.

191 Q. Who is Ronnie Rousey?

192 A. He/She is a Retreat employee, a security guard.

193 Q. Did you speak with him/her?

194 A. Yes. I told him/her to come up to my penthouse immediately, that people were trespassing. I told

195 him/her to go down to the pool and the beach and tell those people to get off our property.

196 Q. Did he/she do that?

197 A. Yes, but I had to call the Sheriff's Department. Most of the people left, but one person refused. It

198 took an hour for the deputy to get there.

199 Q. Why so long?

200 A. Because they don't like enforcing the trespass laws on the beach. I had to personally call the Sheriff's

201 Department and threaten to make a complaint before I could get them to send someone out. The deputy

202 took his sweet time getting to The Retreat.

203 Q. Where were you when the deputy arrived?

204 A. I was waiting with Ronnie at the beach.

205 Q. What was Ronnie doing?

206 A. Detaining Mr./Ms. Vargas till the deputy arrived.

207 Q. Did you know Mr./Ms. Vargas?

208 A. No, and he/she couldn't produce any proof that he/she was either a resident or guest of a resident.

209 Q. Did you recognize him/her as one of the people swimming in the pool or being on any part of The

210 Retreat's privately owned beach property other than where you ultimately found him/her?

211 A. All of those people looked the same, so, no, I couldn't say that he/she was one of those persons for a

212 fact, but he/she was on sitting on a towel on the dry sand beach owned by The Retreat when I met up

213 with Ronnie.

214 Q. What did you do when the deputy got there?

215 A. I could see that the deputy clearly didn't want to arrest Mr./Ms. Vargas. I told the deputy, "Do your
216 duty, sir" or I'd file a formal complaint against him. Everyone working at the Walton County Sheriff's
217 Department has low energy. They're weak, weak people.

218 Q. Did The Retreat pursue prosecution?

219 A. Yes.

220 Q. Did anyone at the State Attorney's office try to dissuade The Retreat from prosecuting Mr./Ms. Vargas?

221 A. Yes, they did.

222 Q. What did they do?

223 A. The assistant district attorney assigned to the case had just graduated from law school—she's wet
224 behind the ears, and obviously didn't know what she was doing. She told me it was a weak case and there
225 was no way she could meet the State's burden of proof.

226 Q. What did you do when she told you that?

227 A. I made an appointment to meet with the State Attorney. I told him that homeowners in The Retreat
228 had the same rights as other citizens and the State Attorney's Office needed to do its job.

229 Q. Did you threaten the State Attorney in any way?

230 A. I didn't have to. He knew that he was coming up for re-election in the fall. Crump, Inc. is a large part
231 of the tax base in Walton County, and all the important players in the county know that.

232 Q. What happened after you met with the State Attorney?

233 A. The chief felony assistant was assigned to prosecute the case.

234 Q. The criminal case was never charged as a felony, was it?

235 A. No. Unfortunately, this kind of trespass is only a misdemeanor.

236 Q. Do you know about the concept of customary usage as applied to a private beach?

237 A. Yes.

238 Q. What do you know about that?

239 A. I know that our county attorney tried to pass an ordinance recognizing a right of anybody at any time
240 to trespass all over private beach owners' properties. I attended all the public hearings on that proposed
241 ordinance. It didn't pass. If it had, we would've filed a lawsuit.

242 Q. How often do people try to utilize the sandy beach at The Retreat?

243 A. We have to chase them off all the time. The public access point to the beach is not even a mile from
244 Crump Tower. That's why we finally hired a security guard to surveil and patrol the beach area at The
245 Retreat in 2010. We've posted no trespassing signs.

246 Q. Where is the sign near The Retreat's commonly owned area?

247 A. Right at the foot of the dunes, next to the walkover.

248 Q. Do you have any other signs near there?

249 A. We have a sandwich board that we put out during daylight hours.

250 Q. Why only daylight hours?

251 A. Walton County has a "leave no trace behind" ordinance.

252 Q. My understanding is that the ordinance you just mentioned does not yet speak to enclosing private
253 property. Why don't you do that?

254 A. I'd build a wall if I could, but I feel like these trespassers ought to pay for it, or the county for not
255 enforcing the trespass laws. I don't want a bunch of criminals and rapists on The Retreat's property. The
256 crowds, the crime, the drugs, and all the riff-raff would run our property values down. People would stop
257 buying our properties or paying to stay at Crump, Inc. resorts such as WaterColor and Water Sound.

258 Q. Why would you assume people crossing or using The Retreat's beach are criminals and rapists?

259 A. Have you heard about last year's spring break at Panama City Beach? College students were having
260 sex and using drugs right on the beach. You could see it on all the major network channels.

261 Q. Prior to 1999, did the public have use of this beach for recreational purposes?

262 A. I suppose they did. I'm from New York, and I didn't buy a residence here until the Retreat was
263 developed. Trump, Inc. was primarily in the paper business prior to 1997. I don't even know if Crump,
264 Inc. was aware people were using those beaches prior to our developing that area. We've interrupted
265 any prior public usage, at least as early as five years ago when we hired our security guard. We actively
266 pursue prosecution when people refuse to leave after being warned. Crump, Inc. and The Retreat dispute
267 that the public has any right of access or use of our private beach. We have a recorded plat that shows
268 we own all the way to the water.

269 Q. Did you contact a lawyer to get legal advice immediately prior to having Mr./Ms. Vargas arrested?

270 A. I didn't need to. I was aware of the Suwannee Attorney General's opinion about our rights in that area.

271 **MS. CUTILLO:** Those are all the questions I have.

272 **MR. TRUMAN:** No questions.

273 (Deposition concluded at 12:00 p.m.)

CERTIFICATE OF OATH

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STATE OF SUWANNEE)
COUNTY OF FOSTER)

I, the undersigned authority, certify that said designated witness personally appeared before me and was duly sworn.

WITNESS my hand and official seal this 2nd day of January, 2015

s/ Veronica Hernandez

Veronica Hernandez
Court Reporter
1-800-934-9000
(850) 878-3333

CERTIFICATE OF REPORTER

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STATE OF SUWANNEE)
COUNTY OF WALTON)

I, VERONICA HERNANDEZ, Court Reporter, certify that the foregoing proceedings were taken before me at the time and place therein designated; that my shorthand notes were thereafter translated under my supervision; and the foregoing pages number 1 through 13 are a true and correct record of the aforesaid proceedings.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested, in the action.

DATED this 25th day of January, 2015.

s/ Veronica Hernandez

Veronica Hernandez
Court Reporter
1-800-934-9000

IN THE CIRCUIT COURT, FIRST JUDICIAL CIRCUIT,
IN AND FOR WALTON COUNTY, SUWANNEE



ANTONIO/ANTONIA VARGAS,

PLAINTIFF,

vs.

CASE NO. 14-CA-2345

CRUMP, INC,

DEFENDANT.

DEPOSITION OF:

RONNIE ROUSEY

TAKEN AT THE INSTANCE:

The Plaintiff, Antonio/Antonia Vargas

DATE:

January 2, 2015

TIME:

Commenced at 2:00 p.m.
Concluded at 5:00 p.m.

LOCATION:

301 South Main Street
Ft. Walton Beach, Suwannee

REPORTED BY:

Veronica Hernandez
Court Reporter, Notary Public

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WHITE SPRINGS, SUWANNEE 32301

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STIPULATIONS

The following deposition of Ronnie Rousey was taken on oral examination, pursuant to notice, for purposes of discovery, and for use as evidence, and for other uses and purposes as may be permitted by the applicable and governing rules. Reading and signing were not waived.

* * *

THEREUPON,

RONNIE ROUSEY

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. CUTILLO:

Q. Good morning. My name is Christian Cutillo, and I represent the Plaintiff in this case. Would you please state your name and spell it for the court reporter.

My name is Ronnie Rousey—R-o-n-n-i-e R-o-u-s-e-y.

Q. Have you ever had your deposition taken before?

A. No.

Q. A deposition allows me to ask you questions that are relevant to the issues in this case, or that may lead to relevant evidence. That means I'm allowed to inquire about a broad area, about things you may not believe have anything to do with this case. Your deposition may also be used for impeachment purposes if you testify differently in court than you do here today. You are under oath today, and you will be under oath if you testify at trial. If you say something different at trial than you say today, I may be able to use those statements to show the jury that you either lied at trial, or at this deposition. If you don't understand a question I ask, please ask me to explain before you answer. I don't want you to tell the judge that you didn't understand a question I asked and that is why you are giving a different answer

24 at trial. Finally, please make your answers audible. No head shakes—the court reporter may not pick that
25 up. Do you understand all of what I just told you?

26 A. Yes, but will I be able to read what’s typed up?

27 Q. You will be able to read it if you like, and make any changes on a correction or errata sheet if necessary
28 before you sign the deposition.

29 A. Okay, thanks.

30 Q. What is your current address, Mr./ Ms. Rousey?

31 A. My home address is Apartment #203 Bentley Park Apartments, Ft. Walton Beach, Suwannee 32547.

32 Q. What is your employment?

33 A. I am a security guard at The Retreat on Blue Mountain Beach.

34 Q. Who is your employer?

35 A. Crump, Inc.

36 Q. How long have you held that job?

37 A. Five years.

38 Q. What was your employment prior to working as a security guard for Crump, Inc.?

39 A. I was a mixed martial artist, and was at one time world Bantamweight Champion.

40 Q. What training did you have to become a security guard?

41 A. I took a 40 hour course from Security Guard Exchange to receive my license as an unarmed security
42 guard.

43 Q. Are you required to be licensed to carry a gun for your job with The Retreat?

44 A. Ma’am, I don’t need a gun to do my job.

45 Q. What are your current job duties?

46 A. Patrol and surveillance of The Retreat properties, helping deter, detect, investigate and resolve all
47 activity on The Retreat property that could result in loss or liability for Crump, Inc., including criminal

48 incidents, fire hazards and safety conditions. I serve as a representative of Crump, Inc. in noticing and
49 remedying any condition that could reflect poorly on the Crump, Inc. brand. I enforce security, safety and
50 fire/life safety rules, procedures and protocols. I perform other duties as required.

51 Q. Who is your direct supervisor?

52 A. Donald/Donna Crump.

53 Q. Were you working July 4, 2014?

54 A. Yes.

55 Q. What time did you arrive at The Retreat?

56 A. Seven thirty a.m.

57 Q. Do you recall what the weather was like that day?

58 A. It was a hot, clear day—great weather.

59 Q. Were there any other security guards on duty that day?

60 A. I was the only guard working the 7:30 to 4:30 p.m. shift.

61 Q. Did you have any conversations with Donald/Donna Crump that day concerning trespassers on The
62 Retreat properties?

63 A. Yes, Mr./Ms. Crump called me about 10:15 that morning.

64 Q. What did Mr./Ms. Crump say to you?

65 A. He/She said, “Ronnie, I see too many wet backs in our community pool and on our beach. They can’t
66 all be residents. I want you to go check it out, chase off any trespassers, and report back to me.”

67 Q. How did you respond?

68 A. I told him I would.

69 Q. What did you do after that phone call?

70 A. I went to the community pool first. I saw three young people swimming naked. I asked them to get
71 out and produce identification.

72 Q. How did they respond?

73 A. They got out of the pool. None of them had any identification papers. None had anything that

74 authorized their being on The Retreat properties.

75 Q. What did you do?

76 A. I told them they had to leave The Retreat property. I warned them that they would be lucky if we

77 didn't file criminal complaints for indecent exposure and trespass.

78 Q. How did they respond?

79 A. They put their swimsuits on and left. I saw them heading back towards the public access point to Blue

80 Mountain Beach.

81 Q. Was Mr./Ms. Vargas one of those three?

82 A. No.

83 Q. Did you see any other people on The Retreat property that you felt were not residents or guests?

84 A. Yes. There were about five or six young people running away from me down the dune walkover. I

85 guess they had planned to join the skinny-dipping party.

86 Q. Did they say anything?

87 A. They were yelling "Vamonos!" to people on the beach.

88 Q. What happened next?

89 A. People on the beach started to scatter. I saw about twenty people running off our community beach

90 property headed towards the public beach.

91 Q. Where were these people on The Retreat community beach?

92 A. All over the place. Some were spread out at the foot of the dunes, some about half way between the

93 dunes and the water, and others were closer to the water.

94 Q. Did any of the people on the walkover or on the community beach have any distinctive features?

95 A. To be honest, and I'm not trying to be offensive, they looked Mexican. Most of them were wearing
96 black swim suits with "Rio Grande Swim Team" imprinted on the back or front.

97 Q. Did you detain any of those people?

98 A. No.

99 Q. Why not?

100 A. They were pretty swift runners. I was only able to detain one of them.

101 Q. Who was that?

102 A. Antonio/Antonia Vargas.

103 Q. Where did you find Mr./Ms. Vargas?

104 A. Sitting on a towel right at the point where the sandy beach drops off. He/she was sitting on the towel
105 with his/her legs hanging over the drop off.

106 Q. Do you have any idea how long he/she had been sitting there?

107 A. No, but he/she was panting like he'd/she'd been running. I'm pretty sure he/she saw me coming and
108 tried to get down to the water and saw he/she couldn't make it.

109 Q. Why do you think that?

110 A. Before I'd even said anything, he/she turned around to look at me.

111 Q. What did you do?

112 A. I asked him/her for identification.

113 Q. What was his/her response?

114 A. He/She said he/she left it in his/her car.

115 Q. What did you do?

116 A. I told him/her he/she had to leave—that this beach belonged to a private property owner, The Retreat.
117 I asked him/her hadn't he/she seen the signs. He/She said "What signs?" I pointed to the sign near the
118 toe of the dunes. The sandwich board sign had been knocked over by all those people running over The

119 Retreat beach, so I went over and set it back up. I then walked back to Mr./Ms. Vargas and asked him/her
120 to leave again. This time he/she told me he/she was on public beach and had a right to be there. He/she
121 told me he'd/she'd read in some book that the public had the right to walk all the way around the State
122 of Suwannee coastline. I told him/her that might be true, but only on the wet sand. For the third time, I
123 asked him/her to leave, and he/she refused. That's when I called Mr./Ms. Crump. He/She told me to wait
124 there—that he/she would call the Sheriff's Department.

125 Q. Did someone from the Sheriff's Department show up?

126 A. About an hour later. In the meantime, Mr./Ms. Vargas just kept applying Banana Boat oil.

127 Q. How did Mr./Ms. Crump react to that?

128 A. He/She told Mr./Ms. Vargas that he'd/she'd probably lose that tan while rotting in jail.

129 Q. What happened after the deputy arrived?

130 A. I told him the sequence of events, what I'd seen, what I did, and about Mr./Ms. Vargas refusing to
131 leave. He and Mr./Ms. Crump got in a big argument about arresting Vargas. The deputy said Vargas was
132 sitting so close to the water that Crump ought to just let it go. Mr./Ms. Crump refused. The deputy then
133 asked Mr./Ms. Vargas didn't he/she think it would be easier for everyone if he/she just walked less than
134 a mile back to the public access point and use the beach there. Mr./Ms. Vargas said it was a matter of
135 principle, that he/she wasn't breaking any laws, and that he/she wasn't going to move. I think that's what
136 finally made the deputy decide to arrest him/her.

137 Q. What was Mr./Ms. Vargas wearing?

138 A. A black swimsuit.

139 Q. Did it have the Rio Grande Swim Team imprint?

140 A. Not that I saw.

141 **MS. CUTILLO:** Those are all the questions I have.

142 **MR. TRUMAN:** No questions.

143 (Deposition concluded at 12:00 p.m.)

CERTIFICATE OF OATH

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STATE OF SUWANNEE)
COUNTY OF WALTON)

I, the undersigned authority, certify that said designated witness personally appeared before me and was duly sworn.

WITNESS my hand and official seal this 2nd day of January, 2015

s/ Veronica Hernandez

Veronica Hernandez
Court Reporter
1-800-934-9000
(850) 878-3333

CERTIFICATE OF REPORTER

STATE OF SUWANNEE)

COUNTY OF WALTON)

I, VERONICA HERNANDEZ, Court Reporter, certify that the foregoing proceedings were taken before me at the time and place therein designated; that my shorthand notes were thereafter translated under my supervision; and the foregoing pages number 1 through 13 are a true and correct record of the aforesaid proceedings.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested, in the action.

DATED this 25th day of January, 2015.

s/ Veronica Hernandez

Veronica Hernandez
Court Reporter
1-800-934-9000

EXHIBIT LIST

Attorney General Opinion

Suwannee Constitution, Statutes, and Administrative Code

(You may assume these are part of the jury instructions)

Walton County Beach Ordinance

Walton County Proposed Beach Ordinance

State Attorney Memo

Antonio/Antonia Vargas Not Guilty Verdict

Sample Affidavit

Sydney Evers Resume

Photos

1. Destin, Okaloosa County, public beach area, picture taken by Sydney Evers
2. Left side of the Destin, Okaloosa County, public beach area, picture taken by Sydney Evers
3. Right side of the Destin, Okaloosa County, public beach area, picture taken by Sydney Evers
4. Security guard chair at the Destin, Okaloosa County, private beach , picture taken by Sydney Evers.
5. Security guard chair at Signature, Destin, Okaloosa County, picture taken by Sydney Evers.
6. No trespassing sign at Signature, Destin, Okaloosa County, picture taken by Sydney Evers.
7. Security guard, Signature, Destin, Okaloosa county, Suwannee, picture taken by Sydney Evers.
8. Security guard hut at Signature, Destin, Okaloosa county, Suwannee, picture taken by Sydney Evers.
9. Public access point for Blue Mountain Beach, Walton County, Suwannee.
10. The Retreat, Walton County, Blue Mountain Beach. Dunes in the background were re-nourished by Walton County with public funds in 2012.
11. The Retreat sign at the toe of the dune, Blue Mountain Beach, Walton County, Suwannee.
12. Sign posted at the toe of the dune, The Retreat, Blue Mountain Beach, Walton County, Suwannee.
13. The Retreat, Blue Mountain Beach, Walton County, Suwannee. Sign posted on the 2012 re-nourished dune.
14. Another view of the sign posted at the toe of the dune by The Retreat, Blue Mountain Beach, Walton county, Suwannee.
15. Another view of the sign posted by The Retreat at the toe of the dune, pointing towards the Gulf of Mexico, Blue Mountain Beach, Walton County, Suwannee.
16. Sandwich board sign placed by The Retreat, Blue Mountain Beach, Walton County, Suwannee. Draper Lake is not in the Gulf of Mexico. Check Retreat plat.
17. Another view of the sandwich board sign placed by The Retreat, Blue Mountain Beach, Walton County, Suwannee.
18. A view showing two of The Retreat's no trespassing signs in conjunction to each other, with a view of The Retreat's private access stairway to the beach.
19. A view of all three The Retreat no trespassing signs with view of private access point.
20. A view of the beach, The Retreat signs, and private access point.
21. A view of Blue Mountain Beach, Walton County, Suwannee, with the sandwich board sign placed by The Retreat.
22. A view showing how The Retreat sign is catty-cornered.

23. Blue Mountain Beach, Walton County, Suwannee. This picture was taken by the Walton County Sheriff's department, is part of the public record--the criminal case file--Walton County, Suwannee.
24. Public record from criminal file, Walton County, Clerk of Court records, taken by Walton County Sheriff July 4, 2014.
25. Public record from Walton County Clerk of Court records criminal file. Picture taken by Walton County deputy sheriff.
26. Public record, part of Walton County Clerk of Court criminal file records. Picture taken by Walton County Sheriff's deputy.
27. Picture from Walton County Clerk of Court public records, criminal case, taken by Walton County deputy sheriff.
28. Public record, Walton County Clerk of Court, criminal file, picture taken by Walton County deputy sheriff, July 4th, 2014, walking away from the Retreat, down the beach, back to public access point.
29. Picture taken by Sydney Evers, St. George Island beach, Franklin County, Suwannee.2
30. Another Picture taken by Sydney Evers, St. George Island beach, Franklin County, Suwannee
31. Picture taken by Sydney Evers, St. George Island beach, Franklin County, Suwannee
32. Picture taken by Sydney Evers, St. George Island, Franklin County, Suwannee depicting coastline
33. The Retreat Beach Club Property Line, courtesy of Walton County Property Appraiser

Retreat Homeowners' Association Covenants and Restrictions

Retreat Plat – Internet version from The Retreat website

Retreat Plat from Walton County Official Records

Follow the link below to access the high resolution Official Records

<http://orsearch.clerkofcourts.co.walton.fl.us/search/index?theme=.blue§ion=searchCriteriaLegal&quickSearchSelection=>

Document Information Details from Landmarks 'My List'. 12/23/2015 1:13:58 PM

Document 1 of 1.

Instrument #:	-100389
Book/Page:	PB 14 / 4
Record Date:	04/28/1999 08:09:36 PM
Book Type:	PB
Doc Type:	PLAT
Number of Pages:	2
Number of Names:	2
Grantor:	THE RETREAT
Grantee:	THE RETREAT
Full Legal:	SEC 1, 11 & 12-3S-20W

Florida Attorney General Advisory Legal Opinion

Number: AGO 2002-38

Date: May 24, 2002

Subject: Regulation of dry sand portion of beach

The Honorable Charles W. Morris
Sheriff, Okaloosa County
1250 Eglin Parkway
Shalimar, Florida 32579-1234

The Honorable Craig H. Barker
Mayor of Destin
4200 Two Trees Road
Destin, Florida 32541

RE: MUNICIPALITIES-SHERIFFS-LAW ENFORCEMENT-BEACHES- regulation of dry sand portion of beaches.

Dear Sheriff Morris and Mayor Barker:

You have asked for my opinion on substantially the following questions:

1. Whether the City of Destin is authorized to apply its beach management ordinance to certain identified dry sand areas of the beach regardless of the ownership or legal control of these areas and regardless of whether the public has been expressly or impliedly allowed use of that area by a private property owner who may hold title to such area?
2. Whether the City of Destin's authority to apply the beach management ordinance to the dry sand portion of the beach is dependent on the existence of a customary right of recreational use by the general public as enunciated by the Supreme Court of the State of Florida in *City of Daytona Beach v. Tona-Rama, Inc.* [1]?
3. Whether a private property owner holding title to certain dry sand areas of the beach falling within the area defined as "beach" within the beach management ordinance may utilize local law enforcement and enforcement of state trespass laws to curtail or discourage the public's right of customary use to this same dry sand area of the beach?

In sum:

1. The City of Destin may regulate in a reasonable manner the beach within its corporate limits to protect the public health, safety, and welfare. This regulation must have a rational relation to and be reasonably designed to accomplish a purpose necessary for the protection of the public. The city may not exercise its police power in an arbitrary, capricious, or unreasonable manner. Such regulation may be accomplished regardless of the ownership of this area, with the exception of state ownership, and without regard to whether the public has been expressly or impliedly allowed to use that area of the beach by a private property owner who may hold title to the property.
2. The right of a municipality to regulate and control dry sand beach property within its municipal boundaries is not dependent on the finding of the Florida Supreme Court in *City of Daytona Beach v. Tona-Rama, Inc.*
3. Private property owners who hold title to dry sand areas of the beach falling within the jurisdictional limits of the City of Destin may utilize local law enforcement for purposes of reporting incidents of trespass as they occur.

According to your letters, the City of Destin has no municipal police force. Rather, the city has contracted with the Okaloosa County Sheriff's Department for the provision of law enforcement services within the city limits.

The city has recently adopted a beach management ordinance, Ordinance No. 350, to provide for the regulation of public use and conduct on the beach. The beach management ordinance applies to the "beaches" within the city limits, which are defined as "the soft sand portion of land lying seaward of a retaining wall, seawall, or line of permanent vegetation and landward of the mean high water line." [2] The beach management ordinance specifically regulates a number of categories of use and conduct on the beach. Examples of regulated use and conduct are a prohibition on the possession of glass containers; restrictions on animals on the beach; restrictions on wheeled vehicle use; prohibition of open fires; prohibition of overnight camping; outlawing of shark fishing by chumming or blood baiting; prohibition of use of aircraft on the beach; and regulation of sound amplification. [3] The ordinance also outlaws breach of the peace and disorderly conduct and prohibits littering and removal of sand. [4]

The city's beach management ordinance does not expressly specify that it be applied only on public land or land on which the public has been expressly granted a right of use and access. You recognize, therefore, that the ordinance as written applies to all areas

falling within the definition of "beach," regardless of whether such areas are located on public or private property and regardless of whether the public has been expressly or impliedly allowed to use such areas by a private property owner.

Question One

Your first question deals with municipal regulation of privately owned real property within jurisdictional boundaries.

Section 2(b), Article VIII, Florida Constitution, provides that:

"Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law. . . ."

The Florida Supreme Court has stated that this constitutional provision "expressly grants to every municipality in this state authority to conduct municipal government, perform municipal functions, and render municipal services." [5] The court stated, in the *City of Sunrise* case, that the only limitation on the power of municipalities under this constitutional section is that such power must be exercised for a valid municipal purpose. As determined by the court, "[l]egislative statutes are relevant only to determine limitations of authority" and municipalities need no further authorization from the Legislature to conduct municipal government. [6] Section 166.021(1), Florida Statutes, grants municipalities "the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and [to] exercise any power for municipal purposes, except when expressly prohibited by law."

Generally, a municipality has civil and criminal jurisdiction over property within its corporate boundaries and may thus regulate and restrict certain activities reasonably calculated to protect the public health, safety, and welfare. [7] This municipal regulatory power is subject to the state's paramount power to regulate and control the use of its sovereign lands. To the extent that any regulation has been preempted by the state or is inconsistent with general law or with regulations adopted by the state, any attempted municipal regulation would be invalid. [8] Further, valid municipal regulations must be reasonable and nondiscriminatory, and they must tend to promote the public health, safety, morals, or general welfare. [9]

An additional limitation on a municipality's power to regulate in this area and a corollary to the requirement that these regulations must further the public health, safety, and welfare is the

requirement that such regulation not violate the constitutional protections afforded to the public for the use of and access to state sovereignty lands. [10]

Thus, it is my opinion that the City of Destin may regulate in a reasonable manner the beach within its corporate limits to protect the public health, safety, and welfare if this regulation has a rational relation to, and is reasonably designed to accomplish, a purpose necessary for the protection of the public. The city may not exercise its police power in an arbitrary, capricious, or unreasonable manner. It may not exercise its police power over those activities or subjects and in those areas that have been preempted to the state or that are in conflict with the state's paramount power to regulate and control its sovereign lands held in trust for all the people of the state; nor may it arbitrarily restrict or abrogate constitutionally recognized and protected "trust doctrine" rights. [11]

Question Two

You ask whether the City of Destin's authority to apply its beach management ordinance to areas within the city's jurisdictional boundaries is dependent on the Florida Supreme Court's decision in *City of Daytona Beach v. Tona-Rama, Inc.* As indicated by my response to Question One, the city has civil and criminal jurisdiction over property within its corporate boundaries, and thus has the power to regulate and restrict activities reasonably calculated to protect the public health, safety, and welfare. This conclusion is not dependent on the Florida Supreme Court's decision in the *Tona-Rama* case.

The *Tona-Rama* case recognizes the common law principle of "customary use" by the public of Florida's dry sand beaches. The court held that if the public's recreational use of a privately owned sandy area adjacent to the mean high tide has been ancient, reasonable, without interruption, and free from dispute, such use, as a matter of custom, should not be interfered with by the owner. However, the owner is allowed to make any use of his property that is consistent with such public use and is not calculated to interfere with the exercise of the right of the public to enjoy the dry sandy area as a recreational adjunct of the wet sand or foreshore area, which is held by the state in trust for the people. [12]

In *Tona-Rama* the defendant owned waterfront property in Daytona Beach on which he operated an ocean pier as a recreation center and tourist attraction. He secured a permit for and constructed an observation tower on an area of dry sand on his property. The observation tower was a part of the pier and could only be entered from the pier.

The plaintiff operated an observation tower near the site of defendant's pier and protested the issuance of the permit. Plaintiff alleged that by continuous use of the property for more than twenty years, the public had acquired an exclusive prescriptive right to use the defendant's land.

While the Court has recognized such a right under proper circumstances, it rejected the notion of a prescriptive right under the facts presented by the *Tona-Rama* case. As the court noted,

"If the use of an alleged easement is not exclusive and not inconsistent with the rights of the owner of the land to its use and enjoyment, it would be presumed that such use is permissive rather than adverse. Hence, such use will never ripen into easement." [13]

While the court rejected a finding of a public easement in the property, it acknowledged the historical right of the public to use Florida's beaches:

"We recognize the propriety of protecting the public interest in, and right to utilization of, the beaches and oceans of the State of Florida. No part of Florida is more exclusively hers, nor more properly utilized by her people than her beaches. And the right of the public of access to, and enjoyment of, Florida's oceans and beaches has long been recognized by this Court." [14]

The court recognized the "customary rights doctrine" or "customary right of use doctrine" as it is employed to afford the public full use of beach property in Florida:

"If the recreational use of the sandy area adjacent to mean high tide has been ancient, reasonable, without interruption and free from dispute, such use, as a matter of custom, should not be interfered with by the owner. However, the owner may make any use of his property which is consistent with such public use and not calculated to interfere with exercise of the right of the public to enjoy the dry sand area as a recreational adjunct of the wet sand or foreshore area."

This right of customary use of the dry sand area of the beaches by the public does not create any interest in the land itself. Although this right of use cannot be revoked by the land owner, it is subject to appropriate governmental regulation and may be abandoned by the public. [15]

The court concluded:

"The general public may continue to use the dry sand area for their usual recreational activities, not because the public has any interest in the land itself, but because of a right gained through

custom to use this particular area of the beach as they have without dispute and without interruption for many years." [16]

In any particular case, however, whether this "customary right of use" exists in a particular piece of property is a mixed question of law and fact that must be resolved judicially. As the Fifth District Court of Appeal recently recognized in the case of *Reynolds v. County of Volusia*, [17] "[t]hat doctrine requires the courts to ascertain in each case the degree of customary and ancient use the beach has been subjected to and, in addition, to balance whether the proposed use of the land by the fee owners will interfere with such use enjoyed by the public in the past." [18]

The right of a municipality to regulate and control dry sand beach property within its municipal boundaries is not dependent on the finding of the Florida Supreme Court in *City of Daytona Beach v. Tona-Rama, Inc.* However, that case establishes the "customary use" doctrine in Florida, which may be relied on and would provide direction in cases involving private property rights and trespass.

Question Three

Your third question relates to the use of local law enforcement by private property owners to enforce trespass laws to curtail or discourage the public's right of customary use to the dry sand areas of the beach.

The City of Destin is authorized to regulate the dry sand portions of the beach within its jurisdictional boundaries under the terms discussed above. However, portions of this property are subject to private ownership and until a court establishes a "customary right of use" by the public in such real property, the fee owners thereof may make complaints of trespass to local law enforcement officers as they occur.

Pursuant to section 810.09(1) (a), Florida Statutes, "[a] person who, without being authorized, licensed, or invited, willfully enters upon or remains in any property other than a structure or conveyance . . . [a]s to which notice against entering or remaining is given . . . commits the offense of trespass on property other than a structure or conveyance." [19]

Section 810.09(2) (b), provides that:

"If the offender defies an order to leave, personally communicated to the offender by the owner of the premises or by an authorized person . . . the offender commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083." [20]

Thus, to commit a trespass, the offender must defy an order to leave

that has been personally communicated to him by the owner of the premises or some other authorized person.

This office, in Attorney General's Opinion 90-08 considered whether on-duty police officers could be pre-authorized to act as the agents of a private landowner for the purpose of communicating to alleged trespassers an order to leave the private property pursuant to section 810.09(2)(b), Florida Statutes. The facts of that opinion involved the Jupiter Inlet Beach Club, Inc., which owned a parcel of land within the Town of Jupiter Inlet Colony. Access to the lands and the facilities located thereon was limited to members and guests of the private club. Representatives of the club proposed to authorize, in advance of any actual incident, all town police officers to act as the club's agent in ordering alleged offenders to leave the beach club's premises. This office rejected the proposal to authorize local law enforcement officers to be designated as the agents of private persons. As the opinion noted, the Florida Constitution prohibits the use of public funds for a private purpose. [21] The pre-authorization of on-duty law enforcement officers to act as agents of private landowners in warning individuals to leave private property appeared to this office to serve primarily a private, not public, purpose.

Thus, it is my opinion that private property owners who hold title to dry sand areas of the beach falling within the jurisdictional limits of the City of Destin may utilize local law enforcement for purposes of reporting incidents of trespass upon their property on a case-by-case basis. However, local law enforcement officers may not be pre-authorized to act as agents of private landowners for the purpose of communicating orders to their property on a case-by-case basis, nor may local law enforcement officers be pre-authorized to act as agents of private landowners for the purpose of communicating orders to leave private property to alleged trespassers pursuant to section 810.09(2)(b), Florida Statutes.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tgh

[1] 294 So. 2d 73 (Fla. 1974).

[2] City of Destin Ordinance No. 350, s. 6D.

[3] See *id.*, s. 7A-F, I and K.

[4] See *supra* n. 2, s. 7L-N.

[5] *State v. City of Sunrise*, 354 So. 2d 1206, 1209 (Fla. 1978).

[6] *Supra* at 1209. See also *City of Miami Beach v. Forte Towers, Inc.*, 305 So. 2d 764 (Fla. 1974).

[7] See 64 C.J.S. *Municipal Corporations* s. 1816 (1950); *Carter v. Town of Palm Beach*, 237 So. 2d 130 (Fla. 1970); *City of Miami Beach v. Texas Co.*, 194 So. 368 (Fla. 1940); *Metropolitan Dade County v. Pierce*, 236 So. 2d 202 (Fla. 3d DCA 1970); and Ops. Att'y Gen. Fla. 96-49 (1996), 85-47 (1985), 79-71 (1979), 77-139 (1977) and 60-139 (1960).

[8] See s. 166.021, Fla. Stat.; *City of Miami Beach v. Forte Towers, Inc.*, 305 So. 2d 764 (Fla. 1974); and Ops. Att'y Gen. Fla. 78-141 (1978), 75-167 (1975), and 74-286 (1974).

[9] See 64 C.J.S. *Municipal Corporations* s. 1818c, p. 301 (1950).

[10] See Art. X, s. 11, Fla. Const. (title to land under navigable waters within boundaries of state which have not been alienated are held by the state by virtue of its sovereignty in trust for all the people); *McDowell v. Trustees of Internal Improvement Fund of State of Florida*, 90 So. 2d 715 (Fla. 1956); *White v. Hughes*, 190 So. 446 (Fla. 1939); Op. Att'y Gen. Fla. 79-71 (1979) (foreshore area of beaches between mean high and low water marks and under Ch. 161 area seaward of beach erosion control line, the traditional uses for which are fishing, swimming, boating and other public purposes authorized by law, are held in trust for the public.) And see *Carter v. Town of Palm Beach*, 237 So. 2d 130 (Fla. 1970), wherein the Court held that while the town may regulate and control surfing and skinning in areas subject to its jurisdiction and may prohibit these activities at certain places along the beach, the complete prohibition of this sport is arbitrary and unreasonable.

[11] See AGO's 96-49 (1996) (municipality may prohibit unauthorized trespass on or unauthorized mooring of boat to privately-owned dock located on state-owned submerged lands within municipal corporate limits); 92-86 (1992) (county may regulate dogs on the beach); 79-71 (1979) (municipality may enact ordinance to control beach erosion in area of beach within its territorial limits).

[12] See 294 So. 2d at 78.

[13] *Id.* at p. 76.

[14] *Supra* n. 12 at p. 75.

[15] *Supra* n. 12 at p. 78.

[16] *Supra* n. 12 at p. 78.

[17] 659 So. 2d 1186 (Fla. 5th DCA 1995).

[18] *Id.* at 1190.

[19] Section 810.09(1)(a)1. and 2., Fla. Stat.

[20] The Supreme Court of Florida has stated that "'[c]ommon understanding' dictates that the phrase 'other authorized person' is to be read in light of the preceding phrase 'owner of the premises' In regard to private land, an 'authorized person' is one who receives either express or implied authorization from the owner. See *State v. Dye*, 346 So. 2d 538, 541 (Fla. 1977).

[21] Article VII, s. 10, Fla. Const.

ARTICLE X

MISCELLANEOUS

SECTION 11. Sovereignty lands.—The title to lands under navigable waters, within the boundaries of the state, which have not been alienated, including beaches below mean high water lines, is held by the state, by virtue of its sovereignty, in trust for all the people. Sale of such lands may be authorized by law, but only when in the public interest. Private use of portions of such lands may be authorized by law, but only when not contrary to the public interest.

History.—Am. H.J.R. 792, 1970; adopted 1970.

If the location of the monument falls in a hard surface such as asphalt or concrete, alternate monumentation may be used that is durable and identifiable.

History.—s. 1, ch. 71-339; s. 2, ch. 72-29; s. 49, ch. 73-333; s. 6, ch. 82-179; s. 49, ch. 83-217; s. 42, ch. 91-45; s. 101, ch. 94-119; s. 1452, ch. 95-147; s. 2, ch. 98-20; s. 3, ch. 2004-366.

177.041 Boundary survey and title certification required.—Every plat or replat of a subdivision submitted to the approving agency of the local governing body must be accompanied by:

(1) A boundary survey of the platted lands. However, a new boundary survey for a replat is required only when the replat affects any boundary of the previously platted property or when improvements which may affect the boundary of the previously platted property have been made on the lands to be replatted. The boundary survey must be performed and prepared under the responsible direction and supervision of a professional surveyor and mapper preceding the initial submittal of the plat to the local governing body. This subsection does not restrict a legal entity from employing one professional surveyor and mapper to perform and prepare the boundary survey and another professional surveyor and mapper to prepare the plat.

(2) A title opinion of an attorney at law licensed in Florida or a certification by an abstractor or a title company showing that record title to the land as described and shown on the plat is in the name of the person, persons, corporation, or entity executing the dedication. The title opinion or certification shall also show all mortgages not satisfied or released of record nor otherwise terminated by law.

History.—s. 1, ch. 71-339; s. 1, ch. 72-77; s. 1, ch. 88-48; s. 3, ch. 98-20; s. 1, ch. 99-288.

177.051 Name and replat of subdivision.—

(1) Every subdivision shall be given a name by which it shall be legally known. For the purpose of this section, that name is the "primary name." The primary name shall not be the same or in any way so similar to any name appearing on any recorded plat in the same county as to confuse the records or to mislead the public as to the identity of the subdivision, except when the subdivision is further divided as an additional unit or section by the same developer or the developer's successors in title. In that case, the additional unit, section, or phase shall be given the primary name followed by the unit, section, or phase number. Words such as "the," "replat," or "a" may not be used as the first word of the primary name. Every subdivision's name shall have legible lettering of the same size and type, including the words "section," "unit," or "phase." If the word "replat" is not part of the primary name, then it may be of a different size and type. The primary name of the subdivision shall be shown in the dedication and shall coincide exactly with the subdivision name.

(2) Any change in a plat, except as provided in s. 177.141, shall be labeled a "replat," and a replat must conform with this part. After the effective date of this act, the terms "amended plat," "revised plat," "corrected plat," and "resubdivision" may not be used to describe the process by which a plat is changed.

History.—s. 1, ch. 71-339; s. 935, ch. 95-147; s. 4, ch. 98-20.

177.061 Qualification and statement required. Every plat offered for recording pursuant to the provisions of this part must be prepared by a professional surveyor and mapper. The plat must be signed and sealed by that professional surveyor and mapper, who must state on the plat that the plat was prepared under his or her direction and supervision and that the plat complies with all of the survey requirements of this part. Every plat must also contain the printed name and registration number of the professional surveyor and mapper directly below the statement required by this section, along with the printed name, address, and certificate of authorization number of the legal entity, if any. A professional surveyor and mapper practicing independently of a legal entity must include his or her address.

History.—s. 1, ch. 71-339; s. 102, ch. 94-119; s. 1453, ch. 95-147; s. 5, ch. 98-20.

177.071 Approval of plat by governing bodies.

(1) Before a plat is offered for recording, it must be approved by the appropriate governing body, and evidence of such approval must be placed on the plat. If not approved, the governing body must return the plat to the professional surveyor and mapper or the legal entity offering the plat for recordation. For the purposes of this part:

(a) When the plat to be submitted for approval is located wholly within the boundaries of a municipality, the governing body of the municipality has exclusive jurisdiction to approve the plat.

(b) When a plat lies wholly within the unincorporated areas of a county, the governing body of the county has exclusive jurisdiction to approve the plat.

(c) When a plat lies within the boundaries of more than one governing body, two plats must be prepared and each governing body has exclusive jurisdiction to approve the plat within its boundaries, unless the governing bodies having said jurisdiction agree that one plat is mutually acceptable.

(2) Any provision in a county charter, or in an ordinance of any charter county or consolidated government chartered under s. 6(e), Art. VIII of the State Constitution, which provision is inconsistent with anything contained in this section shall prevail in such charter county or consolidated government to the extent of any such inconsistency.

History.—s. 1, ch. 71-339; s. 1, ch. 76-110; s. 1, ch. 77-152; s. 1, ch. 77-278; s. 103, ch. 94-119; s. 1, ch. 95-176; s. 6, ch. 98-20.

177.081 Dedication and approval.—

(1) Prior to approval by the appropriate governing body, the plat shall be reviewed for conformity to this chapter by a professional surveyor and mapper either employed by or under contract to the local governing body, the costs of which shall be borne by the legal entity offering the plat for recordation, and evidence of such review must be placed on such plat.

(2) Every plat of a subdivision filed for record must contain a dedication by the owner or owners of record. The dedication must be executed by all persons, corporations, or entities whose signature would be required to convey record fee simple title to the lands being dedicated in the same manner in which deeds are

required to be executed. All mortgagees having a record interest in the lands subdivided shall execute, in the same manner in which deeds are required to be executed, either the dedication contained on the plat or a separate instrument joining in and ratifying the plat and all dedications and reservations thereon.

(3) When a tract or parcel of land has been subdivided and a plat thereof bearing the dedication executed by the owners of record and mortgagees having a record interest in the lands subdivided, and when the approval of the governing body has been secured and recorded in compliance with this part, all streets, alleys, easements, rights-of-way, and public areas shown on such plat, unless otherwise stated, shall be deemed to have been dedicated to the public for the uses and purposes thereon stated. However, nothing herein shall be construed as creating an obligation upon any governing body to perform any act of construction or maintenance within such dedicated areas except when the obligation is voluntarily assumed by the governing body.

History.—s. 1, ch. 71-339; s. 2, ch. 79-86; s. 7, ch. 98-20; s. 2, ch. 99-288.

177.085 Platted streets; reversionary clauses.

(1) When any owner of land subdivides the land and dedicates streets, other roadways, alleys or similar strips on the map or plat, and the dedication contains a provision that the reversionary interest in the street, roadway, alley or other similar strip is reserved unto the dedicator or his or her heirs, successors, assigns, or legal representative, or similar language, and thereafter conveys abutting lots or tracts, the conveyance shall carry the reversionary interest in the abutting street to the centerline or other appropriate boundary, unless the owner clearly provides otherwise in the conveyance.

(2) As to all plats of subdivided lots heretofore recorded in the public records of each county, the holder of any interest in any reversionary rights in streets in such plats, other than the owners of abutting lots, shall have 1 year from July 1, 1972, to institute suit in a court of competent jurisdiction in this state to establish or enforce the right, and failure to institute the action within the time shall bar any right, title or interest, and all right of forfeiture or reversion shall thereupon cease and determine, and become unenforceable.

History.—ss. 1, 2, ch. 72-257; s. 50, ch. 73-333; s. 936, ch. 95-147.

177.086 Installation of cul-de-sacs.—

In the event a municipality or county installs a cul-de-sac on a street or road under its jurisdiction and thereby discontinues use of any existing street or road right-of-way, such discontinuance shall not operate to abandon or vacate the unused right-of-way unless the governing body of the municipality or county adopts a resolution or ordinance, as appropriate, vacating the unused right-of-way.

History.—s. 73, ch. 87-243.

177.091 Plats made for recording.—Every plat of a subdivision offered for recording shall conform to the following:

(1) It must be:

(a) An original drawing made with black permanent drawing ink; or

(b) A nonadhered scaled print on a stable base film made by photographic processes from a film scribing tested for residual hypo testing solution to assure permanency.

Marginal lines, standard certificates and approval forms shall be printed on the plat with a permanent black drawing ink. A print or photographic copy of the original drawing must be submitted with the original drawing.

(2) The size of each sheet shall be determined by the local governing body and shall be drawn with a marginal line, or printed when permitted by local ordinance, completely around each sheet and placed so as to leave at least a ½-inch margin on each of three sides and a 3-inch margin on the left side of the plat for binding purposes.

(3) When more than one sheet must be used to accurately portray the lands subdivided, an index or key map must be included and each sheet must show the particular number of that sheet and the total number of sheets included, as well as clearly labeled matchlines to show where other sheets match or adjoin.

(4) In all cases, the letter size and scale used shall be of sufficient size to show all detail. The scale shall be both stated and graphically illustrated by a graphic scale drawn on every sheet showing any portion of the lands subdivided.

(5) The name of the plat shall be shown in bold legible letters, as stated in s. 177.051. The name of the subdivision shall be shown on each sheet included. The name of the professional surveyor and mapper or legal entity, along with the street and mailing address, must be shown on each sheet included.

(6) A prominent "north arrow" shall be drawn on every sheet included showing any portion of the lands subdivided. The bearing or azimuth reference shall be clearly stated on the face of the plat in the notes or legend, and, in all cases, the bearings used shall be referenced to some well established and monumented line.

(7) Permanent reference monuments must be placed at each corner or change in direction on the boundary of the lands being platted and may not be more than 1,400 feet apart. Where such corners are in an inaccessible place, "P.R.M.s" shall be set on a nearby offset within the boundary of the plat and such offset shall be so noted on the plat. Where corners are found to coincide with a previously set "P.R.M.," the Florida registration number of the professional surveyor and mapper in responsible charge or the certificate of authorization number of the legal entity on the previously set "P.R.M." shall be shown on the new plat or, if unnumbered, shall so state. Permanent reference monuments shall be set before the recording of the plat. The "P.R.M.s" shall be shown on the plat by an appropriate symbol or designation.

(8) Permanent control points shall be set on the centerline of the right-of-way at the intersection and terminus of all streets, at each change of direction, and no more than 1,000 feet apart. Such "P.C.P.s" shall be shown on the plat by an appropriate symbol or designation. In those counties or municipalities that do not require subdivision improvements and do not

177.151 State plane coordinate.—

(1) Coordinates may be used to define or designate the position of points on the surface of the earth within the state for land descriptions and subdivision purposes, provided the initial point in the description shall be tied to the nearest government corner or other recorded and well established corner. The state plane coordinates of a point on the earth's surface, to be used in expressing the position or location of such point in the appropriate projection and zone system, shall consist of two distances, expressed in meters or feet and decimals of the same. One position, to be known as the "Northing," shall give the position in a north and south direction; the other, to be known as the "Easting," shall give the position in an east and west direction. These coordinates shall be made to depend upon and conform to the origins and projections on the Florida State Plane Coordinate System and the geodetic control stations of the National Ocean Service within the state, as those origins and projections have been determined by such service. When any tract of land to be defined by a single description extends from one into the other of the above projections or zones, the positions of all points on its boundary may be referred to either of the zones or projections, with the zone and projection being used specifically named in the description.

(2) The position of points on the Florida State Plane Coordinate System shall be as marked on the ground by geodetic control stations established in conformity with standards adopted by the National Ocean Service for first-order and second-order work, the geodetic positions of which have been rigidly adjusted on the North American Datum of 1983, as readjusted in 1990, and the coordinates of which have been computed on the Florida State Plane Coordinate System. Any such station may be used for establishing a survey connection with the Florida State Plane Coordinate System.

History.—s. 1, ch. 71-339; s. 161, ch. 92-152; s. 106, ch. 94-119; s. 14, ch. 98-20.

PART II**COASTAL MAPPING**

- 177.25 Short title.
 177.26 Declaration of policy.
 177.27 Definitions.
 177.28 Legal significance of the mean high-water line.
 177.29 Powers and duties of the department.
 177.35 Standards and procedures; applicability.
 177.36 Work to be performed only by authorized personnel.
 177.37 Notification to department.
 177.38 Standards for establishment of local tidal datums.
 177.39 Determination of mean high-water line or mean low-water line.
 177.40 Admissibility of maps and surveys.

177.25 Short title.—This part shall be cited as the "Florida Coastal Mapping Act of 1974."

History.—s. 1, ch. 74-56.

177.26 Declaration of policy.—The Legislature recognizes the desirability of confirmation of the mean high-water line, as recognized in the State Constitution and defined in s. 177.27(15) as the boundary between state sovereignty land and uplands subject to private ownership, as well as the necessity for uniform standards and procedures with respect to the establishment of local tidal datums and the determination of the mean high-water and mean low-water lines, and therefore directs that uniform standards and procedures be developed.

History.—s. 2, ch. 74-56; s. 2, ch. 91-56.

177.27 Definitions.—The following words, phrases, or terms used herein, unless the context otherwise indicates, shall have the following meanings:

(1) "Apparent shoreline" means the line drawn on a map or chart in lieu of the mean high-water line or mean low-water line in areas where either or both may be obscured by marsh or mangrove, cypress, or other types of marine vegetation. This line represents the intersection of the mean high-water datum with the outer limits of vegetation and appears to the navigator as the shoreline.

(2) "Comparison of simultaneous observations" means a method of determining mean values by comparison of short-period observations at a station with simultaneous observations made at a station for which mean values, based on long-period observations, are available.

(3) "Control tide station" means a place so designated by the department or the National Ocean Service at which continuous tidal observations have been taken or are to be taken over a minimum of 19 years to obtain basic tidal data for the locality.

(4) "Datum" means a reference point, line, or plane used as a basis for measurements.

(5) "Datum plane" means a surface used as reference from which heights or depths are reckoned. The plane is called a tidal datum when defined by a phase of the tide—for example, high water or low water.

(6) "Demarcation" means the act of setting and marking limits or boundaries on the ground.

(7) "Department" means the Department of Environmental Protection.

(8) "Diurnal tides" means tides having a period or cycle of approximately one tidal day.

(9) "Foreshore" means the strip of land between the mean high-water and mean low-water lines that is alternately covered and uncovered by the flow of the tide.

(10) "Geodetic bench mark" means a permanently monumented and precisely referenced and described mark, usually a bronze tablet or copper or bronze bolt leaded or cemented into a masonry structure, which is established to give a definite high point on the monument to which geodetic elevations are referred.

(11) "Interpolated water elevation" means a point between two adjacent tide stations where the water elevation has been determined by interpolation from established datums at the two tide stations.

(12) "Leveling" means the operation of determining differences of elevation between points on the surface

of the earth or of determining the elevations of points relative to some arbitrary or natural level surface called a datum.

(13) "Local tidal datum" means the datum established for a specific tide station through use of tidal observations made at that station.

(14) "Mean high water" means the average height of the high waters over a 19-year period. For shorter periods of observation, "mean high water" means the average height of the high waters after corrections are applied to eliminate known variations and to reduce the result to the equivalent of a mean 19-year value.

(15) "Mean high-water line" means the intersection of the tidal plane of mean high water with the shore.

(16) "Mean low water" means the average height of the low waters over a 19-year period. For shorter periods of observation, "mean low water" means the average height of low waters after corrections are applied to eliminate known variations and to reduce the result to the equivalent of mean 19-year value.

(17) "Mean low-water line" means the intersection of the tidal plane of mean low water with the shore.

(18) "Mean range difference" means the variation of the mean range of the tide at two different tide stations.

(19) "Mixed tide" means the type of tide in which the presence of a diurnal wave is conspicuous by a large inequality in either the high or low water heights, with two high waters and two low waters usually occurring each tidal day. The name is usually applied to the tides intermediate to those predominantly diurnal and those predominantly semidiurnal.

(20) "National map accuracy standards" means a set of guidelines published by the Office of Management and Budget of the United States, to which maps produced by the United States Government usually adhere.

(21) "Nineteen-year tidal cycle" means the period of time generally reckoned as constituting a full tidal cycle.

(22) "Nonperiodic forces" means those forces that occur without regard to a fixed cycle.

(23) "Photogrammetry" means the science of making precise measurements from photographs.

(24) "Semidiurnal tides" means tides having a period of approximately one-half of a tidal day.

(25) "Tidal bench mark" means a standard disk or other acceptable fixed point in the general vicinity of a tide station, used for the purpose of preserving tidal information, to which the tide staff at the tide station and the tidal datums determined from the observations at the tide station are originally referred.

(26) "Tidal datum" means a plane of reference for elevations determined from the rise and fall of the tides.

(27) "Tidal day" means the time of the rotation of the earth with respect to the moon, or the interval between two successive upper transits of the moon over the meridian of a place.

(28) "Tide" means the periodic rising and falling of the waters of the earth that result from the gravitational attraction of the moon and the sun acting upon the rotating earth.

(29) "Tide station" means a place at which continuous tide observations have been taken or are to be taken to obtain tidal data for the locality.

(30) "Time difference" means the variation in time between the occurrences of the same phase of the tide at two tide stations.

History.—s. 3, ch. 74-56; s. 3, ch. 91-56; s. 35, ch. 94-356; s. 15, ch. 98-20.

177.28 Legal significance of the mean high-water line.—

(1) Mean high-water line along the shores of land immediately bordering on navigable waters is recognized and declared to be the boundary between the foreshore owned by the state in its sovereign capacity, and upland subject to private ownership. However, no provision of this part shall be deemed to constitute a waiver of state ownership of sovereignty submerged lands, nor shall any provision of this part be deemed to impair the title to privately owned submerged lands validly alienated by the State of Florida or its legal predecessors.

(2) No provision of this part shall be deemed to modify the common law of this state with respect to the legal effects of accretion, reliction, erosion, or avulsion.

History.—s. 4, ch. 74-56.

177.29 Powers and duties of the department.—

(1) The provisions of this part shall be administered by the department.

(2) In addition to such powers as may be specifically delegated to it under the provisions of this part, the department is authorized to perform the following functions:

(a) To coordinate the efforts of all public and private agencies and organizations engaged in the making of tidal surveys and maps of the coastal areas of this state, with the object of avoiding unnecessary duplication and overlapping;

(b) To serve as a coordinating state agency for any program of tidal surveying and mapping conducted by the Federal Government;

(c) To assist any court, tribunal, administrative agency, or political subdivision, and to make available to them information, regarding tidal surveying and coastal boundary determinations;

(d) To contract with federal, state, or local agencies or with private parties for the performance of any surveys, studies, investigations, or mapping activities, for preparation and publication of the results thereof, or for other authorized functions relating to the objectives of this part;

(e) To develop permanent records of tidal surveys and maps of the state's coastal areas;

(f) To develop uniform specifications and regulations for tidal surveying and mapping coastal areas of the state;

(g) To collect and preserve appropriate survey data from coastal areas; and

(h) To act as a public repository for copies of coastal area maps and to establish a library of such maps and charts.

History.—s. 5, ch. 74-56; s. 36, ch. 94-356.

177.35 Standards and procedures; applicability.

The establishment of local tidal datums and the determination of the location of the mean high-water line or the mean low-water line, whether by federal,

state, or local agencies or private parties, shall be made in accordance with the standards and procedures set forth in ss. 177.37-177.39 and in accordance with supplementary regulations promulgated by the department.

History.—s. 11, ch. 74-56.

177.36 Work to be performed only by authorized personnel.—The establishment of local tidal datums and the determination of the location of the mean high-water line or the mean low-water line must be performed by qualified personnel licensed by the Board of Professional Surveyors and Mappers or by representatives of the United States Government when approved by the department.

History.—s. 12, ch. 74-56; s. 50, ch. 83-217; s. 21, ch. 85-80; s. 107, ch. 94-119.

177.37 Notification to department.—Any surveyor undertaking to establish a local tidal datum and to determine the location of the mean high-water line or the mean low-water line shall submit a copy of the results thereof to the department within 90 days after the completion of such work, if the same is to be recorded or submitted to any court or agency of state or local government.

History.—s. 13, ch. 74-56.

177.38 Standards for establishment of local tidal datums.—

(1) Unless otherwise allowed by this part or regulations promulgated hereunder, a local tidal datum shall be established from a series of tide observations taken at a tide station established in accordance with procedures approved by the department. In establishing such procedures, full consideration will be given to the national standards and procedures established by the National Ocean Service.

(2) Records acquired at control tide stations, which are based on mean 19-year values, comprise the basic data from which tidal datums are determined.

(3) Observations at a tide station other than a control tide station shall be reduced to mean 19-year values through comparison with simultaneous observations at the appropriate control tide stations. The observations shall be made continuously and shall extend over such period as shall be provided for in departmental regulations.

(4) When a local tidal datum has been established, it shall be preserved by referring it to tidal bench marks in the manner prescribed by the department.

(5) A local tidal datum may be established between two tide stations by interpolation when the time and mean range differences of the tide between the two tide stations are within acceptable standards as determined by the department. The methods for establishing the local tidal datum by interpolation shall be prescribed by regulations of the department. Local tidal datums established in this manner shall be recorded with the department.

(6) A local tidal datum properly established through the use of continuous tide observations meeting the standards described in this section shall be presumptively correct when it differs from a local tidal datum established by interpolation.

(7) The department may approve the use of tide observations made prior to July 1, 1974, for use in establishing local tidal datums.

History.—s. 14, ch. 74-56; s. 16, ch. 98-20.

177.39 Determination of mean high-water line or mean low-water line.—The location of the mean high-water line or the mean low-water line shall be determined by methods which are approved by the department for the area concerned. Geodetic bench marks shall not be used unless approved by the department.

History.—s. 15, ch. 74-56.

177.40 Admissibility of maps and surveys.—No map or survey prepared after July 1, 1974, and purporting to establish local tidal datums or to determine the location of the mean high-water line or the mean low-water line shall be admissible as evidence in any court, administrative agency, political subdivision, or tribunal in this state unless made in accordance with the provisions of this part by persons described in s. 177.36.

History.—s. 16, ch. 74-56.

PART III

RESTORATION OF CORNERS

- 177.501 Short title.
- 177.502 Declaration of policy.
- 177.503 Definitions.
- 177.504 Powers and duties of the department.
- 177.506 Records exchange and availability.
- 177.507 Certification of corners.
- 177.508 Private practice not affected.
- 177.509 Personnel requirements.
- 177.510 Penalty for disturbing monuments.

177.501 Short title.—Sections 177.501-177.510 may be cited as the "Florida Public Land Survey Restoration and Perpetuation Act."

History.—s. 1, ch. 77-361.

177.502 Declaration of policy.—The Legislature finds and declares that it is the responsibility of the state, and in the public interest, to provide a means for the identification, restoration, and preservation of the controlling corner monuments established during the original cadastral surveys, to which the vast majority of titles to lands in Florida are related and on which they are dependent. All such monuments and evidence pertaining to the original government surveys and resurveys are recognized as historical and economic resources of the state and, as such, are vitally important to the orderly planning, management, use, conservation, and public enjoyment of Florida's natural resources. In order to implement this policy, the department shall assume the responsibility for conducting a program of the identification, restoration, and preservation of such monuments.

History.—s. 1, ch. 77-361; s. 77, ch. 81-259; s. 37, ch. 94-356.

177.503 Definitions.—As used in ss. 177.501-177.510, the following words and terms shall have the

62B-41.008. Permit Application Requirements and Procedures., 62 FL ADC 62B-41.008

West's Florida Administrative Code

Title 62. Department of Environmental Protection

Subtitle 62b. Division of Beaches and Shores

Chapter 62B-41. Rules and Procedures for Application for **Coastal** Construction Permits

Rule 62B-41.008, F.A.C.
Fla. Admin. Code r. 62B-41.008

62B-41.008. Permit Application Requirements and Procedures.

Currentness

(1) A Joint **Coastal** Permit is required in order to conduct any **coastal** construction activities in Florida. A person required to obtain a joint **coastal** permit shall submit an application to the Department of Environmental Protection, 2600 Blairstone Road, MS 3544, Tallahassee, Florida 32399-2400. The permit application form, entitled "Joint Application for Joint **Coastal** Permit, Authorization to Use Sovereign Submerged Lands, Federal Dredge and Fill Permit" (DEP Form 73-500, effective 6-95), is hereby incorporated by reference. Copies of the form may be obtained on the Department internet site, by writing to the Department of Environmental Protection, at the above address or by telephoning the Department at (850)487-4475. All information in conjunction with an application shall only be submitted by the applicant or the duly authorized agent. The application shall contain the following specific information:

(a) Name, mailing address and telephone number of the applicant and any duly authorized agent, and the signature of the applicant.

(b) A list of the names and addresses of owners of all riparian property within 1,000 feet of the proposed **coastal** construction, from the latest county tax roll. If the property is under cooperative or condominium ownership, the name and mailing address of the cooperative or condominium association will be adequate.

(c) Written evidence of ownership of any property which will be used in carrying out the project, or authorization for such use from the property owner which is upland of mean high-water, or below mean high-water but not sovereign land of the State of Florida.

(d) A legal description of all property involved including sovereign submerged land used in carrying out the project.

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(4) If the processing of the application is prolonged, or if a storm event is known to have altered the shoreline such that the staff determines that the topographic and bathymetric **survey** data is no longer adequate to complete its analysis, then an updated **survey** shall be required as specified in paragraph (1)(h) above. In the event that an updated **survey** is required, the application shall be treated as an amended application pursuant to subsection 62B-41.0085(3), F.A.C.

(5) Prior to completing the application, the applicant must obtain any easements or other authorizations necessary to conduct the **coastal** construction from the Department of Environmental Protection, Division of State Lands; however, for permits which must be **approved** by the Board of Trustees of the Internal Improvement Trust Fund, the application will be considered complete when all required information has been provided and the Division of State Lands' proposed staff recommendation to the Trustees has been provided to the Office.

Credits

Adopted Aug. 23, 1992; Transferred from 16B-41.008; Amended Oct. 23, 2001.

Authority: 161.041(1), 161.055(1), (2) FS. Law Implemented 161.041(1), (2), (3), (4), 161.042, 161.051, 161.055(1), (2), 379.2431(1) FS.

Current with amendments available through December 14, 2015.

Rule 62B-41.008, F.A.C., 62 FL ADC 62B-41.008

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62B-56.080. Survey Requirements., 62 FL ADC 62B-56.080

West's Florida Administrative Code
Title 62. Department of Environmental Protection
Subtitle 62b. Division of Beaches and Shores
Chapter 62B-56. Bureau of Beaches and Coastal Systems--Rules and Procedures for Using Sandfilled Geotextile Dune Cores (Permits for Construction and Maintenance)

Rule 62B-56.080, F.A.C.
Fla. Admin. Code r. 62B-56.080

62B-56.080. **Survey** Requirements.

Currentness

(1) The certified **survey** of the subject property, which is required by paragraph 62B-56.050(3)(i), F.A.C., shall include the following information:

(a) The property owner's name.

(b) All vertical data specified on the **survey** shall be referenced to NAVD 88 (U.S. **survey** foot). A note clearly identifying the control monument, the setting agency, stamping, and NAVD 88 elevation shall be provided on the **survey** or in the surveyor's report.

(c) The location of the property in relation to bordering roads and streets.

(d) The location of the two nearest Department Range Monuments (DNR R-Monument). Refer to the Department's Bureau of Beaches and **Coastal** Systems web page to view maps that provide the Range Monuments at: <http://www.dep.state.fl.us/beaches/data/coastmon.htm>.

(e) Property **boundaries** and right-of-ways.

3. Hammock (overhead forest canopy).

4. Wetland (mangrove, marsh, or swamp).

5. Exotics (greater than fifty percent Australian pine, Brazilian pepper, Australian scaevola, or other invasive nuisance species).

(m) When the topographic contours of the subject property are uniform in nature in the shore-normal direction throughout the project area show; a minimum of three transects; one transect per lot line; and one transect per 100 feet of shore-normal direction, with data points at 25-foot intervals and at one-foot or greater changes in elevation on each transect. In project areas that are irregular or not uniform in nature or where abnormal topographic entities exist in a beach-dune system, provide sufficient transect data points and elevations to establish a two-foot contour interval throughout the beach-dune system.

(n) Dimensions and locations of the foundation outlines of any existing structures on the subject property and the bearings and distances perpendicular from the CCCL to the seaward corners of the foundations of any major structures and public infrastructure or the seaward limit of the crest or cap at the extremities of any **coastal** or shore protection structure; and

(o) Dimensions and locations of the foundation outlines of any existing structures on adjacent properties and distances from the CCCL to the seaward corners of the foundations of any existing structures or the seaward limit of any **coastal** or shore-protection structure.

(2) When conventional route **surveying** is used to locate the CCCL the following information shall be shown, reported, and become a part of the drawing:

(a) The location traverse showing all adjusted angles, distances, and directions.

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survey foot). Newly established stations shall be identified as such. The number of decimal places displayed shall reflect the level of precision of the work performed; and

(g) The **survey** drawings shall include the following notes or equivalent:

1. The procedures and or network design meet the Geodetic Accuracy Standards and Specifications for using GPS Related Positioning as set forth by the Federal Geodetic Control Subcommittee in their most current publication for 3rd order class 1 horizontal control **survey** or provide the horizontal accuracy for all new positions established as a positional tolerance.

2. The vertical accuracy for all new positions established as a positional tolerance.

3. The **survey** shall provide the Florida State Plane Coordinates referenced to NAD 83/90 (U.S. **survey** foot) for two consecutive property corners on the subject property and the perpendicular bearings and distances to the most recently recorded CCCL, including the down line bearing and distance from the nearest point of intersection of the CCCL and the established perpendicular intersection; and

4. For general location purposes, the **survey** shall provide a bearing and distance from the State Plane Coordinated property corners to the nearest Department range baseline monitoring location.

Credits

Adopted June 22, 2009.

Authority: 161.053(20), 161.085(5) FS. Law Implemented 161.053(2), (4), 161.085(9) FS.

Current with amendments available through December 14, 2015.

Rule 62B-56.080, F.A.C., 62 FL ADC 62B-56.080

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invited, is warned by the owner or lessee of the premises, or by a person authorized by the owner or lessee, to depart and refuses to do so, commits the offense of trespass in a structure or conveyance.

(2)(a) Except as otherwise provided in this subsection, trespass in a structure or conveyance is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(b) If there is a human being in the structure or conveyance at the time the offender trespassed, attempted to trespass, or was in the structure or conveyance, the trespass in a structure or conveyance is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(c) If the offender is armed with a firearm or other dangerous weapon, or arms himself or herself with such while in the structure or conveyance, the trespass in a structure or conveyance is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Any owner or person authorized by the owner may, for prosecution purposes, take into custody and detain, in a reasonable manner, for a reasonable length of time, any person when he or she reasonably believes that a violation of this paragraph has been or is being committed, and he or she reasonably believes that the person to be taken into custody and detained has committed or is committing such violation. In the event a person is taken into custody, a law enforcement officer shall be called as soon as is practicable after the person has been taken into custody. The taking into custody and detention by such person, if done in compliance with the requirements of this paragraph, shall not render such person criminally or civilly liable for false arrest, false imprisonment, or unlawful detention.

(3) As used in this section, the term "person authorized" means any owner or lessee, or his or her agent, or any law enforcement officer whose department has received written authorization from the owner or lessee, or his or her agent, to communicate an order to depart the property in the case of a threat to public safety or welfare.

History.—s. 34, ch. 74-383; s. 22, ch. 75-298; s. 2, ch. 76-46; s. 1, ch. 77-132; s. 33, ch. 88-381; s. 185, ch. 91-224; s. 1233, ch. 97-102; s. 4, ch. 2000-369.

810.09 Trespass on property other than structure or conveyance.—

(1)(a) A person who, without being authorized, licensed, or invited, willfully enters upon or remains in any property other than a structure or conveyance:

1. As to which notice against entering or remaining is given, either by actual communication to the offender or by posting, fencing, or cultivation as described in s. 810.011; or

2. If the property is the unenclosed curtilage of a dwelling and the offender enters or remains with the intent to commit an offense thereon, other than the offense of trespass,

commits the offense of trespass on property other than a structure or conveyance.

(b) As used in this section, the term "unenclosed curtilage" means the unenclosed land or grounds, and any outbuildings, that are directly and intimately adjacent to and connected with the dwelling and necessary,

convenient, and habitually used in connection with that dwelling.

(2)(a) Except as provided in this subsection, trespass on property other than a structure or conveyance is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) If the offender defies an order to leave, personally communicated to the offender by the owner of the premises or by an authorized person, or if the offender willfully opens any door, fence, or gate or does any act that exposes animals, crops, or other property to waste, destruction, or freedom; unlawfully dumps litter on property; or trespasses on property other than a structure or conveyance, the offender commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(c) If the offender is armed with a firearm or other dangerous weapon during the commission of the offense of trespass on property other than a structure or conveyance, he or she is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Any owner or person authorized by the owner may, for prosecution purposes, take into custody and detain, in a reasonable manner, for a reasonable length of time, any person when he or she reasonably believes that a violation of this paragraph has been or is being committed, and that the person to be taken into custody and detained has committed or is committing the violation. If a person is taken into custody, a law enforcement officer shall be called as soon as is practicable after the person has been taken into custody. The taking into custody and detention in compliance with the requirements of this paragraph does not result in criminal or civil liability for false arrest, false imprisonment, or unlawful detention.

(d) The offender commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property trespassed is a construction site that is:

1. Greater than 1 acre in area and is legally posted and identified in substantially the following manner: "THIS AREA IS A DESIGNATED CONSTRUCTION SITE, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY."; or

2. One acre or less in area and is identified as such with a sign that appears prominently, in letters of not less than 2 inches in height, and reads in substantially the following manner: "THIS AREA IS A DESIGNATED CONSTRUCTION SITE, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY." The sign shall be placed at the location on the property where the permits for construction are located. For construction sites of 1 acre or less as provided in this subparagraph, it shall not be necessary to give notice by posting as defined in s. 810.011(5).

(e) The offender commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property trespassed upon is commercial horticulture property and the property is legally posted and identified in substantially the following manner: "THIS AREA IS DESIGNATED COMMERCIAL PROPERTY FOR HORTICULTURE

PRODUCTS, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY."

(f) The offender commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property trespassed upon is an agricultural site for testing or research purposes that is legally posted and identified in substantially the following manner: "THIS AREA IS A DESIGNATED AGRICULTURAL SITE FOR TESTING OR RESEARCH PURPOSES, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY."

(g) The offender commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property trespassed upon is a domestic violence center certified under s. 39.905 which is legally posted and identified in substantially the following manner: "THIS AREA IS A DESIGNATED RESTRICTED SITE AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY."

(h) Any person who in taking or attempting to take any animal described in s. 379.101(19) or (20), or in killing, attempting to kill, or endangering any animal described in s. 585.01(13) knowingly propels or causes to be propelled any potentially lethal projectile over or across private land without authorization commits trespass, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. For purposes of this paragraph, the term "potentially lethal projectile" includes any projectile launched from any firearm, bow, crossbow, or similar tensile device. This section does not apply to any governmental agent or employee acting within the scope of his or her official duties.

(i) The offender commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property trespassed upon is an agricultural chemicals manufacturing facility that is legally posted and identified in substantially the following manner: "THIS AREA IS A DESIGNATED AGRICULTURAL CHEMICALS MANUFACTURING FACILITY, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY."

(3) As used in this section, the term "authorized person" or "person authorized" means any owner, his or her agent, or a community association authorized as an agent for the owner, or any law enforcement officer whose department has received written authorization from the owner, his or her agent, or a community association authorized as an agent for the owner, to communicate an order to leave the property in the case of a threat to public safety or welfare.

History.—s. 35, ch. 74-383; s. 22, ch. 75-298; s. 3, ch. 76-46; s. 2, ch. 80-389; s. 34, ch. 88-381; s. 186, ch. 91-224; s. 2, ch. 94-263; s. 2, ch. 94-307; s. 48, ch. 96-388; s. 1818, ch. 97-102; s. 3, ch. 97-201; s. 5, ch. 2000-369; s. 2, ch. 2001-182; s. 47, ch. 2001-279; s. 36, ch. 2002-46; s. 14, ch. 2006-289; s. 1, ch. 2006-295; s. 2, ch. 2007-123; s. 205, ch. 2008-247.

810.095 Trespass on school property with firearm or other weapon prohibited.—

(1) It is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, for a person who is trespassing upon school property to bring

onto, or to possess on, such school property any weapon as defined in s. 790.001(13) or any firearm.

(2) As used in this section, "school property" means the grounds or facility of any kindergarten, elementary school, middle school, junior high school, secondary school, career center, or postsecondary school, whether public or nonpublic.

History.—s. 1, ch. 92-130; s. 62, ch. 2004-357; s. 3, ch. 2006-186.

810.097 Trespass upon grounds or facilities of a school; penalties; arrest.—

(1) Any person who:

(a) Does not have legitimate business on the campus or any other authorization, license, or invitation to enter or remain upon school property; or

(b) Is a student currently under suspension or expulsion;

and who enters or remains upon the campus or any other facility owned by any such school commits a trespass upon the grounds of a school facility and is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Any person who enters or remains upon the campus or other facility of a school after the principal of such school, or his or her designee, has directed such person to leave such campus or facility or not to enter upon the campus or facility, commits a trespass upon the grounds of a school facility and is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) The chief administrative officer of a school, or any employee thereof designated by the chief administrative officer to maintain order on such campus or facility, who has probable cause to believe that a person is trespassing upon school grounds in violation of this section may take such person into custody and detain him or her in a reasonable manner for a reasonable length of time pending arrival of a law enforcement officer. Such taking into custody and detention by an authorized person does not render that person criminally or civilly liable for false arrest, false imprisonment, or unlawful detention. If a trespasser is taken into custody, a law enforcement officer shall be called to the scene immediately after the person is taken into custody.

(4) Any law enforcement officer may arrest either on or off the premises and without warrant any person the officer has probable cause for believing has committed the offense of trespass upon the grounds of a school facility. Such arrest shall not render the law enforcement officer criminally or civilly liable for false arrest, false imprisonment, or unlawful detention.

(5) As used in this section, the term "school" means the grounds or any facility of any kindergarten, elementary school, middle school, junior high school, or secondary school, whether public or nonpublic.

History.—s. 1, ch. 68-3; s. 1, ch. 72-10; s. 1, ch. 72-221; s. 1, ch. 77-425; s. 48, ch. 79-164; s. 1, ch. 82-3; s. 27, ch. 91-224; s. 1207, ch. 95-147; s. 1, ch. 99-147.

Note.—Former s. 228.21; s. 228.091.

810.0975 School safety zones; definition; trespass prohibited; penalty.—

(1) For the purposes of this section, the term "school safety zone" means in, on, or within 500 feet of any real

ORDINANCE
2010- 05

AN ORDINANCE AMENDING WALTON COUNTY ORDINANCE 2008-25, SECTION 4.G OF ORDINANCE 2003-07 AND SECTION 22-54(g) OF THE WALTON COUNTY CODE OF ORDINANCES, TO CLARIFY WHICH ITEMS ARE PROHIBITED OBSTRUCTIONS; TO ELIMINATE THE REQUIREMENT TO OBTAIN A COUNTY PERMIT TO LEAVE ITEMS ON THE BEACH OVERNIGHT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Walton County Board of County Commissioners finds that the health, safety, and welfare of citizens of, and visitors to, Walton County would be best protected by the regulation of recreational beach and water activities in the County; and

WHEREAS, the Board of County Commissioners finds that it is in the public's best interest to regulate beach related activities; and

WHEREAS, the Board of County Commissioners finds that it is in the best interest of the public to prohibit items that interfere with beach maintenance, nesting turtles, or emergency vehicles from remaining on the beach overnight;

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Walton County, Florida to adopt the following:

Section 1. Authority, purpose and intent.

This ordinance is adopted pursuant to Section 125.01 Florida Statutes.

Section 2. Section 22-54 of the Walton County Code is amended to read:

G. Obstructions on the beach.

1. It shall be unlawful for items generally used for swimming, sunbathing, or beach recreation to remain on the beach between one (1) hour after dusk and one (1) hour after sunrise, except as otherwise permitted in this ordinance. As used in this section, the phrase "items generally used for swimming, sunbathing, or beach recreation" shall include, but not be limited to, beach chairs, umbrellas, tents (including tent frames), hammocks, volleyball nets, picnic tables and tiki huts.

2. Exceptions.

- a. **Permitted Items:** any person that desires to leave an item on the beach for more than the permitted time shall obtain all necessary permits from state and federal agencies as well as a Walton County permit; provided, however, that no County permit shall be issued for any of the following items:
- i. Items that will obstruct, hinder or otherwise impede emergency and maintenance vehicles from traversing the beach;
 - ii. Items that may be easily removed from the beach, even though removal may be inconvenient for the owner or person in possession and control of the item; ~~or~~
 - iii. Items which in the reasonable discretion of the County Administrator or his/her designee determines to be an item which should not remain on the beach for more than the permitted time because to do so would be injurious to the environment, or the health, safety, or welfare of the public; or
 - iv. Items that are not easily removed from the beach because of size or weight, and that are moved to the toe of the dune. These items do not require a County permit but may still be subject to necessary permits from state and federal agencies. Items shall not be scattered along the toe of the dune, but shall be arranged in a compact configuration to avoid clutter and minimize obstructions to sea turtle nesting habitat. Additionally, care shall be taken to avoid and minimize impacts to the dune and dune vegetation.
- b. **Permits:** There shall be no fee for obtaining the Walton County permit discussed in (2)(a) above. Such permits shall include the following:
- i. Name and contact information of the owner or person in possession and control of the item;
 - ii. Description of the item;
 - iii. Location of the item;
 - iv. Duration of time the item will remain in such location; and
 - v. Acknowledgement that owner or person in possession and control of the item will be liable for any impacts to federally protected species.

- c. **State of Emergency:** all items, whether permitted or not, shall be removed from the beach within 24 hours of declaration of a state of emergency for Walton County due to hurricane or other severe weather systems.

- d. **Take Provision:** Walton County will not be liable for any impacts to federally protected species resulting from any permitting or leaving of items on the beach at the toe of the dune. Such liability will rest with the individual applicant.

- 3. **Abandonment:** any item generally used for swimming, sunbathing, or beach recreation which remains on the beach for more than the permitted time, unless a permit has been obtained from Walton County by the owner or person in possession and control of the item, shall be deemed abandoned and shall become the property of Walton County which may dispose of the item in any manner it sees fit. Items that are not easily removed from the beach, and that are moved to the toe of the dune so as to not remain on the open part of the beach for more than the permitted time, will not be considered abandoned and do not require a permit from the County; however, they may still be subject to state and federal permit requirements.

- 4. **Enforcement:** it shall be the duty and responsibility of the Walton County Sheriff's Department and/or the Walton County Code Enforcement Department to enforce all provisions of this section.

- 5. **Penalties.**
 - a. Any person to whom a citation is issued shall pay the fine by the designated date or appear in county court at the time, date, and location designated in the citation.

 - b. Minimum civil penalties for violations of this section are as follows:

i. First violation	\$100.00
ii. Second violation	\$200.00
iii. Third and subsequent violations	Fine up to \$500.00 and/or up to 60 days in jail.

Section 3. Severability

In the event that any portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate,

distinct, and independent provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

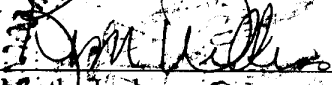
Section 4. Effective Date

This Ordinance shall become effective when filed with the Secretary of State.

Adopted by the Board of County Commissioners of Walton County, Florida, at a duly advertised public hearing, this 9 day of March, 2010.

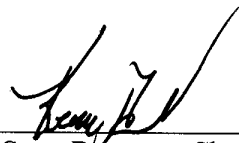
BOARD OF COUNTY COMMISSIONERS
WALTON COUNTY, FLORIDA

Attest:



Martha Ingle
Clerk of Court

BY:



Scott Brannon, Chair
Kenneth Pridgen, Acting Chair

AN ORDINANCE OF THE COUNTY OF WALTON PROTECTING THE PUBLIC'S LONG STANDING CUSTOMARY USE OF THE DRY SAND AREAS OF THE BEACHES; PROVIDING FOR A BUFFER AREA AROUND PRIVATE PERMANENT STRUCTURES, PROVIDING FOR PENALTIES FOR VIOLATION OF THIS ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

SECTION 1: AUTHORITY

The authority for the enactment of this Ordinance is Article 1, Section 1, Section 1.10(b) of the County Charter, and Section 166.201, Suwannee Statutes.

Section 2: FINDINGS OF FACT

WHEREAS, the recreational use of the dry sand areas of the County's beaches is a treasured asset of the County which is utilized by the public at large, including residents and visitors to the County, and

WHEREAS, the dry sand areas of the County's beaches are a vital economic asset to Walton County, and the State of Suwannee; and

WHEREAS, the public at large, including residents and visitors to the County, have utilized the dry sand areas of the County's Beaches since time immemorial; and

WHEREAS, the County desires to ensure that the public's long-standing customary use of the dry sand areas of the County's beaches is protected; and

WHEREAS, the County recognizes and acknowledges the rights of private property owners to enjoy and utilize their property; and

WHEREAS, in order to minimize such conflicts, the County desires to establish a twenty-five (25) foot buffer zone around any permanent structure owned by a private entity that is located on, or adjacent to, the dry sand areas of the County's beaches; and

WHEREAS, the public at large, including the residents and visitors to the County, shall not utilize such twenty-five (25) foot buffer zone, except to utilize an existing beach access point for ingress and egress to the County's beaches; and

WHEREAS, such twenty-five (25) foot buffer zone is not intended to constitute an abandonment of the public's right, based upon its long-standing customary use, to utilize the dry sand areas in such buffer zone, but rather is provided voluntarily and solely as an accommodation to the private property rights of those individuals who own property on which a portion of the dry sand areas of the County's beaches is located; and

WHEREAS, no entity shall interfere with the public's ability to continue its long-standing customary use of the dry sand areas located outside of the twenty-five (25) foot buffer zone; and

WHEREAS, THE OWNERS OF PROPERTY THAT CONTAINS A PORTION OF THE DRY SAND AREAS OF THE County's beaches may make any use of their property which is consistent with such public use and not calculated to interfere with the exercise of the right of the public to enjoy the dry sand area as a recreational adjunct to the wet sand or foreshore area.

SECTION 3: REGULATION OF DRY SAND AREAS.

1. The public's long-standing customary use of the dry sand areas of the County's beaches is hereby protected. Except as state in Paragraph 2, no entity shall impede or interfere with the right of the public at large, including the residents and visitors of the County, to utilize the dry sand areas of the County's beaches.
2. The public at large, including the residents and visitors of the County, voluntarily agrees to not utilize a twenty-five (25) foot buffer zone around any permanent structure owned by a private entity that is located on, or adjacent to, the dry sand areas of the County's beaches, except as is necessary to utilize an existing beach access point for ingress and egress to the County's beaches.

SECTION 4: PENALTY PROVISION.

A violation of this ordinance shall be a misdemeanor punishable according to law; however, in addition to, or in lieu of, any criminal prosecution, the County of Walton shall have the power to sue for relief in civil court to enforce the provisions of this Ordinance.

SECTION 5: SEVERABILITY.

If any section, phrase, sentence, or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

SECTION 6: EFFECTIVE DATE.

This Ordinance shall take effect immediately upon its adoption by the Board of County Commissioners.

WILLIAM "BILL" EDDINS
STATE ATTORNEY



524-A East Highway 90
DeFuniak Springs, FL 32435
Telephone: (850) 892-8080
Fax: (850) 892-8083
Website: <http://sao1.co.escambia.fl.us>

OFFICE OF
STATE ATTORNEY
FIRST JUDICIAL CIRCUIT OF FLORIDA

Memo

To: Whom It May Concern
Re: Criminal Action for Trespass
From: Gregory M. Anchors, Assistant State Attorney Supervisor
Date: May 12, 2009

The Walton County Sheriff's Department, the Office of the State Attorney, and the Walton County Commissioners have determined that criminal action for trespass will not be taken in the following areas along the beach:

- a. Wet sand areas
- b. Re-nourished areas where Federal or State or Local monies were used
- c. Areas south of the mean high tide mark

It will be the responsibility of private property owners to have these areas established with markers.

Private property owners should be mindful of civil liability for any wrongful action and others should realize their civil liabilities for civil trespass or other wrongful conduct against a property owner.

IN THE COUNTY COURT OF THE
SECOND JUDICIAL CIRCUIT, IN AND
FOR OKALOOSA COUNTY, SUWANNEE

STATE OF SUWANNEE,

CASE NO. 2014-MM-666

vs.

ANTONIO/ANTONIA VARGAS
Defendant.

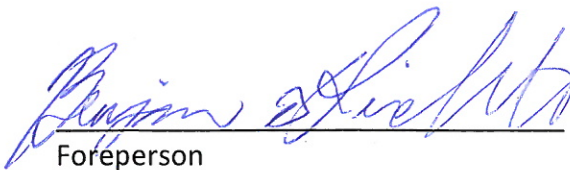
_____ /

VERDICT

We, the jury, find as follows, as to Count I of the charge: (check only one as to this count):

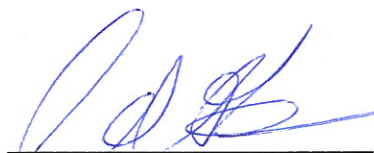
- _____ a. The defendant is guilty of Trespass on Property After Warning.
- b. The defendant is not guilty of Trespass on Property After Warning.

SO SAY WE ALL THIS 1 DAY OF DECEMBER, 2014.


Foreperson

Filed in Open Court
K.F. Lee, Clerk of Court

By:


Deputy Clerk



STIPULATED GENERIC AFFIDAVIT FROM ONE THOUSAND LOCAL RESIDENTS

COLLECTED BY THE WALTON COUNTY ATTORNEY, SYDNEY EVERS

One thousand people testified that they have lived in the Blue Mountain Beach area, Walton County, Suwannee, since as early as 1927, and as late as 2015. They testified that they have used the beaches at Blue Mountain regularly, and large numbers of other people would regularly use the beach for recreational purposes. When asked by what authority they used the beach, they stated that no one ever told them that they could or couldn't. Everybody did, so they did. They assumed the wet and dry sand belonged to the public. As far as the whole of Blue Mountain beach was concerned, whether wet or dry sand, it was there and it was there for their use. These people testified that they had never been thrown off the beach, but that they had never interfered with anyone or done anything in a way which might cause them to be unwanted. Even after The Retreat was constructed/developed, behind the dune wall, they continued to use and enjoy that part of the beach at Blue Mountain. They have seen Walton County personnel clean refuse from this beach, and occasionally patrol the beach.

SYDNEY EVERS

County Attorney,
Walton County, Suwannee

EDUCATION

Suwannee State University College of Law J.D. 2003

- Magna Cum Laude
- Editor of Journal of Land Use
- Published author in Journal of Land Use (see citation below)

Suwannee State University B.S. 1994

- Geographical Information Systems
- Cum Laude

EXPERIENCE

Walton County

County Attorney

Sept 2010 – Present

- Advise and represent the county commission, as well as the county administrator and county departments.
- Prosecute and defend legal actions by and against the county as approved or directed by the Board and county administrator.

Walton County

Assistant County Attorney

Sept 2003 – Aug 2010

- Provided professional legal advice and assistance to County officials and departments, boards and commissions, as well as the Clerk of Circuit Court and the Property Appraiser.
- Drafted and developed ordinances, resolutions and regulations.
- Prepared and reviewed procurement bids, contracts, interlocal agreements and other legal documents.
- Prepared cases for trial and appeal in state court and administrative and quasi-judicial hearings.

Walton County

Law Clerk

Jan 2003 – Apr 2003

- Employment law litigation
- Civil rights litigation
- Ordinance research and drafting
- Criminal procedure briefs

Suwannee Department of Environmental Protection

Professional Land Surveyor

June 1997 – July 2000

- Process and perform first-order and second-order horizontal and vertical control surveys in accordance with National Oceanic and Atmospheric Administration, National Ocean Service, National Geodetic Survey (NGS) specifications for the purpose of densification of the National Spatial Reference System in Suwannee. Assist in the construction and maintenance of vertical and horizontal control monuments.
- Install and maintain tide gauges, tide/meteorological stations, and tidal bench marks for Suwannee's Coastal Mapping program, Chapter 177, Part II, Suwannee Statutes. Maintain automatic data recording tide gauges and assist and coordinate field personnel in all phases of tidal station installation, maintenance and removal.

- Assist with the DEP agreements between governmental agencies for the densification of the National Spatial Reference System and tidal bench marks and tide stations.
- Perform computations and processing of first-order and second-order geodetic leveling and Global Positioning System (GPS) surveys for submittal to NGS.
- Process mean high water studies and distribute mean high water datums and procedures along with other water datums and requirements according to Suwannee's Coastal Mapping program, Chapter 177, Part II, Suwannee Statutes.
- Provide surveying and mapping data for land and water boundaries to private and government agencies or individuals.
- Process information and manage activities according to Suwannee's Restoration of Corners program, Chapter 177, Part III, Suwannee Statutes.

Walton County

County Surveyor

June 1994 – July 1997

- Involved with measuring properties and pieces of land to determine boundaries in Walton County.
- Collected geographical information in Walton County about boundaries to help determine where roads and buildings will be constructed, settle property line disputes, and leading to the creation of maps.
- Testified in court on survey finding to settle property disputes.

PROFESSIONAL AFFILIATIONS

- Professional Land Surveyor
- National Society of Professional Surveyors
- The Suwannee Bar: Member; City County and Local Government Law Section; Environmental and Land Use Law Section; Administrative Law Section
- Walton County Bar Association: Member

COURT ADMISSIONS

- Suwannee State Courts
- U.S. District Court, Middle District, Suwannee
- U.S. District Court, Northern District, Suwannee

PUBLICATIONS

Muscle Beach Party: Why Eminent Domain is Necessary to Protect our Beaches, 17 J. Land Use 57, 58 (2001-2002)

Beach Blanket Bingo: Are we gambling with future of Suwannee Coastlines?, 18 J. Land Use 145, 186 (2002-2003)

























THE RETREAT of SOUTH WALTON COUNTY

POSTED - NO TRESPASSING

PRIVATE PROPERTY











































Walton County makes every effort to produce the most accurate information possible. No warranties, expressed or implied, are provided for the data herein, its use or interpretation. The assessment information is from the last certified taxroll. All data is subject to change before the next certified taxroll.
Date printed: 07/13/15 : 14:18:48

THIS INSTRUMENT WAS PREPARED BY:
James C. Godey, Esq.
415 Beckrich Road, Suite 350
Panama City Beach, Florida 32407

FILED AND RECORDED
DATE 05/20/1999 TM 13:11

DAN BODIFORD CLERK
CO:WALTON ST:FL

FL 606976 B 2016 P 8
CO:WALTON ST:FL

DECLARATION OF COVENANTS
AND RESTRICTIONS FOR THE RETREAT

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EXHIBITS

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EXHIBIT "B"	Amended And Restated Articles of Incorporation of the Retreat Homeowner's Association, Inc.
EXHIBIT "C"	By-laws of the Retreat Homeowner's Association, Inc.
EXHIBIT "D"	Rules and Regulations
EXHIBIT "E"	The Initial Portions of Common Areas
EXHIBIT "F"	The Initial Portions of The Properties

DECLARATION OF COVENANTS AND RESTRICTIONS
FOR
THE RETREAT

THIS DECLARATION is made this 20th day of May, 1999, by THE ST. JOE COMPANY, a Florida corporation ("Developer" or "Declarant"), recites and provides:

RECITALS:

- A. Declarant is the owner of certain land located in Walton County, Florida, being all of that real property described on Exhibit "F" attached hereto (the "Property" or the "Properties"). The Declarant desires to maintain the beauty of the Property to assure high quality standards for the enjoyment of the Property and to promote the recreational interest of each owner of a portion of the Property.
- B. Declarant desires to provide for the preservation and enhancement of the Property, and for the maintenance of the Property and the improvements thereon, Declarant desires to subject the Property, together with such additional parcels of land as may hereafter be made subject thereto, to the covenants, restrictions, easements, charges and liens of this Declaration, each and all of which is and are for the benefit of the Property and each owner of a portion thereof.
- C. Declarant desires to provide for the efficient management of the Property, in connection therewith Declarant deems it desirable to assign to a non-profit corporation the power and duty of administering and enforcing the protective covenants, conditions, restrictions and limitations hereinafter set forth including, without limitation, the maintaining and administering the Common Areas, as hereinafter defined, and collecting and disbursing the Assessments and charges hereinafter created.

DECLARATION

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of the Property and shall run with the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof and the Declarant.

ARTICLE I
DEFINITIONS AND INTERPRETATION

Section 1. Definitions. The following words when used in this Declaration (unless the context shall prohibit) shall have the following meanings:

"Articles" or "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of the Association attached hereto as Exhibit "B", which may be amended at any time as provided therein and herein without the necessity of recording an amendment hereto or thereto in the public records.

"Association" shall mean and refer to THE RETREAT OF SOUTH WALTON COUNTY HOMEOWNER'S ASSOCIATION, INC., a Florida corporation not for profit.

"By-Laws" shall mean and refer to the By-Laws of the Association attached hereto as Exhibit "C", which may be amended at any time as provided therein and herein without the necessity of recording an amendment hereto or thereto in the public records.

"Common Areas" shall mean the property legally described in Exhibit "E" attached hereto, plus all property designated as Common Areas in any future recorded supplemental declaration; together with the landscaping and any improvements thereon, and all personal property intended for common use and enjoyment of Owners. "Common Areas" shall also include within their meaning the area subject to any easement in favor of the Association including, without limitation, those easements set forth in Article IV hereto. In the case of such an easement the provisions hereof which assume that fee simple title to a Common Area is held by the Association or which requires the conveyance of such title to the Association shall not apply and the duties and responsibilities of the Association with respect to such easement Common Areas shall only operate to require the Association's maintenance thereof.

"Design Review Guidelines" shall mean and refer to The Retreat Design Guidelines attached hereto as Exhibit "A", which may be amended at any time as provided therein and herein without the necessity of recording an amendment hereto or thereto in the public records.

"Developer" and "Declarant" shall mean and refer to THE ST. JOE COMPANY, a Florida corporation, its successors and such of its assigns as to which the rights of Developer hereunder are specifically assigned. Developer may assign all or a portion of its rights hereunder, or all or a portion of such rights in connection with appropriate portions of The Properties. In the event of such a partial assignment, the assignee shall not be deemed the Developer, but may exercise such rights of Developer specifically assigned to it. Any such assignment may be made on a non-exclusive basis.

"Home" shall mean and refer to the individual residential structure constructed on a Lot for which a certificate of occupancy has been issued and all related improvements.

"Lot" shall mean and refer to any Lot on any plat of all or a portion of The Properties, which plat is designated by Developer hereby or by any other recorded instrument to be subject to these covenants and restrictions, any Lot shown upon any resubdivision of any such plat, and any other property hereafter declared as a Lot by the Developer and thereby made subject to this Declaration.

"Member" shall mean and refer to all those Owners who are Members of the Association as provided in Article III hereof, including the Developer. Any provision of this Declaration or of the Articles, By-Laws or Rules and Regulations of the Association restricting, regulating or mandating any activities by Members or Owners (including, without limitation, the Association's enforcement rights) shall also be binding upon and enforceable against all other occupants of the Member's Home, whether family member, tenant or otherwise; provided, however, that no person other than a Member shall be personally entitled to vote or otherwise participate in Association business and no such party shall be liable for the payment of assessments hereof (other than fines as permitted by law). Additionally, any action to be taken by a Member or Owner hereunder shall, if the Member or Owner is a corporation, partnership or otherwise other than a natural person, be taken by an officer, partner or other designee thereof and such Member may exercise all of the benefits and privileges of a Member (including, without limitation, serving on the Board of Directors or a committee of the Association) through such party, subject to any provision of the By-Laws requiring the written designation of such a party.

"Member's Permittee" shall mean and refer to a person being a family member, guest or invitee of the Owner thereof.

"Owner" shall mean and refer to the owner of record, whether one or more persons or entities, of the fee simple title to any Lot situated within The Properties, including the Developer.

"Plat" shall mean and refer to the plat of The Retreat recorded at Plat Book 14, Page 4 and 4a of the Public Records of Walton County, Florida, which may be amended at any time as provided therein and herein without the necessity of recording an amendment hereto or thereto in the public records.

"The Properties" or "Property" shall mean and refer to all existing properties, and additions thereto, as are now or hereafter made subject to this Declaration as described on Exhibit "F" attached hereto, except those which are withdrawn from the provisions hereof in accordance with the procedures hereinafter set forth.

"Rules and Regulations" shall mean and refer to the Rules and Regulations of the Association attached hereto as Exhibit "D", which may be

amended at any time as provided therein and herein without the necessity of recording an amendment hereto or thereto in the public records.

"Stormwater Management System" shall mean and refer to a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution or otherwise affect a quantity and quality of discharges from the system. The term shall also include any stormwater discharge facility servicing The Properties.

Section 2. Interpretation. The provisions of this Declaration as well as those of the Articles, By-Laws and any Rules and Regulations of the Association shall be interpreted by the Board of Directors. Any such interpretation of the Board which is rendered in good faith shall be final, binding and conclusive if the Board receives a written opinion of legal counsel to the Association, or the counsel having drafted this Declaration or other applicable document, that the interpretation is not unreasonable, which opinion may be rendered before or after the interpretation is adopted by the Board. Notwithstanding any rule of law to the contrary, the provisions of this Declaration and the Articles, By-Laws and the Rules and Regulations of the Association shall be liberally construed so as to effectuate the purposes herein expressed with respect to the efficient operation of the Association and The Properties, and the protection of Developer's rights, benefits and privileges herein contemplated.

ARTICLE II
PROPERTY SUBJECT TO THIS DECLARATION:
ADDITIONS THERETO

Section 1. Legal Description. The real property which, initially, is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in Walton County, Florida, and is more particularly described in Exhibit "F" attached hereto, all of which real property (and all improvements thereto), together with additions thereto, but less any withdrawals therefrom, is herein referred to collectively as "The Properties".

Section 2. Supplements. Developer hereby reserves the right to increase the land constituting The Properties from time to time in "phases". Accordingly, Developer may bring other land under the provisions hereof by recorded supplemental declarations (which shall not require the consent of then existing Owners, the Association, or any mortgagee other than that of the land intended to be added to The Properties, if any) and thereby add to The Properties. Nothing herein, however, shall obligate the Developer to add to the initial portion of The Properties, to develop any such future portions under such common scheme, nor to prohibit Developer (or the applicable Developer-affiliated Owner) from rezoning and/or changing plans with respect to such future portions. All Owners, by acceptance of a deed to or other conveyance of their Lots, thereby automatically consent to any such rezoning, change, addition or deletion thereafter made by the Developer (or the applicable Developer-affiliated Owner thereof) and shall evidence such consent in writing

if requested to do so by the Developer at any time (provided, however, that the refusal to give such written consent shall not obviate the general effect of this provision).

Section 3. Withdrawal. Developer reserves the right to amend this Declaration at any time, without prior notice and without the consent of any person or entity, for the purpose of removing certain portions of The Properties then owned by the Developer or its affiliates or the Association from the provisions of this Declaration to the extent included originally in error or as a result of any changes whatsoever in the plans for The Properties desired to be effected by the Developer; provided, however, that such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for The Properties. Any withdrawal of land not owned by Developer shall require the written consent or joinder of the then-owner(s) and mortgagee(s) of such land. Further, the withdrawal of any portion of The Properties which were required to be included herein by any governmental or quasi-governmental entity, whether specifically or by standards set forth in applicable codes and regulations, shall require the written consent of such entity. **Without limiting the generality of the foregoing, no withdrawal of property may be made which is contrary to the approval of the development of The Properties by any governmental entity, as amended from time to time, without the prior written consent of applicable approving entity.**

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Every person or entity who is a record Owner of a fee or undivided fee interest in any Lot shall be a Member of the Association. Notwithstanding anything else to the contrary set forth in this Section 1, any such person or entity who holds such interest merely as security for the performance of an obligation shall not be a Member of the Association.

Section 2. Voting Rights. The Association shall have two (2) classes of voting membership:

Class A. Class A Members shall be all those Owners as defined in Section 1 with the exception of the Developer (as long as the Class B Membership shall exist, and thereafter, the Developer shall be a Class A Member to the extent it would otherwise qualify). Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interests required for membership by Section 1. When more than one person holds such interest or interests in any Lot, all such persons shall be Members, but the single vote for such Lot shall be exercised as they among themselves determine but, subject only to the following subsection, in no event shall more than one (1) vote be cast with respect to any such Lot.

Class B. The Class B Member shall be the Developer. The Class B Member shall be entitled to one (1) vote, plus two (2) votes for each vote entitled to be cast in the aggregate at any time and from time to time by the Class A Members. The Class B membership shall cease and terminate three (3) months after ninety percent (90%) of the Lots within The Properties has been sold and conveyed to Class A Members, or sooner at the election of the Developer. Whereupon the Class A Members shall be obligated to elect the Board and assume control of the Association.

Section 3. General Matters. When reference is made herein, or in the Articles, By-Laws, Rules and Regulations of the Association, management contracts or otherwise, to a majority or specific percentage of Members, such reference shall be deemed to be reference to a majority or specific percentage of the votes of Members present at a duly constituted meeting thereof (i.e., one for which proper notice has been given and at which a quorum exists) and not of the Members themselves or of their Lots.

ARTICLE IV **COMMON AREAS; CERTAIN EASEMENTS**

Section 1. Members' Easements. Each Member, and each Member's Permittee, shall have a non-exclusive permanent and perpetual easement over and upon the Common Areas for the intended use and enjoyment thereof in common with all other such Members, Member's Permittees, their tenants, agents and invitees, in such manner as may be regulated by the Association.

Without limiting the generality of the foregoing, such rights of use and enjoyment are hereby made subject to the following:

(A) The right and duty of the Association to levy assessments against each Lot for the purpose of maintaining the Common Areas and facilities in compliance with the provisions of this Declaration and with the restrictions on the plats of portions of The Properties from time to time recorded.

(B) The right of the Association to adopt at any time and from time to time and enforce Rules and Regulations governing the use of The Properties, including the right to fine Members as hereinafter provided and the right to regulate access over Common Area roadways. Any rule and/or regulation so adopted by the Association shall apply until rescinded or modified as if originally set forth at length in this Declaration.

(C) The right to the use and enjoyment of the Common Areas thereon shall extend to all Members' Permittees, subject to regulation from time to time by the Association in its lawfully adopted and published Rules and Regulations.

(D) The right of Developer to permit such persons as Developer shall designate to use the Common Areas.

(E) The right of Developer and the Association to have, grant and use general ("blanket") and specific easements over, under and through the Common Areas.

(F) The right of the Association, by a 2/3rds affirmative vote of the entire membership, to dedicate or convey portions of the Common Areas to any other association having similar functions, or any local government or public or quasi-public agency, community development district or similar entity under such terms as the Association deems appropriate and to create or contract with the other association, government, community development and special taxing districts for lighting, roads, recreational or other services,

patrol, or communications and other similar purposes deemed appropriate by the Association (to which such dedication or contract all Owners, by the acceptance of the deeds, to their Lots, shall be deemed to have consented, no consent of any other party, except the Developer, being necessary). Notwithstanding the foregoing, the Board of Directors may, acting alone, prove and effectuate a conveyance of any portion of the Common Areas to the Developer if necessary to effectuate plans for the development of The Properties or changes therein.

WITH RESPECT TO THE USE OF THE COMMON AREAS AND THE PROPERTIES GENERALLY, ALL PERSONS ARE REFERRED TO ARTICLE VI, HEREOF, WHICH SHALL AT ALL TIMES APPLY THERETO.

Section 2. Easements Appurtenant. The easements provided in Section 1 shall be appurtenant to and shall pass with the title to each Lot, but shall not be deemed to grant or convey any ownership interest in the Common Area subject thereto.

Section 3. Maintenance. The Association shall at all times maintain in good repair and manage, operate and insure (to the extent appropriate), and shall replace as often as necessary, the Common Areas and the Stormwater Management System and to the extent not otherwise provided for, the paving, landscaping, improvements and other structures (except public utilities, to the extent same have not been made Common Areas) situated on the Common Areas, if any, all such work to be done as ordered by the Board of Directors of the Association. Without limiting the generality of the foregoing, the Association shall assume all of Developer's and its affiliates' responsibility to Walton County and its governmental and quasi-governmental subdivisions, any state and federal agencies, and similar entities of any kind with respect to the Common Areas, the Stormwater Management System, and the Environmental Permits and Restrictions set forth in Article IV, Section 13, and shall indemnify and hold the Developer and its affiliates harmless with respect thereto.

All work performed pursuant to this Section and all obligations and expenses incurred by the Association pursuant to this Declaration shall be paid for by the Association through assessments (either general or special) imposed in accordance herewith.

No Owner may waive or otherwise escape liability for assessments by non-use (whether voluntary or involuntary) of the Common Areas or abandonment of the right to use the Common Areas.

Section 4. Utility/Drainage Easements. Use of the Common Areas for utilities, as well as use of the other utility easements as shown on relevant plats, shall be in accordance with the applicable provisions of this Declaration and said Plats. All drainage/utility easements identified in the Plat shall be for the benefit of Declarant, its affiliates, and its and their designees and assignees. The Developer and its affiliates and its and their designees shall have a perpetual easement over, upon and under the Common Areas and the unimproved portions of the Lots for the installation, operation, maintenance, repair, replacement, alteration and expansion of utilities. As used herein, "utilities" shall include, without limitation, drainage systems (even if such systems consist only of

special grading) and cable telecommunications systems. All utilities shall be installed underground, except for transformers and similar equipment which must be above ground.

Section 5. Public Easements. Fire, police, health and sanitation, park maintenance and other public service personnel and vehicles shall have a permanent and perpetual easement for ingress and egress over and across the Common Areas in the performance of their respective duties.

Section 6. Ownership. The Common Areas are hereby dedicated non-exclusively to the joint and several use, in common, of the Developer and the Owners of all Lots that may from time to time constitute part of The Properties and all Member's Permittees and the Developer's tenants, guests and invitees, all as provided and regulated herein or otherwise by the Association. The Common Areas (or appropriate portions thereof) shall, upon the date when the last Lot within The Properties has been conveyed to a purchaser (or at any time and from time to time sooner at the sole election of the Developer), be conveyed by quit claim deed to the Association, which shall be deemed to have automatically accepted such conveyance. Beginning from the date this Declaration is recorded, the Association shall be responsible for the maintenance, insurance and administration of such Common Areas (whether or not then conveyed or to be conveyed to the Association), all of which shall be performed in a continuous and satisfactory manner without cost to the general taxpayers of Walton County.

Without limiting the generality of the definition of Common Areas herein, in the event that a Common Area is not owned or to be owned by the Association but, rather, constitutes an easement in favor of the Association, then the foregoing shall apply only to the extent necessary to permit and require the Association to maintain the area within such easement or to perform such other functions as the easement may require or permit. By way of example, in the event that the Association has an easement, or is required by applicable plat or governmental requirement or regulation, to provide weed or water quality control within a water body, then the area to be so maintained shall be deemed a Common Area of the Association but only for the purpose of complying with such requirement.

It is intended that any and all real estate taxes assessed against that portion of the Common Areas owned or to be owned by the Association shall be (or have been, because the purchase prices of the Lots and Homes have already taken into account their proportionate shares of the values of the Common Area), proportionally assessed against and payable as part of the taxes of the applicable Lots within The Properties. However, in the event that, notwithstanding the foregoing, any such taxes are assessed directly against the Common Areas, the Association shall be responsible for the payment (subject to protest or appeal before or after payment) of the same, including taxes on any improvements and any personal property located thereon, which taxes accrue from and after the date these covenants are recorded, and such taxes shall be prorated between Developer and the Association as of the date of such recordation.

Developer and its affiliates shall have the right from time to time to enter upon the Common Areas and other portions of The Properties (including, without limitation, Lots and Homes) for the purpose of the installation, construction, reconstruction, repair, replacement, operation, expansion and/or alteration of any improvements or facilities on the Common Areas or elsewhere on The Properties that Developer and its affiliates or designee elect to effect, and to use, without charge, the

Common Areas and other portions of The Properties for sales, displays and signs or for any other purpose during the period of construction and sale of any portion thereof or of other portions of adjacent or nearby communities. Without limiting the generality of the foregoing, the Developer and its affiliates shall have the specific right to maintain upon any portion of The Properties owned thereby sales, administrative, construction or other offices and appropriate exclusive and non-exclusive easements of access and use are expressly reserved unto the Developer and its affiliates, and its and their successors, assigns, employees and contractors, for this purpose. Any obligation (which shall not be deemed to be created hereby) to complete portions of the Common Areas shall, at all times, be subject and subordinate to these rights and easements and to the above-referenced activities. Accordingly, the Developer shall not be liable for delays in such completion to the extent resulting from the need to finish the above-referenced activities prior to such completion.

Section 7. Pedestrian Pathway Easements. Declarant hereby grants, bargains, sells and conveys to the Association Pedestrian Pathway Easements over, across and through the areas so identified on the Plat for walking, pedestrian ingress and egress, and other appropriate recreational purposes with respect to use and enjoyment of the beach and lake areas. Declarant or Association may construct within a Pedestrian Pathway Easement any structure incident to the use and enjoyment hereof, including a pavilion, boardwalk, pathway and any other structure.

Section 8. Wall and Landscape Easement. Declarant hereby grants, bargains, sells and conveys to the Association a Wall and Landscaping Easement over and across and through the area so identified in the Plat for landscaping and construction of a buffer wall, the maintenance and repair thereof and all other uses incident thereto. Declarant may construct within the Wall and Landscape Easement a wall and appropriate landscaping to serve as a buffer to the adjacent property.

Section 9. Common Recreation Use Easement. Declarant hereby grants, bargains, sells and conveys to the Association, a Common Recreation Use Easement over, across and through the area so identified on the Plat for walking, bathing and other appropriate recreational purposes with respect to the use and enjoyment of the beach and Gulf of Mexico, and for pedestrian ingress and egress to the beach area. The Association shall establish reasonable rules and regulations with respect to the use of the Common Recreation Use Easement.

Section 10. Access Easement. Declarant hereby grants, bargains, sells and conveys to the Association, an Access Easement over, across and through the area so identified on the Plat for pedestrian and vehicular ingress and egress. Declarant may construct within the Access Easement a road, pathway or related structures incident to the use and enjoyment thereof.

Section 11. Choctawhatchee Electric Cooperative, Inc. Easement. Declarant hereby grants, bargains, sells and conveys to Choctawhatchee Electric Cooperative, Inc., an easement over, across and through the area so identified on the Plat for installation, operation, repairs, replacement, alteration and expansion of electrical power utilities.

Section 12. Florida Community Services Corp of Walton County Left Station Easement. Declarant hereby grants, bargains, sells and conveys to Florida Community Services Corp of Walton

County a Lift Station Easement over, across and through the area so identified on the Plat for installation, operation, repairs, replacement, alteration and expansion of sewer utilities.

Section 13. Environmental Permits and Restrictions. THE PROPERTY WAS DEVELOPED IN ACCORDANCE WITH THE REQUIREMENTS OF PERMIT NUMBER 1994-02417, ISSUED BY THE U.S. ARMY CORPS OF ENGINEERS ("ACOE"), AND PERMIT NUMBER 662512681, ISSUED BY THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION ("DEP"). THE PERMITS ARE OR WILL BE OWNED BY THE ASSOCIATION, AND SUCH ASSOCIATION HAS THE OBLIGATION TO ASSURE THAT ALL TERMS AND CONDITIONS THEREOF ARE ENFORCED. THE ASSOCIATION SHALL HAVE THE RIGHT TO BRING AN ACTION, AT LAW OR IN EQUITY, AGAINST AN OWNER VIOLATING SUCH PERMITS.

PROVIDED, HOWEVER, ANY OWNER OWNING A LOT WHICH CONTAINS OR IS ADJACENT TO JURISDICTIONAL WETLANDS, UPLANDS PRESERVATION AREAS, OR CONSERVATION AREAS AS ESTABLISHED BY THE ACOE OR DEP, SHALL, BY ACCEPTANCE OF TITLE TO THE LOT, BE DEEMED TO HAVE ASSUMED THE OBLIGATION TO COMPLY WITH THE REQUIREMENTS OF THE FOREGOING PERMITS AS SUCH RELATE TO THE OWNER'S LOT.

EXCEPT AS REQUIRED OR PERMITTED BY THE AFOREMENTIONED PERMITS ISSUED BY THE ACOE AND DEP, NO OWNER SHALL ALTER, FILL, DREDGE, PLACE SOD OR EXCAVATE, OR PERFORM SIMILAR ACTIVITIES ON ANY PORTION OF THEIR RESPECTIVE LOTS, UNLESS AND UNTIL SUCH ACTIVITY IS AUTHORIZED BY OR EXEMPT FROM THE REQUIREMENTS OF THE ACOE AND DEP.

IN THE EVENT THAT AN OWNER VIOLATES THE TERMS AND CONDITIONS OF SUCH PERMITS AND FOR ANY REASON THE DEVELOPER, OR THE ASSOCIATION IS CITED THEREFORE, THE OWNER AGREES TO INDEMNIFY AND HOLD THE DEVELOPER, AND THE ASSOCIATION HARMLESS FROM ALL COSTS ARISING IN CONNECTION THEREWITH, INCLUDING WITHOUT LIMITATION, ALL COSTS AND ATTORNEYS FEES AS WELL AS ALL COSTS OF CURING SUCH VIOLATION.

NOTWITHSTANDING ANY OTHER PROVISIONS CONTAINED ELSEWHERE IN THIS DECLARATION, THE ACOE AND DEP SHALL EACH HAVE THE RIGHTS AND POWERS ENUMERATED IN THIS PARAGRAPH. THE ACOE AND DEP SHALL HAVE THE RIGHT TO ENFORCE, BY A PROCEEDING AT LAW OR IN EQUITY, THE PROVISIONS CONTAINED IN THIS DECLARATION WHICH RELATE TO THE PERMITS AND THE JURISDICTIONAL LANDS SUBJECT TO THE REGULATION OF THE ACOE OR DEP. ANY AMENDMENT TO THIS DECLARATION WHICH AMENDS THE RESPONSIBILITIES OR OBLIGATIONS OF THE PARTIES WITH RESPECT TO THE REFERENCED PERMITS, MUST HAVE PRIOR WRITTEN APPROVAL OF THE ACOE AND DEP, AS APPLICABLE, IN THE EVENT THAT THE ASSOCIATION IS DISSOLVED, PRIOR TO SUCH DISSOLUTION, ALL RESPONSIBILITY RELATING TO THE SURFACE WATER OR STORMWATER

MANAGEMENT SYSTEM AND THE PERMITS MUST BE ASSIGNED TO AND ACCEPTED BY AN ENTITY APPROVED BY THE ACOE AND DEP.

ARTICLE V
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Assessments. Except as provided elsewhere herein, the Developer (and each party joining in any supplemental declaration), for all Lots within The Properties, hereby covenants and agrees, and each Owner of any Lot by acceptance of a deed therefor or other conveyance thereof, whether or not it shall be so expressed in such deed or other conveyance, shall be deemed to covenant and agree, to pay to the Association annual assessments and charges for the operation of, and for payment of expenses allocated or assessed to or through, the Association, the maintenance, management, operation and insurance (to the extent appropriate) of the Common Areas and the Stormwater Management System as provided elsewhere herein, including such reasonable reserves as the Association may deem necessary, capital improvement assessments, as provided in Section 4 hereof, special assessments as provided in Section 3 hereof, payments under "bulk" contracts for cable television, monitoring systems and the like and all other charges and assessments hereinafter referred to or lawfully imposed by or on the Association, all such assessments to be fixed, established and collected from time to time as herein provided. In addition, special assessments may be levied against particular Owners and Lots for fines, expenses incurred against particular Lots and/or Owners to the exclusion of others and other charges against specific Lots or Owners as contemplated in this Declaration. The annual, special and other assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with such interest thereon and costs of collection thereof as hereinafter provided, shall also be the personal obligation of the person who is the Owner of such property at the time when the assessment fell due and all subsequent Owners until paid, except as provided in Section 8 of this Article.

Except as provided herein with respect to special assessments which may be imposed on one or more Lots and Owners to the exclusion of others, all assessments imposed by the Association shall be imposed against all Lots subject to its jurisdiction equally.

Reference herein to assessments shall be understood to include reference to any and all of the charges described in this Article whether or not specifically mentioned.

Section 2. Purpose of Assessments. The regular assessments levied by the Association shall be used exclusively for the purposes expressed in Section 1 of this Article.

Section 3. Special Assessments. In addition to the regular and capital improvement assessments which are or may be levied hereunder, the Association (through the Board of Directors) shall have the right to levy special assessments against an Owner(s) to the exclusion of other Owners for (i) the repair or replacement of damage to any portion of the Common Areas (including, without limitation, improvements and landscaping thereon) caused by the misuse, negligence or other action or inaction of an Owner or his Member's Permittee(s) or (ii) the costs of work performed by the

Association in accordance with Article IV of this Declaration (together with any surcharges collectible thereunder). Any such special assessment shall be subject to all of the applicable provisions of this Article including, without limitation, lien filing, foreclosure procedures, late charges and interest. Any special assessment levied hereunder shall be due within the time specified by the Board of Directors in the action imposing such assessment.

Section 4. Capital Improvements. Funds which, in the aggregate, exceed 10% of the total amount of the then-current operating budget of the Association in any one fiscal year which are necessary for the addition of capital improvements (as distinguished from repairs and maintenance, in the reasonable judgment of the Association's Board of Directors) relating to the Common Areas under the jurisdiction of the Association and which have not previously been collected as reserves or are not otherwise available to the Association (other than by borrowing) shall be levied by the Association as assessments only upon approval of a majority of the Board of Directors of the Association and upon approval by two-thirds (2/3) favorable vote of the Members of the Association voting at a meeting or by ballot as may be provided in the By-Laws of the Association.

Section 5. Date of Commencement of Annual Assessments; Due Dates. The annual regular assessments provided for in this Article shall commence on the first day of the month next following the recordation of these covenants and shall be applicable through December 31 of such year. Each subsequent annual assessment shall be imposed for the year beginning January 1 and ending December 31.

The annual assessments shall be payable in advance in monthly installments, or in annual, semi- or quarter-annual installments if so determined by the Board of Directors of the Association.

The assessment amount (and applicable installments) may be changed at any time by said Board from that originally stipulated or from any other assessment that is in the future adopted. The original assessment for any year shall be levied for the calendar year (to be reconsidered and amended, if necessary, no more than twice each year), but the amount of any revised assessment to be levied during any period shorter than a full calendar year shall be in proportion to the number of months (or other appropriate installments) remaining in such calendar year.

The due date of any special assessment or capital improvement assessment shall be fixed in the Board resolution authorizing such assessment.

Section 6. Duties of the Board of Directors. The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against the Lots subject to the Association's jurisdiction for each assessment period, to the extent practicable, at least thirty (30) days in advance of such date or period, and shall, at that time, prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner.

Written notice of the assessment shall thereupon be sent to every Owner subject thereto at least twenty (20) days prior to the date for the payment of the first installment thereof, except as to special assessments. In the event no such notice of the assessments for a new assessment period is

given, the amount payable shall continue to be the same as the amount payable for the previous period, until changed in the manner provided for herein.

Subject to other provisions hereof, the Association shall upon demand at any time furnish to any Owner liable for an assessment a certificate in writing signed by an officer of the Association, setting forth whether such assessment has been paid as to any particular Lot. Such certificate shall be conclusive evidence of payment of any assessment to the Association therein stated to have been paid.

The Association, through the action of its Board of Directors, shall have the power, but not the obligation, to enter into an agreement or agreements from time to time with one or more persons, firms or corporations (including affiliates of the Developer) for management services. The Association shall have all other powers provided in its Articles of Incorporation and By-Laws.

Section 7. Effect of Non-Payment of Assessment; the Personal Obligation; the Lien; Remedies of the Association. If the assessments (or installments) provided for herein are not paid on the date(s) when due (being the date(s) specified herein or pursuant hereto), then such assessments (or installments) shall become delinquent and shall, together with late charges, interest and the cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the Lot which shall bind such property in the hands of the then Owner, his heirs, personal representatives, successors and assigns. Except as provided in Section 8 of this Article to the contrary, the personal obligation of the then Owner to pay such assessment shall pass to his successors in title and recourse may be had against either or both.

If any installment of an assessment is not paid within fifteen (15) days after the due date, at the option of the Association, a late charge not greater than ten percent (10%) of the amount of such unpaid installment may be imposed (provided that only one late charge may be imposed on any one unpaid installment and if such installment is not paid thereafter, it and the late charge shall accrue interest as provided herein but shall not be subject to additional late charges; provided further, however, that each other installment thereafter coming due shall be subject to one late charge each as aforesaid) or the next twelve (12) months' worth of installments may be accelerated and become immediately due and payable in full and all such sums shall bear interest from the dates when due until paid at the highest lawful rate (or, if there is no highest lawful rate, 18% per annum). In any such case, the Association may bring an action at law against the Owner(s) personally obligated to pay the same, may record a claim of lien (as evidence of its lien rights as hereinabove provided for) against the Lot on which the assessments are unpaid, may foreclose the lien against the Lot on which the assessments are unpaid, or may pursue one or more of such remedies at the same time or successively, and attorneys' fees and costs actually incurred in preparing and filing the claim of lien and the complaint, if any, and prosecuting same, in such action shall be added to the amount of such assessments, late charges and interest, and in the event a judgment is obtained, such judgment shall include all such sums as above provided and attorneys' fees actually incurred together with the costs of the action, through all applicable appellate levels.

In the case of an acceleration of the next twelve (12) months' of installments, each installment so accelerated shall be deemed, initially, equal to the amount of the then most current delinquent

installment, provided that if any such installment so accelerated would have been greater in amount by reason of a subsequent increase in the applicable budget, the Owner of the Lot whose installments were so accelerated shall continue to be liable for the balance due by reason of such increase and special assessments against such Lot shall be levied by the Association for such purpose.

In addition to the rights of collection of assessments stated in this Section, any and all persons acquiring title to or an interest in a Lot as to which the assessment is delinquent, including without limitation persons acquiring title by operation of law and by judicial sales, shall not be entitled to the occupancy of such Lot or the enjoyment of the Common Areas until such time as all unpaid and delinquent assessments due and owing from the selling Owner have been fully paid; provided, however, that the provisions of this sentence shall not be applicable to the mortgagees and purchasers contemplated by Section 8 of this Article.

All assessments, late charges, interest, penalties, fines, attorney's fees and other sums provided for herein shall accrue to the benefit of the Association.

Section 8. Subordination of the Lien. The lien of the assessments provided for in this Article shall be subordinate to real property tax liens and the lien of any first mortgage (recorded prior to recordation by the Association of a claim of lien) and which is now or hereafter placed upon any property subject to assessment; provided, however, that any such mortgage lender when in possession or any receiver, and in the event of a foreclosure, any purchaser at a foreclosure sale, and any such mortgage lender acquiring a deed in lieu of foreclosure, and all persons claiming by, through or under such purchaser or mortgage lender, shall hold title subject to the liability and lien of any assessment coming due after such foreclosure (or conveyance in lieu of foreclosure). Any unpaid assessment which cannot be collected as a lien against any Lot by reason of the provisions of this Section shall be deemed to be an assessment divided equally among, payable by and a lien against all Lots subject to assessment by the Association, including the Lots as to which the foreclosure (or conveyance in lieu of foreclosure) took place.

Section 9. Developer's Assessments. Notwithstanding anything herein to the contrary, Developer shall have the option, in its sole discretion, to (i) pay assessments on the Lots owned by it, (ii) pay assessments only on certain designated Lots (e.g., those under construction or those containing a Home for which a certificate of occupancy has been issued) or (iii) not pay assessments on any Lots and in lieu thereof fund any resulting deficit in the Association's operating expenses not produced by assessments receivable from Owners other than Developer and any other income receivable by the Association. The deficit to be paid under option (iii), above, shall be the difference between (a) actual operating expenses of the Association (i.e., expenses exclusive of capital improvement costs and reserves) and (b) the sum of all monies receivable by the Association (including, without limitation, assessments, interest, late charges, fines and incidental income) and any surplus carried forward from the preceding year(s). Developer may from time to time change the option under which Developer is making payments to the Association by written notice to such effect to the Association. If Developer at any time elects option (ii), above, it shall not be deemed to have necessarily elected option (i) or (iii) as to the Lots which are not designated under option (ii). When all Lots within The Properties are sold and conveyed to purchasers, neither the Developer nor

its affiliates shall have further liability of any kind to the Association for the payment of assessments, deficits or contributions.

Section 10. Association Funds. The portion of all regular assessments collected by the Association for reserves for future expenses, and the entire amount of all special and capital assessments, shall be held by the Association and may be invested in interest bearing accounts or in certificates of deposit or other like instruments or accounts available at banks or savings and loan institutions, the deposits of which are insured by an agency of the United States.

Section 11. Transfer Fee. In addition to the periodic assessments, there shall be a recurring non-refundable contribution paid to the Northwest Florida Improvement Foundation, Inc. on the sale of a Lot (and Home, if applicable) within the Property, in the amount of one-half of one percent (.5 %) of the total purchase price of the Lot (with Home, if applicable). This recurring contribution shall be paid by the Developer on the initial transfer of title to each Lot from Developer and thereafter by the Buyer each time a Lot is sold within the Property, at the time of its conveyance to the purchaser of the Lot, and shall be secured and collected in the same manner as Assessments pursuant to Article V of the Declaration.

ARTICLE VI

MAINTENANCE OF HOMES AND LOTS; COMPLETION OF CONSTRUCTION

Section 1. Exteriors of Homes. Each Owner shall maintain all structures (including the Home) located on his Lot in a neat, orderly and attractive manner and consistent with the general appearance of The Properties and as provided in the Design Review Guidelines. The minimum (though not sole) standard for the foregoing shall be consistency with the general appearance of The Properties as initially constructed and otherwise improved by Developer or by any builders who build in accordance with plans approved as set forth in the Design Review Guidelines. Each Owner shall repaint or restrain, as appropriate, the exterior portions of his Home (with the same colors as initially used on the Home, unless otherwise approved by the Design Review Board (as defined below) as often as is necessary to comply with the foregoing standards.

Section 2. Lots. Each Owner shall maintain the trees, shrubbery, grass and other landscaping on his Lot in a neat, orderly and attractive manner and consistent with the general appearance of The Properties as a whole and as required by the Design Review Guidelines. The minimum (though not sole) standard for the foregoing shall be the general appearance of The Properties as initially landscaped by Developer or builders (such standard being subject to being raised by virtue of the natural and orderly growth and maturation of applicable landscaping, as properly trimmed and maintained).

In addition to the foregoing, each Owner shall maintain the area located between the front (and side, in the case of a corner lot) boundary line of his Lot and the edge of the pavement of the adjacent road (including, without limitation, sidewalks, sod, trees, any mailbox and the driveway) to the extent the Association does not affirmatively elect to do so.

Section 3. Remedies for Noncompliance. In the event of the failure of an Owner to maintain his Home or Lot in accordance with this Article, the Association shall have the right, upon at least five (5) days' prior written notice to the Owner at the address last appearing in the records of the Association, to enter upon the Owner's Lot and perform such work as is necessary to bring the Lot or Home, as applicable, into compliance with the standards set forth in this Article. Such work may include, but shall not necessarily be limited to, the cutting/trimming of grass, trees and shrubs; the removal (by spraying or otherwise) of weeds and other vegetation; the resodding or replanting of grass, trees or shrubs; the repainting or restaining of exterior surfaces of a Home; the repair of walls, fences, roofs, doors, windows and other portions of a Home or other structures on a Lot; and such other remedial work as is judged necessary by the applicable entity. The remedies provided for herein shall be cumulative with all other remedies available under this Declaration (including, without limitation, the imposition of fines or special assessments or the filing of legal or equitable actions).

Section 4. Costs of Remedial Work; Surcharges. In the event that the Association performs any remedial work on a Home or Lot pursuant to this Article, the costs and expenses thereof shall be deemed a special assessment under Article V, Section 3 of this Declaration and may be immediately imposed by the Board of Directors. In order to discourage Owners from abandoning certain duties hereunder for the purpose of forcing one of the aforesaid entities to assume same, and, additionally, to reimburse same for administrative expenses incurred, the applicable entity may impose a surcharge of not more than thirty-five percent (35%) of the cost of the applicable remedial work, such surcharge to be a part of the aforesaid special assessment. No bids need be obtained for any of the work performed pursuant to this Article and the person(s) or company performing such work may be selected by the Association in its sole discretion.

Section 5. Right of Entry. There is hereby created an easement in favor of the Association and its applicable designees over each Lot for the purpose of entering onto such Lot in the performance of the work herein described, provided that the notice requirements of this Article are complied with and any such entry is during reasonable hours.

Section 6. Completion Requirement. To the extent that a Home on a Lot is under construction, each Owner shall be responsible for maintaining any unimproved Lot owned by that Owner free of litter and debris and in a "rough mowed" condition, and shall be subject to all terms and conditions of the Design Review Guidelines. "Commencement of Construction" shall be evidenced by complete installation of the footings and pouring of the building slab for the single family residence. Once Commencement of Construction starts, construction shall be diligently and continuously pursued to completion. Construction shall be completed within twelve (12) months from the Commencement of Construction ("Promised Completion Date"). Completion of construction shall be evidenced by issuance by the applicable government agency of a certificate of occupancy or approval of final inspection for the single family residence on the Lot, and installation of all landscaping and related site improvements to the satisfaction of the Design Review Board. If construction is not completed on or before the Promised Completion Date, Owner must pay Developer or its assigns, the sum of One Thousand and No/100 U.S. Dollars (\$1,000.00) per month for each month (or portion thereof) for which completion of construction is delayed, unless such delay is caused by an event, which in the sole discretion of Developer, is beyond Owner's reasonable

control. Said amount shall be paid upon demand in addition to all other remedies available hereunder, and shall be secured in the same manner as assessments pursuant to Article V of the Declaration.

ARTICLE VII

CERTAIN USE RESTRICTIONS

Section 1. Applicability. The provisions of this Article VII shall be applicable to all of The Properties but shall not be applicable to the Developer or any of its designees or Lots or other property owned by the Developer or its designees, except as to the architectural review requirements set forth in Section 10, below and in the Design Review Guidelines.

Section 2. Land Use and Building Type. No Lot shall be used except for residential and reasonable ancillary purposes. No building constructed on a Lot shall be used except for such purposes. Temporary uses by Developer for model homes, sales displays, parking lots, sales offices and other offices, or any one or combination of such uses, shall be permitted until permanent cessation of such uses takes place. No changes may be made in buildings erected by the Developer (except if such changes are made by the Developer) without compliance with the procedures set forth herein and in the Design Review Guidelines and herein.

Section 3. Easements. Easements for installation and maintenance of utilities are reserved as shown on the recorded plats covering The Properties and as provided herein. The area of each Lot covered by an easement and all improvements in the area shall be maintained continuously by the Owner of the Lot, except for installations for which a public authority or utility company is responsible. The appropriate water and sewer authority, electric utility company, telephone company, the Association, and the Developer and its affiliates, and their respective successors and assigns, shall have a perpetual easement for the installation and maintenance, all underground, of water lines, sanitary sewers, storm drains, and electric, telephone and telecommunications lines, cables and conduits, under and through the utility easements as shown on the plats.

Section 4. Nuisances. Nothing shall be done or maintained on any Lot which may be or become an annoyance or nuisance to the neighborhood. Any activity on a Lot which interferes with television, cable or radio reception on another Lot shall be deemed a nuisance and a prohibited activity. In the event of a dispute or question as to what may be or become a nuisance, such dispute or question shall be submitted to the Board of Directors of the Association, which shall render a decision in writing, which decision shall be dispositive of such dispute or question. ALL PERSONS ARE REFERRED TO ARTICLE XIII, SECTION 10 HEREOF WITH RESPECT TO CERTAIN ACTIVITIES OF DEVELOPER.

Section 5. Temporary Structures; Gas Tanks; Other Outdoor Equipment. Except as may be approved or used by the Developer during construction and/or sales periods, no structure of a temporary character, or trailer, mobile home or recreational vehicle, shall be permitted on any Lots within The Properties at any time or used at any time as a residence, either temporarily or permanently. No gas tank, gas container or gas cylinder shall be permitted to be placed on or about the outside of any Home or on or about any ancillary building, except for one (1) gas cylinder (not to exceed 20 lbs.

capacity) connected to a barbecue grill and such other tank designed and used for household purposes as shall be approved by the Design Review Board described in Section 10, below. Any outdoor equipment such as, but not limited to, pool pumps and water softening devices shall be completely screened from the view of anyone not standing on the Lot by the use of landscaping or other means (in any event, as approved by the Design Review Board); provided, however, that the use of such screening shall not alter the requirement that the installation of any such equipment nevertheless be approved by the Design Review Board.

Section 6. Signs. Except as provided below, no sign of any kind shall be displayed to the public view on any Lot except for signs used or approved by the Developer and its affiliates and agents during the development, construction and sale of The Properties.

The foregoing shall not prohibit placing usual and customary "for sale" and similar signs on Lots or those used to identify a Builder of a Unit on a Lot, subject to such rules and standards for same as may be adopted by the Design Review Board described below.

The foregoing shall also not prohibit placing numbers representing the street address of a Home on such Home or on the mailbox or mailbox pole serving such home.

Section 7. Private Wells; Oil and Mining Operations. No private water well for irrigation, swimming pool or other purposes shall be permitted within The Properties other than those, if any, used by the Association for the irrigation of Common Areas or other purposes.

No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in The Properties, nor on dedicated areas, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in The Properties. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any portion of the land subject to these restrictions. ALL PERSONS ARE REFERRED TO ARTICLE XIII, SECTION 10 WITH RESPECT TO CERTAIN ACTIVITIES OF DEVELOPER.

Section 8. Pets, Livestock and Poultry. No animals, reptiles, wildlife, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that household pets may be kept, provided they are not kept, bred or maintained for any commercial purpose, and provided that they do not become a nuisance or annoyance to any neighbor by reason of barking or otherwise. No dogs or other pets shall be permitted to have excretions on any Common Areas, except areas designated by the Association, if any, for such use and Owners shall be responsible to clean-up any such excretions. For purposes hereof, "household pets" shall mean dogs, cats and other animals expressly permitted by the Association, if any. ALL PETS SHALL BE KEPT ON A LEASH WHEN NOT IN THE APPLICABLE HOME OR A FENCED-IN YARD, IF ANY. Pets shall also be subject to all applicable Rules and Regulations. Nothing contained herein shall prohibit the keeping of fish or domestic (household-type) birds, as long as the latter are kept indoors and do not become a source of annoyance to neighbors.

Section 9. Visibility at Intersections. No obstruction to visibility at street intersections or Common Area intersections shall be permitted; provided that the Association shall not be liable in any manner to any person or entity, including Owners and Members Permittees, for any damages, injuries or deaths arising from any violation of this Section.

Section 10. Design Control. No building, wall, fence or other structure or improvement of any nature including, but not limited to, swimming pools, spas, screen enclosures, patios (or patio extensions), hedges, other landscaping, exterior paint or finish, play structures, awnings, shutters, hurricane protection, basketball hoops, mailboxes, decorative plaques or accessories, birdhouses, other pet houses, swales, asphaltting, sidewalk/driveway surfaces or treatments or other improvements or changes of any kind, even if not permanently affixed to the land or to other improvements) shall be erected, placed or altered on any Lot (including the removal of trees) unless in strict accordance with Design Review Guidelines.

Section 11. Commercial Vehicles, Trucks, Trailers, Campers and Boats. Unless specifically permitted (if at all) by rules adopted by the Board of Directors, no trucks or commercial vehicles, or campers, mobile homes, motorhomes, house trailers or trailers of every other description, recreational vehicles, boats, boat trailers, horse trailers or vans shall be permitted to be parked or to be stored at any place on The Properties, nor in dedicated areas, except in (i) enclosed garages and (ii) spaces for some or all of the above specifically designated by Developer or the Association, if any. For purposes of this Section, "trucks or commercial vehicles" shall mean those which are not designed and used for customary, personal/family purposes or, even if so, those containing attached equipment such as pipe racks, exterior tool boxes (other than in the bed) or the like. The absence of commercial-type lettering or graphics on a vehicle shall not be dispositive as to whether it is a commercial vehicle. The prohibitions on parking contained in this Section shall not apply to temporary parking of trucks and commercial vehicles, such as for construction use or providing pick-up and delivery and other commercial services, nor to passenger-type vans with windows for personal use which are in acceptable condition in the sole opinion of the Board (which favorable opinion may be changed at any time), nor to any vehicles of the Developer or its affiliates.

All Owners and other occupants of Homes are advised to consult with the Association prior to purchasing, or bringing onto The Properties, any type of vehicle other than a passenger car inasmuch as such other type of vehicle may not be permitted to be kept within The Properties.

Subject to applicable laws and ordinances, any vehicle parked in violation of these or other restrictions contained herein or in the Rules and Regulations now or hereafter adopted may be towed by the Association at the sole expense of the owner of such vehicle if such vehicle remains in violation for a period of 24 hours from the time a notice of violation is placed on the vehicle. The Association shall not be liable to the owner of such vehicle for trespass, conversion or otherwise, nor guilty of any criminal act, by reason of such towing and once the notice is posted, neither its removal, nor failure of the owner to receive it for any other reason, shall be grounds for relief of any kind. For purposes of this paragraph, "vehicle" shall also mean campers, mobile homes and trailers. An affidavit of the person posting the aforesaid notice stating that it was properly posted shall be conclusive evidence of proper posting.

Section 12. Parking on Common Areas and Lots/Garages. No vehicles of any type shall be parked on any portion of the Common Areas or any portions of a Lot other than its driveway and garage. Parking on road rights of way shall be subject to the regulations, if any, of the Association and/or Walton County.

All Owners and Members Permittees shall use at least one (1) space in their respective garages for the parking of a vehicle. In the event that such a party keeps a boat on a trailer in the party's garage, the other space shall still be used for vehicular parking. Garage doors shall be kept closed at all times except when in actual use and during reasonably limited periods when the garage is being cleaned or other activities are being conducted therefrom which reasonably require the doors to be left open.

Section 13. Garbage and Trash Disposal. No garbage, refuse, trash or rubbish (including materials for recycling) shall be kept out of doors except as permitted by the Association. The requirements from time to time of the applicable governmental authority or other company or association for disposal or collection of waste shall be complied with. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. Containers must be rigid plastic, no less than 20 gallons or more than 32 gallons in capacity, and well sealed. Such containers may not be placed out for collection sooner than 24 hours prior to scheduled collection and must be removed within 12 hours of collection.

Section 14. No Drying. No clothing, laundry or wash shall be aired or dried on any portion of The Properties except on a portion of a Lot which is completely screened from the view of all persons other than those on the Lot itself.

Section 15. Waterfront Property. As to all portions of The Properties which have a boundary contiguous to any lake, canal or other body of water, the following additional restrictions and requirements shall be applicable:

(A) No boathouse, dock, wharf or other structure of any kind shall be erected, placed, altered or maintained on the shores of the water body, except that docks may be erected on or adjacent to Plat Lots 39 through 46 provided such improvements are (i) approved by the Design Review Board in its sole discretion or (ii) erected by the Developer or its affiliates, subject to any and all governmental approvals and permits that may be required.

(B) No request for a variance from any coastal construction control line or any dune lake construction control line whatsoever shall be sought with respect to any Lot, except that such variance may be requested (i) by the Developer, (ii) in connection with a dock as provided in subparagraph (A) above, or (iii) for a boardwalk erected on Plat Lots 25-46 provided the boardwalk is approved by the Design Review Board in its sole discretion.

(C) No boat, boat trailer or vehicular parking or use of canal or waterway slope or shore areas shall be allowed, except as permitted by applicable governmental authorities.

(D) No solid or liquid waste, litter or other materials may be discharged into/onto or thrown into/onto any lake or other body of water or the banks thereof.

(E) Each applicable Owner shall maintain his Lot to the line of the water in the adjacent lake or other water body, as such line may change from time to time by virtue of changes in water levels, to the extent such maintenance is not performed by any applicable governmental authority.

(F) No landscaping, fences, structures or other improvements (regardless of whether or not same are permanently attached to the land or to other improvements) shall be placed within any lake maintenance or similar easements around lakes or other bodies of water unless permitted by the entity or entities to which such easement is dedicated, granted or assigned.

(G) No water shall be drawn from any lake, canal or other body of water for irrigation or any other purpose, except by the Association.

WITH RESPECT TO WATER LEVELS AND QUALITY AND OTHER WATER BODY-RELATED MATTERS, ALL PERSONS ARE REFERRED TO ARTICLE XIII, SECTION 11 HEREOF.

Section 16. Home Air Conditioners and Reflective Materials. No air conditioning units may be mounted through windows or walls. No building shall have any aluminum foil placed in any window or glass door or any reflective substance or other materials (except standard window treatments) placed on any glass, except such as may be approved by the Design Review Board for energy conservation purposes.

Section 17. Exterior Antennas. No exterior antennas, satellite dishes or similar equipment shall be permitted on any Lot or improvement thereon unless approved by the Design Review Board, which may approve or prohibit same in its sole discretion; provided that a satellite dish of a twenty-four inch (24") or smaller diameter shall be permitted if same is reasonably screened from view, as determined by the Design Review Board. In no event shall any "ham" radio or similar antenna, if approved at all, exceed thirty-two feet (32') in height.

Section 18. Renewable Resource Devices. Nothing in this Declaration shall be deemed to prohibit the installation of energy devices based on renewable resources (e.g., solar collector panels); provided, however, that same shall be installed only in accordance with the reasonable standards adopted from time to time by the Design Review Board. Such standards shall be reasonably calculated to maintain the aesthetic integrity of The Properties without making the cost of the aforesaid devices prohibitively expensive and shall permit such installations which, by law, cannot be prohibited.

Section 19. Artificial Vegetation. No artificial grass, plants or other artificial vegetation, or rocks used in lieu of sod, shall be placed or maintained upon the exterior portion of any Lot without the prior approval of the Design Review Board.

Section 20. Protected Species. The following restrictions are required by applicable governmental authorities to protect the indicated species:

(a) Beach Mouse

- (1) The area along the Gulf of Mexico waterward of the Coastal Construction Coastal Line/Building Restriction Line ("CCCL/BRL") is habitat for the endangered Choctawhatchee Beach Mouse.
- (2) Alterations and destruction of the foredune area represents the greatest threat to its survival. The Retreat has been designed to protect the habitat of the mouse by limiting development to areas upland of the CCCL/BRL and providing beach walkovers.
- (3) Cats, both house pets and feral, also pose a threat to the mouse. Owners are encouraged not to have cats as pets, but if they do so, keep them indoors at night. Other predators, which are often drawn to developed areas, can be minimized by the use of scavenger-proof trash receptacles as required in The Properties.

(b) Sea Turtle

- (1) The Gulf beachfront supports nesting sea turtles. Artificial lights from residential development visible from the beach can inhibit female turtles from coming ashore and can disorient hatchlings as they crawl to the Gulf. This disorientation could prevent hatchlings from reaching the sea causing dehydration and predation.

Please remember: Any construction activity that disrupts a nesting marine turtle, disrupts and destroys a sea turtle nest, or results in the injury or mortality of a marine turtle may subject the Lot Owner to prosecution under the U.S. Endangered Species Act and Florida Statutes.

- (2) All lighting associated with Homes and other improvements constructed on each Lot shall comply with the following:
 - (i) Lights placed on the seaward side of any Lot shall not be visible from the nesting areas of the beach.
 - (ii) The light source of any reflective surface of the light fixture must not be visible from any point on the nesting beach. Illumination of any area of the nesting beach, either through direct illumination, reflective illumination, or cumulative illumination is prohibited.

- (iii) Completely shielded downlights without interior reflective surfaces are preferred. All proposed fixtures shall be appropriately shielded, louvered, and/or recessed.
- (iv) Fixtures shall be low mounted through the use of low wall mounts.
- (v) Lights proposed for the seaward side of a Lot or Home must incorporate either shielded low pressure sodium lamps or low wattage (i.e., 5W or less) "bug" type bulbs, or extremely low wattage bulbs (e.g, 5W).
- (vi) Lights for purely decorative or accent purposes shall not be used on the seaward side of a Lot or Home and, if proposed for the landward side, shall be limited in number and intensity. The use of uplights is strongly discouraged.
- (vii) Only low intensity lighting shall be utilized in parking areas that are visible from any point on the nesting beach. This lighting shall be set on a base which raises the source of light no higher than 48" off the ground and shall be positioned and shielded such that the point source and any reflective surface of the light fixture is not visible from any point on the nesting beach. The light emanating from such fixtures may not directly or indirectly illuminate the nesting beach.
- (viii) During construction, temporary security lighting during the main portion of the sea turtle nesting season (May 1 - October 31) is strongly discouraged. If utilized, these lights shall be limited to the fewest number necessary. Security lights shall be completely shielded and low-mounted. Low pressure sodium vapor lamps or low wattage yellow "bug" type bulbs shall be utilized. Under no circumstances shall these lights directly or indirectly illuminate any area of the nesting beach.

Section 21. Variances. The Board of Directors of the Association shall have the right and power to grant variances from the provisions of this Article for good cause shown, as determined in the reasonable discretion of the Board. No variance granted as aforesaid shall alter, waive or impair the operation or effect of the provisions of this Article in any instance in which such variance is not granted.

Section 22. Gatehouse Procedures. All Owners shall be responsible for complying with and ensuring that their Members' Permittees and invitees comply with, all procedures adopted for controlling access to and upon The Properties through any gatehouse serving The Properties or any

portion thereof as well as Common Area roadways and other portions of the Common Areas, as such procedures and restrictions are adopted and amended from time to time.

Section 23. [Intentionally Omitted]

Section 24. Additional Rules and Regulations. The Board shall have the authority from time to time to promulgate Rules and Regulations of the Association which are consistent with the terms hereof and which may be modified, in whole or in part, at any time by the Board.

Section 25. Parcel Description. No Lot shall be further subdivided or separated into smaller parcels by any Owner. Declarant shall have the right to modify subdivision plats of the Property if all Owners of parcels which are included within any such modified plat consent to such modification, which consent shall not be unreasonably withheld or delayed.

Section 26. Soliciting. No soliciting will be allowed at any time within the Property.

Section 27. Leasing of Homes. "Leasing," for purposes of this Declaration, is defined as regular, exclusive occupancy of a Unit by any person, other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. Homes may be only leased in their entirety; no single rooms or other fraction or portion of a Home constituting less than the entire dwelling may be leased, nor shall any Home portion thereof be used for operation of a boarding house, "Bed and Breakfast" establishment, or similar accommodation for transient tenants. All leases shall be for an initial term of no less than one (1) month. Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Owner within ten (10) days of execution of the lease. The Owner must make available to the lessee copies of the Declaration, By-Laws, and the Rules and Regulations. There shall be no subleasing or assignment of any lease unless prior written approval is obtained from the Board of Directors or its designated administrator.

Section 28. Golf Carts. The Board of Directors of the Association shall have the authority to determine whether Golf Carts will be permitted on the Property and, if permitted, promulgate Rules and Regulations governing the use thereof.

ARTICLE VIII
ESTOPPEL CERTIFICATE

No Owner may sell or convey his interest in a Lot unless all sums due the Association are paid in full and an estoppel certificate in recordable form to such effect shall have been received by the Owner. If all such sums shall have been paid, the Association shall deliver such certificate within ten (10) days of a written request therefor. The Owner requesting the certificate may be required by the Association to pay to the Association a reasonable sum to cover the costs of examining records and preparing the certificate.

Owners shall be obligated to deliver the documents originally received from the Developer, containing this and any other declarations and documents, to any grantee of such Owner.

ARTICLE IX ENFORCEMENT

Section 1. Compliance by Owners. Every Owner and Member's Permittee shall comply with the restrictions and covenants set forth herein and any and all Rules and Regulations which from time to time may be adopted by the Board of Directors of the Association.

Section 2. Enforcement. Failure of an Owner or his Member's Permittee to comply with such restrictions, covenants or Rules and Regulations shall be grounds for immediate action which may include, without limitation, an action to recover sums due for damages, injunctive relief, or any combination thereof. The Association shall have the right to suspend the rights of use of Common Areas (except for legal access) of defaulting Owners. The offending Owner shall be responsible for all costs of enforcement including attorneys' fees actually incurred and court costs.

Section 3. Fines. In addition to all other remedies, and to the maximum extent lawful, in the sole discretion of the Board of Directors of the Association, a fine or fines may be imposed upon an Owner for failure of an Owner or his Member's Permittees to comply with any covenant, restriction, rule or regulation, provided the following procedures are adhered to:

(A) Notice: The Association shall notify the Owner of the alleged infraction or infractions. Included in the notice shall be the date and time of a special meeting of the Enforcement Committee (as defined below) at which time the Owner shall present reasons why a fine(s) should not be imposed. At least fourteen (14) days' notice of such meeting shall be given.

(b) Enforcement Committee: The Board of Directors may appoint an Enforcement Committee to perform the functions given it under this Section. The Enforcement Committee shall consist of at least three (3) Members who are not officers, directors or employees of the Association or the spouse, parent, child, brother or sister of such an officer, director or employee. The Enforcement Committee may impose fines only upon a majority vote thereof.

(c) Hearing: The alleged non-compliance shall be presented to the Enforcement Committee at a meeting at which it shall hear reasons why a fine(s) should not be imposed. A written decision of the Enforcement Committee shall be submitted to the Owner by not later than twenty-one (21) days after the meeting.

(d) Amounts: The Enforcement Committee (if its findings are made against the Owner) may impose special assessments in the form of fines against the Lot owned by the Owner as follows:

(1) In the case of each violation, a fine not to exceed One Hundred Dollars (\$100.00); provided, however, that

(2) In the case of each violation of a continuing nature, a fine not to exceed Fifty Dollars (\$50.00) per day for each day the violation continues, the aggregate amount of which shall not exceed Twenty-Five Hundred Dollars (\$2,500).

(e) Payment of Fines: Fines shall be paid not later than five (5) days after notice of the imposition or assessment of the penalties.

(f) Collection of Fines: Fines shall be treated as an assessment subject to the provisions for the collection of assessments as set forth herein.

(g) Application of Proceeds: All monies received from fines shall be allocated as directed by the Board of Directors.

(h) Non-exclusive Remedy: These fines shall not be construed to be exclusive, and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled; provided, however, any penalty paid by the offending Owner shall be deducted from or offset against any damages which the Association may otherwise be entitled to recover by law from such Owner.

ARTICLE X
DAMAGE OR DESTRUCTION TO COMMON AREAS

Damage to or destruction of all or any portion of the Common Areas shall be handled in the following manner, notwithstanding any provision in this Declaration to the contrary:

(A) In the event of damage to or destruction of the Common Areas, if the insurance proceeds are sufficient to effect total restoration, then the Association shall cause such portions of the Common Areas to be repaired and reconstructed substantially as it previously existed.

(B) If the insurance proceeds are within Fifty Thousand Dollars (\$50,000.00) or less of being sufficient to effect total restoration of the Common Areas, then the Association shall cause such portions of the Common Areas to be repaired and reconstructed substantially as it previously existed and the difference between the insurance proceeds and the actual cost shall be levied as a capital improvement assessment against each of the Owners in equal shares in accordance with the provisions of Article V, of this Declaration.

(C) If the insurance proceeds are insufficient by more than Fifty Thousand Dollars (\$50,000.00) to effect total restoration of the Common Areas, then by

written consent or vote of a majority of each class of the Members, they shall determine, subject to Article III hereof, whether (1) to rebuild and restore the Common Areas in substantially the same manner as they existed prior to damage and to raise the necessary funds over the insurance proceeds by levying capital improvement assessments against all Members, (2) to rebuild and restore in a way which is less expensive than replacing the Common Areas in substantially the same manner as they existed prior to being damaged, or (3) subject to the approval of the Board, to not rebuild and to retain the available insurance proceeds. Anything to the contrary herein notwithstanding, no decision not to rebuild or to rebuild in a manner which would result in a change in the Common Areas shall be effective without the written approval of the Board, which can require rebuilding as it deems appropriate.

(D) Each Member shall be liable to the Association for any damage to the Common Areas not fully covered by collected insurance which may be sustained by reason of the negligence or willful misconduct of any Member or his Member's Permittees. Notwithstanding the foregoing, the Association reserves the right to charge such Member an assessment equal to the increase, if any, in the insurance premium directly attributable to the damage caused by such Member. In the case of joint ownership of a Home, the liability of such Member shall be joint and several. The cost of correcting such damage shall be an assessment against the Member and may be collected as provided herein for the collection of assessments.

ARTICLE XI **INSURANCE**

Section 1. Common Areas. The Association shall keep all improvements, facilities and fixtures located within the Common Areas (other than landscaping and other improvements which are not customarily insured or insurable), insured against loss or damage by fire or other casualty for the full insurable replacement value thereof (with reasonable deductibles and normal exclusions for land, foundations, excavation costs and similar matters), and may obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other property, whether real or personal, owned by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance for and on behalf of itself and all Members. The insurance coverage with respect to the Common Areas shall be written in the name of, and the proceeds thereof shall be payable to, the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are common expenses included in the assessments made by the Association.

To the extent obtainable at reasonable rates, the insurance policy(ies) maintained by the Association shall contain provisions, or be accompanied by endorsements, for: agreed amount and inflation guard, demolition costs, contingent liability from operation of building laws and increased costs of construction.

All insurance policies shall contain standard mortgagee clauses, if applicable.

The Association shall also maintain flood insurance in an amount equal to the lesser of 100% of the replacement costs of all insurable improvements (if any) within the Common Areas or the maximum amount of coverage available under the National Flood Insurance Program.

Any improvements within a Common Area which is only an easement in favor of the Association shall be insured by the Owner of the Lot over which such easement exists and shall not be the insurance, maintenance, repair or replacement responsibility of the Association except to the extent that any such improvements are damaged by the Association.

Section 2. Replacement or Repair of Property. In the event of damage to or destruction of any portion of the Common Areas, the Association shall repair or replace the same from the insurance proceeds available, subject to the provisions of Article X of this Declaration.

Section 3. Waiver of Subrogation. As to each policy of insurance maintained by the Association which will not be voided or impaired thereby, the Association hereby waives and releases all claims against the Board, the Members, Developer and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but only to the extent that insurance proceeds are received in compensation for such loss.

Section 4. Liability and Other Insurance. The Association shall have the power to and shall obtain comprehensive public liability insurance, including medical payments and malicious mischief, with coverage of at least \$1,000,000.00 (if available at reasonable rates and upon reasonable terms) for any single occurrence, insuring against liability for bodily injury, death and property damage arising from the activities of the Association or with respect to property under its jurisdiction, including, if obtainable, a cross liability endorsement insuring each Member against liability to each other Member and to the Association and vice versa and coverage for legal liability resulting from lawsuits related to employment contracts shall also be maintained. The Association may also obtain Worker's Compensation insurance and other liability insurance as it may deem desirable, insuring each Member and the Association and its Board of Directors and officers, from liability in connection with the Common Areas, the premiums for which shall be Common Expenses and included in the assessments made against the Members. The Association may also obtain such other insurance as the Board deems appropriate. All insurance policies shall be reviewed at least annually by the Board of Directors and the limits increased in its discretion.

The Board may also obtain such errors and omissions insurance, indemnity bonds, fidelity bonds and other insurance as it deems advisable, insuring the Board or any management company engaged by the Association against any liability for any act or omission in carrying out their obligations hereunder, or resulting from their membership on the Board or any committee thereof. At a minimum, however, there shall be blanket fidelity bonding of anyone (compensated or not) who handles or is responsible for funds held or administered by the Association, with the Association to be an obligee thereunder. Such bonding shall cover the maximum funds to be in the hands of the Association or management company during the time the bond is in force. In addition, the fidelity

bond coverage must at least equal the sum of three (3) months' of regular assessments, plus all reserve funds.

ARTICLE XII **MORTGAGEE PROTECTION**

The following provisions are added hereto (and to the extent these added provisions conflict with any other provisions of the Declaration, these added provisions shall control):

(A) The Association shall be required to make available to all Owners and Mortgagees, and to insurers and guarantors of any first Mortgage, for inspection, upon request, during normal business hours or under other reasonable circumstances, current copies of this Declaration (with all amendments) and the Articles, By-Laws and Rules and Regulations and the books and records of the Association. Furthermore, such persons shall be entitled, upon written request, to (i) receive a copy of the Association's financial statement for the immediately preceding fiscal year, (ii) receive notices of and attend the Association meetings, (iii) receive notice from the Association of an alleged default by an Owner in the performance of such Owner's obligations under this Declaration, the Articles of Incorporation or the By-Laws of the Association, which default is not cured within thirty (30) days after the Association learns of such default, and (iv) receive notice of any substantial damage or loss to the Common Areas.

(B) Any holder, insurer or guarantor of a Mortgage on a Home shall have, if first requested in writing, the right to timely written notice of (i) any condemnation or casualty loss affecting a material portion of the Common Areas, (ii) a sixty (60) day delinquency in the payment of the Assessments on a mortgaged Lot, (iii) the occurrence of a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association, and (iv) any proposed action which requires the consent of a specified number of Mortgage holders.

(C) Unless at least 66-2/3% of first Mortgagees (based upon one vote for each Mortgage owned), and the Members holding at least two-thirds (2/3rds) of the votes entitled to be cast by them, have given their prior written approval, neither the Association nor the Owners shall:

(1) by act or omission seek to sell or transfer the Common Areas and any improvements thereon which are owned by the Association (the granting of easements for utilities or for other such purposes consistent with the intended use of such property by the Association or the Declarant or the transfer of the Common Areas to another similar association of the Owners in accordance with the Articles of Incorporation of the Association or dedication of such property to the public shall not be deemed a transfer within the meaning of this clause);

(2) change the basic methods of determining the obligations, assessments, dues or other charges which may be levied against a Lot, except as provided herein with respect to future Lots;

(3) by act or omission, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of The Properties;

(4) fail to maintain fire and extended insurance on insurable portions of the Common Areas as provided herein; or

(5) use hazard insurance proceeds for losses to any Common Areas for other than the repair, replacement or reconstruction of the improvements.

ARTICLE XIII **GENERAL PROVISIONS**

Section 1. Duration. The covenants and restrictions of this Declaration shall run with and bind The Properties, and shall inure to the benefit of and be enforceable by the Association, the Design Review Board, the Design Review Board, the Developer (at all times) and the Owner of any land subject to this Declaration, and their respective legal representatives, heirs, successors and assigns, for a term of ninety-nine (99) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years each unless an instrument signed by the then Owners of 75% of all the Lots subject hereto and of 100% of the mortgagees thereof has been recorded, agreeing to revoke said covenants and restrictions; provided, however, that no such agreement to revoke shall be effective unless made and recorded seven (7) years in advance of the effective date of such revocation, and unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any signatures being obtained.

Section 2. Notice. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when personally delivered or mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

Section 3. Enforcement. Enforcement of these covenants and restrictions shall be accomplished by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the Lots to enforce any lien created by these covenants; and failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 4. Severability. Invalidation of any one of these covenants or restrictions or any part, clause or word hereof, or the application thereof in specific circumstances, by judgment or court

order shall not affect any other provisions or applications in other circumstances, all of which shall remain in full force and effect.

Section 5. Amendment. In addition to any other manner herein provided for the amendment of this Declaration, the covenants, restrictions, easements, charges and liens of this Declaration may be amended, changed, deleted or added to at any time and from time to time upon the execution and recordation of an instrument executed by the Developer alone, for so long as it or its affiliates holds title to any Lot affected by this Declaration; or alternatively by approval at a meeting of Owners holding not less than 66 2/3% vote of the entire membership in the Association (as opposed to only those Members represented at a meeting of the Association), provided, that so long as the Developer or its affiliates is the Owner of any Lot affected by this Declaration, the Developer's consent must be obtained if such amendment, in the sole opinion of the Developer, affects its interest. In addition to the foregoing, any amendment to this Declaration which alters the Surface Water or Stormwater Management System, beyond maintenance in its original condition, including the water management portions of the Common Areas, and must have the prior approval of the applicable governmental authorities.

Section 6. Effective Date. This Declaration shall become effective upon its recordation in the Public Records of Walton County.

Section 7. Conflict. This Declaration shall take precedence over conflicting provisions in the Articles of Incorporation and By-Laws of the Association and said Articles shall take precedence over the By-Laws.

Section 8. Standards for Consent, Approval, Completion, Other Action and Interpretation. Whenever this Declaration shall require the consent, approval, completion, substantial completion, or other action by the Developer or its affiliates, the Association, or Design Review Board, such consent, approval or action may be withheld in the sole and unfettered discretion of the party requested to give such consent or approval or take such action, and all matters required to be completed or substantially completed by the Developer or its affiliates or the Association shall be deemed so completed or substantially completed when such matters have been completed or substantially completed in the reasonable opinion of the Developer or Association, as appropriate. This Declaration shall be interpreted by the Board of Directors and an opinion of counsel to the Association or the counsel having drafted this Declaration rendered in good faith that a particular interpretation is not unreasonable shall conclusively establish the validity of such interpretation.

Section 9. Easements. Should the intended creation of any easement provided for in this Declaration fail by reason of the fact that at the time of creation there may be no grantee in being having the capacity to take and hold such easement, then any such grant of easement deemed not to have been so created shall nevertheless be considered as having been granted directly to the Association as agent for such intended grantees for the purpose of allowing the original party or parties to whom the easements were originally intended to have been granted the benefit of such easement and the Owners designate hereby the Developer and the Association (or either of them) as their lawful attorney-in-fact to execute any instrument on such Owners' behalf as may hereafter be required or deemed necessary for the purpose of later creating such easement as it was intended

to have been created herein. Formal language of grant or reservation with respect to such easements, as appropriate, is hereby incorporated in the easement provisions hereof to the extent not so recited in some or all of such provisions.

Section 10. Construction Activities. ALL OWNERS, OCCUPANTS AND USERS OF THE PROPERTIES ARE HEREBY PLACED ON NOTICE THAT DEVELOPER AND/OR ITS AGENTS, CONTRACTORS, SUBCONTRACTORS, LICENSEES AND OTHER DESIGNEES WILL BE, FROM TIME TO TIME, CONDUCTING, CONSTRUCTION AND OTHER ACTIVITIES WITHIN OR IN PROXIMITY TO THE PROPERTIES. BY THE ACCEPTANCE OF THEIR DEED OR OTHER CONVEYANCE OR MORTGAGE, LEASEHOLD, LICENSE OR OTHER INTEREST, AND BY USING ANY PORTION OF THE PROPERTIES, EACH SUCH OWNER, OCCUPANT AND USER AUTOMATICALLY ACKNOWLEDGES, STIPULATES AND AGREES (i) THAT NONE OF THE AFORESAID ACTIVITIES SHALL BE DEEMED NUISANCES OR NOXIOUS OR OFFENSIVE ACTIVITIES, HEREUNDER OR AT LAW GENERALLY, (ii) NOT TO ENTER UPON, OR ALLOW THEIR CHILDREN OR OTHER PERSONS UNDER THEIR CONTROL OR DIRECTION TO ENTER UPON (REGARDLESS OF WHETHER SUCH ENTRY IS A TRESPASS OR OTHERWISE) ANY PROPERTY WITHIN OR IN PROXIMITY TO THE PROPERTIES WHERE SUCH ACTIVITY IS BEING CONDUCTED (EVEN IF NOT BEING ACTIVELY CONDUCTED AT THE TIME OF ENTRY, SUCH AS AT NIGHT OR OTHERWISE DURING NON-WORKING HOURS), (iii) THAT DEVELOPER AND THE OTHER AFORESAID PARTIES SHALL NOT BE LIABLE FOR ANY AND ALL LOSSES, DAMAGES (COMPENSATORY, CONSEQUENTIAL, PUNITIVE OR OTHERWISE), INJURIES OR DEATHS ARISING FROM OR RELATING TO THE AFORESAID ACTIVITIES, (iv) THAT ANY PURCHASE OR USE OF ANY PORTION OF THE PROPERTIES HAS BEEN AND WILL BE MADE WITH FULL KNOWLEDGE OF THE FOREGOING AND (v) THAT THIS ACKNOWLEDGMENT AND AGREEMENT IS A MATERIAL INDUCEMENT TO DEVELOPER TO SELL, CONVEY, LEASE AND/OR ALLOW THE USE OF THE APPLICABLE PORTION OF THE PROPERTIES.

Section 11. Notices and Disclaimers as to Water Bodies. NEITHER DEVELOPER, THE ASSOCIATION, NOR ANY OF THEIR OFFICERS, DIRECTORS, COMMITTEE MEMBERS, EMPLOYEES, MANAGEMENT AGENTS, CONTRACTORS OR SUBCONTRACTORS (COLLECTIVELY, THE "LISTED PARTIES") SHALL BE LIABLE OR RESPONSIBLE FOR MAINTAINING OR ASSURING THE SAFETY, WATER QUALITY OR WATER LEVEL OF/IN ANY LAKE, POND, CANAL, CREEK, STREAM OR OTHER WATER BODY WITHIN THE PROPERTIES, EXCEPT AS SUCH RESPONSIBILITY MAY BE SPECIFICALLY IMPOSED BY, OR CONTRACTED FOR WITH, AN APPLICABLE GOVERNMENTAL OR QUASI-GOVERNMENTAL AGENCY OR AUTHORITY. FURTHER, NONE OF THE LISTED PARTIES SHALL BE LIABLE FOR ANY PROPERTY DAMAGE, PERSONAL INJURY OR DEATH OCCURRING IN, OR OTHERWISE RELATED TO, ANY WATER BODY, ALL PERSONS USING SAME DOING SO AT THEIR OWN RISK.

ALL OWNERS AND USERS OF ANY PORTION OF THE PROPERTIES LOCATED ADJACENT TO OR HAVING A VIEW OF ANY OF THE AFORESAID WATER BODIES SHALL BE DEEMED, BY VIRTUE OF THEIR ACCEPTANCE OF THE DEED TO OR USE OF,

SUCH PROPERTY, TO HAVE AGREED TO RELEASE THE LISTED PARTIES FROM ALL CLAIMS FOR ANY AND ALL CHANGES IN THE QUALITY AND LEVEL OF THE WATER IN SUCH BODIES.

ALL PERSONS ARE HEREBY NOTIFIED THAT FROM TIME TO TIME ALLIGATORS AND OTHER WILDLIFE MAY HABITAT OR ENTER INTO WATER BODIES WITHIN OR NEARBY THE PROPERTIES AND MAY POSE A THREAT TO PERSONS, PETS AND PROPERTY, BUT THAT THE LISTED PARTIES ARE UNDER NO DUTY TO PROTECT AGAINST, AND DO NOT IN ANY MANNER WARRANT OR INSURE AGAINST, ANY DEATH, INJURY OR DAMAGE CAUSED BY SUCH WILDLIFE.

Section 12. Proceeds from Sale of Utilities. In the event the Declarant sells and conveys any or all of the utility easements or utility systems, all compensation and other proceeds from such sale and conveyance, if any, shall accrue to Declarant.

Section 13. Covenants Running With The Land. Anything to the contrary herein notwithstanding and without limiting the generality (and subject to the limitations) of Section 1 hereof, it is the intention of all parties affected hereby (and their respective heirs, personal representatives, successors and assigns) that these covenants and restrictions shall run with the land and with title to the properties. Without limiting the generality of Section 4 hereof, if any provision or application of this Declaration would prevent this Declaration from running with the land as aforesaid, such provision and/or application shall be judicially modified, if at all possible, to come as close as possible to the intent of such provision or application and then be enforced in a manner which will allow these covenants and restrictions to so run with the land; but if such provision and/or application cannot be so modified, such provision and/or application shall be unenforceable and considered null and void in order that the paramount goal of the parties (that these covenants and restrictions run with the land as aforesaid) be achieved.

Section 14. Litigation. No judicial or administrative proceedings shall be commenced or prosecuted by the Association unless the same is approved by a vote of the Members holding seventy five percent (75%) of the votes. This section shall not apply, however, to (a) actions brought by the Association to enforce and provisions of this Declaration (including, without limitation, foreclosure of lien), (b) imposition of Assessments as provided herein, (c) proceedings involving challenges, to any taxation, or (d) counter claims brought by the Association in proceedings instituted against it. Notwithstanding the provisions of this Section, this Section shall not be amended unless such Amendment is approved by the Declarant or is approved by the percentage vote pursuant to the same procedures as are necessary to institute proceedings and provided above.

Section 15. Action Without Meeting. Any action required to be taken hereunder by vote or assent of the Members holding a certain percentage of votes may be taken in the absence of a meeting by obtaining the written approval of the requisite percentage of all of the votes of the Association. Any action so approved shall have the same effect as though taken at a meeting of the Members, and such approval shall be duly filed in the minute book of the Association.

ARTICLE XIV

DISCLAIMER OF LIABILITY OF ASSOCIATION

NOTWITHSTANDING ANYTHING CONTAINED HEREIN OR IN THE ARTICLES OF INCORPORATION, BY-LAWS, ANY RULES OR REGULATIONS OF THE ASSOCIATION OR ANY OTHER DOCUMENT GOVERNING OR BINDING THE ASSOCIATION (COLLECTIVELY, THE "ASSOCIATION DOCUMENTS"), THE ASSOCIATION SHALL NOT BE LIABLE OR RESPONSIBLE FOR, OR IN ANY MANNER A GUARANTOR OR INSURER OF, THE HEALTH, SAFETY OR WELFARE OF ANY OWNER, OCCUPANT OR USER OF ANY PORTION OF THE PROPERTIES INCLUDING, WITHOUT LIMITATION, RESIDENTS AND THEIR FAMILIES, GUESTS, INVITEES, AGENTS, SERVANTS, CONTRACTORS OR SUBCONTRACTORS OR FOR ANY PROPERTY OF ANY SUCH PERSONS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING:

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

(B) THE ASSOCIATION IS NOT EMPOWERED, AND HAS NOT BEEN CREATED, TO ACT AS AN ENTITY WHICH ENFORCES OR ENSURES THE COMPLIANCE WITH THE LAWS OF THE UNITED STATES, STATE OF FLORIDA, WALTON COUNTY, AND/OR ANY OTHER JURISDICTION OR THE PREVENTION OF TORTIOUS ACTIVITIES; AND

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

EACH OWNER (BY VIRTUE OF HIS ACCEPTANCE OF TITLE TO HIS LOT) AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN UPON, OR MAKING ANY USE OF, ANY PORTION OF THE PROPERTIES (BY VIRTUE OF ACCEPTING SUCH INTEREST OR LIEN OR MAKING SUCH USES) SHALL BE BOUND BY THIS ARTICLE AND SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ANY AND ALL RIGHTS, CLAIMS, DEMANDS AND CAUSES OF ACTION AGAINST THE ASSOCIATION ARISING FROM OR CONNECTED WITH ANY MATTER FOR WHICH THE LIABILITY OF THE ASSOCIATION HAS BEEN DISCLAIMED IN THIS ARTICLE.

AS USED IN THIS ARTICLE, "ASSOCIATION" SHALL INCLUDE WITHIN ITS MEANING ALL OF THE ASSOCIATION'S DIRECTORS, OFFICERS, COMMITTEE AND

Exhibit A

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- A. ARCHITECTURAL STYLING – Exhibit A
- B. APPROVED PLANT LIST – Exhibit B

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I. STATEMENT OF PURPOSES & OBJECTIVES

The Developer of "The Retreat", the Declarant, is desirous of an aesthetically pleasing and functionally convenient community and for that purpose has declared and recorded Declaration of Covenants and Restrictions for the Retreat, ("covenants") applicable to all improvements within The Retreat. The Covenants establish The Retreat Home Owners Association (RHOA) and the Design Review Board (DRB) and sets forth its jurisdiction, powers, obligations and rules and regulations under which it will conduct its review of proposed improvements. Statements in this document are intended to condense, amplify, or clarify provisions of the Declaration. In the event of conflicts, the Declaration's provisions will prevail.

The DRB has been established to define and interpret aesthetic standards in The Retreat and examine, approve or disapprove all proposed vertical or horizontal improvements for all residences.

DRB approval must be obtained for, but not limited to: dwellings; garages; any type of outbuilding, decks, terraces, patios, courtyards, sidewalks, driveways, parking areas, swimming pools, greenhouses, walls, fences, docks, bulkheads, exterior lighting, and any exterior changes or limitation, colors of any exterior surface or material.

DRB approval must be obtained for landscaping, cut and fill operations, and drainage, as well as the removal of any existing vegetation.

The development philosophy for The Retreat is rooted in a commitment to design quality ensuring that materials are best used to enhance the natural beauty. In all instances, the Declarant has a strong determination and desire to create a superior living environment for generations to come through the preservation of the natural character of the community.

Presented herein are the Design Guidelines with regard to residential design and landscaping. Our intent is to present the overall design concept of the community and to give your design professionals reasonable parameters in which to work in a creative manner. It is our hope that this manual will inspire and encourage outstanding individually designed residences which, when viewed together, produce an equally outstanding and harmonious community environment.

As The Retreat is developed, we hope that each individual property owner will take an active interest and concern for the quality of our surroundings by designing their own environment with an eye for quality in design, workmanship and materials.

Each stage of activity will be carefully monitored to assure compliance with our philosophy and this manual. We are determined that specific principles and standards

be observed by all owners, as each detail herein has been carefully formulated to assure an attractive environment for all residents. Our commitment to the property

owner is the reason behind these guidelines and the spirit in which all of the professionals associated with creating this community have approached their roles and responsibilities. We encourage property owners to embrace our commitment to excellence and the standards established herein.

II. DESIGN PHILOSOPHY

The Design concept for The Retreat is that buildings should be elegantly scaled and proportioned in form and mass with detailing and color that enhances and embraces the natural setting.

The style and geographic influences endorsed for the architectural character of The Retreat is rooted in the Caribbean Islands with simple forms and materials adorned with rich detailing and color that heeds the natural environment while extending beyond the structural walls of individual residences. The main concern is that The Retreat be wholly harmonious in feeling, with architecture that explores individuality yet is free of impact and is non-competitive visually with its neighbors.

It is summarized with the statement that design considerations extend beyond building walls to include the entire site with exterior material being of a form, texture and color that enhances the natural beauty of The Retreat.

* See Exhibit A for examples

III. DESIGN REVIEW BOARD

A. PURPOSE

The Design Review Board and review process has been established for the purpose of defining aesthetic standards for construction in The Retreat, and for examining, approving or disapproving any and all proposed or modified improvements for building sites.

B. OBJECTIVES

Architectural and design review shall focus on, but not limited to, the following objectives.

1. Preventing excessive or unsightly grading, indiscriminate earth moving or clearing of property, removal of trees and vegetation which could cause disruption of natural water courses or scar natural land forms.
2. Ensuring that the location and configuration of the proposed improvements are visually harmonious with the terrain and do not unnecessarily block scenic views from existing structures or tend to dominate any general development or natural landscape.
3. Ensuring that the architectural design of proposed improvements and their materials and colors visually enhance The Retreat's overall appearance.
4. Ensuring the plans for landscaping provide visually pleasing settings for structures on the same lot and on adjoining or nearby lots, and blend harmoniously with the natural landscape.
5. Ensuring that any proposed improvements comply with the provisions of these guidelines and the covenants and restrictions set forth in the applicable declarations.
6. Promoting building design and construction techniques that respond to energy consumption and environmental quality consideration such as heat loss, air emissions, and run-off water quality.

C. ENFORCEMENT POWERS

1. The DRB reserves the right during construction of the proposed improvements as a part of its approval process, to enter into the lot to inspect the proposed improvements to assure their compliance with the approved plans and specifications.
2. If any proposed improvements shall be made without the approval of the DRB, or are not in compliance with the approved plans and specifications, then owner shall, upon written demand, cause the proposed improvements to be removed or restored within ten (10) days from the date of the written demand to their original conditions, and such owner shall bear all costs and expenses of such restoration or removal, including costs and reasonable attorney's fees of the DRB.
3. If owner has not removed or restored or commenced to remove or restore the unapproved proposed improvements within the period set forth in subparagraph 2 hereof, the DRB shall have the right to institute an action to recover sums due, for damages or to seek injunctive relief to require the owner to cease, remove or restore the unapproved proposed improvements. It is hereby declared that any violation of the requirements, set forth herein may not be adequately compensated by recovery of damages and, accordingly, the DRB, on behalf of the Association, may seek an injunction to restrain a violation or breach or threatened violation or breach.
4. In addition to the foregoing, the DRB may enforce the provisions hereof in accordance with the compliance deposit hereinafter set forth.

All the remedies set forth herein are cumulative. No delay, failure or omission on the part of the DRB in exercising any right, power, or remedy herein provided shall be construed as an acquiescence thereto or a waiver of the right to enforce its rights, powers or remedies. No right of action shall accrue nor shall any action be brought or maintained by anyone whatsoever against the DRB, the Association, declarant or any owner on account of any failure to bring any action on account of any violation or breach of the provisions of these Design Guidelines.

5. In all enforcement actions, the prevailing party shall be entitled to be reimbursed for its attorney's fees, prior to or at trial or on appeal and all reasonable court costs.

D. BASIS FOR DECISION

Approval shall be granted or denied by the DRB based upon the standards and guidelines promulgated by the DRB from time-to-time, including:

- 1) Compliance with the provisions of these Design Guidelines;
- 2) The quality of workmanship and materials;
- 3) The harmony of external design with the surrounds;
- 4) The effect of the construction on the appearance from surrounding property; and
- 5) Such other factors, including purely aesthetic considerations, which in the sole opinion of the DRB shall affect the desirability or suitability of the construction.

E. LIMITATIONS OF RESPONSIBILITY

The primary goal of the DRB is to review the application, plans, materials, and samples submitted to determine if the proposed structure conforms in appearance with the Design Guidelines and does not assume responsibility for the following:

1. Structural adequacy, capacity, or safety features of the proposed structure.
2. Soil conditions or erosion requirements.
3. Compliance with all building codes, safety requirements, governmental laws, regulations, or ordinances.
4. Performance or quality of work by any contractor.
5. Any owner making or causing to be made any proposed improvement, agrees and shall be deemed to have agreed, for such owner and his heirs, personal representatives, successors and assigns to hold the DRB, The Retreat Home Owners Association, Inc. and all other owners harmless from any liability, damage of property and from expenses arising from the construction and installation of any proposed improvements or in any way relating to the subject matter of any such reviews, acceptances, inspections, permissions, consents or required approvals, whether given, granted or withheld, and such owner shall be solely responsible for the maintenance, repair and insurance of any proposed

improvement and for assuring that the proposed improvement is in full compliance with all local, state and federal laws, rules and regulations.

F. MEMBERSHIP

The Design Review Board shall be appointed by the Declarant or its assign and shall have the duties and function described in the Declaration. The Design Review Board shall consist of a minimum of three (3) members who need not be members of The Retreat Home Owners Association. The Developer shall appoint at least one (1) architect or building contractor to such Board.

G. ADMINISTRATOR

The DRB may appoint an Administrator to handle the day-to-day responsibilities of processing submissions and coordinating with owners, including the following:

1. Explanation and interpretation of Design Guidelines.
2. Providing pre-design conferences to consider existing data relating to a particular homesite, adjacent, or planned homes, easements, setbacks, etc.
3. Scheduling of all meetings and member notification.
4. Review job progress, schedule DRB inspections, and issue applicable DRB permits and certifications.

H. MEETINGS

The DRB will conduct regular meetings. Special meetings may be called by the Administrator with two days written notification of time, date and place.

Anyone wishing to appear before the DRB in conjunction with the construction application shall notify the DRB Administrator and request to appear. All appearances before the DRB shall be limited to five (5) minutes. Due to the technical nature of the proceedings, it is preferred that the architect make such presentations.

I. MINUTES/NOTIFICATION

All decisions of the DRB will be recorded in minutes taken at DRB meetings. Although owners will not be present at meetings, recorded minutes will be available upon request. Plans and specifications will be retained by the DRB as part of the record. Applicants will be notified within five (5) working days of all decisions by the Board.

J. APPEALS

If an application has been denied, or the approval is subject to conditions which the owner feels are unacceptable, the owner may request a hearing before the Developer.

K. FEES AND BONDS

1. Administration Fee

The DRB requires the payment of an administration fee at the time of application. The fee is non-refundable and should be made payable to "The St. Joe Company" or its assign.

- a. Modifications to existing structures or grounds \$150.00
- b. Single Family Residences \$750.00

2. Compliance Deposit

- a. The DRB requires that each owner submitting plans and specifications for a proposed improvement shall place in escrow with the RHOA a sum of money, which shall be a compliance deposit. The purpose of the compliance deposit is to provide the DRB with funds to complete the proposed improvement in the event that the owner fails to complete construction of the proposed improvements in accordance with the approved plans and specifications, including the approved landscaping or fails to clean up the construction site. In addition, the compliance deposit funds may be used to pay the attorney's fees of the DRB in the event that it is required to obtain the services of an attorney to enforce compliance. The funds constituting the compliance deposit shall be held in a non-interest bearing account.
- b. The amount of the compliance deposit shall be computed as follows:

- (i) Existing structures or grounds: Minimum deposit of One Thousand Dollars (\$1,000) shall be required, but in no event shall the compliance deposit exceed ten percent (10%) of the cost of the proposed improvement or Two Thousand Five Hundred Dollars (\$2,500).
- (ii) New construction: Minimum deposit of Two Thousand Five Hundred (\$2,500) shall be required.

The foregoing amounts shall not constitute a limit on the owner's liability but will be applied against the total cost of enforcement of these provisions including, without limitation, the cost of removal or restoration, construction in accordance with the approved plans and specifications, attorneys fees and court costs.

The DRB has the authority to grant exceptions to the foregoing amounts, on a case-by-case basis, relative to the number of compliance deposits to be on-hand for any one builder.

- c. In the event that the owner does not comply with his obligations hereunder including, without limitation, construction of any unapproved proposed improvement or failure to construct in full accordance with the approved plans and specifications. The DRB shall give the owner written notice of the non-compliance and ten (10) days to cure the non-compliance. If such non-compliance is not cured, the DRB may use the compliance deposit to complete the construction or remove and restore the unapproved proposed improvements or to retain an attorney. Upon a violation as set forth herein, the DRB shall be entitled to retain the entire compliance deposit amount, even if the entire amount is not utilized. Such coverage shall be deemed a penalty for such failure.
- d. In order to determine compliance and completion for disposition of compliance deposit, owner/builder shall contact the DRB for final in-field inspection and provide a County Building Department Certificate of Occupancy (CO).

L. VARIANCES

All variance requests pertaining to DRB approvals must be made in writing to the DRB. Any variances granted shall be considered unique and will not set any precedent for future decisions.

M. ADDITIONAL REQUIREMENTS

These Design Guidelines have been adopted to assist the owners within The Retreat and the DRB in connection with the architectural approval process. These are merely guidelines, and the DRB will have the right to waive any of the requirements, or will have the right to require additional or more stringent requirements.

IV. DESIGN REVIEW PROCEDURES

The following is an outline of the procedures for plan submissions for single-family detached homes. All plans are to be submitted to the DRB for review.

Once approved, applications are valid for one (1) year from date of approval. After one (1) year, applications expire and become invalid. If applicant wishes to proceed with project after date of expiration, he must reapply for new approval. See Design Review Application for new construction.

A. PROFESSIONAL CONSULTANTS

Selection of a Florida registered architect and landscape architect is required.

B. PRELIMINARY PLANS

At the discretion of the applicant, a schematic or design concept may be submitted to the DRB in order to determine suitability of a particular design for The Retreat. Preliminary plan submission is recommended to resolve potential problems before going to the time and expense of contract documents.

Preliminary plans shall include, but are not limited to:

1. Application form.
2. Site plan at 1/8" or other suitable scale showing all trees with a caliper greater than 4 inches (4") at a height greater than 4 feet (4') above grade, all grades, horizontal and vertical improvements with pertinent dimensions, setbacks, easements, etc.
3. Floor plans may be shown on site plan.
4. Key elevations or sketches to define exterior.
5. List of materials or locations of materials.

The DRB will render an opinion as to whether the preliminary submittal would be acceptable. The opinion will be strictly non-binding and will be offered in an effort to save the applicant time and expense.

6. Application Fee.

C. FINAL SUBMISSION

In order to provide a systematic and uniform review of the proposed construction, two (2) sets of architectural plans and specifications signed and sealed by a registered Florida architect are required. Plans and specifications shall be completed and detailed to the point that all significant aspects of construction are clearly identified and understandable by construction professionals.

As a minimum, the drawings shall include:

1. Site Plan

Scale in size appropriate to show detail, but not less than 1" = 20'-0", indicating:

- a. Access street(s) and walkway(s), drives and other exterior improvements, including material and color.
- b. Grading drainage plan, including on-site retention areas.
- c. Fill plan, if any (indicating run-off and tree preservation method).
- d. Culvert(s), location and size and flow direction.
- e. Foundation plan if other than slab-on-grade.
- f. Exterior lighting plan.
- g. Service yards.
- h. Service entry to lot, of water electricity and telephone.
- i. Tree survey showing location and species of trees four inches (4") or larger in diameter at a point four feet (4') above ground.
- j. Building plan to scale, overlaid on tree survey indicating all structures and other improvements to be included in the scheme with an indication of trees to remain and trees to be removed (at the same scale as boundary/tree survey).
- k. Location and identification of special features (e.g., drainage ditch, dune, nearby lake easements, adjacent structures, etc.).
- l. Mechanical equipment showing location and screening details.

m. Location of contractor ID sign and outdoor toilet facility.

2. Floor Plans

In a scale appropriate to show all detail including an exact computation of the square footage stated by floor in the case of multi-floored residences and finished floor elevations.

3. Roof Plans

In size appropriate to show detail.

4. Foundation Plans

In size appropriate to show detail.

5. Elevations

Depicting all four (4) sides, including hidden views.

- a. Existing and finished grade.
- b. Total height dimension.
- c. Exterior treatment to include all materials, door and window fenestration, walls, fences, etc.

6. Typical Wall and Building Sections

Depicting:

- a. Materials.
- b. Roof pitch.
- c. Fences, screens, exterior walls, etc.

7. Details

Depicting:

- a. Design features and other improvements requiring clarifications.
- b. Fascia and trim details.
- c. Doors and windows.

d. Garage doors.

8. **Patios, Decks, Balconies, Verandas, Porches, etc.**

9. **Exterior Lighting**

Details with product photos.

10. **Landscape Plan**

At a scale of site plan, including:

- a. **Boundary:** Indicate all perimeter property lines, setbacks, dedicated easements and north arrow.
- b. **Structures:** Position all structures on the property and indicate the location of all windows, doors and permanent construction elements, which are proposed.
- c. **Perimeter Areas:** Reflect all adjacent site conditions and surrounding roadways, lakes and pertinent features, which may affect the subject property.
- d. **Hardscape:** Indicate all proposed vehicular and pedestrian circulation treatments, swimming pool location and configuration, miscellaneous amenity elements, garden features and permanent site furnishings which may affect the use of the site.
- e. **Utility elements:** Show all air conditioner equipment locations, exposed utility meters, garbage areas, LP gas tank, pool equipment and any service or utility elements which may require landscape treatment or buffer screening.
- f. **Decorative Grading:** Indicate general existing grades and all proposed decorative grading (earth berming) at one foot (1') intervals.
- g. **Existing Vegetation:** Based upon the current tree survey, accurately identify and locate all existing vegetation with a caliper of four inches (4") or greater, which is intended to be removed, remain or be relocated on the site.
- h. **Proposed Vegetation:** Provide a comprehensive landscape layout for all trees, palms, shrubs, ground covers, vines and sod which are proposed throughout the site.

- i. Street Tree Location.
- j. Plant List: Identify all proposed vegetation with a plant list that reflects the scientific and accepted common name, height, spread, caliper, or size at time of installation as well as any necessary remarks which may be required to clearly portray the technical needs for design review, and/or final installation purposes.

D. FINAL STAKEOUT

Concurrent with final submission, the owner or contractor will provide a string stakeout of the lot lines and building lines for review by the DRB, if required. All trees to be removed must be clearly indicated.

E. BUILDING PERMIT

Upon approval by the DRB of the final plans and the stakeout, the owner may then submit to the county or other agencies for a building permit.

F. CONSTRUCTION START

Upon receipt of the DRB approval and the county building permit, the owner may commence with construction. The DRB reserves the right to inspect in the field for compliance during any stage of construction.

G. SURVEY/CERTIFICATE OF OCCUPANCY/COMPLIANCE DEPOSIT

Upon completion of construction, the following will be submitted to the DRB:

- a. Final survey certificate by surveyor.
- b. As-built set of drawings.
- c. Certificate of Occupancy by the county.

Upon certification by the DRB that all improvements have satisfied the Design Guidelines, the DRB will issue a final approval. No residence within The Retreat may be occupied by any person until a final approval is issued by the DRB, and a Certificate of Occupancy is issued by the county. Upon final approval, the DRB will return the compliance deposit as is appropriate.

THE RETREAT
Declarant Design Review Application Form
New Construction

DATE: _____

TO: _____

OWNER: _____

Name _____

Street _____

City _____ State _____ Zip _____

Telephone _____

BUILDER/
CONSTRUCTOR

Name _____

Street _____

City _____ State _____ Zip _____

Telephone _____ FL License # _____

RESIDENTIAL
ARCHITECT

Name _____

Street _____

City _____ State _____ Zip _____

Telephone _____ FL License # _____

LANDSCAPE
ARCHITECT

Name _____

Street _____

City _____ State _____ Zip _____

Telephone _____ FL License # _____

LOT # _____

REVIEW DEPOSIT \$ _____ CHECK NUMBER _____

COMPLIANCE DEPOSIT \$ _____ CHECK NUMBER _____

THE RETREAT
Design Review Application Form
New Construction – Page Two

The application is being submitted for:

Preliminary Review		_____
Final Review		_____
Impervious Lot coverage		_____ %
Air Conditioned Space (First Floor)		_____ sq. ft.
Air Conditioned Space (Second Floor)		_____ sq. ft.
	Total Net Sq. Ft.	_____ sq. ft.
Covered Porches/Entries, etc.		_____ sq. ft.
Garage		_____ sq. ft.
Other: _____		_____ sq. ft.
	Total Gross Sq. Ft.	_____ sq. ft.

GENERAL INFORMATION:

Lot Dimensions:	_____
Lot Sq. Ft.	_____ Stories _____
Bedrooms	_____ Baths _____
Height from Slab; to top Of roof excl. appendages:	_____
Finished first floor Elevation	_____
Finished Grade Elevation	_____

THE RETREAT
Design Review Application Form
New Construction – Page Three

Exterior Features	Color/Finish	Description
Driveway	_____	_____
Entry Walk	_____	_____
Siding	_____	_____
Trim	_____	_____
Shutters	_____	_____
Windows	_____	_____
Window Trim	_____	_____
Entry Door	_____	_____
Garage Door	_____	_____
Other Doors	_____	_____
Roofing	_____	_____
Fascia	_____	_____
Soffit	_____	_____
Gutters	_____	_____
Chimney	_____	_____
Screening	_____	_____
Walls	_____	_____

The preceding application is submitted for review by the Design Review Board.
 Required design documents are attached.

SUBMITTED BY:

_____ Title

_____ Firm

V. LANDSCAPING STANDARDS

A. INTRODUCTION

The goal of the Design Review Board (DRB) is to provide for the sensitive enhancement of the environment by the encouragement of an on-going planting program, which adheres to a "natural theme". Plant material selections and planting arrangements which reinforce naturalistic settings in keeping with the character of the site will be expected and the use of plant species prescribed in the list at the end of this chapter will be a requirement.

B. SUBMITTAL REQUIREMENTS

To ensure that the unique elements which create the visual appeal of the community are preserved and enhanced, and that any proposed vegetative improvements are kept consistent for the benefit of all, a comprehensive landscape plan and plant list will be required for all proposed home site construction projects. The DRB reserves the right to approve or disapprove any such submission, and may at its sole discretion make suggestions or require modifications which may be appropriate to bring the proposed landscape plan into compliance with the Design Guidelines of The Retreat.

In order to insure a mature, grown-in appearance upon installation, the DRB may require a minimum of five percent (5%) (excluding automatic irrigation system) of the total estimated construction cost and lot value to be applied toward landscaping. At its discretion, the DRB further retains the right to increase landscape expenditures as it sees fit, to a maximum of ten percent (10%) of the said total of house and property. For this reason the protection and retention of existing vegetation during site clearing and construction is mandatory.

The Landscape Plan shall be prepared by a landscape architect, licensed in the state of Florida, or by an experienced landscape designer familiar with the restrictions and limitations of the local coastal environment, and submitted to the DRB. Additionally, an Irrigation Plan, at the same scale as the Landscape Plan, showing the layout of an automatic sprinkler system shall be submitted. Two (2) signed and sealed copies of the landscape documents shall be delivered to the DRB for review and comments. No installation work may commence prior to receipt of written approval by the DRB of the landscape documents.

C. DESIGN REQUIREMENTS

1. Design Intent

The general landscape design theme for The Retreat is intended to be natural and informal, using sufficient plant material to present an established appearance at time of installation. The goal is to have a continuous flow of the landscape from one lot to another between the street and the front of the house, rather than making each lot an autonomous island from lot line to lot line.

2. Street Frontage/Right-of-Way Landscaping

To reinforce the common streetscape design character through the community, each residential property will participate in the creation of a unified street landscape program for the community. The right-of-way portion of each home site, between its front lot-line and the street pavement, shall be landscaped with a mix of at least five of the following plants: Gulf Muhleygrass, Saltmeadow Cordgrass, Sand Cordgrass, Saw Palmetto, Conradina, Woody Goldenrod, Woolly Goldenaster, Adam's Needle, Florida Rosemary. Grass species should comprise approximately seventy-five percent (75%) of the planted area and shall be installed in sizes sufficient to present a mature, grown-in appearance (minimum one-gallon container). The remaining twenty-five percent (25%) shall be a selection placed in a natural, random pattern that mimics nature as best it can.

3. Plant Palette

All home sites at The Retreat are located within the coastal dune scrub ecosystem. Vegetation in this unique and increasingly rare zone owes its form and make-up to its perpetual exposure to the pruning effects of wind and salt spray. Trees and shrubs exposed to the full force of the wind and salt are stunted and their canopies, such as they are, tend to lean down-wind. Only specialized plants which can endure this harsh environment will grow here. The site is blessed with totally native plant species with very few exotic plants found anywhere on the site. The intent is to keep it that way as development proceeds. This means that future landscape installations will be required to utilize strictly native or indigenous plants with exceptions only as specified in this chapter. While there are a number of exotic plants that thrive in this environment, it is the intent of the DRB to restrict all landscape plantings visible from the roads to species that are indigenous to the site. A detailed list of acceptable landscape material is included at the end of this

chapter. Any deviation from this list will only be with written approval of the DRB.

4. Front Yard Landscaping

All front yard plantings visible from the street shall be landscaped with plants from the approved plant palette. Where existing vegetation was preserved, every effort shall be made to landscape adjacent areas with more of the same species to achieve a look of continuity.

Areas enclosed by walls or fences may be planted with adaptable, non-native species provided they are not and will not become visible from the street. Plants such as ligustrums, pindo palms, pittosporums, etc that have the potential to grow above the fence lines are not acceptable. Small areas of turfgrass are also acceptable provided they are enclosed from view.

Should large (six feet tall and taller) plants be desired by an applicant, the use of Sand Live Oak, Sand Pine or Slash Pine, all of which are available in large sizes, is strongly encouraged.

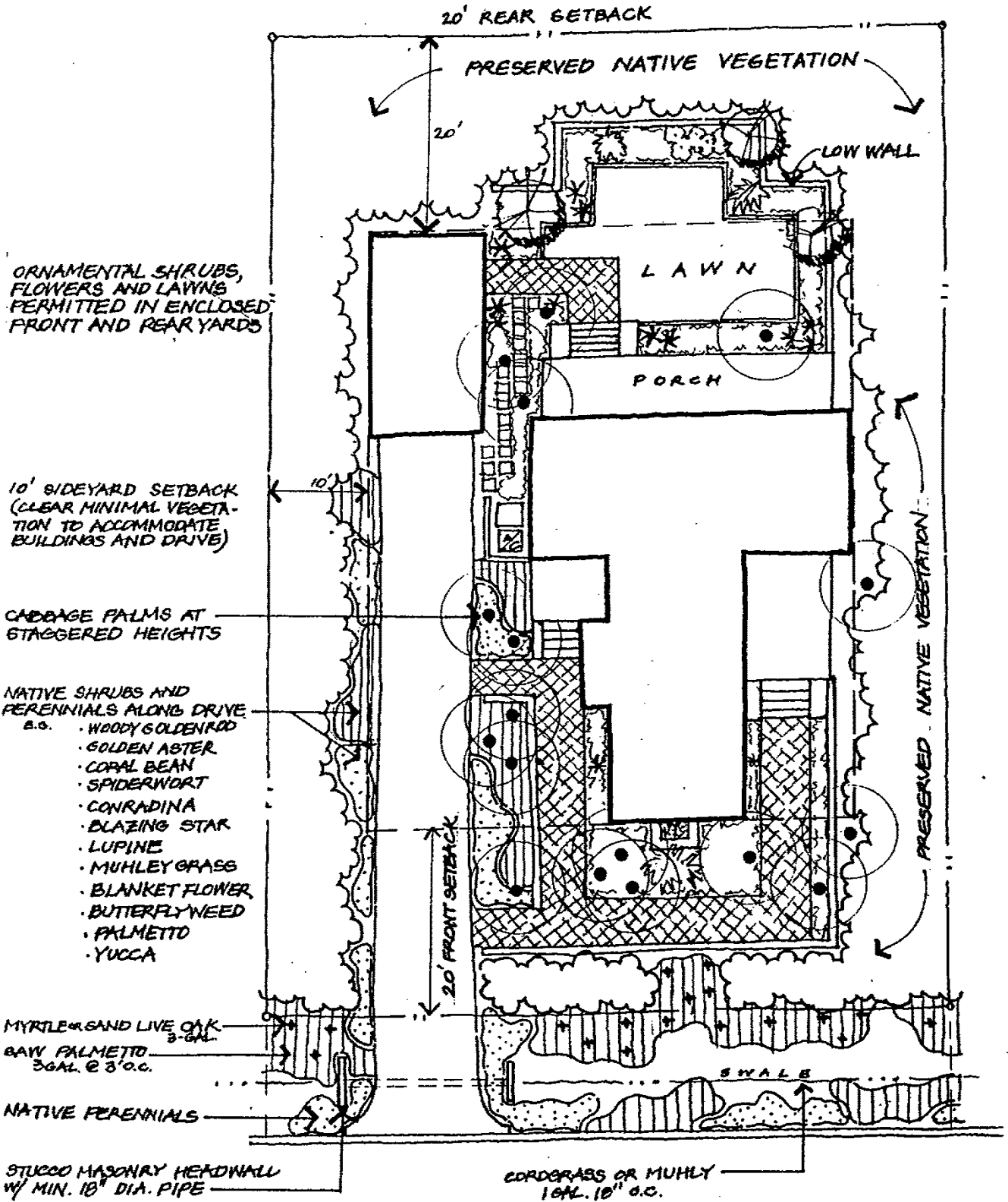
5. Irrigation

All developed homes sites shall be required to have an automatic irrigation system utilizing either domestic potable water or water from a shallow well supplied by the lot owner. Domestic water is the preferred choice, since it does not present the iron staining problems often found with shallow well water.

The required use of native plants is intended to minimize the need for irrigation water throughout the neighborhood. Once initial landscape plantings are established, it is hoped that irrigation systems can essentially be turned off and used only during periods of severe drought.

All street rights-of-way on which each lot fronts will be on an automatic irrigation system operated and maintained by the Retreat Homeowners Association. For soil stabilization purposes, these rights-of-way will be planted and irrigated with various grasses and shrubs and will be maintained as such, until a lot owner begins to develop his lot. At that time, the HOA roadside irrigation heads along the street on which the owner's lot fronts will be capped off and from that time henceforth the lot owner will be responsible for landscaping, irrigating and maintaining that space.

TYPICAL LANDSCAPE PLAN



VI. CONTRACTOR STANDARDS

The following shall apply to any and all construction, improvement, alteration or maintenance of any structure, to any change to the exterior of any structure and to grading, excavating, tree removal, landscaping or any other change to the grounds of a single-family site within The Retreat. In the event a violation of these criteria and guidelines takes place, the construction or work being performed shall cease until conformance is achieved. Infractions of the construction rules may be cause for a \$500.00 fine per infraction and/or suspension of a contractor or subcontractor from the community.

A. BUILDING CONTRACTORS

All builders and general contractors must have all appropriate Florida licenses.

B. START OF CONSTRUCTION

No lot clearing or placement of portable toilets will be permitted until all required governmental permits are obtained and formal written approval of the DRB has been granted.

C. PORTABLE TOILETS

Prior to commencing work, a portable toilet must be placed on the job site and in a manner so as to least disturb other residences and other construction.

D. CONSTRUCTION TRAFFIC

All construction traffic shall access the community through the designated construction entrance. For security purposes, all contractors must register a complete list of their sub-contractors and other employees who are permitted entry into the community with the homeowners association.

No vehicle shall be parked on any lots, other than their specific job site. There will be no washing of any trucks on the streets.

E. CONSTRUCTION HOURS

The construction working hours are currently from 7:30 am to 6:00 PM, Monday through Saturday, except on nationally recognized holidays. These hours are subject to change by the DRB. A 24-hour emergency telephone number must be kept on file at the sales center.

F. SITE CLEAN-UP

All construction sites must be maintained in a neat and orderly fashion. All contractors are required to provide at least one (1) covered trash dumpster for every residence under construction. Dumpsters must be emptied on a regular basis. The builder is responsible for trash that blows off the site and shall retrieve such trash immediately.

No trash shall be stockpiled on the lot. There will be no stockpiling or dumping on adjacent lots or on streets. Contractors will use only the utilities provided on the site on which they are working.

G. CLEARING

Only plants, vegetation and trees directly within the planned structure, roof overhangs, or driveway shall be removed. Any plants, vegetation or trees uprooted or cut down on the job site shall be removed from the job site and from the community as soon as is practical but not later than five (5) working days.

H. CONSTRUCTION DAMAGE

Any damage to streets and curbs, drainage inlets, sidewalks, street lights, street markers, mailboxes, walls, etc., will be repaired by the Declarant or the homeowners association and such costs billed to the responsible contractor.

I. CONSTRUCTION SPILLAGE

Operators of vehicles are required to see that they do not spill any damaging materials while within the community. If spillage of a load occurs, operators are responsible for cleaning it up. Clean-ups done by the association will be billed to the responsible party. Please report any spills as soon as possible.

J. TELEPHONE/CABLE TV LINES

If any telephone, cable television, electrical, water, etc., lines are cut; it is the contractor's responsibility to report the accident to the Declarant within thirty (30) minutes.

K. DRESS

All construction workers will be required to wear clothing compatible with their specific job requirements. Shirts will be worn at all times.

L. CONSTRUCTION SITE APPEARANCE

All personnel working in the community are to keep all of their areas free of discarded materials such as lunch bags and odd materials. Objects should not be thrown out of cars and trucks.

M. NOISE LEVELS

Loud radios or noise will not be allowed within the community. Normal radio levels are acceptable; however, speakers mounted on vehicles or outside of homes under construction are not permitted.

N. VEHICLES AND EQUIPMENT

No vehicles (trucks, vans, cars, etc.) may be left in the community overnight. Construction equipment may be left on the site while needed, but must not be kept on the street, unless prior permission has been granted.

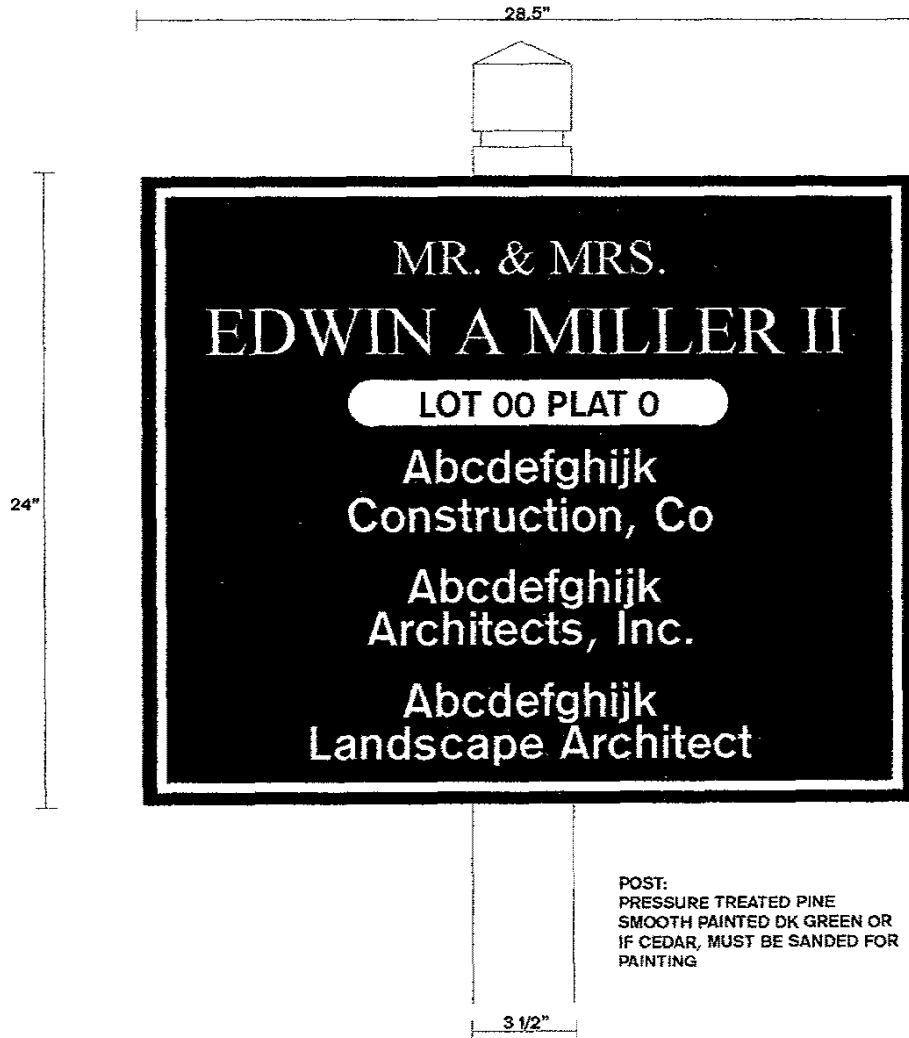
O. PERSONNEL

Only bona fide workers are allowed on the property and are required to exit the property upon completion of their work. Spouses may drive workers to and from the site, but must not remain on the property unless they are actual employees of the sub-contractor. For safety reasons, children will not be permitted on the job site. No alcoholic beverages are permitted on or near the job site. Contractor personnel will not be permitted to bring pets on the property.

P. SIGNAGE

During construction, one (1) approved standard construction sign shall be allowed within the front setback of the lot to assist sub-contractors and others in locating the job site (see page 29).

STANDARD CONSTRUCTION SIGN



INSERT 1/4" WHITE BORDER
1/2" FROM EDGE

1 3/16" WHITE BERKLEY OLDSTYLE MEDIUM

1 5/8" WHITE BERKLEY OLDSTYLE MEDIUM

1 5/8" X 14 7/8" WHITE OVAL WITH
7/8" BLACK HELVETICA COPY

1 3/16" WHITE UPPER AND LOWER CASE
HELVETICA

NOTE: COLOR FOR DK GREEN TO MATCH
PMS # 328

HIGH GLOSS DK GREEN MEDEX BACKGROUND
(WOOD PRODUCT WITH NO GRAIN).
EDGES AND BACK FINISHED
STAINLESS STEEL SCREWS
LETTERS ARE HIGH PERFORMANCE VINYL

POST:
PRESSURE TREATED PINE
SMOOTH PAINTED DK GREEN OR
IF CEDAR, MUST BE SANDED FOR
PAINTING

4' OUT OF
GROUND

FL 606976 B 2016 P 77
CO:WALTON ST:FL

VII. BUILDING GUIDELINES & ARCHITECTURAL STANDARDS

1. ACCESSORY STRUCTURES

Gazebos, cabanas and detached garages are permissible where lot sizes warrant. If built, the accessory structures must be located within the required setbacks and match the architectural details of the home to include wall and roof materials and color.

2. BUILDING/ACCESSORY STRUCTURES SETBACKS

The building setbacks and envelope illustrations that follow graphically represent the placement of buildings, garages, decks, patios, walls, fences and hedges, dependent on the lot's location. Where lots vary from the illustrations, due to special factors, the DRB will establish setbacks on these lots in consultation with the owners and/or their architect during the initial review stage.

3. BUILDING HEIGHTS

Maximum building height of residences shall be forty two feet (42') measured from the first floor elevation to the highest point of the roof excluding chimneys, weathervanes, etc. or forty six feet (46') above the average grade of the lot within the building envelope.

Where homes are elevated above existing grade due to topography sloping away from the street or are cut into the existing topography, the maximum height of the structure will be determined in consultation with the owner and/or their architect during the initial review.

Whenever possible, the third floor of any structure shall be tucked into or related to the roof structure with dormers, small roof trusses, etc to diminish the scale of the structure.

4. MAXIMUM BUILDING COVERAGE

A maximum of forty percent (40%) of the lot can be covered by the building. The building shall mean areas contained under the roof, including air-conditioned or non-air conditioned space.

5. SQUARE FOOTAGE & STORIES

All single family structures shall have minimum and maximum square footage as set forth below.

<u>LOT</u>	<u>SQ. FT. MIN</u>	<u>SQ. FT. MAX</u>	<u>GR. FL. OF 2 STORY</u>
Gulf Front			
Single Story	2000 SF	3000 SF	1200 SF
Other		7000 SF	
Lake Front			
Single Story	2000 SF	4000 SF	1200 SF
Other		7000 SF	
Interior			
Single Story	1800 SF	3000 SF	1200 SF
Other		6000 SF	
Conservation			
Single Story	1600 SF	2700 SF	1000 SF
Other		5000 SF	

6. FINISH FLOOR ELEVATIONS

The minimum finished floor (first floor) shall be eighteen inches (18") above the crown of the adjacent roadway or the adjacent natural elevation, whichever is greater. The maximum finished floor elevation of residences shall be forty-eight inches (48") above the crown of the road or the adjacent natural elevation, whichever is greater.

Lots where grade at the building setback is above or below the street elevation by more than twenty-four inches (24") will be reviewed individually based on the design of the residence and the proposed method for off-street parking.

7. SETBACK CRITERIA

General setback requirements shall be as follows:

Side yard setbacks:	10 feet
Front yard setbacks:	20 feet
Rear yard setbacks:	
Gulf front	Coastal Control Line
Lake front	100 feet from lake edge
Interior:	20 feet adjacent property
Conservation:	Building setback per plat

Specific setbacks include:

- Lot # 24 20 ft. on North property line adjacent to lot # 25
- Lot # 46 7.5 ft. on Northeast property line
10 ft. on West property line for garage, 20 ft for residence
- Lot # 57 7.5 ft. on East property line
- Lot # 90 7.5 ft. on West property line

Specific garage/drive entries:

From Bermuda Road:

- Lots # 58
- 65
- 66
- 71
- 72

From St. Lucia Road:

- Lots # 61
- 62
- 68
- 69
- 74

Where two lots are joined for a single home, the side setbacks shall be doubled with allowable area increased by 50%.

Corner lots shall be deemed to have front yard setbacks off one street frontage, as defined by the DRB in consultation with owner and/or designer.

Exception: Lots which have exceptional circumstances can apply for a hardship variance with the DRB. Each case will be considered on its individual merits and decisions will not set precedent for cases past, pending or future on other lots. Variances will be granted only if it is proven that the subject property cannot adequately conform to the current setbacks, or if conformance will cause substantial detriment to the community as a whole. Purchasers are cautioned to fully examine their proposed lot for ability to comply with the setback requirements as part of normal due diligence involved with the purchase of real property.

Lots # 6, 7, 19 and 20 will be allowed to attach directly to the dune walk areas with boardwalks provided that the connection is a minimum of eight feet (8'0") land ward of the shelters at the C.C.L., no greater than four feet (4'0") in width, and that the design is compatible with that of the existing crossovers.

8. **EXTERIOR APPEARANCE**

- A. **Walls and Siding:** The architectural design throughout The Retreat will utilize the Caribbean style that allows a combination of masonry (stucco finish) and wood siding. If wood is to be utilized as the major exterior finish, masonry shall be included to reflect the image with walls, fencing, chimneys, etc. Colors will be selected from a range of subtle earth tones with the more vibrant accents used sparingly.

Acceptable materials include stucco, vertical and horizontal wood siding or Hardi Plank or preferably a mix of both.

While stucco banding may be appropriate, the use of keystones and quoins is not permitted.

- B. **Windows:** Wood frame windows are strongly suggested, as is the use of French doors in combination with windows. They should be carefully proportioned to enhance the exterior appearance and interior light quality. While not preferred, vinyl or aluminum clad wood and aluminum windows will be permitted, subject to color approval.

Lightly tinted glass is acceptable, but foil or reflective material is not allowed. Drapery liners of a neutral color are required to provide a consistent exterior appearance. Roof overhangs, awnings and shutters are appropriate sun screening devices with approval of design, material and colors.

- C. **Roofs, Materials and Appurtenances:** The roofs of all residences within the community, while perhaps different in material and color, shall have a similarity of form to provide for a homogeneous character, with all gable and hip roofs having a minimum roof slope of 3/12 and maximum of 8/12.

Roofing less than 3/12 slope is acceptable only in minor areas (not to exceed 15% of roofing area) with primary acceptability in use as a connection to more dominant themes of the roofing mass. All connecting roofs, i.e., garage to main structure or freestanding garage, etc., shall have a roof with material compatible with the main structure.

Roof materials may be chosen from a selection of cedar shakes, cedar shingles, imitation cedar shingle, standing seam metal, corrugated or 5V crimp metal, slate or flat concrete shingles.

Roof overhangs form an integral part of the architectural character of the community and should be maximized wherever possible to provide shelter from both the subtropical sun and rain showers. In many cases, the roof overhangs may incorporate balconies, decks and screened porches.

Roof overhangs shall be a minimum of twenty-four inches (24").

Roof attachments, whether ornamental or functional such as ornamental ridge caps, weather vanes, oversized fireplace flues, etc., are not only permissible but encouraged to give an additional scale of detail to the dwellings.

All roof accessories, such as vent stacks and roof vents shall be either painted to match the roof color, or accentuated to form a statement. Wherever possible, vents shall be located away from the entry elevations. Flashing is recommended to be copper except in the case of metal roofs, where it shall be of the same material.

The use of solar energy producing devices (active and/or passive) and personal satellite dishes are entirely subject to the DRB approval, and in all cases must be completely hidden from view from the street and adjacent properties.

- D. **Chimneys:** Chimneys, along with other projections above roofing surfaces, play a dominant role in depicting the character desired. Chimney dimensions shall be compatible in scale to the structure; however, the minimum size shall be two feet six inches (2'6") by four feet six inches (4'6"). Prefab metal fireplaces, when used, must have coverings for all exposed flue pipes. No direct vent fireplaces will be permitted.
- E. **Doors:** Front doors should make a strong architectural statement. Wood or glass exterior doors are recommended to exceed a height of seven feet (7'). The use of double front entry doors, or doors enhanced by side and /or top window panels are encouraged. Sliding patio doors are not to be utilized where they are visible from the street or used as a front entrance. Garage doors should be solid and be compatible with the exterior wall design and color.
- F. **Shutters:** Louvered shutters are encouraged, but bevel board and panel shutters are acceptable. Louvered shutters can be allowed to tilt from the top or swing open. All shutters must be operable and sized to fit the window, and must be painted wood, or pre-approved authentic-looking materials. Anodized aluminum is acceptable for louvered shutters.

9. DRIVEWAYS

Driveway widths should be a maximum of twelve feet (12'), except in the vehicular parking area or as the drive enters the garage enclosure. Driveway entry from the street should generally be located at least three feet (3') from the side property lines and, where possible, should gracefully curve to the garage entrance.

The maximum driveway width at the intersection of the curb shall not exceed eighteen feet (18') and should have a curved or geometric pattern intersecting with the driveway. This cleared area shall be part of the submission for approval as part of the hardscape drawings on the landscape site plan.

Drive surfaces shall be concrete pavers with rigidly defined parameters. Each drive shall be noted on the site plan for hardscape and landscape design.

10. GARAGES

No garage may be built to contain more than two cars. Garages may be detached from the main residence, but must fall within the allowable building area as defined in the attached building setbacks. In detached garages, homeowners are encouraged to incorporate garage apartments or extra bedrooms into space above garages. Where possible, the volume should be included within the roof structure and enhanced with dormers, balconies, etc.

Carports or covered parking may be accomplished by the use of Pergolas or trellising to match similar elements of the house.

11. WALL/FENCES/HEDGES

Walls constructed between the front and rear building setback, but within the side building setback have a maximum height of six feet (6') above the finished first floor elevation of the house provided such floor elevation does not exceed twenty-four inches (24") above crown of roadway. Where elevations are adjusted above or below the twenty-four inches (24") due to topography within individual lots, wall heights shall be reviewed with the DRB for allowable heights. Pilasters may extend an additional twenty-four inches (24") above wall elevations.

Courtyard walls may extend into all setbacks with approval of the DRB. These walls will be reviewed by the DRB for consistency with individual home design, streetscape of existing residences and to preclude the blocking of views from adjacent properties. It is recommended that these

walls not exceed thirty-six inches (36") and that they be a combination of masonry/stucco with metal or picket infill.

Pool enclosures shall be built in such a way as to not obstruct the views of adjoining property using open aluminum or wrought iron not more than four feet (4'0") off grade.

Hedges are encouraged as alternatives to fencing and should be in a supporting role to the landscape. The height limit of walls would be consistent with hedges, and they should not be the dominant theme of any installation.

12. PORCHES, DECKS, VERANDAS AND BALCONIES

The creative use of wide verandas on the front, sides or rear of the residences is strongly encouraged.

Handrails and/or columns form an integral part of the veranda concept. The handrails and columns should either be stone, wood, painted aluminum or wrought iron (with proper rust prohibitor), and designed to be architecturally compatible with the residence. Columns and handrails must be relatively simple, properly proportioned to the scale and mass of the house and be understated rather than overly ornate and fussy.

Porch or deck enclosures may not be freestanding. If screening is desired, the enclosure must be designed as an integral part of the roof and walls, and not appear as an added appendage.

13. COLORS

Exterior Colors

The general color theme of the Retreat is to utilize the intense and lively colors of the Caribbean Island including the colors of nature (sky, flowers, trees, gulf, sand) and bleach them into fresh but more subtle or muted shades.

Stucco colors shall be warm in nature and lighter than surrounding siding materials with a mat finish. Accent colors may be more brilliant in nature subject to DRB approval. Walls and fences should match the body colors of the main structure.

A sample palette and recommended colors is available for individual review, these palettes will serve as a guide, although other colors and intensities may be appropriate which will be added in consultation with the DRB.

In reviewing exterior colors, the DRB will take into account the combination and intensity of colors selected, their appropriate use, and the palette of surrounding residences. For all color review, sample panels of at least four feet by four feet (4'x 4') of main body materials will be erected on the site.

14. EXTERIOR LIGHTING

Exterior lighting must be provided for safety and security. Recessed or down lighting, and vertical landscape lighting are recommended in lieu of flood lights which is prohibited.

No lighting should be located as to interfere with vehicular traffic or become a nuisance to neighbors by adversely affecting the night time environment of adjacent properties. The DRB will approve all post mounted and building mounted fixtures which are visible from other properties.

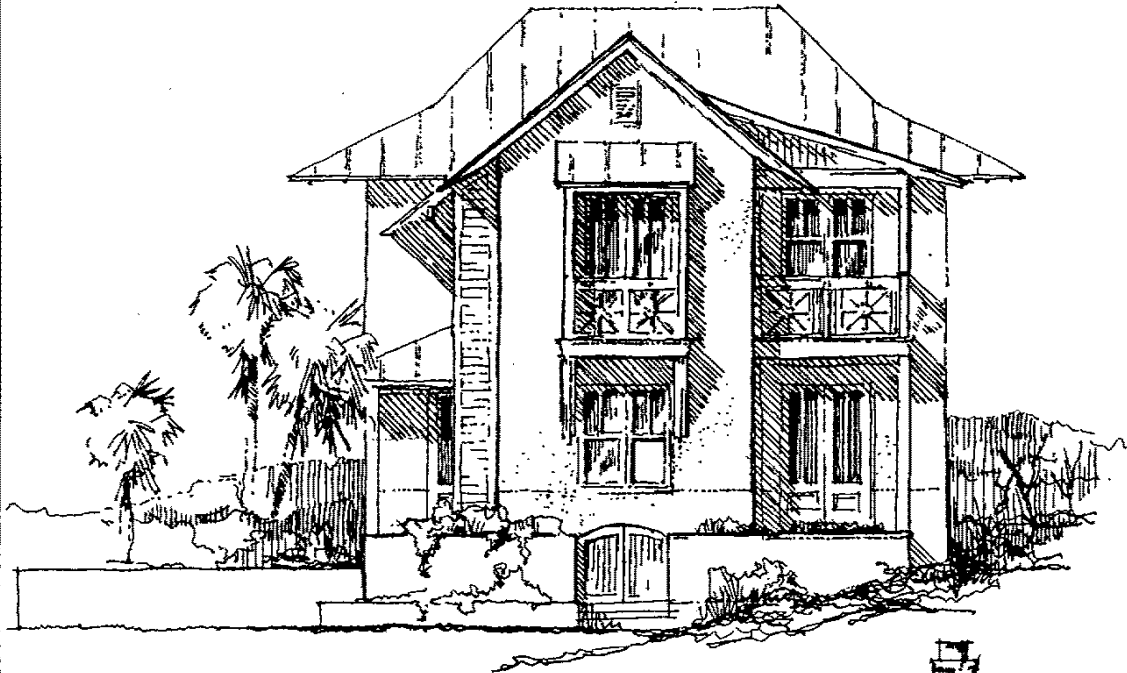
15. GARDENS/GREENHOUSES

Detached greenhouses will be reviewed on a case by case basis. Greenhouses must be designed by a licensed architect and must be located within the fence location area. The DRB will take into account the impact of the structure on neighboring residences and views.

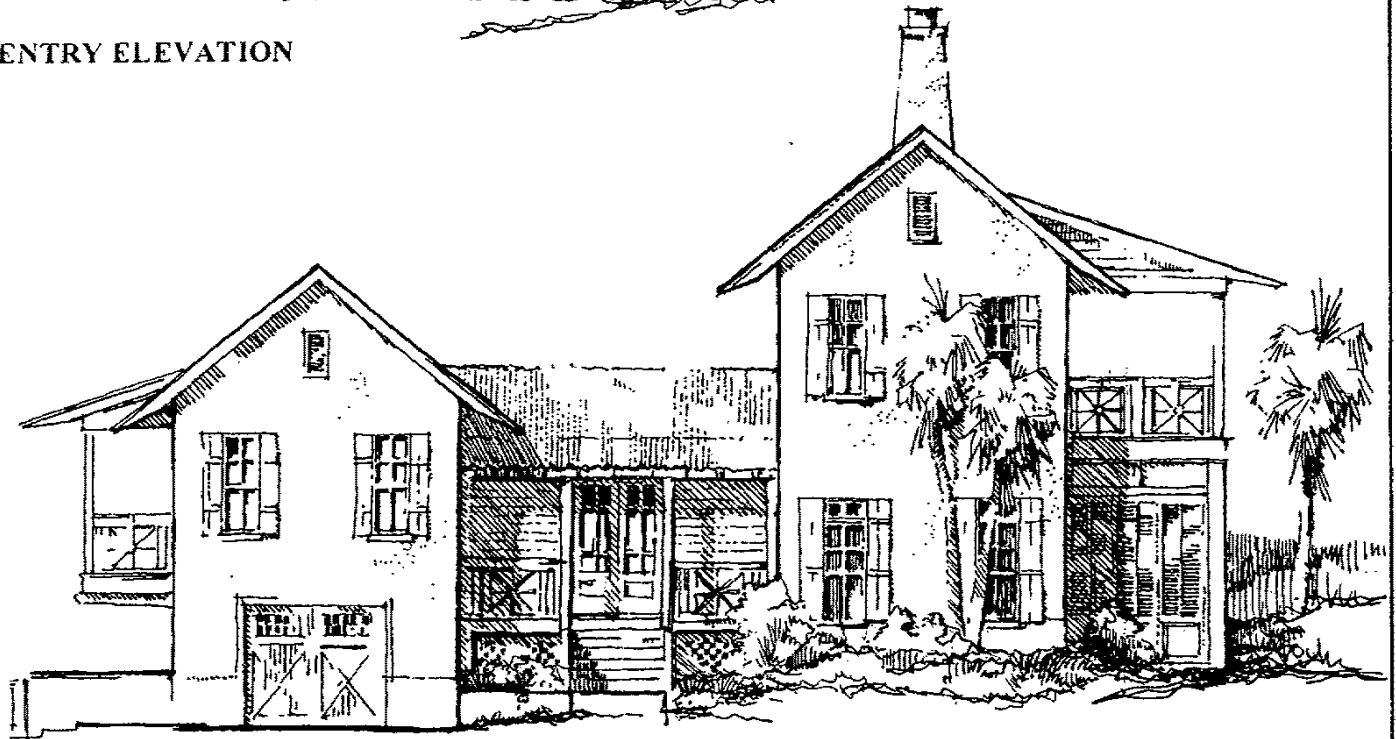
16. DOCKS

Docks are permitted on lots # 39 - # 46, subject to necessary state permitting and DRB approval. Docks shall extend no further than 20' into the water with a maximum width of 4'0". Bench seating on the dock is permissible.

ARCHITECTURAL STYLES & DETAILS



ENTRY ELEVATION



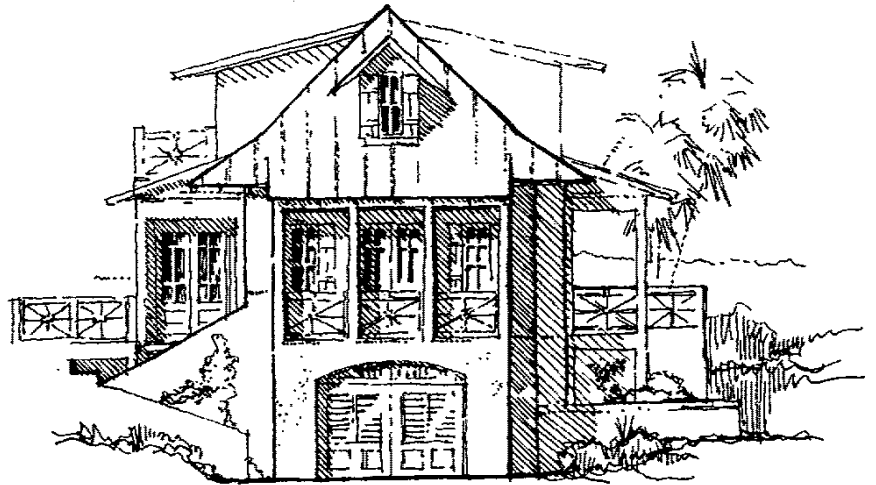
SIDE ELEVATION w/ GARAGE

The following residential designs were prepared for St. Joe/Arvida and The Retreat by:

Christ & Associates
Architects and Planners, P.A.

FL 606976 B 2016 P 86
CO:WALTON ST:FL

ARCHITECTURAL STYLES & DETAILS



GARAGE ELEVATION



SIDE ELEVATION

The following residential designs were prepared for St. Joe/Arvida and The Retreat by:

Christ & Associates
Architects and Planners, P.A.

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CO:WALTON ST:FL

EXHIBIT A

ARCHITECTURAL STYLES & DETAILS



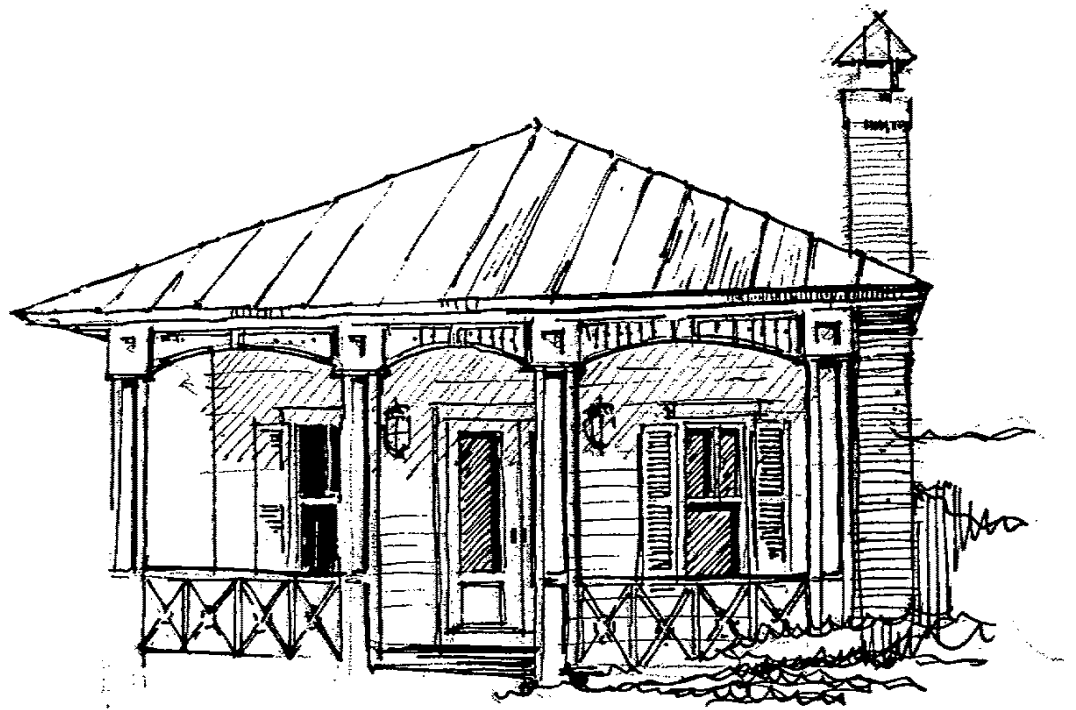
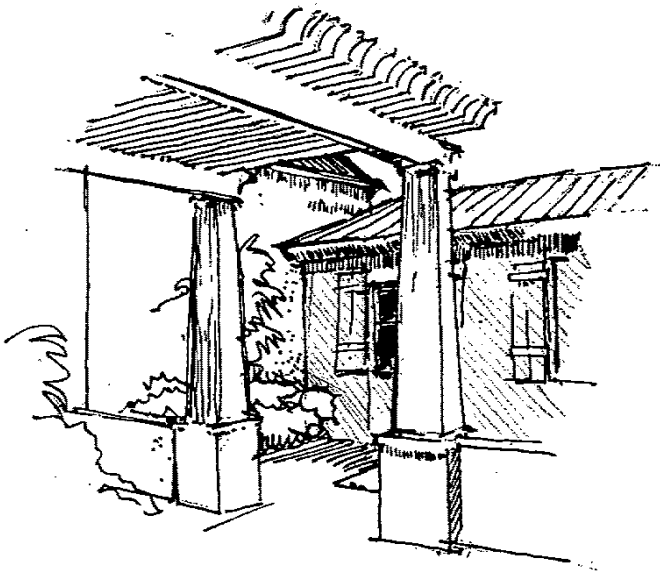
VIEW ELEVATION

The following residential designs were prepared for St. Joe/Arvida and The Retreat by:

Christ & Associates
Architects and Planners, P.A.

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CO:WALTON ST:FL

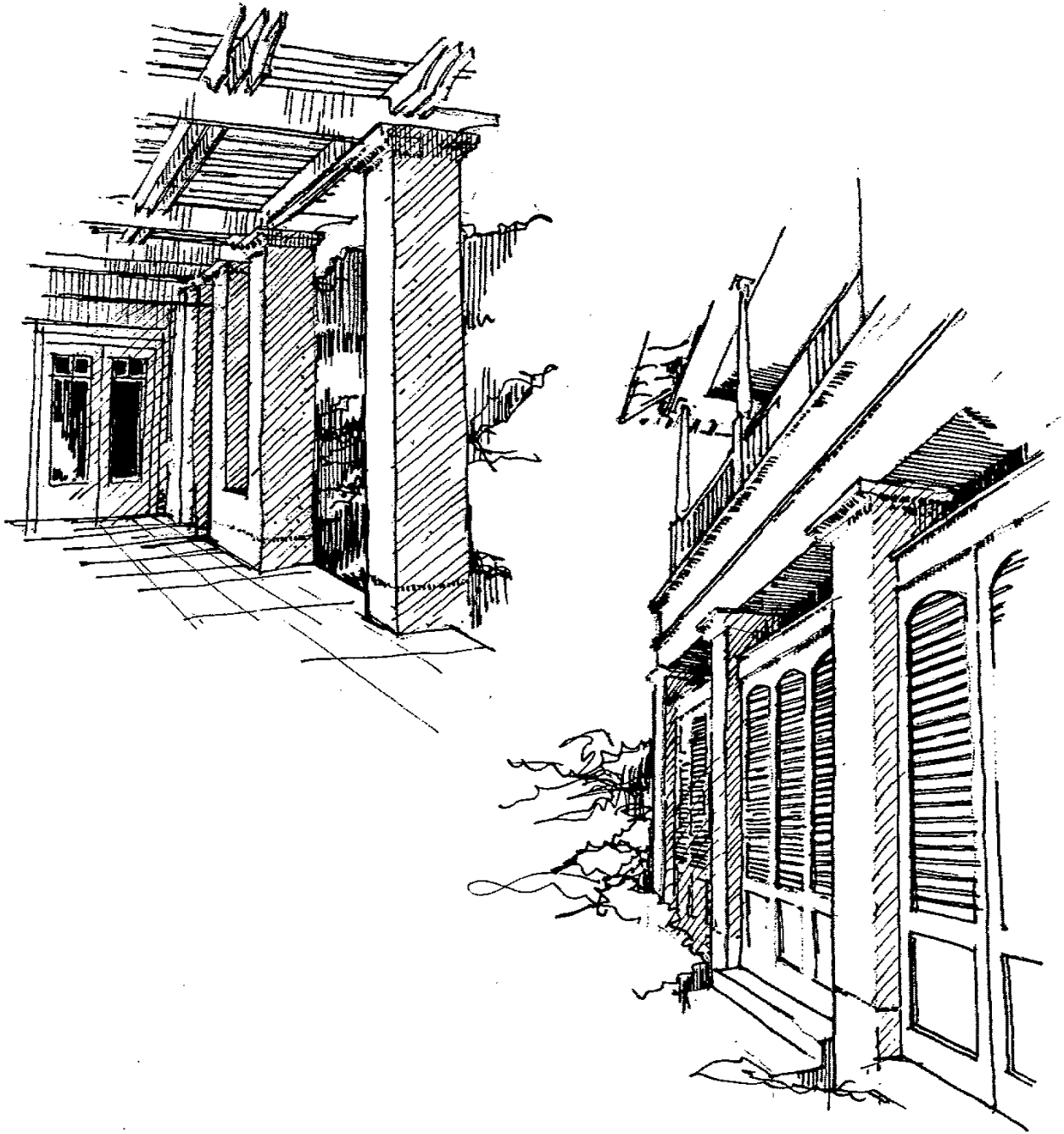
ARCHITECTURAL STYLES & DETAILS



FORMS, GARDENS & ARBORS

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CO:WALTON ST:FL

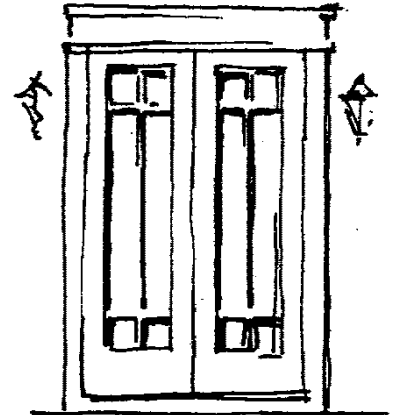
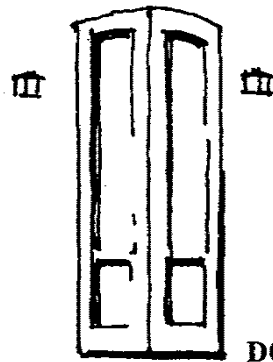
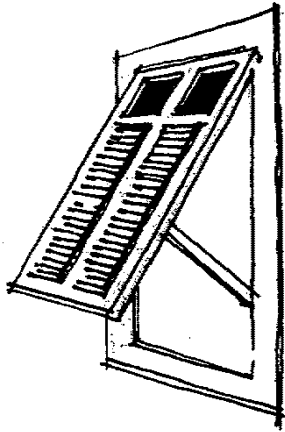
ARCHITECTURAL STYLES & DETAILS



**SIDE YARD GARDEN ENTRANCES
FRONT & SHUTTERED PORCHES**

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CO:WALTON ST:FL

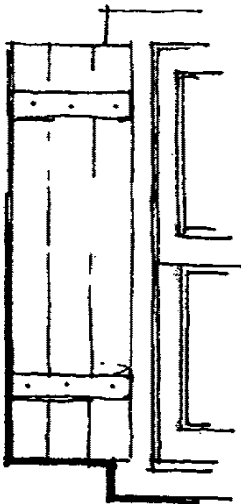
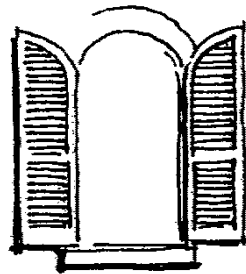
ARCHITECTURAL STYLES & DETAILS



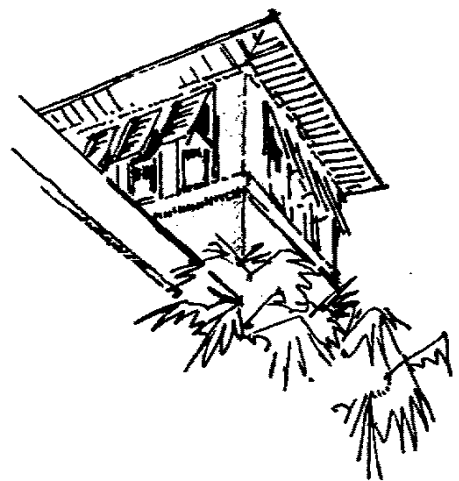
DOORS



SHUTTERS & WINDOWS



TOWERS



FL 606976 B 2016 P 91
CO:WALTON ST:FL

EXHIBIT "B"

**AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
THE RETREAT OF SOUTH WALTON COUNTY HOMEOWNER'S ASSOCIATION,
INC.**

Pursuant to Chapter 617, Florida Statutes, as amended, and the bylaws (the "Bylaws") of The Retreat of South Walton County Homeowner's Association, Inc. (the "Association"), and the requisite number of Member votes being obtained pursuant to the Bylaws, the Articles of Incorporation of the Association are amended and restated in their entirety as follows:

**ARTICLE I
NAME**

The name of the corporation shall be THE RETREAT OF SOUTH WALTON COUNTY HOMEOWNER'S ASSOCIATION, INC.

**ARTICLE II
PURPOSES AND POWERS**

The objects and purposes of the Association are those objects and purposes as are authorized by the Declaration of Covenants and Restrictions for The Retreat recorded (or to be recorded) in the Public Records of Walton County, Florida, as hereafter amended and/or supplemented from time to time (together, the "Covenants"). The further objects and purposes of the Association are to preserve the values and amenities in The Properties and the land subject to the first aforesaid Covenants.

The Association is not organized for profit and no part of the net earnings, if any, shall inure to the benefit of any Member or individual person, firm or corporation.

The Association shall have the power to contract for the management of the Association and to delegate to the party with whom such contract has been entered into (which may be an affiliate of the Developer) the powers and duties of the Association, except those which require specific approval of the Board of Directors or Members.

The Association shall have all of the common law and statutory powers of a corporation not for profit which are not in conflict with the terms of these Articles and the Covenants above identified. The Association shall also have all of the powers necessary to implement the purposes of the Association as set forth in the Covenants.

The definitions set forth in the Declaration of Covenants and Restrictions for The Retreat are incorporated herein by this reference.

**ARTICLE III
MEMBERS**

Section 1. Membership. Every person or entity who is a record owner of a fee or undivided fee interest in any Lot shall be a Member of the Association, provided that any such person or entity who holds such interest merely as security for the performance of an obligation shall not be a Member.

Section 2. Voting Rights. The Association shall have two (2) classes of voting membership:

Class A. Class A Members shall be all those Members of the Association as defined in Article III, Section 1 with the exception of the Developer (as long as the Class B Membership shall exist, and thereafter, the Developer shall be a Class A Member to the extent it would otherwise qualify). Except as provided below, Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interests required for membership by Section 1. When more than one person holds such interest or interests in any Lot, all such persons shall be Members, and the single vote for such Lot shall be exercised as they among themselves determine, but, subject only as provided in the following sentence, in no event shall more than one (1) vote be cast with respect to any such Lot.

Class B. The Class B Member shall be the Developer. The Class B Member shall be entitled to one (1) vote, plus two (2) votes for each vote entitled to be cast in the aggregate at any time and from time to time by the Class A Members. The Class B membership shall cease and terminate three (3) months after ninety percent (90%) of the Lots within The Properties has been sold and conveyed to Class A Members, or sooner at the election of the Developer. Whereupon the Class A Members shall be obligated to elect the Board and assume control of the Association.

Section 3. Meetings of Members. The By-Laws shall provide for an annual meeting of Members, and may make provisions for regular and special meetings of Members other than the annual meeting as well as the quorum requirements for meetings of members.

Section 4. General Matters. When reference is made herein, or in the Covenants, By-Laws, Rules and Regulations, management contracts or otherwise, to a majority or specific percentage of Members, such reference shall be deemed to be reference to a majority or specific percentage of the votes of Members and not of the Members themselves.

ARTICLE IV **CORPORATE EXISTENCE**

The Association shall have perpetual existence.

ARTICLE V **BOARD OF DIRECTORS**

Section 1. Management by Directors. The property, business and affairs of the Association shall be managed by a Board of Directors, which shall consist of not less than three (3) persons, but as many persons as the Board of Directors shall from time to time determine. A majority of the

directors in office shall constitute a quorum for the transaction of business. The By-Laws shall provide for meetings of directors, including an annual meeting.

Section 2. Board of Directors. The names and addresses of the Board of Directors of the Association, who shall hold office until the next annual meeting of Members and thereafter until qualified successors are duly elected and have taken office, shall be as follows:

<u>Name</u>	<u>Address</u>
James Rester	415 Beckrich Road, Suite 350 Panama City Beach, Florida 32407
Lewis Howell	415 Beckrich Road, Suite 350 Panama City Beach, Florida 32407
Wm. Britton Greene	415 Beckrich Road, Suite 350 Panama City Beach, Florida 32407

Section 3. Election of Members of Board of Directors. Except as otherwise provided herein and for the first Board of Directors and their Developer-appointed replacements, directors shall be elected by a plurality vote of the Members of the Association at the annual meeting of the membership as provided by the By-Laws of the Association, and the By-Laws may provide for the method of voting in the election and for removal from office of directors. All directors shall be Members of the Association or shall be authorized representatives, officers, or employees of corporate Members of the Association, or designees of the Developer. Notwithstanding the foregoing, until the time provided below, the Developer shall have the right to appoint the Directors of the Association by written notice to such effect or by an announcement reflected in the minutes of the annual meeting of the Association. Failure to achieve a quorum at the annual meeting shall not effect the validity of an election of directors.

The Class A Members shall have the right to elect a majority of the Board of Directors three (3) months after ninety percent (90%) of the Lots have been sold by the Developer.

Section 4. Duration of Office. Members elected to the Board of Directors shall hold office until the next succeeding annual meeting of Members, and thereafter until qualified successors are duly elected and have taken office.

Section 5. Vacancies. If a director elected by the general membership shall for any reason cease to be a director, the remaining directors so elected may elect a successor to fill the vacancy for the balance of the term.

ARTICLE VI
OFFICERS

Section 1. Officers Provided For. The Association shall have a President, a Vice President, a Secretary and a Treasurer, and such other officers as the Board of Directors may from time to time elect.

Section 2. Election and Appointment of Officers. The officers of the Association, in accordance with any applicable provision of the By-Laws, shall be elected by the Board of Directors for terms of one (1) year and thereafter until qualified successors are duly elected and have taken office. The By-Laws may provide for the method of voting in the election, for the removal from office of officers, for filling vacancies and for the duties of the officers. The President shall be a director; other officers may or may not be directors of the Association. If the office of President shall become vacant for any reason, or if the President shall be unable or unavailable to act, the Vice President shall automatically succeed to the office or perform its duties and exercise its powers. If any office shall become vacant for any reason, the Board of Directors may elect or appoint an individual to fill such vacancy.

ARTICLE VII BY-LAWS

The Board of Directors shall adopt By-Laws consistent with these Articles of Incorporation. Such By-Laws may be altered, amended or repealed in the manner set forth in the By-Laws.

ARTICLE VIII AMENDMENTS AND PRIORITIES

Section 1. Amendments to these Articles of Incorporation shall be proposed and approved by the Board of Directors and thereafter submitted to a meeting of the membership of the Association for adoption or rejection (by affirmative vote of 66 2/3% of the Members), all in the manner provided in, and in accordance with the notice provisions of, Fla. Stat. 617.017.

Section 2. In case of any conflict between these Articles of Incorporation and the By-Laws, these Articles shall control; and in case of any conflict between these Articles of Incorporation and the Covenants, the Covenants shall control.

ARTICLE IX INDEMNIFICATION

Section 1. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a director, employee, officer or agent of the Association, against all expenses (including attorneys' fees and appellate attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding, unless (a) it is determined by a court of competent jurisdiction, after all available appeals have been exhausted or not pursued by the proposed indemnity, that he did not act in good faith or that he acted in a manner he believed to be not in or opposed to the best interest of the Association, and, with respect to any criminal action or proceeding, that he had reasonable cause to believe his conduct was unlawful, and (b) such court

further determines specifically that indemnification should be denied. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith or did act in a manner which he believed to be not in or opposed to the best interest of the Association, and with respect to any criminal action or proceeding, that he had reasonable cause to believe that his conduct was unlawful.

Section 2. To the extent that a director, officer, employee or agent of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 1 above or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees and appellate attorneys' fees) actually incurred by him in connection therewith.

Section 3. The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any by-law, agreement, vote of Members or otherwise, both as to action in his official capacity while holding such office or otherwise, and shall continue as to a person who has ceased to be director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such person.

Section 4. The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the provisions of this Article.


Section 5. The provisions of this Article IX shall not be amended.

ARTICLE X
REGISTERED AGENT; PRINCIPAL OFFICE

Until changed, Jim Godey shall be the registered agent of the Association and the registered office shall be at 415 Beckrich Road, Suite 350, Panama City Beach, Florida 32407.

Until changed, the principal office of the Association shall be 415 Beckrich Road, Suite 350, Panama City Beach, Florida 32407.

IN WITNESS WHEREOF, the foregoing Amended and Restated Articles of Incorporation have been approved this 20th day of May, 1999, by the Board of Directors and by a vote of at least 66 and 2/3% of the Members.



James Rester, President

STATE OF FLORIDA)

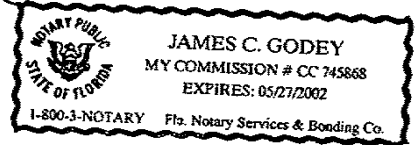
COUNTY OF WALTON) SS:
)

The foregoing instrument was acknowledged before me this 20th day of May, 1999,
by James M. Rubin who is personally known to me or has produced
_____ as identification and who did not take an oath.

[NOTARY SEAL]



NOTARY PUBLIC, STATE OF FLORIDA

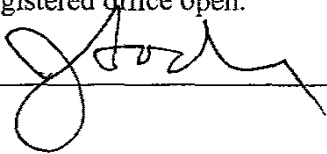


CERTIFICATE DESIGNATING PLACE OF BUSINESS OR DOMICILE FOR THE SERVICE OF PROCESS WITHIN THIS STATE, NAMING AGENT UPON WHOM PROCESS MAY BE SERVED.

In compliance with the laws of Florida, the following is submitted:

That desiring to organize under the laws of the State of Florida with its principal office, as indicated in the foregoing Articles of Incorporation, in the County of Bay, State of Florida, the corporation named in said articles has named Jim Godey located at 415 Beckrich Road, Suite 350, Panama City Beach, Florida 32407 as its statutory registered agent.

Having been named the statutory agent of the above corporation at the place designated in this certificate, I hereby accept the same and agree to act in this capacity, and agree to comply with the provisions of Florida law relative to keeping the registered office open.



Dated this 14 day of May,
1999.

EXHIBIT "C"

AMENDED RESTATED BY-LAWS OF

**THE RETREAT OF SOUTH WALTON COUNTY HOMEOWNER'S ASSOCIATION,
INC.**

*A corporation not for profit organized
under the laws of the State of Florida*

1. **Identity.** These are the Amended and Restated By-Laws of THE RETREAT OF SOUTH WALTON COUNTY HOMEOWNER'S ASSOCIATION, INC. (the "Association"), a corporation not for profit incorporated under the laws of the State of Florida, and organized for the purpose of administering that certain DECLARATION OF COVENANTS AND RESTRICTIONS FOR THE RETREAT (the "Declaration") as well as the properties made subject thereto ("The Properties").
 - 1.1 **Principal Office.** The principal office of the Association shall be as provided in its Articles of Incorporation, or at such other place as may be subsequently designated by the Board of Directors. All books and records of the Association shall be kept at its principal office or in the office of any manager engaged by the Association.
 - 1.2 **Fiscal Year.** The fiscal year of the Association shall be the calendar year.
 - 1.3 **Seal.** The seal of the Association shall bear the name of the corporation, the word "Florida", the words "Corporation Not for Profit", and the year of incorporation.
2. **Definitions.** For convenience, these By-Laws shall be referred to as the "By-Laws" and the Articles of Incorporation of the Association as the "Articles". The other terms used in these By-Laws shall have the same definitions and meanings as those set forth in the Declaration, unless herein provided to the contrary or unless the context otherwise requires.
3. **Members.**
 - 3.1 **Annual Meeting.** The annual Members' meeting shall be held on the date, at the place and at the time determined by the Board of Directors from time to time, provided that there shall be an annual meeting every calendar year and, to the extent possible, no later than twelve (12) months after the last preceding annual meeting. The purpose of the meeting shall be, except as provided herein to the contrary, to elect Directors and to transact any other business authorized to be transacted by the Members, or as stated in the notice of the meeting sent to Members in advance thereof. Unless changed by the Board of Directors, the first annual meeting shall be held in the month of November following the year in which the Declaration is recorded.

- 3.2 Special Meetings. Special Members' meetings shall be held at such places as provided herein for annual meetings, and may be called by the President or by a majority of the Board of Directors of the Association, and must be called by the President or Secretary upon receipt of a written request from a majority of the Members of the Association. The business conducted at a special meeting shall be limited to that stated in the notice of the meeting.
- 3.3 Notice of Meeting; Waiver of Notice. Notice of a meeting of Members, stating the time and place and the purpose(s) for which the meeting is called, shall be given by the President or Secretary. The notice of the annual meeting shall be sent by mail or hand delivery to each Member, unless the Member waives in writing the right to receive notice of the annual meeting by mail. The delivery or mailing shall be to the address of the Member as it appears on the roster of Members. The posting and mailing of the notice shall be effected not less than fourteen (14) days, nor more than sixty (60) days, prior to the date of the meeting.

Notice of specific meetings may be waived before or after the meeting and the attendance of any Member (or person authorized to vote for such Member) shall constitute such Member's waiver of notice of such meeting, except when his (or his authorized representative's) attendance is for the express purpose of objecting, at the beginning of the meeting, to the transaction of business because the meeting is not lawfully called.

An officer of the Association shall provide an affidavit, to be included in the official records of the Association, affirming that notices of the Association meeting were mailed or hand delivered in accordance with this Section. No other proof of notice of a meeting shall be required.

- 3.4 Quorum. A quorum at Members' meetings shall be attained by the presence, either in person or by proxy, of persons entitled to cast in excess of 33 1/3% of the votes of Members in the Association.

3.5 Voting.

- (a) Number of Votes. In any meeting of Members, the Members shall be entitled to cast one vote for each Lot owned, except as provided in the Declaration and/or Articles with respects to the Class B Member. The vote of a Lot shall not be divisible.
- (b) Majority Vote. The acts approved by a majority of the votes, except in the case of the election of directors which shall be by plurality vote, present in person or by proxy at a meeting at which a quorum shall have been attained shall be binding upon all Members for all purposes, except where otherwise provided by law, the Declaration, the Articles or these By-Laws. As used in these By-Laws, the Articles or the Declaration, the term "majority of the

Members" shall mean a majority of the votes of Members and not a majority of the Members themselves and shall further mean more than 50% of the then total authorized votes present in person or by proxy and voting at any meeting of the Members at which a quorum shall have been attained. Similarly, if some greater percentage of Members is required herein or in the Declaration or Articles, it shall mean such greater percentage of the votes of Members and not of the Members themselves.

- (c) Voting Member. If a Lot is owned by one person, his right to vote shall be established by the roster of Members. If a Lot is owned by more than one person, those persons (including husbands and wives) shall decide among themselves as to who shall cast the vote of the Lot. In the event that those persons cannot so decide, no vote shall be cast. A person casting a vote for a Lot shall be presumed to have the authority to do so unless the President or the Board of Directors is otherwise notified. If a Lot is owned by a corporation, partnership, trust or other entity, the person entitled to cast the vote for the Lot shall be designated by a certificate signed by a person entitled to execute a conveyance of the entity's property and filed with the Secretary of the Association. Such person need not be a Member. Such certificates shall be valid until revoked or until superseded by a subsequent certificate or until a change in the ownership of the Lot concerned. A certificate designating the person entitled to cast the vote for a Lot may be revoked by any record Member of an undivided interest in the Lot. If a certificate designating the person entitled to cast the vote for a Lot for which such certificate is required is not on file or has been revoked, the vote attributable to such Lot shall not be considered in determining whether a quorum is present, nor for any other purpose, and the total number of authorized votes in the Association shall be reduced accordingly until such certificate is filed.

- 3.6 Proxies. Votes may be cast in person or by proxy. A proxy may be made by any person entitled to vote, but shall only be valid for the specific meeting for which originally given and any lawful adjourned meetings thereof. Every proxy shall be revocable at any time at the pleasure of the person executing it. A proxy must be in writing, signed by the person authorized to cast the vote for the Lot (as above described), name the person(s) voting by proxy and the person authorized to vote for such person(s), state the date, time and place of the meeting for which it is given and filed with the Secretary before the appointed time of the meeting, or before the time to which the meeting is adjourned. Any limited proxy shall set forth the matters on which the proxy holder may vote and the manner in which the vote is to be cast.

- 3.7 Adjourned Meetings. If any proposed meeting cannot be organized because a quorum has not been attained, the Members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present, provided notice of the newly scheduled meeting is given in the manner required for the giving of notice of a meeting. Except as required above, proxies given for the

adjourned meeting shall be valid for the newly scheduled meeting unless revoked for reasons other than the new date of the meeting.

3.8 Order of Business. If a quorum has been attained, the order of business at annual Members' meetings, and, if applicable, at other Members' meetings, shall be:

- (a) Call to order by President;
- (b) Appointment by the President of a chairman of the meeting (who need not be a Member or a director);
- (c) Proof of notice of the meeting or waiver of notice;
- (d) Reading of minutes;
- (e) Reports of officers;
- (f) Reports of committees;
- (g) Appointment of inspectors of election;
- (h) Election of Directors;
- (i) Unfinished business;
- (j) New business;
- (k) Adjournment.

Such order may be waived in whole or in part by direction of the chairman.

3.9 Minutes of Meeting. The minutes of all meetings of Members shall be kept in a book available for inspection by Members or their authorized representatives and Board Members at any reasonable time.

3.10 Action Without A Meeting. Anything to the contrary herein notwithstanding, to the extent lawful, any action required to be taken at any annual or special meeting of Members, or any action which may be taken at any annual or special meeting of such Members, may be taken without a meeting, without prior notice and without a vote if a consent in writing, setting forth the action so taken, shall be signed by the Members (or persons authorized to cast the vote of any such Members as elsewhere herein set forth) having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting of Members at which a quorum of Members (or authorized persons) entitled to vote thereon were present and voted. Within ten (10) days after obtaining such authorization by written consent,

notice must be given to Members who have not consented in writing. The notice shall fairly summarize the material features of the authorized action.

4. Directors.

4.1 Membership. The affairs of the Association shall be governed by a Board of not less than three (3) but no more than seven (7) Directors, the exact number to be determined in the first instance in the Articles, and, thereafter, by the Board of Directors.

4.2 Vacancies and Removal.

- (a) Except as to vacancies resulting from removal of Directors by Members, vacancies in the Board of Directors occurring between annual meetings of Members shall be filled by the remaining Directors, provided that all vacancies in directorships to which Directors were appointed by the Developer shall be filled by the Developer without the necessity of any meeting.
- (b) Any Director elected by the Members other than the Developer may be removed by concurrence of a majority of the votes of the Members at a special meeting of Members called for that purpose or by written agreement signed by a majority of the Owners of all Lots. The vacancy in the Board of Directors so created shall be filled by the Members at the same meeting, or by the Board of Directors, in the case of removal by a written agreement unless said agreement also designates a new Director to take the place of the one removed.
- (c) Anything to the contrary herein notwithstanding, until a majority of the Directors are elected by the Members other than the Developer, neither the first Directors of the Association, nor any Directors replacing them, nor any Directors named by the Developer, shall be subject to removal by Members other than the Developer. The first Directors and Developer-appointed Directors replacing them may be removed and replaced by the Developer without the necessity of any meeting.
- (d) If a vacancy on the Board of Directors results in the inability to obtain a quorum of Directors in accordance with these By-Laws, any Member may apply to the Circuit Court for the jurisdiction in which The Properties exist for the appointment of a receiver to manage the affairs of the Association. At least thirty (30) days prior to applying to the Circuit Court, the applying Member shall mail to the Association a notice describing the intended action and giving the Association an opportunity to fill the vacancy(ies) in accordance with these By-Laws. If, during such time, the Association fails to fill the vacancy(ies), the Member may proceed with the petition. If a

receiver is appointed, the Association shall be responsible for the salary of the receiver, court costs and attorneys' fees. The receiver shall have all powers and duties of a duly constituted Board of Directors, and shall serve until the Association fills the vacancy(ies) on the Board sufficient to constitute a quorum in accordance with these By-Laws.

- 4.3 Term. Except as provided herein or in the Articles to the contrary, the term of each Director's service shall extend until the next annual meeting of the Members and subsequently until his successor is duly elected and has taken office, or until he resigns or is removed in the manner elsewhere provided.
- 4.4 Organizational Meeting. The organizational meeting of newly-elected or appointed Directors shall be held within ten (10) days of their election or appointment at such place and time as shall be fixed by the Directors at the meeting at which they were elected or appointed, and no further notice to the Board of the organizational meeting shall be necessary.
- 4.5 Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the Directors. Notice of regular meetings shall be given to each Director, personally or by mail, telephone or telegraph, and shall be transmitted at least two (2) days prior to the meeting.
- 4.6 Special Meetings. Special meetings of the Directors may be called by the President, and must be called by the President or Secretary at the written request of at least two (2) of the Directors. Notice of the meeting shall be given personally or by mail, telephone or telegraph, which notice shall state the time, place and purpose of the meeting, and shall be transmitted not less than two (2) days prior to the meeting.
- 4.7 Waiver of Notice. Any Director may waive notice of a meeting before or after the meeting and that waiver shall be deemed equivalent to the due receipt by said Director of notice. Attendance by any Director at a meeting shall constitute a waiver of notice of such meeting, except when his attendance is for the express purpose of objecting, at the beginning of the meeting, to the transaction of business because the meeting is not lawfully called.
- 4.8 Quorum. A quorum at Directors' meetings shall consist of a majority of the entire Board of Directors. The acts approved by a majority of those present at a meeting at which a quorum is present shall constitute the acts of the Board of Directors, except when approval by a greater number of Directors is specifically required by the Declaration, the Articles or these By-Laws.
- 4.9 Adjourned Meetings. If, at any proposed meeting of the Board of Directors, there is less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present, provided notice of such newly scheduled

meeting is given as required hereunder. At any newly scheduled meeting, any business that might have been transacted at the meeting as originally called may be transacted without further notice.

- 4.10 Joinder in Meeting by Approval of Minutes. The joinder of a Director in the action of a meeting by signing and concurring in the minutes of that meeting shall constitute the approval of that Director of the business conducted at the meeting, but such joinder shall not allow the applicable Director to be counted as being present for purposes of quorum.
- 4.11 Presiding Officer. The presiding officer at the Directors' meetings shall be the President (who may, however, designate any other person to preside).
- 4.12 Order of Business. If a quorum has been attained, the order of business at Directors' meetings shall be:
- (a) Proof of due notice of meeting;
 - (b) Reading and disposal of any unapproved minutes;
 - (c) Reports of officers and committees;
 - (d) Election of officers;
 - (e) Unfinished business;
 - (f) New business;
 - (g) Adjournment.

Such order may be waived in whole or in part by direction of the presiding officer.

- 4.13 Minutes of Meetings. The minutes of all meetings of the Board of Directors shall be kept in a book available for inspection by Members, or their authorized representatives, and Board Members at any reasonable time.
- 4.14 Executive Committee; Other Committees. The Board of Directors may, by resolution duly adopted, appoint an Executive Committee to consist of three (3) or more Members of the Board of Directors. Such Executive Committee shall have and may exercise all of the powers of the Board of Directors in management of the business and affairs of the Association during the period between the meetings of the Board of Directors insofar as may be permitted by law, except that the Executive Committee shall not have the power (a) to determine the level of assessments required for the affairs of the Association, (b) to adopt or amend any Rules and

Regulations covering the details of the operation and use of The Properties, or (c) to exercise any of the powers set forth in paragraphs (f) and (o) of Section 5 below. The Board may by resolution also create other committees and appoint persons to such committees and invest in such committees such powers and responsibilities as the Board shall deem advisable. In the event the Board does not appoint a Design Review Board as provided in the Declaration, then the Board itself shall perform such functions.

5. Powers and Duties. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association and may take all acts, through the proper officers of the Association, in executing such powers, except such acts which by law, the Declaration, the Articles or these By-Laws may not be delegated to the Board of Directors by the Members. Such powers and duties of the Board of Directors shall include, without limitation (except as limited elsewhere herein), the following:
- (a) Operating and maintaining the Common Easements.
 - (b) Determining the expenses required for the operation of the Common Easements and the Association.
 - (c) Employing and dismissing the personnel necessary for the maintenance and operation of the Common Easements and the Association.
 - (d) Adopting and amending Rules and Regulations concerning the details of the operation and use of The Properties.
 - (e) Maintaining bank accounts on behalf of the Association and designating the signatories required therefor.
 - (f) Purchasing, leasing or otherwise acquiring Lots or other property in the name of the Association, or its designee.
 - (g) Purchasing Lots at foreclosure or other judicial sales, in the name of the Association or its designee.
 - (h) Selling, leasing, mortgaging or otherwise dealing with Lots acquired, and subleasing Lots leased, by the Association, or its designee.
 - (i) Organizing corporations and appointing persons to act as designees of the Association in acquiring title to or leasing Lots or other property.
 - (j) Obtaining and reviewing insurance for The Properties and the Association.

- (k) Making repairs, additions and improvements to, or alterations of, The Properties, and repairs to and restoration of The Properties in accordance with the provisions of the Declaration after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings or otherwise.
- (l) Enforcing obligations of the Members, allocating profits and expenses and taking such other actions as shall be deemed necessary and proper for the sound management of The Properties and the Association.
- (m) Levying fines against appropriate Owners for violations of the Declaration or of the Rules and Regulations established by the Association to govern the conduct of such Owners and others.
- (n) Purchasing or leasing Lots for use by resident superintendents and other similar persons.
- (o) Borrowing money when required in connection with the operation, care, upkeep and maintenance of the Common Easements or the acquisition of property, and granting mortgages on and/or security interests in Association owned property; provided, however, that the consent of the Owners of at least two-thirds (2/3rds) of the Lots represented at a meeting at which a quorum has been attained in accordance with the provisions of these By-Laws shall be required for the borrowing of any sum which would cause the total outstanding indebtedness of the Association to exceed \$10,000.00. If any sum borrowed pursuant to the authority contained in this subparagraph (o) is not repaid by the Association, an Owner who pays to the creditor such portion thereof as his interest in his Common Easements bears to the interest of all the Unit Members in the Common Easements shall be entitled to obtain from the creditor a release of any judgment or other lien which said creditor shall have filed or shall have the right to file against, or which will affect, such Member's Lot; provided always, however, the Association shall take no action authorized in this paragraph without the prior written consent of the Developer as long as the Developer owns any Lot.
- (p) Contracting with a manager for the management and maintenance of The Properties and the Association and/or authorizing a management agent (who may be an affiliate of the Developer) to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of assessments, preparation of records, enforcement of rules and maintenance, repair, and replacement of the Common Easements, Lots and Units with such funds as shall be made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties granted by the Declaration, the Articles and

these By-Laws including, but not limited to, the making of assessments, promulgation of rules and execution of contracts on behalf of the Association.

- (q) At its discretion, authorizing Owners or other persons to use portions of the Common Easements for private parties and gatherings and imposing reasonable charges for such private use.
- (r) Exercising (i) all powers specifically set forth in the Declaration, the Articles and these By-Laws (ii) all powers incidental thereto, and (iii) all other powers of a Florida corporation not for profit.
- (s) Contracting with and creating or joining in the creation of special taxing districts, joint councils and the like.

6. Officers.

- 6.1 Executive Officers. The executive officers of the Association shall be a President, a Vice-President, a Treasurer and a Secretary (none of whom other than the President need be Directors), all of whom shall be elected by the Board of Directors and who may be peremptorily removed at any meeting by concurrence of a majority of all of the Directors. A person may hold more than one office, except that the President may not also be the Secretary. No person shall sign an instrument or perform an act in the capacity of more than one office. The Board of Directors from time to time shall elect such other officers and designate their powers and duties as the Board shall deem necessary or appropriate to manage the affairs of the Association.
- 6.2 President. The President shall be the chief executive officer of the Association. He shall have all of the powers and duties that are usually vested in the office of president of an association.
- 6.3 Vice-President. The Vice-President shall exercise the powers and perform the duties of the President in the absence or disability of the President. He also shall assist the President and exercise such other powers and perform such other duties as are incident to the office of the vice president of an association and as may be required by the Directors or the President.
- 6.4 Secretary. The Secretary shall keep the minutes of all proceedings of the Directors and the Members. He shall attend to the giving of all notices to the Members and Directors and other notices required by law. He shall have custody of the seal of the Association and shall affix it to instruments requiring the seal when duly signed. He shall keep the records of the Association, except those of the Treasurer, and shall perform all other duties incident to the office of the secretary of an association and as may be required by the Directors or the President.

- 6.5 Treasurer. The Treasurer shall have custody of all property of the Association, including funds, securities and evidences of indebtedness. He shall keep books of account for the Association in accordance with good accounting practices, which, together with substantiating papers, shall be made available to the Board of Directors for examination at reasonable times. He shall submit a treasurer's report to the Board of Directors at reasonable intervals and shall perform all other duties incident to the office of treasurer and as may be required by the Directors or the President. All monies and other valuable effects shall be kept for the benefit of the Association in such depositories as may be designated by a majority of the Board of Directors.
- 6.6 Manager. Any of the foregoing functions of the Secretary or Treasurer may also be performed by a manager engaged by the Association (which may be an affiliate of the Developer), provided that (i) the Secretary or Treasurer, as appropriate, shall oversee the performance of such functions and (ii) no manager may execute any documents as, or in the name of, the Secretary or Treasurer.
7. Compensation. Neither Directors nor officers shall receive compensation for their services as such, but this provision shall not preclude the Board of Directors from employing a Director or officer as an employee of the Association, nor preclude contracting with a Director or officer for the management of The Properties or for any other service to be supplied by such Director or officer. Directors and officers shall be compensated for all actual and proper out of pocket expenses relating to the proper discharge of their respective duties.
8. Resignations. Any Director or officer may resign his post at any time by written resignation, delivered to the President or Secretary, which shall take effect upon its receipt unless a later date is specified in the resignation, in which event the resignation shall be effective from such date unless withdrawn. The acceptance of a resignation shall not be required to make it effective. The conveyance of all Lots owned by any Director or officer (other than appointees of the Developer or officers or directors who were not Owners) shall constitute a written resignation of such person.
9. Fiscal Management. The provisions for fiscal management of the Association set forth in the Declaration and Articles shall be supplemented by the following provisions:
- 9.1 Budget. The Board of Directors shall from time to time, and at least annually, prepare a budget for the Association (which shall detail all accounts and items of expense the Board finds to be appropriate), determine the amount of assessments payable by the Owners to meet the expenses of the Association and allocate and assess such expenses among the Owners in accordance with the provisions of the Declaration. In addition to annual operating expenses, the budget may include reserve accounts for capital expenditures and deferred maintenance.

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- 9.2 Assessments. Assessments against Lots for their share of the items of the budget shall be made for the applicable fiscal year annually at least twenty (20) days preceding the year for which the assessments are made. Such assessments shall be due in January (or each quarter at the election of the Board) of the year for which the assessments are made. If annual assessments are not made as required, assessments shall be presumed to have been made in the amount of the last prior assessments, and monthly (or quarterly) installments on such assessments shall be due upon each installment payment date until changed by amended assessments. In the event the annual assessments prove to be insufficient, the budget and assessments may be amended at any time by the Board of Directors. Unpaid assessments for the remaining portion of the fiscal year for which amended assessments are made shall be payable in as many equal installments as there are full months (or quarters) of the fiscal year left as of the date of such amended assessments, each such monthly (or quarterly) installment to be paid on the first day of the month (or quarter), commencing the first day of the next ensuing month (or quarter). If only a partial month (or quarter) remains, the amended assessments shall be paid with the next regular installment in the following year, unless otherwise directed by the Board in its resolution.
- 9.3 Assessments for Emergencies. Assessments for expenses for emergencies that cannot be paid from the annual assessments shall be levied in accordance with the Declaration and shall be due only after ten (10) days' notice is given to the Members concerned, and shall be paid in such manner as the Board of Directors of the Association may require in the notice of such Assessments.
- 9.4 Depository. The depository of the Association shall be such bank or banks in the State of Florida as shall be designated from time to time by the Directors and in which the monies of the Association shall be deposited. Withdrawal of monies from those accounts shall be made only by checks signed by such person or persons as are authorized by the Directors. All sums collected by the Association from assessments or otherwise may be commingled in a single fund or divided into more than one fund, as determined by a majority of the Board of Directors. In addition, a separate reserve account may be established for the Association in such a depository for monies specifically designated as reserves for capital expenditures and/or deferred maintenance.
- 9.5 Acceleration of Installments Upon Default. If a Member shall be in default in the payment of an installment of his assessments, the Board of Directors may accelerate the next twelve (12) months' of the assessments as provided in the Declaration.
- 9.6 Fidelity Bonds. Fidelity bonds may be obtained by the Association for all persons handling or responsible for Association funds in such amounts as shall be determined by a majority of the Board. The premiums on such bonds shall be paid by the Association as a common expense.

- 9.7 Accounting Records and Reports. The Association shall maintain accounting records in the State according to accounting practices normally used by similar associations. The records shall be open to inspection by Members or their authorized representatives at reasonable times as provided by law.
- 9.8 Application of Payment. All payments made by a Member shall be applied as provided in these By-Laws and in the Declaration or as otherwise determined by the Board.
10. Roster of Members. Each Owner shall file with the Association a copy of the deed or other document showing his ownership. The Association shall maintain such information. The Association may rely upon the accuracy of such information for all purposes until notified in writing of changes therein as provided above. Only Members of record on the date notice of any meeting requiring their vote is given shall be entitled to notice of and to vote at such meeting, unless prior to such meeting other Members shall produce adequate evidence, as provided above, of their interest and shall waive in writing notice of such meeting.
11. Parliamentary Rules. Roberts' Rules of Order (latest edition) shall govern the conduct of the Association meetings when not in conflict with the Declaration, the Articles or these By-Laws and subject to waiver in the discretion of the presiding officer if he determines that technical compliance with such Rules would interfere with the efficient conduct of a meeting or the will of its attendees.
12. Amendments. Except as in the Declaration provided otherwise, these By-Laws may be amended in the following manner:
- 12.1 Notice. Notice of the subject matter of a proposed amendment shall be included in the notice of a meeting at which a proposed amendment is to be considered.
- 12.2 Adoption. A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board of Directors or by not less than one-third (1/3) of the Members of the Association. Directors and Members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, provided that such approval is delivered to the Secretary at or prior to the meeting. The approval must be:
- (a) by not less than a majority of the votes of all Members of the Association (as opposed to only those represented at a meeting at which a quorum has been attained) and by not less than 66-2/3% of the entire Board of Directors; or
 - (b) by the Developer prior to the transfer of control of the Association to the Members as provided herein, acting alone.

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- 12.3 Proviso. No amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to the Developer or mortgagees of Lots without the consent of said Developer and mortgagees in each instance. No amendment shall be made that is in conflict with the Articles or Declaration. No amendment to this Section shall be valid.
13. Compliance with Chapter 617, Florida Statutes. The Association shall at all times comply with the provisions of Chapter 617, Florida Statutes applicable to the Association. At the time of the adoption of these By-Laws, such statutes provide, among other things, for matters pertaining to keeping of records (including minutes and financial records), the rights of members to inspect such records, financial reporting, special meetings, notices of meetings and the right to attend and make recordings of meetings.
14. Rules and Regulations. Attached hereto are Rules and Regulations concerning the use of portions of The Properties. The Board of Directors may, from time to time, modify, amend or add to such Rules and Regulations, except that subsequent to the date control of the Board is turned over by the Developer to Members other than the Developer, Owners of a majority of the Lots may overrule the Board with respect to any such modifications, amendments or additions. Copies of such modified, amended or additional Rules and Regulations shall be furnished by the Board of Directors to each affected Member not less than thirty (30) days prior to the effective date thereof. At no time may any rule or regulation be adopted which would prejudice the rights reserved to the Developer.
15. Construction. Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be deemed to include all genders.
16. Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way define or limit the scope of these By-Laws or the intent of any provision hereof.

The foregoing was adopted as the Amended and Restated By-Laws of THE RETREAT OF SOUTH WALTON COUNTY HOMEOWNER'S ASSOCIATION, INC., a corporation not for profit under the laws of the State of Florida, on the 20th day of May, 1999.

Approved:



James Rester, President

EXHIBIT "D"

RULES AND REGULATIONS

1. The Common Areas and facilities, if any, shall not be obstructed nor used for any purpose other than the purposes intended therefor. No carts, bicycles, carriages, chairs, tables or any other similar objects shall be stored thereon, except by the Association.

2. The personal property of Owners must be stored in their respective Homes or in outside storage areas (if any are approved by the Design Review Board).

3. No garbage cans, supplies, milk bottles or other articles shall be placed on the exterior portions of any Home or Lot and no linens, cloths, clothing, curtains, rugs, mops, or laundry of any kind, or other articles, shall be hung from or on the Home, the Lot or any of the windows, doors, fences, balconies, patios or other portions of the Home or Lot, except as provided in the Declaration with respect to refuse containers.

4. Employees of the Association are not to be used by Owners for personal services. The Board of Directors shall be solely responsible for directing and supervising employees of the Association.

5. No motor vehicle which cannot operate on its own power or which has a flat tire(s) or does not have a current license plate and registration shall remain on The Properties for more than twenty-four (24) hours, and no repair of such vehicles shall be made thereon, except for emergencies or in a garage. No portion of the Common Areas may be used for parking purposes, except those portions specifically designed and intended therefor, if any.

Areas designated for guest parking, if any, shall be used only for this purpose and neither Owners nor occupants of Homes shall be permitted to use these areas.

Vehicles which are in violation of these Rules and Regulations shall be subject to being towed by the Association as provided in the Declaration, subject to applicable laws and ordinances. In this regard, usual and customary activities (for example, lawn cutting) which, by their nature, generate noise shall be permitted, but only after 8:00 a.m. and before sunset.

6. No Owner shall make or permit any disturbing noises in the Home or on the Lot by himself or his family, servants, employees, agents, visitors or licensees, nor permit any conduct by such persons that will interfere with the rights, comforts or conveniences of other Owners. No Owner shall play or permit to be played any musical instrument, nor operate or permit to be operated a phonograph, television, radio or sound amplifier or any other sound equipment in his Home or on his Lot in such a manner as to disturb or annoy other residents (applying reasonable standards). No Owner shall conduct, nor permit to be conducted, vocal or instrumental instruction at any time which disturbs other residents.

7. No electronic equipment shall be permitted in or on any Home or Lot which interferes with the television or radio reception of another Home.

8. No awning, canopy, shutter, enclosure or other projection shall be attached to or placed upon the outside walls or roof of the Home or on the Lot, except as approved by the Design Review Board, which may be withheld in its sole discretion.

9. No Owner may alter in any way any portion of the Common Areas, including, but not limited to, landscaping, without obtaining the prior written consent of the Design Review Board.

10. No vegetable gardens shall be permitted except in fully enclosed patio areas.

11. No commercial use shall be permitted in The Properties even if such use would be permitted under applicable zoning ordinances.

12. No flammable, combustible or explosive fluids, chemicals or substances shall be kept in any Home, on a Lot or on the Common Areas, except as to gas cylinders permitted under the Declaration.

13. An Owner who plans to be absent during the hurricane season must prepare his Home and Lot prior to his departure by designating a responsible firm or individual to care for his Home and Lot should the Home suffer hurricane damage, and furnishing the Association with the name(s) of such firm or individual. Such firm or individual shall be subject to the approval of the Association.

14. All persons using any pool on the Common Areas shall do so at their own risk. All children under twelve (12) years of age must be accompanied by a responsible adult. Bathers are required to wear footwear and cover over their bathing suits in any enclosed recreation facilities. Glasses and other breakable objects may not be utilized in the pool or on the pool deck, if any. Pets are not permitted in any pool or pool area under any circumstances.

15. Children will be the direct responsibility of their parents or legal guardians, including full supervision of them while within The Properties and including full compliance by them with these Rules and Regulations and all other Rules and Regulations of the Association. Loud noises will not be tolerated. All children under twelve (12) years of age must be accompanied by a responsible adult when entering and/or utilizing recreation facilities (if any).

16. Pets and other animals shall neither be kept nor maintained in or about The Properties except in accordance the Declaration and with the following:

No pet shall be permitted outside of its Owner's Home unless attended by an adult or child of more than ten (10) years of age and on a leash of reasonable length. Said pets shall only be walked or taken upon those portions of the Common Areas designated by the Association from time to time for such purposes. In no event shall said pets ever be allowed to be walked or taken on or about any recreational facilities (if any) contained within the Common Areas.

17. Every Owner and occupant shall comply with these Rules and Regulations as set forth herein, any and all Rules and Regulations which from time to time may be adopted, and the provisions of the Declaration, By-Laws and Articles of Incorporation of the Association, as amended from time to time. Failure of an Owner or occupant to so comply shall be grounds for action which may include, without limitation, an action to recover sums due for damages, injunctive relief, or any combination thereof. The Association shall have the right to suspend use of recreation facilities, if any, in the event of failure to so comply. In addition to all other remedies, a fine or fines may be imposed upon an Owner for failure of an Owner, his tenants, family, guests, invitees or employees, to comply with any covenant, restriction, rule or regulation herein or in the Declaration, or Articles of Incorporation or By-Laws, as provided in the Declaration.

18. These Rules and Regulations shall not apply to the Developer, nor its affiliates, agents, employees or contractors nor to property while owned by either the Developer or its affiliates. Further, no Builder shall be deemed in violation hereof by reason of the conduct of any usual and customary constructing, marketing or sales activities. All of these Rules and Regulations shall apply, however, to all other Owners and occupants even if not specifically so stated in portions hereof. The Board of Directors shall be permitted (but not required) to grant relief to one or more Owners from specific Rules and Regulations upon written request therefor and good cause shown in the sole opinion of, and conditions on time limitations imposed by, the Board.

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EXHIBIT "E"

The initial portions of the Common Areas shall be:

Common Areas, Right-of-Ways, Utility/Drainage Easements, Pedestrian Pathway Easements, Wall and Landscape Easement, Common Recreation Use Easement, and Access Easement as identified on the plat of The Retreat recorded at Plat Book 14, Page 4 and 4a, of the Public Records of Walton County.

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EXHIBIT "F"

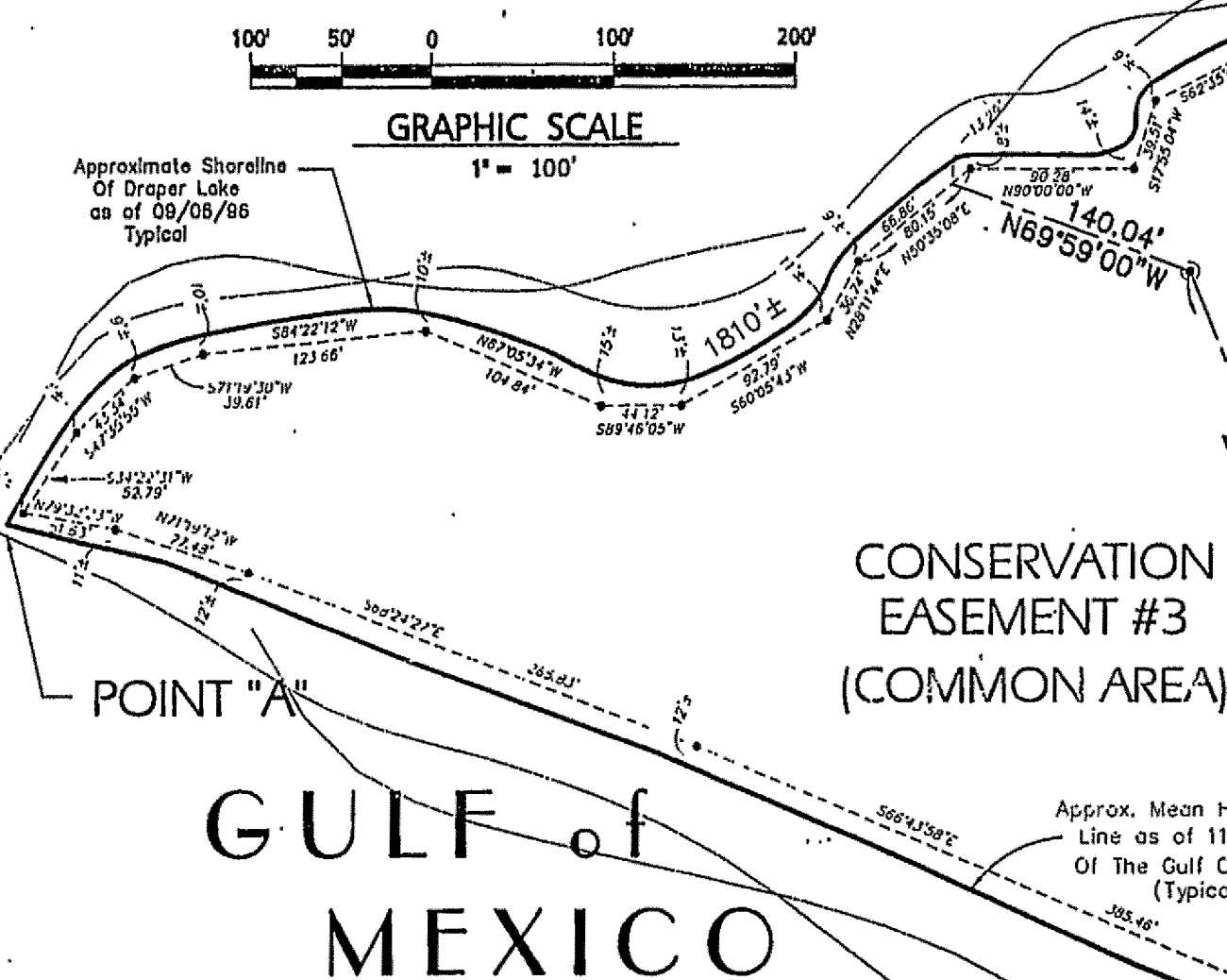
The initial portions of The Properties shall be:

- (i) All the property identified on the plat of The Retreat recorded at Plat Book 14, Page 4 and 4a, of the Public Records of Walton County.
- (ii) Lots 11 and 12, Block G, Blue Gulf Resort, Unit #1, as recorded in Plat Book 3, Page 69 of the property records of Walton County, Florida.

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LINE TABLE

LINE #	DIRECTION	DISTANCE	LINE #	DIRECTION	DISTANCE
L1	S 13°30'04" E	18.56'	L56	S 85°56'51" E	38.43'
L2	S 03°44'05" W	76.41'	L57	S 54°55'45" E	51.37'
L3	S 44°08'09" E	26.88'	L58	S 80°03'09" E	13.29'
L4	S 02°23'50" E	23.09'	L59	N 87°14'07" E	21.98'
L5	S 22°23'50" E	67.86'	L60	S 47°26'31" E	47.22'
L6	S 06°50'33" E	43.64'	L61	N 73°09'54" E	25.10'
L7	S 02°23'50" E	35.63'	L62	S 65°09'51" E	18.88'
L8	N 17°21'54" E	20.59'	L63	S 48°40'40" E	27.01'
L9	S 74°51'37" E	10.89'	L64	S 86°45'57" E	11.38'
L10	N 25°28'20" W	33.40'	L65	N 135°52'02" E	35.81'
L11	N 88°05'36" W	19.49'	L66	N 135°52'02" E	35.85'
L12	N 35°04'18" W	63.20'	L67	S 81°47'08" W	18.88'
L13	N 88°37'14" W	46.03'	L68	N 21°40'28" W	45.17'
L14	N 83°49'17" W	26.76'	L69	N 43°00'24" W	43.70'
L15	N 38°41'10" W	66.09'	L70	N 86°22'07" E	42.00'
L16	N 41°18'59" W	38.41'	L71	S 43°44'56" E	14.00'
L17	N 44°00'17" W	16.70'	L72	N 44°53'55" E	28.00'
L18	N 23°58'38" W	13.02'	L73	S 80°24'35" E	28.84'
L19	N 44°48'59" W	20.42'	L74	N 33°22'03" W	7.08'
L20	S 18°03'38" E	7.43'	L75	N 38°03'30" W	20.22'
L21	S 03°44'05" E	62.38'	L76	N 30°32'35" W	19.98'
L22	S 44°08'09" E	26.23'	L77	N 43°39'30" W	21.69'
L23	S 03°44'05" E	33.40'	L78	S 64°53'57" W	26.71'
L24	S 22°23'50" E	66.31'	L79	N 88°03'03" W	22.16'
L25	S 22°23'50" E	18.22'	L80	N 53°49'47" W	18.77'
L26	S 03°44'05" E	30.64'	L81	N 03°30'20" E	14.03'
L27	S 35°33'34" E	21.02'	L82	N 88°03'03" W	22.71'
L28	S 40°04'13" W	27.78'	L83	N 53°30'45" W	24.85'
L29	S 15°04'13" W	26.63'	L84	N 39°25'56" W	42.62'
L30	S 09°21'24" E	59.75'	L85	N 64°48'28" W	27.87'
L31	S 50°50'17" E	27.18'	L86	N 38°24'25" W	28.26'
L32	S 87°29'40" E	30.58'	L87	S 46°32'38" W	15.48'
L33	S 09°21'24" E	33.40'	L88	N 42°42'26" W	23.77'
L34	S 21°15'38" E	32.73'	L89	N 47°35'43" W	31.26'
L35	N 79°02'48" E	17.49'	L90	N 70°25'45" W	37.74'
L36	S 12°02'29" E	26.03'	L91	N 49°03'52" W	21.97'
L37	N 78°22'32" W	12.88'	L92	N 55°38'58" W	27.49'
L38	S 42°10'34" W	41.38'	L93	N 28°22'02" W	24.09'
L39	S 37°53'34" W	33.40'	L94	N 23°58'38" W	13.72'
L40	S 11°24'50" E	39.00'	L95	N 70°13'30" W	20.00'
L41	S 79°38'24" E	27.98'	L96	N 29°21'25" W	31.29'
L42	S 43°43'43" E	23.38'	L97	N 03°14'56" W	23.73'
L43	N 65°38'25" E	20.30'	L98	N 38°55'44" W	19.79'
L44	S 48°09'04" E	37.34'	L99	N 87°45'08" W	20.34'
L45	N 77°49'12" E	55.70'	L100	N 28°24'52" W	43.62'
L46	S 48°09'04" E	41.50'	L101	N 68°09'10" W	39.78'
L47	S 88°28'25" E	28.21'	L102	S 82°10'44" W	19.82'
L48	S 37°19'21" W	51.75'	L103	N 75°09'14" W	34.18'
L49	S 43°43'43" E	33.40'	L104	N 68°09'10" W	39.78'
L50	S 02°02'29" E	35.27'	L105	N 82°52'14" W	35.79'
L51	S 30°38'15" E	32.86'	L106	N 89°48'38" W	55.37'
L52	S 05°14'29" E	18.58'	L107	N 43°18'58" W	9.86'
L53	S 05°14'29" E	18.58'	L108	N 48°47'24" W	13.45'
L54	S 34°33'48" E	10.62'	L109	N 87°20'39" W	98.03'
L55	N 41°51'07" E	28.28'	L110	N 87°20'39" W	103.37'



LOT LINE CURVE TABLE

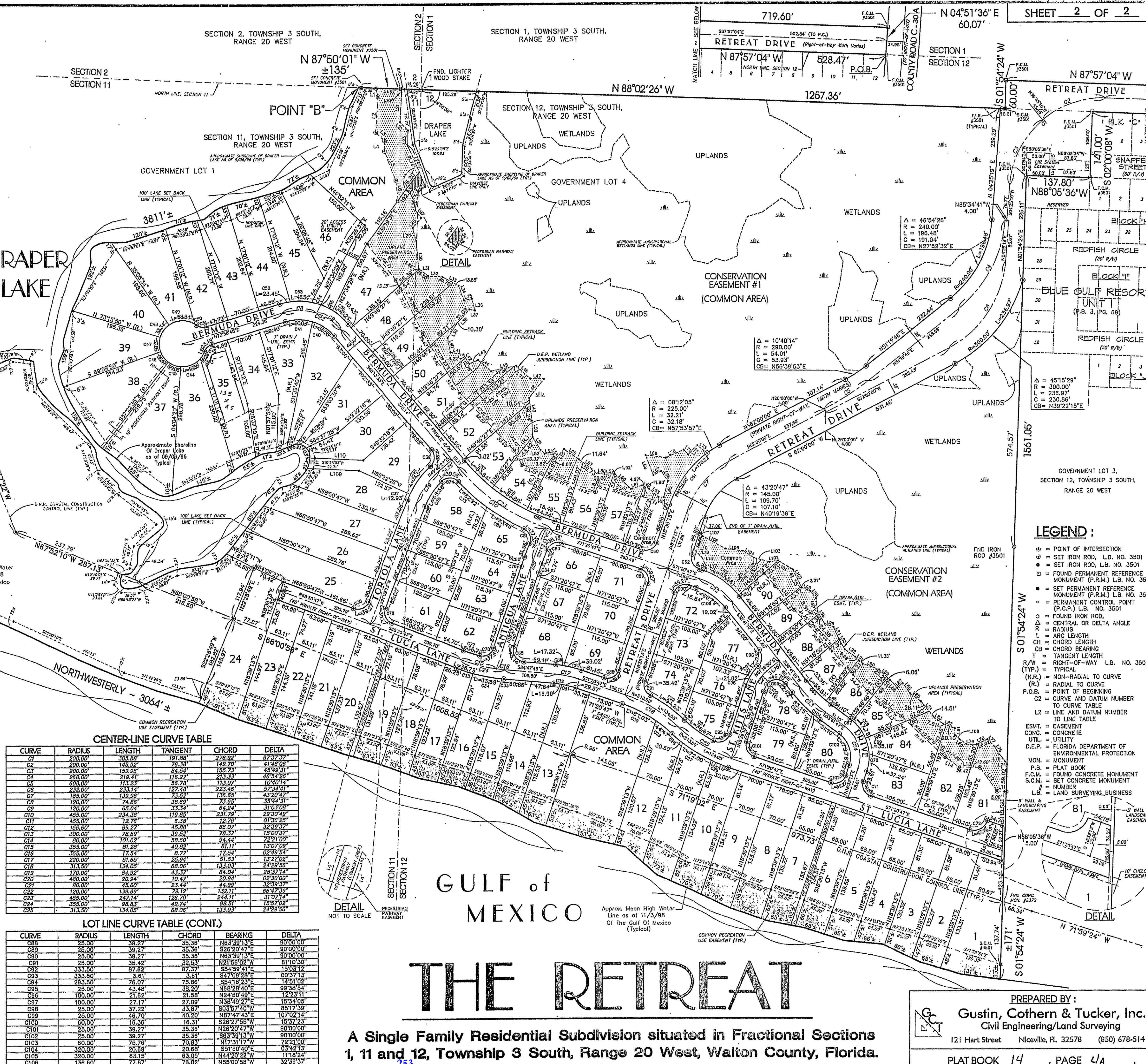
CURVE	RADIUS	LENGTH	CHORD	BEARING	DELTA
C26	333.50'	40.10'	40.07'	S67°54'07" E	06°53'19"
C27	333.50'	72.00'	71.96'	N58°16'22" W	12°22'12"
C28	333.50'	30.50'	30.49'	S49°03'25" E	06°14'24"
C29	293.50'	44.47'	44.43'	S51°11'18" E	08°40'53"
C30	293.50'	81.03'	80.77'	S63°28'18" E	15°49'03"
C31	200.00'	29.97'	29.94'	N75°38'19" W	08°35'04"
C32	200.00'	16.99'	16.98'	N82°21'50" W	04°51'58"
C33	375.00'	3.91'	3.91'	S94°29'54" E	00°35'52"
C34	375.00'	63.62'	63.62'	N79°20'57" E	09°43'54"
C35	375.00'	36.78'	36.78'	N71°39'25" W	05°37'17"
C36	25.00'	39.27'	35.38'	N66°09'13" E	90°00'00"
C37	190.00'	12.93'	12.92'	S23°08'10" W	03°53'54"
C38	190.00'	74.34'	73.86'	S36°15'37" W	22°29'41"
C39	230.00'	38.26'	34.64'	S03°37'17" W	87°41'41"
C40	100.00'	58.55'	55.80'	N58°25'36" W	32°24'07"
C41	100.00'	60.03'	59.13'	N89°49'26" W	34°23'33"
C42	25.00'	23.18'	22.38'	S46°24'53" W	53°07'48"
C43	50.00'	18.22'	18.12'	N30°17'28" E	20°52'54"
C44	50.00'	45.55'	44.85'	N87°24'07" E	53°20'27"
C45	50.00'	29.06'	28.68'	N69°16'32" W	33°18'15"
C46	50.00'	28.47'	28.08'	S36°18'47" E	32°37'15"
C47	50.00'	32.06'	31.51'	N01°38'00" W	36°44'19"
C48	50.00'	33.31'	32.70'	S35°49'18" W	38°10'17"
C49	50.00'	55.23'	55.23'	N88°29'51" E	87°41'41"
C50	25.00'	3.62'	3.62'	S49°59'01" E	04°05'13"
C51	25.00'	23.18'	22.36'	N80°27'18" W	53°07'48"
C52	140.00'	23.45'	23.43'	S77°46'46" W	09°35'56"
C53	140.00'	46.54'	46.33'	S87°53'51" E	19°02'52"
C54	140.00'	20.45'	20.43'	N74°11'22" W	08°22'05"
C55	140.00'	27.58'	27.58'	N84°21'57" W	11°16'45"
C56	140.00'	45.21'	45.01'	S49°28'33" E	18°30'02"
C57	435.00'	83.64'	83.51'	N45°44'03" W	11°01'00"
C58	435.00'	87.89'	87.74'	S57°01'51" E	11°34'35"
C59	435.00'	64.74'	64.68'	S67°04'58" E	08°31'39"
C60	25.00'	39.27'	35.38'	N63°39'13" E	90°00'00"
C61	25.00'	170.22'	166.19'	S40°19'36" W	90°00'00"
C62	25.00'	39.27'	35.38'	S26°20'47" E	90°00'00"
C63	176.80'	97.56'	96.33'	N55°31'13" W	31°39'08"
C64	176.80'	3.11'	3.11'	S39°11'24" E	01°00'28"
C65	280.00'	59.81'	59.70'	N44°48'20" W	12°14'20"
C66	280.00'	13.54'	13.54'	S52°18'49" E	02°46'17"
C67	100.00'	6.07'	6.07'	N51°57'30" W	03°28'33"
C68	100.00'	47.78'	47.33'	S35°31'54" E	27°22'39"
C69	100.00'	35.18'	35.00'	N12°45'52" W	20°09'26"
C70	100.00'	37.24'	37.03'	S07°59'02" W	21°20'21"
C71	25.00'	29.27'	26.39'	S28°20'47" E	90°00'00"
C72	30.00'	42.12'	42.43'	S83°39'13" W	90°00'00"
C73	475.00'	82.82'	82.81'	S48°13'28" E	10°00'07"
C74	25.00'	39.58'	35.56'	S88°33'04" E	90°39'22"
C75	150.00'	65.35'	64.85'	S33°38'14" W	14°51'02"
C76	25.00'	29.27'	26.39'	S23°30'47" W	90°00'00"
C77	335.00'	36.70'	36.58'	S71°59'05" E	06°18'35"
C78	25.00'	37.62'	34.17'	S61°45'55" W	86°13'24"
C79	500.00'	1.82'	1.82'	N18°45'28" E	00°12'31"
C80	500.00'	20.00'	19.99'	N20°00'28" E	02°17'29"
C81	25.00'	17.31'	17.31'	N21°40'28" W	85°39'07"
C82	475.00'	93.46'	93.24'	N58°51'42" W	11°16'24"
C83	25.00'	38.18'	34.58'	S64°54'13" W	87°30'00"
C84	480.00'	20.07'	20.07'	S19°54'13" W	02°30'00"
C85	25.00'	45.14'	39.25'	N33°04'18" W	103°27'02"
C86	240.00'	17.31'	17.31'	N21°40'28" W	04°08'45"
C87	240.00'	39.02'	38.95'	N76°09'17" W	09°18'58"

CENTER-LINE CURVE TABLE

CURVE	RADIUS	LENGTH	TANGENT	CHORD	DELTA
C1	200.00'	305.89'	191.88'	278.82'	87°37'37"
C2	200.00'	145.92'	76.38'	142.70'	41°48'08"
C3	200.00'	159.96'	84.54'	156.73'	45°49'31"
C4	268.00'	218.41'	116.27'	213.33'	46°54'32"
C5	268.00'	113.23'	56.78'	113.37'	24°01'44"
C6	232.00'	243.14'	123.48'	223.46'	57°34'41"
C7	185.00'	138.96'	73.52'	136.65'	43°20'47"
C8	120.00'	74.86'	39.69'	73.65'	39°44'31"
C9	120.00'	65.94'	33.34'	64.24'	31°37'30"
C10	455.00'	234.38'	118.65'	231.78'	50°30'49"
C11	455.00'	12.76'	6.38'	12.76'	01°38'25"
C12	156.60'	89.27'	45.89'	88.07'	32°39'37"
C13	300.00'	78.59'	39.59'	78.37'	16°07'14"
C14	80.00'	101.07'	58.00'	94.44'	32°21'00"
C15	355.00'	81.28'	40.82'	81.11'	13°07'09"
C16	355.00'	17.54'	8.77'	17.54'	02°49'54"
C17	220.00'	51.65'	25.94'	51.53'	13°29'56"
C18	312.50'	134.82'	68.05'	132.17'	36°47'56"
C19	170.00'	84.82'	43.37'	84.04'	28°17'14"
C20	480.00'	20.94'	10.47'	20.94'	02°30'00"
C21	80.00'	45.60'	24.44'	44.99'	32°39'37"
C22	120.00'	139.89'	70.12'	132.17'	66°47'56"
C23	455.00'	247.14'	126.70'	244.11'	51°07'14"
C24	355.00'	98.83'	49.74'	98.51'	15°57'02"
C25	312.50'	134.05'	68.05'	133.03'	24°29'58"

LOT LINE CURVE TABLE (CONT.)

CURVE	RADIUS	LENGTH	CHORD	BEARING	DELTA
C88	25.00'	39.27'	35.38'	N63°39'13" E	90°00'00"
C89	25.00'	39.27'	35.38'	S28°20'47" E	90°00'00"
C90	25.00'	39.27'	35.38'	N63°39'13" E	90°00'00"
C91	25.00'	35.42'	32.53'	N21°58'02" W	81°10'30"
C92	333.50'	87.82'	87.37'	S54°58'41" E	15°03'12"
C93	333.50'	3.61'	3.61'	S47°08'28" E	00°37'13"
C94	293.50'	75.07'	75.86'	S54°16'23" E	14°51'02"
C95	25.00'	43.48'	40.00'	N88°28'40" E	99°38'54"
C96	100.00'	21.62'	21.58'	N24°50'49" E	12°23'11"
C97	100.00'	27.17'	27.09'	N38°49'27" E	15°34'05"
C98	25.00'	37.22'	33.87'	S03°57'40" W	86°17'39"
C99	25.00'	46.70'	40.20'	N87°47'43" E	107°02'44"
C100	60.00'	16.36'	16.31'	S08°27'55" W	15°37'23"
C101	25.00'	39.27'	35.38'	N68°20'47" W	90°00'00"
C102	25.00'	39.27'	35.38'	S83°39'13" W	90°00'00"
C103	60.00'	75.78'	70.83'	N17°31'17" W	72°21'00"
C104	320.00'	20.69'	20.68'	S51°50'40" E	05°42'13"
C105	320.00'	63.15'	63.05'	N44°50'22" W	11°18'24"
C106	136.60'	77.87'	76.82'	N55°00'58" W	32°39'37"



JURY INSTRUCTIONS

INTRODUCTION

Members of the jury, you have now heard and received all of the evidence in this case. I am now going to tell you about the rules of law that you must use in reaching your verdict. When I finish telling you about the rules of law, the attorneys will present their final arguments and you will then retire to decide your verdict.

It is your duty as jurors to decide the issues, and only those issues, that I submit for your determination by your verdict. In reaching your verdict, you should consider and weigh the evidence, decide the disputed issues of fact, and apply the law on which I shall instruct you to facts as you find them from the evidence.

The evidence in this case consists of the sworn testimony of the witnesses, all exhibits received in evidence and all facts that may be admitted or agreed to by the parties.

In determining the facts, you may draw reasonable inferences from the evidence. You may make deductions and reach conclusions that reason and common sense lead you to draw from the facts shown by the evidence in this case, but you should not speculate on any matters outside the evidence.

GENERAL CONSIDERATIONS

- **CREDIBILITY OF THE WITNESS**

- In determining the believability of any witness and the weight to be given to the testimony of any witness, you may properly consider the demeanor of the witness while testifying; the frankness or lack of frankness of the witness; the intelligence of the witness; any interest the witnesses may have in the outcome of the case; the means and opportunity the witness had to know the facts about which the witness testified; and the reasonableness of the testimony of the witness, considered in the light of all the evidence in the case and in the light of your own experience and common sense.

- **EXPERT WITNESS**

- You have heard opinion testimony on certain technical subjects from a person referred to as an expert witness. Some of the testimony before you was in the form of opinions about certain technical subjects.
- You may accept such opinion testimony, reject it, or give it the weight you think it deserves, considering the knowledge, skill, experience, training, or education of the witness, the reasons given by the witness for the opinion expressed, and all the other evidence in the case.

SUMMARY OF CLAIMS

The claims and defenses in this case are as follows.

Plaintiff has brought two legal claims against Defendant.

1. Plaintiff's first legal claim is that Defendant falsely imprisoned Plaintiff when Defendant, without color of or claim of lawful authority restrained, or caused others to restrain, Plaintiff.
 - a. Defendant denies that claim.
2. The second legal claim is that Defendant maliciously and without probable cause caused the Suwannee State Attorney's Office to file an information and continue to prosecute a case against Plaintiff for criminal trespass after warning, which later terminated in favor of Plaintiff, and which caused Plaintiff harm.
 - b. Defendant denies that claim, affirmatively asserting that Plaintiff was on Defendant's property without legal authorization or excuse, and remained on the property after being warned to leave.

- Defendant also claims that Defendant received legal advice concerning prosecution for trespasses on Defendant's property that exonerates Defendant as to any claim of malicious prosecution.
- Plaintiff claims that he/she was on state owned property, but even if not on State owned property, had a public right of access to and use of the sandy beach property owned by the Defendant.
- Defendant denies that the public or Plaintiff has a right of customary use of Defendant's privately owned beach property.

I. PLAINTIFF'S FIRST CLAIM, FALSE IMPRISONMENT, APPLICABLE LAW

INTENTIONAL RESTRAINT

“Intentional restraint” means that Defendant restrained Plaintiff with the purpose of causing the restraint and Defendant acted with knowledge that the Plaintiff's restraint would, to a substantial certainty, result from Defendant's acts.

To be restrained means that Plaintiff was held against Plaintiff's will and did not consent to the restraint. In other words, a person is restrained when he or she is not free or does not reasonably believe he or she is free, to leave the place to which he or she had been confined. To be restrained, a person must be aware of the restraint. However, a person is not “restrained” when there is a reasonable means of escape, which is apparent or known to the person.

A restraint is without “lawful authority” if Defendant did not act under color of or claim of lawful authority.

LEGAL CAUSE

a. Legal cause generally:

An unlawful and intentional restraint is a cause of loss or injury or damage if it directly and in natural and continuous sequence produces or contributes substantially to producing such loss or injury or damage, so that it can reasonably be said that, but for the unlawful and intentional restraint, the loss or injury or damage would not have occurred.

b. Concurring cause:

In order to be regarded as a legal cause of loss or injury or damage and unlawful and intentional restraint need not be the only cause. An unlawful and intentional restraint may be a legal cause of loss or injury or damage even though it operates in combination with the act of another or some natural cause or some other cause if the unlawful and intentional restraint contributes substantially to producing such loss or injury or damage.

c. Intervening cause:

An unlawful and intentional restraint may also be a legal cause of loss or injury or damage even though it operates in combination with the act of another or some natural cause or some other cause occurring after the unlawful and intentional restraint occurs if such other cause was itself reasonably foreseeable and the unlawful and intentional restraint contributes substantially to producing such loss or injury or damage or the resulting loss or injury or damage was a reasonably foreseeable consequence of the unlawful and intentional restraint and the unlawful and intentional restraint and the unlawful and intentional restraint contributes substantially to producing it.

ISSUES ON THE CLAIM

The issues for you to decide on Plaintiff's claim against Defendant are whether Defendant, without legal authority, intentionally caused Plaintiff to be restrained against his or her will in a manner that was unreasonable and unwarranted under the circumstances, and, if so, whether that restraint was a legal cause of loss or injury or damage to Plaintiff.

You must decide whether Plaintiff was on Defendant's private property without legal authority or justification, and whether, after being warned, Plaintiff failed to leave Defendant's property.

BURDEN OF PROOF ON THE CLAIM

If the greater weight of the evidence does not support Plaintiff's claim for false imprisonment, your verdict should be for Defendant.

However, if the greater weight of the evidence supports Plaintiff's claim, then you shall consider the defenses raised by Defendant.

DEFENSE ISSUES

On the defense, the issue you must decide is whether Defendant had probable cause to believe that Plaintiff was trespassing on the Plaintiff's property and could restrain Defendant until law enforcement arrived.

"Probable cause" means that at the time of the restraint the facts and circumstances known to Defendant were sufficiently strong to support a reasonable belief that Plaintiff had committed a criminal offense.

BURDEN OF PROOF ON DEFENSE ISSUES

If the greater weight of the evidence supports the Defendant's defense, your verdict should be for Defendant and against Plaintiff. If, however, the greater weight of the evidence does not support Defendant's defense, and does support Plaintiff's claim, your verdict should be for Plaintiff and against Defendant.

PLAINTIFF'S RESPONSE TO DEFENDANT'S AFFIRMATIVE DEFENSE OF TRESPASS

Plaintiff claims that he/she and the public had a right of customary usage to access and use the sandy beach at issue in this case even if it was Defendant's private property.

BURDEN OF PROOF ON PLAINTIFF'S RESPONSE TO DEFENDANT'S DEFENSE

If you find that Plaintiff was on Defendant's private property after being warned to leave, you must decide whether Plaintiff had legal justification for being on Defendant's property due to a public right of customary usage to access and use the sandy beach part of Defendant's property. In deciding whether the public had a right of customary usage, you must make findings as to all of the following issues:

- (1) was this use of ancient origin;
- (2) was this use reasonable;
- (3) was this use uninterrupted; and
- (4) was this use without dispute.

Plaintiff has the burden of proof as to a right of customary usage, and must prove all four elements: ancient use, reasonable use, uninterrupted use, and undisputed use. If Plaintiff proves all four elements of customary usage, you cannot find that Plaintiff committed trespass after warning.

FALSE IMPRISONMENT DAMAGES

If you find for Defendant, you will not consider the matter of damages. But, if you find for Plaintiff, you should award Plaintiff an amount of money that the greater weight of the evidence shows will fairly and adequately compensate Plaintiff for the loss or injury or damage as the greater weight of the evidence show was caused by the conduct complained of.

If you find for Plaintiff, you shall consider the following elements of damages:

1. Lost earnings, lost time, lost earning capacity:
 - When lost earnings or lost working time shown:
 - Any earning or working time lost in the past and any loss of ability to earn money in the future.
 - When earnings or lost working time not shown:
 - Any loss of ability to earn money sustained in the past and any such loss in the future.
2. Property damage:
 - Any loss to Plaintiff for towing or storage charges and by being deprived of the use of Plaintiff's automobile.
 - The reasonable expenses, including lawyers' fees, necessarily incurred by Plaintiff in the proceeding complained of.
 - If you find for Plaintiff, but find that no loss or injury or damage has been proved, you should award Plaintiff nominal damages. Nominal damages are damages of an inconsequential amount which are awarded when a wrong has been done but no actual damage is proved.

II. PLAINTIFF'S SECOND CLAIM, MALICIOUS PROSECUTION, APPLICABLE LAW

GREATER WEIGHT OF THE EVIDENCE

"Greater weight of the evidence" means the more persuasive and convincing force and effect of the entire evidence in the case.

PROBABLE CAUSE

Probable cause means that at the time of causing the State Attorney's Office to institute or continue a criminal proceeding against Plaintiff, the facts and circumstances known to Defendant were sufficiently strong to support a reasonable belief that Plaintiff had committed a criminal offense was supported by existing facts.

MALICE

One acts maliciously in instituting or causing to continue a criminal proceeding against another if he or she does so for the primary purpose of injuring the other, or recklessly and without regard for whether the proceeding is justified, or for any primary purpose except to bring an offender to justice. In determining whether Defendant acted maliciously, you may consider all the circumstances at the time of the conduct complained of, including any lack of probable cause to cause the institution or continuation of criminal prosecution.

INSTITUTING OR CONTINUING A PROCEEDING

One is regarded as having instituted or continued a criminal proceeding against another if the proceeding resulted directly and in natural and continuous sequence from his or her actions, so that it reasonably can be said that, but for his or her actions, the proceeding would not have been instituted or continued. One is not regarded as having instituted or continued a criminal proceeding against another if in good faith he or she made a full and fair disclosure of what he or she knew to the proper authorities and left the decision to institute or continue the prosecution entirely to the judgment of the authorities.

LEGAL CAUSE

a. Legal cause generally:

The malicious institution or continuation of a proceeding is a cause of loss or injury or damage if it directly and in natural and continuous sequence produces or contributes substantially to producing such loss or injury or damage, so that it can reasonably be said that, but for the malicious institution or continuation of a proceeding, the loss or injury or damage would not have occurred.

b. Concurring cause:

In order to be regarded as a legal cause of loss or injury or damage the malicious institution or continuation of such a proceeding need not be the only cause. The malicious institution or continuation of a proceeding may be a legal cause of loss or injury or damage even though it operates in combination with the act of another or some natural cause or some other cause if the malicious institution or continuation of a proceeding contributes substantially to producing such loss or injury or damage.

c. Intervening cause:

The malicious institution or continuation of a proceeding may also be a legal cause of loss or injury or damage even though it operates in combination with the act of another or some natural cause or some other cause occurring after the malicious institution or continuation of a proceeding occurs if such other cause was itself reasonably foreseeable and the malicious institution or continuation of a proceeding contributes substantially to producing such loss or injury or damage or the resulting loss or injury or damage was a reasonably foreseeable consequence of the malicious institution or continuation of a proceeding and the malicious institution or continuation of a proceeding contributes substantially to producing it.

ISSUES ON CLAIM

The issues you must decide on Plaintiff's claim against Defendant are whether Defendant maliciously and without probable cause instituted or continued a criminal proceeding against Plaintiff which later

terminated in favor of Plaintiff and, if so, whether that action was a legal cause of loss or injury or damage to Plaintiff.

If the greater weight of the evidence does not support Plaintiff's claim, your verdict should be for Defendant.

However, if the greater weight of the evidence supports Plaintiff's claim, then your verdict should be for Plaintiff and against Defendant. Then you should consider the defense raised by Defendant.

DEFENSE ISSUES; AFFIRMATIVE DEFENSES

On the defense, one issue for you to decide is whether the Plaintiff was trespassing on Defendant's private property, and whether Plaintiff failed to leave after warning by Defendant's agents and employees.

On the defense, another issue for you to decide is whether before institution or continuing the criminal proceeding complained of, Defendant in good faith sought the advice of a lawyer, gave the lawyer a full and fair statement of what it knew, and relied on the lawyer's advice in instituting or continuing the proceeding.

BURDEN OF PROOF ON DEFENSE ISSUES

If the greater weight of the evidence supports the defense, your verdict should be for Defendant. However, if the greater weight of the evidence does not support the defense and does support Plaintiff's claim, your verdict should be for Plaintiff and against Defendant.

PLAINTIFF'S RESPONSE TO DEFENDANT'S AFFIRMATIVE DEFENSE OF TRESPASS

Plaintiff claims that he/she and the public had a right of customary usage to access and use the sandy beach at issue in this case even if it was Defendant's private property.

BURDEN OF PROOF ON PLAINTIFF'S RESPONSE TO DEFENDANT'S DEFENSE

If you find that Plaintiff was on Defendant's private property after being warned to leave, you must decide whether Plaintiff had legal justification for being on Defendant's property due to a public right of customary usage to access and use the sandy beach part of Defendant's property. In deciding whether the Plaintiff and the public had a right of customary usage, you must make findings as to all of the following issues:

- (1) was this use of ancient origin;
- (2) was this use reasonable;
- (3) was this use uninterrupted; and
- (4) was this use without dispute.

Plaintiff has the burden of proof as to a right of customary usage, and must prove all four elements: ancient use, reasonable use, uninterrupted use, and undisputed use. If Plaintiff proves all four elements of customary usage, you cannot find that Plaintiff did committed trespass after warning.

DAMAGES

If you find for Defendant, you will not consider the matter of damages. But, if you find for Plaintiff, you should award Plaintiff an amount of money that the greater weight of the evidence shows will fairly and adequately compensate Plaintiff for such loss or injury or damage as the greater weight of the evidence shows was caused by the institution or continuation of the proceeding complained of.

If you find for Plaintiff, you shall consider the following elements of damages:

1. Lost earnings, lost time, lost earning capacity:
 - When lost earnings or lost working time shown:
 - Any earning or working time lost in the past and any loss of ability to earn money in the future.
 - When earnings or lost working time not shown:
 - Any loss of ability to earn money sustained in the past and any such loss in the future.
2. Property damage:
 - Any loss to Plaintiff for towing or storage charges and by being deprived of the use of Plaintiff's automobile.
 - The reasonable expenses, including lawyers' fees, necessarily incurred by Plaintiff in the proceeding complained of.
 - If you find for Plaintiff, but find that no loss or injury or damage has been proved, you should award Plaintiff nominal damages. Nominal damages are damages of an inconsequential amount which are awarded when a wrong has been done but no actual damage is proved.

The parties must prove all claims and defenses by the greater weight of the evidence. “**Greater weight of the evidence**” means the more persuasive and convincing force and effect of the entire evidence in the case.

IN THE CIRCUIT COURT, SECOND JUDICIAL CIRCUIT,
IN AND FOR WALTON COUNTY, SUWANNEE

ANTONIO/ANTONIA VARGAS,

PLAINTIFF,

vs.

CASE NO. 15-CA- 2345

CRUMP, INC.,

DEFENDANT.

_____ /

SPECIAL VERDICT FORM

WE, THE JURY, answer the questions submitted to us as follows:

1. Was Plaintiff on Defendant's private property on July 4, 2014?

YES _____

NO _____

If your answer to question 1 is YES, then answer question 2. If you answered NO, stop here, and proceed to questions 4 and 5.

2. Did the public have a right of customary use of Defendant's private sandy beach property that was :

A. of ancient origin

YES _____

NO _____

B. reasonable

YES _____

NO _____

C. without interruption

YES _____

NO _____

D. without dispute

YES _____

NO _____

If your answer to question 2 is Yes to A., B., C., and D, then answer questions 4 and 5. If you answered NO to either A., B., C., or D, and yes to question 1, proceed to question 3.

3. Did Plaintiff refuse to leave Defendant's privately owned beach property after warning?

YES _____

NO _____

If you answer to question 3 is yes, then your verdict is for Defendant, Crump, Inc., and you should proceed no further except to date and sign this verdict form and return it to the courtroom.

4. As for the false imprisonment claim, did Defendant Crump, Inc., have probable cause to restrain Antonio/Antonia Vargas?

YES _____

NO _____

5. As for the malicious prosecution, did Defendant Crump, Inc., maliciously and without probable cause institute and continue a criminal proceeding against Antonio/Antonia Vargas?

YES _____

NO _____

So say we all, this _____ day of February, 2016.

Foreperson

Courtroom _____

Team # _____
Plaintiff

vs.

Team # _____
Defense

_____ Round One (Day One) Time _____ Date _____

_____ Round Two (Day One) Time _____ Date _____

_____ Semi-Final Round (Day Two) Time _____ Date _____

_____ Final Round (Day Two) Time _____ Date _____

Points for Plaintiff		Points for Defense
	Motions in Limine (5 points max each)	
	Opening (20 points max each)	
	Direct of Plaintiff Witness #1 (15 points max)	XXXXXX
XXXXXX	Cross of Plaintiff Witness #1 (15 points max)	
	Direct of Plaintiff Witness #2 (15 points max)	XXXXXX
XXXXXX	Cross of Plaintiff Witness #2 (15 points max)	
XXXXXX	Direct of Defense Witness #1 (15 points max)	
	Cross of Defense Witness #1 (15 points max)	XXXXXX
XXXXXX	Direct of Defense Witness #2 (15 points max)	
	Cross of Defense Witness #2 (15 points max)	XXXXXX
	Closing (20 points max each)	
	TOTAL POINTS (MUST NOT EXCEED 105 POINTS EACH SIDE)	

PLEASE CIRCLE THE WINNING TEAM (TIES ARE NOT PERMITTED)
CIRCLE ONLY THE TEAM WITH THE HIGHEST SCORE:

Plaintiff

Defense

<p>For Official Use Only:</p> <p>Plaintiff(s) Score _____</p> <p>Defense Score _____</p> <p>Winning Team _____</p> <p>Checked By:</p> <p>_____</p> <p>Please Print and Sign Name</p>

Please Print Name of Scoring Judge

Signature of Scoring Judge



FLORIDA STATE UNIVERSITY COLLEGE OF LAW

2016 MOCK TRIAL INVITATIONAL



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