

20060013296
THIS DOCUMENT HAS BEEN RECORDED
IN THE PUBLIC RECORDS OF
LEON COUNTY FL
BK: 3453 PG:1628, Page1 of 12
02/10/2006 at 03:49 PM,

THIS DOCUMENT PREPARED BY:
SEDIAT CAYSON
8511 BULL HEADLEY ROAD #200
TALLAHASSEE, FL 32312

BOB INZER, CLERK OF COURTS

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
OF
ELMWOOD ESTATES HOMEOWNERS ASSOCIATION, INC.**

THIS DECLARATION, made on the date hereinafter set forth by **WESTERN
WAVE, CORPORATION**, a Florida Corporation, hereinafter referred to as "Declarant",

WITNESSETH

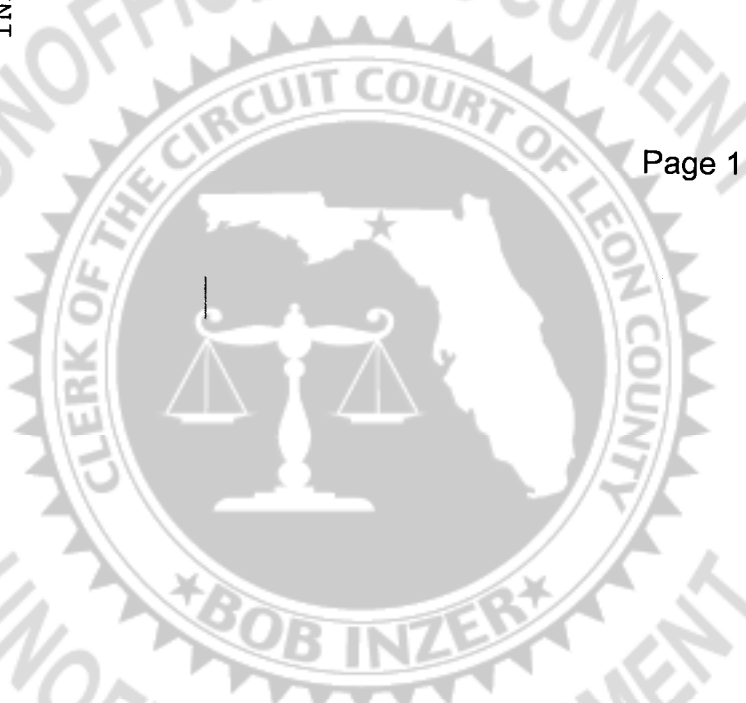
WHEREAS, Declarant is the owner of certain property in Leon County, State of Florida, which is more particularly described as: See ~~Exhibit "A"~~^{*} attached hereto and by reference made a party hereof;
*Exhibit "A"

NOW, THEREFORE, Declarant hereby declares that all of the property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each owner thereof.

**ARTICLE I
Definitions**

Section 1. "Association" shall mean and refer to **ELMWOOD ESTATES HOMEOWNERS ASSOCIATION, INC.**, its successors and assigns.

THIS DOCUMENT IS BEING RE-RECORDED TO INCLUDE EXHIBIT "A" WHICH WAS INADVERTENTLY OMITTED



UNOFFICIAL DOCUMENT

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property, if any, (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners.

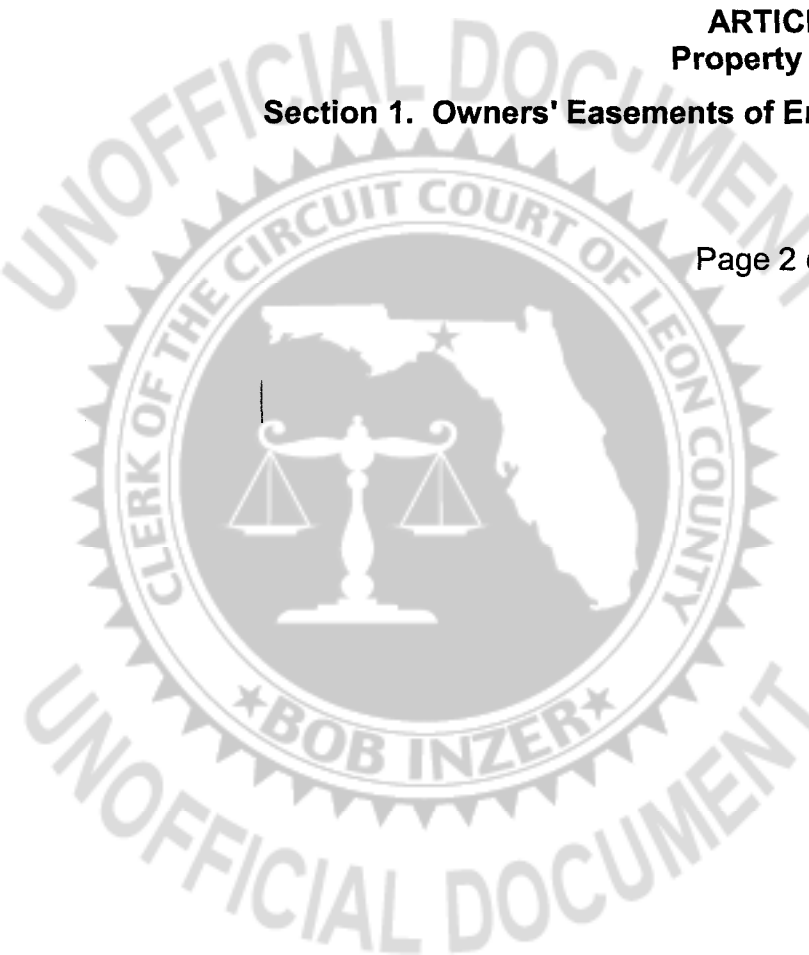
Section 5. "Declarant" shall mean and refer to **WESTERN WAVE CORPORATION**, a Florida Corporation, its successors and assigns.

Section 6. "Lot" and "home" as referenced herein, shall mean and refer to the single-family residences constructed on the real property governed by this declaration, as more particularly shown on Exhibit "A". "Lot" and "home" may be used herein interchangeably, and have synonymous meanings as the context requires. As of the recording of this declaration, the property consists of vacant lots which will eventually be developed with single-family homes.

Section 7. "Development" shall mean and refer to **ELMWOOD ESTATES** which is the neighborhood (planned unit development) which is governed by this declaration and further defined by the surveys attached hereto as Exhibit "A".

**ARTICLE II
Property Rights**

Section 1. Owners' Easements of Enjoyment. Every owner shall have a right



and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

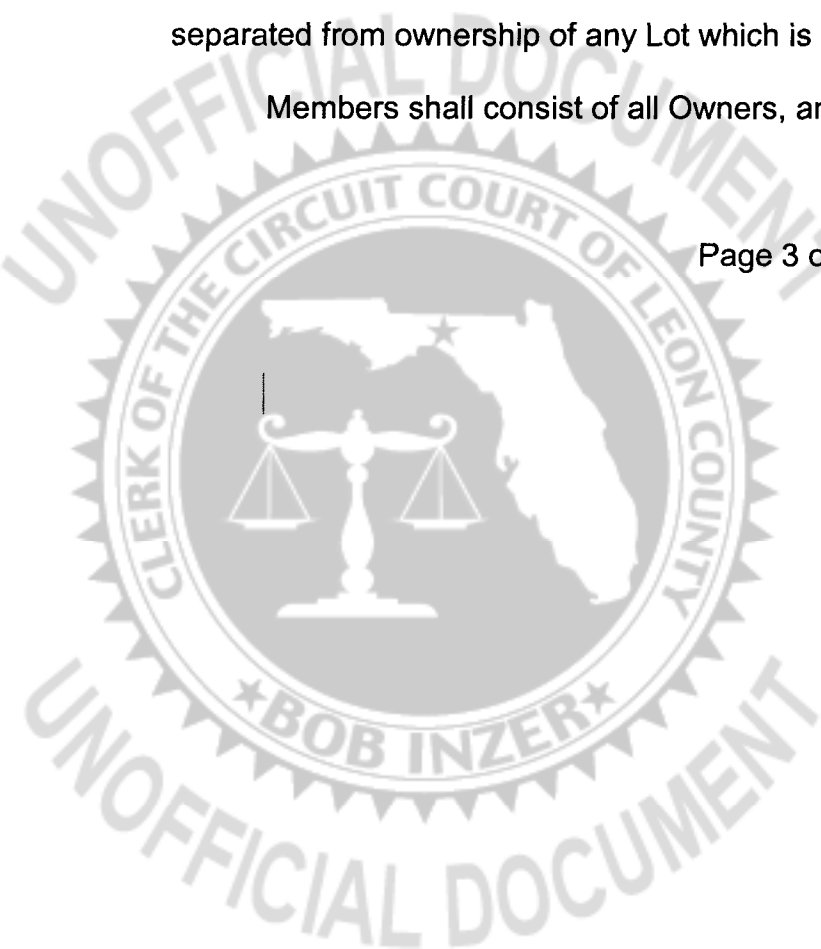
- (a) The right of the association to charge reasonable admission and other fees for the use of any recreational facility, if any, situated upon the Common Area;
- (b) The right of the association to suspend the voting rights and right to use of the recreational facilities, if any, by an owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;
- (c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds of each class of members has been recorded.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the Bylaws, his rights of enjoyment to the Common Area and facilities, if any, to the members of his family, his tenants, or contract purchasers who reside on the property.

**ARTICLE III
Membership and Voting Rights**

Section 1. Every owner of a lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Members shall consist of all Owners, and shall be entitled to one vote for each



Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any individual lot.

Section 3. Every owner of a lot, at all times, shall be allowed to elect the Association's Board of Directors. The first vote for election of the directors shall be held before more than fifty percent (50%) of the lots have been sold by the Declarant or deeded away by the Declarant.

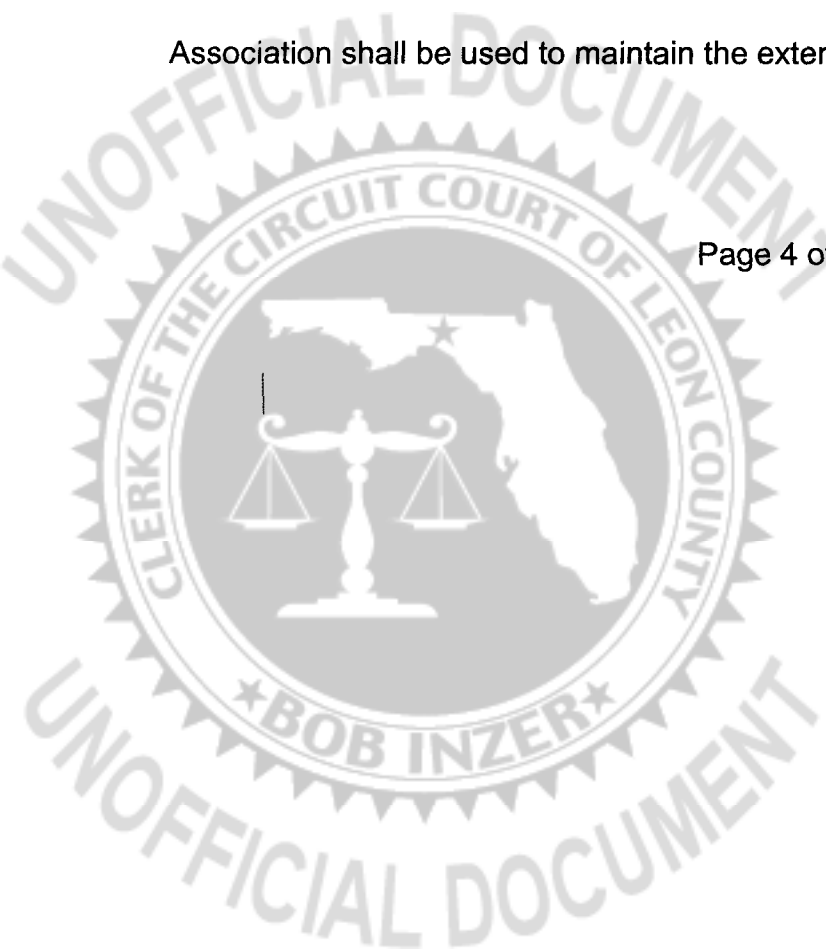
ARTICLE IV Covenant for Maintenance Assessments

Section 1. Creation of the Lien and Personal Obligation of Assessments.

Each Owner of any lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

(1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used to maintain the exterior of the property and common areas.

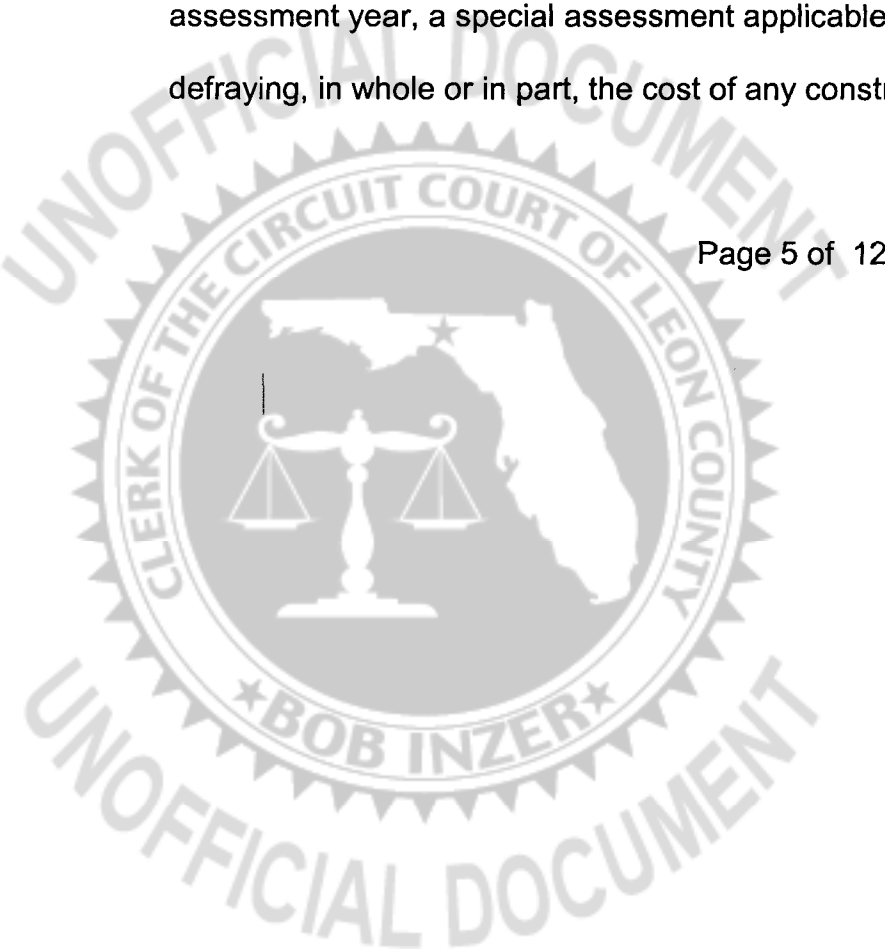


The Association shall maintain all areas for which assessments are collected. Such areas may include, but do not necessarily include and are not necessarily limited to, lawn maintenance of common areas, lighting and signage on common areas, maintenance of retention pond and other common areas. The Association may vote to add or remove items for which assessments are collected in the budget.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be \$100.00 per home per year.

- (a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 5% above the maximum assessment for the previous year without a vote of the membership.
- (b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above 5% by a vote of two-thirds (2/3) of the members who are voting in person or by proxy, at a meeting duly called for this purpose.
- (c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or



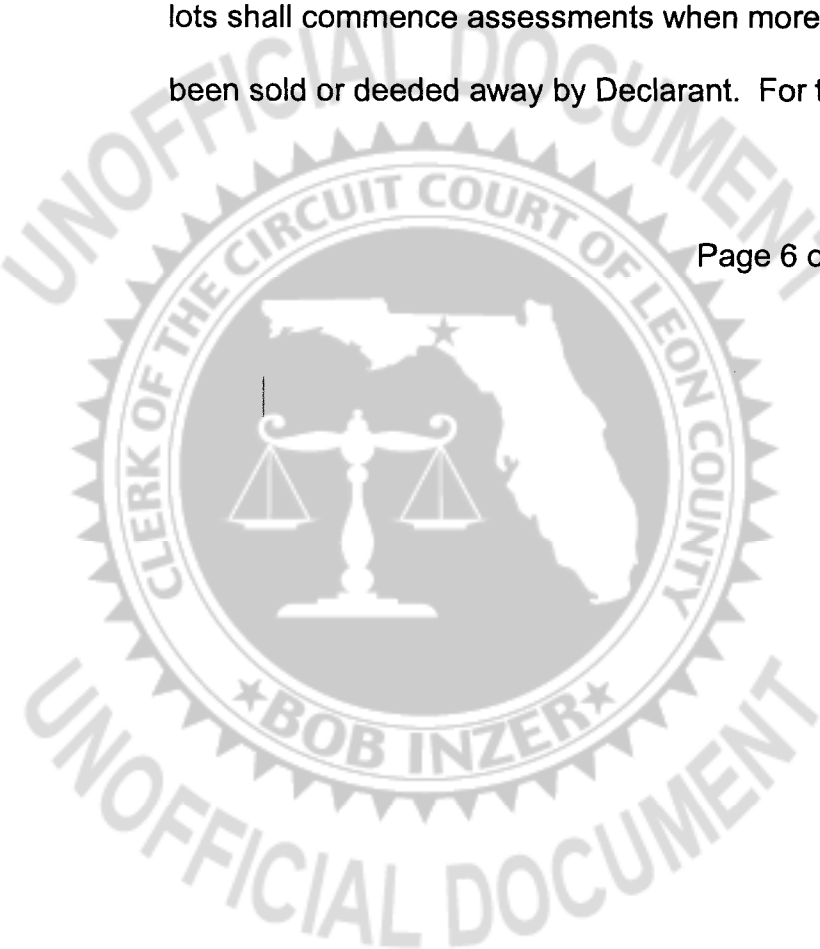
replacement of a capital improvement upon the retention pond and Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Section 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 and 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At such meeting, the presence of members or of proxies entitled to cast one-third of all the votes of membership shall constitute a quorum.

If a quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be two voting members. No such subsequent meeting shall be held more than 90 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all lots and may be collected on a monthly or quarterly basis.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on a date to be decided by the Board of Directors. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. Declarant owned lots shall commence assessments when more than fifty percent (50%) of the lots have been sold or deeded away by Declarant. For that portion of the assessment



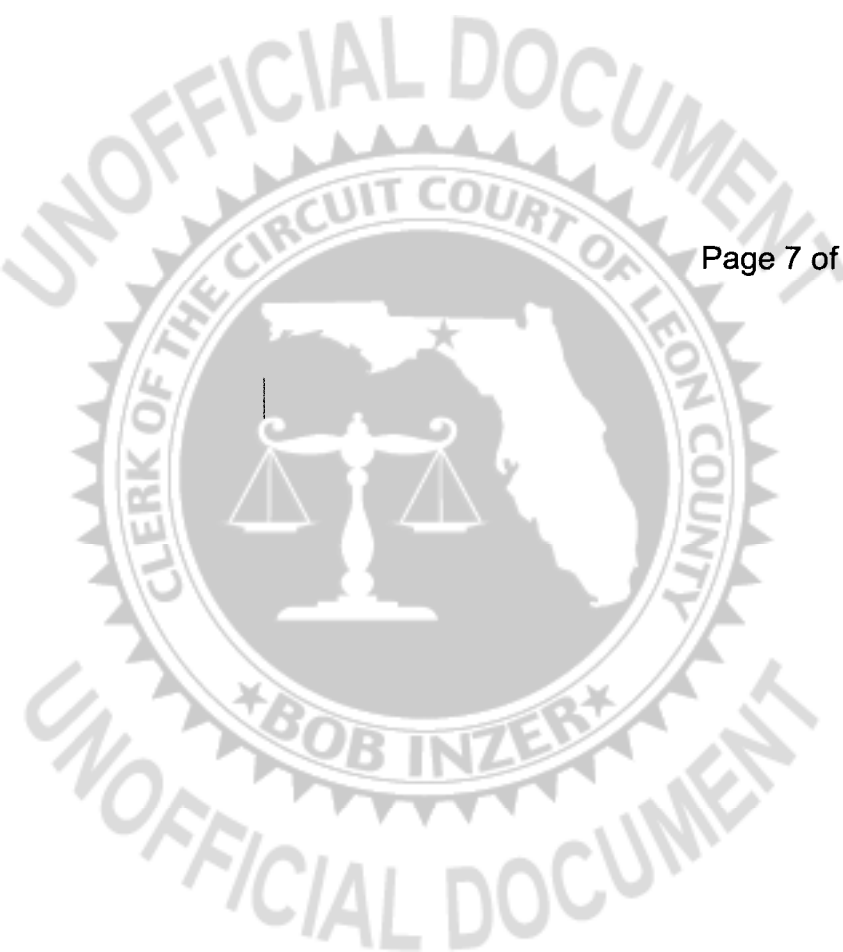
representing the contribution to the reserve account, Declarant shall not commence paying that portion of the assessment until more than seventy-five percent (75%) of the lots have been sold or deeded away by Declarant. The Board of Directors shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period. The due dates shall be established by the Board of Directors.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 18% per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage recorded prior to the assessment lien. A mortgage foreclosure may only extinguish assessment liens that are inferior to said mortgage. Sale or transfer of any Lot shall not affect the assessment lien.

ARTICLE V
Land Use and Building Type

No lot shall be used except for residential purposes.



**ARTICLE VI
Dwelling Size**

The only dwellings permitted are single-family homes and each home will be a minimum of 1600 square feet, heated and cooled.

**ARTICLE VII
Building Location**

No building shall be constructed on any Lot nearer to the front lot line or nearer to a side street than the minimum setback lines shown on the approved plat or determined by the City of Tallahassee or Leon County Codes.

**ARTICLE VIII
Nuisances**

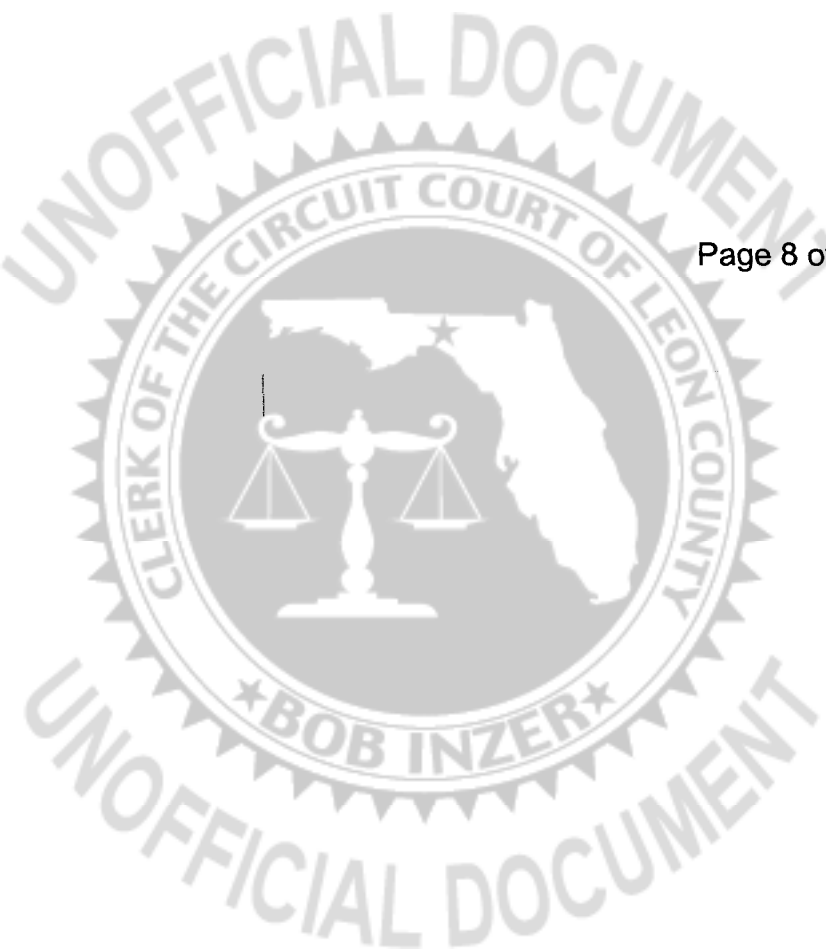
No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become any annoyance or nuisance to the neighborhood.

**ARTICLE IX
Signs**

No sign of any kind shall be displayed to the public view on any lot except one sign of not more than four square feet to advertise the property for sale or lease.

**ARTICLE X
Livestock and Poultry**

No animals, livestock, or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept, provided they are not kept, bred or maintained for any commercial purpose.



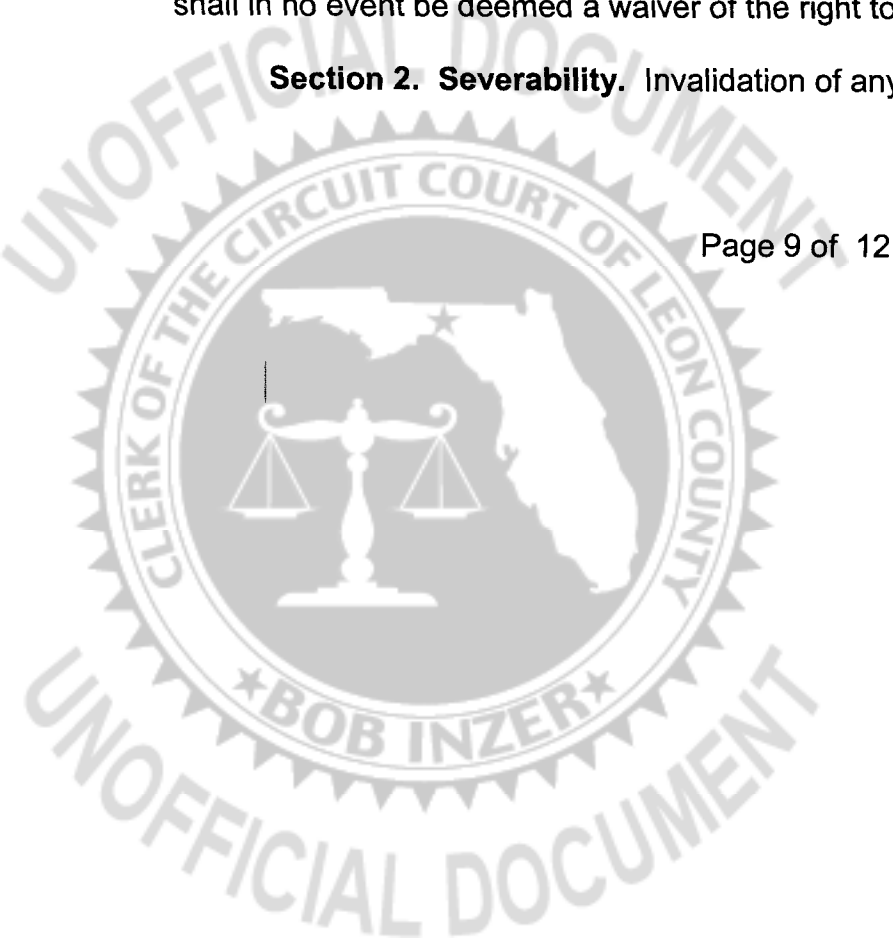
ARTICLE XI
Architectural Control

No building, exterior color, shingles, fence, patio, screened porch, pool, storage building, driveway, mailbox, wall or other structure shall be commenced, erected or maintained upon the properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this article will be deemed to have been fully complied with.

ARTICLE XII
General Provisions

Section 1. Enforcement. The Association, or any owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or

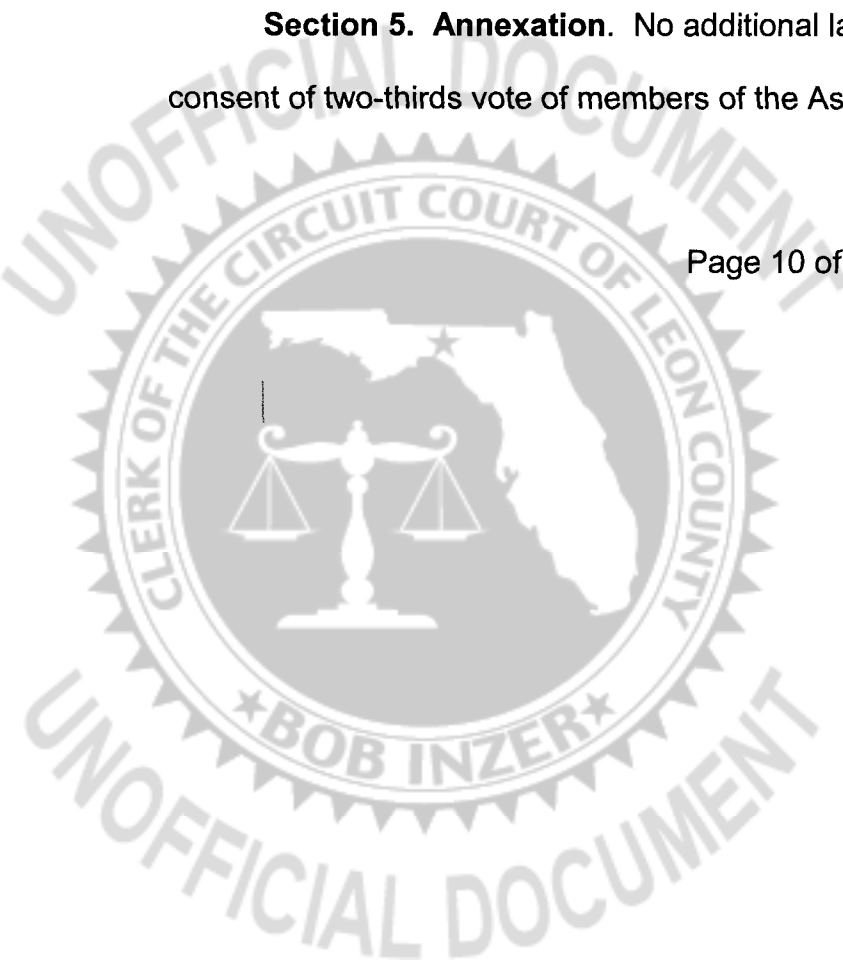


restrictions by judgment or court order shall not affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date of this Declaration recordation, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended at any time by an instrument signed by not less than two-thirds (2/3) of the Lot Owners. Any amendment must be recorded.

Section 4. Developer's Reservation to Amend. The Developer reserves and shall have the sole right (a) to amend these Covenants and Restrictions for the purpose of curing any ambiguity in or any inconsistency between the provisions contained herein, (b) to include in any contract of deed, subsequent Declaration of Covenants and Restrictions, or other instrument hereafter made, any additional covenants and restrictions applicable to the said land which do not lower standards of the covenants and restrictions herein contained (c) to grant reasonable variances from the provisions of this Declaration, or any portion hereof, in order to overcome practical difficulties and to prevent unnecessary hardship in the application of the provisions contained herein, provided, however, that said variances shall not materially injure any of the property or improvements of an adjacent property. No variance granted pursuant to the authority granted herein shall constitute a waiver of any provision of this Declaration as applies to any other person or real property.

Section 5. Annexation. No additional land may be annexed without the consent of two-thirds vote of members of the Association.

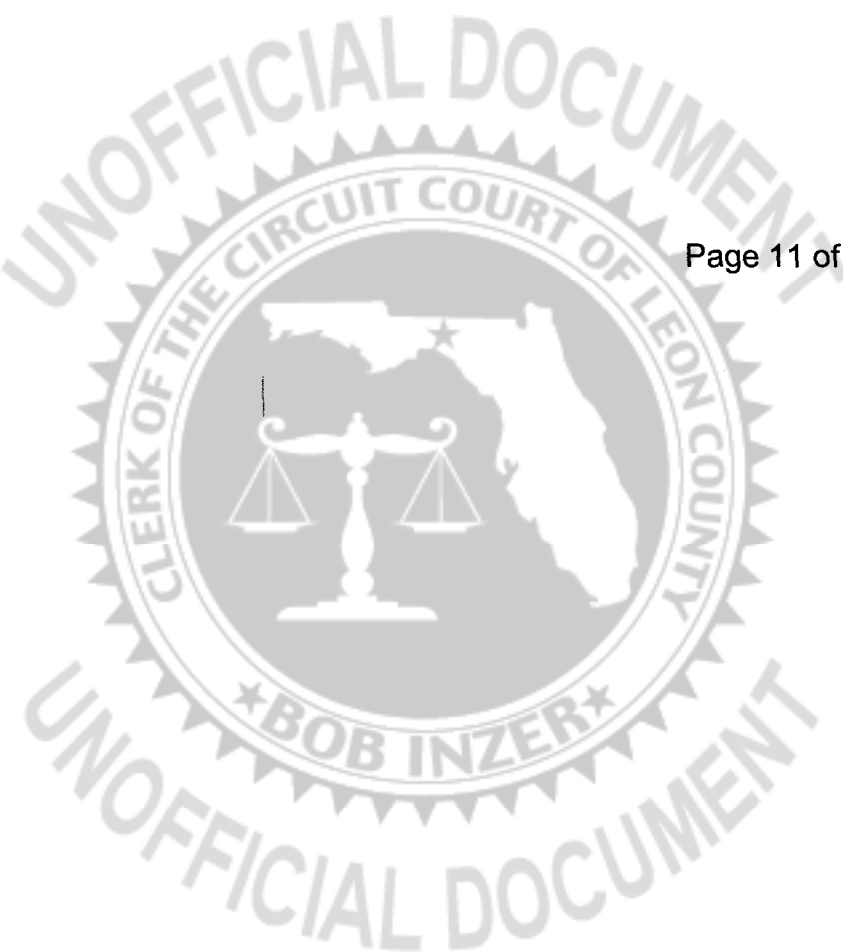


Section 6. Attorney's Fees. The prevailing party in any litigation, including appeals, to require the association to perform its obligations in regard to annual assessments and the maintenance or repair of streets and other common facilities shall be entitled to recover attorney's fees and costs. In addition, the prevailing party in any litigation, including appeals, to require the Declarant to incorporate the association or to perform any other action or obligation imposed on the developer pursuant to these restrictive covenants shall be entitled to recover attorney's fees and costs.

Section 7. Common Area Ownership. The Declarant shall deed the private streets or roads, drainage facilities, and other common area improvements to the Association before more than seventy percent (70%) of the lots have been sold or deeded away by the Declarant.

Section 8. Amendments Prohibited. No amendments shall be allowed to those portions of these restrictive covenants that contain provisions required under Section 10-1560, 1(a) – 1(m), Leon County Code of Laws, without the written consent and joinder of Leon County, which consent and joinder may be given by the county attorney provided the minimum requirements of this section have been fully complied with.

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DATED this 9th day of February, 2006.

WESTERN WAVE CORPORATION,
a Florida Corporation

By: [Signature]
SEDITA CAYSON, Vice President

STATE of Florida
COUNTY of Leon

BEFORE ME, personally appeared **SEDITA CAYSON** known to be the person described in and who executed the foregoing instrument, who acknowledged before me that he executed the same, that said person is personally known to me and that an oath was not taken.

WITNESS my hand and official seal in the County and State last aforesaid this 9th day of February, 2006.

[Signature] My commission expires: 8/1/09
NOTARY PUBLIC

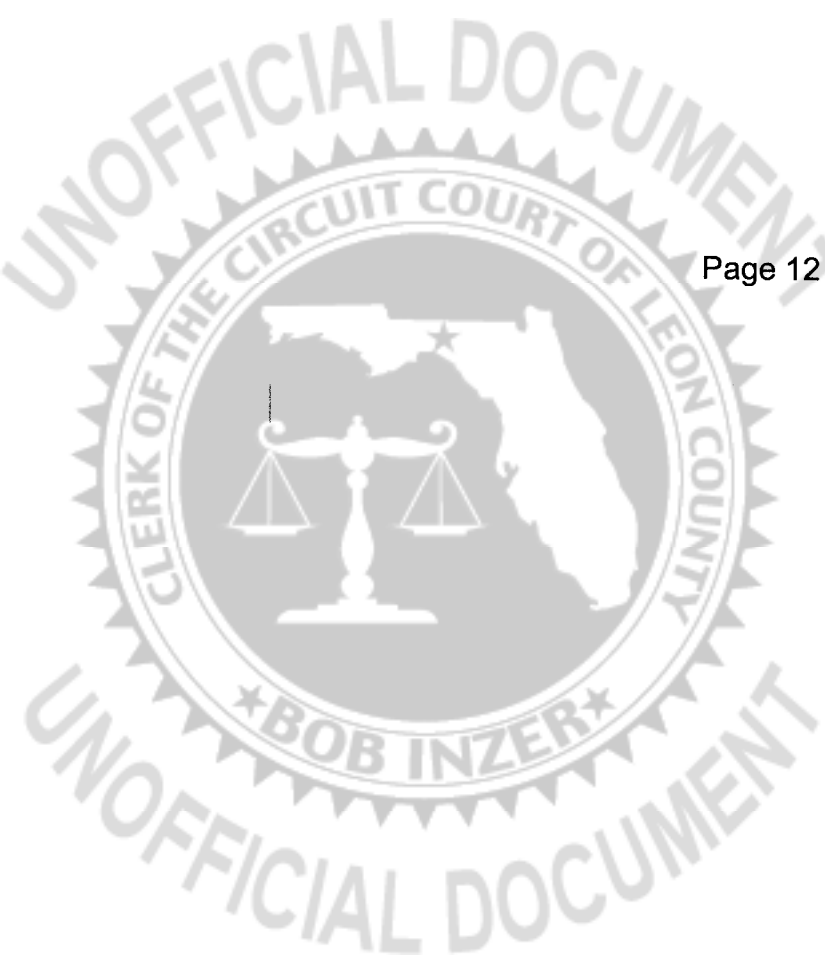


Exhibit A

Commence at the Southeast corner of Section 18, Township 1 North, Range 2 East, Leon County, Florida, and run North 00 degrees 20 minutes West 2383.27 feet to a point on the South boundary of the right-of-way of U.S. Highway No. 90, thence along said South boundary of said highway right-of-way run South 67 degrees 19 minutes West 70.2 feet to a point, thence South 00 degrees 20 minutes East 433 feet to a point, thence run South 70 degrees 32 minutes 00 seconds West 290.0 feet to the POINT OF BEGINNING. From said POINT OF BEGINNING thence run South 21 degrees 10 minutes 00 seconds East a distance of 411.57 feet to an iron pipe (1/2") on the Northerly right of way boundary of Elmwood Road, thence run Southwesterly along said right of way boundary as follows: run South 67 degrees 26 minutes 47 seconds West a distance of 119.28 feet to a point on a curve concave to the North, thence run Westerly along said curve having a radius of 1073.35 feet, through a central angle of 15 degrees 00 minutes 00 seconds for an arc distance of 281.00 feet (chord of said arc bears South 74 degrees 56 minutes 47 seconds West for a distance of 280.20 feet), thence run South 82 degrees 10 minutes 45 seconds West a distance of 169.59 feet, thence leaving said right of way boundary run North 22 degrees 15 minutes 26 seconds West a distance of 364.23 feet, thence run North 70 degrees 34 minutes 53 seconds East a distance of 62.28 feet, thence run North 70 degrees 37 minutes 42 seconds East a distance of 118.51 feet, thence run North 70 degrees 45 minutes 42 seconds East a distance of 189.52 feet, thence run North 70 degrees 37 minutes 08 seconds East a distance of 189.90 feet, thence run North 73 degrees 24 minutes 19 seconds East a distance of 9.90 feet to the POINT OF BEGINNING.

