

RESTATED AND AMENDED  
DECLARATION OF CONDOMINIUM  
OF

*FAIRWAY WOODS OF  
CROSS CREEK, a Condominium*

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SUBSTANTIAL REWORDING OF DECLARATION, SEE PRESENT DECLARATION FOR PRESENT TEXT.

## RESTATED AND AMENDED DECLARATION OF CONDOMINIUM

OF

### FAIRWAY WOODS OF CROSS CREEK, a Condominium

EXECUTED this 5<sup>th</sup> day May, 1995, by FAIRWAY WOODS OF CROSS CREEK CONDOMINIUM ASSOCIATION, INC., a Florida corporation not for profit, hereinafter called the "Association", for itself and on behalf of the unit owners.

WHEREIN the Association amends and restates the Declaration as follows:

1. **THE LAND:** The Association owns certain real property located in Lee County, Florida, described on Exhibit "A" attached hereto (the "Land").

2. **SUBMISSION STATEMENT:** All of the Land and all improvements erected thereon, all easements, rights and appurtenances belonging thereto, and all other property, real, personal or fixed, located on and intended for use in connection therewith, has been submitted to the condominium form of ownership and use on August 17, 1987 by Declaration of Condominium recorded at Official Records Book 1936, at Page 4536, of the Public Records of Lee County, Florida; excluding therefrom, however, any public utility installations, cable television lines, and other similar equipment that are owned by the utility furnishing services to the Condominium. The covenants and restrictions contained in this Declaration run with the land and are binding upon and inure to the benefit of all present and future owners of condominium parcels. The acquisition of title to a unit, or any other interest in the condominium property, or the lease, occupancy, or use of any portion of the condominium property constitutes an acceptance and ratification of all provisions of this Declaration as it may be amended from time to time, and signifies agreement to be bound by its terms. The provisions of this Declaration shall be liberally construed to effectuate the purpose of creating a uniform plan of condominium ownership.

Fairway Woods of Cross Creek, a condominium, contains thirty-six (36) residential units as depicted on the site plan attached to the original Declaration as an Exhibit, and amendments thereto, recorded in the Public Records of Lee County, Florida.

3. **NAME:** The name of this condominium is Fairway Woods of Cross Creek, a Condominium, (the "Condominium").

4. **DEFINITIONS:** The terms used in this Declaration and its exhibits shall have the meanings stated below and in Chapter 718, Florida Statutes, (The "Condominium Act"), unless the context otherwise requires.

4.1 **"Apartment"** has the same meaning as the term "unit" as defined in the Condominium

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Act.

4.2 "Apartment Owner" or "Owner" has the same meaning as the term "unit owner" as defined in the Condominium Act, except that for purposes of interpreting use and occupancy restrictions related to units, in cases where a primary occupant has been designated for a unit because of its ownership, the word "owner" refers to the primary occupant and not the record owner.

4.3 "Assessment" means a share of the funds required for the payment of common expenses which from time to time is assessed against the units.

4.4 "Association" means Fairway Woods of Cross Creek Condominium Association, Inc., a Florida corporation not for profit, the entity responsible for the operation of this Condominium.

4.5 "Association Property" means all property, real or personal, owned or leased by the Association for the use and benefit of the unit owners.

4.6 "Board of Directors" or "Board" means the representative body which is responsible for the administration of the Association's affairs, and is the same body referred to in the Condominium Act as the "Board of Administration".

4.7 "Commons Area" or "Recreational Parcel" means the real property and/or easement owned by the two Condominium Associations for Fairway Woods of Cross Creek and Fairway Woods of Cross Creek II, as legally described at Official Records Book 1958, at Page 733, of the Public Records of Lee County, Florida, and all improvements thereon. The Association reserves the right to add to the commons area property which is part of the Fairway Woods of Cross Creek complex.

4.8 "Commons Maintenance" The ownership, maintenance and operation of the pool, spa, picnic area and facilities referred to as the Commons Area or Recreation Parcel which is the responsibility of the Condominium Associations for Fairway Woods of Cross Creek and Fairway Woods of Cross Creek II.

4.9 "Commons Documents" means the Rules and Regulations of the Commons Area.

4.10 "Condominium Documents" means and includes this Declaration and all recorded exhibits hereto, as amended from time to time.

4.11 "Family" or "Single Family" shall refer to any one of the following:

(A) One natural person.

(B) Two or more natural persons who commonly reside together as a single housekeeping unit, each of whom is related by blood, marriage or adoption to each of the others.

(C) Two or more natural persons meeting the requirements of (B) above, except that there is among them one person who is not related to some or all of the others.

4.12 "Fixtures" means those items of tangible personal property which by being physically

annexed or constructively affixed to the unit have become accessory to it and part and parcel of it, including but not limited to, interior partitions, walls, appliances which have been built in or permanently affixed, and plumbing fixtures in kitchens and bathrooms. Fixtures do not include floor, wall or ceiling coverings.

4.13 "Guest" means any person who is not the unit owner or a lessee or a member of the owner's or lessee's family, who is physically present in, or occupies the unit on a temporary basis at the invitation of the owner or other legally permitted occupant, without the payment of consideration.

4.14 "Institutional Mortgagee" means the mortgagee (or its assignee) of a mortgage against a condominium parcel, which mortgagee is a bank, savings and loan association, mortgage company, insurance company, real estate or mortgage investment trust, pension or profit sharing trust, the Federal Housing Administration, the Veterans Administration, or any agency of the United States of America. The term also refers to any holder of a mortgage against a condominium parcel which mortgage is guaranteed or insured by the Federal Housing Administration, the Veterans Administration, any agency of the United States of America, or by any other public or private corporation engaged in the business of guaranteeing or insuring residential mortgage loans, and their successors and assigns.

4.15 "Lease" means the grant by a unit owner of a temporary right of use of the owner's unit for valuable consideration.

4.16 "Limited Common Elements" means and includes those common elements which are reserved for the use of a certain unit or units to the exclusion of other units.

4.17 "Master Association" means and refers to Cross Creek of Fort Myers Community Association, Inc., a Florida corporation not for profit which is responsible for the maintenance and operation of the common properties as described in the Master Documents. All unit owners in this Condominium shall be members of the Master Association.

4.18 "Master Documents" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions for Cross Creek of Fort Myers Community Association, as recorded in Official Records Book 1760, Page 2417, et. seq. of the Public Records of Lee County, Florida including all recorded exhibits thereto, as the same shall be amended, from time to time.

4.19 "Occupy", when used in connection with a unit, means the act of staying overnight in a unit. "Occupant" is a person who occupies a unit.

4.20 "Primary Institutional Mortgagee" means that institutional mortgagee which, at the time a determination is made, holds first mortgages on more units in the Condominium than any other institutional mortgagee, such determination to be made by reference to the number of units encumbered, and not by the dollar amount of such mortgages.

4.21 "Primary Occupant" means the natural person approved for occupancy when title to a unit is held in the name of two or more persons who are not husband and wife, or by a trustee or a corporation or other entity which is not a natural person.

4.22 "Rules and Regulations" means those rules and regulations promulgated by the Board

of Directors, governing the use of the common elements and the operation of the Association.

4.23 "Voting Interest" means and refers to the arrangement established in the condominium documents by which the owners of each unit collectively are entitled to one vote in Association matters.

5. DESCRIPTION OF IMPROVEMENTS; SURVEY AND PLANS:

5.1 Survey and Plot Plans. Attached to the original Declaration as Exhibits and incorporated by reference herein, are a survey of the Land, the Recreational Parcel, and site plans, which graphically describe the improvements in which units are located, and which show all the units, including their identification numbers, locations and approximate dimensions and the common elements and limited common elements. Together with this Declaration, the exhibits are in sufficient detail to identify each unit, the common elements, limited common elements and their relative locations and dimensions.

5.2 Unit Boundaries. Each unit shall include that part of the building that lies within the following boundaries:

- (A) Upper and Lower Boundaries. The upper and lower boundaries of the unit shall be the following boundaries extended to their intersections with the perimeter boundaries:
  - (1) Upper Boundaries. The horizontal plane of the unfinished lower surface of the ceiling of the unit.
  - (2) Lower Boundaries. The horizontal plane of the unfinished upper surface of the concrete floor of the unit.
- (B) Perimeter Boundaries. The perimeter boundaries of the unit shall be the vertical planes of the unfinished interior surfaces of the plasterboard walls bounding the unit as shown on the plans, extended to their intersections with each other and with the upper and lower boundaries.
- (C) Interior Walls. No part of the non-structural interior partition walls within an apartment shall be considered part of the boundary of a unit.
- (D) Apertures. Where there are openings in any boundary, including, without limitation, windows, doors and skylights, the boundaries of the unit shall extend to the interior unfinished surfaces of the coverings of such openings, and their frameworks thereof. Therefore, windows, doors, screens and all framing, casings and hardware therefor, are included in the unit.

In cases not specifically covered in this Section 5.2, or in any case of conflict or ambiguity, the graphic depictions of the unit boundaries set forth in Exhibit "B" hereto shall control in determining the boundaries of a unit, except the provisions of 5.2(D) above shall control over Exhibit "B".

6. CONDOMINIUM PARCELS; APPURTENANCES AND USE:

6.1 Shares of Ownership. The owner of each unit shall also own an undivided 1/36th share



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in the common elements and the common surplus.

6.2 Appurtenances to Each Unit. The owner of each unit shall have certain rights and own a certain interest in the condominium property, including without limitation the following:

- (A) An undivided 1/36th ownership share in the Land and other common elements and the common surplus.
- (B) Membership and voting rights in the Association, which shall be acquired and exercised as provided in the Amended and Restated Articles of Incorporation and Amended and Restated Bylaws of the Association, attached hereto as Exhibits "C" and "D", respectively.
- (C) The exclusive right to use the limited common elements reserved for the unit, and the non-exclusive right to use the common elements.
- (D) An exclusive easement for the use of the airspace occupied by the unit as it exists at any particular time and as the unit may lawfully be altered or reconstructed from time to time. An easement in airspace which is vacated shall be terminated automatically.
- (E) Membership Rights in Cross Creek of Fort Myers Community Association, Inc. with all rights and obligations provided in the Master Documents.
- (F) The non-exclusive right to use the common areas, properties and recreation facilities owned by the Association, subject to all of the rules and regulations of the Association.
- (G) Other appurtenances as may be provided in this Declaration and its exhibits.

Each unit and its appurtenances constitutes a "condominium parcel".

6.3 Use and Possession. A unit owner is entitled to exclusive use and possession of his unit. He is entitled to use the common elements in accordance with the purposes for which they are intended, but no use of the unit or of the common elements may unreasonably interfere with the rights of other unit owners or other persons having rights to use the condominium property. No unit may be subdivided, and no fractional portion may be sold, leased or otherwise transferred. The use of the units, common elements and limited common elements shall be governed by the condominium documents and by the rules and regulations adopted by the Board of Directors, as provided in the Bylaws.

## 7. COMMON ELEMENTS; EASEMENTS:

7.1 Definition. The term "common elements" means all of the property submitted to condominium ownership that is not within the unit boundaries set forth in Section 5 above. The common elements include without limitation the following:

- (A) The Land.
- (B) All portions of the buildings and other improvements outside the units, including all limited common elements.

- (C) Easements through each unit for conduits, ducts, plumbing, wiring, and common elements.
- (D) An easement of support in every portion of the Condominium which contributes to the support of a building.
- (E) The fixtures and installations required for access and utility services to more than one unit or to the common elements.

7.2 Easements. Each of the following easements and easement rights is reserved through the condominium property and is a covenant running with the land of the Condominium, and notwithstanding any of the other provisions of this Declaration, may not be revoked and shall survive the exclusion of any land from the Condominium. None of these easements may be encumbered by any leasehold or lien other than those on the condominium parcels. Any lien encumbering these easements shall automatically be subordinate to the rights of unit owners with respect to such easements.

- (A) Utility and other Easements. The Association has the power, without the joinder of any unit owner, to grant, modify or move easements such as electric, gas, cable television, or other utility or service easements, or relocate any existing easements, in any portion of the common elements or association property, and to grant access easements or relocate any existing access easements in any portion of the common elements or association property, as the Association shall deem necessary or desirable for the proper operation and maintenance of the Condominium. Such easements, or the relocation of existing easements, may not prevent or unreasonably interfere with the use of the units. The Association may also transfer title to utility-related equipment, facilities or material, and to take any other action to satisfy the requirements of any utility company or governmental agency to which any such utility-related equipment, facilities or material are to be so transferred.
- (B) Encroachments. If any unit encroaches upon any of the common elements or upon any other unit for any reason other than the intentional act of the unit owner, or if any common element encroaches upon any unit, then an easement shall exist to the extent of that encroachment as long as the encroachment exists.
- (C) Ingress and Egress. A non-exclusive easement shall exist in favor of each unit owner and occupant, their respective guests, tenants, licensees and invitees for pedestrian traffic over, through, and across sidewalks, streets, paths, walks, and other portions of the common elements as from time to time may be intended and designated for such purpose and use, and for vehicular and pedestrian traffic over, through, and across such portions of the common elements as from time to time may be paved or intended for such purposes, and for purposes of ingress and egress to the public ways.

7.3 Restraint Upon Separation and Partition. The undivided share of ownership in the common elements and common surplus appurtenant to a unit cannot be conveyed or encumbered separately from the unit and shall pass with the title to the unit, whether or not separately described. As long as the Condominium exists, the common elements cannot be partitioned. The shares in the funds and assets of the Association cannot be assigned, pledged or transferred except as an appurtenance to the units.

8. **LIMITED COMMON ELEMENTS:**

8.1 **Description of Limited Common Elements.** Certain common elements have been reserved for the use of a particular unit or units, to the exclusion of the other units. The limited common elements and the units to which their exclusive use is appurtenant, are as described in this Declaration and its recorded exhibits. The following common elements are hereby designated as limited common elements:

- (A) **Air Conditioning and Heating Equipment.** All equipment, fixtures and installations located outside of a unit, which furnish air conditioning or heating exclusively to that unit, shall be limited common elements, and shall be maintained, repaired and replaced by, and solely at the expense of, the owner of the unit, except as otherwise provided in Section 11.3 below.
- (B) **Lanais.** Any lanai attached to and serving exclusively a unit shall be a limited common element. The unit owner shall be responsible for day-to-day cleaning, care and general maintenance. No lanai may be painted, carpeted, covered or enclosed in any way without the prior written approval of the Board of Directors. The maintenance, repair, replacement and insurance of such approved carpeting, covering or enclosure shall be the responsibility of the unit owner.
- (C) **Storage Locker.** Any storage facility, whether screened, enclosed, fenced or open shall be a limited common element if it has been assigned to and serves exclusively a unit. The unit owner shall be responsible for the day to day cleaning and care, but the Association shall be responsible for all painting and maintenance as a common expense.
- (D) **Covered Parking.** The COVERED PARKING SPACE ASSIGNED TO EACH UNIT shall be a limited common element. The unit owner shall be responsible for the day to day cleaning and care, but all painting and maintenance shall be the responsibility of the Association as a common expense.

Uncovered guest parking is provided for temporary guests of unit owners or lessees. 36 parking spaces are available throughout the common area, of which 5 are restricted for handicapped parking in accordance with State laws and are so marked.

- (E) **Others.** Any part of the common elements that is connected to or exclusively serves a single unit, and is specifically required in Section 11 of this Declaration to be maintained, repaired or replaced by or at the expense of the unit owner, shall be deemed a limited common element appurtenant to that unit, whether specifically described above or not. This paragraph includes windows, screens and doors, including all hardware and framing therefor.

9. **ASSOCIATION:** The operation of the Condominium is by Fairway Woods of Cross Creek Condominium Association, Inc., a Florida corporation not for profit, which shall perform its function pursuant to the following:

9.1 **Articles of Incorporation.** A copy of the Amended and Restated Articles of Incorporation of the Association is attached as Exhibit "C".

9.2 Bylaws. The Bylaws of the Association shall be the Bylaws attached as Exhibit "D", as they may be amended from time to time.

9.3 Delegation of Management. The Association may contract for the management and maintenance of the condominium property and authorize a licensed management agent to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of assessments, keeping of records, enforcement of rules and maintenance, repair and replacement of the common elements with funds made available by the Association for such purposes. The Association and its officers however, shall retain at all times the powers and duties provided in the Condominium Act.

9.4 Membership. The membership of the Association shall be comprised of owners of the units, as further provided in the Bylaws.

9.5 Acts of the Association. Unless the approval or affirmative vote of the unit owners is specifically made necessary by some provision of the Condominium Act or these condominium documents, all approvals or actions permitted or required to be given or taken by the Association may be given or taken by its Board of Directors, without a vote of the unit owners. The officers and Directors of the Association have a fiduciary relationship to the unit owners. A unit owner does not have the authority to act for the Association by reason of being a unit owner.

9.6 Powers and Duties. The powers and duties of the Association include those set forth in the Condominium Act and the condominium documents. The Association may contract, sue, or be sued with respect to the exercise or nonexercise of its powers and duties. For these purposes, the powers of the Association include, but are not limited to, the maintenance, management, and operation of the condominium property and association property. The Association may impose fees for the use of common elements, recreation or association property. The Association has the power to enter into agreements to acquire leaseholds, memberships and other ownership, possessory or use interests in lands or facilities, whether or not the lands or facilities are contiguous to the lands of the Condominium, for the use and enjoyment of the unit owners.

9.7 Official Records. The Association shall maintain its Official Records as required by law. The records shall be open to inspection by members or their authorized representatives at all reasonable times. The right to inspect the records includes a right to make or obtain photocopies at the reasonable expense of the member seeking copies.

9.8 Purchase of Units. The Association has the power to purchase units in the Condominium and to hold, lease, mortgage, or convey them, such power to be exercised by the Board of Directors.

9.9 Acquisition of Property. The Association has the power to acquire property, both real and personal. The power to acquire personal property shall be exercised by the Board of Directors. Except as otherwise provided in 9.8 above, the power to acquire ownership interests in real property shall be exercised by the Board of Directors, but only after approval by at least a majority of the voting interests.

9.10 Disposition of Property. Any property owned by the Association, whether real,

personal or mixed, may be mortgaged, sold, or otherwise encumbered or disposed of by the affirmative vote of a majority of the entire Board of Directors, without need for authorization by the unit owners.

9.11 Roster. The Association shall maintain a current roster of names and mailing addresses of unit owners, based upon information supplied by the unit owners. A copy of the roster shall be made available to any member upon request.

9.12 Limitation on Liability. Notwithstanding its duty to maintain and repair condominium or association property, the Association shall not be liable to unit owners for injury or damage, other than the cost of maintenance and repair, caused by any latent condition of the property to be maintained and repaired by the Association, or caused by the elements or unit owners or other persons.

9.13 Member Approval of Certain Litigation. Notwithstanding any other provisions of the condominium documents, the Board of Directors shall be required to obtain the prior approval of at least a majority of the voting interests prior to the payment of, or contracting for the payment of, legal fees to any person engaged by the Association for the purpose of commencing any lawsuit, other than for the following purposes:

- (A) the collection of assessments;
- (B) the collection of other charges which owners are obligated to pay;
- (C) the enforcement of the use and occupancy restrictions applicable to the Condominium;
- (D) the enforcement of any restrictions on the sale, lease and other transfer of units;
- (E) in an emergency, when waiting to obtain the approval of the members creates a substantial risk of irreparable injury to the Association or its members; or
- (F) filing a compulsory counterclaim.

9.14 Mandatory Non-binding Arbitration of Disputes. Prior to the institution of court litigation, the parties shall petition The Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business Regulation pursuant to its promulgated rules and The Condominium Act, for any dispute involving:

- (A) The authority of the Board under any law or Association documents to:
  - (1) Require any owner to take or not take any action involving that owner's unit; or
  - (2) Alter or add to a common area or element.
- (B) The failure of the Association, when required by law or Association documents to:
  - (1) Properly conduct elections;
  - (2) Give adequate notice of meetings or other actions;

- (3) Properly conduct meetings; or
- (4) Allow inspection of books and records.

9.15 Use of Commons Area or Recreational Parcel. The unit owners in this condominium shall have a non-exclusive right to use the Commons Area and the recreational facilities located on the commons areas. All use rights are subject to rules and regulations. The share of the expenses of the Commons Area for which this Association is liable shall be a fraction of the whole, the numerator of which is thirty-six (36) and the denominator of which is seventy-six (76) the total number of dwelling units located in the Fairway Woods of Cross Creek Complex. The Association shall be responsible for its share of the maintenance and repair of Commons property.

10. ASSESSMENTS AND LIENS: The Association has the power to levy and collect assessments against each unit and unit owner in order to provide the necessary funds for proper operation and management of the Condominium and for the operation of the Association. This power includes both "regular" assessments for each unit's share of the common expenses as set forth in the annual budget including Master Association assessments, recreation and "special" assessments for unusual, nonrecurring or unbudgeted common expenses. The Association may also levy special charges against any individual unit for any amounts, other than for common expenses, which are properly chargeable against such unit under this Declaration or the Bylaws. Assessments shall be levied and payment enforced as provided in Section 6 of the Bylaws, and as follows:

10.1 Common Expenses. Common expenses include all expenses of the operation, maintenance, repair, replacement or insurance of the common elements and association property, the expenses of operating the Association, any assessments levied by the Master Association on this Association and any other expenses properly incurred by the Association for the Condominium, including any amounts budgeted for the purpose of funding reserve accounts. The cost of water and sewer and irrigation water service to the units shall be a common expense. If the Board of Directors contracts for pest control within units or basic cable television programming services in bulk for the entire Condominium, the cost of such services shall be a common expense. Bulk contracts may, however, be entered by the Master Association for such services.

10.2 Share of Common Expenses. The owner of each unit shall be liable for a share of the common expenses equal to his share of ownership of the common elements and the common surplus, as set forth in Section 6.1 above.

10.3 Ownership. Assessments and other funds collected by or on behalf of the Association become the property of the Association; no unit owner has the right to claim, assign or transfer any interest therein except as an appurtenance to his unit. No owner can withdraw or receive distribution of his share of the common surplus, except as otherwise provided herein or by law.

10.4 Who is Liable for Assessments. The owner of each unit, regardless of how title was acquired, is liable for all assessments or installments thereon coming due while he is the owner. Multiple owners are jointly and severally liable. Except as provided in Section 20.3 below, whenever title to a condominium parcel is transferred for any reason, the transferee is jointly and severally liable with the transferor for all unpaid assessments against the transferor, regardless of when incurred, without prejudice to any right the transferee may have to recover from the transferor any amounts paid by the transferee.

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10.5 No Waiver or Excuse from Payment. The liability for assessments may not be avoided or abated by waiver of the use or enjoyment of any common elements, by abandonment of the unit on which the assessments are made, or by interruption in the availability of the unit or the common elements for any reason whatsoever. No unit owner may be excused from payment of his share of the common expenses unless all unit owners are likewise proportionately excused from payment, except as otherwise provided in Section 20.3 below as to certain mortgagees.

10.6 Application of Payments; Failure to Pay Interest. Assessments and installments thereon paid on or before ten (10) days after the date due shall not bear interest, but all sums not so paid shall bear interest at the highest rate allowed by law, calculated from the date due until paid. The Association may also impose a late payment fee (in addition to interest) to the extent permitted by law. Assessments and installments thereon shall become due, and the unit owner shall become liable for said assessments or installments, on the date established in the Bylaws or otherwise set by the Board of Directors for payment. All payments on account shall be applied to interest, late payment fees, court costs and attorney's fees, and delinquent assessments, in such manner as is provided by law. The Association may refuse to accept a partial payment which bears a restrictive endorsement and such will be the equivalent of no payment. No payment by check is deemed received until the check has cleared.

10.7 Acceleration. If any special assessment or installment of a regular assessment as to a unit becomes more than thirty (30) days past due, and a Claim of Lien is recorded, the Association shall have the right to accelerate the due date of the entire unpaid balance of the unit's assessments for that fiscal year. The due date for all accelerated amounts shall be the date the Claim of Lien was recorded in the public records. The Association's Claim of Lien shall secure payment of the entire accelerated obligation, together with interest on the entire balance, attorneys' fees and costs as provided by law; and said Claim of Lien shall not be satisfied or released until all sums secured by it have been paid. The right to accelerate shall be exercised by sending to the delinquent owner a notice of the exercise, which notice shall be sent by certified or registered mail to the owner's last known address, and shall be deemed given upon mailing of the notice, postpaid. The notice may be given as part of the notice of intent to foreclose, as required by Section 718.116 of the Condominium Act, or may be sent separately.

10.8 Liens. The Association has a lien on each condominium parcel securing payment of past due assessments, including interest and attorney's fees and costs incurred by the Association incident to the collection of the assessment or enforcement of the lien, whether before, during or after a lien foreclosure suit. The lien is perfected upon recording a Claim of Lien in the Public Records of Lee County, Florida, stating the description of the condominium parcel, the name of the record owner, the assessments past due and the due dates. The lien is in effect until barred by law. The Claim of Lien secures all unpaid assessments coming due prior to a final judgment of foreclosure. Upon full payment, the person making the payment is entitled to a satisfaction of the lien.

10.9 Priority of Lien. The Association's lien for unpaid assessments shall be subordinate and inferior to any recorded institutional mortgage unless the Association's Claim of Lien was recorded prior to the mortgage. The Association's lien shall be superior to, and take priority over, any other mortgage or lien regardless of when the mortgage was recorded. Any lease of a unit shall be subordinate and inferior to the Association's lien, regardless of when the lease was executed.

10.10 Foreclosure of Lien. The Association may bring an action in its name to foreclose its lien for unpaid assessments in the manner provided in the Condominium Act, and may also bring an

action to recover a money judgment for the unpaid assessments without waiving any lien rights.

10.11 Transfer of Ownership of Foreclosed Unit. If a foreclosure action is brought against the owner of a unit and the interest of the owner in the unit is sold, the owner's membership shall be canceled and membership shall be issued to the purchaser at the foreclosure sale.

10.12 Certificate As To Assessments. Within ten (10) days after receiving written request by a unit owner or mortgagee, the Association shall provide a certificate (sometimes referred to as an "estoppel letter") stating whether all assessments and other monies owed to the Association by the unit owner with respect to the condominium parcel have been paid. Any person other than the owner who relies upon such certificate shall be protected thereby.

11. MAINTENANCE; LIMITATIONS UPON ALTERATIONS AND IMPROVEMENTS: Responsibility for the protection, maintenance, repair and replacement of the condominium property, and restrictions on its alteration and improvement shall be as follows:

11.1 Association Maintenance. The Association is responsible for the protection, maintenance, repair and replacement of all common elements and association property (other than the limited common elements that are required elsewhere herein to be maintained by the unit owner). The cost is a common expense. The Association's responsibilities include, without limitation:

- (A) Electrical wiring up to the circuit breaker panel in each unit.
- (B) Rough plumbing up to the supply valve.
- (C) All installations located within one unit but serving another unit, or located outside the unit, for the furnishing of utilities to more than one unit or the common elements.
- (D) The exterior surface of the entrance doors to the units.
- (E) All exterior building walls and the interior walls of the carports.
- (F) Roofs.
- (G) Infrastructure not dedicated to Lee County.

The Association's responsibility does not include interior wall switches or receptacles, plumbing fixtures, or other electrical, plumbing or mechanical installations located within the unit. All incidental damage caused to a unit or limited common elements by work performed or ordered to be performed by the Association shall be promptly repaired by and at the expense of the Association, which shall restore the property as nearly as practical to its condition before the damage, and the cost shall be a common expense, except the Association shall not be responsible for the damage to any alteration or addition made by a unit owner without prior Association approval as required elsewhere herein.

11.2 Unit Owner Maintenance. Each unit owner is responsible, at his own expense, for all maintenance, repairs, and replacements of his own unit and certain limited common elements. The owner's responsibilities include, without limitation:



- (A) Maintenance, repair and replacement of screens, windows and window glass.
- (B) The entrance door to the unit and its interior surface.
- (C) All other doors within or affording access to the unit.
- (D) The electrical, mechanical and plumbing fixtures and outlets (including connections).
- (E) The circuit breaker panel.
- (F) Appliances and water heaters.
- (G) All air conditioning and heating equipment, ducts and installations serving the unit.
- (H) Carpeting and other floor covering.
- (I) Door and window hardware and locks.
- (J) Shower pans.
- (K) Other facilities or fixtures which are located or contained entirely within the unit, or which serve only the unit.
- (L) All interior, partition walls which do not form part of the boundary of the unit.

11.3 Other Unit Owner Responsibilities. The unit owner shall also have the following responsibilities:

- (A) Lanais. Where a limited common element consists of a lanai, the unit owner who has the right to the exclusive use of said lanai shall be responsible for the maintenance, care and preservation of the paint and surface of the interior parapet walls, including floor and ceiling, within said area, if any; and any fixed and/or sliding glass doors in portions of the entrance way of said area, if any; and the wiring, electrical outlet(s) and fixture(s) thereon, if any, and the replacement of light bulbs.
- (B) Interior Decorating. Each unit owner is responsible for all decorating within his own unit, including painting, wallpapering, panelling, floor covering, draperies, window shades, curtains, lamps and other light fixtures, and other furnishings and interior decorating.
- (C) Flooring. All units above the ground floor shall always have the floors covered with wall-to-wall carpeting installed over high quality padding, except carpeting is not required in kitchens, bathrooms or laundry rooms. An owner who desires to install in place of carpeting any hard-surface floor covering (e.g. marble, slate, ceramic tile, parquet) shall also install a sound absorbent underlayment of such kind and quality as to substantially reduce the transmission of noise to adjoining units, and must obtain written approval of the Board of Directors prior to making any such installation. If

prior approval is not obtained, the Board may, in addition to exercising all the other remedies provided in this Declaration, require the unit owner to cover all such hard-surface flooring with carpeting, or require the removal of such hard-surface flooring at the expense of the offending unit owner.

- (D) Window Coverings. The covering and appearance of windows and doors, whether by draperies, shades, reflective film or other items, whether installed within or outside of the unit, visible from the exterior of the unit, shall be subject to the rules and regulations of the Association, and shall be white or off-white in color.
- (E) Modifications and Alterations. If a unit owner makes any modifications, installations or additions to his unit or the common elements, the unit owner and his successors in title shall be financially responsible for the insurance, maintenance, repair and replacement of the modifications, installations or additions.
- (F) Use of Licensed and Insured Contractors. Whenever a unit owner contracts for maintenance, repair, replacement, alteration, addition or improvement of any portion of the unit or common elements, whether with or without Association approval, such owner shall be deemed to have warranted to the Association and its members that his contractor(s) are properly licensed and fully insured, and that the owner will be financially responsible for any resulting damage to persons or property not paid by the contractor's insurance.

11.4 Appliance Maintenance Contracts. If there shall become available to the Association a program of contract maintenance for kitchen appliances or water heaters within units and/or air-conditioning compressors and/or air handlers serving individual units, which the Association determines is to the benefit of the owners to consider, then upon agreement by a majority of the voting interests present, in person or by proxy and voting, at a meeting called for the purpose, or upon agreement by a majority of the total voting interest in writing, the Association may enter into such contractual undertakings. The expenses of such contractual undertakings to the Association shall be common expenses. All maintenance, repairs and replacements not covered by the contracts shall be the responsibility of the unit owner.

11.5 Alteration to Units, Limited Common Elements or Common Elements by Unit Owners. No owner shall make or permit the making of any material alterations or substantial additions to his unit, its appurtenant limited common elements, or the common elements, or in any manner change the exterior appearance of any portion of the Condominium, unless the record owner of the unit and all record owners of liens on it join in the execution of an amendment to the Declaration and unless a majority of the total voting interests approve such amendment to the Declaration (unless required by any governmental entity). Any glass, screen, curtain, blind, shutter, awning, or other similar structure which may be installed where visible from outside the unit is subject to regulation by the Board of Directors. No owner may alter the landscaping in any way without prior Board approval. If any unit owner requests approval of an alteration or modification involving the removal of any interior partition wall, the Association may permit such removal if the removal would not materially affect or interfere with the utility services constituting common elements, if any, located therein. No owner shall cause any of the limited common elements appurtenant to his unit to be enclosed or cause any changes to be made outside of the unit, including painting or other decoration, or the installation of any electrical wiring, television antennas, appliances

or air conditioning units which may protrude through the walls of the condominium or in any manner change the exterior appearance of any portion of the condominium, without the prior written consent of the Board of Directors.

11.6 Alterations and Additions to Common Elements and Association Property. The protection, maintenance, repair, insurance and replacement of the common elements and association property is the responsibility of the Association and the cost is a common expense. Beyond this function, the Association shall make no material alteration of, nor substantial additions to, the common elements, which result in a material expense or a material change in the common elements without the prior approval of at least a majority of the voting interests unless required by a governmental agency.

11.7 Enforcement of Maintenance. If after reasonable notice the owner of a unit fails to maintain the unit or its appurtenant limited common elements as required above, the Association shall have the right to institute legal proceedings to enforce compliance, or when necessary, to prevent damage to the common elements or to another unit or units, may take any and all other lawful actions to remedy such violation, including but not limited to, entering the unit during reasonable hours, with or without notice to or consent of the tenant or unit owner, to repair, replace, or maintain any item which may cause such damage to the common elements or to another unit or units. Any expenses incurred by the Association in performing work within the unit as authorized by this Declaration shall be charged to the unit owner, together with reasonable attorney's fees and other expenses of collection, if any.

11.8 Negligence; Damage Caused by Condition in Unit. Each owner shall be liable for the expenses of any maintenance, repair or replacement of common elements or personal property made necessary by his act or negligence, or by that of any member of his family or his guests, employees, agents, or tenants. Each unit owner has a duty to maintain his unit and personal property therein in such a manner as to prevent foreseeable and reasonably preventable damage to the common elements or the property of other owners and residents. If any condition, defect or malfunction existing within a unit, resulting from the owner's failure to perform this duty, shall cause damage to the common elements or property within other units, the owner of the offending unit shall be liable to the person or entity responsible for repairing the damaged property for all costs of repair or replacement not paid by insurance. If one or more of the units involved is not occupied at the time the damage is discovered, the Association may enter the unit without prior notice to the owner and take reasonable action to mitigate damage or prevent its spread to the common elements or to other units.

11.9 Association's Access to Units. The Association has an irrevocable right of access to the units during reasonable hours for the purposes of maintaining, repairing and replacing the common elements or portions of a unit to be maintained by the Association under this Declaration, and as necessary to prevent damage to the common elements or to one or more units. The exercise of the Association's rights of access to the unit shall be accomplished with due respect for the rights of occupants to privacy and freedom from unreasonable annoyance, as well as with appropriate precautions to protect the personal property within the unit. The Association may retain a pass-key to all units. If a unit owner alters any lock or installs a new lock, the unit owner shall provide the Association with a key.

11.10 Surface Water Management Facilities. Unless maintained by Lee County or the Master Association, the Association shall be responsible for the maintenance of the surface water management system in Fairway Woods of Cross Creek. No structure of any kind shall be constructed or erected, nor

shall any unit owner or the Association in any way change, alter, impede, revise or otherwise interfere with the flow and the volume of water, in any portion of any water management area including, but not limited, swales, drainage ways, pipes or areas intended for the accumulation of run-off waters, without the specific written permission of the Master Association. No unit owner or the Association shall unreasonably deny or prevent ingress and egress to water management areas for maintenance, repair or landscaping purposes by the Master Association or any appropriate governmental agency that may reasonably require any right of ingress and egress, and easements therefore are hereby specifically reserved and created. Nothing in this section shall be construed to allow construction of any new water management facility or alteration of water management systems without first obtaining the necessary permits from all governmental regulatory agencies having jurisdiction.

**12. USE RESTRICTIONS:** The use of the condominium property shall be in accordance with the following provisions:

**12.1 Units.** Each unit shall be occupied by only one family at any time. Each unit shall be used as a residence and for no other purpose. No business or commercial activity shall be conducted in or from any unit. This restriction shall not be construed to prohibit any owner from maintaining a personal or professional library, from keeping his personal, business or professional records in his unit, or from handling his personal, business or professional telephone calls or written correspondence in and from his unit. Such uses are expressly declared customarily incident to residential use.

**12.2 Occupancy in Absence of Owner.** If the owner and his family who permanently reside with him are absent, and the unit has not been leased, the owner may permit his unit to be occupied by his guests only in accordance with the following:

- (A) Any one person who is the parent or child of the unit owner or of the unit owner's spouse, if any, may occupy the unit in the absence of the owner for a period not to exceed thirty (30) days. That person's spouse and children, if any, may accompany him. The total number of occasions for occupancy by all guests combined under this paragraph shall be limited to four (4) in any one calendar year.
- (B) House guests not included within 12.2(A) are permitted for occupancy in the unit owner's absence provided the total number of guests is limited to 2 per bedroom. Such guests may stay up to 30 days and the total number of occasions for this type of guest occupancy in any unit shall be limited to three (3) in each calendar year.
- (C) The Board of Directors may require all guests to be registered in advance.

**12.3 Exceptions.** Upon prior written application by the unit owner, the Board of Directors may make such limited exceptions to the foregoing restrictions as may be deemed appropriate in the discretion of the Board, for the sole purpose of avoiding undue hardship or inequity. The making of one exception shall not be construed as a precedent for later exceptions.

**12.4 Occupancy When Owner is Present.** There is no restriction on the number of guests, whether related or unrelated to the owner, who may occupy the unit in the presence of the unit owner.

**12.5 Minors.** All occupants under eighteen (18) years of age shall be closely supervised at

all times by an adult to insure that they do not become a source of unreasonable annoyance to other residents.

12.6 Pets. The owner of each unit may keep one (1) small pet, (25 lbs or less) of a normal domesticated household type (such as a cat or dog) in the unit. The pet must be carried under the owner's arm or be leashed at all times while on the condominium property outside of the unit. The ability to keep such a pet is a privilege, not a right, and the Board of Directors is empowered to order and enforce the removal of any pet which becomes a source of unreasonable annoyance to other residents of the Condominium. No pets of any kind are permitted in leased units. No reptiles, rodents, amphibians, poultry or livestock may be kept in the Condominium. The Master Association may restrict the walking of pets to certain areas. Owners who walk their pets must clean up after their pets and pets may not be brought into the swimming pool or spa areas. Pets may not be left unattended or leashed on lanais, entries, or in carports.

12.7 Nuisances. No owner shall use his unit, or permit it to be used, in any manner which constitutes or causes an unreasonable amount of annoyance or nuisance to the occupant of another unit, or which would not be consistent with the maintenance of the highest standards for a first class residential condominium, nor permit the premises to be used in a disorderly or unlawful way. The use of each unit shall be consistent with existing laws and the condominium documents, and occupants shall at all times conduct themselves in a peaceful and orderly manner.

12.8 Signs. Only one (1) sign may be displayed in front of any unit. That sign may be "For Rent" or "For Sale." In addition, one additional sign carrying the words "Open House" and arrow showing direction may be displayed.

12.9 Use of Lanais and Entries. Lanais and entries shall not be obstructed, littered, defaced or misused in any manner. Lanais, entries and walkways shall be used only for the purposes intended, and they shall not be used for hanging or drying clothing, for cleaning of rugs or other household items, or for storage of bicycles or other personal property.

13. LEASING OF UNITS: All leases of units must be in writing. A unit owner may lease only his entire unit, and then only in accordance with this Section, after receiving the approval of the Association. The lessee must be a natural person.

13.1 Procedures.

A. Notice by the Unit Owner. An owner intending to lease his unit shall give to the Board of Directors or its designee written notice of such intention at least twenty (20) days prior to the first day of occupancy under the lease together with the name and address of the proposed lessee, a fully executed copy of the proposed lease, and such other information as the Board may reasonably require. The Board may require a personal interview with any lessee and his spouse, if any, as a precondition to approval.

B. Board Action. After the required notice and all information or interviews requested have been provided, the Board shall have twenty (20) days in which to approve or disapprove the proposed lease. If the Board neither approves nor disapproves within that time, its failure to act shall be deemed the equivalent of approval, and on demand

the Board shall issue a written letter of approval to the lessee.

- (C) Disapproval. A proposed lease shall be disapproved only if a majority of the whole Board so votes, and in such case the lease shall not be made. Appropriate grounds for disapproval shall include, but not be limited to, the following:
- (1) The unit owner is delinquent in the payment of assessments at the time the application is considered;
  - (2) The unit owner has a history of leasing his unit to troublesome lessees and/or refusing to control or accept responsibility for the occupancy of his unit;
  - (3) The real estate company or rental agent handling the leasing transaction on behalf of the unit owner has a history of screening lessee applicants inadequately or recommending undesirable lessees;
  - (4) The application on its face indicates that the person seeking approval intends to conduct himself in a manner inconsistent with the covenants and restrictions applicable to the Condominium;
  - (5) The prospective lessee has been convicted of a felony involving violence to persons or property, a felony involving sale or possession of a controlled substance, or a felony demonstrating dishonesty or moral turpitude;
  - (6) The prospective lessee has a history of conduct which evidences disregard for the rights and property of others;
  - (7) The prospective lessee evidences a strong probability of financial irresponsibility;
  - (8) The lessee, during previous occupancy, has evidenced an attitude of disregard for the Association rules;
  - (9) The prospective lessee gives false or incomplete information to the Board as part of the application procedure, or the required transfer fees and/or security deposit are not paid; or
  - (10) The owner fails to give proper notice of his intention to lease his unit to the Board of Directors.
- (D) Failure to Give Notice or Obtain Approval. If proper notice is not given, the Board, at its election, may approve or disapprove the lease. Any lease entered into without approval may, at the option of the Board, be treated as a nullity, and the Board shall have the power to evict the lessee with five (5) days notice, without securing consent to such eviction from the unit owner.
- (E) Applications; Assessments. Applications for authority to lease shall be made to the

Board of Directors on such forms and include such terms as the Board may provide from time to time. The legal responsibility for paying condominium assessments may not be delegated to the lessee.

- (F) Committee Approval. To facilitate approval of leases proposed during times when many of the members are not in residence, the Board of Directors may by resolution delegate its approval powers to an ad hoc committee, which shall consist of at least three (3) members.

13.2 Exception for Mortgagees. The provisions of Section 13.1 shall not apply to leases entered into by institutional mortgagees who acquire title through the mortgage whether by foreclosure or by a deed in lieu of foreclosure.

13.3 Term of Lease and Frequency of Leasing. No unit may be leased more often than three (3) times in any calendar year, with the minimum lease term being thirty (30) days. The first day of occupancy under the lease shall determine in which year the lease occurs. No lease may be for a period of more than one (1) year, and no option for the lessee to extend or renew the lease for any additional period shall be permitted without Board approval. The Board may, in its discretion, approve the same lease from year to year. No subleasing or assignment of lease rights by the lessee is allowed without Board approval.

13.4 Occupancy During Lease Term. No one but the lessee, his guest, his family members within the first degree of relationship by blood, adoption or marriage, and their spouses and guests may occupy the unit. The total number of overnight occupants of a leased unit is limited to two (2) persons per bedroom.

13.5 Occupancy in Absence of Lessee. If a lessee absents himself from the unit for any period of time during the lease term, his family within the first degree of relationship already in residence may continue to occupy the unit and may have house guests subject to all the restrictions in Sections 12 and 13.4 above. If the lessee and all of the family members mentioned in the foregoing sentence are absent, no other person may occupy the unit.

13.6 Use of Commons/Recreation Areas. To prevent overtaxing the facilities, a unit owner whose unit is leased may not use the recreation or parking facilities located on the Recreation areas or the common elements of the condominium during the lease term.

13.7 Regulation by Association. All of the provisions of the condominium documents and the rules and regulations of the Association including those for the Recreation Parcel shall be applicable and enforceable against any person occupying a unit as a lessee or guest to the same extent as against the owner. A covenant on the part of each occupant to abide by the rules and regulations of the Association and the provisions of the condominium documents, designating the Association as the owner's agent with the authority to terminate any lease agreement and evict the tenants in the event of breach of such covenant, shall be deemed to be included in every lease agreement, whether oral or written, and whether specifically expressed in such agreement or not.

14. TRANSFER OF OWNERSHIP OF UNITS: In order to maintain a community of congenial, financially responsible residents with the objectives of protecting the value of the units, inhibiting

transiency, and facilitating the development of a stable, quiet community and peace of mind for all residents, the transfer of ownership of a unit shall be subject to the following provisions:

14.1 Forms of Ownership:

- (A) A unit may be owned by one natural person who has qualified and been approved as elsewhere provided herein.
- (B) Co-Ownership. Co-ownership of units is permitted. If the co-owners are other than husband and wife, the Board shall condition its approval upon the designation of one approved natural person as "primary occupant". The use of the unit by other persons shall be as if the primary occupant were the only actual owner. Any change in the primary occupant shall be treated as a transfer of ownership by sale or gift subject to the provisions of this Section 14. No more than one such change will be approved in any twelve (12) month period.
- (C) Ownership by Corporations, Partnerships or Trusts. A unit may be owned in trust, or by a corporation, partnership or other entity which is not a natural person, if approved in the manner provided elsewhere herein. The intent of this provision is to allow flexibility in estate, financial or tax planning, and not to create circumstances in which the unit may be used as short-term transient accommodations for several individuals or families. The approval of a trustee, or corporation, partnership or other entity as a unit owner shall be conditioned upon designation by the owner of one natural person to be the "primary occupant". The use of the unit by other persons shall be as if the primary occupant were the only actual owner. Any change in the primary occupant shall be treated as a transfer of ownership by sale or gift subject to the provisions of this Section 14. No more than one such change will be approved in any twelve (12) month period.
- (D) Life Estate. A unit may be subject to a life estate, either by operation of law or by a voluntary conveyance approved under 14.2 below. In that event, the life tenant shall be the only Association member from such unit, and occupancy of the unit shall be as if the life tenant was the only owner. Upon termination of the life estate, the holders of the remainder interest shall have no occupancy rights unless separately approved by the Association. The life tenant shall be liable for all assessments and charges against the unit. Any consent or approval required of association members may be given by the life tenant alone, and the consent or approval of the holders of the remainder interest shall not be required. If there is more than one life tenant, they shall be treated as co-owners for purposes of determining voting and occupancy rights.

14.2 Transfers.

- (A) Sale or Gift. No unit owner may dispose of a unit or any interest in a unit by sale or gift (including agreement for deed) without prior written approval of the Board of Directors.
- (B) Devise or Inheritance. If any unit owner acquires his title by devise or inheritance, his right to occupy or use the unit shall be subject to the approval of the Board of Directors



under Section 14.3(A)(2) below. The approval shall not be denied to any devisee or heir who was the prior owner's lawful spouse at the time of death, or was related to the owner by blood or adoption within the first degree.

(C) Other Transfers. If any person acquires title in any manner not considered in the foregoing subsections, that person shall have no right to occupy or use the unit before being approved by the Board of Directors under the procedures outlined in Section 14.3 below.

(D) Ad Hoc Committee. To facilitate transfers proposed during times when many of the members of the Board of Directors are not in residence, the Board of Directors may by resolution delegate its approval powers to an ad hoc committee, which shall consist of at least three (3) members. The Chairman of the committee shall be deemed a Vice-President, and as such shall be empowered to execute Certificates of Approval on behalf of the Association.

#### 14.3 Procedures.

##### (A) Notice to Association.

(1) Sale or Gift. An owner intending to make a sale or gift of his unit or any interest therein shall give to the Board of Directors or its designee written notice of such intention at least twenty (20) days before the intended closing date, together with the name and address of the proposed purchaser or donee, a copy of the executed sales contract, if any, and such other information as the Board may reasonably require. The Board may require a personal interview with any purchaser or donee and his spouse, if any, as a pre-condition to approval.

(2) Devise, Inheritance or Other Transfers. The transferee must notify the Board of Directors of his ownership and submit a certified copy of the instrument evidencing his ownership and such other information as the Board may reasonably require. The transferee shall have no occupancy or use rights until and unless approved by the Board, but may sell or lease the unit following the procedures in this Section or Section 13.

(3) Demand. With the notice required in Subsection (A)(1) above, the owner or transferee seeking approval may make a written demand that if the transfer is disapproved without good cause, the Association shall furnish an approved alternate purchaser who shall purchase the unit at the same price and upon substantially the same terms as in the disapproved sales contract, or if no contract is involved, for the fair market value of the unit determined as provided below.

(4) Failure to Give Notice. If no notice is received, the Board of Directors, at its election, may approve or disapprove at the time it learns of the transfer. If any owner fails to obtain the Association's approval prior to selling an interest in a unit, such failure shall create a rebuttable presumption that the seller and the purchaser intend to violate the covenants of this Declaration, and shall constitute

good cause for Association disapproval.

- (B) Board Action. Within ten (10) days after receipt of the required notice and all information or interviews requested, or not later than sixty (60) days after the notice required by paragraph (A) above is received, whichever occurs first, the Board shall approve or disapprove the transfer. If a transfer is approved, the approval shall be stated in a Certificate of Approval executed by the President or Vice-President of the Association in recordable form and delivered to the transferee. If the Board neither approves nor disapproves within the time limits as set forth above, such failure to act shall be deemed the equivalent of approval and on demand the Board shall issue a Certificate of Approval to the transferee.
- (C) Disapproval. Approval of the Association shall be withheld for good cause only if a majority of the whole Board so votes, after receiving a written opinion of counsel that good cause exists. Only the following may be deemed to constitute good cause for disapproval:
- (1) The person seeking approval has been convicted of a felony involving violence to persons or property, a felony involving possession or sale of a controlled substance, or a felony demonstrating dishonesty or moral turpitude;
  - (2) The person seeking approval has a record of financial irresponsibility, including without limitation prior bankruptcies, foreclosures or bad debts;
  - (3) The application for approval on its face indicates that the person seeking approval intends to conduct himself in a manner inconsistent with the covenants and restrictions applicable to the Condominium;
  - (4) The person seeking approval has a history of disruptive behavior or disregard for the rights or property of others;
  - (5) The person seeking approval has failed to provide the information, fees or interviews required to process the application in a timely manner, or provided false information during the application process.
  - (6) The transaction, if a sale, was concluded by the parties without having sought and obtained the prior approval required herein.

14.4 Exception. The provisions of Sections 14.1, 14.2 and 14.3 are not applicable to the acquisition of title by an institutional mortgagee who acquires title through the mortgage, whether by foreclosure or deed in lieu of foreclosure.

14.5 Unapproved Transfers. Any sale or transfer which is not approved, or which is disapproved pursuant to the terms of this Declaration shall be void unless subsequently approved in writing by the Board.

14.6 Fees and Depcsits Related to the Sale of Units. Whenever herein the Board's approval

is required to allow the sale, lease or other transfer of an interest in a unit, the Association may charge the owner a preset fee for processing the application, such fee not to exceed the maximum amount allowed by law (currently \$50.00 per applicant). The Association may also require any deposits that are authorized by the Condominium Act as amended from time to time. No fee may be charged for approval of the renewal or extension of a lease with the same tenant.

15. **INSURANCE:** In order to adequately protect the Association and its members, insurance shall be carried and kept in force at all times in accordance with the following provisions:

15.1 **The Unit Owner.** Each unit owner is responsible for insuring his own unit, and the personal property therein, including all electrical fixtures, appliances, air conditioner or heating equipment, water heaters, built in cabinets, floor, wall and ceiling coverings, and all alterations, additions and improvements made to the unit or the common elements by the owner or his predecessors in title. Each unit owner is expected to carry homeowner's insurance, with endorsements for leakage, seepage and wind-driven rain, additions and alterations, and loss assessment protection, or recognize that he bears financial responsibility for any damage to his property otherwise covered by such insurance.

15.2 **Association Insurance; Duty and Authority to Obtain.** The Board of Directors shall obtain and keep in force the insurance coverage which it is required to carry by law and under the condominium documents, and may obtain and keep in force any or all additional insurance coverage as it deems necessary. The name of the insured shall be the Association and the unit owners without naming them, and their mortgagees, as their interests shall appear. To the extent permitted by law, the Association may self-insure.

15.3 **Required Coverage.** The Association shall maintain adequate insurance covering all of the buildings and the common elements as well as all association property, in amounts determined annually by the Board of Directors, such insurance to afford the following protection:

- (A) **Property.** Loss or damage by fire, extended coverage, including windstorm, vandalism and malicious mischief, and other hazards covered by the standard "All Risk" property contract.
- (B) **Flood.** In amounts deemed adequate by the Board of Directors, as available through the National Flood Insurance Program.
- (C) **Liability.** Premises and operations liability for bodily injury and property damage in such limits of protection and with such coverage as are determined by the Board of Directors, with cross liability endorsement to cover liabilities of the unit owners as a group to a unit owner.
- (D) **Automobile.** Automobile liability for bodily injury and property damage for all owned and non-owned motor vehicles, in such limits of protection and with such coverage as may be determined by the Board of Directors.
- (E) **Compensation.** The Association shall maintain Workers' Compensation insurance on at least a minimum premium basis.

- (F) Statutory Dishonesty Bond. A minimum of \$10,000 per person having access to Association funds.

15.4 Optional Coverage. The Association may purchase and carry other such insurance coverage as the Board of Directors may determine to be in the best interest of the Association and unit owners. Some of the more common options include:

- (A) Additional flood insurance.
- (B) Boiler and Machinery coverage (includes breakdown on air conditioning units).
- (C) Broad Form Comprehensive General Liability Endorsement.
- (D) Directors and Officers Liability.
- (E) Medical Payments.
- (F) Leakage, seepage and wind-driven rain.

15.5 Description of Coverage. A detailed summary of the coverage included in the master policies, and copies of the master policies, shall be available for inspection by unit owners or their authorized representatives upon request.

15.6 Waiver of Subrogation. If available and where applicable, the Board of Directors shall endeavor to obtain insurance policies which provide that the insurer waives its right to subrogation as to any claim against the Association unit owners, or their respective servants, agents or guests, except for any claim based upon gross negligence evidencing reckless, willful or wanton disregard for life or property.

15.7 Insurance Proceeds. All insurance policies purchased solely by the Association shall be for the benefit of the Association, the unit owners and their mortgagees as their interests may appear, and all proceeds shall be payable to the Association. The duty of the Association shall be to receive such proceeds as are paid and hold and disburse the same in trust for the purposes stated herein and for the benefit of the unit owners and their respective mortgagees in the following shares:

- (A) Common Elements. Proceeds on account of damage to common elements shall be held in as many undivided shares as there are units, the shares of each unit owner being the same as his share in the common elements.
- (B) Units. Proceeds on account of damage within the units shall be held in undivided shares based on the prorated amount of damage within each damaged unit as a percentage of the total damage within all units.
- (C) Mortgagee. If a mortgagee endorsement has been issued as to a unit, the shares of the mortgagee and the unit owner shall be as their interests appear. In no event shall any mortgagee have the right to demand application of insurance proceeds to any mortgage or mortgages which it may hold against unit or units, except to the extent that insurance proceeds exceed the actual cost of repair or restoration of the damaged building or

buildings. No mortgagee shall have any right to participate in determining whether improvements will be restored after casualty.

The foregoing notwithstanding, insurance proceeds on account of NFIP flood insurance policies (if any) covering specific units purchased by the Association or various unit owners shall be used only for the purpose of repairing or replacing the unit to which the respective policy applies and that unit's appurtenant share of the common elements, and no other unit owner or unit may benefit from said proceeds. If the Condominium is not to be restored or rebuilt, the proceeds shall accrue to the benefit of the respective unit owner and his mortgagees, if any.

**15.8 Distribution of Proceeds.** Proceeds of insurance policies received by the Association shall be distributed to or for the benefit of the unit owners in the following manner:

- (A) **Cost of Reconstruction or Repair.** If the damage for which the proceeds are paid is to be reconstructed or repaired by the Association, the remaining proceeds shall be paid to defray the costs thereof. Any proceeds remaining after defraying costs shall be distributed to the beneficial owners, remittances to unit owners and their mortgagees being paid jointly to them.
- (B) **Failure to Reconstruct or Repair.** If it is determined in the manner elsewhere provided herein that the damages for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial owners, remittances to unit owners and their mortgagees being payable jointly to them.

**15.9 Association as Agent.** The Association is hereby irrevocably appointed as agent for each unit owner to adjust all claims arising under insurance policies purchased by the Association for damage or loss to the condominium property.

**16. RECONSTRUCTION OR REPAIR AFTER CASUALTY:** If any part of the condominium property is damaged by casualty, whether and how it shall be reconstructed or repaired shall be determined as follows:

**16.1 Damage to Units.** Where loss or damage occurs within one or more units, any Association insurance proceeds on account of the loss or damage, less the deductible, shall be distributed to the owner(s) of the damaged unit(s) in shares as provided in Section 15.7 above. The owner(s) of the damaged unit(s) shall be responsible for reconstruction and repair.

**16.2 Damage to Common Elements - Less than "Very Substantial".** Where loss or damage occurs to the common elements, but the loss is less than "very substantial", as hereinafter defined, it shall be mandatory for the Association to repair, restore and rebuild the damage caused by the loss, and the following procedures shall apply:

- (A) The Board of Directors shall promptly obtain reliable and detailed estimates of the cost of repair and restoration, and shall negotiate and contract for repair and reconstruction.
- (B) If the proceeds of insurance and available reserves are insufficient to pay for the cost of repair and reconstruction of the common elements, the Association shall promptly,

upon determination of the deficiency, levy a special assessment against all unit owners in proportion to their shares in the common elements for the deficiency. Such special assessments need not be approved by the unit owners. The special assessments shall be added to the funds available for repair and restoration of the property.

16.3 **"Very Substantial" Damage.** As used in this Declaration, the term "very substantial" damage shall mean loss or damage whereby three-fourths (3/4ths) or more of the total units are rendered uninhabitable. Should such "very substantial" damage occur then:

- (A) The Board of Directors shall promptly obtain reliable and detailed estimates of the cost of repair and restoration.
- (B) A membership meeting shall be called by the Board of Directors to be held not later than sixty (60) days after the casualty, to determine the opinion of the membership with reference to rebuilding or termination of the Condominium, subject to the following:
  - (1) If the insurance proceeds and reserves available for restoration and repair are sufficient to cover the cost thereof so that no special assessment will be required, then the Condominium shall be restored or repaired unless two-thirds (2/3rds) of the total voting interests shall vote for termination, or unless the then applicable zoning or other regulatory laws will not allow reconstruction of the same number and general types of units, in either of which cases the Condominium shall be terminated.
  - (2) If the insurance proceeds and reserves available for restoration and repair are not sufficient to cover the cost thereof so that a special assessment will be required, then unless two-thirds (2/3rds) of the total voting interests vote in favor of such special assessment and against termination of the Condominium, it shall be terminated and the property removed from the provisions of the Condominium Act. If two-thirds (2/3rds) of the total voting interests approve the special assessment, the Association, through its Board of Directors, shall levy such assessment and shall proceed to negotiate and contract for necessary repairs and restoration. The special assessment shall be added to the funds available for repair and restoration of the property.
- (C) If any dispute shall arise as to whether "very substantial" damage has occurred, a determination by the Board of Directors shall be binding upon all unit owners.

16.4 **Application of Insurance Proceeds.** It shall be presumed that the first monies disbursed for repair and restoration are from the insurance proceeds; if there is a balance in the funds held by the Association after the payment of all costs of repair and restoration, such balance shall be distributed to the unit owners, except as otherwise provided in Section 15.7(C) above.

16.5 **Equitable Relief.** In the event of damage to the common elements which renders any unit uninhabitable, and the damage is not repaired, reconstructed, or rebuilt within a reasonable period of time, the owner of the uninhabitable unit may petition a court for equitable relief, which may include a termination of the Condominium and a partition. For the purposes of this provision, it shall be

presumed that repair, reconstruction or rebuilding has occurred within a reasonable period of time if substantial work is commenced within four (4) months following the damage or destruction and is completed within nine (9) months thereafter.

16.6 Plans and Specifications. Any reconstruction or repairs must be substantially in accordance with the plans and specifications for the original buildings, or according to different plans and specifications approved by the Board of Directors, by the owners of three-fourths (3/4ths) of the units, and by the Primary Institutional Mortgagee, if any.

## 17. CONDEMNATION:

17.1 Deposit of Awards with Association. The taking of all or any part of the condominium property by condemnation or eminent domain shall be deemed to be a casualty to the portion taken and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty. Even though the awards may be payable to unit owners, the unit owners shall deposit the awards with the Association; and if any fail to do so, a special charge shall be made against a defaulting unit owner in the amount of his award, or the amount of that award shall be set off against any sums payable to that owner.

17.2 Determination Whether to Continue Condominium. Whether the Condominium will be continued after condemnation will be determined in the same manner provided for determining whether damaged property will be reconstructed and repaired after a casualty.

17.3 Disbursement of Funds. If the Condominium is terminated after condemnation, the proceeds of all awards and special assessments will be deemed to be condominium property and shall be owned and distributed in the manner provided for insurance proceeds when the Condominium is terminated after a casualty. If the Condominium is not terminated after condemnation, the size of the Condominium will be reduced, the owners of condemned units, if any, will be made whole, and any property damaged by the taking will be made usable in the manner provided below. Proceeds of awards and special assessments shall be used for these purposes and shall be disbursed in the manner provided for disbursements of funds after a casualty.

17.4 Association as Agent. The Association is hereby irrevocably appointed as each unit owner's attorney-in-fact for purposes of negotiating or litigating with the condemning authority for the purpose of realizing just compensation.

17.5 Units Reduced but Habitable. If the condemnation reduces the size of a unit and the remaining portion of the unit can be made habitable, the awards for the taking of a portion of that unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium:

- (A) Restoration of Unit. The unit shall be made habitable. If the cost of the restoration exceeds the amount of the award, the additional funds required shall be paid by the owner of the unit.
- (B) Distribution of Surplus. The balance of the award, if any, shall be distributed to the owner of the unit and to each mortgagee of the unit, the remittance being made payable

jointly to the owner and mortgagees.

- (C) Adjustment of Shares of Common Elements. If the floor area of a unit is reduced by the taking, the number representing the share in the common elements appurtenant to the unit shall be reduced in the proportion by which the floor area of the unit is reduced by the taking, and then the shares of all unit owners in the common elements shall be restated as percentages of the total of the numbers representing their original shares as reduced by the taking.

17.6 Unit Made Not Habitable. If the condemnation is of an entire unit or reduces the size of a unit so that it cannot be made habitable, the award for the taking of the unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium:

- (A) Payment of Award. The fair market value of the unit immediately prior to the taking shall be paid to the owner of the unit and to each mortgagee of the unit, the remittance being made payable jointly to the owner and mortgagee(s).
- (B) Distribution of Surplus. If possible and practical, the remaining portion of the unit shall become a part of the common elements and shall be placed in condition for use by some or all unit owners in a manner approved by the Board of Directors.
- (C) Adjustment of Shares in Common Elements. The shares in the common elements appurtenant to the units that continue as part of the Condominium shall be adjusted to distribute the ownership of the common elements among the reduced number of unit owners. This shall be done by restating the shares of continuing unit owners in the common elements as percentages of the total of the numbers representing the shares of these as they existed prior to the adjustment.
- (D) Assessments. If the amount of the award for the taking is not sufficient to pay the fair market value of the condemned unit to the unit owner and to condition the remaining portion of the unit for use as a part of the common elements, the additional funds required for those purposes shall be raised by special assessment against all unit owners who will continue as owners of units after the changes in the Condominium affected by the taking. The assessments shall be made in proportion to the shares of those owners in the common elements after the changes affected by the taking.
- (E) Arbitration. If the fair market value of a unit prior to the taking cannot be determined by agreement between the unit owner and the Association within thirty (30) days after notice by either party, the value shall be determined by appraisal in accordance with the following. The unit owner, the first mortgagee, if any, and the Association shall each appoint one certified real property appraiser, who shall appraise the unit and determine the fair market value by computing the arithmetic average of their appraisals of the unit. A judgment of specific performance upon the fair market value calculated in this way may be entered in any court of competent jurisdiction. Each party shall bear the cost of his own appraiser.

- 17.7 Taking of Common Elements. Awards for the taking of common elements shall be used



to make the remaining portion of the common elements usable in a manner approved by the Board of Directors. The balance of such awards, if any, shall be distributed to the unit owners in the shares in which they own the common elements after adjustment of these shares on account of the condemnation, if any. If a unit is mortgaged, the remittance shall be paid jointly to the owner and mortgagee(s) of the unit.

17.8 Amendment of Declaration. Any changes in units and in the common elements, in the ownership of the common elements, and in the sharing of common expenses that are necessitated by condemnation shall be accomplished by amending this Declaration. Such amendment need be approved only by a majority of all Directors. The consent of unit owners or lien holders is not required for any such amendment.

18. TERMINATION: The Condominium may be terminated in the following manner:

18.1 Agreement. The Condominium may be terminated at any time by written agreement of the owners of at least eighty percent (80%) of the units, and the Primary Institutional Mortgagee.

18.2 Very Substantial Damage. If the Condominium, as a result of casualty, suffers "very substantial damage" to the extent defined in Section 16.3, and it is not decided as therein provided that it will be reconstructed or repaired, the condominium form of ownership of the property in this Condominium will thereby terminate without agreement.

18.3 General Provisions. Upon termination, the former unit owners shall become the owners, as tenants in common, of all condominium and association property and the assets of the Association. The shares of such tenants in common shall be the same as were their shares of the common elements. The mortgagee or lienor of a unit owner, shall have a mortgage or lien solely and exclusively upon the undivided share of such tenant in common in and to the lands and other properties and rights which he may receive by reason of such termination. The termination of the Condominium shall be evidenced by a certificate of the Association, executed with the formalities of a deed, and certifying as to the facts effecting the termination. Termination shall become effective when that certificate is recorded in the Public Records of Lee County, Florida.

18.4 New Condominium. The termination of the Condominium does not bar creation of another Condominium affecting all or any portion of the same property.

18.5 Partition; Sale. Following termination, the former condominium property and association property may be partitioned and sold upon the application of any unit owner. If following a termination, at least seventy-five percent (75%) of the voting interests agree to accept an offer for the sale of the property, all owners shall be bound to execute deeds and other documents reasonably required to effect the sale. In that event, any action for partition of the property shall be held in abeyance pending the sale, and upon the consummation of the sale shall be discontinued by all parties thereto.

18.6 Last Board. The termination of the Condominium does not, by itself, terminate the Association. The members of the last Board of Directors shall continue to have the powers granted in this Declaration for the purpose of winding up the affairs of the Association.

18.7 Provisions Survive Termination. The provisions of this Section 18 are covenants

running with the land, and shall survive the termination of the Condominium until all matters covered by those provisions have been completed.

## **19. OBLIGATIONS OF OWNERS:**

19.1 Duty to Comply; Right to Sue. Each unit owner, his tenants and guests, and the Association shall be governed by and shall comply with the provisions of the Condominium Act, the condominium documents and the Rules and Regulations. Actions for damages or for injunctive relief, or both, for failure to comply may be brought by the Association or by a unit owner against:

- (A) The Association;
- (B) A unit owner;
- (C) Anyone who occupies or is a tenant or guest in a unit; or
- (D) Any member of the Board of Directors who willfully and knowingly fails to comply with these provisions.

19.2 Waiver of Rights. The failure of the Association or any member to enforce a right, provision, covenant or condition which may be granted by the condominium documents shall not constitute a waiver of the right of the Association or member to enforce such right, provision, covenant or condition in the future. A provision of the Condominium Act may not be waived by a unit owner if the waiver would adversely affect the rights of the owner or defeat the purpose of the provision, except that unit owners or Directors may waive notice of specific meetings as provided in the Bylaws. Any written instrument or instruction given by a purchaser or unit owner to an escrow agent may be relied upon by the escrow agent, whether or not such instruction and the payment of funds thereunder might otherwise constitute a waiver of any provision of the Condominium Act or the condominium documents.

19.3 Attorney's Fees. In any legal proceeding arising out of an alleged failure of a guest, tenant, unit owner or the Association to comply with the requirements of the Condominium Act, or the condominium documents, as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such attorneys fees as may be awarded by the court. Recovery of attorneys fees in litigation involving Association rules and regulations shall be governed by Section 8 of the Bylaws.

19.4 No Election of Remedies. All rights, remedies and privileges granted to the Association or unit owners under the law and the condominium documents shall be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party from exercising any other rights, remedies, or privileges that may be available.

## **20. RIGHTS OF MORTGAGEES:**

20.1 Approvals. Written consent of the institutional mortgagee of a unit shall be required for any amendment to the Declaration which would decrease the units share of ownership of the common elements, except as otherwise provided in Sections 17.5(C), 17.6(C) and 17.8.

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20.2 Notice of Casualty or Condemnation. In the event of condemnation, eminent domain proceedings, or very substantial damage to, or destruction of, any unit or any part of the common elements, the record holder of any first mortgage on an affected unit shall be entitled to notice.

20.3 Mortgage Foreclosure. Unless otherwise provided by the Condominium Act as it may be amended, if the mortgagee of a first mortgage or an institutional mortgage of record acquires title to a condominium parcel as a result of foreclosure of the mortgage, or as the result of a deed given in lieu of foreclosure, such acquirer of title shall be liable for the share of common expenses or assessments attributable to the condominium parcel, or chargeable to the former owner of the parcel, which came due prior to the mortgagee's acquisition of title. However, the mortgagee's liability is limited to a period not exceeding six (6) months, and in no event does the mortgagee's liability exceed one percent (1%) of the original mortgage debt. Any unpaid share of common expenses for which such acquirer is exempt from liability becomes a common expense collectible from all unit owners, including such acquirer and his successors and assigns. No owner or acquirer of title to a condominium parcel by foreclosure, or by a deed in lieu of foreclosure, may be excused from the payment of any assessments coming due during the period of such ownership.

20.4 Redemption. If proceedings are instituted to foreclose any mortgage or lien on any unit, the Association, on behalf of one or more unit owners and with the permission of the mortgagee, may redeem the mortgage or lien for the amount due thereon and be thereby subrogated to all of the mortgagee's or lienor's rights of action, or the Association may purchase the unit at the foreclosure sale. Any mortgagee shall have an unrestricted, absolute right to accept title to the unit in settlement and satisfaction of the mortgage or to foreclose its mortgage in accordance with its terms, and to bid upon the unit at the foreclosure sale.

21. AMENDMENT OF DECLARATION: Except as otherwise provided above as to amendments made by the Board of Directors, all amendments to this Declaration shall be proposed and adopted in the following manner:

21.1 Proposal. Amendments to this Declaration may be proposed by the Board of Directors, or by written petition to the Board signed by the owners of at least ten percent (10%) of the units.

21.2 Procedure. Upon any amendment or amendments to this Declaration being proposed as provided above, the proposed amendment or amendments shall be submitted to a vote of the members not later than the next annual meeting, unless insufficient time to give proper notice remains before that meeting.

21.3 Vote Required. Except as otherwise provided by law, or by specific provision of the condominium documents, this Declaration may be amended by concurrence of at least fifty-one percent (51%) of those voting interests who are present and voting, in person or by proxy, at any annual or special meeting called for the purpose. Alternatively, amendments may be adopted without a meeting following the procedure set forth in Section 3.13 of the Bylaws.

21.4 Certificate; Recording. A copy of each adopted amendment shall be attached to a certificate that the amendment was duly adopted as an amendment to the Declaration, which certificate shall be in the form required by law and shall be executed by the President or Vice President of the Association with the formalities of a deed. The amendment shall be effective when the certificate and

copy of the amendment are recorded in the Public Records of Lee County, Florida.

21.5 Provision. No amendment may change the configuration or size of any unit in any material fashion, materially alter or modify the appurtenances to the unit, or change the proportion or percentage by which the owner of a parcel shares the common expenses and owns the common surplus (except as provided in Section 6.1 herein), unless the record owner of the unit, and all record owners of liens on it join in the execution of the amendment and unless a majority of the total voting interests consent to the amendment in writing (unless required by any governmental entity). No other consents or approvals shall be required. This proviso does not apply to changes caused by condemnation or a taking by eminent domain as provided in Section 17.

21.6 Enlargement of Common Elements. The common elements designated by this Declaration may be enlarged to add real property acquired by the Association through amendment of this Declaration. The amendment must be approved by at least two-thirds (2/3rds) of the voting interests, but no other person need join in or consent to the amendment. The amendment divests the Association of title and vests title in the unit owners without naming them and without further conveyance, in the same proportion as the undivided shares in the common elements that are appurtenant to the units.

21.7 Correction of Errors and Amendments. If there is an omission or error in this Declaration of Condominium or in other documents required by Florida law to establish the Condominium, the Association may correct the error or omission by following the procedures set forth in the Condominium Act. Said amendments may be made and executed solely by the Association and recorded in the Public Records of Lee County, Florida, and without any requirement of securing the consent of any unit owner, or the owner and holder of any lien encumbering a condominium parcel, provided such amendments shall not increase the number of units nor alter the boundaries of the common elements, nor shall such amendments adversely affect the lien or priority of any institutional mortgage recorded prior to the amendment.

21.8 Merger of Condominiums. The Fairway Woods of Cross Creek Complex may contain other condominiums or other forms of residential development, each with its own association, and with all owners sharing certain common facilities located upon the Recreation Parcel. This multi-development, multi-association structure was administratively convenient and desirable from the developer's perspective. However, it is possible that the unit owners, now that they have assumed control of the various associations, will determine that it is in their best interests collectively to merge some or all of the condominiums and other developments and Recreation Area in the Fairway Woods of Cross Creek Complex into one condominium, operated by one association, in the manner contemplated by Section 718.110(7) of the Condominium Act. Notwithstanding any provision in this Declaration to the contrary, this Declaration and the recorded exhibits thereto may be amended or rescinded in any way necessary to accomplish that purpose by the written consent of two thirds (2/3) of the voting interests and no other approval, consent or joinder of any other person shall be necessary. Proviso: the amendments or new documents accomplishing such a merger must provide that;

- (A) The security and priority of all existing mortgages and liens, and the rights of existing mortgagees and lienholders, shall not be impaired by the merger;
- (B) The restrictions on the use, occupancy, leasing and transfer of units shall not be materially changed as part of the merger; and

- (C) The share of common expenses and ownership of the common elements for each unit in the newly merged condominium shall be a fraction, the numerator of which is the number "one" (1), and the denominator of which is the total number of units in the newly merged condominium.

**22. MISCELLANEOUS:**

22.1 Severability. The invalidity or unenforceability in whole or in part of any covenant or restriction or any section, subsection, sentence, clause, phrase or word or other provision of this Declaration, or any recorded exhibit to this Declaration, shall not effect the remaining portions thereof.

22.2 Applicable Statutes. The validity, application and construction of this Declaration and its recorded exhibits shall be governed by the Laws of Florida, particularly the Condominium Act, as it exists on the date hereof.

22.3 Conflicts. If there is a conflict between any provision of this Declaration and the Condominium Act, the Condominium Act shall control. If there is a conflict between this Declaration and the Association's Articles of Incorporation or Bylaws, the Declaration shall control.

22.4 Interpretation. The Board of Directors is responsible for interpreting the provisions of this Declaration and its exhibits. Such interpretation shall be binding upon all parties unless wholly unreasonable. A written opinion rendered by legal counsel that an interpretation adopted by the Board is not unreasonable shall conclusively establish the validity of such interpretation.

22.5 Exhibits. There is hereby incorporated within this Declaration any materials contained in the exhibits hereto which, under the Condominium Act, are required to be part of the Declaration.

22.6 Singular, Plural and Gender. Whenever the context so requires, the use of the plural shall include the singular and the plural, and the use of any gender shall be deemed to include all genders.

22.7 Headings. The headings used in the condominium documents are for reference purposes only, and do not constitute substantive matter to be considered in construing the terms and provisions of these documents.

DR2622 Pg4049

0R2622 PG4050

IN WITNESS WHEREOF, the Association has executed this Amended and Restated Declaration the day and year first above written.

Signed in the presence of:

FAIRWAY WOODS OF CROSS CREEK  
CONDOMINIUM ASSOCIATION, INC.,  
a Florida corporation not for profit

Beverly Stephenson  
Witness

Beverly Stephenson  
Printed Name of Witness

Valerie Goodwin  
Witness

Valerie Goodwin  
Printed Name of Witness

BY: John H. Shaw Pres  
JOHN H. SHAW, President

AND BY: Patricia G. Meagher, Sec.  
PATRICIA A. MEAGHER, Secretary

(CORPORATE SEAL)

STATE OF FLORIDA

COUNTY OF LEE

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared JOHN H. SHAW and PATRICIA A. MEAGHER, (one of the following should be checked; if none are checked, they are personally known to me) ☒ who are personally known to me, or ☐ have produced ☐ as identification, and who did take an oath, and who are known to be the President and Secretary of FAIRWAY WOODS OF CROSS CREEK CONDOMINIUM ASSOCIATION, INC., a Florida corporation not for profit, the corporation named in the foregoing instrument and that they acknowledged executing the same, in the presence of two subscribing witnesses, freely and voluntarily under authority duly vested in them by said corporation and that the seal affixed thereto is the true corporate seal of said corporation.

WITNESS my hand and official seal in the State and County last aforesaid this 5 day of MAY, 1995.

David J. Workman  
NOTARY PUBLIC

(SEAL)  
"OFFICIAL SEAL"  
David J. Workman  
My Commission Expires 3/21/98  
Commission #CC 357627  
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Printed Name of Notary  
My Commission Number is:  
My Commission Expires:

# **CROSS CREEK**

## **OF FT. MYERS**

**FAIRWAY WOODS OF CROSS CREEK**

**A CONDOMINIUM**

**TRACT NO. 16**

EXHIBIT "A"

### **LEGAL DESCRIPTION**

#### **Condominium 1**

A parcel of land lying in Section 17, Township 45 South, Range 25 East, Lee County, Florida, said parcel of land being more particularly described as follows;

Commencing at the Southeast corner of said Section 17; thence North 010-21'-01" West along the Easterly line of said Section 17 for a distance of 2353.90 feet; thence South 880-38'-59" West for a distance of 279.84 feet to the Point of Beginning of the herein described parcel of land;

Thence South 880-53'-27" West for a distance of 691.66 feet; thence North 070-59'-37" East for a distance of 59.60 feet; thence North 290-44'-17" East for a distance of 89.28 feet; thence North 880-53'-27" East for a distance of 463.87 feet; thence South 010-06'-33" East for a distance of 14.00 feet; thence North 880-53'-27" East for a distance of 120.25 feet to a point of curvature; thence Southeasterly along said curve concave to the Southwest having a radius of 60.00 feet, a central angle of 970-35'-15" for an arc distance of 102.19 feet; thence South 060-28'-42" West for a distance of 54.05 feet to the Point of Beginning.

Containing 2.032 acres, more or less

Bearings herein are based on the South line of said Section 17 bearing North 880-54'-28" East.

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TIES TO P.O.B.'S FROM P.O.C.

RECREATIONAL PARCEL  
CONDO. 1

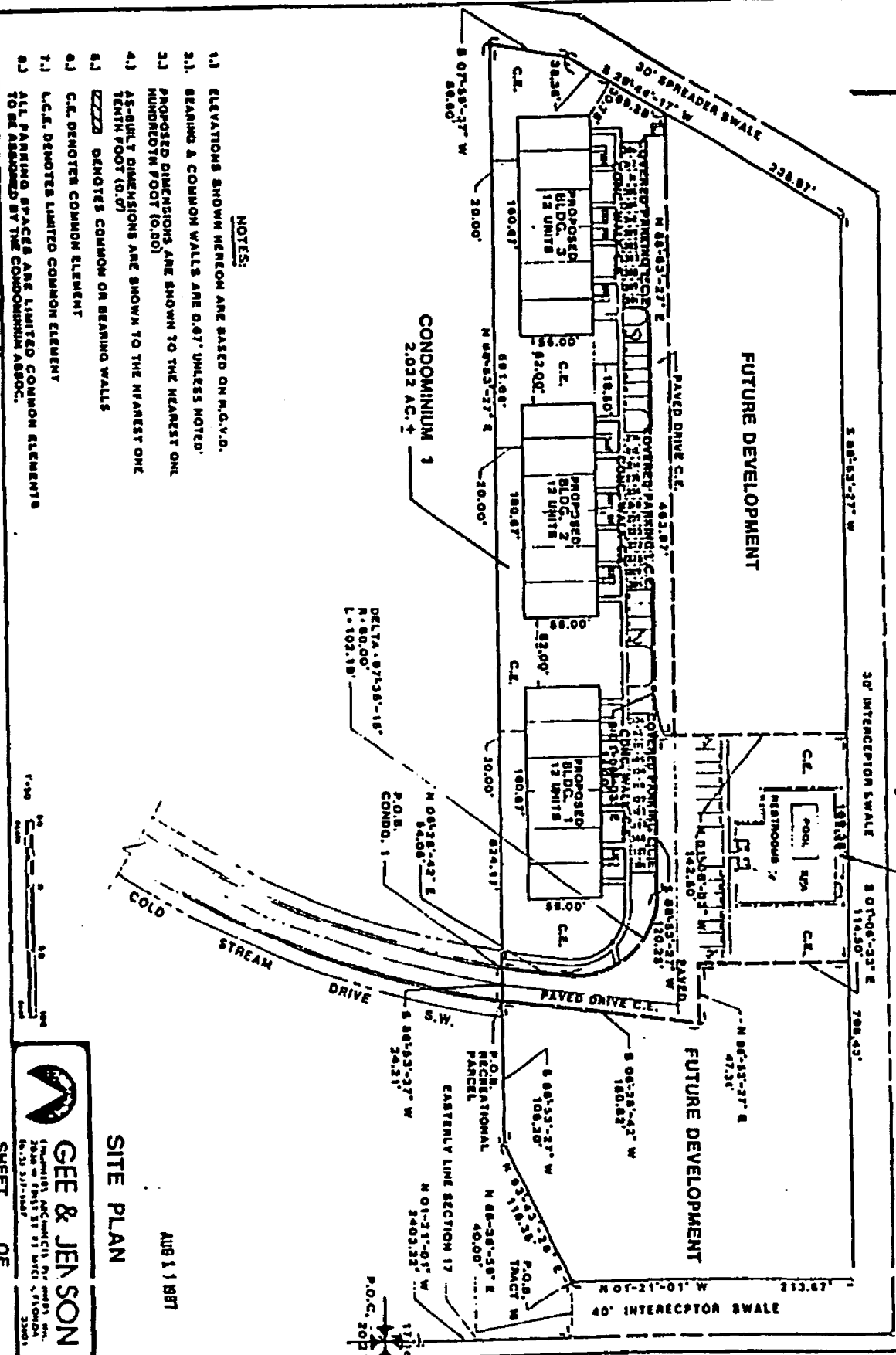
N 01°21'-01" W  
2353.00'  
2353.00'

S 88°38'-05" W  
255.62'  
279.04'

RECREATIONAL PARCEL  
AND ACCESS EASEMENT  
CONDOMINIUM 1  
0.675 AC. ±

# CROSS CREEK OF FT. MYERS A CONDOMINIUM FAIRWAY WOODS OF CROSS CREEK TRACT NO. 16

EXHIBIT "B"



## NOTES:

1. ELEVATIONS SHOWN HEREON ARE BASED ON M.G.V.D.
2. BEARING & COMMON WALLS ARE 0.67' UNLESS NOTED.
3. PROPOSED DIMENSIONS ARE SHOWN TO THE NEAREST ONE HUNDREDTH FOOT (0.01)
4. AS-BUILT DIMENSIONS ARE SHOWN TO THE NEAREST ONE TENTH FOOT (0.07)
5. C.C. DENOTES COMMON OR BEARING WALLS
6. C.C. DENOTES COMMON ELEMENT
7. L.C.E. DENOTES LIMITED COMMON ELEMENT
8. ALL PARKING SPACES ARE LIMITED COMMON ELEMENTS TO BE ASSIGNED BY THE CONDOMINIUM ASSOC.



**GEE & JENSON**  
Professional Surveyors  
2000 W. 10th St. Ft. Myers, FL 33901  
(813) 217-1900

**SITE PLAN**

AUG 1, 1987

SHEET OF



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CONDOMINIUM PLAT BOOK PAGE

# CROSS CREEK

## OF FT. MYERS

FAIRWAY WOODS OF CROSS CREEK

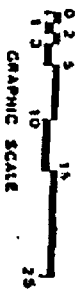
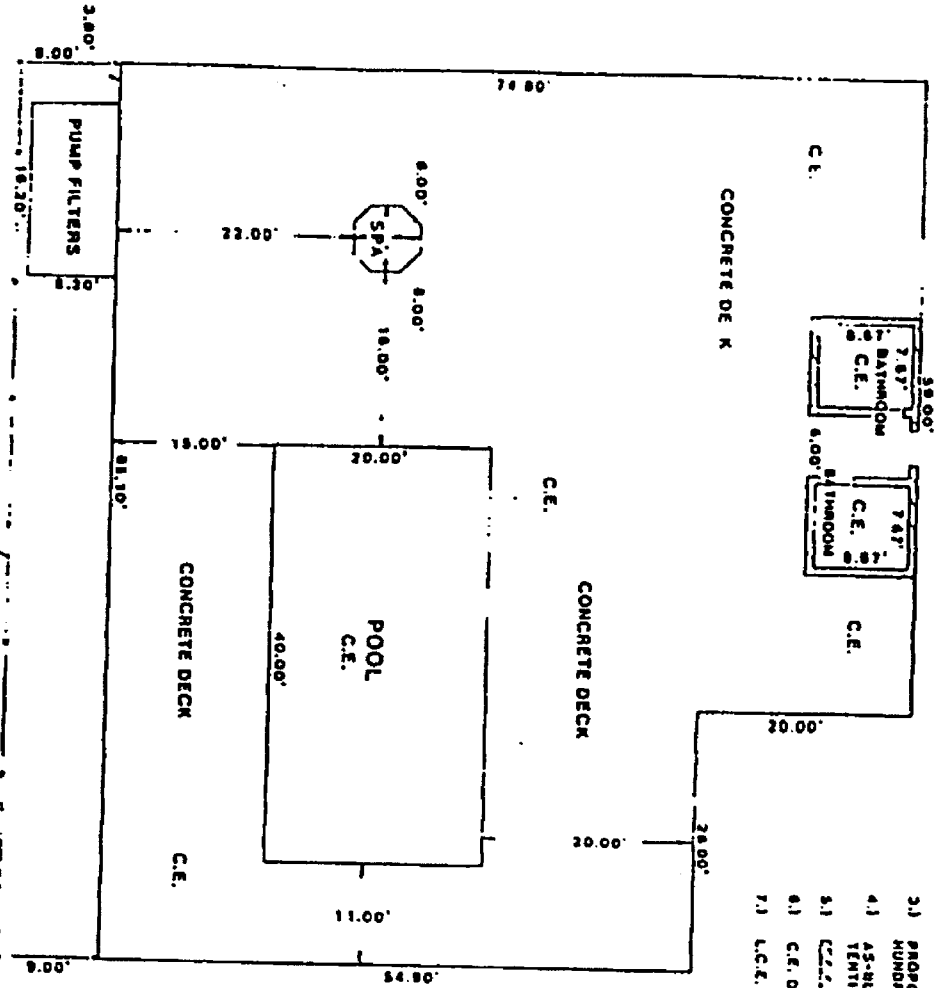
TRACT NO. 16

RECREATION AREA

CONDOMINIUMS 1 & 2

### NOTES:

- 1.) ELEVATIONS SHOWN HEREON ARE BASED ON M.C.V.D.
- 2.) BEARING & COMMON WALLS ARE 0.67' UNLESS NOTED
- 3.) PROPOSED DIMENSIONS ARE SHOWN TO THE NEAREST ONE HUNDREDTH FOOT (0.00')
- 4.) AS-BUILT DIMENSIONS ARE SHOWN TO THE NEAREST ONE TENTH FOOT (0.1')
- 5.) C.C. DENOTES COMMON ON BEARING WALLS
- 6.) C.E. DENOTES COMMON ELEMENT
- 7.) L.C.E. DENOTES LIMITED COMMON ELEMENT



TRAC 021987



GEE & JENSON

1000 10th Street, N.W., Atlanta, Georgia 30309  
Phone 404-525-1111  
FAX 404-525-1112

DR2622 PG4054

CONDOMINIUM PLAY BOOK

PAGE

1. ELEVATIONS SHOWN HEREON ARE BASED ON N.C.V.
2. BEARING & COMMON WALLS ARE 0.87' UNITS. NOTED
3. PROPOSED DIMENSIONS ARE SHOWN TO THE H AND ST ON
4. HORIZONTAL FOOT (10.00')
5. 25.80' DIMENSIONS ARE SHOWN TO THE H AND ST ON
6. 12.00' FOOT (10.00')
7. 12.00' DIMENSIONS COMMON ON BEARING WALL
8. C.E. DEMOTES COMMON ELEMENT
9. L.C.E. DEMOTES LIMITED COMMON ELEMENT
10. PATIO, LANAI, BALCONY, ARE
11. LIMITED COMMON ELEMENTS
12. THESE UNITS SHALL BE RUN AS SHOWN
- ON REVERSED

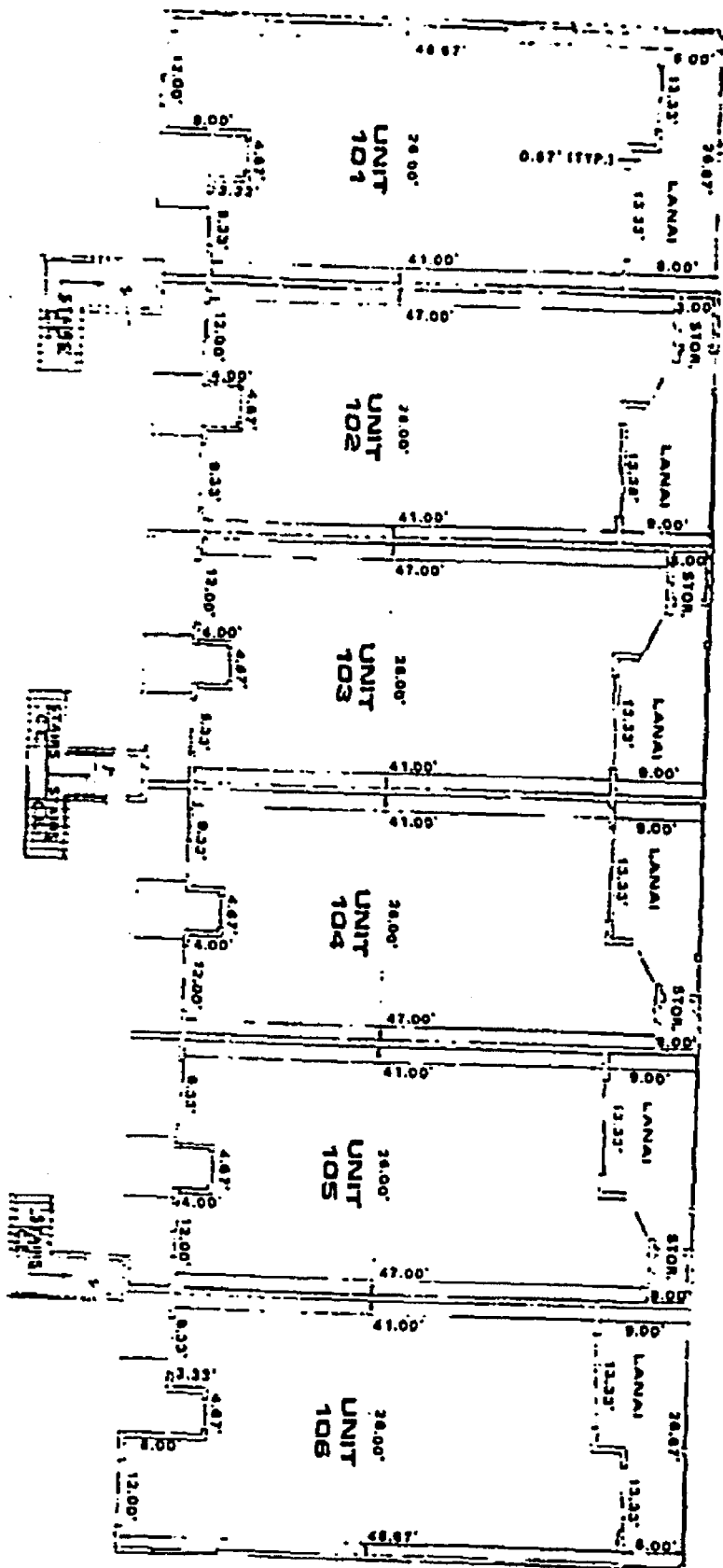
# CROSS CREEK

## OF FT. MYERS

### FAIRWAY WOODS OF CROSS CREEK

#### CONDOMINIUM 1

BUILDING 1 18T FLOOR  
TRACT NO. 16



DATE 02/1987

UNIT NO.	101	102	103	104	105	106
PROPOSED F.L. ELEV.	19.30	19.30	19.30	19.30	19.30	19.30
PROPOSED CEILING ELEV.	27.00	27.00	27.00	27.00	27.00	27.00
UNIT SQUARE FT.	1,175	1,175	1,175	1,175	1,175	1,175
PATIO SQUARE FT.	175	175	175	175	175	175

GRAPHIC SCALE

0 10 20

**GEE & JENSON**

Architects, Inc. 1111 1/2 1st Street, Suite 100, Ft. Myers, FL 33901

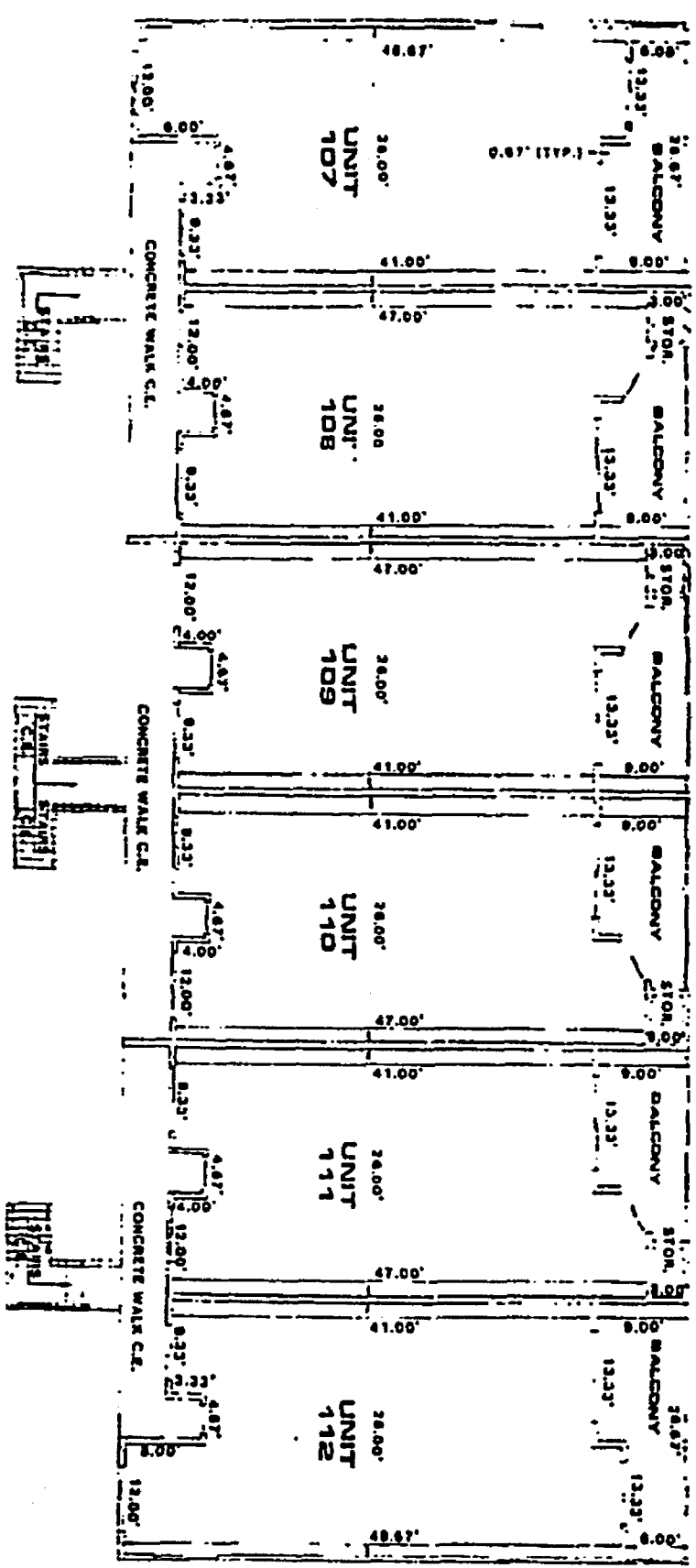
Phone 941-937-1147

0R2622 P64055

# CROSS CREEK OF FT. MYERS FAIRWAY WOODS OF CROSS CREEK CONDOMINIUM 1

BUILDING 1 2ND FLOOR  
TRACT NO. 16

1. ELEVATIONS SHOWN HEREIN ARE BASED ON M.C.V.I.
2. BALCONY & COMMON WALLS ARE 0.87' UNLESS NOTED
3. PROPOSED DIMENSIONS ARE SHOWN TO THE NEAREST INCH UNLESS NOTED OTHERWISE (0.000').
4. DIMENSION LINES ARE SHOWN TO THE NEAREST INCH UNLESS NOTED OTHERWISE.
5. C.C. DENOTES COMMON OR BEARING WALLS
6. C.C. DENOTES COMMON ELEMENT
7. L.C.E. DENOTES LIMITED COMMON ELEMENT
8. PATIO, BALCONY, BALCONIES, ARE LIMITED COMMON ELEMENTS
9. SMALL UNITS SHALL BE BUILT AS SHOWN ON PLANS



100' 0" 2 1987

GRAPHIC SCALE  
0 10 20

UNIT NO.	107	108
PROPOSED F.L. ELEV.	38.17	38.17
PROPOSED CEILING E.L.	38.17	38.17
UNIT SQUARE FT.	1,354	1,373
PATIO SQUARE FT.	175	175

UNIT NO.	109	110
PROPOSED F.L. ELEV.	38.17	38.17
PROPOSED CEILING E.L.	38.17	38.17
UNIT SQUARE FT.	1,373	1,373
PATIO SQUARE FT.	175	175

UNIT NO.	111	112
PROPOSED F.L. ELEV.	38.17	38.17
PROPOSED CEILING E.L.	38.17	38.17
UNIT SQUARE FT.	1,373	1,373
PATIO SQUARE FT.	175	175

**GEE & JENSON**  
Architects, Engineers, Planners  
1001 W. 1st St., Suite 100  
Fort Myers, FL 33901  
813-437-1000

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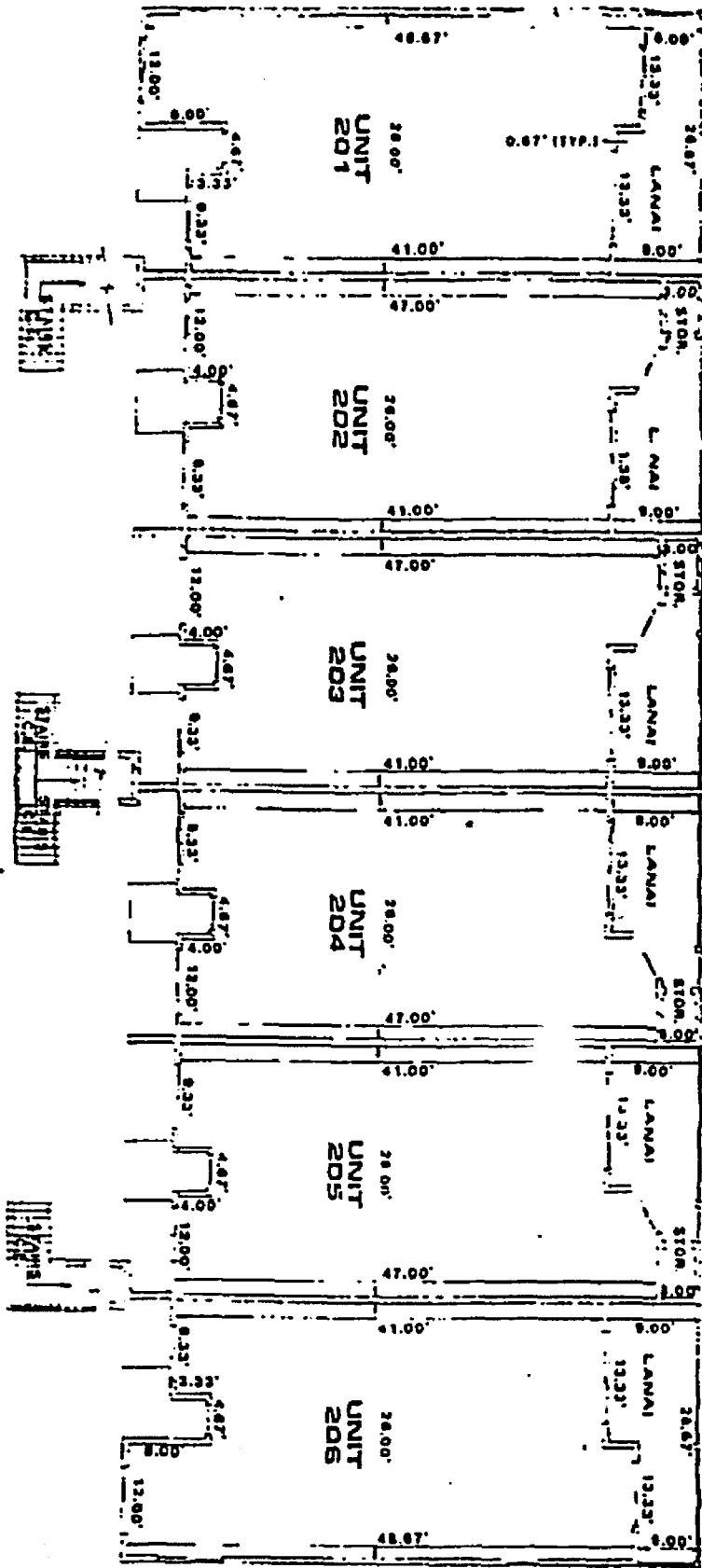
0R2622 P64056

# CROSS CREEK OF FT. MYERS FAIRWAY WOODS OF CROSS CREEK CONDOMINIUM 1

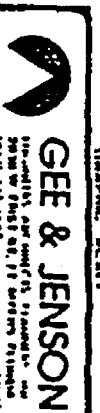
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BUILDING 2 18TH FLOOR

TRACT NO. 16



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GRAPHIC SCALE  
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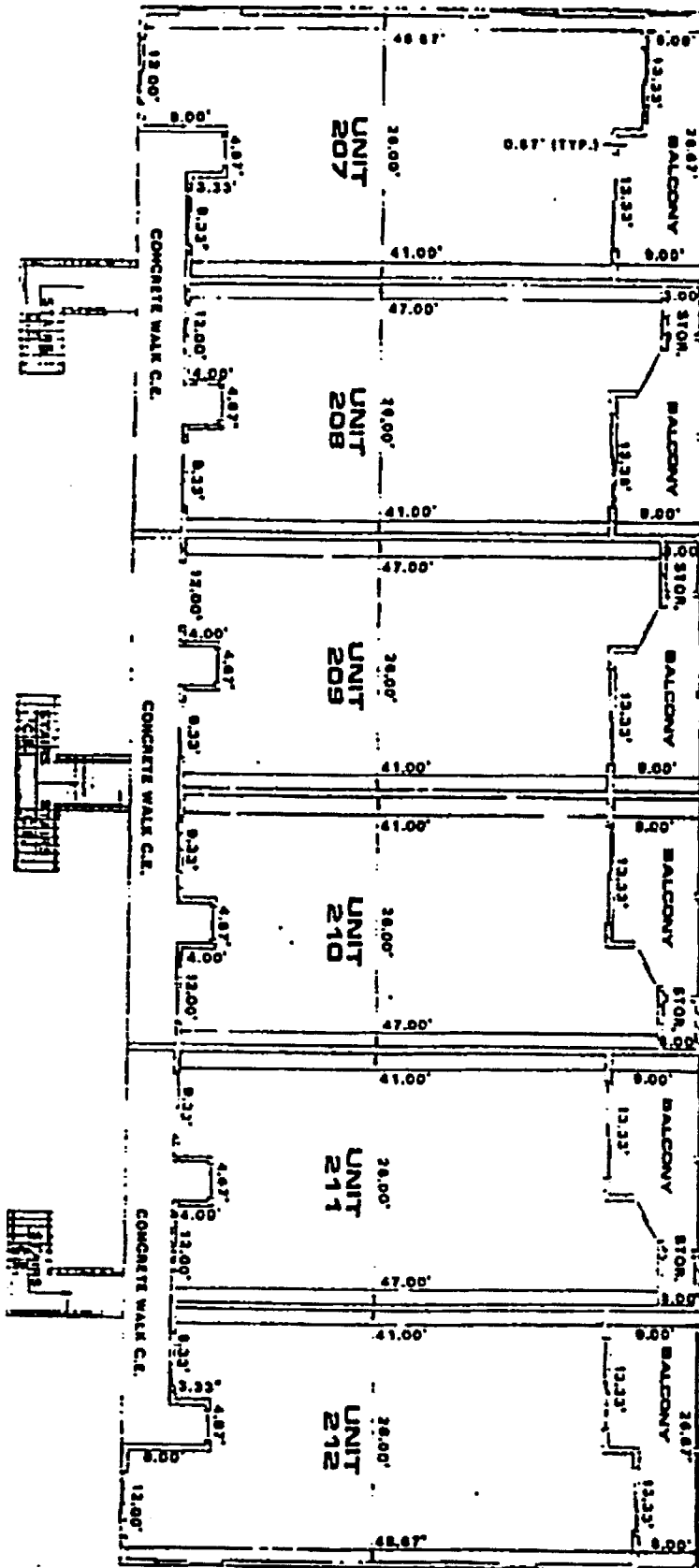
(M)11.5

- 1) ELEVATIONS SHOWN HEREON ARE BASED ON U.C.V.N.
- 2) PLACING & COMMON WALLS ARE 0.67' UNITS NOTED
- 3) PROPOSED DIMENSIONS ARE SHOWN TO THE NEAREST ONE HUNDREDTH (0.01) OF A FOOT
- 4) AS-BUILT DIMENSIONS ARE SHOWN TO THE NEAREST ONE HUNDREDTH (0.01) OF A FOOT
- 5) U.C.V.N. DIMENSIONS COMMON OR BEARING WALLS
- 6) C.E. DEMOTES COMMON ELEMENT
- 7) U.C.E. DEMOTES LIMITED COMMON ELEMENT
- 8) PATIO S, LOBBY'S, BALCONIES, ARE LIMITED COMMON ELEMENTS
- 9) THE U.C. WALLS SHALL BE BUILT AS SHOWN OR INCREASED

0R2622 P64057

# CROSS CREEK OF FT. MYERS FAIRWAY WOODS OF CROSS CREEK CONDOMINIUM 1

BUILDING 2 END FLOOR  
TRACT NO. 16



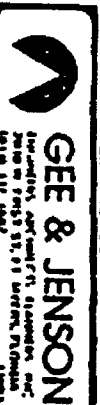
UNIT NO.	307	308
PROPOSED G.L. ELEV.	38.17	38.17
PROPOSED GROUND E.L.	38.17	38.17
UNIT SQUARE FT.	1,134	1,173
PATIO SQUARE FT.	175	175

UNIT NO.	209	210
PROPOSED G.L. ELEV.	38.17	38.17
PROPOSED GROUND E.L.	38.17	38.17
UNIT SQUARE FT.	1,175	1,173
PATIO SQUARE FT.	175	175

UNIT NO.	211	212
PROPOSED G.L. ELEV.	38.17	38.17
PROPOSED GROUND E.L.	38.17	38.17
UNIT SQUARE FT.	1,173	1,134
PATIO SQUARE FT.	175	175

GRAPHIC SCALE  
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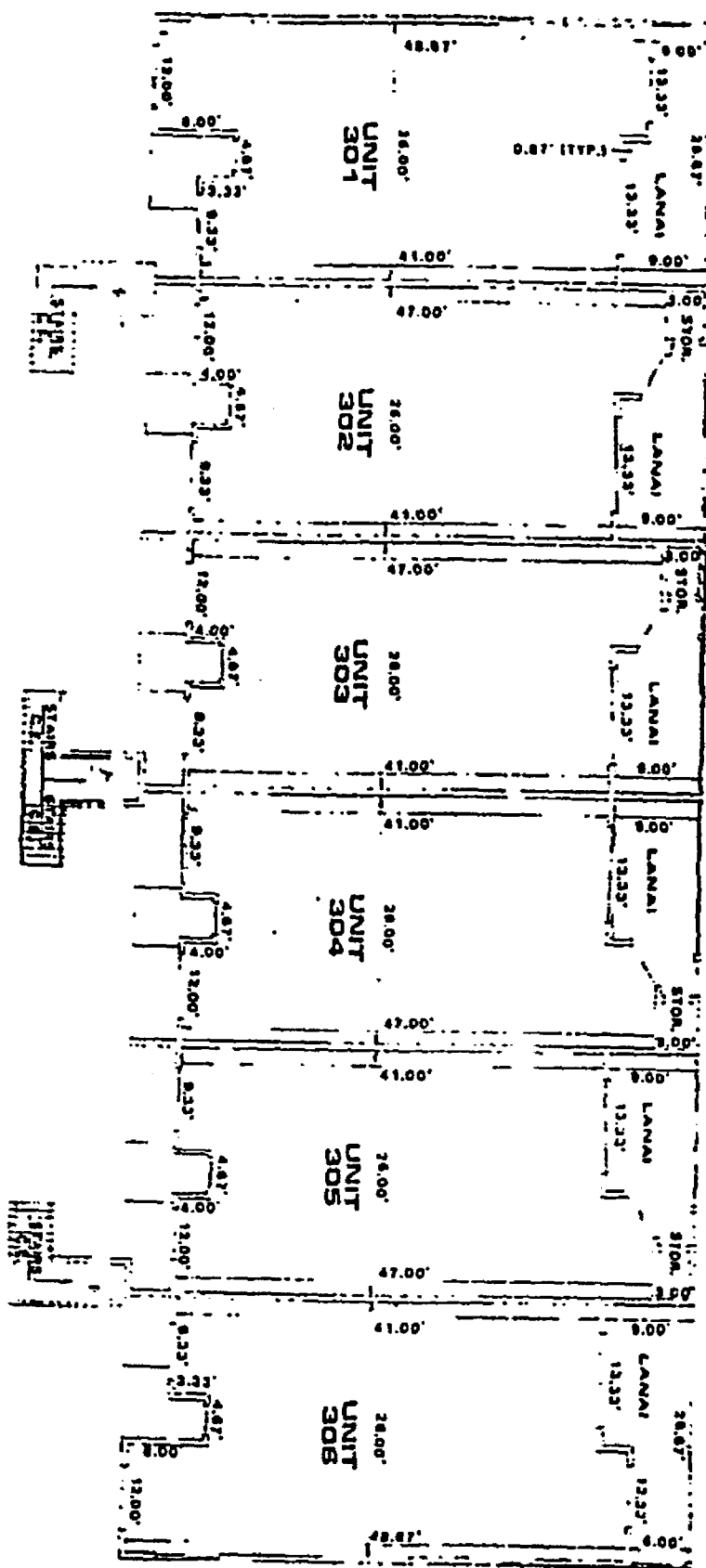
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SHEET OF

**OF FT. MYERS**  
FAIRWAY WOODS OF CROSS CREEK  
CONDOMINIUM 1

BUILDING 3 18T FLOOR  
TRACT NO. 16



UNIT NO.	301	302	303	304	305	306
PHOTOGRAPH, P. ELEV.	18.50	18.50	18.50	18.50	18.50	18.50
PHOTOGRAPH, P. ELEV.	67.40	27.00	27.00	27.00	27.00	27.00
UNIT SQUARE FT.	1.00	1.00	1.00	1.00	1.00	1.00
UNIT SQUARE FT.	7.5	17.5	17.5	17.5	17.5	17.5
PATIO SQUARE FT.						

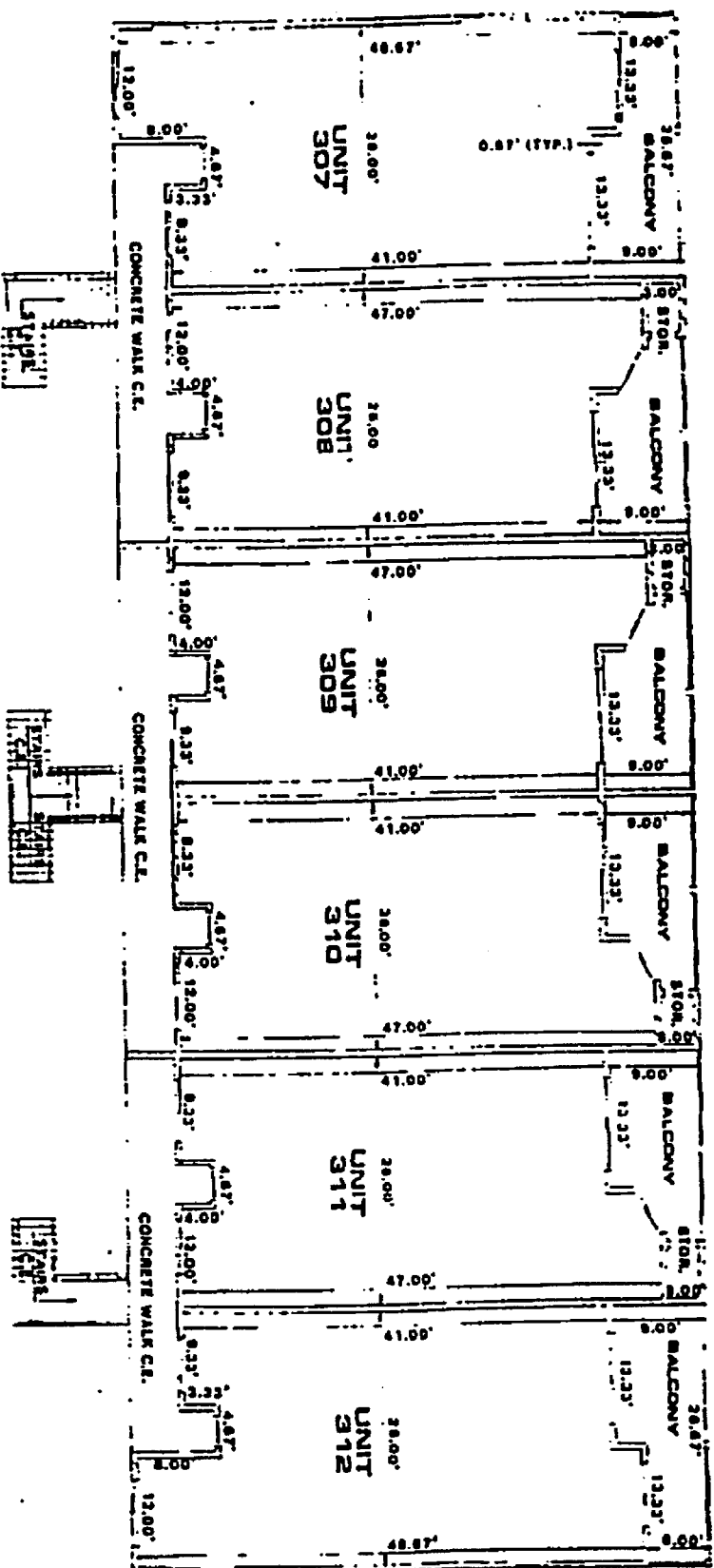


**GEE & JENSON**

**SHEET OF**

**CROSS CREEK  
OF FT. MYERS  
FAIRWAY WOODS OF CROSS CREEK  
CONDOMINIUM 1**

**BUILDING 3 2ND FLOOR**  
**TRACT NO. 16**



UNIT NO.	211	212
PROPOSED E. & 61ST	38.17	38.17
PROPOSED CENARO BL.	36.17	36.17
WEST SQUARE BL.	17.3	12.34
PALDO SQUARE FT.	175	195



**GEE & JENSON**

**SHEET OF**



Department of State

DR2622 PG4060

I certify the attached is a true and correct copy of the Amended and Restated Articles of Incorporation, filed on June 26, 1995, for FAIRWAY WOODS OF CROSS CREEK CONDOMINIUM ASSOCIATION, INC., a Florida corporation, as shown by the records of this office.

The document number of this corporation is N21406.

Given under my hand and the  
Great Seal of the State of Florida,  
at Tallahassee, the Capitol, this the  
Twenty-seventh day of June, 1995



CR2EO22 (2-95)

*Sandra B. Northam*

Sandra B. Northam  
Secretary of State

Exhibit "C"