

2002 RESTRICTIVE COVENANTS

PROPERTY OWNERS ASSOCIATION OF SPANISH COVE, INC.

(Revised April 2011)

INDEX FOR
AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS APPLICABLE TO SPANISH COVE
A PLANNED UNIT DEVELOPMENT
April, 2008

RECITALS	1
ARTICLE I DEFINITIONS	4
ARTICLE II MUTUALITY OF BENEFIT AND OBLIGATION	12
ARTICLE III PROPERTY RIGHTS OBLIGATION	13
3.01 Easement of Enjoyment by Owner	13
3.02 Delegation of Use	14
3.03 POASC Easement	14
3.04 Drainage Easements	14
3.05 Grading	14
3.06 Easement for Governmental Health, Sanitation and Emergency Services	15
3.07 Common Property and Private Driveways	15
3.08 1991 Assignment and Assumption Agreement	15
3.09 Section II-H of 1998 Amended Declaration	15
3.10 Proviso – Rules & Regulations	15
ARTICLE IV BUILDING REGULATIONS	17
4.01 Written Approval Required	17
4.02 Basis for Disapproval of Plans and Specifications	17
4.03 Retention of Copy of Plans and Specifications	18
4.04 Effect of Approval and Disapproval, Time for Approval	18
4.05 Permit	19
4.06 Certificate of Compliance	19
4.07 Inspection and Testing Rights	20
4.08 Waiver of Liability	20
4.09 Variance	20
4.10 Enforcement	20

ARTICLE V ZONING AND SPECIFIC RESTRICTIONS	21
ARTICLE VI SITE DEVELOPMENT	22
6.01 Site to be Staked Prior to Tree Cutting	22
6.02 Erosion Control	22
6.03 Utility Lines and Appurtenances	22
ARTICLE VII COVENANTS FOR MAINTENANCE	23
7.01 Responsibility of POASC	23
7.02 Responsibility of Owner	23
ARTICLE VIII COVENANTS AND RESTRICTIONS	24
General Covenants and Restrictions	24
8.01 Permitted	24
8.02 Commercial Use	24
8.03 Building Setback	24
8.04 Subdivision of Lot Ownership	25
8.05 Contiguous Lot Ownership	25
8.06 Parking	25
8.07 Common Property Use	26
8.08 Construction Materials and Foundation	26
8.09 Driveways, Culverts and Retaining Walls	26
8.10 Tree Preservation	27
8.11 Animals	27
8.12 Signs and Lighting	27
8.13 Temporary Improvement	27
8.14 Air Conditioning Units	27
8.15 Chimney Flues	27
8.16 Play Equipment	27
8.17 Energy Conservation Equipment	27
8.18 Oil or Gas Tanks, Pools, Swimming Pool Equipment	28
8.19 Wells, Drainage and irrigation	28
8.20 Storm Precautions	28
8.21 Hunting, Firearms and Fireworks	28
8.22 Insurance Rates	28
8.23 Completion of Construction	28
8.24 Occupants bound	29

8.25 Unsightly or Unkempt Conditions.....	29
8.26 Sewage Disposal.....	30
8.27 Open Burning.....	30
8.28 Mineral Operations Prohibited.....	30
8.29 Fences, Walls, Hedges, Privacy Screens and Ornamental Improvements.....	30
8.30 Nuisance.....	31
8.31 Variance.....	31
8.32 Discrimination Prohibited.....	31
8.33 1993 Enforcement and Grandfather Resolution.....	31
Covenants and Restrictions Pertaining to Residential Lots (Bayside and Spanish Oaks)	
8.34 Permitted Uses and Improvements.....	31
8.35 Minimum Dwelling Area.....	31
8.36 Building Setback.....	31
8.37 Accessory Improvements.....	32
Covenants and Restrictions Pertaining to Recreational Vehicle Lots (Land Harbor)	
8.38 Permitted Uses and Improvements.....	32
8.39 Building Setback.....	33
8.40 Accessory Improvements and Additions.....	33
8.41 Skirting.....	34
Covenants and Restrictions Pertaining to Mobile Home Lots (Perdido Pines)	
8.42 Permitted Uses and Improvements.....	34
8.43 Minimum Mobile Home Area.....	35
8.44 Building Setback.....	35
8.45 Accessory Improvements.....	35
8.46 Skirting.....	36
8.47 Axles, Wheels and Pull Yokes.....	36
Covenants and Restrictions Pertaining to Commercial Lots	
8.48 Permitted Uses and Improvements.....	36
8.49 Building Setback.....	36
8.50 Signs.....	37
8.51 Height.....	37
8.52 Parking and Access.....	37
8.53 Fences.....	37
ARTICLE IX WATERFRONT AREAS AND WATERWAYS.....	38

ARTICLE X MEMBERSHIP AND VOTING RIGHTS

10.01 POASC.....	39
10.02 Membership.....	39
10.03 Voting.....	39
10.04 Rules and Regulations.....	40
10.05 Implied Rights.....	40
10.06 Self-Help.....	40
10.07 Right of Entry.....	40
10.08 Assignment.....	41
10.09 Board of Directors.....	41
10.10 Bylaws.....	41
10.11 Availability of Records.....	41
10.12 Reserve Fund.....	42

ARTICLE XI COVENANT FOR MAINTENANCE ASSESSMENTS

11.01 Creation of the Lien and Personal Obligations for Assessments, Fees and Monetary Fines.....	43
11.02 Rate of Assessment.....	44
11.03 Date of Commencement of Assessments, Due Dates.....	45
11.04 Effects of Nonpayment of Assessments, fees, Charge or Fines Remedies of POASC.....	46

ARTICLE XII INSURANCE AND CASUALTY LOSS

12.01 POASC.....	47
A. Hazard Insurance.....	47
B. Public Liability Insurance.....	47
C. Workers' Compensation Insurance.....	47
D. Premiums.....	47
E. Adjustment.....	47
12.02 Owner.....	47
12.03 Reconstruction and Repair.....	47

ARTICLE XIII AMENDMENT

13.01 Notice.....	49
13.02 Resolution.....	49
13.03 Recording.....	49
13.04 Proviso.....	49

ARTICLE XIV ADDITIONAL PROPERTY AND RELEASE OF PROPERTY

14.01 Additional Property.....	50
14.02 Released Property.....	50
14.03 Procedure for Amendment.....	50
14.04 Subsequent Amendment.....	50

ARTICLE XV MISCELLANEOUS

15.01 Unrestrictive Right of Transfer.....	51
15.02 Leasing.....	51
15.03 No restrictions on Mortgage.....	51
15.04 Acceptance by Grantee.....	51
15.05 Indemnity for Damages.....	51
15.06 Severability.....	52
15.07 Captions and Form of Word.....	52
15.08 Effect of Violation on Mortgage Lien.....	52
15.09 No Riveter.....	52
15.10 Duration and Amendment.....	52
15.11 Enforcement.....	52
15.12 Certification of Violation.....	53
15.13 Interpretation by POASC.....	53
15.14 No Waiver.....	53
15.15 Effective Date.....	53

EXHIBIT A ASSIGNMENT AND ASSUMPTION AGREEMENT

EXHIBIT B JUNE 1993 BOARD OF DIRECTORS WORKING SESSION

EXHIBIT C SPANISH COVE INDEPENDENT PROPERTY OWNERS VS POASC

EXHIBIT D CRARY VS POASC JUDGEMENT

AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS APPLICABLE TO SPANISH COVE
A PLANNED UNIT DEVELOPMENT
INSTRUMENT NO. 645946

STATE OF ALABAMA:

COUNTY OF BALDWIN:

Property Owners Association of Spanish Cove, Inc., an Alabama Corporation (“POASC”) does by this Amended and Restated Declaration of Covenants, Conditions and Restrictions Applicable to Spanish Cove, a Planned Unit Development (this Declaration) MAKE, PUBLISH AND DECLARE as follows:

RECITALS

- A. Spanish Cove Corp., an Alabama Corporation filed for record certain maps or plats of Spanish Cove, a Planned Unit Development prepared by Perry Hand Associates, Inc., recorded in Map Book 9, Pages 18 through 39, and Pages 56 and 58, and Map Book 10, Page 142 and portions thereof have been re subdivided by maps recorded in Map Book 11, Pages 50, 98, 99, 126, 127, 150, 164, 165 and 166. Sp Cove Properties Corp., an Alabama Corporation, the successor-in-interest to Spanish Cove Corp., an Alabama Corporation, filed for record certain re subdivision plats or maps in Map Book 11, Pages 192, 193 and 195 and in Map Book 12, Pages 6, 7, 54, 94 and 109, and in Slides 1120-B, 1121-A, 1121-B, 1192-B, 1202-B, 1238-B and 1241-B. Rowan Developers, Inc., an Alabama Corporation, successor-in-title to the Lots located in Block 29, Division I of Spanish Cove, a Planned Unit Development, re subdivided those Lots on plat recorded in Slide 1512-B and on Slide 1554-B. Saltwater Land Co., Inc., an Alabama Corporation, successor-in-title to certain Lots in Block 25, Division IV of Spanish Cove, a Planned Unit Development, re subdivided those Lots on plat recorded in Slide 1701-B. Lillian Land Company, Inc., an Alabama Corporation. successor-in-title to Lots 2249-B through 2330-B and Lot 3265, Division I of Spanish Cove, a Planned Unit Development, re subdivided said Lots as The Cove, a Subdivision according to map or plat thereof recorded in Slide 1331-A. The real property described on Slide 1331-A has been released by instrument dated June 11, 1992 entitled Release of Property from Restrictive Covenants between Lillian Land Company, Inc., an Alabama Corporation and the POASC recorded on June 12, 1992 in Miscellaneous Book 71, Pages 663 through 666 from the 1974 Declaration (as defined in this Declaration) and the 1988 Amended Declaration (as defined in this Declaration). Saltwater Land Co., Inc an Alabama Corporation, successor-in-title to certain Lots in Division IV of Spanish Cove, a Planned Unit Development, has re subdivided certain of those Lots by plats recorded in Slide 1862-A and Slide 1889- A. All real property shown on the maps or plats described in this paragraph is collectively sometimes referred to in this Declaration as “Spanish Cove”.
- B. Spanish Cove Corp., an Alabama Corporation, did execute, deliver and record that certain instrument entitled the Maintenance and Utility Covenant dated March 26, 1974 and recorded March 27, 1974 in Miscellaneous Book 24, Pages 753 through 756 (the “Maintenance and Utility Covenant”).

- C. Spanish Cove Corp., an Alabama Corporation, did execute, deliver and record that certain instrument entitled Declaration of Restrictive Covenants and Conditions Applicable to Spanish Cove Development dated March 14, 1974 and recorded March 27, 1974 in Miscellaneous Book 24, Pages 757 through 766 (the '1974 Declaration').
- D. Sp Cove Properties Corp., an Alabama Corporation, the successor-in-interest to Spanish Cove Corp., an Alabama Corporation, did execute, deliver and record that certain instrument entitled Amended and Restated Declaration of Restrictive Covenants and Conditions Applicable to Spanish Cove Development dated February 23, 1988 and recorded February 24, 1988, in Miscellaneous Book 61, Pages 1288 through 1300 (the "1988 Amended Declaration").
- E. The Articles of Incorporation of POASC is dated July 18, 1991 and recorded July 18, 1991 in Miscellaneous Book 69, Pages 157 through 159 (the Articles of Incorporation"). See instrument dated January 13, 1992 and recorded January 21, 1992, in Miscellaneous Book 70, Page 402, instrument dated June 4, 1992 and recorded June 12, 1992, in Miscellaneous Book 71, Page 678 and instrument dated October 10, 1995 and recorded November 7, 1995 in Miscellaneous Book 85, Page 1131.
- F. The initial By-Laws of POASC were adopted on the 18th day of July, 1991. The By-Laws have been revised or amended.
- G. Sp Cove Properties Corp., an Alabama Corporation, Cove Club of Perdido Bay, Inc., an Alabama Corporation and POASC, did execute and deliver that certain instrument dated July 18, 1991 entitled Assignment and Assumption Agreement Concerning Amended and Restated Declaration of Restrictive Covenants and Conditions Applicable to Spanish Cove Development which instrument is marked exhibit "A" and attached to this Declaration (the 1991 Assignment and Assumption Agreement").
- H. POASC, the successor-in-interest to Sp Cove Properties Corp., an Alabama Corporation, did execute, deliver and record that certain instrument entitled Amended and Restated Declaration of Restrictive Covenants and Conditions Applicable to Spanish Cove Development dated July 27, 1992 and recorded October 15, 1992, in Miscellaneous Book 72, Pages 802 through 817 (the 1992 Amended Declaration").
- I. The Board of Directors of POASC adopted a resolution on June 24, 1993 entitled "Announcement of Rules Enforcement Policy" which became effective July 1, 1993, a copy of which is marked Exhibit "B" and attached to this Declaration (the 1993 Enforcement and Grandfather Resolution").
- J. The Circuit Court of Baldwin County, Alabama, entered an Order and Judgment dated October 12, 1993, in the case styled Spanish Cove Independent Property Owners Association, Inc. vs. Spanish Cove Properties Corp., et al., Case Number CV-91 -757, a copy of which is marked Exhibit "C" and attached to this Declaration.
- K. The Circuit Court of Baldwin County, Alabama entered an Order and Judgment dated June 28, 1999, in the case filed Howard Crary vs. Property Owners Association of Spanish Cove, Inc., Civil Action No. CV-98-263, a copy of which is marked Exhibit "D" and attached to this Declaration.
- L. POASC, did execute and record that certain instrument entitled Amendment to Declaration of Covenants, Conditions and Restrictions Applicable to Spanish Cove dated June 18, 1998 and recorded June 22, 1998 in Miscellaneous Book 99, Pages 976 through 980 (the 1998 Amended Declaration).
- M. POASC owns certain Common Property (as defined in Section 1.13 of this Declaration).

- N. The 1974 Declaration, the 1988 Amended Declaration, the 1991 Assignment and Assumption Agreement, the 1992 Amended Declaration and the 1998 Amended Declaration refer to Spanish Cove as “Spanish Cove Development” or “Subdivision” or “Planned Unit Development”. The maps or plats referred to in Paragraph A of the Recitals of this Declaration refer to Spanish Cove as a Planned Unit Development and as a Subdivision and various other references. One of the purposes of this Declaration is to amend all references in the documents and instruments recited in the Recitals so that Spanish Cove shall be referred to and known as a Planned Unit Development.
- O. The 1974 Declaration provided for amendment in Section III., Paragraph L. The 1988 Amended Declaration provided for amendment in Section IX., Paragraph A.
- P. The 1992 Amended Declaration provided for amendment in Section VII All of the requirements of Section VII of the 1992 Amended Declaration pertaining to the amendment of the 1992 Amended Declaration has been satisfied.
- Q. This Declaration is made pursuant to the amending authority contained in the 1992 Amended Declaration.
- R. This Declaration amends restates and replaces the Maintenance and Utility Covenant, the 1974 Declaration, the 1988 Amended Declaration, the 1992 Amended Declaration and the 1998 Amended Declaration.

The **Recitals** are incorporated into this Declaration as the Recitals fully set out. The recording references in this Declaration are to the Office of the Judge of Probate Baldwin County, Alabama.

NOW, THEREFORE, Property Owners Association of Spanish Cove Inc., an Alabama Corporation declares that the Maintenance and Utility Covenant. 1974 Declaration, 1988 Amended Declaration, 1992 Amended Declaration and 1998 Amended Declaration are all amended, restated and replaced by this Declaration and Spanish Cove (all references to Spanish Cove in this Declaration shall have the same meaning as that set out in Section 1.45 of this Declaration) shall be held, transferred, sold, conveyed, given, purchased or encumbered, rented, used, occupied and improved, subject to the following Easements, covenants, conditions and restrictions, which shall run with Spanish Cove subject to this Declaration and shall be binding on all parties having any right, title or interest in Spanish Cove or any part of Spanish Cove, their heirs, successors and assigns, and shall inure to the benefit of each Owner (as defined in Section 1.30 of this Declaration).

In the event of conflict between or among the Maintenance and Utility Covenant, the 1974 Declaration, the 1988 Amended Declaration, the 1992 Amended Declaration or the 1998 Amended Declaration and this Declaration, then the Maintenance and Utility Covenant, the 1974 Declaration, the 1988 Amended Declaration, the 1992 Amended Declaration and the 1998 Amended Declaration shall be subject and subordinate to the terms, conditions and provisions of this Declaration. It is the intent of this Declaration to amend, supersede and replace any of the terms, conditions and provisions of the Maintenance and Utility Covenant, the 1974 Declaration, the 1988 Amended Declaration, the 1992 Amended Declaration and the 1998 Amended Declaration.

Article I

Definitions

The bolded words and terms in this Declaration shall have the following meaning, unless the context clearly shall indicate otherwise:’

Section 1.01 Areas of geographical parts of Spanish Cove are defined as follows:

- A. **“Residential Lots”** are sometimes commonly referred to as “Bayside” or “Spanish Oaks” and shall mean and refer to all Lots in Spanish Cove for which the Lot numbers are Lot 2000 through Lot 3999 as per plats thereof recorded in Map Book 9, Pages 18 through 29, and re-subdivision plats recorded in Map Book 9, Page 56, Map Book 9, Page 58, Map Book 11, Page 99, Map Book 11, Page 165, Map Book 11, Page 193, Map Book 12, Page 6, Page 54, Page 94 and Map Book 12, Page 109. Residential Lots shall also include Lot 1 through Lot 19 as shown on a re-subdivision plat filed by Rowan Developers, Inc. in Slide 1512-B, a re-subdivision of Block 29 of Spanish Cove, a Planned Unit Development.
- B. **“Recreational Vehicle Lots”** are sometimes commonly referred to as “Land Harbor” and shall mean and refer to, except as provided in this Declaration, all Lots in Spanish Cove for which the Lot numbers are Lot I through Lot 999 as per plats thereof recorded in Map Book 9, Pages 34 through 39, and re-subdivision plats recorded in Map Book 11, Page 150, Map Book 11, Page 164, Map Book 11, Page 166, Map Book 12, Page 7, Slide 1120-B, Slide 1121-A, Slide 1121-B and Slide 1238-B. Provided, However, Recreational Vehicle Lots shall not include Lots 1 through Lot 19 as shown on re subdivision plat filed by Rowan Developers, Inc. in Slide 1512-B, a re-subdivision of Block 29 of Spanish Cove, a Planned Unit Development.
- C. **“Mobile Home Lots”** are sometimes commonly referred to as “Perdido Pines” and shall mean and refer to all Lots in Spanish Cove for which the Lot numbers are Lot 1000 through Lot 1999 as per plats thereof recorded in Map Book 9, Pages 30 through 33, and re-subdivision plats recorded in Map Book 11. Page 50 Map Book 11, Page 98, Map Book 11, Pages 126 through 127, Page 192 and Page 195 and Slide 1192-B, Slide 1202-B, S 1241-B, Slide 1701-B, S 126-A and Slide 1139-A.
- D. **“Commercial Lots”** shall mean and refer to all Lots in Spanish Cove for which the Lot designations are Lot A through Lot K as per plat thereof recorded in Map Book 9, Page 23 and per re subdivision plat recorded in Map Book 10, Page 142.

Section 1.02 “Articles of Incorporation” shall mean and refer to the Articles of Incorporation of Property Owners Association of Spanish Cove, Inc., dated the 18th day of July, 1991 and recorded the 18th day of July, 1991, in Miscellaneous Book 69, Pages 157 through 159. See instrument dated January 13, 1992 and recorded January 21, 1992, in Miscellaneous Book 70, Page 402, instrument dated June 4, 1992 and recorded June 12, 1992, in Miscellaneous Book 71, Page 678 and instrument dated October 10, 1995 and recorded November 7, 1995 in Miscellaneous Book 85, Page 1131.

Section 1.03 “Assessments” shall mean and refer to the procedure under which Lot Owners are called on for financial contributions to POASC as required by this Declaration and are the Assessments referred to in this Declaration.

Section 1.04 “Board of Directors” shall mean and refer to the Board of Directors of POASC. The Board of Directors is the governing body of POASC.

Section 1.05 “Boat” shall mean and refer to any craft for travel or mobile recreation on water, together with any attachment or accessory to said Boat.

Section 1.06 “**Boat Trailer**” means and refers to a Vehicle for hauling a Boat designed to be towed or pulled by a Vehicle.

Section 1.07 “**Building Setback**” shall mean and refer to the distance back from the Lot Property Line (as defined in this Declaration) within which no Improvement may be located above ground unless specifically allowed by this Declaration or the Board of Directors as provided for in this Declaration.

Section 1.08 “**By-Laws**” shall mean and refer to the By-Laws of POASC.

Section 1.09 “**Carport**” shall mean and refer to an Attached or Unattached Improvement consisting of a roof with supporting columns and shall be permanently installed with construction approved by Baldwin County and POASC. Temporary Carports are not permitted.

Revision 3/04/06

Section 1.10 “**Certificate of Compliance**” shall mean and refer to the Certificate of Compliance provided for in Section 4.06 of this Declaration.

Section 1.11 “**Clubhouse**” shall mean and refer to the clubhouse and clubhouses referred to in the Maintenance and Utility Covenant.

Section 1.12 “**Commercial**” shall mean and refer to any activity for the production of income through commerce, trade or business.

Section 1.13 “**Common Property**” shall mean and refer to all real property so designated on any recorded subdivision plat of Spanish Cove or any Improvement, property, building, fixture, facility or other personal property now owned or otherwise acquired by POASC by purchase, gift, lease or otherwise to be devoted to the common use and enjoyment of the Owners of Spanish Cove. Common Property shall include the “Common Properties” as defined in the 1991 Assignment and Assumption Agreement and as described in the Statutory Warranty Deed from Sp Cove Properties Corp. (also known as Sp Cove Properties Corporation) and Cove Club of Perdido Bay, Inc., both Alabama Corporations, to Property Owners Association of Spanish Cove, Inc. dated the 18th day of July, 1991 and recorded July 18, 1991 in Real Property Book 428, Pages 1937 through 1947. By way of identification but not in limitation thereof, the Common Property includes the Wilderness Areas, Clubhouses, recreational areas, Recreational Facilities, office buildings, maintenance buildings common property, piers and bulkheads, pools, shuffleboard courts, horseshoe courts, beach areas, and drainage and flood control facilities, parking lots, walkways, pump houses and Private Roadways in Spanish Cove.

Section 1.14 “**Expenses**” shall mean and include the actual and estimated expenses of operating POASC, including any reserve, as may be found to be necessary and appropriate by the Board of Directors pursuant to this Declaration, the Articles of Incorporation and the By-Laws of POASC.

Section 1.15 “**Conventional Home**” shall mean and refer to any Improvement intended to be used as a Dwelling other than a Recreational Vehicle, Park Model, Park Trailer, Manufactured Home, Mobile Home or Modular Home.

Section 1.16 “**Declaration**” shall mean and refer to this Declaration of Covenants, Conditions and Restrictions Applicable to Spanish Cove, a Planned Unit Development which shall be recorded in the records in the Office of the Judge of Probate of Baldwin County, Alabama, as the same may from time to time be supplemented or amended in the manner described in this Declaration.

Section 1.17 “**Deed**” shall mean and refer to an instrument in writing under which an interest or title to real estate was conveyed and shall include any Deed, assignment, lease or other instrument conveying fee simple title or a leasehold interest in any part of Spanish Cove.

Section 1.18 “Driveway” shall mean and refer to a path for vehicles from the private POASC prepared roadway to a dwelling, accessory improvement or designated parking area.

Revised 01/16/14

Section 1.19 “Dwelling” shall mean and refer to a single-family Improvement on a Lot in which one or more persons reside used to provide living accommodations.

Section 1.20 “Easement” shall mean and refer to any privilege or right recognized by Alabama law which a Person has in the land of another such as a right of way.

Section 1.21 “Grantee” shall mean and refer to a Person who acquires property from another by purchase or otherwise.

Section 1.22 “Grantor” shall mean and refer to a Person who grants or transfers property to another by sale or otherwise.

Section 1.23 “Improvement” shall mean and refer to anything that is built, added or changed from the original configuration and located on, upon or in a Lot. An Improvement shall include, but is not limited to, a Dwelling, building, deck, balcony, patio, porch, pool, parking area, gazebo, well, sprinkler system, or other object, the whole or parts of which are arranged by human agency.

Revision 3/12/11

“Addition” shall mean and refer to any Improvement which is Attached to a Dwelling or Attached to an Accessory Improvement (as defined in this Declaration) and shall include, but not be limited to, an Attached garage, Attached Carport, screen room, deck or porch.

“Accessory Building” shall mean and refer to any Improvement which contains a roof supported by columns or walls and is used or intended to be used for shelter or enclosure of persons and/or property that is Unattached (as defined in this Declaration) from a Dwelling. Carports are not considered to be an Accessory Building.

Revision 3/17/05

“Accessory Improvement” shall mean and refer to any Improvement that is Unattached (as defined in this Declaration) from a Dwelling.

“Attached” shall mean and refer to any Improvement that is connected, joined or fastened to another Improvement and is intended to be Permanent.

“Unattached” shall mean and refer any Improvement that is not connected, joined nor fastened to another Improvement.

Section 1.24 “Lot” shall mean and refer to any plot, parcel or portion of Spanish Cove, with the exception of the Common Property, and shall include, where the context may indicate, any Improvement or fixture located on the Lot.

“Developed Lot” shall mean and refer to the following:

- A. Any Residential Lot upon which a Dwelling is located and a Certificate of Occupancy is issued by the appropriate governmental authority, or in the absence of such Certificate of Occupancy, upon the first (1st) day that the Dwelling is occupied.

If a Dwelling is placed or located so that said Dwelling crosses a contiguous Property Line of two (2) or three (3) Residential Lots and meets the definition of a Developed Lot, only one (1) of said Residential Lots shall be

considered a Developed Lot for the purpose of Assessment and the other Residential Lots shall be considered Undeveloped.

Any Residential Lot that meets the definition of a Developed Lot shall remain a Developed Lot for the purpose of Assessment until the title to the Residential Lot (Developed Lot) is transferred at which time if said Residential Lot (Developed Lot) does not meet the definition of a Developed Lot then the Residential Lot (Developed Lot) shall be reclassified in accordance with this Declaration.

- B. Any Recreational Vehicle Lot upon which a Recreational Vehicle is located for more than six (6) consecutive days, or which is available for rental evidenced by a For Rent sign, other public notice, or by public knowledge. (This change makes any RV lot offered for rent to be assessed.)

Revision 4/01/04

If a Recreational Vehicle is placed or located so that said Recreational Vehicle crosses a contiguous Property Line of two (2) or three (3) Recreational Vehicle Lots and meets the definition of a Developed Lot, only one (1) of said Recreational Vehicle Lots shall be considered a Developed Lot for the purpose of Assessment and the other Recreational Vehicle Lots shall be considered Undeveloped.

Any Recreational Vehicle Lot that meets the definition of a Developed Lot shall remain a Developed Lot for the purpose of Assessment until the title to the Recreational Vehicle Lot (Developed Lot) is transferred at which time if said Recreational Vehicle Lot (Developed Lot) does not meet the definition of a Developed Lot then the Recreational Vehicle Lot (Developed Lot) shall be reclassified in accordance with this Declaration.

- C. Any Mobile Home Lot upon which a Manufactured Home, Mobile Home, Modular Home or Dwelling of the type permitted on Residential Lots is located and a Certificate of Occupancy is issued by the appropriate governmental authority, or in the absence of such Certificate of Occupancy, upon the first (1st) day that the Manufactured Home, Mobile Home, Modular Home or Dwelling of the type permitted on Residential Lots is occupied.

If a Manufactured Home, Mobile Home, Modular Home or Dwelling of the type permitted on Residential Lots is placed or located so that said Manufactured Home, Mobile Home, Modular Home or Dwelling of the type permitted on Residential Lots crosses a contiguous Property Line of two (2) or three (3) Mobile Home Lots and meets the definition of a Developed Lot, only one (1) of said Mobile Home Lots shall be considered a Developed Lot for the purpose of Assessment and the other Mobile Home Lots shall be considered Undeveloped.

Any Mobile Home Lot that meets the definition of a Developed Lot shall remain a Developed Lot for the purpose of Assessment until the title to the Mobile Home Lot (Developed Lot) is transferred at which time if said Mobile Home Lot (Developed Lot) does not meet the definition of Developed Lot then the Mobile Home Lot (Developed Lot) shall be reclassified in accordance with this Declaration.

- D. An Owner of a Developed Lot who also owns a contiguous Undeveloped Lot may store a Recreational Vehicle (which shall not include a Park Model or Park Trailer), Boat (with or without a Boat Trailer) or Utility Trailer on the contiguous Undeveloped Lot and said contiguous Undeveloped Lot shall not be considered a

Developed Lot for the purposes of Assessment. Anything else contained in this **Section 1.24 D** to the contrary, in order to satisfy the requirements of this **Section 1.24 D**, the Owner of the Developed Lot must also be the same Person as the Owner of the Undeveloped Lot and the same Person as the Owner of the Recreational Vehicle (which shall not include a Park Model or Park Trailer), Boat (with or without Boat Trailer) or Utility Trailer and all of the other requirements of this Declaration must be satisfied. No more than one (1) Undeveloped Lot which is contiguous to a Developed Lot as described in this **Section 1.24 D** may be used to store said Recreational Vehicle (which shall not include a Park Model or Park Trailer), Boat (with or without Boat Trailer) or Utility Trailer as provided for in this **Section 1.24**. 0 The term “store” as used in this Section 1.23. D shall mean to place or locate said Recreational Vehicle on said Lot for the purpose of storage and not for the purpose of using said Recreational Vehicle as a Dwelling nor may said Recreational Vehicle be occupied by any Person.

- E. Any Commercial Lot upon which an Improvement is located and a Certificate of Occupancy is issued by the appropriate governmental authority, or in the absence of such Certificate of Occupancy, upon the first (1st) day that the Commercial Lot is occupied or used for any purpose.

“Undeveloped Lot” shall mean and refer to any Lot which is not a Developed Lot.

Section 1.25 **“Maintenance and Utility Covenant”** shall mean and refer to the Maintenance and Utility Covenant by Spanish Cove Corp., an Alabama Corporation, dated March 26, 1974 and recorded March 27, 1974 in Miscellaneous Book 24, Pages 753 through 756.

Section 1.26 **“Majority”** shall mean and refer to those eligible votes, the Owners or other groups as the context may indicate totaling more than fifty percent (50%) of the total eligible number.

Section 1.27 **“Manufactured Home” or “Mobile Home or “Modular Home”** shall mean and refer to a factory-prefabricated single-family Dwelling unit or multiple units of vehicular portable design, and in the case of a Manufactured Home or Mobile Home built on a special Trailer chassis having a Permanent metal frame undercarriage with axles, wheels and pull yoke, which is transported to the Lot. Such dwellings will contain more than six hundred (600) square feet of interior livable area when placed on a Mobile Home lot, but no more than one thousand (1,000) square feet of livable area when placed on a single Recreational Vehicle lot and no more than one thousand two hundred fifty (1,250) square feet when placed on two or more contiguous Recreational Vehicle lots. . A Manufactured Home, Mobile Home or a Modular Home shall meet the requirements of Alabama law, federal law and regulations, where applicable.

Revision 3/12/10

Section 1.27.01 The installation of Manufactured or Mobile Home Units that have been lived in or otherwise used are prohibited on any Mobile Home Lot purchased on or after April 1, 2004. The Board of Directors may grant exceptions or waivers in special circumstances, when used or lived in unit is in like-new condition. The affected property owner must request exception or waiver from the Operations Manager, who will in turn present a formal recommendation to the Board of Directors for approval. The Rule and Regulations as to the Restrictive Covenants will define specific requirements and procedures.

Revision 4/21/11

Section 1.28 **“Member” or “Members”** shall mean and refer to every Person or entity that holds membership in POASC, as provided in this Declaration.

Section 1.29 “**Mortgage**” shall mean and refer to any Mortgage, Deed with vendor’s lien reserved and any and all other similar instruments intended for the purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation.

Section 1.30 “**Burning**” shall mean and refer to the combustion on open ground of any flammable material, specifically including trash, construction debris, yard debris or similar materials, not contained in a grill, fireplace or other suitable container meant for that purpose.

Section 1.31 “**Owner**” shall mean and refer to the holder of record of fee simple title to any Lot. Notwithstanding any applicable theory of any Mortgage, the Owner shall not mean and refer to the mortgagee or the successors or assigns or heirs of said mortgagee, unless such mortgagee has acquired title pursuant to foreclosure or a proceeding or Deed in lieu of foreclosure. The term Owner shall not mean or refer to any lessee of any Owner, nor shall the term Owner mean or refer to any Person holding title merely as security for the payment of a debt. In the event there is of record a Deed granting one (1) or more parties a life estate in any Lot, the Owner of said Lot shall be deemed to be the holder or holders of a life estate, regardless of who owns a fee interest.

Section 1.32 “**Park Trailer**” or “**Park Model**” is designated “Manufactured Home” and shall mean and refer to a factory prefabricated single family living unit which can contain a maximum exterior living area up to one thousand (1,000) square feet in the Recreational Vehicle Lot Section. These units shall provide single-family living quarters when connected to all necessary utilities and shall meet lot constraints according to the Covenants. Singlewide units shall not exceed five hundred (500) square feet, plus Board approved addition of equal size, for a maximum total of one thousand (1,000) square feet. Complete units shall not exceed a maximum total of one thousand (1,000) square feet. These units must meet all requirements of Federal and Alabama law, regulations and standards and shall include, but not limited to, all laws, regulations, and standards.

Revised 3/04/06

Section 1.33 “**Permanent**” shall mean and refer to anything that is meant to last indefinitely or not expected to change in status or condition.

Section 1.34 “**Permit**” shall mean and refer to the written permission or authorization by POASC for any burning, hurricane cleanup, yard sale, construction, repair, maintenance or Improvement on a Lot and shall include the permission or authorization to remove trees or to install on a Lot a Manufactured Home, Mobile Home, Modular Home, Park Model, Park Trailer or any other similar object.

Section 1.35 “**Person**” shall mean and refer to a natural person, corporation, partnership, a limited liability company, trustee or other legal entity.

Section 1.36 “**POASC**” shall mean and refer to Property Owners Association of Spanish Cove, Inc., an Alabama Corporation, or the successors and assigns, and is the same entity created by the Articles of Incorporation.

Section 1.37 “**Private Roadways**” shall mean and refer to the private roads falling within Spanish Cove and includes the entire area, improved or not improved, falling between the Private Roadway lines. The Private Roadways are Common Property. Any reference in this Declaration to Common Property shall also include Private Roadways.

Section 1.38 “**Property Line**” shall mean and refer to the boundary line of any Lot, plot, parcel or portion of a Lot or of Spanish Cove.

“**Front**” shall mean and refer to the Property Line of a Lot which is contiguous to a Private Roadway. In the case where a Lot is contiguous to two (2) or more Private Roadway Property Lines, the Lot Property Line that is the shortest in length shall be considered the Front.

In the case where a Lot is contiguous to two (2) or more Private Roadway Property Lines of equal length, the Owner shall be required to specify in writing to POASC which Lot Property Line is the Front. Once specified, the Front Lot Property Line may not be changed without the specific written approval of the Board of Directors. An Owner must specify in writing to POASC which is the Front prior to POASC being obligated to issue a Permit on said Lot.

“Side” shall mean and refer to the Property Line of a Lot which is not the Front Property Line of a Lot or the Rear Property Line of a Lot.

“Rear” shall mean and refer to the Property Line of a Lot which is the opposite or parallel Property Line from the Front Property Line.

Section 1.39 **“Proxy”** shall mean and refer to the instrument signed by a Member of POASC granting the authority to another Person to vote on any matters for which the Member may vote. The Board of Directors may establish Rules and Regulations pertaining to the term, form and content of the Proxy.

Section 1.40 **“Recreational Facilities”** shall mean and refer to the Common Property owned by POASC for the purpose of indoor or outdoor recreation, including, but not limited to, Clubhouses, piers, tennis and shuffleboard courts and swimming pools.

Section 1.41 **“Recreational Vehicle”** shall mean and refer to a factory-prefabricated Vehicle primarily designed for single-family living quarters for recreational camping or travel use, which either has its own mode power or is mounted on or drawn by another Vehicle. A Recreational Vehicle must meet all requirements of Federal and Alabama law, regulations and standards and shall include, but not be limited to, all laws, regulations and standards for the installation of plumbing, heating, electrical systems and fire safety in a Recreational Vehicle.

Revised 3/04/06

Section 1.41-01 The Installation of a Manufactured Home that has been lived in or otherwise used is prohibited on any Recreational Vehicle Lot purchased on or after April 1, 2004. The Board of Directors may grant exceptions or waivers in special circumstances, when a used or lived in unit is in like-new condition. The affected property owner must request exception or waiver from the Operations Manager, who will in turn present a formal recommendation to the Board of Directors for approval. The Rules and Regulations as to the Restrictive Covenants will define specific requirements and procedures. On or after April 1, 2006, property Owners cannot modify used Class A, B and C Motor Homes, Fifth Wheels or Camping Trailers into a permanent residence on any Recreational Vehicle Lot Without prior inspection and approval.

Revised 3/04/06

Revised 4/21/11

Section 1.42 **“Retaining Wall”** shall mean and refer to a wall of wood, brick, concrete or other suitable material designed to prevent erosion of soil from sharply sloping land or from around Improvements.

Section 1.43 **“Rules and Regulations”** shall mean and refer to the document established by POASC which sets forth the standards and methods for action, conduct and organization to be upheld within Spanish Cove. Rules and Regulations are enforceable by POASC in accordance with the terms, conditions and provisions of this Declaration.

Section 1.44 **“Shed” or “Storage Shed”** shall mean and refer to any Improvement, other than a garage or Carport, which is built of Permanent materials and contains a roof supported by columns or walls and is used or intended to be used for the storage of goods or materials, but not occupied as living quarters.

Section 1.45 “**Sign**” shall mean and refer to an identification, description, illustration, pennant, declaration, banner or device which serves as an announcement, direction or advertisement directing attention to a place, activity, product, Person, institution or business. A Sign shall include all types of mobile Signs in all cases where the use of a Vehicle or Trailer containing or supporting such Sign is for the purpose of advertising.

Section 1.46 “**Spanish Cove**” shall mean and refer to Spanish Cove, a Planned Unit Development, as described in **Paragraph A** of the Recitals of this Declaration and any other property which is part of Spanish Cove, a Planned Unit Development.

Section 1.47 “**Tent**” shall mean and refer to a portable, temporary shelter consisting of canvas, skins, etc., which are stretched over poles usually attached to stakes or an Improvement.

Section 1.48 “**Utility Trailer**” or “**Trailer**” shall mean and refer to a Vehicle used for the purpose of hauling lumber, garden materials, household goods, etc., designed to be towed or pulled by a Vehicle. A Utility Trailer or Trailer may not be a Commercial Vehicle.

Section 1.49 “**Variance**” shall mean and refer to a relaxation of certain requirements contained in this Declaration and certain Rules and Regulations as described in Section 4.09 of this Declaration.

Section 1.50 “**Vehicle**” shall mean and refer to any device on wheels for conveying Persons or objects.

Section 1.51 “**Wilderness Area**” shall mean and refer to land owned by POASC and permitted to remain in an undeveloped state and. in some instances serving as a utility and drainage Easement. 4 Wilderness Area may also be identified as a recreational area or drainage area or buffer zone.

Article II

Section 2.01

Mutuality of Benefit and Obligation

This Declaration is made for the mutual and reciprocal benefit of each and every part of Spanish Cove and is intended to create mutual, equitable servitudes upon Spanish Cove, to create reciprocal rights between the respective Owners and future Owners of Lots in Spanish Cove; and to create a privity of contract and estate between the Grantees of the Lots of Spanish Cove, their heirs, successors and assigns.

Each and every Owner of a Lot or any part of Spanish Cove shall by virtue of becoming an Owner, accept and agree with POASC and with each and every other Owner of a Lot or any part of Spanish Cove, that the terms, conditions and provisions of this Declaration shall:

- A.** Applies to Lots in Spanish Cove or any other part of Spanish Cove:
- B.** Constitute a covenant running with the land (Spanish Cove); and
- C.** Be binding upon POASC and on each Owner of any Lot, part or parcel of Spanish Cove, and upon their respective successors, assigns, heirs and personal representatives.

Article III

Property Rights and Easements

Section 3.01 Easement of Enjoyment by the Owner. Every Owner shall have and is granted a non-exclusive right and Easement of ingress, egress, use and enjoyment in and to the Common Property and Private Roadways necessary for access to the Lot of an Owner and such rights shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

Commercial Business Owners will not have access to amenities or be given a FOB - unless they are also residents of Spanish Cove.

Adopted 4/20/2017

- A. The use of Spanish Cove is subject to the terms, conditions and provisions of this Declaration, the By-Laws and the Rules and Regulations.
- B. The right of POASC to charge reasonable admission and other fees for the use and maintenance of the Common Property and to impose reasonable limits on the use of the Common Property. Provided, however, nothing contained in this Declaration shall be construed to allow POASC to prohibit any Owner from ingress and egress to and from the Lot owned by the Owner.
- C. The right of POASC, in addition to the other rights as set forth in this Declaration, to suspend the voting rights of an Owner and the right to use any of the Common Property for any period during which any Assessment against a Lot remains unpaid, and for any infraction by an Owner, or the family, guests or tenants of an Owner, of this Declaration or of the Rules and Regulations of POASC. Provided, however, nothing contained in this Declaration shall be construed to allow POASC to prohibit any Owner from ingress and egress to and from the Lot owned by the Owner.
- D. The right of POASC to grant Easements in and to the Common Property to any public agency, authority or utility for such purposes as benefit Spanish Cove or portions of Spanish Cove and the Owners of Lots.
- E. The right of POASC to dedicate or transfer all or any part of the Common Property to any public agency, authority or utility for such purposes and subject to such conditions as may be approved by a Majority of the total votes entitled to be cast by Members of POASC who are voting in person or represented by Proxy at a meeting duly called for such purpose.
- F. The right of POASC to borrow, for any purpose, of money equaling up to five percent (5%) of the annual operating budget in effect at the time the Board of Directors passes a resolution authorizing POASC to borrow said sum of money without a vote of the Members. Provided, however, if required by a lender, POASC may give as security for the payment of any such loan a Mortgage or other form of security interest conveying or secured by all or any portion of the Common Property, provided a Majority of the total votes entitled to be cast by Members of POASC who are voting in person or represented by Proxy at a meeting duly called for such purpose shall approve.

POASC may borrow a sum of money in excess of five percent (5%) of the then current annual operating budget of POASC for any purpose and, if required by a lender, may give as security for the payment of any such loan a Mortgage or other form of security interest conveying or secured by all or any portion of the Common Property, provided a Majority of the total votes entitled to be cast by Members of POASC who are voting in person or represented by Proxy at a meeting duly called for such purpose shall approve.

Provided, However, the lien and encumbrance of any such Mortgage or security interest given by POASC shall be subject and subordinate to any and all rights, interests, options, Easements and privileges reserved or established in this Declaration for the benefit of POASC or any Owner, or the holder of any Mortgage, irrespective of when executed, given by POASC or any Owner encumbering any Lot or other property located within Spanish Cove.

- G. Travel on, over and across the Private Roadways and the parking of Vehicles shall be subject to reasonable Rules and Regulations imposed by the Board of Directors.
- H. The rights, duties and obligations as set out in the 1991 Assignment and Assumption Agreement, including, but not limited to, the rights, if any, of the “Bulk Owner” or “Bulk Owner Parties”.

Section 3.02 Delegation of Use Any Owner may delegate the right of enjoyment of said Owner to the Common Property and facilities to the members of the family and social guests of the Owner who reside in Spanish Cove.

Section 3.03 POASC Easement POASC reserves a perpetual Easement for the benefit of POASC or the successors and assigns and licensees of POASC as follows:

- A. Twenty (20) feet along the Front Property Line of each Lot.
- B. Except as provided in Section **3.03.C** and Section **3.03.D** of this Declaration, ten (10) feet along the Side Lot Property Line and Rear Lot Property Line of each Lot.
- C. Provided. However, the perpetual Easements reserved to POASC for POASC or the successors and assigns and licensees of POASC on Recreational Vehicle Lots shall be seven (7) feet on the Side Lot Property Line and Rear Lot Property Line.
- D. Provided, Further, where an Owner of two (2) or more contiguous Lots constructs an Improvement (which has been approved by the Board of Directors in accordance with this Declaration or when said Improvement was constructed prior to the Effective Date of this Declaration in accordance with POASC Rules and Regulations in effect prior to the Effective Date of this Declaration) which is located on the common contiguous Side Lot Property Line said common contiguous Side Lot Property Line shall not be subject to the ten (10) foot Easement referred to in **Section 3.03.B** of this Declaration. Provided, However, no Improvement shall be placed on a common contiguous Side Lot Property Line if the above described perpetual Easement has been or is used for one (1) of the purposes set out in this Declaration and has not been properly vacated in accordance with Alabama Law.

POASC reserves the right of ingress and egress in, over and under said perpetual Easements for the purpose of installing, operating and maintaining the Private Roadways and all types of utilities, drainage ditches and appurtenances thereto, and the right to trim or remove any trees or shrubs necessary for the purpose stated in this Declaration.

No Owner shall have any cause of action against POASC or the assigns and licensees of POASC at law or in equity arising out of the use of said Easement by POASC or the designees of POASC except for gross negligence.

Section 3.04 Drainage Easements Except with prior written permission from the Board of Directors, drainage flow shall not be obstructed nor be diverted from drainage swales, storm sewers and/or utility Easements located on Spanish Cove, or as may appear on any plat of record pertaining to any part of Spanish Cove. POASC may cut drain ways for surface water on the Common Property or on any utility Easement in Spanish Cove wherever and whenever such

action is determined by POASC to be necessary in order to maintain reasonable standards of health, safety and appearance.

Section 3.05 Grading POASC may at any time make such cuts and fills upon any Common Property or upon any utility Easement in Spanish Cove and do such grading and moving of earth as may be necessary to improve or maintain the Common Property or utility Easement to drain surface waters there from; and may assign such rights to the appropriate governmental authority.

Section 3.06 Easement for Governmental, Health, Sanitation and Emergency Services There is granted to the appropriate governmental authorities and to the appropriate private organizations supplying health, sanitation, sewer, water, utilities, police services and any emergency services such as fire, ambulance and rescue services, a non-exclusive Easement, for the purposes set out in this **Section 3.06** for ingress and egress over the Common Property.

Section 3.07 Common Property and Private Roadways The Common Property and Private Roadways are NOT Donated, Dedicated or Granted to the Public. The Private Roadways are Common Property. The Common Property and Private Roadways shall be owned and maintained by POASC.

Section 3.08 1991 Assignment and Assumption Agreement The terms, conditions and provisions of the 1991 Assignment and Assumption Agreement pertaining to the “Bulk Property”, “Bulk Owner” and “Bulk Owner Parties” are incorporated in this Declaration as if fully set out. Provided, However, the terms, conditions and provisions of the 1991 Assignment and Assumption Agreement apply to the extent and only to the extent that the facts meet the definition of “Bulk Property”, “Bulk Owner” or “Bulk Owner Parties” as defined in the 1991 Assignment and Assumption Agreement.

Section 3.09 Section I Paragraph H. of the 1988 Amended Declaration The terms, conditions and provisions of **Section II., Paragraph H** of the 1988 Amended Declaration are incorporated in this Declaration by reference as if fully set out. Section H., Paragraph H of the 1988 Amended Declaration is restated as follows:

- H.** DECLARANT reserves for itself, and its licensees, perpetual easements 20 feet along both sides of all road rights of way; and 10 feet along the side and rear lines of each lot, except that the reservation on recreational vehicle lots shall be 7 feet on the side and rear lines. DECLARANT reserves the right of ingress and egress over such easements for the purpose of installing, operating and maintaining all types of utilities, drainage ditches and appurtenances thereto, and the right to trim or remove any trees or shrubs necessary for the above purpose. Notwithstanding the foregoing, where an owner of two or more adjoining lots construct a building which will cross over or through a common lot line, said consolidated lot shall not be subject to the aforementioned 10 feet easements along the line common to both lots (except in cases where adjoining lots are back to back), provided that such building shall be placed thereon prior to the use of this easement for one of the foregoing purposes. No owner shall have any cause of action against DECLARANT or its licensees at law or in equity arising out of the use of said easement by DECLARANT or its designees except for gross negligence.”

The 1988 Amended Declaration defines **“Declarant”** as Sp Cove Properties Corp., an Alabama Corporation and successor-in-interest to Spanish Cove Corp, an Alabama Corporation.

Pursuant to the provisions of **Section IX., Paragraph A** of the 1988 Amended Declaration, “no amendment, restatement or revocation, however, shall be made of the restrictions in Section II., Paragraphs A or H”.

Section 3.10 **Proviso** All of the Rights, Easements and Privileges provided form this Declaration shall be subject to the right of POASC to adopt and promulgate reasonable Rules and Regulations pertaining to the use of Spanish Cove which shall serve to promote the best interest of the Owners and residents of Spanish Cove. In no event shall the Rules and Regulations conflict with or violate the terms, conditions and provisions of this Declaration, and if such a conflict occurs, then this Declaration shall be controlling and the Rules and Regulations shall be of no force and effect as to the conflict. All Rules and Regulations properly established by POASC shall be binding upon all Owners and occupants and their families, guests, tenants and visitors.

Article IV

Building Regulations

Section 4.01 Written Approval Required Commencing on the Effective Date of this Declaration, no Improvement shall be commenced, erected, placed or moved onto any Lot, nor shall any existing Improvement upon any Lot be altered in anyway which materially changes the Improvement unless plans and specifications (the form and content of said plans and specifications shall meet the requirements of the Board of Directors) thereof shall have been submitted to and approved by the Board of Directors as provided for in this Declaration. Such plans and specifications shall be in such form and shall contain such information as may be required by the Board of Directors, including:

- A. Plans, elevations and specifications showing the nature, kind, height and materials of all Improvements proposed for the Lot.
- B. A site plan of the Lot showing the location with respect to the particular Lot (including proposed Building Setback and free spaces, if any are proposed) of all Improvements, the location of all Improvements with reference to Improvements on adjoining portions of the Lot and the number and location of all parking spaces and driveways on the Lot.
- C. A grading plan for the Lot.
- D. A drainage plan.
- E. U. S. Army Corps of Engineers permit, if required and any other governmental permit required by law or regulation.

All of said plans and specifications shall address any other matters set out in this Declaration, as applicable. All plans and specifications and Improvements must comply with all applicable laws, rules or regulations and building codes of any governmental authority.

No application shall be considered by the Board of Directors nor shall any Permit or Certificate of Compliance be issued unless the Owner is in compliance with all of the terms, conditions and provisions of this Declaration and all Assessments and fees are paid current.

No Improvement may be occupied until a Certificate of Occupancy has been issued by the appropriate governmental authority.

Section 4.02 Basis for Disapproval of Plans and Specifications The Board of Directors shall be entitled to deny the approval of plans and specifications submitted pursuant to this Declaration because of any of the following:

- A. Failure of such plans or specifications to comply with this Declaration, or the Rules and Regulations of POASC;
- B. Failure of such plans or specifications to include information as may have been reasonably requested by the Board of Directors;
- C. Failure of such plans and specifications to include the following:
 - 1. The boundaries of the Lot involved, Easements, adjoining Private Roadways and unusual features;
 - 2. Location and dimensions of all Improvements to be erected, altered or moved and any Improvement already located on the Lot;
 - 3. Area of Lot in square feet;

4. Across floor area of each Improvement;
 5. Design of required parking areas or parking facilities;
 6. Proposed use of Lot and Improvements;
 7. Any other information required by the Board of Directors to determine compliance with this Declaration.
- D. Objections to the location due to violation of this Declaration of any proposed Improvement upon any Lot or with reference to other Lots;
- E. Objection to the site plan, grading plan or drainage plan for any Lot;
- F. Objection to parking areas or parking facilities proposed for any Lot on the grounds of either (1) incompatibility to proposed use and Improvements on such Lot, or (2) the insufficiency of the size of parking areas or parking facilities in relation to the proposed use of the Lot; or
- G. Failure of plans and specifications to take into consideration the particular topography, vegetative characteristics, natural environment and storm water runoff of the Lot.

Approval of any such plans and specifications shall terminate and be rendered void if construction is not begun within six (6) months after such approval unless such six (6) month period is extended by agreement with the Board of Directors in which event the extended time period shall be applicable.

In any case where the Board of Directors shall not approve any plans and specifications submitted pursuant to this Declaration, or approval of said plans and specifications is made only as modified or upon specified conditions, such disapproval or qualified approval shall be accompanied by a written statement of the grounds upon which such action was based. In any such case the Board of Directors shall, if requested. Make reasonable efforts to assist and advise the applicant in order that an acceptable proposal can be prepared and submitted for approval.

THE SCOPE OF REVIEW BY THE BOARD OF DIRECTORS IS LIMITED TO COMPLIANCE WITH THIS DECLARATION ONLY AND DOES NOT INCLUDE ANY RESPONSIBILITY OR AUTHORITY TO REVIEW FOR STRUCTURAL SOUNDNESS, COMPLIANCE WITH BUILDING OR ZONING CODES OR STANDARDS, OR ANY OTHER SIMILAR OR DISSIMILAR FACTORS.

Section 4.03 Retention of Copy of Plans and Specifications Upon approval of any plans and specifications submitted pursuant to this Declaration, a copy of such plans and specifications, as approved, shall be deposited for record with POASC, and shall be retained for a period of no more than six (6) months after completion of the Improvement and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same.

Section 4.04 Effect of Approval and Disapproval- Time for Approval The Board of Directors may promulgate reasonable Rules and Regulations governing the form and content of plans and specifications to be submitted for approval or requiring specific Improvements on Lots, and may issue statements with respect to approval or disapproval of matters which may be presented.

The Rules and Regulations may be amended or revoked by the Board of Directors at anytime, and no inclusion in, omission from or amendment of any such Rule and Regulation or statement shall be deemed to bind the Board of Directors to approve or disapprove any feature or matter subject to approval, or to waive the exercise of the discretion of the Board of Directors as

to any such matter, but no change of the Rules and Regulations shall affect the finality of any approval granted prior to such change.

Approval for use on any Lot of any plans or specifications shall not be deemed a waiver of the right of the Board of Directors, in the discretion of the Board of Directors, to disapprove such plans or specifications or any of the for elements included in said plans and specifications if such plans, specifications, features or elements are subsequently submitted for use on any other Lot or Lots.

Approval of any such plans and specifications relating to any Lot, however, shall be final as to that Lot and such approval may not be revoked or rescinded thereafter, provided, (1) that the Improvement or use shown or described on or in such plans and specifications do not violate any specific prohibition contained in this Declaration, and (2) that the plans and specifications, as approved, and any condition attached to any such approval, have been adhered to and complied with in regard to all Improvements on and use of the Lot in question.

In the event that the Board of Directors fails to approve, disapprove or approve conditionally any plans and specifications as provided in this Declaration within thirty (30) days after proper submission of said plans and specifications, the same shall be automatically appealed to the Board of Directors for consideration. In the event that the Board of Directors fails to approve, disapprove or approve conditionally any plans and specifications provided in this Declaration within fifty (50) days after proper submission of said plans and specifications to the Board of Directors, the same shall be deemed to have been approved, as submitted, and no further action shall be required.

Section 4.05 Permit The form and content of each Permit shall be approved by the Board of Directors. Upon satisfaction of all of the requirements of this Declaration and of the Board of Directors and upon approval of the plans and specifications as provided for in this Article IV the Board of Directors shall issue a Permit to the Owner of the Lot. The Board of Directors shall designate the Person authorized to sign the Permit on behalf of the Board of Directors. The Board of Dir may charge reasonable fees for the application and submittal of the plans and specifications as provided in this Article IV and for the issuing of a Permit. No application shall be considered nor a Permit issued unless all fees and Assessments are paid current. A Permit shall not be issued until the Owner of the Lot has complied with all of the requirements of this Article IV and with all other requirements of this Declaration.

Section 4.06 Certificate of Compliance Upon completion of the construction or alteration of any Improvement in accordance with plans and specifications approved by the Board of Directors, upon written request of the Owner, the Board of Directors shall issue a Certificate of Compliance in form suitable for recordation.

The Certificate of Compliance shall identify such Improvement and the Lot on which such Improvement is placed, and state that the plans and specifications, the location of such Improvement and the use to be conducted on the Lot and Improvement have been approved and that such Improvement complies with the requirements of the Board of Directors.

Preparation and recording of such Certificate of Compliance shall be at the expense of such Owner.

Any Certificate of Compliance issued in accordance with the provisions of this Section 4.06 shall be prima fade evidence of the facts stated in the Certificate of Compliance, and as to any purchaser or encumbrances in good faith and for value, or as to any title insurer, such Certificate of Compliance shall be conclusive evidence that, as of the date of the Certificate of Compliance, all Improvements on the Lot, and the use described in the Certificate of Compliance comply with all the requirements of this Article IV and with all other requirements of this Declaration as to which the Board of Directors exercises any discretionary or interpretive powers.

Section 4.07 Inspection and Testing Rights Any agent or employee of POASC may at any reasonable time or times enter upon and inspect any Lot and any Improvements on said Lot for the purpose of ascertaining whether the maintenance of such Lot and the maintenance, construction, or alteration of the Improvements on said Lots are in compliance with the provisions of the Rules and Regulations and this Declaration. Neither POASC nor any such agent or employee shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

Any such inspection shall be for the sole purpose of determining compliance with the Rules and Regulations and this Declaration, and neither the making of any such inspection, nor the failure to make any such inspection, shall be relied upon by the Owner of a Lot or any third Person or entities for any purpose whatsoever; nor shall any such inspection obligate POASC to take any particular action based on the inspection.

Section 4.08 Waiver of Liability Neither POASC, nor any member of the Board of Directors, agent or employee, shall be responsible for any failure of the Improvements to comply with the requirements of the Rules and Regulations or this Declaration, although a Permit or Certificate of Compliance has been issued, nor for any defects in any plans and specifications submitted, revised or approved in accordance with the foregoing provisions, nor for any structural or other defects in any work done according to such plans and specifications. All Persons relying on, or benefiting from, a Permit or a Certificate of Compliance agree not to sue or make a claim against the Persons referred to in this **Section 4.08** for any cause arising out of the matters referred to in this **Section 4.08** and further agree to and do release said Persons for any and every such cause.

Section 4.09 Variance A Variance is a relaxation of certain requirements contained in this Declaration and certain Rules and Regulations where such Variance shall not be contrary to the interest of the Owners in Spanish Cove and where, owing to conditions peculiar to the Lot and not the result of the actions of the applicant or the Owner, a literal enforcement would result in unnecessary and undue hardship. A Variance may be authorized only by the Board of Directors for height, area, square footage or size of Improvement, size of yards and open spaces, Building Setback, location of Improvements, parking requirements or height of fencing or buffering. Establishment or expansion of a use otherwise prohibited shall not be allowed by Variance, nor shall a Variance be granted because of the presence of non-conformities or use of another Lot.

The provisions of this Declaration providing for a Variance shall not be taken as permitting any Variance from any applicable law, rule or regulation of any governmental authority, or Variance from the requirements of a specific covenant or restriction imposed by Deed or lease which does not give POASC the power to grant a Variance.

Section 4.10 Enforcement The Board of Directors is empowered to enforce the terms, conditions and provisions of this Article IV and this Declaration.

Article V

Zoning and Specific Restrictions

This Declaration shall not be taken as permitting any action or thing prohibited by the applicable laws, rules or regulations of any governmental authority, or by specific covenants or restrictions imposed by any Deed or lease. In the event of any conflict, the most restrictive provision of such laws, rules, and regulations. Deeds, leases, covenants, restrictions or this Declaration shall be taken to govern and control. The Owners shall comply with all applicable laws, rules or regulations of any governmental authority, or of any specific covenants or restrictions imposed on any Lot.

Article VI

Site Development

Section 6.01 Site to be Staked Prior to Tree Cutting After the plan for the Improvement is approved by the Board of Directors as evidenced by the Permit, the site of the Improvement must be staked out and such site approved by the Board of Directors before tree cutting is done. Existing vegetation shall be saved whenever practical to do so. All areas on site and outside the areas of disturbance shall be “corded off” with high visibility surveyor flagging tape and no trees shall be removed from the corded areas without prior approval of the Board of Directors. No tree may be cut or removed without consent of the Board of Directors until the Improvement or plans and specifications and site plan and site staking are approved by the Board of Directors.

Section 6.02 Erosion Control At all times the Owners shall implement erosion control measures to protect the Lot of said Owner and adjacent Lots and adjacent property. This may be accomplished by the use of temporary retention ponds, silt fencing, or other protective measures intended to intercept and filter the excess storm water runoff from the Lot. All erosion control measures, including slope stabilization, must be specified on the grading plan and must be approved by the Board of Directors prior to commencement of grading activities.

Any storm water retention ponds created to implement erosion control measures on a Lot shall not remain as Permanent ponds unless so provided in the grading, site and landscaping plan submitted to and approved by the Board of Directors.

If any portion of Spanish Cove has been identified as ‘wetlands’ pursuant to federal or state law and regulation, such wetlands area shall not be utilized or otherwise developed and improved unless in accordance with all federal, state and local laws and regulations.

If any portion of Spanish Cove is located within an area designated as ‘flood prone’ pursuant to federal law and regulations, all Improvements constructed in said flood prone area must be constructed in accordance with all federal, state and local laws and regulations pertaining to flood prone areas.

Section 6.03 Utility Lines and Appurtenances Commencing with the Effective Date of this Declaration, all new construction for gas, water, sewer, telephone, television cable and electrical feeder and service lines shall be approved by the Board of Directors. To the extent of the interest of the Owner of a Lot, the Owner of a Lot will not erect or grant to any Person, firm or corporation the right, license or privilege to erect or use or permit the use of overhead wires, poles or overhead facilities of any kind for electrical, television cable or telephone service on Spanish Cove (except such poles and overhead facilities as may be required at those places where distribution facilities enter and leave the particular area) without the prior written consent of the Board of Directors.

Article VII

Covenants for Maintenance

Section 7.01 Responsibility of POASC Except, as to the provisions pertaining to the maintenance of the Private Roadway set out in **Section 7.02** of this Declaration, POASC shall maintain and keep in good repair the Common Property, such maintenance to be funded as provided in this Declaration.

Section 7.02 Responsibility of the Owner Each Owner shall keep all Developed Lots and Improvements owned by said Owner, in good maintenance, order and repair, including, but not limited to the painting, repair, replacement, maintenance and care of the exterior of said Improvements, trees, shrubs, grass, walks, driveways and other exterior Improvements all in a manner and with such frequency as is consistent with good property management.

In addition, each Owner shall keep all real property falling between the Property Line of the Lot of said Owner which is adjacent to a Private Roadway and the hard driving surface located within the Private Roadway in good maintenance, order and repair, including, but not limited to the maintenance and care of the trees, shrubs, grass, walks and driveways located within said area all in a manner and with such frequency as is consistent with good property management.

If any Owner fails to perform the duties imposed by this Declaration after fifteen (15) days' written notice from the Board of Directors to the Owner to remedy the condition in question, POASC, shall have the right, through the agents and employees of POASC, to enter upon the Lot in question and to repair, maintain, repaint and restore the Lot or such Improvements and the cost thereof shall be a binding, personal obligation of such Owner when billed by POASC as well as a lien upon the Lot in question. The lien provided in this **Section 7.02** shall have the same enforceability and priority as the lien provided for in **Article XI** of this Declaration.

Each Owner shall keep the lawn area of an Improved Lot in a neat and orderly manner and mowed with such frequency as is consistent with good property management.

If any Owner fails to perform the responsibility imposed by this Declaration after ten (10) days' written notice from the Board of Directors to the Owner to remedy the condition, POASC shall have the right, through the agents or employees of POASC, to enter upon the Lot in question to mow the lawn and the Owner will be billed as set forth in paragraph 3, above.

Revision 4/15/2021

Article VIII

Covenants and Restrictions

POASC is empowered to enforce the following covenants, restrictions and provisions which shall pertain to Spanish Cove and to set forth policy, or Rules and Regulations, as to enforcement of this Declaration or the Rules and Regulations in accordance with this Declaration and the By-Laws.

General Covenants and Restrictions

Section 8.01 through Section 8.33 shall apply to all of the Lots in Spanish Cove.

Section 8.01 Permitted Use The Terms, Conditions and Provisions of Section II., Paragraph A. of the 1988 Amended Declaration are incorporated in this Declaration by reference as if fully set out. **Section. II., Paragraph A** of the 1988 Amended Declaration is restated as follows:

- A. Lots may be used only for the purpose as set forth on the recorded plats and shall be subject to recorded restrictions applicable to the lots on said plats except that DECLARANT reserves the right to erect and use such structures as may be necessary for DECLARANT'S purposes on any lot."

Pursuant to the provisions of **Section IX., Paragraph A** of the 1988 Amended Declaration, 'no amendment, restatement or revocation, however, shall be made of the restrictions in Section II, Paragraphs A or H'.

Section 8.02 Commercial Use Except as provided elsewhere in this Declaration, no Commercial use may be conducted in or from any Lot. Notwithstanding anything else contained in this Declaration to the contrary, the leasing of a Lot for residential use shall not be considered a trade or business within the meaning of this **Section 8.02** This **Section 8.02** shall not apply to the operations of POASC nor to any activity conducted by POASC nor to any portion of Spanish Cove designated by POASC as the business office of POASC nor shall this **Section 8.02** apply to the Commercial Lots.

Provided, however, any Lot Owner shall have the right to use a Dwelling as a model Dwelling, sales office, construction office and business office as may be required, convenient or incidental to the sale of the Dwelling on the Lot so long as the use of said model Dwelling, sales office, construction office and business office shall be limited to a period of no longer than six (6) months and otherwise complies with the requirements of this Declaration. The Board of Directors may extend the time for the use of said Dwelling for the purposes set out in this paragraph.

Provided, further, except as provided in this Declaration, home occupations shall be permitted in a Dwelling on a Mobile Home Lot, Recreational Vehicle Lot or Residential Lot which are clearly incidental to the residential use of the Dwelling and which do not change the residential use and character of the Dwelling or adversely affect the uses permitted. No home occupation shall be permitted which might interfere with the general welfare of the residential use of the surrounding area due to potential noise, increased pedestrian and vehicular traffic or any other conditions which would constitute an objectionable residential use of Spanish Cove. The right to use a Dwelling for the purposes of home occupation shall be subject to reasonable Rules and Regulations promulgated by POASC.

Section 8.03 Building Setback Except as provided in this Declaration, no Improvement, except the surface of a parking area, sidewalk or driveway, fences, Retaining Walls or sprinkler systems, located on any Lot shall be erected, altered, remodeled, constructed or added to so as to be located any nearer to any Lot Property Line than the Building Setback lines shown on the recorded maps or plats of Spanish Cove or as elsewhere set out in this Declaration or in any validly existing legal document properly imposing Building Setback lines on any Lot. Provided,

However, the Board of Directors shall have the power to grant Variances from the requirements of this Declaration or any map or plat of Spanish Cove in accordance with this Declaration. In the event of any conflict, the most restrictive Building Setback shall be taken to govern and control. **Provided, however,** nothing contained in this Declaration shall be implied to authorize the construction of an Improvement upon any Easement.

Section 8.04 Subdivision of Lot and Time Sharing Except as provided in this Declaration, no Lot shall be split, divided or subdivided or the Property Lines of a Lot changed except with the prior written approval of POASC. As to all Lots except Commercial Lots, POASC may permit a division in ownership of any Lot but solely for the purpose of increasing the size of the adjacent Lots. POASC may permit a division of any Commercial Lot so long as the division meets the requirements of POASC. In the event of a division of any Lot, each subdivided part of a Lot shall be subject to Assessments in accordance with any written agreement by and between POASC and all Owners of said subdivided Lot. See **Section 11.02** of this Declaration for a definition of “Full Assessment” and **Section 1.23** of this Declaration for a definition of “Developed Lot” and “Undeveloped Lot”. Any such division, change or re platting shall not be in violation of the applicable subdivision and zoning regulations.

No Lot shall be made subject to any kind of time-share program, interval ownership or similar program whereby the right to exclusive use of the Lot rotates among multiple Owners or members of the program on a fixed or floating time schedule over a period of years.

Section 8.05 Contiguous Lot Ownership Except as provided in this Declaration, for the purposes of this **Article VIII** any Owner who owns two (2) or more contiguous Lots may treat, use and build on the contiguous Lots as though the contiguous Lots were one (1) Lot after making written application and receiving written approval from the Board of Directors. Provided, however, the provisions contained in this **Section 8.05** are subject to:

- A. Any other applicable law, rule or regulation that may apply to the Lots.
- B. Any Easement that affects any Lot including, but not limited to, the Easements referred to in **Section 3.03.**, **Section 3.06.** and **Section 3.09** of this Declaration.
- C. The provisions of this Declaration pertaining to Assessments.

Section 8.06 Parking An Owner of a Lot shall provide space for adequate parking off the Private Roadway in accordance with the Rules and Regulations. Parking must be confined to the interior of the Lot and not on the Private Roadway unless specifically approved by the Board of Directors. No overnight parking on Private Roadways shall be permitted, unless otherwise specifically approved by the Board of Directors.

Parking in Spanish Cove shall be restricted to private Vehicles and only within the parking areas designed and/or designated by the Board of Directors for that purpose. No Owner shall conduct repairs (except in an emergency) or restorations of any Vehicle upon any portion of Spanish Cove. No stripped down, partially wrecked or junk Vehicles or any portion of the stripped down, partially wrecked or junk Vehicles, including discarded or abandoned materials, shall be permitted to be parked or stored upon any Lot or Common Property.

No Commercial Vehicles, Boats, or Boat Trailers shall be permitted to be parked or to be stored at any place within Spanish Cove except in spaces specifically designated by the Board of Directors or as provided in **Section 8.37.**, **Section 8.40** or **Section 8.45** of this Declaration. No Owner shall keep any Vehicle, Boat, Boat Trailer or other property on the Common Property which is deemed a nuisance by the Board of Directors.

The prohibitions on parking contained in this **Section 8.06** shall not apply to temporary parking of Commercial Vehicles used for construction purposes or providing pick-up and delivery services to Spanish Cove which have been approved by the Board of Directors nor to any Vehicles owned or operated by POASC. Subject to applicable laws and ordinances, any Vehicle, Boat, Boat Trailer or Trailer or other property parked or located in violation of this Declaration or in violation of the Rules and Regulations may be towed at the sole expense of the Owner of the Vehicle, Boat, Boat Trailer or Trailer or other property if the Vehicle, Boat, Boat Trailer or Trailer or other property remains in violation for a period of twenty-four (24) hours from the time a notice of violation is placed on the Vehicle, Boat, Boat Trailer or Trailer or other property. POASC or any of the members of the Board of Directors or their officers, agents or employees, shall not be liable to the Owner of any Vehicle, Boat, Boat Trailer or Trailer or other property for trespass, conversion or otherwise, nor guilty of any criminal act, by reason of the towing, and once the notice is posted, neither the removal of said notice, nor failure of the Owner to receive notice for any other reason, shall be grounds for relief of any kind. An affidavit of the Person posting the aforesaid notice stating that the notice was properly posted shall be conclusive evidence of proper posting.

Section 8.07 Common Property Use POASC shall have full control over the Common Property and may establish such Rules and Regulations and conditions for the use of the Common Property as POASC may deem adequate or necessary. POASC shall have full power and authority to suspend or revoke the privilege and license of any Owner, and any member of the household of an Owner or any of the guests, tenants or invitees of an Owner, from using the Common Property, should any such party violate any of the Rules and Regulations or any of the terms, conditions and provisions of this Declaration. Provided, however, nothing contained in this Declaration shall be construed to allow POASC to prohibit any Owner from ingress and egress to and from the Lot owned by the Owner.

Section 8.08 Construction Materials and Foundation Except as provided in this Declaration, all Dwellings shall be placed on a Permanent foundation approved by the Board of Directors. No open basement or foundation shall remain unenclosed without Permanent coverings for a period of more than four (4) weeks. Provided, However, Manufactured Homes, Mobile Homes, Modular Homes, Park Trailers, Park Models and Recreational Vehicles located on a Lot shall not be required to be placed on a Permanent foundation but shall be required to be tied down in accordance with the Rules and Regulations.

Section 8.09 Driveways, Culverts and Retaining Walls Each Owner shall be responsible for building, at the sole expense of the Owner, a driveway and a culvert when required by the Board of Directors. Each driveway and culvert when required by the Board of Directors must be completed on or prior to the completion of the Improvement. All driveways must connect with the adjoining Private Roadway and the parking area on the Lot.

A driveway may be composed of concrete, asphalt, stone, compactable gravel, brick, crushed concrete and other compactable surface

Provided, however, the Board of Directors may require that an Owner install a pipe or pipes under the driveway in the adjoining Private Roadway for the purpose of running electrical lines, cable television lines or other utility lines under ground through said pipe or pipes. The type, quality of materials, location and design of said pipe or pipes must be approved in writing by the Board of Directors.

No construction shall take place on a Private Roadway without the express written permission of the Board of Directors.

When approved by the Board of Directors, Retaining Walls may be constructed within a Building Setback but no other Improvement shall be erected on or upon Retaining Walls or

driveways within a Building Setback unless a Variance is obtained in accordance with this Declaration.

Section 8.10 Tree Preservation No tree having a diameter of two and one-half (2 1/2) inches or more in diameter (measured from a point twelve (12) inches above ground level) shall be removed from any Lot without the express written authorization of the Board of Directors. The Board of Directors shall adopt and promulgate Rules and Regulations regarding the preservation of trees and other natural resources and wildlife upon Spanish Cove. If the Board of Directors shall deem appropriate, the Board of Directors may mark certain trees, regardless of size, as not removable without written authorization. In carrying out the provisions of this **Section 8.10**, POASC and the Board of Directors and the respective agents of each may come upon any Lot during reasonable hours, and with reasonable notice, for the purpose of inspecting or marking trees or in relation to the enforcement and administration of any Rules and Regulations adopted and promulgated pursuant to the provisions of this Declaration. Neither POASC nor the agents of POASC shall be deemed to have committed a trespass or wrongful act by reason of any such entry or inspection.

Section 8.11 Animals No animals, livestock, birds or poultry of any kind shall be raised, bred, harbored or kept on any Lot except that the Owner may keep up to four (4) domesticated household pets. No pets or animals shall be kept for the production of income through Commercial use and may be kept only so long as they or any of them do not become an annoyance or nuisance. All domesticated household pets shall be kept on a leash under the close supervision of their owners or shall, be kept within a fenced in area sufficient to contain the animal.

Should an animal threaten or attack a person or other animal the POASC Board of Directors will require that the animal be removed from Spanish Cove.

Revised 01/15/15

Section 8.12 Signs and Lighting No Sign shall be placed upon any Lot unless specifically approved by the Board of Directors and shall comply with the Rules and Regulations of POASC. Exterior lighting shall be compatible with lighting used on other Improvements in Spanish Cove and shall comply with the Rules and Regulations relating to signs or lighting adopted by POASC. Provided, however, that nothing contained in this Declaration shall prohibit the appropriate display of the American Flag.

Section 8.13 Temporary Improvement Except as provided in this Declaration, no temporary Improvement shall be used as a Dwelling or temporary housing or the like on any Lot. If approved by the Board of Directors, such an Improvement may be used as a security station during construction or other special purpose.

Section 8.14 Air Conditioning Units No water source heat pump heating and air-conditioning systems which discharge heating/cooling water into sewers, wells, Common Property or any areas other than the Lot of said Owner shall be permitted. Closed circuit heat pump, heating and air-conditioning systems may be permitted if approved by the Board of Directors. -

Section 8.15 Chimney Flues Chimney flues shall conform to the Rules and Regulations of POASC.

Section 8.16 Play Equipment All play equipment shall conform to the Rules and Regulations of POASC. Play equipment shall not be allowed to remain on the Common Property when not in use.

Section 8.17 Energy Conservation Equipment All energy conservation equipment shall comply with the Rules and Regulations of POASC.

Section 8.18 Oil or Gas Tanks, Pools, Swimming Pool Equipment All swimming pool equipment and housing must be placed in walled-in or screened areas or landscaped area so that they are not visible from any Common Property, Private Roadways or adjoining Lots. No oil tanks or bottled gas tanks shall be allowed on any Lot or on the Common Property. Provided, however, bottled propane gas tanks may be kept on a Lot for the purpose of providing propane gas to the Lot so long as said propane gas tanks are placed in a screened area and so that they are not visible from any Common Property, Private Roadways or adjoining Lots. Above ground pools or above ground spas or Jacuzzis may be permitted with the approval of the Board of Directors. Any pool or spa or Jacuzzi to be constructed on any Lot shall be subject to the requirements of the Board of Directors, which include, but are not limited to, the following:

- A. Composition to be of material thoroughly tested and accepted by the industry for such construction.
- B. All screening material shall be of a color in harmony with the Improvements on the Lot.

Section 8.19 Wells, Drainage and Irrigation No sprinkler or irrigation system of any type that draws upon water from creeks, streams, rivers, lakes, ponds, wetlands, canals or other ground or surface waters within Spanish Cove shall be installed, constructed or operated within Spanish Cove by any Person, other than POASC, or be utilized by any group of Lots, unless prior written approval has been received from the Board of Directors. Wells must be a minimum of 20ft. with a pipe casing not to exceed 4" diameter. All Permanent sprinkler and Permanent irrigation systems must be installed underground and shall be subject to approval of the Board of Directors. The foregoing sentence shall not apply to movable water hoses and movable water hose sprinkler systems. This **Section 3.19** shall not apply to POASC.

Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas.

Section 8.20 Storm Precautions All Improvements must provide for adequate hurricane strap tie-down or other hurricane protection as required by law or by the Board of Directors.

Section 8.21 Hunting, Firearms and Fireworks The discharge of firearms or fireworks and hunting within Spanish Cove is prohibited except with the prior approval of the Board of Directors. The term "firearms" includes pellet guns and other firearms of all types, regardless of size or type. The term fireworks' includes any device consisting of various combinations of explosive and combustibles that generate colored lights, smoke or noise for amusement.

Section 8.22 Insurance Rates Nothing shall be done or kept on any Lot or in any Improvement or on the Common Property which will increase the rate of insurance on any property insured by POASC without the approval of the Board of Directors nor shall anything be done or kept on any Lot which would result in the cancellation of insurance on any property insured by POASC or which would be in violation of any law.

Section 8.23 Completion of Construction Conventional Homes must be completed within nine (9) months after the construction of same shall have commenced. All other Improvements, including, but not limited to, Manufactured Homes, Mobile Homes, Modular Homes, Park Models, Park Trailers and Recreational Vehicles, must be completed within three (3) months after the construction of same shall have commenced. Erosion must be controlled immediately on the site during construction so as not to affect the neighboring Lots or Common Property. All other erosion control and landscaping must be completed within three (3) months of the completion of construction of the Improvement.

The time limit imposed by this **Section 8.23** on completion of Improvements may be extended by the Board of Directors where such completion is impossible or would result in great hardship to the Owner or builder due to strikes, fires, national emergencies or natural calamities.

Provided, however, in all cases the Board of Directors may extend the time to complete construction on an Improvement for an additional period of three (3) months. During the continuation of construction, the Owner shall maintain the Lot, and any Improvement located on the Lot, in a reasonably clean, safe and uncluttered condition. Upon completion of construction, the Owner shall immediately remove all equipment, tools, construction material and debris from the Lot. Any damage to Private Roadways, paths, Common Property or any other property owned by any Person caused by the Owner or the agent, contractor or other party providing labor or services to the Owner shall be repaired by the Owner. All repairs by the Owner as provided in this **Section 8.23** are subject to the written approval of the Board of Directors.

Section 8.24 Occupants Bound All provisions of this Declaration, the By-Laws and of any Rules and Regulations or restrictions promulgated pursuant to this Declaration that govern the conduct of the Owners and that provide for sanctions against the Owners shall also apply to all occupants, guests and invitees of any Lot. Every Owner shall cause all occupants of the Lot of said Owner to comply with this Declaration, the By-Laws and the Rules and Regulations adopted pursuant to this Declaration, and shall be responsible for all violations and losses to Spanish Cove caused by those occupants, notwithstanding the fact that those occupants of a Lot are fully liable and may be sanctioned for any violation of this Declaration, the By-Laws and Rules and Regulations adopted pursuant to this Declaration.

Section 8.25 Unsightly or Unkempt Conditions It shall be the responsibility of each Owner of a Lot to keep and maintain said Lot in accordance with the terms, conditions and provisions of this Declaration. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done on any Lot which may be or may become an annoyance or nuisance to Spanish Cove. Except as may be authorized in writing by POASC, all personal property shall be housed and kept inside a Dwelling or inside a fully enclosed Improvement. No hazardous materials shall be allowed to be kept in Spanish Cove.

No lumber, metals or bulk materials (except lumber, metals and bulk materials as is usual in the maintenance of an approved Improvement and except building materials during the course of construction of any approved Improvement and which must be stored in such a manner so that said lumber, metals and bulk materials comply with the Rules and Regulations) garbage, waste, refuse or trash shall be kept, stored or allowed to accumulate on any Lot.

PODS (Portable on Demand Storage) may be used in Spanish Cove. Permits must be obtained from the POASC office. Time limit is a maximum of 90 days and may be renewed at the discretion of the Operations Manager. PODS must be placed within property boundaries.

Adopted 4/20/2017

No harmful or noxious materials shall be stored, either inside any Improvement, or outside any Improvement, if said materials pose any significant threat to public health and safety or to individuals within or in proximity to such Improvements.

Garbage, waste, refuse or trash shall be placed in water-proof trash bags or containers with tight-fitting covers to control rodents, flies, obnoxious odors, etc., and must be disposed of in a manner approved by the Board of Directors. Trash and garbage containers shall be screened in such a manner so that they cannot be seen from adjacent and surrounding property, and as approved by the Board of Directors. Such containers for trash and other refuse to be picked up and carried away on a regular and recurring basis may be placed on a Lot adjoining the Private Roadway for a period not to exceed twenty- four (24) hours, beginning on the day before such pick up and ending on the day following such pickup. All trash and garbage containers shall be kept in a clean and sanitary condition.

All electric appliances, accessories and tools must comply with the National Electrical Safety Code, prepared by the National Bureau of Standards, the National Electrical

Code of the National Board of Fire Underwriters and such applicable ordinances and regulations affecting electrical installation which are in effect.

The Board of Directors may adopt and promulgate reasonable Rules and Regulations pertaining to the matters set out in this **Section 8.25** including, but not limited to, the size, shape, color and type of containers permitted and the manner of storage and screening of the personal property on Spanish Cove.

Section 8.26 Sewage Disposal No individual sewage disposal system shall be permitted on any Lot. Prior to completion of a Dwelling or other Improvement which requires sewage disposal, all Lots must use a public sewerage system.

No outside toilets shall be allowed except that a written Permit may be issued by POASC on a temporary basis during construction of an Improvement which has been approved by the Board of Directors. Temporary on-site toilet facilities must be provided during the entire construction period which temporary on-site toilet facilities must be approved by the Board of Directors.

No waste, refuse or litter shall be permitted to enter Perdido Bay or any water course in Spanish Cove.

Section 8.27 Open Burning No Open Burning of any kind shall be permitted upon any Lot unless specifically approved in writing by the Board of Directors. Provided, further, any burning contained in a grill, fireplace or other suitable container must meet the reasonable requirements of POASC.

Section 8.28 Mineral Operations Prohibited No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind whatsoever shall be permitted upon any Lot, nor shall oil wells, derricks, tanks, tunnels, mineral excavations or shafts be erected or permitted to remain on any Lot; however, it is understood that this prohibition does not affect the rights of mineral owner or owners of any interest in minerals that may have been previously reserved or conveyed to others prior to the Effective Date of this Declaration.

Section 8.29 Fences Hedges, Privacy Screens and Ornamental Improvements Except as provided in this Declaration, no fence, wall or hedge shall be allowed which is in excess of six feet (6) in height, measured from the ground. No fence, wall, hedge or privacy screen or other similar Improvement shall be constructed or located on a Lot if such fence, wall, hedge or privacy screen or similar Improvement obstructs the vision to the Private Roadway for drivers of vehicles.

Property Owners around the perimeter of Spanish Cove may, at their expense, erect up to a 10 foot fence between their lot and the perimeter of Spanish Cove.

Revision 04/19/2018

Fences, walls, hedges and privacy screens must satisfy the Rules and Regulations. A Permit must be issued by the Board of Directors prior to the construction of a fence, wall, hedge, privacy screen or similar Improvement.

POASC shall have the right to enter upon any Lot and trim or prune, at the expense of the Owner, any hedge or other planting which in the opinion of POASC, by reason of the location upon the Lot of said hedge or other planting or the height to which said hedge or other planting is permitted to grow so that said hedge or other planting obscures the view of road traffic. Provided, however, that the Owner shall be given fifteen (15) days prior written notice of such action. The terms, conditions and provisions of **Section 7.02** of this Declaration are incorporated in this **Section 8.29** for reference.

Section 8.30 Nuisance No obnoxious, offensive or illegal activities shall be carried on upon any Lot nor shall anything be done on any Lot which may be or may become an annoyance or nuisance.

Section 8.31 Variance The Board of Directors shall have the power to grant Variances as provided for in this Declaration.

Section 8.32 Discrimination Prohibited No action shall at any time be taken by POASC or the Board of Directors which in any manner discriminates against any Owner in favor of any other Owner.

Section 8.33 1993 Enforcement and Grandfather Resolution The 1993 Enforcement and Grandfather Resolution are incorporated in this Declaration as if fully set out.

Covenants and Restrictions Pertaining to Residential Lots

Section 8.34 through Section 8.37 shall apply to all Residential Lots.

Section 8.34 Permitted Uses and Improvements Residential Lots shall be used exclusively for single-family residential uses. Any Dwelling located on a Residential Lot must be constructed in the same manner as a Conventional Home is constructed. No Tent, Boat or Boat with Boat Trailer, Manufactured Home, Mobile Home, Modular Home or Recreational Vehicle shall be used as a Dwelling on a Residential Lot. No permitted Accessory Improvement shall be used as a Dwelling on a Residential Lot. Temporary occupancy of a Recreational Vehicle which shall not include a Park Model or a Park Trailer may be permitted with the specific written approval of the Board of Directors. No more than one (1) Dwelling may be erected or constructed on any one (1) Residential Lot.

Section 8.35 Minimum Dwelling Area The ground floor livable area (heated and cooled area) of the Dwelling located on a Residential Lot, exclusive of porches, balconies, decks, patios, Carports and garages, shall contain the minimum square feet indicated by the letter symbol set forth on each Residential Lot on the plat or plats of the Residential Lots. The letter symbol "A" shall indicate twelve hundred (1200) square feet; "B" shall indicate nine hundred sixty (960) square feet; "C" shall indicate seven hundred twenty (720) square feet.

Section 8.36 Building Setback Except as provided in this Declaration, no Improvement, except the surface of a parking area, sidewalk or driveway, fences, Retaining Walls or sprinkler systems, located on a Residential Lot shall be erected, altered, remodeled, constructed or added to so as to be located nearer to any Lot Property Line than the Building Setback line shown on the recorded maps or plats of Spanish Cove or in any validly existing legal document properly imposing Building Setback lines on any Lot or as follows: **(a) within thirty (30) feet from the Front Lot Property Line; (b) within ten (10) feet from the Side Lot Property Line; and (c) within ten (10) feet from the Rear Lot Property Line. Roof overhangs of Improvements may not extend beyond two (2) feet into the Building Setback.**

In the event of conflict pertaining to a Building Setback on Residential Lots between or among this **Section 8.36** and the Building Setback shown on a recorded map or plat pertaining to Residential Lots, then the most restrictive Building Setback shall apply. Provided, however, nothing contained in this Declaration shall be implied to authorize the construction of an Improvement upon any Easement.

Wilderness Area Building Setback Exception When the Rear Property Line of a Residential Lot adjoins a Wilderness Area, permissible Accessory Improvements may be located on said Residential Lot with a building setback of three (3) feet from the Rear Property Line.

Handicap ramps may be installed in setback areas when no other practicable placement option exists. Property owners must apply for a permit and specify on the application that the

ramp can only be installed in the setback area due to the configuration of the lot, space limitations or safety of the user.

Adopted 03/21/13

Section 8.37 Accessory Improvements Except as provided in this Declaration, no Accessory Improvement on Residential Lots shall be located between the Front Property Line and the Dwelling. Accessory Improvements may be constructed or located on a Residential Lot within one year prior to the construction of a Dwelling. No more than one (1) permissible Accessory Building shall be permitted to be located on a Residential Lot which contains a Dwelling and in the case where two (2) or three (3) Residential Lots are combined into one (1) Residential Lot as provided for in **Section 8.05** of this Declaration due to the Dwelling being located across the common Property Line then, in that event, no more than one (1) permissible Accessory Building shall be permitted to be located on both or all three (3) of the Residential Lots.

In addition to any other requirements imposed by this Declaration, a Shed or Storage Shed must be located on a Lot in a manner which meets all Building Setback requirements of this Declaration and additionally must be located to the rear of a line which cuts in half the distance between the Front Property Line and the Rear Property Line.

Provided, however, no more than a total of two (2) of any of the following may be located on a Residential Lot: Recreational Vehicle (which shall not include a Park Model or a Park Trailer), Boat. (with or without Boat Trailer), Utility Trailer (all limited to private, noncommercial use by said Residential Owner) so long as said Recreational Vehicle (which shall not include a Park Model or a Park Trailer), Boat, Boat Trailer or Utility Trailer meets the other requirements of this Declaration.

Handicap ramps may be installed in setback areas when no other practicable placement option exists. Property owners must apply for a permit and specify on the application that the ramp can only be installed in the setback area due to the configuration of the lot, space limitations or safety of the user.

Adopted 03/21/13

Revised 01/15/15

Covenants and Restrictions Pertaining to Recreational Vehicle Lots

Section 8.38 through Section 8.41 shall apply to all Recreational Vehicle Lots.

Section 8.38 Permitted Uses and Improvements Recreational Vehicle Lots shall be used exclusively for single-family residential uses. Recreational Vehicles, Manufactured Homes, Modular Homes and Conventional Homes, which cannot exceed one thousand (1,000) square feet in size, may be used as a Dwelling on a Recreational Vehicle Lot.

No more than one (1) Recreational Vehicle, one (1) Manufactured Home, one (1) Modular Home or one (1) Conventional Home shall be permitted as a Dwelling on any one (1) Recreational Vehicle Lot. No permitted Accessory Improvement shall be used as a Dwelling on a Recreational Vehicle Lot. Temporary occupancy of a stored or visiting Recreational Vehicle may be permitted with specific written approval of the Board of Directors. Manufactured Homes may include single wide units (formerly known as Park Model units) up to five hundred (500) square feet with additions of equal size approved by the Board of Directors or complete manufactured homes up to the maximum size of one thousand (1,000) square feet as approved by the Board of Directors.

Revision 4/15/10

Contiguous Lots Manufactured Homes. Modular Homes and Conventional Homes up to one thousand two hundred fifty (1,250) square feet of livable area (heated and cooled area), exclusive of porches, decks, patios, carports and garages, are allowed in Recreational Vehicle Lots when placed on two or more contiguous lots. The home must be placed such that the main dwelling footprint falls across at least one lot line separating the contiguous lots. Sufficient parking space shall be reserved to park all planned vehicles (including RV's, boats with trailers and utility trailers) in accordance with POASC parking restrictions.

Revised 3/04/06,

Revised 3/13/10

Section 8.39 Building Setback Except as provided in this Declaration, no Improvement, except the surface of a parking area, sidewalk or driveway, fences, Retaining Walls or sprinkler systems, located on a Recreational Vehicle Lot shall be erected, altered, remodeled, constructed or added to so as to be located nearer to any Lot Property Line than the Building Setback line shown on the recorded maps or plats of the Property or in any validly existing legal document properly imposing Building Setback lines on any Lot or as follows: **(a) within twenty (20) feet from the Front Lot Property Line; (b) within seven (7) feet from the Side Lot Property Line; and (c) within seven (7) feet from the Rear Lot Property Line. Roof overhangs of Improvements may not extend beyond two (2) feet into the Building Setback.**

In the event of conflict pertaining to a Building Setback on Recreational Vehicle Lots between or among this **Section 8.39** and the Building Setback shown on a recorded map or plat pertaining to Recreational Vehicle Lots, then the most restrictive Building Setback shall apply. Provided, however, nothing contained in this Declaration shall be implied to authorize the construction of an Improvement upon any Easement.

Wilderness Area Building Setback Exception When the Rear Property Line of a Recreational Vehicle Lot adjoins a Wilderness Area, Permissible Accessory Improvements may be located on said Recreational Vehicle Lot with a Building Setback of three (3) feet from the Rear Property Line.

Handicap ramps may be installed in setback areas when no other practicable placement option exists. Property owners must apply for a permit and specify on the application that the ramp can only be installed in the setback area due to the configuration of the lot, space limitations or safety of the user.

Adopted 03/21/13

Section 8.40 Accessories Improvements and Additions Except as provided in this Declaration, no Accessory Improvement on Recreational Vehicle Lots shall be located between the Front Property Line and the Dwelling. Accessory Improvements may be constructed or located on a Recreational Vehicle Lot prior to the construction of a Dwelling. No more than one (1) permissible Accessory Building shall be permitted to be located on a Recreational Vehicle Lot.

In addition to any other requirements imposed by this Declaration, a Shed or Storage Shed must be located on a Lot in a manner which meets all Building Setback requirements of this Declaration and additionally must be located to the rear of a line which cuts in half the distance between the Front Property Line and the Rear Property Line.

- A. Provided, however, no more than a total of two (2) of any of the following may be located on a Recreational Vehicle Lot: Recreational Vehicle (which shall not include a Park Model or a Park Trailer), Boat (with or without Boat Trailer) or Utility Trailer (limited to private, noncommercial use by said

Recreational Vehicle owner) so long as said Boat (with or without Boat Trailer) or Utility Trailer meets the other requirements of this Declaration.

Addition An Addition may be Attached to a Recreational Vehicle on one (1) side only and shall be equal to or less than the width of the Recreational Vehicle and if the Addition contains a roof, the roof shall not extend more than three (3) feet beyond the width of the Addition. Any roof overhang shall be compatible with the existing roof line. The length of the Addition shall not extend beyond the front and rear ends of the Recreational Vehicle which shall not include the tongue of the Recreational Vehicle. More than one (1) Addition may be attached to a Recreational Vehicle so long as all Additions do not exceed the requirements of this **Section 8.40**

The exterior construction of an Addition to a Recreational Vehicle shall be compatible in style and material as approved by the Board of Directors.

- B. Sheds** Any Shed on a Recreational Vehicle Lot shall contain no more than three hundred (300) square feet and shall not exceed a height measured from the ground to the apex of the roof of the Shed of fifteen (15) feet.

Revised 9/28/05

- C.** Removal of Addition When the Recreational Vehicle is removed from the Recreational Vehicle Lot; the Recreational Vehicle Lot Owner shall dismantle any Addition to said Recreational Vehicle and remove the same from the Recreational Vehicle Lot. Provided, however, the Board of Directors may extend the time to dismantle any Addition for an additional period of time of three (3) months.

Handicap ramps may be installed in setback areas when no other practicable placement option exists. Property owners must apply for a permit and specify on the application that the ramp can only be installed in the setback area due to the configuration of the lot, space limitations or safety of the user.

Adopted 03/21/13

Section 8.41 Skirting All Manufactured Homes must be skirted in the manner and with materials acceptable to the Board of Directors within sixty (60) days of being placed on the Recreational Vehicle Lot.

Covenants and-Restrictions Pertaining to Mobile Home Lots

Section 8.42 through Section 8.47 shall apply to all Mobile Home Lots.

Section 8.42 Permitted Uses and Improvements Mobile Home Lots shall be used exclusively for single-family residential uses. Only Manufactured Homes, Mobile Homes, Modular Homes or Dwellings of the type permitted on Residential Lots may be used as a Dwelling on a Mobile Home Lot Upon the construction of a Dwelling of the type that is permitted on Residential Lots, then, in that event, all of the terms, conditions and provisions which apply to Residential Lots shall apply to said Mobile Home Lot on which a Dwelling of the type permitted on Residential Lots is constructed. No permitted Accessory Improvement shall be used as a Dwelling on a Mobile Home Lot. Temporary occupancy of a Recreational Vehicle which shall not include a Park Model or a Park Trailer may be permitted with the specific written approval of the Board of Directors. No more than one (1) Manufactured Home, one (1) Mobile Home, one (1) Modular Home or one (1) Dwelling of the type permitted on Residential Lots may be used as a Dwelling on a Mobile Home Lot.

Section 8.43 Minimum Mobile Home Area The ground floor livable area (heated and cooled area) of the Mobile Home Dwelling located on a Mobile Home Lot, exclusive of porches, balconies, decks, patios, Carports and garages, shall contain a minimum square footage of six hundred (600) square feet.

Section 8.44 Building Setback Except as provided in this Declaration, no Improvement, except for the surface of a parking area, sidewalk or driveway, fences, Retaining Walls or sprinkler systems, located on a Mobile Home Lot shall be erected, altered, remodeled, constructed or added to so as to be located nearer to any Lot Property Line than the Building Setback line shown on the recorded maps or plats of the Property or in any validly existing legal document property imposing Building Setback lines on any Lot or as follows: **(a) within thirty (30) feet from the Front Lot Property Line; (b) within ten (10) feet from the Side Lot Property Line; and (c) within ten (10) feet from the Rear Lot Property Line. Roof overhangs of Improvements may not extend beyond two (2) feet into the Building Setback.**

In the event of conflict pertaining to a Building Setback on Mobile Home Lots between or among this **Section 8.44** and the Building Setback shown on a recorded map or plat pertaining to Mobile Home Lots, then the most restrictive Building Setback shall apply. Provided, however, nothing contained in this Declaration shall be implied to authorize the construction of an Improvement upon any Easement.

Handicap ramps may be installed in setback areas when no other practicable placement option exists. Property owners must apply for a permit and specify on the application that the ramp can only be installed in the setback area due to the configuration of the lot, space limitations or safety of the user.

Adopted 03/21/13

Wilderness Area Building Setback Exception When the Rear Property Line of a Mobile Home Lot adjoins a Wilderness Area, permissible Accessory Improvements may be located on said Mobile Home Lot with a Building Setback of three (3) feet from the Rear Property Line.

Section 8.45 Accessory Improvements Except as provided in this Declaration, no Accessory Improvement constructed or located on Mobile Home Lots shall be located between the Front Property Line and the Dwelling. Accessory Improvements may be constructed or located on a Mobile Home Lot within one year prior to the construction of a Dwelling. No more than one (1) permissible Accessory Building shall be permitted to be located on a Mobile Home Lot which contains a Dwelling and in the case where two (2) or three (3) Mobile Home Lots are combined into one (1) Mobile Home Lot as provided for in **Section 8.05** of this Declaration due to the Dwelling being located across the common Property Line then, in that event, no more than one (1) permissible Accessory Building shall be permitted to be located on both or alt three (3) of the Mobile Home Lots.

In addition to any other requirements imposed by this Declaration, a Shed or Storage Shed must be located on a Lot in a manner which meets all Building Setback requirements of this Declaration and additionally must be located to the rear of a line which cuts in half the distance between the Front Property Line and the Rear Property Line. Provided, however, no more than a total of two (2) of any of the following may be permitted on a Mobile Home Lot: R Vehicle (which shall not include a Park Model or Park Trailer), Boat (with or without Boat Trailer) or Utility Trailer so long as said Recreational Vehicle (which shall not include a Park Model or Park Trailer), Boat (with or without Boat Trailer) or Utility Trailer, meets the other requirements of this Declaration.

Handicap ramps may be installed in setback areas when no other practicable placement option exists. Property owners must apply for a permit and specify on the application that the

ramp can only be installed in the setback area due to the configuration of the lot, space limitations or safety of the user.

Adopted 03/21/13

Revised 01/15/15

Section 8.46 Skirting All Manufactured Homes, Mobile Homes and Modular Homes must be skirted in the manner and with material acceptable to the Board of Directors within sixty (60) days of being placed on the Mobile Home Lot.

Section 8.47 Axles, Wheels and Pull Yokes Axles, wheels and pull yokes shall be removed from a Manufactured Home or Mobile Home within sixty (60) days of placing the Manufactured Home or Mobile Home on the Mobile Home Lot.

Covenants and Restrictions Pertaining to Commercial Lots

Sections 8.48 through Section 8.53 apply to all Commercial Lots.

Section 8.48 Permitted Uses and Improvements Except as specifically provided in this **Section 8.48.**, Commercial Lots shall be used exclusively for retail businesses and personal service businesses and services, offices and other compatible uses that serve a relatively small area of medium density residential developments such as Spanish Cove, where an attractive appearance of Improvements and the Lot is important to the successful conduct of business. Except as provided in this **Section 8.48.**, no Commercial use, including industrial, manufacturing or other business enterprises, shall be conducted on any Commercial Lot. In addition, Commercial Lots may be used for single-family residential purposes or multi-family residential purposes such as condominiums or residential care facilities. Commercial Business Owners will not have access to amenities or be given a FOB - unless they are also residents of Spanish Cove.

Revision 4/20/2017

Revision 4/19/2018

Section 8.49 Building Setback Except as provided in this Declaration, no Improvement, except the surface of a parking area, sidewalk or driveway, fences and Retaining Walls. located on a Commercial Lot shall be erected, altered, remodeled, constructed or added to so as to be located nearer to any Lot Property Line than the Building Setback line shown on the recorded maps or plats of Spanish Cove or in any validly existing legal document properly imposing Building Setback lines on any Lot or as follows: **(a) within thirty (30) feet from the Front Lot Property Line; (b) within ten (10) feet from the Side Lot Property Line; and (c) within ten (10) feet from the Rear Lot Property Line. Roof overhangs of Improvements may not extend beyond two (2) feet into the Building Setback.**

In the event of conflict between a Building Setback on Commercial Lots as set out in this **Section 8.49** and the Building Setback shown on a recorded map or plat pertaining to Commercial Lots, then the most restrictive Building Setback shall apply. Provided, however, nothing contained in this Declaration shall be implied to authorize the construction of an Improvement upon any Easement.

Section 8.50 Signs In addition to the requirements set out in Section 8.12 of this Declaration. Signs on Commercial Lots shall be limited to the advertisement of or in connection with the permitted Commercial use activity allowed by Section 8.48 of this Declaration.

Section 8.51 Height No Improvement located on a Commercial Lot may exceed thirty-five (35) feet in height measured from the ground level to the apex of the roof of the Improvement without written permission from the Board of Directors.

Section 8.52 **Parking and Access** Parking areas and access to a Commercial Lot must be approved by the Board of Directors. Except as provided in this Declaration, all Commercial Lots must provide for minimum adequate Permanent off Private Roadway and off public roads parking and loading space in the amount required by any governmental authority having jurisdiction or as specified by this **Section 8.52.**, whichever is more restrictive, and as follows:

- A. Office Use** One (1) parking space for each 200 square feet of gross floor area.
- B. All Other Commercial Use** Four (4) parking spaces for each 1,000 square feet of gross floor area.
- C. Single-family Use** Two (2) parking spaces.
- D. Multi-Family Use** Two (2) spaces for each unit.

Provided, however, anything else contained in this Declaration to the contrary, POASC may increase or decrease the minimum adequate Permanent off Private Roadway and off public roads parking and loading space so long as said minimum parking and loading space complies with any requirement of any governmental authority having jurisdiction.

Section 8.53 **Fence** POASC may require a fence or privacy fence, not exceeding ten (10) feet in height from the ground, along any common Property Line falling between a Commercial Lot and any other Lot.

Article IX

Waterfront Areas and Waterways

Section 9.01 Any Lot which shall abut Perdido Bay or any other waterway shall be subject to the following additional restrictions:

- A.** No wharf, pier, dock, bulkhead or other Improvement or obstruction shall be built or maintained upon any waterfront Lot or into or upon any waterway on the Lot or adjacent to the Lot unless the appropriate governmental permit for such construction has been obtained.
- B.** Except with prior written approval of the Board of Directors, no device may be constructed or installed upon any Lot which shall in any way alter the course of natural boundaries of any waterway or which shall involve or result in the removal of water from any waterway.
- C.** The Owner of each Lot that is contiguous to Perdido Bay or any other waterway shall have if granted by law the right at all times of ingress and egress to and from Perdido Bay or other waterway, but shall be responsible for the maintenance of all Real Property falling between each Property Line of the Lot and the water's edge.
- D.** No waste, refuse or litter shall be permitted to enter Perdido Bay or any other water course in Spanish Cove.
- E.** No construction or dredging is permitted on or in Perdido Bay, i.e., all lands falling below the navigable waters of Perdido Bay and below the mean high tide line, except by permission of the U.S. Army Corps of Engineers or other governmental agencies having jurisdiction.

Article X

Membership and Voting Rights

Section 10.01 POASC The operation and administration of Spanish Cove shall be by POASC. POASC shall have all the common law and statutory powers of a nonprofit corporation and shall have all the powers, duties and authority vested in POASC by Alabama law, the Articles of Incorporation, By-Laws and this Declaration as each may be amended from time to time, including but not limited to the following:

- A. Exercise all of the powers and privileges and to perform all of the duties and obligations of POASC as set forth in this Declaration.
- B. Fix, levy, collect and enforce payment by any lawful means, all charges or Assessments pursuant to the terms of this Declaration; to pay all expenses and all office and other expenses incident to the conduct of the business of POASC including all licenses, taxes or governmental charges levied or imposed against the property of POASC.
- C. Acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of the Common Property to any public agency, authority or utility for such purposes and subject to the terms and conditions of this Declaration.
- D. Grant permits, licenses, and Easements over the Common Property for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of Spanish Cove.
- E. Borrow money and mortgage, pledge, deed in trust, or hypothecate any or all of the real or personal property of POASC as security for money borrowed or debts incurred in accordance with the provisions of this Declaration.
- F. Enter into agreements by which the powers and duties of POASC, or some of them, may be exercised or performed by some other Person.
- G. File suit and bring suit with respect to the powers of POASC.
- H. Exclusive authority and power to maintain a class action and to settle a cause of action on behalf of the Owners in Spanish Cove with reference to the Common Property and with reference to any and all other matters in which all of the Owners have a common interest.
- I. Have and to exercise any and all powers, rights and privileges which a corporation organized under Alabama law may now or hereafter have or exercise.

The foregoing enumeration of powers and authority shall not limit or restrict in any manner the exercise of other and further rights and powers that may now or hereafter be allowed or permitted by Alabama law, or the Articles of Incorporation, By-Laws or by this Declaration.

Section 10.02 Membership Each Owner shall be a Member of POASC. Membership shall be appurtenant to and may not be separate from ownership of a Lot. The membership of an Owner cannot be assigned or transferred in any manner except as an appurtenance to the Lot. The membership of an Owner shall immediately terminate when the Owner ceases to be an Owner.

Section 10.03 Voting

- A. Each Member shall be entitled to cast one (1) vote for each Full Assessment such Member is required to pay with respect to any Lot or Lots owned by such Member. At all membership meetings, a Member shall not be entitled to a vote for any Assessment imposed on said Member which is less than a Full Assessment. For example, a Lot Owner who owns one (1) Developed Lot and three (3) Undeveloped Lots will be

obligated to pay a 1.25 Full Assessment but shall only be entitled to one (1) vote. See **Section 11.02** of this Declaration for a definition of “Full Assessment” and **Section 1.23** of this Declaration for a definition of “Developed Lot” and a definition of “Undeveloped Lot”.

- B. The vote shall be cast by the Owner in the manner provided for in this Declaration and in the By-Laws. At all membership meetings, any Owner may vote either in person or by Proxy. A mail vote can also be held at any time during the calendar year to approve an amendment proposed by either a two-thirds vote of the Board of Directors or by eligible members holding twenty percent (20%) of the total votes entitled to be cast by members of POASC.

Revision 3/16/06

- C. No vote shall be divisible.
- D. Notwithstanding the provisions of this **Section 10.03** if any Assessment required to be paid by a Member is past due at the time the vote is taken, such Member shall not be entitled to vote.

Section 10.04 Rules and Regulations The Board of Directors may make and enforce reasonable Rules and Regulations governing the use of Spanish Cove, which Rules and Regulations shall be consistent with the rights and duties established by this Declaration. Copies of such Rules and Regulations and amendments to the Rules and Regulations shall be made available at the main office of POASC to all Owners. Sanctions may include reasonable monetary fines and suspension of the right to vote and the right to use the Common Property. The Board of Directors shall, in addition, have the power to seek relief in any court for violations or to abate nuisances. Imposition of sanctions shall be as provided in the By-Laws of POASC. In addition, POASC, through the Board of Directors may, by contract or other agreement, enforce local ordinances on Spanish Cove for the benefit of POASC and the Members of POASC.

Section 10.05 Implied Rights POASC may exercise any other right or privilege given to POASC expressly by this Declaration or the By-Laws, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to POASC in this Declaration or reasonably necessary to effectuate any such right or privilege.

Section 10.06 Self-Help In addition to any other remedies provided for in this Declaration, POASC or the duly authorized agent of POASC shall have power to enter upon a Lot or any portion of the Common Property to abate or remove anything or any condition which violates this Declaration, the By-Laws or the Rules and Regulations. Unless an emergency situation exists, the Board of Directors shall give the violating Owner fifteen (15) days written notice of the intent of the Board of Directors to exercise self-help. All cost of self-help, including reasonable attorney's fees actually incurred, shall be assessed against the violating Owner and shall be collected as provided for in this Declaration for imposing Assessments and for the collection of Assessments.

If the violation is the failure of the Owner to maintain the lawn in an orderly manner and mowed with such frequency as is consistent with good property management, POASC, or a duly authorized agent of POASC, shall have the right to enter upon the Lot to remedy the violation after ten (10) days written notice from the Board of Directors to the Owner of the intent to exercise self-help.

Revision 4/15/21

Section 10.07 Right of Entry POASC shall have the right, in addition to and not in limitation of the rights POASC may have, to enter into Lots for emergency, security or safety purposes, which right may be exercised by the Board of Directors, or the officers, agents, employees, managers of the Board of Directors and all police officers, firefighters, ambulance personnel and

similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall be during reasonable hours and after reasonable notice to the Owner or occupant of the Lot.

Section 10.08 Assignment The share of a Member in the funds and assets of POASC cannot be assigned, hypothecated, or transferred in any manner except as an appurtenance to the Lot of said Owner.

Section 10.09 Board of Directors The affairs of POASC shall be conducted by a Board of Directors which shall consist of such number neither less than five (5) nor more than as shall, from time to time, be determined and fixed by the Board of Directors as stated in the By-Laws. The number of Members of the Board of Directors currently authorized by the By-Laws is nine (9).

Section 10.10 By-Laws POASC and the Members of POASC shall be governed by the By-Laws. Except as specifically provided in this Declaration, the By-Laws may be amended as provided for in the By Laws.

- A. **Paragraph 5.11** of the 1991 Assignment and Assumption Agreement prohibiting the amendment of certain provisions of the By-Laws is incorporated in this Declaration for reference as if fully set out **Paragraph 5.11** of the 1991 Assignment and Assumption Agreement is restated as follows:

‘The following provisions of the Association Bylaws shall not be altered, amended or repealed without the prior written consent of each entity or person then included within the defined term Bulk Owner (as said term is defined in the Association Bylaws): Section 1.1.5., Section 1.1.6., Section 1.1.9., Section 1.1.13., Section 1.1.14., Section 1.1.16., Section 3.2., the third sentence of Section 4.1., clause (b) of the second sentence of Section 4.2.1.1., Section 11.5., Section 15.1., and Article Sixteen.’

Provided, however, the terms, conditions and provisions of **Paragraph 5.11** of the 1991 Assignment and Assumption Agreement apply to the extent and only to the extent that the facts meet the definition of Bulk Property’, ‘Bulk Owner’ or ‘Bulk Owner Parties’ as defined in the 1991 Assignment and Assumption Agreement.

- B. **Article Six** of the Articles of Incorporation prohibiting the amendment of certain provisions of the By-Laws is incorporated in this Declaration for reference as if fully set out. Article Six of the Articles of Incorporation is restated as follows:

“The following provisions of the Bylaws of the corporation shall not be altered, amended or repealed without the prior written consent of each entity or person then included within the defined term Bulk Owner (as said term is defined in the Bylaws of the corporation): Section 1.1.5., Section 1.1.6., Section 1.1.9., Section 1.1.13., Section 1.1.14., Section 1.1.16., Section 3.2., the third sentence of Section 4.1., clause (b) of the second sentence of Section 4.2.1.1., Section 11.5., Section 15.1., and Article Sixteen.”

Provided, however, the terms, conditions and provisions of **Article Six** of the Articles of Incorporation apply to the extent and only to the extent that the facts meet the definition of “Bulk Property”, “Bulk Owner” or “Bulk Owner Parties” as defined in the 1991 Assignment and Assumption Agreement.

Section 10.11 Availability of Records POASC shall make available to the Owners, prospective purchasers, first mortgagees and insurers of first mortgagees of any Lot, current copies of this Declaration, By-Laws, Rules and Regulations and other financial books, financial records, financial statements and the most recent audited financial statement of POASC, if such financial statement is prepared. “Available” shall mean available for inspection upon request,

during normal business hours or under reasonable circumstances. POASC shall be entitled to impose a reasonable fee for copying and making available said documents and financial records.

Section 10.12 Reserve Fund POASC shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of Improvements to the Common Property. The fund shall be maintained out of regular Assessments for Common Expenses.

Article XI

Covenant for Maintenance Assessments

Section 11.01 Creation of the Lien and Personal Obligation for Assessments, Charges, Fees and Monetary Fines Except as provided in this Declaration, each Owner of any Lot by acceptance of a Deed for said Lot, whether or not it shall be so expressed in such Deed, is deemed to covenant and agree to pay to POASC annual and special Assessments, charges, fees and monetary fines as may be established from time to time by the Board of Directors. Provided, however, except as provided in this Declaration, no Assessments shall be due on a Commercial Lot or the following described Lots:

Lots 1000 through 1027, Lots 1043 through 1077, Lots 1086 through 1091, Lots 1094 through 1097, Lot 1111, Lot 1112, Lots 1147 through 1155, Lots 1167 through 1185, Lots 1092 and 1093, all as shown on map or plat thereof recorded in Map Book 11, Page 18, et seg and more particularly shown on Map Book 11, Page 31; less and Except any portion which was re platted on Slide 1241-B, Slide 1862-A and Slide 1889-A, Spanish Cove Subdivision, being recorded in the Office of the Judge of Probate of Baldwin County, Alabama.

Lots 1083 through 1085, as shown on map or plat thereof recorded in Map Book 11, Page 18, et and more particularly shown on Map Book 11, Page 31; less and except that portion which was re platted on Slide 1241-B; and Lots 1079 through 1082, as shown on Map Book 11, Page 31; less and except that portion which was re platted on Slide 1241-B, Spanish Cove Subdivision, being recorded in the Office of the Judge of Probate of Baldwin County, Alabama.

Lots 1816 through 1867, both inclusive, and Lots 1871 through 1892, both inclusive Spanish Cove Subdivision, as shown on map or plat thereof recorded in Slide 1120-B, in the Office of the Judge of Probate of Baldwin County, Alabama.

Lots 3051 through 3055, both inclusive, Spanish Cove Subdivision, as recorded in Map Book 9, Page 18, et and more particularly described on Page 26, in the Office of the Judge of Probate of Baldwin County, Alabama.

Lots 3056 through 3094, both Inclusive, Spanish Cove Subdivision, as recorded in Map Book 9, Page 18, et seg, and more particularly described on Page 27, in the Office of the Judge of Probate of Baldwin County, Alabama.

Lots 3098 through 3153, both inclusive, Spanish Cove Subdivision, as recorded in Map Book 9, Page 18, et g., and more particularly described on Page 27, in the Office of the Judge of Probate of Baldwin County, Alabama.

Lots 3159 through 3184, both inclusive, Spanish Cove Subdivision, as recorded in Map Book 9, Page 18, et and more particularly described on Page 27, in the Office of the Judge of Probate of Baldwin County, Alabama.

Lots 3189 through 3223, both inclusive, Spanish Cove Subdivision, as recorded in Map Book 9, Page 18, et and more particularly described on Page 27, in the Office of the Judge of Probate of Baldwin County, Alabama.

Lots 3230 through 3239, both inclusive, Spanish Cove Subdivision, as recorded in Map Book 9, Page 18, et g., and more particularly described on Page 27, in the Office of the Judge of Probate of Baldwin County, Alabama.

Lots 3245 through 3262, both inclusive, Spanish Cove Subdivision, as recorded in Map Book 9, Page 18, et and more particularly described on Page 27, in the Office of the Judge of Probate of Baldwin County, Alabama.

Provided, Further:

- A. When any such Commercial Lot becomes a Developed Lot, either before, on or after November 1, 1999, then said Developed Lot (**Commercial Lot**) shall be assessed in accordance with the provisions of this Declaration.
- B. When any such Lot described in this **Section 11.01** (other than a Commercial Lot) becomes a Developed Lot or is sold or conveyed either before, on or after November 1, 1999, then said Lot shall be assessed in accordance with the provisions of this Declaration.

The annual and special Assessments, fees, charges and fines together with interest, costs and reasonable attorney's fees, shall be a charge on the Lot and a continuing lien upon the Lot against which each such Assessment, fee, charge and fine is made. Each such Assessment, fee, charge or fine, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the Owner of such Lot at the time when the Assessment fell due. The personal obligation for delinquent Assessments, fees, charges and fines shall pass to successors-in-title. Provided, further, POASC shall not be obligated to pay any assessments, fees, charges and fines on any property owned by POASC.

Section 11.02 Rate of Assessment

- A. Each Lot Owner that is obligated to pay Assessments pursuant to this Declaration shall be required to pay Assessments to POASC calculated in accordance with the Formula described in **Section 11.02.B** of this Declaration. For example, a Lot Owner who owns one (1) Developed Lot and three (3) Undeveloped Lots shall be obligated to pay an Assessment equal to a 1.25 Full Assessment. See **Section 11.2** of this Declaration for a definition of "Full Assessment" and **Section 1.23** of this Declaration for a definition of "Developed Lot" and a definition of "Undeveloped Lot".
- B. In order to determine the Assessment to be paid to POASC by each Lot Owner the following calculations must be used:
 - 1. An Assessment Rate imposed upon each Lot Owner by POASC shall be calculated in accordance with the following Formula:

$$\text{Assessment Rate} = X + (.25 \times B) + (15 \times C)$$

Explanation of Terms:

"X" is the number of Developed Lots (or part of Developed Lots in the event of a division of any Lot as provided for in **Section 8.04** of this Declaration) owned by an Owner, or a value of 1.0 if the Owner does not own any Developed Lots.

"B" is the number of Undeveloped Lots (or part of Undeveloped Lots in the event of a division of any Lot as provided for in **Section 8.04** of this Declaration) owned by an Owner in excess of a total of three (3) Lots (Developed Lots or Undeveloped Lots). B may not exceed a value of 5.0.

"C" is the number of Undeveloped Lots (or part of Undeveloped Lots in the event of a division of any Lot as provided for in Section Q4 of this Declaration) owned by an Owner in excess of a total of eight (8) Lots (Developed Lots or Undeveloped Lots).

See **Section 1.23** of this Declaration for a definition of "Developed Lot" and a definition of "Undeveloped Lot".

Example, the Assessment Rate imposed upon a Lot Owner who owns one (1) Developed Lot and three (3) Undeveloped

Lots shall be calculated as follows:

$$\text{Assessment Rate} = X + (.25 \times B) + (.15 \times C)$$

$$\text{Assessment Rate I} + (.25 \times 1) + (.15 \times 0)$$

$$\text{Assessment Rate} = I + .25 \pm 0$$

$$\text{Assessment Rate} = 1.25$$

Therefore, the Assessment Rate imposed upon the Lot Owner in this example is equal to 1.25.

2. The dollar amount of one (I) Full Assessment (“Full Assessment”) is determined by dividing the POASC Common Expenses minus Supplemental Income by the sum of all Assessment Rates imposed on all Lot Owners. Supplement Income shall mean and refer to all income other than income from Assessments and interest income.

As a further example, assuming the POASC Common Expenses minus Supplemental Income as described in the preceding paragraph is Five Hundred Thousand Dollars (\$500,000.00) and further assuming that the sum of all Assessment Rates of the Lot Owners totals 1,389 (rounded) then the dollar amount of one (1) Full Assessment is equal to Three Hundred Sixty Dollars (\$360.00).

3. The Assessment imposed by POASC upon each Lot Owner shall be determined by multiplying the Assessment Rate of each Lot Owner by the Full Assessment.

Therefore, assuming the facts stated in the example set out in **Section 11.02. A** and **Section 11.02.B** of this Declaration, the Lot Owner who owns one (I) Developed Lot and three (3) Undeveloped Lots shall be obligated to pay to POASC the Full Assessment of Three Hundred Sixty Dollars (\$360.00) multiplied by the Assessment Rate of the Lot Owner of 1.25 for a total Assessment equal to Four Hundred Fifty Dollars (\$450.00).

- C. Reference is made to Section 8.04 of this Declaration pertaining to Assessments imposed in the event of a division of any Lot.

Section 11.03 Date of Commencement of Assessments: Due Dates All Assessments in effect on the Effective Date of this Declaration shall be due and payable as fixed by the Board of Directors prior to the Effective Date of this Declaration. The Board of Directors may revise the Assessments in effect on the Effective Date of this Declaration at any time after the Effective Date of this Declaration in accordance with the provisions of this Declaration. The Board of Directors shall fix the amount of the Assessment against each Lot at least thirty (30) days in advance of each Assessment period. Written notice of the Assessment shall be sent to every Owner subject to said Assessment. The due date of any Assessment shall be fixed by the Board of Directors in the resolution authorizing such Assessment and any such Assessment shall be payable in advance in monthly, quarterly, semiannual or annual installments as determined by the Board of Directors. POASC shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of POASC, setting forth whether the Assessments on a specified Lot have been paid. A properly executed certificate of POASC as to the status of Assessments on a Lot is binding upon POASC as of the date of the issuance of said certificate. Provided however, POASC shall not be obligated to pay any Assessments on any property owned by POASC.

Section 11.04 Effect of Nonpayment of Assessments, Fees, Charges or Fines: Remedies of POASC. Any Assessment, fee, charge or fine not paid within thirty (30) days after the due date shall bear interest thereon at a rate to be set by the Board of Directors, but in no event greater than the maximum percentage rate as may then be permitted under the laws of the State of Alabama. POASC may bring an action at law or in equity against the Owner personally obligated to pay the same, foreclose a lien against the Lot or seek injunctive relief. Interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such Assessment, fee, charge or fine. POASC shall have the right and power to bring all actions against such Owner personally for the collection of each charge as a debt and to foreclose with power of sale the aforesaid lien by all methods available under the laws of the State of Alabama for the enforcement of such liens, including foreclosures by an action brought in the name of POASC in a like manner as a Mortgage lien on real property. The lien provided for in this **Section 11.04** shall be in favor of POASC and shall be for the benefit of all Owners. POASC, acting on behalf of the Owners, shall have the power to bid for an interest foreclosed at such foreclosure sale and to acquire and hold, ease, Mortgage and convey the same.

Article XII

Insurance and Casualty Loss

Section 12.01 POASC POASC is authorized to purchase and maintain insurance on the Common Property and on any Lot owned by POASC, together with any Improvements on said Common Property or said Lot, in such forms and such amounts, with such deductibles, and with such companies as the Board of Directors shall deem appropriate.

- A. All hazard insurance policies obtained by POASC shall designate POASC as the named insured as insurance trustee for the benefit of all Owners and their mortgagees as their respective interests may appear. In the event of loss or damage, all insurance proceeds paid pursuant to a policy purchased by POASC shall be paid to POASC as insurance trustee under the provisions of this Declaration.
- B. POASC shall obtain, if reasonably available, comprehensive public liability insurance with limits and provisions as approved by the Board of Directors.
- C. POASC shall obtain workers' compensation insurance to meet the requirements of Alabama law.
- D. All premiums upon insurance policies purchased by POASC shall be assessed as a Common Expense to the Owners as an Assessment of POASC.
- E. Each Owner shall be deemed to have delegated to POASC the right of said Owner to adjust with insurance companies all losses under policies purchased by POASC, subject to the rights of mortgagees.

Section 12.02 Owner Each Owner of a Lot shall be obligated to obtain, maintain and pay for liability or hazard insurance for the benefit of said Owner. POASC shall not be obligated to obtain, maintain or pay for liability or hazard insurance pertaining to a Lot.

Section 12.03 Reconstruction or Repair after Casualty In the event of the damage or destruction of all or part of any Improvement or Lot, the Owner shall be responsible for the prompt reconstruction and repair of the damaged or destroyed Improvement or Lot after such casualty or, at the election of the Owner, the Improvement shall be removed and the Lot restored to the original condition of the Lot. Provided, However, should the Owner fail to repair or replace the damaged or destroyed Improvement or Lot, or remove the Improvements from the Lot and restore the Lot to the original condition of said Lot, within a reasonable period of time (not to exceed one hundred eighty (180) days), POASC may, but shall not be obligated to, do so for the account of said Owner and may assess the Lot accordingly and, thereafter, be subrogated to any insurance proceeds.

If any Owner fails to perform the duties imposed by this **Section 12.03** after fifteen (15) days written notice from the Board of Directors to the Owner to remedy the condition in question, POASC shall have the right, through the agents and employees of the Board of Directors to enter upon the Lot in question and to repair, maintain, repaint and restore or remove the Improvements on the Lot and restore the Lot to the original condition of said Lot and the cost thereof shall be a binding, personal obligation of such Owner when billed by POASC as well as a lien upon the Lot in question. The lien provided for in this **Article XII** shall have the same enforceability and priority as the lien provided for in **Article XI** of this Declaration.

In the event of the damage or destruction of all or part of the Improvements on the Common Property, POASC shall be responsible for the prompt reconstruction and repair of the Improvements after such casualty. Provided, however, the Board of Directors may elect not to reconstruct or repair the Improvements on the Common Property. Reconstruction or repair shall be mandatory unless a Majority of the Board of Directors vote that it is not necessary to repair or

reconstruct said damaged or destroyed Improvement. Any reconstruction or repair must comply in all other respects with the terms, conditions and provisions of this Declaration.

Article XIII

Amendment

This Declaration may be amended in the following manner:

Section 13.01 Notice Notice of the subject matter of the proposed amendment shall be included in the notice of any meeting of Members of POASC at which a proposed amendment is to be considered.

Section 13.02 Resolution An amendment may be proposed by either a two-thirds (2/3) vote of the Board of Directors or by eligible Members holding twenty percent (20%) of the total votes entitled to be cast by Members of POASC. A resolution certifying the adoption of a proposed amendment by an affirmative vote of not less than two-thirds (2/3) of the votes cast by eligible Members of POASC must be passed by the Board of Directors.

Revised 3/04/06

Section 13.03 Recording A copy of each amendment shall be certified by the President and Secretary of POASC as having been duly adopted and shall be effective when recorded in the Office of the Judge of Probate of Baldwin County, Alabama.

Section 13.04 Proviso Provided, however, no amendment, restatement or revocation of this Declaration shall be made to the provisions set out in **Section 3.09** or **Section 8.01** of this Declaration.

Article XIV

Additional Property and Release of Property

Section 14.01 Additional Property Subject to the terms and conditions of this Declaration, POASC shall have the right to bring within the scheme and operation of this Declaration property which is not part of Spanish Cove (the “Additional Property”).

Section 14.02 Released Property Subject to the terms and conditions of this Declaration, POASC shall have the right to release from the terms and conditions of this Declaration any part of Spanish Cove (the “Released Property”).

Section 14.03 Procedure for Amendment No Additional Property shall be brought within the scheme and operation of neither this Declaration nor the Released Property released from this Declaration unless proposed, approved and adopted in the same manner as provided for in Article XIII of this Declaration.

Section 14.04 Subsequent Amendment Any Additional Property or Released Property authorized by this **Article XIV** shall be evidenced by filing of record in the Office of the Judge of Probate of Baldwin County, Alabama a subsequent amendment (“Subsequent Amendment”) which, with respect to any Additional Property, shall extend the operation and effect of this Declaration to such Additional Property or which, with respect to any Released Property, will release the operation and effect of this Declaration as to such Released Property.

The Subsequent Amendment may contain such complementary additions and modifications of this Declaration and such restrictive covenants as may be necessary or convenient to reflect and adapt to any difference in character of the Additional Property and Released Property and as proposed, approved and adopted as provided for in this **Article XIV**

The terms, conditions and provisions of this **Article XIV** shall not apply to the purchase of property by POASC. POASC shall have the right to purchase property as elsewhere provided in this Declaration.

Article XV

Miscellaneous

Section 15.01 Unrestricted Right of Transfer The right of an Owner to sell, transfer or otherwise conveys the Lot of an Owner shall not be subject to any right of first refusal or a similar restriction.

Section 15.02 Leasing Lots may be leased by the Owners. Provided, however, that such lease and the rights of any tenants under such Lease are made expressly subject to this Declaration and the power of POASC to prescribe reasonable Rules and Regulations relating to the lease and rental of Lots and to enforce the same directly against such tenant or other occupant by the exercise of such remedies as the Board of Directors deems appropriate, including eviction. See R&R

After April 1, 2013 real property may be leased by natural or legal persons who are Owners of Real Property in Spanish Cove by virtue of a Deed evidencing ownership and recorded in the Office of The Judge of Probate in Baldwin County Alabama who are:

1. In good standing as property owners as set out in the Declarations of the Property Owners Association of Spanish Cove, and,
2. Natural persons who formerly occupied the property, or,
3. Trusts, or any legal person or entity valid under Alabama law, which are legal persons created for the benefit of natural persons who formerly occupied the property.

Persons under the definitions set out above are the only persons permitted to act as lessors of real property and are exclusively defined in the Rules and Regulations of POASC as "Owners" with respect to any rental of real property. Leases of real property are permitted, provided, however, that Rental of any property which has a lease commencing after April 1, 2013, shall be restricted such that any owner may rent only one lot, or multiple lots only if such multiple lots constitute one single residence or single dwelling house. Any person purchasing property after April 1, 2013, shall only have the right to lease one property. Leases executed before that date shall be "grandfathered" and allowed until they expire under their own terms, or until the subject property is sold. Multiple properties, which are under lease from one lessor to various lessees, shall also be "grandfathered" such that those multiple properties under lease on April 1, 2013, shall not be subject to this restriction. However, those properties with multiple leases prior to April 1, 2013, may continue to lease the subject property until it is sold, conveyed, transferred or otherwise changes ownership.

Adapted 03/21/13

Section 15.03 No Restrictions on Mortgaging The right of an Owner to mortgage or otherwise encumber the Lot of said Owner shall not be subject to any restriction so long as said mortgage or encumbrance is made subject to the terms, conditions and provisions of this Declaration.

Section 15.04 Acceptance by Grantee The Grantee of any Lot by acceptance of a Deed or other instrument conveying an interest in or title to, or the execution of a contract for the purchase of any Lot shall accept such Deed or other contract upon and subject to each and all of the terms and conditions set out in this Declaration. -

Section 15.05 Indemnity for Damages Each and every Owner and future Owner, in accepting a Deed or contract for any Lot subject to this Declaration, agrees to indemnify POASC for any damage caused by such Owner, or the contractor, agent or employees of such Owner, to the Common Property or Private Roadways, including all surfacing thereon or to water, drainage or

storm sewer lines or sanitary sewer lines owned by POASC, or for which POASC has responsibility, at the time of such damage.

Section 15.06 Severability If any Article, Section, part, clause, provision or condition of this Declaration is held to be void, invalid or inoperative, such voidances, invalidity or inoperativeness shall not affect any other Article, Section, part, clause, provision or condition contained in this Declaration; but the remainder of this Declaration shall be effective as though such Article, Section, part, clause, provision or condition had not been contained in this Declaration.

Section 15.07 Captions and Form of Word The captions preceding the various sections, paragraphs and subparagraphs of this Declaration are for the convenience of reference only, and none of them shall be considered as an aid to the construction of any provision in this Declaration. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, the plural form of any word shall be taken to mean or apply to the singular, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

Section 15.08 Effect of Violation on Mortgage Lien No violation of any of the terms and conditions of this Declaration shall defeat or render invalid the lien of any Mortgage or vendor's lien made or reserved in good faith and for value upon any portion of Spanish Cove. Provided, however, that any mortgage or vendor in actual possession, or any purchaser at any mortgagee's or vendor's lien foreclosure sale shall be bound by and subject to this Declaration as fully as any other Owner of any portion of Spanish Cove.

Section 15.09 No Riveter No provision of this Declaration is intended to be, or shall be construed as a condition subsequent or as creating a possibility of riveter.

Section 15.10 Duration and Amendment This Declaration shall run with and bind Spanish Cove, and shall inure to the benefit of and shall be enforceable by POASC or the Owner of any Property subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of ninety-nine (99) years from the Effective Date of this Declaration after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a Majority of the then Owners, has been recorded within the year preceding the beginning of each successive period often (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated as specified in said instrument.

Section 15.11 Enforcement In the event of a violation or breach of this Declaration or any amendments to this Declaration by any Owner, or employee, agent or lessee of such Owner, the Owner of any Lot or POASC, their heirs, successors and assigns, shall have the right to proceed at law or in equity to compel compliance with the terms and conditions of this Declaration, to prevent the violation or breach of this Declaration, to sue for and recover damages or other dues, or take all such courses of action at the same time, or such other legal remedy that may be appropriate. No delay or failure on the part of an aggrieved party to initiate an available remedy set forth in this Declaration shall be held to be a waiver of that party or an estoppels of that party or of any other party to assert any right available to that party upon the recurrence or continuation of said violation or the occurrence of a different violation.

Damages shall not be deemed adequate compensation for any breach or violation of any provision of this Declaration, but any Person or entity entitled to enforce any provision of this Declaration shall be entitled specifically to relief by way of injunction as well as any other available relief either at law or in equity.

Any party to a proceeding who succeeds in enforcing this Declaration or enjoining the violation of this Declaration against an Owner or any other party may be entitled to recover costs and be awarded a reasonable attorney's fee against such Owner or other party.

Section 15.12 Certificate of Violation In addition to any other rights or remedies available to POASC under this Declaration or at law or equity, POASC shall have the right to file in the records of Baldwin County, Alabama, a Certificate of Violation of this Declaration (which violation shall include, without limitation, nonpayment of Assessments and/or failure to comply with architectural guidelines) upon failure of an Owner to correct a violation of this Declaration within thirty (30) days after written notice of the violation has been given by POASC to the Owner.

Section 15.13 Interpretation by POASC The Board of Directors shall have the right to construe and interpret the provisions of this Declaration, and in absence of an adjudication by a court of competent jurisdiction to the contrary, the construction or interpretation by the Board of Directors shall be final and binding as to all Persons or property benefited or bound by the provisions of this Declaration.

Section 15.14 No Waiver The failure of any party entitled to enforce this Declaration to do so shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to such a violation or breach occurring prior or subsequent thereto. Provided, however, approval of plans pursuant to this Declaration shall be binding on any and all parties as a conclusive determination that such plans are in conformity with this Declaration.

Section 15.15 Effective Date The Effective Date of this Declaration shall be the date that this Declaration is recorded in the Office of the Judge of Probate of Baldwin County, Alabama ("Effective Date").

IN WITNESS WHEREOF, POASC has caused this Declaration to be executed on this 28th day of February, 2002.

Attest:

By: Willard L. Penfold

Its: Secretary

(Corporate Seal)

STATE OF ALABAMA

COUNTY OF BALDWIN

POASC:

Property Owners Association of Spanish Cove, Inc., an Alabama Corporation

By: Sally L. McKinney

Its: President

I, the undersigned authority, a Notary Public in and for said State and County, hereby certify that — Sally L. McKinney, whose name as President of Property Owners Association of Spanish Cove, Inc., an Alabama Corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, that she, as such officer and with full authority, executed the same voluntarily for and as the act of said Corporation.

Given under my hand and seal this 28th day of February 2002.

This document has been scanned from the original and has been checked for grammar and spelling and reflects these changes.

Emphasis has been added to facilitate researching the document. The original document is available for viewing at the POASC office during regular business hours.

Exhibit "A"

Attached to and made a part of the
Amended and Restated Declaration of Covenants, and Restrictions
Applicable to Spanish Cove, a Planned Unit Development

Re: Book 61, Page 1288

ASSIGNMENT AND ASSUMPTION AGREEMENT
CONCERNING AMENDED AND RESTATED
DECLARATION OF RESTRICTIVE COVENANTS AND CONDITIONS
APPLICABLE TO SPANISH COVE DEVELOPMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Agreement") is made as of the 18th day of July, 1991, by and among (i) SP COVE PROPERTIES CORP., on Alabama corporation ("SP Cove"), (ii) COVE CLUB OF PERDIDO BAY INC., an Alabama corporation (the "Cove Club") and (iii) PROPERTY OWNERS ASSOCIATION OF SPANISH COVE, INC., an Alabama nonprofit corporation (the "Association").

RECITALS

- A. On February 23, 1988, SP Cove as successor-in-interest to Spanish Cove Corp., executed that certain Amended and Restated Declaration of Restrictive Covenants and Conditions Applicable to Spanish Cove Development (the "Declaration"), which was filed in the Baldwin County, Alabama records at Miscellaneous Book 61, Page 1288, on February 24, 1988.
- B. The Declaration provides that its covenants, restrictions and limitations shall (a) apply to that certain subdivision known as SPANISH COVE DEVELOPMENT (the "Subdivision"), (b) constitute covenants running with the land, and (c) be binding upon SP Cove as the Declarant under said Declaration and on the present and future owners of each and every part or parcel of the Subdivision, and upon their respective successors, assigns, heirs and personal representatives.
- C. By that certain Warranty Deed dated of even date herewith, simultaneously with the execution and delivery of this Agreement, SP Cove and the Cove Club are conveying certain real property in the Subdivision (the "Common Properties") to the Association concurrently with the organization of the Association.
- D. Simultaneously with the execution and delivery of this Agreement, SP Cove is also conveying by separate instrument certain other real property in the Subdivision (the "Bulk Property") to PERDIDO LAND, INC., an Alabama corporation, and LILLIAN LAND COMPANY, INC., an Alabama corporation, (together, the "Bulk Owner"; which term shall also be deemed to include as the context may require all assignees or transferees of PERDIDO LAND, INC., an Alabama corporation, or LILLIAN LAND COMPANY, INC., an Alabama corporation, who acquire either (a) real property in the Subdivision that is not subdivided into lots or (b) more than two lots of subdivided property in the Subdivision in a single transaction if, and to the extent, that the recorded deed conveying said real property shall specifically

Exhibit "A"-Page 2

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recite that the grantee in said deed shall have the rights, privileges and immunities of a Bulk Owner under this Agreement).

- E. Simultaneously with the execution and delivery of this Agreement, SP Cove is conveying its entire right, title and interest as the Declarant under the Declaration to the Association, except as otherwise provided in this Agreement, in consideration for the Association's release and exculpation of SP Cove and certain related entities of all of its duties, liabilities and obligations under the Declaration.
- F. Simultaneously with the execution and delivery of this Agreement, the Cove Club is conveying its entire right, title and interest in and to the Common Properties, and all of its rights and authority under the Declaration, to the Association in consideration for the Association's release and exculpation of the Cove Club and certain related entities of all of its duties, liabilities and obligations under the Declaration.
- G. The Association is willing to assume the obligations of SP Cove and the Cove Club under the Declaration and to accept title to the Common Properties.
- H. SP Cove, the Cove Club and the Association acknowledge that SP Cove and the Cove Club would not have conveyed their rights and property as aforesaid without the agreement by the Association to accord the Bulk Owner certain rights and privileges as provided in the Agreement.

NOW, THEREFORE, in consideration of these premises, the covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

1. Assignment by SP Cove and the Cove Club. As of the date hereof, SP Cove and the Cove Club hereby assign, transfer and set over unto the Association, its successors and assigns, all of their respective rights, duties, and obligations under the Declaration, provided that the parties hereto agree that the right, duties, and obligations of SP Cove as the Declarant under Section VIII of the Declaration have been assumed by SCWS Enterprises, Inc. ("SCWS," an Alabama corporation which is a wholly owned subsidiary of SP Cove) and are expressly excluded from this Agreement and are not assigned, transferred or set over unto the Association by virtue hereof, and provided further, that the assignment to the Association of the easements reserved for Declarant in Section IT.H. of the Declaration are assigned subject to a prior, nonexclusive, assignment of said easements of even date herewith, by SP Cove and the Cove Club to the Bulk Owner.

Exhibit "A"-Page 3

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2. Assumption by the Association. As of the date hereof and except with respect to certain rights, duties and obligations of SCHS excluded from assignment by Section 1 above, the Association hereby (a) expressly assumes all of the rights, duties, and obligations of SP Cove and the Cove Club under the Declaration; (b) otherwise agrees to be bound by all of the covenants, agreements and obligations of the Declarant under the Declaration; and (c) represents and warrants that it has the full power, authority and legal right to execute this Agreement and to observe and perform all of the covenants, agreements and obligations of the Declaration on the Association's part to observe or perform.
3. Direct and Primary Liability. The Association agrees that its assumption of liability hereunder shall constitute a direct and primary liability under the Declaration.
4. Release. To induce SP Cove and the Cove Club to enter into this Agreement, the Association does, for itself and its attorneys-at-law, attorneys-in-fact, employees, agents, representatives, heirs, administrators, executors, successors and assigns, hereby:
 - a. Release, acquit and forever discharge SP Cove, the Cove Club, Perdido Land, Inc., Lillian Land Company, Inc. and their respective attorneys-in-law, attorneys-in-fact, predecessors, affiliates, subsidiaries, directors, officers, shareholders, employees, agents, representatives, successors and assigns (collectively, the "Released Parties") of and from any and all claims, demands, liabilities, actions, suits, debts, causes of action, obligations, controversies, costs, expenses, accounts, damages, losses and judgements of every kind or character in law, equity or otherwise, including, but not limited to, reasonable attorney's fees and expenses, including, but not limited to, fees of paralegals, fees on appeal, expert witness fees and disbursements (any such claims, demands, etc. being hereinafter referred to as a "Claim"), that the Association ever had, now has, or hereafter has, based upon or by reason of, in whole or in part, any act, omission to act, transaction, practice, conduct, matter, cause or thing of any kind or character that arose or occurred prior to the date of this Agreement, whether known or unknown, suspected or unsuspected, as of such date, including, but not limited to, all matters, claims and things arising out of, relating to or based upon in whole or in part; (I) any matter actionable or claimed to be actionable under any Federal, State or local rule or regulation; (II) any affect that existed or occurred, presently exists, or will in the future exist or occur as a result of any circumstances that

Exhibit "A"-Page 4
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Applicable to Spanish Cove, a Planned Unit Development

existed prior to the date of this Agreement; (III) this Agreement or any matter relating hereto; and (IV) any other matter whatsoever that occurred prior to the date of the Agreement; and

- b. Covenant not to sue the Released Parties or any of them with respect to any of the matters for which release and discharge is set forth in paragraph (a) above.

- 5. Certain Provisions Regarding the Bulk Owner. The Association hereby consents to the conveyance of the Bulk Property from SP Cove and the Cove Club to the Bulk Owner. The Association expressly acknowledges that the Bulk Owner is intended to be and in fact is a third party beneficiary of this Agreement. The Association hereby acknowledges and confirms with respect to the Bulk Owner the following:

5.1 The Bulk Owner has, by virtue of the conveyance by the Cove Club and SP Cove of the Common Properties to the Association, prepaid any and all assessments that the Bulk Owner would otherwise owe to the Association as an owner of Lots (as said term is defined in the Bylaws of the Association as in effect on this date, which Bylaws are hereinafter referred to as the "Association Bylaws"), except for assessments as a Member pursuant to the Association Bylaws.

5.2 The Bulk Owner Parties (as said term is defined in the Association Bylaws) have a non-exclusive perpetual right-of-way easement for ingress, egress, use, and enjoyment over, along across all of the Common Properties (including for purpose of this Section "5" not only the Common Properties as they currently exist but also any other Common Properties the Association may hereafter be granted ownership of or accept maintenance of).

5.3 The Bulk Owner shall have a non-exclusive perpetual right-of-way easement for the installation and maintenance of utilities over, along and across all existing and future roadways, rights-of-way and all other Common Properties.

5.4 The Bulk Owner Parties have the right to use the Common Properties, including the roads, bridges, and the land upon which the same are situated, for ingress and egress to all of the real property conveyed to the Bulk Owner and for ingress and egress to existing amenities and to such amenities as the Bulk Owner may construct or develop.

5.5 The Association shall accept all future roads constructed by the Bulk Owner in the course of this development of the Bulk Property, along with responsibility

Exhibit "A"-Page 5

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Applicable to Spanish Cove, a Planned Unit Development

for maintenance of same on the same terms as the existing roads conveyed to the Association as part of the Common Properties; provided that all such future roads shall be built to the standards of the State of Alabama Highway Department for county roads and that the plans and specifications for the construction of any such roads shall have the approval of such Department prior to construction if required by such Department.

5.6 The Common Properties shall be maintained for the purpose set forth in the development plans for the Subdivision.

5.7 Each Owner (as said term is defined in the Association Bylaws) who becomes the owner of a Lot by acquiring same from the Bulk Owner shall be treated by the Association as a member of the Association having the same rights and privileges as any other member in good standing in the Association.

5.8 The Association shall not, notwithstanding its authority under Section II(A) of the Declaration, erect and use any structure on any lot within the Subdivision owned by the Bulk Owner.

5.9 The Association hereby permanently waives its rights as the Declarant to enforce against the Bulk Owner Section II(P) (which concerns the cutting or removing of trees larger than two and one-half inches in diameter) of the Declaration, provided that such waiver shall apply only with respect to the Bulk Owner's cutting or removal of trees in connection with the construction of roads and utilities.

5.10 The Association shall not seek to alter, amend or consent to any amendment of, the Declaration, pursuant to Section IX(A) thereof or otherwise, without the prior written consent of each entity or person then included within the defined term Bulk Owner.

5.11 The following provisions of the Association Bylaws shall not be altered, amended or repealed without the prior written consent of each entity or person then included within the defined term Bulk Owner (as said term is defined in the Association Bylaws) Section 1.1.5, Section 1.1.6, Section 1.1.9, Section 1.1.13, Section 1.1.14, Section 1.1.16, Section 3.2, the third sentence of Section 4.1, clause (b) of the second sentence of Section 4.2.1.1, Section 11.5, Section 15.1 and Article Sixteen.

6. Governing Law. This Agreement is delivered in and made and shall in all respects be construed according to, the laws of the State of Alabama.

Exhibit "A"-Page 6

Attached to and made a part of the
Amended and Restated Declaration of Covenants, and Restrictions
Applicable to Spanish Cove, a Planned Unit Development

7. Binding Agreement. This Agreement and each and every provision hereof shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, representatives, executors, successors and assigns, and shall also inure to the benefit of the Bulk Owner and of each and every future owner of real property within the Subdivision and their respective heirs, administrators, representative, executors, successors and assigns.
8. Notices. Any notice which any party may deem necessary or desirable to give pursuant to the terms of this Agreement or the Declaration shall be deemed duly given if delivered to the parties hereto at the respective addresses set forth below or to such other addresses as any party may designate by notice in writing as its address for future notice purposes:

If to SP Cove or
the Cove Club:

SP Cove Properties Corp. or
Cove Club of Perdido Bay Inc.
c/o Citicorp Real Estate, Inc.
24th Floor, Zone 9C
599 Lexington Avenue
New York, NY 10043 (for US Mail)
New York, NY 10022 (for Fed Ex)
Attention: Mr. Dennis Diczok

with a copy to:

Holt, Ney, Zatcoff & Wasserman
100 Galleria Parkway, Suite 600
Atlanta, Georgia 30339
Attention: Robert G. Holt, Esq.

If to the Association:

Property Owners Association of
Spanish Cove, Inc.
Post Office Box 218
County Rd 99 and Clubhouse Drive
Lillian, Alabama 36549
Attention: Chairman

9. Miscellaneous. Each party hereto acknowledges and agrees that (a) it has thoroughly read and reviewed the terms and provisions of this Agreement and is familiar with same; (b) the terms and provisions contained herein are clearly understood by it and have been fully and unconditionally consented to by it; (c) each has had full benefit and advice of counsel of its own selection,

Exhibit "A"-Page 7

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Amended and Restated Declaration of Covenants, and Restrictions
Applicable to Spanish Cove, a Planned Unit Development

or the opportunity to obtain the benefit and advice of counsel of its own selection, in regard to understanding the terms, meaning and effect of this Agreement; (d) the execution of this Agreement by each party hereto is done freely, voluntarily, with full knowledge, and relying on no other representations either written or oral, express or implied;. (a) the consideration received hereunder by each party has been actual and adequate; and (b) this Agreement supersedes all prior agreements and understandings amount the parties, may not be contradicted by any prior or contemporaneous agreement, and may not be changed or terminated orally.

10. Headings. The headings of the Sections of this Agreement are included for ease or reference only, are not intended to represent the full scope of the matters included or excluded from such provisions, and shall not be used to interpret this Agreement or to construe the intent of the parties.
11. Further Assurances. Each party hereto agrees to execute and deliver any and all additional instruments and documents reasonably necessary to further evidence and perfect the terms, covenants, conditions, agreements and obligations of this Agreement and the transactions contemplated hereby.
12. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original counterpart and all of which together shall constitute one and the same Agreement.
13. Survival of Provisions. All provisions in this Agreement shall survive the execution and delivery of this Agreement and the conveyance of the Common Properties to the Association, and no provisions of this Agreement shall merge with the transfer of title.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date and year first above written.

SP COVE PROPERTIES CORP., an
Alabama corporation
By: Dennis Diczok
Title: Vice President

PROPERTY OWNERS ASSCIAITON OF
SPANISH COVE, INC., an Alabama
nonprofit corporation
By: Mel Dashevsky
Title: Chairmam

Exhibit "B"
Attached to and made a part of the
Amended and Restated Declaration of Covenants, Conditions and Restrictions
Applicable to Spanish Cove, a Planned United Development

PROPERTY OWNERS ASSOCIATION OF SPANISH OCVE, INC.
BOARD OF DIRECTORS WORKING SESSION
JUNE 24, 1993

PRESENT

Lou Boehms	Chris Hovde
Jean Bourne	Leo Ittenbach
Roberta Clinton	Bill O'Neal
Dan Dayton	George Search
Jean Heflin	Herb Tate
	Gen Wabnitz

Chairman Chris Hovde Called the meeting to order at 9:00 a.m.

Approval of Minutes:

June 10, working session minutes were changed as follows:

Communications Committee, paragraph 2, sentence 1, "First Class Permit for Bulk Mail."

Long Range Planning Sub-Committee: paragraph 2, The word "meeting" corrected. Paragraph 5, "total of 410 to 460 lots."

Covenants, By Laws, Rules & Regulations Committee: Paragraph 2, sentence 4, of change to "or".

MOTION MADE BY Dan Dayton to accept the minutes as changed.

MOTION SECONDED by Roberta Clinton. MOTION CARRIED.

OPERATIONS MANAGER REPORT: John Newman (See Addendum #1)

John reported that as of June 22, we have a total of 1266 members of POASC owning 1737 lots. This is an increase of 4 owners and 4 lots.

From May 25 to June 22, 1993, 19 building permits were issued.

Security reported 3, 911 calls.

Accounts receivable past due amount is \$19,651, for 65 accounts.

The radio Towner has been re-tensioned and re-grounded.

A new Coke machine has been installed at the Bayside Clubhouse.

COMMUNICATIONS COMMITTEE: Jean Bourne

MOTION was made by Jean Bourne to authorize the purchase of a Third Class Bulk Mail Permit. SECONDED by Bud Ittenbach. MOTION CARRIED.

Exhibit "B" – Page 2

Attached to and made a part of the
Amended and Restated Declaration of Covenants, Conditions and Restrictions
Applicable to Spanish Cove, a Planned United Development

BOARD OF DIRECTORS WORKING SESSION
JUNE 24, 1993
Page 2

PLANS DEVELOPMENT & MAINTENANCE COMMITTEE: Leo Ittenbach.

See addendum #2)

Bud reported that Mike Russell resigned from the Long Range Planning Sub-Committee.

The Questionnaire is now complete and is ready to go out as soon as mailing can be arranged.

Rick Patterson has resigned as Chairman of the Building and Environmental Sub-Committee.

The Committee determined the need for a meeting with the POASC Covenants Committee to clarify jurisdictional responsibilities in regard to Building Permits.

The Committee recommends to the Board that it request POASC Management to add the needed ducts to the existing air conditioning system to provide adequate cooling in the RV Clubhouse center section. Also that insulation film be installed on the sliding glass doors.

Bud read a letter from LeRoy Vanderheiden asking for a 2' variance off Rico Drive. Mr. Vanderheiden was instructed to go to the office and apply for a variance request asap so the committee could act on it.

COVENANTS, BY LAWS, RULES & REGULATIONS COMMITTEE:

Roberta Clinton. (See Addendum # 3).

Roberta asked the Board to approve Amendment # 1 of the "Announcement of Rules Enforcement Policy."

MOTION was made by Roberta Clinton to approve amendment # 1 to the "Announcement of Rules Enforcement Policy" which reads as follows: "As of July 1, 1993, all restrictions and conditions contained in the AMENDED AND RESTATED DECLARATION OF RESTRICTIVE COVENANTS AND CONDITONS APPLICABLE TO SPANISH COVE and the PROPERTY OWNERS ASSOCIATION OF SPANISH COVE, INC., BY LAWS and the SPANISH COVE RULES AND REGULATIONS will be enforced. No previous rulings may be construed as a precedent.

Any existing fixed structure/s which are in violation will be permitted as temporarily non-conforming, but may not be re-built, modified or replaced out of conformance if destroyed or removed.

Exhibit "B" – Page 3

Attached to and made a part of the
Amended and Restated Declaration of Covenants, Conditions and Restrictions
Applicable to Spanish Cove, a Planned United Development

BOARD OF DIRECTORS WORKING SESSION

JUNE 24, 1993

Page 3

Violations of Section IV-C of the Covenants wherein more than one RV, Park Model or combination thereof are on one lot will be permitted as a non-conforming condition until such time as one of the units is sold or permanently removed. Replacing the sold unit will be considered a violation of Section IV-C. Under no circumstances may a unit extend into the 10' frontage easement.

All other on-going violations must be brought into conformity."

MOTION SECONDED by Gene Wabnitz. MOTION CARRIED.

FINANCE COMMITTEE REPORT: George Search (See addendum # 4)

Fiscal year to date income is \$117,193. Expenses are \$48,560. Net cash on hand is \$179,242. Asset repair Fund balance is \$41,164, the road re-surfacing fund balance is \$4,377 after payment for recent road re-surfacing.

The Budget Sub-Committee continues to work on classifying expense.

Exhibit “C”

Attached to and made a part of the
Amended and Restated Declaration of Covenants, Conditions and Restrictions
Applicable to Spanish Cove, a Planned United Development

IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

SPANISH COVE INDEPENDENT	:	
PROPERTY OWNERS ASSOCIATION	:	
INC.,	:	
	:	
Plaintiff,	:	
v.	:	CASE NO. CV-9I-757
	:	
SPANISH COVE PROPERTIES CORP.,	:	(Honorable James H. Reid)
et al.,	:	
	:	
Defendants,	:	

ORDER AND JUDGMENT

This case having been tried before the Court without a jury and this Court having heard and considered all of the evidence and arguments of counsel finds for the defendants and makes the specific findings of fact and conclusions of law:

1. The transfer of power, right and authority from Spanish Cove Corporation, The Cove Club, Inc. and Spanish Cove Utilities Inc. (collectively “the Original Developer”) to the Cove Club of Perdido Bay, Inc., and SP Cove Properties Corp. (collectively “the Bank”) to amend the “Declaration of Restrictive Covenants and Conditions Applicable to Spanish Cove Development” and the Maintenance and Utility Covenant” (collectively the “Original Restrictions”) was legally accomplished so as to transfer full power, right and authority to amend;
2. The procedures established in the Original Restrictions to amend them were substantively and procedurally sufficient and not in violation of any laws or rights of any of the parties subject to the Original Restrictions;

Exhibit "C" – Page 2

Attached to and made a part of the
Amended and Restated Declaration of Covenants, Conditions and Restrictions
Applicable to Spanish Cove, a Planned United Development

3. The procedure followed by the Bank, pursuant to the amendment procedure in the Original Restrictions, when it amended the Original Restrictions, complied with the amendment procedure and was substantively and procedurally sufficient so as to protect the rights of all parties subject to the Original Restrictions and, thereby, did not violate any of the rights of anyone subject to the Original Restrictions to include, but not to be limited to, the parties to this litigation;
4. The procedure followed by the Bank after the Original Restrictions were amended and, pursuant to the "Amended and Restrictive Declaration of Restrictive Covenants and Conditions Applicable to Spanish Cove Development" dated February 23, 1988 (the "Amended Restrictions"), to set up the Property Owners Association of Spanish Cove, Inc., was both legally and substantively sufficient and did not violate the rights of anyone subject to the Original or Amended Restrictions to include, but not to be limited to, the parties to this litigation:
5. The powers, rights and authority subsequently transferred from the Bank to the Property Owners Association of Spanish Cove, Inc. were property transferred.

It is accordingly hereby adjudged and decreed that a verdict be entered in favor of the defendants. Costs are to be taxed to the plaintiff.

JAMES H. REID
CIRCUIT JUDGE, BALDWIN COUNTY, ALABAMA

October 12, 1993

Exhibit “D”
Attached to and made a part of the
Amended and Restated Declaration of Covenants, Conditions and Restrictions
Applicable to Spanish Cove, a Planned United Development

IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

HOWARD CRARY,	*
	*
Plaintiff,	*
	*
v.	* CIVIL ACTION NO. CV-98-263
	*
PROPERTY OWNERS ASSOCIATION	* (Hon. James H. Reid)
OF SPANISH COVE. INC.,	*
	*
Defendant,	*
	*

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND FINAL JUDGMENT

This matter having come before this Court for a final hearing on the application for attorneys’ fees and costs presented as a counterclaim by the Property Owners Association of Spanish Cove (“POASC”), the Court makes the following findings of fact and conclusions of law:

Findings of Fact

1. The premises of the claim under the Alabama Litigation Accountability Act for attorneys’ fees and costs filed by the POASC are that the Plaintiff, Mr. Howard Crary, has, as part of his allegations in this case, claims under the “Interstate Land Sales Act,” 42 U.S.C. § 1701, et seq., which Act does not apply to the POASC, and claims which have been litigated twice in the past; once by the Independent Property Owners Association (“IPOASC”) and once by Mr. Crary in the earlier case of Crary v. POASC.

Exhibit “D” – Page 2

Attached to and made a part of the
Amended and Restated Declaration of Covenants, Conditions and Restrictions
Applicable to Spanish Cove, a Planned United Development

2. In the case of Spanish Cove Independent Property Owners Association, Inc. v. Spanish Cove Properties Corp., et al. (Circuit Court of Baldwin County, CV-91-757) (the IPOASC case) which this court tried and in which the POASC was a named party defendant, the issues of the POASC, its legitimacy as the POASC; its legitimacy as a legally constituted entity and as the legally constituted form of government at Spanish Cove were litigated successfully by the POASC. See this Court’s Order and Judgment attached.
3. Nevertheless, Mr. Crary in his first case tried to litigate those issues again. Summary judgment was granted against him on those issues and others.
4. He again tried to litigate those issues in this case and has again had a summary judgment granted against him on those issues.
5. In spite of this Court’s Order and Judgment in 1993, these issues are ones that are still being advanced by individuals at Spanish Cove. They, therefor, present a constant threat to the POASC which threat, if materialized into litigation, requires the POASC to notify its insurance carrier. The POASC has been involved in the IPOASC case, Mr. Crary’s first case and other extensive litigation in the past on these and other issues and, because of the constant litigation as Spanish Cove, the POASC was not renewed by one carrier; was offered interim insurance by a second carrier; and is now with a third carrier which is having to bear litigation costs for this case. Furthermore, there is a self-insured retention under the POASC policy involved in this case and, therefore, this litigation has directly cost the POASC and, therefore, the property owners at Spanish Cove, \$..____ .____.

Exhibit “D” – Page 3

Attached to and made a part of the
Amended and Restated Declaration of Covenants, Conditions and Restrictions
Applicable to Spanish Cove, a Planned United Development

6. The history of the development at Spanish Cove and the establishment of the POASC are matters that were fully litigated in the IPOASC case. In that case, it was demonstrated that Spanish Cove was originally developed by Spanish Cove Corp, (“the Original Declarant”). Pursuant to the original development, covenants were filed and recorded in the Probate Court of Baldwin County. One document was titled the “Maintenance and Utility Covenant.” The other was titled the “Declaration of Restrictive Covenants and Conditions Applicable to Spanish Cove Development. “(Collectively the “Original Covenants.”)
7. Spanish Cove Corp, was designated as the Declarant in the Original Covenants. It created the Cove Club Inc. which was a corporation established to construct and maintain roads, a water system, a club house and other facilities for the benefit of the purchasers of property at Spanish Cove. The Cove Club Inc. was the holder of the common property at Spanish Cove and, as such, had certain powers regarding maintenance fees, etc.
8. The Original Declarant eventually deeded and assigned all properties and interests back to Citicorp, the financing institution for the development (“the Bank”). Accordingly, Spanish Cove Corp. and the Cove Club, Inc. transferred all rights and interests to the Bank which set up receiving companies titled S.P. Cove Properties Corp. and the Cove Club of Perdido Bay, Inc. (all hereinafter collectively referred to as the Bank).

Exhibit “D” – Page 4
Attached to and made a part of the
Amended and Restated Declaration of Covenants, Conditions and
Restrictions
Applicable to Spanish Cove, a Planned United Development

9. The Bank then instituted a process to amend the Original Covenants. It did so after publishing notices of the proposed amendments in the Baldwin County newspaper for the required number of consecutive weeks and by following all other administrative and procedural requirements to amend the Original Covenants.
10. As a result of the amendment procedure followed by the Bank, the Original Covenants were amended producing an amended and restated set of covenants titled: “Amended and Restated Declaration of Restrictive Covenants and Conditions Applicable to Spanish Cove Development” (the “Amended Covenants”). The establishment of these new covenants was accomplished on or about February 24, 1988.
11. The Bank then, with a goal of removing itself from the position of the Declarant, began a process ultimately designed to produce a property owners association. The Bank worked with a number of residents at Spanish Cove over a lengthy period of time and through property owners groups and, after extensive consultation with property owners at Spanish Cove, the Bank set up the POASC and did so through Articles of Incorporation, By-Laws, etc. The POASC was established on July 18, 1991. Contemporaneous with the establishment of the POASC, the Bank transferred and assigned all rights, interests, and liabilities then held by the Bank to the POASC.
12. The POASC then began functioning as the legitimate governing body of Spanish Cove the powers of which included, but were not limited to, the holding of title to the common property, the collection of dues and

Exhibit “D” – Page 5

Attached to and made a part of the
Amended and Restated Declaration of Covenants, Conditions and Restrictions
Applicable to Spanish Cove, a Planned United Development

assessments, etc. Prior to that time, however, and before the formation of the POASC, an independent group of property owners had set themselves up as a nonprofit corporation titled: the “Independent Property Owners Association of Spanish Cove” (“IPOASC”).

13. After the formation of the POASC, the IPOASC filed the IPOASC case.

In the action, the IPOASC and its members, who were also property owners at Spanish Cove and, therefore, also members of the POASC, contended among other things, that the POASC was not the legitimate governing body of Spanish Cove, that the Bank, in its efforts to amend the Original covenants, through the process referred to above, had not done so properly, that the Amended Covenants were without legal efficacy, and that the subsequent efforts to set up the POASC and transfer all rights, property, interests, and liabilities to the POASC were, thereby, defective and of no legal effect. In short, the IPOASC and its members, through the action filed in the Circuit Court of Baldwin County, contended that the POASC did not have any legally recognized existence, that it had no power, that it could not collect dues and assessments, that it could not exercise any power of any type, that it was not the legitimate governing body at Spanish Cove.

14. At a full evidentiary non-jury trial in front of the this Court at which both associations and, therefore, their members were represented by counsel, numerous witnesses testified and operative and relevant documents were introduced in the record. Members of the POASC testified as well as did members of the IPOASC . After that full hearing, this Court rendered a judgment in favor of the POASC and held that the transfer from the Original Declarant to the Bank was done property, that the Bank’s

Exhibit “D” – Page 6

Attached to and made a part of the
Amended and Restated Declaration of Covenants, Conditions and Restrictions
Applicable to Spanish Cove, a Planned United Development

subsequent amendment of the Original Covenants was done properly, that the Bank had properly transferred all rights, interests, ownership, and liabilities that it had obtained from the Original Declarant to the POASC, that the POASC was the legitimate governing body at Spanish Cove, and that it had full authority, commensurate with the authority that had been transferred from the Original Declarant, through the Bank to it, to function in its capacity as the Property Owners Association of Spanish Cove. See this Court’s Order and Judgment attached.

15. Since that time, however, two lawsuits have been filed by Mr. Howard Crary, a property owner at Spanish Cove. In which Mr. Crary attempted to raise and relitigate the issues that were decided and foreclosed in the IPOASC case. The first action filed was styled:

“Howard Crary v. Property Owners Association of Spanish Cove (Circuit Court of Baldwin County, CV-95-108)” (“Crary I”). Although there were a number of issues resolved in that case, a primary issue was whether Mr. Crary was attempting to relitigate issues that had been decided in the IPOASC case and which were, therefore, foreclosed by this Court’s Order and Judgment in that case. The POASC filed an answer in that case and pled resjudicats, collateral estoppel, and issue preclusion as defenses based on this Court’s Order and Judgment in the IPOASC case.

16. After a full evidentiary hearing, this Court found for the POASC on that issue, as well as all other issues, and rendered a judgment on behalf of the POASC.

Exhibit “D” – Page 7

Attached to and made a part of the
Amended and Restated Declaration of Covenants, Conditions and Restrictions
Applicable to Spanish Cove, a Planned United Development

17. Mr. Crary appealed that case to the Alabama Court of Civil Appeals. The Court of Civil Appeals denied the appeal and sustained this Court’s Order and Judgment.
18. This is now the second case filed by Mr. Crary in which he has again attempted to relitigate the very same issues. In this case, the POASC, among other issues, plead affirmative defenses that one or more of Mr. Crary’s theories was foreclosed as a result of this Court’s original Order and Judgment in the IPOASC case.
19. The POASC moved for a summary judgment raising, among other issues, resjudicate, collateral estoppel and issue preclusion as to this Court’s Order and Judgment and the issues foreclosed by that Order and this Court’s ruling in Crary I.
20. Summary Judgment has now been granted to the POASC.
21. As a result of the two lawsuits filed by Mr. Howard Crary and the advancing of similar positions by other property owners at Spanish Cove to the POASC, it has become clear that certain property owners at Spanish Cove are ignoring, and are prepared to continue to ignore, this Court’s Order and Judgment in the IPOASC case. There is therefore, an existing case and controversy and a need to end the continuing disruptive confrontation with the POASC on these issues.
22. The POASC is contemplating filing a declaratory judgment action to secure a declaration of the rights and liabilities of the POASC, as a nonprofit corporation, and as the governing body at Spanish Cove and the

Exhibit “D” – Page 8

Attached to and made a part of the
Amended and Restated Declaration of Covenants, Conditions and Restrictions
Applicable to Spanish Cove, a Planned United Development

Property owners at Spanish Cove, each of whom is a member of the POASC, with respect to the legal authority of the POASC to function as the representative, governing body of Spanish Cove as provided in the covenants as this Court previously held in the IPOASC case.¹

¹ Because of this Court’s Order and Judgment in the IPOASC case, such an action should not be necessary.

23. The unnecessary litigation will be expensive, time consuming, and disruptive to the lives of all of the resident at Spanish Cove.

Conclusions of Law

1. The claims against the POASC under the Interstate land Sales Act lack substantial justification. It was clear before their filing that the Act did not apply to the POASC.

2. Under Alabama law, the elements of resjudicata are:

- a. There must be a prior judgment rendered by a court of competent jurisdiction:
- b. There must be a prior judgment rendered on the merits in that case;
- c. The parties to both suits must be substantially identical; and

3.

Exhibit “D” – Page 9
Attached to and made a part of the
Amended and Restated Declaration of Covenants, Conditions and Restrictions
Applicable to Spanish Cove, a Planned United Development

d. The same cause of action must be present in both suits.

See Wheeler v. First Alabama Bank of Birmingham, 364 So. 2d 1190, 1199 (Ala. 1978);

Hurt v. Pullman, Inc., 764 F.2d 1448, 1447 (11th Cir. 1985) (Alabama Law).

3. Collateral estoppel has the same three elements (a-c) above as res judicata, but it does not require that the causes of action be identical, only that issues litigated in the first suit be the same as in the second suit. See Precision Air Parts, Inc., v. Avco Corp., 786 F.2d 1498, 1501 (11th Cir. 1994) (Alabama law); Wheeler, 364 So. 2d at 1199.
4. “Res judicata applies so as to prevent the re litigation of an issue that could have been litigated in previous litigation unto judgment between the same parties, or their privies, as to the same cause of action, but collateral estoppel is not applicable unless some material issue in the second case between the same parties, or their privies, as to another cause of action, was actually decided, expressly or by necessary implication in the first case.” White v. State, 378 Co. 2d 239, 244 (Ala. Crim. App. 1979).
5. “A former adjudication may only be a bar to a subsequent suit if all of the elements are present”. Hurt, 764 E.2d at 1447.
6. In order for the doctrines of res judicata and collateral estoppel to apply, the concept of substantial identity of parties “does not require absolute identity, but extends as well to persons or entities in privity with those who in fact litigated the former action.” Hurt, 764 F.2d at 1447.

Exhibit “D” – Page 10

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Amended and Restated Declaration of Covenants, Conditions and Restrictions
Applicable to Spanish Cove, a Planned United Development

7. In determining whether there is substantial identify of parties so as to make the doctrines applicable, the question is “not only those who were actual parties but also all persons who are in privity with them, this is, all persons who have a mutual or successive relationship to the same rights of property.” Fisher v. Space of Pensacola Inc., 461 So. 2d 790, 791 (Ala. 1984). See also Century 21 Preferred Properties, Inc. v. Alabama Real Estate Commission, 401 So. 2d 764, 772 (Ala. 1981) (“Privity, as used in the context, is said to denote a ‘mutual or successive relationship to the same right of property.’”).
8. In order for a party to be bound, that party or its privity must not only have been present in both suits, but is must appear in the same capacity in both suits. Hurt 764 F.2d at 1448.
9. “Privity is defined as “a relationship between one party who is a party of record and a nonparty that is sufficiently close so a judgment for or against the party should bind or protect the nonparty.” N.A.A.O.P. V. Hunt, 891 F.2d 1555, 1560 (11th Cir. 1990) (Alabama Law).
10. “Privity exists where the nonparty’s interests were represented adequately by the party in the original suit.” N.A.A.O.P., 891 F.2d at 1560-61.
11. “Privity also exists where a party to the original suit is ‘so closely aligned to a nonparty’s interest as to be his virtual representative.’” N.A.A.O.P., 891 F2d at 1561.

Exhibit “D” – Page 11

Attached to and made a part of the
Amended and Restated Declaration of Covenants, Conditions and Restrictions
Applicable to Spanish Cove, a Planned United Development

12. “The question of whether sufficient privity exists to warrant application of the doctrine of res judicata is a question of law.” N.A.A.O.P., 891 F.2d at 1551.
13. Here, as a matter of law, the litigation from 1991 to 1993 between the Independent Property Owners Association of Spanish Cove and the Property Owners Association of Spanish Cove, the IPOASC case, as to those issues litigated in that case and as to any issues which could have or should have been litigated in that case, is binding on all members of the Property Owners Association and the Independent Property Owners Association and their privities, as well as anyone subsequently taking property interests from them or through them and the order issued in that case is therefore binding on all so stated.
14. Mr. Crary, the plaintiff in this case, was a member of the Property Owners Association at the time of the IPOASC litigation and of the Order of Judgment in that case and, therefore, he is bound by the Order and Judgment. West v. City of Mobile, 689 So. 2d 14 (Ala. 1997).
15. Furthermore, if Mr. Crary’s interests were subjectively contrary to the positions taken by the POASC in the IPOASC case, he was in privity with the Independent Property Owners Association and its members and is, thereby, bound by the Order and Judgment in that case. West, 689 So. 2d 14.
16. Mr. Crary attempted to litigate some or all of the issues that we resolved in the IPOASC case in the first case he filed. This Court granted summary

Exhibit “D” – Page 12
Attached to and made a part of the
Amended and Restated Declaration of Covenants, Conditions and Restrictions
Applicable to Spanish Cove, a Planned Unit Development

judgment in that case and applied the doctrine of issue preclusion to him and to those claims which he was trying to litigate.

17. Mr. Crary, in this case now, a second time, has again attempted to litigate some or all of the issues litigated in the IPOASC case and foreclosed to him in his first case.

18. Accordingly, Mr. Crary’s claims in this suit that were litigated in the IPOASC case, and foreclosed to him in his first case, as well as his claims under the “Interstate Land Sales Act,” were filed with substantial justification and, in accordance with the rights accruing to the Property Owners Association under Alabama’s Litigation Accountability Act, this Court awards

\$ _____ attorneys’ fees and _____ costs to the Property Owners Association of Spanish Cove against Mr. Crary.