

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

**In re: Affirming Existence of Recreational
Customary Use on 1,194 Private
Properties Located in Walton County,
Florida**

Case No.: 2018-CA-000547

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“Agreement”) is entered into on the ____ day of _____, 2023 (“Effective Date”), by and between the Plaintiff, Walton County, and those Intervenor identified in attached **Exhibit A** (“Intervenors”). Plaintiff and Intervenor may be referred to herein collectively as the “Parties.

RECITALS

WHEREAS, Plaintiff filed an Amended Complaint on October 15, 2020 (“Amended Complaint”) seeking a declaratory judgment of certain specified customary uses pursuant to § 163.035, Fla. Stat., as to 1,194 privately owned parcels abutting the Gulf of Mexico (“Lawsuit”); and

WHEREAS, there is approximately 26 miles of beaches in Walton County abutting the Gulf of Mexico, and approximately 8 miles is owned by Walton County or the State of Florida all of which is available for public use; and

WHEREAS, Plaintiff provided written Notice of the Lawsuit to those persons identified in the Walton County Property Appraiser’s records as owning the 1,194 parcels; and

WHEREAS, approximately 450+/- of those property owner’s sought permission from the Court to intervene in the Lawsuit, which was granted (“Intervenors”); and

WHEREAS, several Intervenor have filed Counterclaims against Plaintiff in the Lawsuit (“Counterclaims”); and

WHEREAS, the Honorable David W. Green, acting Circuit Court Judge, has been assigned to preside over the Lawsuit (“Judge Green”); and

WHEREAS, Judge Green entered an Amended Case Management and Trial Scheduling Order on March 7, 2023, establishing a trial date for Plaintiff’s claim for a declaration of customary use to commence May 22, 2023 for seven (7) weeks, with Intervenor’s Counterclaims to be scheduled at a later date (“Pre-Trial Order”); and

WHEREAS, Plaintiff and several Intervenor, through their respective counsel, have negotiated this Agreement to resolve the Lawsuit; and

WHEREAS, by entering into this Agreement, none of the Parties admit any liability for any actions alleged in the Amended Complaint and Counterclaims.

NOW THEREFORE, for mutual valuable consideration, the receipt of which is hereby acknowledged, the Parties desire to enter into and execute this Agreement upon the following terms and conditions:

1. Recitals. The above-referenced recitals are true, correct and incorporated herein by reference.
2. Specific Settlement Terms. See attached **Exhibit B** which is incorporated herein by reference.
3. Separate Counsel. Each party was represented by counsel, or chose not to be represented by counsel, in the negotiation and drafting of this Agreement.
4. Normal Rule of Construction. Each party to this Agreement and their counsel have reviewed and revised this Agreement. The normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or of any amendments or exhibits to this Agreement.
5. Authority. The persons signing this Agreement on behalf of the Parties represent and warrant that they have full power, authority and legal right to execute, deliver and perform their obligations under this Agreement; that this Agreement and the obligations hereunder are legal, valid and binding obligations of the Parties, enforceable in accordance with their terms; that there are no claims or defenses, persons or otherwise, or offsets whatsoever to the enforceability or validity of this Agreement; and that the persons signing this Agreement have full power, authority and legal right to do so and to bind and to cause the Parties to perform the obligations hereunder, without the joinder or consent of any other person.
6. Waiver of Jury Trial. THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT ANY OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION BASED HEREON OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO THIS AGREEMENT.
7. Attorneys' Fees and Recoverable Costs. In the event of a legal action or other proceeding arising under this Agreement or a dispute regarding any alleged breach, default, claim, or misrepresentation arising out of this Agreement, whether or not a lawsuit or other proceeding is filed, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs, whether incurred before suit, during suit, or at the appellate level. The prevailing party shall also be entitled to recover any attorneys' fees and costs incurred in (i) litigating the entitlement to attorneys' fees and costs;(ii) in determining or quantifying the amount of attorneys' fees and costs due to it; and (iii) post judgment collection efforts to collect on any final judgment.

8. Venue. The Parties to this Agreement agree that this Agreement was entered into in Walton County, Florida, and if any litigation should arise as a result of either party's breach of the terms and conditions of this Agreement, or any exhibits attached hereto and any collateral documents referenced herein, then venue shall lie solely in the state courts, in and for Walton County, Florida.
9. Remedies. In addition to any specific remedies provided in attached **Exhibit B**, the Parties shall have all remedies available in law or equity in the event of a breach of this Agreement, including without limitation specific performance, injunctive relief, inverse condemnation, and eminent domain compensation.
10. Free Will. Each Party states and acknowledges that they have entered into this Agreement of their own free will, that the Parties have had the opportunity to consult with their attorney prior to executing this Agreement, and that the Parties fully understand and agree with all of the terms of this Agreement. Each of the Parties acknowledges that they have had a sufficient amount of time to consider this Agreement.
11. Entire Agreement. The Parties understand that this Agreement contains the entire agreement between the Parties, in regard to the matters set forth herein and shall be binding upon and inure to the benefit of the Parties and their executors, administrators, personal representatives, heirs, successors and permitted assigns.
12. Sole Agreement. No promise or agreement not herein expressed has been made to the Parties, and in executing this Agreement, they are not relying upon any statement or representation made by each other or by anyone who has acted for them or on their behalf. The Parties rely solely upon their own judgment in entering this Agreement.
13. No Admission of Wrongdoing. None of the Parties admit any liability to each other for the assertions made by either of them in the Lawsuit. This Agreement shall never be construed as an admission of liability at any time or in any manner whatsoever by the Parties.
14. Compromise Settlement. The Parties understand fully that this Agreement is mutual, final and binding upon them.
15. Governing Law and Interpretation. This Agreement shall be construed and enforced exclusively according to the laws of the state of Florida, without regard to the application of conflicts of law principles. If any provision of this Agreement is declared illegal or unenforceable by any court of competent jurisdiction and if it cannot be modified to be enforceable, such provision shall become null and void, leaving the remainder of this Agreement in full force and effect.
16. Headings. Section headings are used herein for convenience of reference only and shall not affect the meaning of any provisions of this Agreement.
17. Notices. Any notice required or permitted to be given hereunder shall be in writing and shall be (i) delivered by hand, (ii) delivered by reputable national or local courier (such as United Parcel Service or Federal Express), (iii) mailed by United States registered or certified mail, return receipt requested and postage prepaid, or (iv) sent by email transmission provided a confirmation of such

email transmission is sent the same day by one of the methods of delivery in (i), (ii), or (iii) above. Any notice shall be addressed to each party at its address as set forth below. Any such notice shall be considered given on the date of such hand delivery, deposit with such courier for same day or next business day delivery, upon receipt of return receipt of certified mail, or receipt of facsimile transmissions, as the case may be, and the time period (if any is provided herein) in which to respond to such notice shall commence on the date of receipt. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice. By giving to the other party at least ten (10) days' notice thereof, any party shall have the right from time to time to change the addresses thereof and to specify up to two (2) additional addresses within the United States of America to which copies of notices to it shall be sent. Notice may be given on behalf of any party by such party's counsel. Notices shall be sent as follows:

Each notice to County shall be addressed as follows:

Walton County Administrator
76 North 6th Street
DeFuniak Springs, FL 32433
Phone: (850) 892-8155
Email:

With a copy to: Clay Adkinson, County Attorney
76 North 6th Street
DeFuniak Springs, FL 32433
Phone: (850) 892-8155
Email: clay@adkinsonlaw.com

Each notice to Intervenor shall be sent to the address on file with the Walton County Tax Collector's Office with a copy to their Intervenor Counsel in the Lawsuit.

18. The terms and conditions of this Agreement shall inure to the Parties hereto, as well as their successor and assigns as if they were covenants running with the land.
19. Waiver/ Estoppel. No waiver by the County or those Intervenors joining into this Agreement of any default by the other or of any event, circumstance or condition permitting either to terminate this Agreement shall constitute a waiver of any other default or other such event, circumstance or condition, whether of the same or of any other nature or type and whether preceding, concurrent or succeeding; and no failure or delay by the County or those Intervenors joining into this Agreement to exercise any right arising by reason of any default by the other shall prevent the exercise of such right while the defaulting Party continues in default, and no waiver of any default shall operate as a waiver of any other default or as a modification of this Agreement. The failure to enforce any provision of this Agreement for any period of time shall not be deemed a waiver or estoppel to assert said covenant, condition, restriction or obligation at a later date.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

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PRO SE INTERVENORS:

EXHIBIT A
INTERVENORS

1. Matthews & Jones, LLP Intervenors
2. Smolker Mathews, LLP Intervenors
3. Becker & Poliakoff, P.A. Intervenors
4. Holtzman Vogel Baran Torchinsky & Josefiak Intervenors
5. Clark Partington Intervenors
6. Pleat & Perry Intervenors
7. Borowski & Traylor P.A. Intervenors
8. Barron & Redding, P.A.
9. Bruce P. Anderson Law
10. Pro Se Intervenors

EXHIBIT B

SPECIFIC SETTLEMENT TERMS

1. A. Lawsuit: The currently pending Lawsuit shall be dismissed with prejudice against those Parties entering into this Agreement. The County acknowledges that the rights established by this Settlement Agreement supersede any customary use rights that could exist on those parcels owned by those Parties entering into this Agreement, and based upon that acknowledgment and the dismissal with prejudice of customary use claims by the County, the County consents to entry of a Final Judgment determining the issue of customary use on any parcel that is part of this Agreement is now and forevermore moot.
- B. Currently pending counterclaims filed by those Parties entering into this Agreement shall be dismissed with prejudice.
- C. The County shall file a voluntary dismissal without prejudice, which shall convert to with prejudice if the County has not filed a new Customary Use lawsuit by May 31, 2024, against those Intervenor not joining this Agreement who:
 - (i) have not asserted any counter-claims in the Lawsuit and agree to each party paying their own attorney fees and costs;
 - (ii) voluntarily dismiss their counter-claims without prejudice as well, and agree to each party paying their own attorney fees and costs, and with those Intervenor dismissing their counter-claims with prejudice if no lawsuit is re-filed before May 31, 2024.
- D. With respect to parcels (i) located between Tops'1 State Park and the Walton/Okaloosa County line, inclusive; and (ii) that may currently have established an Erosion Control Line ("ECL), the County shall dismiss those parcels, with prejudice, whether they have intervened or not, provided that any pending counterclaims are mutually dismissed and that each party agrees to bear their own fees and costs associated with this litigation. To the extent that the County has already executed voluntary dismissals without prejudice on any of these parcels, the County shall make subsequent filings consistent herewith to render those dismissals prejudicial, contingent upon the terms of this subsection.
- E. The Parties recognize that a number of beach front parcel owners were previously provided notice from the County as to the existence of the Lawsuit ("Noticed Parcels"), and for which no intervention or other pleading has been filed in the Lawsuit. The County, in its discretion, will either (i) dismiss without prejudice the Lawsuit against those Noticed Parcels, and their successors and assigns, as to those Beach Parcels; or (ii) to the extent the County seeks to obtain a judicial remedy in the Lawsuit against such Noticed Parcels, such judicial remedy shall be strictly limited to establishing those customary use rights, and location thereof, that is consistent with and no greater than as provided in Sections 2, 3, 4, 5, 20, 21 and 22 in this Agreement. Should the County elect to pursue option (ii) under this section, the County further covenants and agrees, as a material part of this Agreement and to induce Intervenor to agree to any provision of Section 1 and its subparts of this Agreement, to adhere to the provisions set forth in Paragraph 24 of this Agreement

and to incorporate language consistent therein within all pleadings and judgments filed associated with those non-intervening Noticed Parcels.

2. Participating Intervenors whom have executed this Agreement (“Participating Intervenors”) agree to generally allow persons who are members of the general public (“General Public”) to use the area of their privately owned parcels (“Beach Parcel”), within that area landward 20 feet of the wet/dry sand line (the “Transitory Zone”). In no event shall the Transitory Zone extend landward of any currently established Erosion Control Line (“ECL”) which currently exists between Tops’l State Park on the eastern terminus, and the Okaloosa/Walton County line on the western terminus, inclusive. The following uses only (“Transitory Uses”), are allowed within the Transitory Zone, subject to the Conditions identified in paragraph 4 below:

- A. Walking, Running, and Jogging.
- B. Access to the wet sand and water for Swimming, Surfing, Surf Fishing, and Skim Boarding.
- C. Sunbathing Uses defined as consisting of standing, sitting, or laying, either on the sand or on a beach towel or in/on a beach chair that is privately owned by the user and is not stored by nor associated with a third party vendor, condominium association, townhome association, hotel, motel, bed and breakfast, or other commercial property between the hours of 9:00 am – 4:00 pm, CT.

All uses by the General Public, without limitation, other than Transitory Uses within the Transitory Zone described in paragraph 2A, B, and C, are prohibited. The following are defined as “Beach Parcel Owners” for purposes of this Agreement:

- i. Public record title owners (“Owners”) of Beach Parcels [i.e., vacant parcels, single family homes, condominium unit owners and their associations, townhome unit owners and their associations, bed and breakfast, hotels and their guests, motels and their guests, beach club members, and beach access easement owners];
- ii. renters of the Owners;
- iii. users permitted by the Owners; and
- iv. guests of the Owners or renters.

The General Public is prohibited from entering onto any area of a Beach Parcel owned by a Participating Intervenor (“Participating Parcel”) for any reason other than within the Transitory Zone for Transitory Uses only (for example, the General Public cannot enter a Participating Parcel to access a Transitory Zone). For purposes of Paragraph 2c above, the term General Public does not include “Beach Parcel Owners” defined above. It is clearly understood that Beach Parcel Owners shall have the same rights and obligations as the General Public while engaging in Paragraph 2a and b Transitory Uses within the Transitory Zone on all Beach Parcels, however, Beach Parcel Owners shall not exercise Paragraph 2c uses on any Beach Parcel other than their own Beach Parcels. Additionally, Beach Parcel Owners may exercise all lawful uses of their own Beach Parcel, including within the Transitory Zone, without restriction.

Transitory Uses do not include any other uses, other than as described in Paragraph 2a-c, and expressly excludes uses that are disallowed, limited, or otherwise restricted by the Revised Beach Activities Ordinance identified in Paragraph 11 herein. Other than as provided in this Agreement, no person or entity, whether part of the General Public or a Beach Parcel Owner, shall engage in any activity or behavior that acts to restrict Transitory Uses in the Transitory Zone as provided in this Agreement, or is otherwise a violation of law. Notwithstanding the foregoing, this does not preclude Beach Parcel Owners from entering into contracts with beach vendors to place beach chair and umbrella set ups on Beach Parcels, including within the Transitory Zone for use by the Beach Parcel Owners. Furthermore, nothing contained in this Agreement shall preclude a Beach Parcel Owner from utilizing any part of their Beach Parcel, including the entirety of the Transitory Zone, consistent with the terms of this Agreement.

It is further understood that the rights of the Beach Parcel Owners are superior to the rights of the General Public in the Transitory Zone on each Participating Intervenor's Beach Parcel. The uses in Paragraph 2c may only be exercised by the General Public if the Beach Parcel Owner is not actively using that area. In the event a Beach Parcel Owner is not actively using the area within the Transitory Zone and a member or members of the General Public begin to exercise the Paragraph 2c uses in the Transitory Zone, and subsequently the Beach Parcel Owner begins or resumes active use of the Transitory Zone on their Beach Parcel, the member or members of the General Public must acquiesce use in favor of the Beach Parcel Owner upon request from the Beach Parcel Owner. Vacation of the Transitory Zone in any such occurrence shall be required only when the use(s) interfere with the Beach Parcel Owner's intended use, and relocation within a Transitory Zone, if possible, shall be the preferred method of dealing with any such overlapping uses. Any failure by the General Public to cease exercising the Paragraph 2c uses upon request from the Beach Parcel Owner shall be considered an act of trespass pursuant to §810.12, F.S.

3. Transitory Uses shall be allowed regardless of whether all or any portion of the Transitory Zone is landward or seaward of the Mean High Water Line ("MHWL").
4. "Conditions". No person may interfere with use of the Beach Parcel by Beach Parcel Owners while the Beach Parcel Owners are using the "Transitory Zone" upon their Beach Parcel. Beach Parcel Owners shall possess the right to exclude any person within the Transitory Zone if any person is not respectfully conducting themselves or otherwise complying with this Agreement and the Revised Beach Activity Ordinance identified in Paragraph 11 while engaging in Transitory Uses. The Parties hereto recognize that overcrowding of a Beach Parcel's Transitory Zone by the General Public is undesirable and has the potential to create safety issues. As such, the General Public's Transitory Use rights provided for in Paragraph 2(c) shall be limited such that each Beach Parcel's Transitory Zone shall have a maximum density of the General Public exercising Paragraph 2(c) uses equivalent to one person per 5 feet of Beach Parcel frontage on the Gulf of Mexico. This provision shall not be construed to require a separation between persons in distance, but rather solely to limit the maximum number of members of the General Public that may exercise Paragraph 2(c) Transitory Uses on a specific Beach Parcel at any one time.. No Beach Parcel Owner's access to the Gulf of Mexico shall be impaired hereby, nor shall the density limitation operate to interfere with a Beach Parcel Owners superior rights to use the entirety of the Transitory Zone. A Beach Parcel Owner's survey demonstrating the amount of frontage owned shall be

utilized to calculate the Gulf frontage for this Condition. The County and Beach Parcel Owners shall work to identify the size and shape of all Beach Parcels subject to this Agreement, and shall identify within the Revised Beach Activities Ordinance a reasonable amount of persons that should be permitted upon the Transitory Zone within each parcel consistent with this Paragraph 4 to ensure the safety and well-being of Beach Parcel Owners and the General Public. The County shall strictly enforce these Conditions at all times.

5. The County will further restrict the setting up of beach chairs and umbrellas seaward of the Transitory Zone by any person and shall strictly enforce this restriction. The Parties agree that such area shall be kept free of obstructions to provide for transit of required enforcement and safety personnel.
6. The County shall promptly and continually inform all beachgoers and the General Public of the location of Transitory Zones within Beach Parcels, County and State owned Beaches, and the nature and limitation of Transitory Uses in the Transitory Zones, subject to the Conditions. The County shall strictly ensure that the priority rights held by Beach Parcel Owners to use their Beach Parcels, inclusive of the Transitory Zone located thereon, are made clear to all beachgoers and the General Public, and that beachgoers and the General Public must conduct themselves in a manner that demonstrates courtesy and respect to all beachgoers and Beach Parcel Owners. The Beach Parcel Owners right to exclude noncompliant persons of the General Public and other Beach Parcel Owners as to the requirements in this Agreement, shall be made explicit by the County. This message shall be communicated at a minimum to the General Public in the following ways:
 - A. signage posted at County-owned beach accesses and upon County-owned beaches;
 - B. the County's social media platforms;
 - C. Tourist Development Council ("TDC") social media platforms;
 - D. updating the County's Beach Activities Ordinance;
 - E. the County and TDC websites; and
 - F. other reasonable information dissemination platforms;
7. Failure to Comply with Settlement Agreement. The Parties mutually agree that enforcement and good-faith compliance of this Agreement is a material term hereof, and that violations of the provisions of this Agreement by either party are subject to the imposition of judicial remedies, to be brought before a Walton County Circuit Court Judge, as set forth below:
 - A. No relief shall be available to any party unless written notice detailing the nature of the alleged violation is provided in writing, specifying the date, time, location (to include, at a minimum, the specific Beach Parcel Property Appraiser's Parcel ID), and the names of all persons involved (if known) is provided to the other party prior to filing any request for relief with the Court, and the party receiving notice has been given at least ten (10) days to take curative or corrective measures of the violation, with a written response to the

complaining party detailing the curative or corrective measures taken. Thereafter the complaining party may seek judicial relief for all remedies available in law and equity, and the prevailing party in any such action shall be entitled to recover attorney fees and costs. Intentional and willful acts or omissions by the violating party may be considered by the Court, as well as a pattern of prior violations, but shall not be dispositive of any remedy available to the Court.

- B. Injunctive Relief. The Parties mutually agree and covenant that among other remedies, injunctive relief shall be available and that the standard for obtaining such relief shall not require any showing of irreparable harm or inadequate alternative remedy, nor shall bond be required to be posted.
- C. Following an order granting Injunctive Relief, additional remedies, as set forth in (iii) below, may be available upon the occurrence of (i) or (ii) below:
 - i. Any violation of said injunction;
 - ii. A repeated failure of a similar nature between the same parties against whom injunctive relief has been applied for;
 - iii. Compensatory and consequential damages.
- D. If the Court finds a party has intentionally or willfully violated this Agreement, or a prior injunction issued by the Court, then the Court may rescind this Agreement.
- E. In addition to the provisions in this Paragraph 7, the Parties shall have all other remedies available at law and equity, in the Court's discretion.

- 8. The County and those Intervenor Beach Parcel Owners shall pay their own attorney fees and costs in the Lawsuit, and hereby waive any claims against one another for same.
- 9. Participating Intervenor Beach Parcel Owners shall have the right to post signs, not to exceed 24" x 36", on their Beach Parcels from 7 am to 7 pm daily as of the Effective Date of this Agreement reflecting that public access thereto is limited (or restricted). Within ninety (90) days following the Effective Date of this Agreement, the County and Participating Intervenor Beach Parcel Owners shall work together to agree on the form, size, shape, look, verbiage, and other elements of additional signage, that informs the General Public that the Participating Intervenor Beach Parcel Owner has agreed to Transitory Uses in a Transitory Zone on their Beach Parcel. Such signage shall also serve as notice that the Participating Intervenor Beach Parcel Owner intends to use the Beach Parcel during the time such sign is erected.
- 10. A. The County shall instruct and train their code enforcement officers and other employees (i) as to the terms of this Agreement; and (ii) the County shall adopt policies and procedures to protect the rights of the Participating Intervenor Beach Parcel Owners and the General Public's right to Transitory Uses only in the Transitory Zone subject to the Conditions. The County shall further advise the Walton County Sheriff's Office ("WCSO") of this Agreement and shall conduct joint

training meetings with WCSO deputies and County Code Enforcement officers as to the County's goal in respecting Participating Intervenor Beach Parcel Owners rights to use their Beach Parcels to the exclusion of the General Public, other than the General Public's Transitory Uses within the Transitory Zone only subject to the Conditions.

B. Any County Code Enforcement Officer responding to a call and/or activity for an alleged violation of this Agreement shall immediately report the incident to the Walton County Sheriff's Office consolidated dispatch center.

11. The Specific Settlement Terms described in this Exhibit B between the County and Participating Intervenor shall be included in Chapter 22 of Walton County's Waterways and Beach Activities Ordinance ("Beach Activities Ordinance"). Within three (3) months following the Effective Date of the Agreement, the County agrees to adopt a Revised Beach Activities Ordinance to comply with the terms of this Agreement. That Ordinance shall include the codification of the terms contained in this Exhibit B as it applies to those Participating Intervenor to this Agreement and their respective Beach Parcels (identified by Tax I.D. numbers), and those terms that are part of a binding final judgment to be adopted by the Court. The County covenants that no modification of those codified terms in the Revised Beach Activities Ordinance shall be made, unless and to the extent that a Court order or state or federal law so requires. The Participating Intervenor to this Agreement and their respective Beach Parcels are vested with the rights provided them in this Agreement against any future modification to the Revised Beach Activities Ordinance that diminishes said rights codified therein. The County further covenants that all other provisions of the Revised Beach Activities Ordinance, other than those codified provisions adopted pursuant to this Settlement Agreement (which may not be modified), shall include a requirement that future modifications of those others provisions shall require affirmative vote of a super-majority of the Board of County Commissioners and repeal thereof shall require a unanimous vote.
12. The County shall work with the Walton County Sheriff's Office ("WCSO") to enforce this Agreement consistent with Florida's Trespassing laws, and shall enter into a joint agreement within ninety (90) days following the Effective Date of this Agreement with the WCSO to adopt policies and procedures for enforcement of this Agreement. The County shall seek authority to allow County Code Enforcement Officers to issue trespass warnings. Arrest authority shall be the sole discretion of WCSO, and any such decision shall not be charged as a violation for failing to comply with this Agreement by either the County or Beach Parcel Owners, or otherwise be deemed a material breach of this Agreement.
13. Within one (1) year following the Effective Date of this Agreement, the County shall commission a comprehensive beach study ("Beach Study") to determine the need for additional public recreational beach access parcels. The Beach Study shall, among other things, ascertain the approximate number of persons accessing the beaches; where those persons access the beaches; the volume of usage during Spring Break, summer, and major holidays; capacity of County/State owned beaches; and proposals for partnership with the State of Florida for public use of State parks on the beach. Inclusive within the Beach Study, the County shall have a survey of the entirety of the beaches along the Gulf of Mexico in Walton County completed. The parties entering into this Agreement covenant with one another to facilitate and in no way obstruct or hinder the completion of the Beach Study and accompanied survey referenced herein, and to the extent a Party hereto

suffers erosion on their Beach Parcel that would substantially limit the amount of remaining property available for their exclusive use, the County shall work with that Party to determine a mutually agreeable manner to abate or otherwise modify Transitory Uses on such a parcel until such time that Beach Parcel is renourished. Nothing contained herein shall prohibit the County from acquiring beach front parcels for recreational use by either (i) negotiated acquisition; or (ii) eminent domain proceedings.

14. **Indemnity:** Subject to the liability protection provided by Section 375.251, Florida Statutes, the County hereby agrees to defend, hold harmless, and indemnify those Beach Parcel Owners who have signed this Agreement, and who sustain property damage or personal injuries arising from the County's failure to enforce this Agreement. Furthermore, Participating Intervenors who are the subject of claim(s) brought by members of the General Public for personal injuries or property damage sustained while the General Public (hereinafter "Third Party Claims") is using the Transitory Zone or Beach Parcel Owners' dry sand beach outside the Transitory Zone, shall be held harmless from such claims by Walton County and indemnified by Walton County for any attorney's fees and costs incurred defending Third Party Claims brought by the General Public as well as indemnifying the Participating Intervenors for any judgment rendered against them in favor of the Third Party Claim litigants. Nothing herein shall be deemed a waiver of sovereign immunity.
15. This Agreement shall be attached to a stipulation to be executed by the Parties and submitted to Judge David W. Green in the Lawsuit for approval, execution of a Final Judgment, and subsequent enforcement in the event of a breach by any party. The agreed upon Stipulation and Final Judgment are attached hereto as **Exhibits C and D**, respectively.
16. The Parties shall not file an appeal of the Final Judgment identified in Paragraph 15.
17. The County, by virtue of its Home Rule Authority, shall exercise its general police power related to those public lands seaward of a currently established or future ECL, and that the terms of this Agreement shall apply to such areas.
18. The right of a Participating Intervenor to withdraw from this Agreement upon application to the Court is a material term of this Agreement. The County's affirmation to strictly enforce Transitory Uses in the Transitory Zone is a material term in Participating Intervenors execution of this Agreement.
19. Those Beach Parcel Owners who do not join in this Agreement are not afforded the rights identified herein in favor of the Participating Intervenors who have joined in this Agreement.
20. A Participating Intervenor may designate one or more representatives to act for them to exclude unauthorized persons from their Beach Parcels ("Rep Designation"). Such Rep Designation shall be in writing and delivered to the County Code Department and Walton County Sheriff's Office.
21. If an uninvited person enters on a Beach Parcel Owner's Beach Parcel outside the Transitory Zone, it shall be a presumption of trespassing on such parcel and the privately owned Beach Parcels adjacent thereto.

22. If an uninvited person litters on a Beach Parcel, that is prima facie evidence of the intention of such person to commit an act of trespass pursuant to §810.12. (9) “Litter” means to leave, drop, or discard or cause to be left, dropped, or discarded, any waste, garbage, rubbish, trash, refuse, debris, can, bottle, box, container, paper, tobacco product, including any glass, beach equipment, chairs, or towels. The County shall not issue code citations to Beach Parcel Owners for violations of the “Leave No Trace Behind” Ordinance when the General Public has left prohibited items on a Beach Parcel’s Transitory Zone.
23. A. The County will further restrict the General Public’s use of those Participating Intervenors’ Beach Parcels seaward of the currently existing Erosion Control Line (“ECL”), on the Participating Intervenors Beach Parcel, to Transitory Uses only within the Transitory Zone (as defined in paragraph 2 above). The County will further regulate and strictly enforce this restriction.
- B. The Parties hereto expressly acknowledge and agree that the County contemplates engaging in Beach Nourishment/Renourishment and similar beach restoration projects, and to such an extent, the County’s pursuit of any such activity, including the establishment of an easement on or fee-ownership of property that may already be subject to this Agreement shall not be deemed to constitute a violation, repudiation, breach (material or otherwise), or act in any way to rescind, cancel, or modify this Agreement. It is expressly understood that in the event of a County Beach Nourishment/Renourishment project, the Parties shall have all rights and remedies available in law or equity.
- C. If a Beach Parcel Owner consents to granting the County an easement for a Future Beach Nourishment/Renourishment Project, then the County and the Beach Parcel Owner shall execute an addendum to this Agreement (i) attaching the agreed upon easement as an exhibit; (ii) confirming the terms of this Agreement; and (iii) specifically restricting the General Public’s rights to Transitory Uses only within the Transitory Zone (as defined in paragraph 2 above with the restriction that the Transitory Zone shall never extend landward of the new ECL) on such Beach Parcel.
- D. If a Beach Parcel Owner elects not to provide an easement as described in C above, and the County is required to file an eminent domain action and pay the Beach Parcel Owner for the value of the taking, then the General Public shall have the right to use the entirety of the Beach Parcel seaward of the newly established ECL at the sole discretion of the County.
24. The County shall make explicit in all court filings that any effort to establish customary use rights against non-intervening Noticed Parcels pursuant to Paragraph 1E of this Agreement shall in no way establish any customary use right in fact or law upon any Intervenor’s Noticed Parcel, whether joining this Settlement or not. The County shall further require from the Court to include in any judgment or order entered in such a proceeding an explicit finding that due to the unique development, beach ownership and beach usage of Walton County, the “general area of the beach” analysis utilized in *Trepanier v. Cty. of Volusia*, 965 So. 2d 276 (Fla. 5th DCA 2007), does not apply and any such judgment or order is predicated upon unique factual and legal findings of law applicable solely to those non-intervening parcels subject to the judgment or order. . Moreover, a judgment or order shall make explicit the factual and legal findings supporting entry thereof are not applicable to any future analysis seeking to apply those legal or factual findings to a “general

area of the beach” in order to establish customary use against any Intervenor in this present case. The County further covenants and agrees that it will not consent or otherwise permit any expert retained by the County in the present case, specifically including Jim Miller, to use any materials prepared in this case for any other person or entity in any proceeding attempting to establish customary use in Walton County.

25. The template forms of dismissals identified in Section 1 of this Agreement, are attached hereto and incorporated herein as composite **Exhibits** _____.

EXHIBIT C

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

**In re: Affirming Existence of Recreational
Customary Use on 1,194 Private
Properties Located in Walton County,
Florida**

Case No.: 2018-CA-000547

JOINT STIPULATION FOR ENTRY OF FINAL JUDGMENT

Plaintiff, WALTON COUNTY, and those INTERVENORS identified in attached **Exhibit A**, hereby give notice to this Court that all matters by and between them in the above-styled action have been resolved pursuant to a Settlement Agreement dated _____. The parties respectfully request that the Court enter the attached agreed upon Final Judgment.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

[SIGNATURES ON FOLLOWING PAGES]

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