IN THE SUPREME COURT OF FLORIDA

CASE NO. 90,750

PALM BEACH COUNTY,

Petitioner,

vs.

COVE CLUB INVESTORS, LTD.,
d/b/a SANDALFOOT COUNTRY CLUB,
a Florida Limited Partnership,

Respondent.

_____/

FOURTH DISTRICT COURT OF APPEAL
CASE NO. 96-00367

ANSWER BRIEF OF RESPONDENT

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PREFACE

The Respondent, COVE CLUB INVESTORS, LTD. d/b/a SANDALFOOT COUNTRY CLUB, a Florida Limited Partnership, was the Plaintiff in the trial court, and will be referred to in this Brief as "COVE CLUB," or "the Respondent."

The Petitioner, PALM BEACH COUNTY, was the Defendant in the trial court, and will be referred to in this Brief as "the COUNTY," or "the Petitioner."

The following are the symbols which are used in this Brief:

"T" refers to the trial transcript.

"A" refers to the Appendix.

STATEMENT OF THE CASE

This litigation involves a claim for inverse condemnation filed by COVE CLUB INVESTORS, LTD. d/b/a SANDALFOOT COUNTRY CLUB ("COVE CLUB") against the COUNTY OF PALM BEACH (the "COUNTY").

The trial court conducted a bench trial on December 19, 1996. Testimony and evidence was presented on the issue of whether or not a taking of property in the constitutional sense had occurred. On January 2, 1996, the trial court entered its Judgment in Favor of Plaintiff on Claim of Inverse Condemnation, reserving jurisdiction for a valuation trial. (A-1) The COUNTY took an interlocutory appeal from the judgment of inverse condemnation and the Fourth District Court of Appeal affirmed. Upon motion for certification, the appellate court certified the following question to this Court as a matter of great public importance:

> WHETHER THE RIGHT OF A PRIVATE COUNTRY CLUB TO RECEIVE A STREAM OF INCOME FROM A MONTHLY RECREATION FEE ASSESSED AGAINST THE OWNER OF A RESIDENTIAL MOBILE HOME LOT CONSTITUTES A PROPERTY RIGHT COMPENSABLE UPON INVERSE CONDEMNATION BY THE COUNTY FOR USE OF THAT LOT IN A PUBLIC ROAD WIDENING PROJECT?

Palm Beach County v. Cove Club Investors, Ltd., 692 So.2d 998, 1000 (Fla. 4th DCA 1997). (A-10)

On June 6, 1997, the COUNTY filed a notice to invoke this Court's discretionary jurisdiction. On June 18, 1997, this Court entered an order postponing its decision on jurisdiction and ordering briefs to be filed on the merits.

STATEMENT OF THE FACTS

COVE CLUB generally agrees with the Statement of the Facts provided by the COUNTY. However, the following information, which was omitted from the COUNTY's Initial Brief, is pertinent to the issues and is included for the Court's edification.

The COUNTY has correctly advised the Court that on November 21, 1989, a mobile home lot was acquired by the COUNTY "through its power of eminent domain and under threat of condemnation" from one Mary B. Herman, and that at the time of the taking, title to the lot (and all other lots in the subdivision known as "Sandalfoot Cove Section One") was taken subject to a recorded "Declaration of Conditions, Covenants, Restrictions and Reservations Affecting Property Located in Sandalfoot Cove," ("the Declaration"). However, an important fact omitted from the COUNTY's Brief is that title to the property adjacent to the mobile home community, consisting of golf course lands and other recreational facilities now owned by COVE CLUB was, and is, also subject to the Declaration.

Additional important information which the COUNTY fails to mention is that the Declaration was modified by an amendment recorded in Official Records Book 1853, Page 828, and by a Final Judgment in *Ruth Moltz, et. al. v. Sandalfoot Cove Country Club, Inc., etc., et. al.,* Case number 75-4697 CA (L) 01 A, entered on September 30, 1977 and recorded in Official Records Book 2745, Page 1460-1465. A-3; A-4. The *Moltz* case was a class action, brought on behalf of all of the 170 mobile home lot owners in Sandalfoot Cove Section One, (including the COUNTY's predecessor in title)

against COVE CLUB's predecessors in title.[1] In that case, the Court certified the class, and approved a global settlement agreement, binding on the parties, the class members, and their successors in title (including COVE CLUB and the COUNTY). The Final Judgment in the *Moltz* case clarified, elaborated upon, and ratified the terms and provisions of the Declaration as previously amended, and stated that "as herein defined (the Declaration) shall remain in full force and effect until their expiration as provided therein." A-4.

Among other things, the Final Judgment made it clear that the recreation fee covenant contained in the Declaration was a "two way street." The judgment set out in unambiguous terms the nature of the benefits and burdens arising from the covenant and the rights and obligations of the mobile home lot owners on the one hand, and the owners of the golf course lands on the other hand. When read together, the Declaration, the Amendment, and the Final Judgment show that reciprocal cross-easements were granted to and/or imposed upon each of the 170 lots in the Sandalfoot Cove, Section One subdivision, to run with these lands, on the one hand, and upon the adjacent golf and country club lands and facilities, to run with those lands, on the other. A-2; A-3; A-4. An easement appurtenant to the subdivision lands as the dominant estate, granted the lot owners access to and the right to play golf, tennis, and otherwise enjoy the recreational amenities located on the golf course lands, as the servient estate. A reciprocal easement appurtenant to the golf course lands as the dominant estate, imposed a requirement upon the owners of the subdivision lots as the servient

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[1] At trial the COUNTY stipulated that COVE CLUB had "standing" to enforce the Declaration as the successor in title to the golf course lands owned by the original Grantor of the Declaration. A-5; T-30, 54.

estate, to pay a monthly "recreation fee" to the owners of the dominant estate. A-2; A-3; A-4.

With respect to the easement entitling the lot owners to utilize the golf and country club facilities, Charles Crosswhite, the general partner of COVE CLUB, testified that the facilities of the Sandalfoot Country Club include a 24,000 square foot clubhouse, and 18-hole championship golf course, a 9-hole executive golf course, tennis courts, swimming pools, saunas, meeting rooms and other amenities. He testified that it costs between 1.1 to 1.2 million dollars a year to operate and maintain the golf and country club facilities, not counting capital improvements or equipment replacement. He also testified that COVE CLUB depends upon the recreation fee income received from the lot owners in Sandalfoot Cove Section One to provide the cash flow needed to pay the operating and maintenance expenses so that COVE CLUB can fulfill its obligation to the lot owners to keep the golf and country club facilities open for their use 365 days per year for the duration of the term of the Declaration. A-6; T-34. Mr. Crosswhite further testified that but for the COUNTY's acquisition of Mrs. Herman's lot and its claim that COVE CLUB's right to receive recreation fees from the owner of record of the lot was thereby terminated, COVE CLUB would have received $4,017.00 in recreation fee income from the date of the COUNTY's acquisition of the lot up through the date of trial. A-7; T-42. Furthermore, according to Mr. Crosswhite, COVE CLUB would have continued to receive recreation fee income in the future from the lot's record owners at the rate of $65.00 per month, plus a cost of living increase in accordance with the Consumer Price Index. A-8; T39-41.

The evidence at trial also established that in addition to the reciprocal covenants regarding the use of the golf and country club facilities in exchange for the payment of

recreation fees, the Declaration contained other covenants. Thus, the Declaration included certain restrictive covenants in the nature of building and use restrictions. For example, there were restrictions which prohibited installation of accessory structures, fences, or clotheslines. Other restrictions disallowed the storage of vehicles and watercraft, or the keeping of animals, livestock or poultry upon the premises. A-2. Mr. Crosswhite testified that COVE CLUB did not contend that the loss of the ability to enforce these building and use restrictions against the COUNTY was a compensable "taking" of a "property right" of COVE CLUB. No claim of inverse condemnation has ever been made for the loss of these rights. The Declaration also included a covenant requiring each mobile home lot owner to pay COVE CLUB a monthly fee for lawn service and garbage collection. No claim of inverse condemnation was made with respect to the maintenance fee covenant either. On the contrary, as Mr. Crosswhite testified at trial, COVE CLUB's claim of inverse condemnation was strictly limited to the COUNTY's taking of COVE CLUB's right under the covenant running with the land to collect recreation fee income from the record owner of the lot formerly owned by Mary B. Herman, in order to partially defray the expense of COVE CLUB's reciprocal covenant to operate and maintain the golf and country club facilities for the benefit of the lot owners. A-9; T52-54.

Finally, in an abundance of caution, Respondent offers the following clarification of the COUNTY's statement at page 2 of its Initial Brief that "[b]oth parties agreed that no recreation fees were due on the Real Property as of the date of the acquisition by the COUNTY": COVE CLUB does agree that Mary B. Herman had paid all recreation fees due to COVE CLUB up through the date of taking by the COUNTY, so that her account was current as of the date of the acquisition. Accordingly, no recreation fees

were due from her. However, recreation fees would have continued to accrue against the property on and after the date of sale, but for the involuntary sale to the COUNTY pursuant to its power of eminent domain.

SUMMARY OF THE ARGUMENT

The issue in this case was whether a "covenant running with the land" requiring subdivision lot owners to pay monthly recreation fees to COVE CLUB in exchange for COVE CLUB's reciprocal covenant, running with its lands, to operate, maintain and make available its golf and country club facilities for the use of the subdivision lot owners constitutes "property" within the meaning of Article X, § 6 of the Florida Constitution and the Fifth and Fourteenth Amendments to the United States Constitution requiring the COUNTY to pay COVE CLUB full and just compensation for its taking.

The "Declaration of Conditions, Covenants, Restrictions and Reservations Affecting Real Property Located in Sandalfoot Cove" (the "Declaration") created real property interests in the form of "easements appurtenant" to run with both the golf course and the subdivision lands for the duration of the Declaration. Under the Declaration, the owners of each mobile home lot in the subdivision adjoining the golf and country club lands are granted an easement to enter upon the golf and country club lands and to use and enjoy the recreational facilities located thereon.

The reciprocal easement entitles the grantors and successive owners of the golf and country club lands to collect monthly recreation fees from each of the mobile home lot owners to partially defray the expense of operating and maintaining the golf and country club facilities.

As an "easement appurtenant," it is clear that the covenant requiring payment of recreation fees by the mobile home lot owners to COVE CLUB as the owner of the golf course lands is an interest in real property within the provisions of the Florida and

Federal constitutions that private property may not be taken for a public purpose without full and just compensation being paid therefor. The cases relied on by the COUNTY are distinguishable because they involve contract rights of water and sewer service providers who were held to have "easements in gross and personal," not "easements appurtenant" such as those involved in this case.

The COUNTY's argument that *The Board of Public Instruction of Dade County v. Town of Bay Harbor Islands,* 81 So. 2d 637 (Fla. 1955) and *Ryan v. Town of Manalapan,* 414 So. 2d 193 (Fla. 1982) require reversal of the trial court's judgment that the involuntary termination of COVE CLUB's right to receive recreation fee income was a compensable taking of property is also misplaced. The trial court analyzed this Court's opinion in *Town of Bay Harbor Islands* as holding that building restrictions in a town subdivision plan prohibiting the erection of non-residential buildings did not vest owners of other lands in the subdivision with "property rights" for which compensation must be paid if the lots are taken and devoted to a non-residential public use such as a public school building. The trial court astutely observed that implicit in the holding in *Bay Harbor* was this Court's recognition that the mere possibility that the erection of a school building in a residential neighborhood might diminish the value of neighboring residences in a community governed by building restrictions is simply too nebulous to place a value upon and, therefore, did not amount to a compensable taking of a property right.

The trial judge distinguished the recreation fee covenant from covenants imposing mere building restrictions by pointing out that the covenant burdening the golf course lands here obliged COVE CLUB to operate and make available its recreational facilities for the use of the lot owners in exchange for payment of a readily calculable

monetary sum. Contrary to the facts in *Bay Harbor* and *Ryan*, the taking of COVE CLUB's right to receive its monthly recreation fee does not involve the mere theoretical devaluation of property which might occur due to the location of a public building in a residential area. Instead, the taking in this case reduced COVE CLUB's cash flow, without any commensurate reduction of its obligation to provide recreational facilities to the remaining subdivision lot owners.

The constitutional right to compensation for property taken by eminent domain is *the full and perfect equivalent of the right taken*. Under Florida law, the focus is properly on what the owner has lost, not what the condemning authority has gained. As the trial court said in the Judgment appealed from, had the taking not occurred, COVE CLUB (or its successors) would have been entitled to a future stream of income at the rate of $65.00 per month from the lot owner of record for the duration of the term of the Declaration as adjusted in accordance with future changes in the Consumer Price Index. That is a property right of obvious monetary value.

The COUNTY also attempts to characterize COVE CLUB's right to receive recreation fee income as a mere "lien" on real property rather than an interest in real property. The fact that the Declaration provides a remedy in the form a lien for delinquent recreation fees does not alter the character COVE CLUB's real property interest, which is, under established principles of Florida law, an easement appurtenant. The easement exists independent of any lien which may, or may not, later arise and afford a remedy in the event that a particular owner defaults in payment of his recreation fee obligation.

The COUNTY also argues that the trial court's judgment was contrary to public policy, because the determination that there was a compensable taking of COVE

CLUB's property would "frustrate government ability to acquire property for public purposes" and "open for argument all manner of restrictive covenants." Clearly that is not the case since there is no question that the public policy of this state requires the payment of full and just compensation for the taking of private property. Furthermore, the property interest taken by the COUNTY here is not a restrictive covenant at all, but covenant creating reciprocal easements appurtenant representing a valuable real property right for which COVE CLUB must be compensated.

POINT I

[As stated by the COUNTY]

COVENANT IN FAVOR OF COVE CLUB IS NOT A PROPERTY INTEREST COMPENSABLE UPON INVERSE CONDEMNATION.

[As re-stated by COVE CLUB]

COVENANT RUNNING WITH THE LAND, REQUIRING MOBILE HOME LOT OWNERS TO PAY MONTHLY RECREATION FEES TO OWNER OF COUNTRY CLUB IN EXCHANGE FOR COUNTRY CLUB OWNER'S RECIPROCAL COVENANT, RUNNING WITH ITS LAND, TO OPERATE AND MAINTAIN A GOLF COURSE AND OTHER RECREATIONAL FACILITIES FOR THE USE OF THE LOT OWNERS, CONSTITUTED "PRIVATE PROPERTY" IN THE CONSTITUTIONAL SENSE REQUIRING FULL COMPENSATION TO BE PAID UPON INVERSE CONDEMNATION.

The pivotal issue in this case was whether the recorded covenant running with the land requiring lot owners in Sandalfoot Cove Section One to pay monthly recreation fees to COVE CLUB in exchange for COVE CLUB's reciprocal covenant to operate, maintain and make available its golf course for the use of the lot owners is "property" in the constitutional sense so that Article X, § 6 of the *Florida Constitution* and the Fifth and Fourteenth Amendments to the *United States Constitution*, require the COUNTY to pay COVE CLUB full and just compensation for its taking. The trial judge entered a judgment of inverse condemnation, finding that a valuable property right had been taken, and the Fourth District Court of Appeal agreed, and affirmed.

For the most part, the facts in this case are not in dispute. To the extent that there were any facts in dispute, the trial court's findings of fact as set forth in the "Judgment in Favor of Plaintiff on Claim of Inverse Condemnation" entered January 2,

1996, are clothed with a presumption of correctness. *Herzog v. Herzog,* 346 So.2d 56 (Fla. 1977); *Parsons v. Motor Homes of America, Inc.,* 465 So.2d 1285 (Fla. 1st DCA 1985).

It is conceded by the COUNTY that on November 21, 1989, it took title to a residential mobile home lot in Sandalfoot Cove Section One formerly owned by Mary B. Herman "through its power of eminent domain and under threat of condemnation for the improvement of Marina Boulevard in Palm Beach County, Florida." Initial Brief, p.2. At the time of the taking of fee title to the Herman property, there was a recorded "Declaration of Conditions, Covenants, Restrictions and Reservations Affecting Property Located in Sandalfoot Cove" (the "Declaration"), which imposed covenants, reservations and restrictions on each of the 170 mobile home lots located in Sandalfoot Cove Section One (including the Herman lot), and upon the adjacent golf course lands and facilities owned by COVE CLUB.

The Declaration expires in June, 1999, but will be renewed for successive 25 year terms, unless sooner terminated by COVE CLUB, at its election, as successor to the original Grantor. By the plain language of the Declaration, as amended by Amendment of November 13, 1970, and Final Judgment of September 30, 1977, real property interests in the form of "easements appurtenant" were created to run with both the golf course lands and the mobile home lands for the duration of the Declaration. The easements are reciprocal and are binding on the owners of the respective lands and their successors. Under the Declaration, the owners of each mobile home lot in the subdivision adjoining the golf and country club lands are granted a non-exclusive easement to enter upon the golf and country club lands and to use and enjoy the recreational facilities located thereon. This easement is appurtenant to each of the

mobile home lots (the dominant estate) and its character as an affirmative easement arises from the granting of authority to do acts upon the golf and country club lands (the servient estate), which would give rise to a right of action if no easement existed. *See,* 20 Fla. Jur. 2d, *Easements* § 5.

The reciprocal easement entitles the owners of the golf course lands to collect monthly recreation fees from each of the mobile home lot owners to partially defray the expense of operating and maintaining the golf and country club facilities. The reciprocal easement curtails the owners of the servient estate in the exercise of the free and unencumbered ownership, use, and possession of the mobile home lots, which would otherwise be associated with fee ownership. This type of covenant has sometimes been described as a "negative" easement. 20 Fla. Jur 2d, *Easements* § 5. In the case of the reciprocal easement requiring a fee to be paid to COVE CLUB for the right to use the golf course, the mobile home lots comprise the servient estate and the golf course lands constitute the dominant estate.

As "easements appurtenant," it is clear that the covenants requiring payment of recreation fees by the mobile home lot owners to COVE CLUB in exchange for an easement over and upon the golf course lands are interests in real property within the Florida and Federal constitutions that private property may not be taken for a public purpose without full and just compensation being paid therefor.

Thus, as stated in 20 Fla. Jur. 2d, *Easements* § 1:

> (An easement) is more than a mere personal privilege; it is an interest in land. And, although it is a right distinct from the ownership of land, it may be a vested right within the meaning of constitutional guaranties, including the prohibition against taking property without just compensation. An easement constitutes property within the protection of the

> constitutional provision that private property may not be taken without just compensation. (citations omitted.)

In *Glessner v. Duval County,* 203 So.2d 330, 332 (Fla. 1st DCA 1967), the court held:

> Section 12 of the Declaration of Rights in the Florida Constitution, F.S.A. provides that "private property [may not] be taken without just compensation."
>
> That an easement constitutes property within the protection of the above constitutional provision has long been established in Florida. The following statement from 12 Fla. Jur., *Eminent Domain*, Sec. 77, correctly reflects the decisional law on this point:
>
> > When there is an easement over or upon a parcel of land taken for the public use, the easement is considered to be property in the constitutional sense. For example, if a parcel of land taken by eminent domain is subject to a right of way in favor of an adjoining lot, and the public use to which the servient parcel is put destroys the enjoyment of the way, the owner of the easement is deprived of his property and is entitled to compensation.

In Trustees of Tuft's College v. Triple R Ranch, Inc., 275 So.2d 521 (Fla. 1973) this Court discussed the First District Court's decision in *Glessner, stating:*

> That a right of entry or perpetual easement is a property right is clearly stated in Glessner v. Duval, 203 So.2d 330, 332, wherein the court held '[t]hat . . . that an easement constitutes property within the protection of [the Florida Constitution] has long been established in Florida'").

The COUNTY has attempted to characterize COVE CLUB's right to recreation fees from the subdivision lot owners as "simply a contract to provide services and receive payment for it, not a compensable property right." Initial Brief, p.10. Citing *Division of Administration v. Ely*, 351 So.2d 66 (Fla. 3d DCA 1977) and *North Dade Water Co. v. Florida State Turnpike Authority,* 114 So.2d 458 (Fla. 3d DCA 1959), the COUNTY argues that "COVE CLUB's interest is merely a contract right and therefore

not compensable upon inverse condemnation." Initial Brief, p.10. The COUNTY's reliance on these cases is misplaced. COVE CLUB occupies a considerably different position than that of the "contracting parties" in the *Ely* and *North Dade Water Co.* cases. Each of these cases involved "easements in gross and personal to the holder thereof" and not "easements appurtenant." In *Division of Administration v. Ely*, 351 So.2d 66 at 68, 69, the court held:

> The law is clear that a service and easement agreement held by a private company to provide water and sewer service to the owners of land creates no property right which is compensable upon condemnation of the land or the right of way on the land to which such agreement relates. *Such a service and easement agreement creates an easement in gross personal to the company and not appurtenant because the easement is unsupported by another dominant estate held by the company which the easement benefited.* (emphasis added).

In *North Dade Water Co. v. Florida State Turnpike Authority,* 114 So.2d 458 at 460, 461, the court held:

> A contract giving one public service corporation the exclusive privilege of maintaining its works upon a certain tract of land creates no property right that the law will recognize when enforcing the exercise of eminent domain over the same land in behalf of another corporation . . . an easement is in gross and personal to the holder when it is not appurtenant to other lands or premises. An easement is appurtenant when the right which it represents is attached to and belongs with some greater or superior right as a dominant estate . . . the able trial judge was eminently correct in holding that the easements were unsupported by a dominant estate and were in gross and personal to the holder.

The distinction between the cases relied upon by the COUNTY and the case now before this Court is obvious. Both of the cited cases involve mere contract rights or "gross easements" and not "easements appurtenant" which are involved in this case.

In the case of the utilities service providers, there was a "servient estate" (the land to be served by the water and sewer service agreement) but no "dominant estate" held by the service provider. In the case before this Court, there are reciprocal easements and a dominant and servient estate with respect to each easement. Thus, it is apparent that the covenant running with the lands entitling COVE CLUB to receive recreation fee income is an "easement appurtenant," not a mere "easement in gross and personal" such as those which were involved in the *Ely* and *North Dade Water Co.* cases.

The fallacy of the COUNTY's position is further illustrated by contrasting the recreation fee covenant with other covenants contained in the Declaration. Paragraph 4(d), appearing at pages 5 and 6 of the Declaration (O.R. Book 1729, Pages 289 through 290) includes a covenant requiring lot owners to pay a monthly maintenance fee to COVE CLUB for lawn service and garbage collection. That covenant provides:

> (d) The grantor, its successors and assigns, shall provide each residential lot owner general lawn maintenance services . . . and periodic garbage pick-up service . . . Each lot owner (their successors, assigns and remote grantees), by the acceptance of his deed, agrees to accept said services to be performed by grantor, and agrees to pay grantor the sum of $17.00 per month . . . adjusted annually (upward or downward) based upon the cost of living index . . . (A-2).

Unlike the reciprocal covenant requiring payment of a recreation fee in exchange for an easement over and upon the golf course for the use of recreational facilities which burdens two separate tracts of land and involves both dominant and servient estates, there is no dominant estate with respect to the maintenance fee covenant. Without a dominant estate, the easement to provide maintenance services for a monthly fee fails to meet the definition of an "easement appurtenant," because it does

not "run with" or "benefit" other real property. Instead, like the contractual rights to supply services to lot owners discussed in the *Ely* and *North Dade Water Co.* cases, the covenant to pay maintenance fees under paragraph 4(d) is in the nature of an "easement in gross and personal to the holder."

The distinction between "appurtenant easements" and "easements in gross" is explained in an article entitled "*Easements: Are They Appurtenant?*" by J. Robert Hunkapiller, Attorneys Title Insurance Company Senior Claims Attorney:

> A well-drafted appurtenant easement (1) describes both the servient and dominant estate and (2) states that it is appurtenant to the dominant estate (or that "it runs with the land") and that it shall be binding on and shall inure to the benefit of the parties, their heirs, successors and assigns . . . *Florida Real Property Sales Transactions,* (Fla. Bar CLE 1994), Sec. 9.2 provides the following definitions:
>
> *Appurtenant Easement*: Easements that are created and exist for the benefit of a particular parcel of land regardless of who owns the parcel.
>
> *Easement in Gross*: Easements that exist apart from a dominant estate and are personal to the holder.
>
> *The Fund Concept*, June, 1997; Volume 29, page 90.

In accordance with the above definitions, the recreation fee covenant is an easement appurtenant because it "runs with" both the subdivision lands and the golf course lands. The fees are payable by whomever from time to time owns a particular mobile home lot to whomever from time to time owns the golf course lands. Likewise, the obligation to operate, maintain and grant unlimited use of the golf course and other recreational facilities at the Sandalfoot Country Club to the mobile home owners, is imposed upon the owners of the golf course lands, whomever they may be from time to time. In other words, the reciprocal easements involved in this case burden the

respective servient estates and benefit the respective dominant estates regardless of whom the owners may be.

On the other hand, the maintenance fee covenant does not "run with" the golf course lands, but is personal to the service provider, whomever that may be from time to time. This distinction is made even more apparent by the provisions in the Declaration regarding assignability. While the recreation fee covenant exists only for the benefit of the owners and successor owners of the golf course lands and cannot be assigned to a third party independent of the conveyance of the golf course property, the Declaration expressly provides that the maintenance fee covenant can be assigned to anyone, without regard to the ownership of property. Thus, paragraph 4(h) of the Declaration provides:

> GRANTOR may, at its option, assign its right to provide the lawn maintenance and garbage collection services above described, to any person, firm or corporation of its choosing, and in the event of such an assignment . . . GRANTOR'S assignee shall have the right to enforce the lawn maintenance and garbage collection fee lien as hereinabove provided, and shall assume the obligations of GRANTOR contained in paragraph 4(d) above.

Accordingly, the taking of the maintenance fee covenant (like the takings of the personal service contracts in *Ely* and *North Dade Water Co.*) would not be compensable under the holdings in those cases. COVE CLUB did not make a claim in this case for compensation based upon the taking of its right under paragraph 4(d) to receive maintenance fees, even though that right was destroyed by the COUNTY's taking as effectively as was COVE CLUB's right to receive recreation fees under paragraph 4(b). It should be noted, however, that while the taking cut off the right to receive future maintenance fees as to this lot, the service provider was correspondingly

relieved of its responsibility to perform future maintenance services. On the other hand, although the COUNTY's taking resulted in a termination of COVE CLUB's recreation fee income, it did not relieve COVE CLUB of the obligation, running with its lands, to operate, maintain and provide an easement over and upon its golf course lands for all of the remaining lot owners in the mobile home community.

That the COUNTY has failed to recognize the distinction between the easement appurtenant created by paragraph 4(b) of the Declaration and the easement in gross and personal created by paragraph 4(d) of the Declaration is clear from its attempt, at page 7 of its Initial Brief, to equate COVE CLUB's recreation fee covenant to the maintenance fee covenant discussed in *Balzer v. Indian Lake Maintenance, Inc.*, 346 So.2d 146, 149 (Fla. 2d DCA 1977). As the COUNTY points out, the Second District Court in *Balzer* held that a covenant requiring the payment of maintenance fees by subdivision lot owners "is more nearly akin to a contractual provision than a restriction placed on the use of the land." The covenant for maintenance fees in *Balzer* is virtually identical to the covenant for the payment of maintenance fees under paragraph 4(d) of the Declaration in this case. By citing *Balzer*, the COUNTY has unwittingly helped highlight the critical distinction between the two types of "covenants" which renders the COUNTY's taking of COVE CLUB's recreation fee covenant, the taking of a compensable property interest, while the taking of the maintenance fee covenant merely destroyed a contract right or easement in gross and personal for which no compensation is payable.

In its brief, the COUNTY chastises the trial judge, the appellate court and opposing counsel for ascribing "many titles" to COVE CLUB's recreation fee covenant throughout the prolonged litigation of this case. It is true that a variety of terms have

been employed in attempting to describe the reciprocal covenant granting easement rights over COVE CLUB's golf course in exchange for the payment of recreation fees. However, regardless of the labels applied to it, in the final analysis, the recreation fee covenant is clearly an interest in real property and a valuable property right. The COUNTY's repeated and disingenuous references to it as a "restrictive covenant," a "mere contract right," a "chose in action" or an "artifice," does not alter its fundamental character as "property" in the constitutional sense. Although the COUNTY chooses to label COVE CLUB's property interest as a "restrictive covenant" throughout its brief, it obviously recognizes that the full title of the Declaration is "Declaration of Conditions, Covenants, Restrictions, and Reservations Affecting Property Located in Sandalfoot Cove," as the COUNTY so describes the instrument in footnote 2 of its Initial Brief. The title itself establishes that the Declaration contains not only "restrictions," but also, "covenants," "conditions," and "reservations."

The Declaration also contains a "mere contract right" in the form of COVE CLUB's (or its assignee's) right to receive maintenance fees for the lawn service and garbage collection, but the reciprocal recreation fee covenant is distinctly different from that. The Declaration also contains "restrictive covenants," but the reciprocal recreation fee covenant is different from those as well. For example, paragraph 3 of the Declaration prohibits lot owners from having "clotheslines," "signs," "animals" (except non-talking birds), "persons under the age of eighteen years," "fences," "add-ons," etc. COVE CLUB has made no inverse condemnation claim in this case for loss of its ability to enforce its "mere contract rights' or these "restrictive covenants."

As a covenant running with the land imposing reciprocal easements appurtenant, the recreation fee covenant is neither a "restrictive covenant" nor a "mere contract

right." Rather, it is a property interest in the constitutional sense, and its taking by COUNTY is compensable as the trial court correctly found in this case.

Arguing, however, that COVE CLUB's recreation fee covenant is nothing more than a "restrictive covenant," the COUNTY relies on *The Board of Public Instruction of Dade County v. Town of Bay Harbor Islands*, 81 So.2d 637 (Fla. 1955) and *Ryan v. Town of Manalapan*, 414 So.2d 193 (Fla. 1982) as authority for reversing the trial court's judgment that the termination of COVE CLUB's right to receive recreation fee income was a compensable taking of property. According to the COUNTY, "[t]he restrictive covenant at issue in *Town of Bay Harbor Islands* did not involve the obligation to pay money, but rather, restricted the use of property to residential purposes. Nevertheless, the rationale of *Town of Bay Harbor Islands* applies with equal force."

The COUNTY readily concedes that the building restrictions that were the subject of the *Town of Bay Harbor Islands* and *Ryan* cases are different from the covenants in this case which involve the mandatory payment of recreation fees in exchange for the mandatory obligation to maintain recreational facilities. However, the COUNTY argues that this is a distinction without a difference. The trial court found otherwise. The trial judge analyzed the Supreme Court's opinion in *Town of Bay Harbor Islands* as holding that building restrictions in a town subdivision plan prohibiting the erection of non-residential buildings did not vest owners of other lands in the subdivision with "property rights" for which compensation must be paid if the lots are taken and devoted to a non-residential public use such as a public school building, even though that use is inconsistent with the building restrictions imposed on the lands by private agreement. Judgment in Favor of Plaintiff on Claim of Inverse Condemnation, p.5 (A-1).

The trial judge astutely observed that implicit in the holding in *Town of Bay Harbor Islands* was the Florida Supreme Court's recognition that the mere possibility that the erection of a school building in a residential neighborhood might diminish the value of neighboring residences in a community governed by building restrictions is simply too nebulous to value. As noted by the trial judge, "[p]roperty in the constitutional sense, includes any interest in real or personal property that may be the subject of ownership and upon which it is practicable to place a money value." Judgment in Favor of Plaintiff on Claim of Inverse Condemnation, p.4 (A-1), *citing,* 2 Julius L. Sackman, Nichols, *The Law of Eminent Domain,* § 5.101[2] (Rev. 3d Ed. 1990). It is evident that the lack of ability to enforce the "residential only" restriction would be an uncertain and speculative interest which would be difficult, if not impossible, to place a value on. Therefore, under Nichols' definition, the lack of enforceability of building restrictions such as those involved in *Town of Bay Harbor Islands* would not appear to amount to "property" in the constitutional sense. Nevertheless, in so holding, the Florida Supreme Court aligned itself with the minority view.[2] *Town of Bay Harbor Islands,* 81 So.2d, at 641-642.

The trial court in this case distinguished the provisions in the Declaration from the building restrictions of the type discussed in *Town of Bay Harbor Islands* on the grounds that more than mere building restrictions, the right to receive recreation fee income arose from a covenant running with the land whereby the Plaintiff is obliged to

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[2] A thorough analysis of the compensability of "negative covenants" or "use restrictions" which argues that restrictive covenants are valuable property interests for which owners should be compensated, including a well reasoned criticism of the *Town of Bay Harbor Islands* is contained in: Brickman, Richard I. *The Compensability of Restrictive Covenants in Eminent Domain,* 13 U. Fla. L. Rev. 147 (1960).

operate and make available its country club facilities for the use and enjoyment of each and every lot owner in the Sandalfoot Cove Section One subdivision in exchange for payment of a readily calculable monetary sum. In contrast to the facts in *Town of Bay Harbor Islands* and *Ryan*, this is no mere theoretical devaluation of property because of the location of a public building in a residential area. There is an actual impact on the cash flow and the money deposited into the cash register at COVE CLUB every month. Thus, the reciprocal covenant in this case meets the definition of "property," i.e., it is readily capable of having a monetary value placed upon it. The COUNTY apparently recognizes the distinction made by the trial judge, because at page 25 of its Initial Brief filed in the Fourth District Court of Appeal, it was conceded that:

> It is true that COVE CLUB will receive a reduction in gross (but not necessarily net) income of something less than 1/170th of the total it is now receiving. Any detriment to COVE CLUB by way of lost income is part of the price one pays for existing in an organized society where 'the right to own and acquire property the individual is subject to the right and power of eminent domain'. . . and 'every person is charged with the knowledge that land may be taken by the sovereign for public purposes at any time'. . . Members of society accept the benefit of roads, schools, etc.; they must also accept its cost. (citations omitted).

Apparently, the COUNTY's argument is that there has been a taking in this case of something of value, but since the value is relatively small it does not warrant compensation. The COUNTY improperly analyzes the law of the State of Florida in suggesting that COVE CLUB's loss of its property is "part of the price one pays for existing in an organized society." It is, of course, true that private property rights must sometimes yield to the needs of society. When a valid public purpose exists for the taking of private property, the government, through exercise of its power of eminent domain, has the unquestionable authority to condemn and take the property. However,

under the Florida and federal constitutions, the State cannot take private property without paying full compensation for it. It does not matter if the loss is only 1/170th of COVE CLUB's income. It is still a compensable taking under the Florida and federal constitutions.

As the United States Supreme Court held long ago, "the constitutional right to compensation for property taken by eminent domain under Article XIV, § 29 of the Constitution of the State of Florida is *the full and perfect equivalent of the right taken. Monongahela Navigational Company v. United States,* 148 U.S. 312, 13 Sup. Ct. 622, 37 L. Ed. 463. In the COUNTY's Initial Brief filed in the Fourth District Court of Appeal, the trial judge was taken to task for focusing on the "detriment to COVE CLUB." Appellant's Initial Brief (4th DCA), p.25. Of course, in doing so, the able trial judge followed firmly established principles of Florida law. In *Meyers v. City of Daytona Beach,* 30 So.2d 354 (Fla. 1947), this Court held that, "[f]ull compensation means nothing less than payment for that which the property owner is being deprived of." In *Florida Department of Revenue v. Orange County,* 620 So.2d 991 (Fla. 1993), this Court again held that "full compensation within the meaning of the Constitution must be determined by reference to the state of affairs that would have existed absent any condemnation proceeding whatsoever, i.e., the owners retaining ownership."

Under Florida law, the focus is properly on what the owner has lost, not what the condemning authority has gained. *See, Vatalaro v. Department of Environmental Regulation,* 601 So.2d 1223 (Fla. 5th DCA 1992) (the extent to which [the owner's] right has been diminished is the test for determining whether a taking has occurred). In this case, the trial court found that the determinative question was "what has the owner lost?" citing, *State of Florida, Department of Health and Rehabilitative Services v.*

Scott, 418 So.2d 1032, 1034. As the trial court said in the Judgment appealed from, had the taking not occurred, the Plaintiff would have been entitled to a future stream of income at the rate of $65.00 per month from the lot owner of record for the duration of the term of the Declaration as adjusted in accordance with future changes in the Consumer Price Index. That is *what was lost* and that was the proper focus of the trial court's decision.

The COUNTY also attempts to characterize COVE CLUB's right to receive recreation fee income as a mere "lien" on real property rather than an interest in real property. Quoting from § 4 (c) of the Declaration, the COUNTY points out that the owners of the golf and country club lands may impose and enforce a lien against a defaulting mobile home lot owner's property as a remedy for failure to pay the recreation fees. Initial Brief, p.8.

From this, the COUNTY concludes that COVE CLUB's rights are akin to the rights of a mortgagee who has no estate or interest in mortgaged lands but is merely an owner of a chose in action, creating a lien on the property. The COUNTY cites *Shavers v. Duval County,* 73 So.2d 684 (Fla. 1954) for the proposition that a mortgage holder has no right to receive interest under a long term mortgage when the property is condemned prior to maturity of the obligation secured by the mortgage. Initial Brief, p.7. The fact that the Declaration provides a remedy in the form a lien for delinquent recreation fees does not alter the character of COVE CLUB's real property interest, which is, under established principles of Florida law, an easement appurtenant.

The provision for a lien for delinquent recreation fee payments is nothing more than an enforcement mechanism which operates as a remedy in the event of a default by an owner of the servient estate in his obligation to pay recreation fees in accordance

with COVE CLUB's rights as the owner of the dominant estate to which its easement is appurtenant. The easement exists independent of any lien which may or may not later arise because a particular owner defaults in payment of his recreation fee obligation. The rationale of the Court in *Shavers* is similar to that of the Court in *Ely* and *North Dade Water Co.* The rights of which the parties were deprived in those cases did not amount to real property interests with the result that only incidental frustration of contract rights (rather than a taking of private property) was involved. In each of these situations, the parties were deprived of future contract rights, but they were also relieved of the requirement to continue to perform their contractual obligations in the future.[3] In contrast, COVE CLUB was not relieved of any of its obligations under the covenant, and the full responsibility and expense of maintaining, operating and providing access to and use of its recreational facilities to the mobile home owners continues to be a burden upon and to run with its lands.

In this case, the COUNTY has attempted to show that COVE CLUB's right to receive recreation fees in respect to the lot condemned by the COUNTY is not an interest in real property but a mere personal or contractual right or lien, the taking of which is non-compensable. In so doing, the COUNTY has relied primarily on the decisions in *North Dade Water Co., Ely and Shavers,* all of which are easily distinguished. The trial court properly found that a taking of COVE CLUB's property by

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[3] Obviously, the service providers in *Ely* and *North Dade Water Co.* were relieved of future performance of their obligations under their water/sewer service agreements, thus permitting their equipment to be put to use elsewhere. Although perhaps less obvious, the mortgage holder in *Shavers* was likewise relieved of future performance of its obligation to continue to make available to the mortgagor the use of the principal sum of the mortgage loan for the duration of the original mortgage term. Upon condemnation, the entire principal of a mortgage loan is returned to the mortgagee, making it available to be loaned out again to another party.

inverse condemnation[4] has been proven to have occurred in this case by a preponderance of the evidence. The Fourth District Court agreed and affirmed the judgment. This court should not disturb those findings which are correct in both law and in fact, and the certified question should be answered in the affirmative.

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[4] It is well established that a public body is liable to the same extent in an inverse condemnation action that it would be if it were the petitioner in a direct condemnation action, and that when a governmental body takes private property without first initiating formal proceedings, the injured property owner may institute an inverse condemnation suit. *See, Stewart v. City of Key West,* 429 So. 2d 784 (Fla. 3d DCA 1983); *Flatt v. City of Brooksville,* 368 So. 2d 631 (Fla. 2d DCA 1979); *State of Florida, Department of Health and Rehabilitative Services v. Scott,* 418 So. 2d 1032 (Fla. 2d DCA 1982).

POINT II

[As stated by the COUNTY]

FINDING THIS COVENANT TO BE COMPENSABLE UPON INVERSE CONDEMNATION IS CONTRARY TO PUBLIC POLICY.

[As re-stated by COVE CLUB]

FINDING THAT THE TAKING OF THIS COVENANT WAS COMPENSABLE WAS CONSISTENT WITH THE PUBLIC POLICY OF FLORIDA.

"Eminent domain" is the fundamental power of the sovereign to take private property for public use without the owner's consent. The power is an inherent attribute of sovereignty and is not derived from the Constitution. *Florida Eminent Domain Practice & Procedure*, 5th Ed., The Florida Bar, 1996, p.2-3; *Demeter Land Co. v. Florida Public Service Co.*, 99 Fla. 954, 128 So. 402 (1930).

Thus, Article X, § 6, of the Florida Constitution is not a grant of the power of eminent domain, but a limitation on it. The limitation imposed by § 6 is that "no private property shall be taken except for a public purpose and with full compensation therefor paid. . ." In addition to the limitation contained in the Florida Constitution, the Fifth Amendment to the United States Constitution (made applicable to the states through the Fourteenth Amendment) prohibits the taking of private property without the payment of just compensation.

The exercise of the power of eminent domain is one of the most onerous proceedings known to law. *Peavy-Wilson Lumber Co. v. Brevard County*, 159 Fla. 311, 31 So.2d 483 (1947). Accordingly, these constitutional limitations exist as an expression of the public policy of the State to ensure that private property rights will be

safeguarded. Specifically, they exist to protect individuals whose property interests are taken by a condemning authority for a public purpose from having to bear a burden for the cost of public projects disproportionate to that borne by the general public. *Joint Ventures, Inc. v. Department of Transportation,* 563 So.2d 622, 624 nt. 7 (Fla. 1990) (citing additional cases); *Daniels v. State Road Dept.*, 170 So.2d 846 (Fla. 1964).

Safeguarding private property rights is considered to be of such paramount importance as a matter of public policy in Florida, that only in eminent domain cases (when one's property is in jeopardy) and in capital cases (when one's life is at stake) are twelve person juries required.

Florida courts have broadly interpreted the constitutional mandate to safeguard private citizens from appropriation of their property rights without full compensation, liberally applying the concept of "property" to extend well beyond physical interest in land. Thus, in *State Department of Transportation v. Stubbs,* 285 So.2d 1 (Fla. 1973), an eminent domain proceeding involving the taking of an access right, this Court stated:

> The rationale for granting compensation, although not always expressed in judicial pronouncements, is that "Property" is something more than a physical interest in land; it also includes certain legal rights and privileges constituting appurtenants to the land and its enjoyment. This is part of a gradual process of judicial liberalization of the concept of property so as to include the "taking" of an incorporeal interest such as the acquisition of access rights resulting from condemnation proceedings. *Id.* at 2.

The definition of "property" has been extended to contractual obligations and leasehold interests, including options to renew leases, (*Dama v. Record Bar, Inc.*, 512 So.2d 206 (Fla. 1st DCA 1987); *Pinellas County v. Brown*, 450 So.2d 240 (Fla. 2d DCA 1984)) and apparently contracts for deed. *Cravero v. Florida State Turnpike Authority,* 91 So.2d 312 (Fla. 1957). Similarly, easements, including access easements, have

been held to constitute property requiring full compensation. *Kendry v. Division of Administration, Department of Transportation,* 366 So.2d 391 (Fla. 1st DCA 1978); *Glessner v. Duval County,* 203 So.2d 330 (Fla. 1st DCA 1967). The taking of riparian rights also requires compensation. *Moore v. State Road Department,* 171 So.2d 25 (Fla. 1st DCA 1965).

Florida courts have equally required compensation when purely personal property has been taken. *Hillsborough County v. Guiterrez,* 433 So.2d 1337 (Fla. 2d DCA 1983); *Flatt v. City of Brooksville,* 368 So.2d 631 (Fla. 2d DCA 1979) (household items). *See, Dept. of Agriculture and Consumer Services v. Mid-Florida Growers, Inc.,* 570 So.2d 892 (Fla. 1990); *Florida Power Corporation v. Wenzel,* 113 So.2d 747 (Fla. 2d DCA 1959) (crops); *In re Forfeiture of 1976 Kenworth Tractor Trailer Truck,* 576 So.2d 261 (Fla. 1990) (motor vehicle).

The interests represented by mortgages and judgment liens must also be satisfied in eminent domain proceedings. *Shavers v. Duval County,* 73 So.2d 684 (Fla. 1954). *See, also, Florida Eminent Domain Practice and Procedure,* 5th Ed. pp. 12-4,5 (1996). Even intangible property rights such as franchises are protected by the requirement of full compensation. *Pinellas County v. General Telephone Company of Florida,* 229 So.2d 9 (Fla. 2d DCA 1969).

This Court recognized early that the term "property interest" must extend even to reservation interests. *City of Jacksonville v. Shaffer,* 144 So. 888 (Fla. 1932). In *Shaffer,* the Court held that a reservation to a developer of the exclusive right to lay public utility works in the streets of a subdivision created a new and independent right,

and the extinguishment of this right through condemnation required the payment of full compensation.[5]

Based upon the foregoing, it is clear that when private property is appropriated by the State of Florida, the public policy of this State requires the highest degree of protection and judicial scrutiny to ensure that the taking is for a valid public purpose and that full compensation be paid to the owner. That public policy was carried out by the trial judge and appellate court in this case in holding that COVE CLUB's private property shall not to be taken by the COUNTY without full and just compensation being paid therefor. The COUNTY's argument that "[a]llowing private parties to contract in a manner which frustrates government's ability to acquire property for public purposes is contrary to public policy," is specious. See, Initial Brief, p.25.

COVE CLUB does not take issue with the power of the State to involuntarily take private property for a public purpose. It is the COUNTY's position that it has the power to take COVE CLUB's property without paying compensation which is erroneous and clearly not consistent with the public policy of Florida. The COUNTY's characterization of COVE CLUB's right to compensation for the appropriation of its private property as a "windfall" is either a gross misunderstanding of the Constitution, laws and judicial decisions of this State, or it is an arrogant appeal to this Court to ignore the law and permit the appropriation of private property without any compensation. If so, the

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[5] Several other jurisdictions, most notably the federal courts, have held that, in the absence of a contrary state statute, covenants or servitudes creating the affirmative right to collect operation and maintenance assessment charges constitute compensable property interests which are distinct from those held by the fee simple owners of the underlying property. *United States v. 129.4 Acres,* 446 F.Supp. 1 (D. Ariz. 1976) *aff'd* 572 F.2d 1385 (9th Cir. 1978); 572 F.2d 1385 (9th Cir. 1978); *People of State of Cal. Dept. of P.W. v. 25.09 Acres of Lands,* 329 F.Supp. 230 (S.D. Cal. 1971); *Adaman Mutual Water Company v. United States,* 278 F.2d 842 (9th Cir. 1960). *See also, State v. Human Relations Research Foundation,* 391 P.2d 513 (Wash. 1964).

argument is being made to the wrong audience. This Court is bound to apply the Florida and federal constitutions and laws of the State of Florida, unless, and until, they are changed.

The fact that the property right taken by the COUNTY amounts to only a small fraction of COVE CLUB's income under its recreational fee covenant is immaterial. No matter how small the value of the property taken, it is still compensable under the Florida and federal constitutions. The absurdity of the COUNTY's position becomes obvious by following it to its logical conclusion. At page 15 of its Initial Brief, the COUNTY takes the argument almost to its logical conclusion by saying:

> If the COUNTY acquired half of the lots in the subject development, COVE CLUB would presumably require just compensation for each of the acquired properties, even though it would be providing services to a far smaller community.

Testimony at trial in this case established that it costs over a million dollars a year to operate and maintain the golf course, and that COVE CLUB depends upon the recreation fee income received from the mobile home owners to provide cash flow needed to pay the expenses of fulfilling its obligation to keep the recreational facilities open for their use 365 days per year for the duration of the Declaration. The testimony also established that whether the owner of a particular lot chooses to play golf or not, it makes no difference in the operating expense of the country club. COVE CLUB is bound by the reciprocal covenant to supply a fully operational golf and country club for a fixed recreation fee, subject only to a CPI adjustment, and cannot raise the fee for the remaining lot owners if one lot, or fifty lots or even 169 lots out of the 170 total lots were to be condemned and taken. Thus, taking the COUNTY's argument all the way to its logical conclusion, if 169 lots out of 170 were condemned and taken, thereby

forcing COVE CLUB to keep its golf course open and fully operational for a single lot owner, the COUNTY would apparently still argue that no property right of any value was taken - - notwithstanding the fact that COVE CLUB would still be required to spend over a million dollars a year to accommodate one golfer in order to comply with the burden imposed upon its lands by the recorded covenant.

If this Court were to accept the COUNTY's "public policy" argument, the result would be that COVE CLUB would bear a disproportionate burden to that borne by the general public for the costs of the public improvement for which Mrs. Herman's lot was condemned. Not only would COVE CLUB pay taxes along with all other taxpayers in Palm Beach County to defray the costs of the public project, but, in addition, it would be forced to pay the equivalent of the present value of the future stream of income which would otherwise have been received pursuant to the recreation fee covenant running with the Herman lot and golf course lands. Such a result would not be consistent with the public policy of this State and would be an impermissible encroachment on COVE CLUB's private property rights in violation of Article X, § 6, of the Florida Constitution and Amendments V and XIV of the United States Constitution.

CONCLUSION

Based upon the foregoing arguments, the question certified to this Court by the Fourth District Court of Appeal should be answered in the affirmative. This matter should then be remanded for further proceedings consistent with the decision of the Fourth District Court of Appeal.

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BY _____
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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing Answer Brief of Respondent was furnished by U.S. Mail to: DENISE D. DYTRYCH, ESQ., County Attorney, and LEONARD BERGER, Assistant County Attorney, P. O. Box 1989, West Palm Beach, FL 33402-1989, this October 6, 1997.

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