

RESTATED AND AMENDED  
RECREATIONAL LAND USE  
AGREEMENT

OF

*FAIRWAY WOODS OF CROSS  
CREEK, A CONDOMINIUM, AND  
FAIRWAY WOODS OF CROSS  
CREEK II, A CONDOMINIUM*

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THIS LAND USE AGREEMENT IS NOT A RECREATIONAL LEASE AGREEMENT OR A LAND LEASE OR A LEASE OF ANY KIND.

**RESTATED AND AMENDED RECREATIONAL  
LAND USE AGREEMENT**

**OF**

**FAIRWAY WOODS OF CROSS CREEK,  
A CONDOMINIUM, AND  
FAIRWAY WOODS OF CROSS CREEK II,  
A CONDOMINIUM**

002613 PG0943

This Restated and Amended Recreational Land Use Agreement is executed this 9 day of May, 1995 by and between Fairway Woods of Cross Creek Condominium Association, Inc. and Fairway Woods of Cross Creek II Condominium Association, Inc., both Florida corporations not for profit, hereinafter called "Association I" and "Association II", respectively, for themselves and on behalf of their unit owners.

Association I is the entity responsible for the operation of the recreational facilities located upon the land described herein for the benefit of all unit owners at the Fairway Woods Complex.

The Association I and Association II amend and restate the Recreational Land Use Agreement as follows:

1. The Land:

Association I and Association II own certain real property located in Lee County, Florida, described on Exhibit "A" attached hereto (the "Land") upon which certain recreational facilities and areas have been constructed for the use and benefit of the Condominium Unit Owners and/or tenants of the Fairway Woods Complex, which Complex consists of Fairway Woods of Cross Creek, a Condominium, containing 36 condominium units, and Fairway Woods of Cross Creek II, a Condominium, containing 40 condominium units, for a total of 76 condominium units contained in the Fairway Woods Complex.

2. Restrictive Covenants Run With the Land:

The covenants and restrictions contained in this Restated and Amended Recreational Land Use Agreement run with the Land and are binding upon and inure to the

benefit of all present and future owners of condominium parcels in the Fairway Woods Complex. The acquisition of title to a unit, or any other interest in the Fairway Woods Complex, or the lease, occupancy or use of any portion of the Fairway Woods Complex property constitutes an acceptance and ratification of all provisions of this Agreement, as it may be amended from time to time, and signifies agreement to be bound by its terms. The provisions of this Agreement shall be liberally construed to effectuate the purpose of creating a uniform plan of recreational use among all condominium unit owners in Fairway Woods Complex.

3. Definitions:

The terms used in this Agreement shall have the meanings stated in the Restated and Amended Declaration of Condominium of Fairway Woods of Cross Creek, a Condominium, and the Restated and Amended Declaration of Condominium of Fairway Woods of Cross Creek II, a Condominium, unless the context otherwise requires.

4. Description of Recreational Facilities:

The recreational facilities consist of the following:

A. One (1) heated swimming pool having an approximate size of twenty (20) feet by forty (40) feet and an approximate depth of three (3) feet at the shallow end and six feet at the deep end and a capacity of twenty (20) people.

B. A perimeter deck having a capacity of forty (40) people.

C. A pool house having a 7.67 foot by 8.67 foot mens facility and a 7.67 by 8.67 foot womens facility.

D. A spa, approximately 6 feet by 6 feet with a capacity of four (4) persons.

5. Shares of Ownership:

Association I owns an undivided thirty-six/seventy-sixths (36/76) share in the recreational facilities and the common surplus, if any. Association II owns an undivided forty/seventy-sixths (40/76) share in the recreational facilities and the common surplus, if any. Association I and Association II have been vested with fee simple title as tenants in common to the recreational facilities and areas, free and clear of mortgages or liens subject to the covenants herein contained and to the continuing obligations created hereunder to pay the expenses of said recreation areas. The recreation areas shall not be conveyed by

Association I or Association II except to their unit owners upon termination of the Condominium as provided in the Declaration of Condominium for each Condominium in the Fairway Woods Complex, nor shall Association I or Association II, encumber, mortgage, pledge, hypothecate or lease said recreation areas without the consent of the majority of the unit owners.

6. Easements:

Each of the following easements and easement rights is reserved through the recreational areas and is a covenant running with the land, and notwithstanding any of the other provisions of this Agreement, may not be revoked. None of these easements may be encumbered by any leasehold or liens other than those on condominium units. 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 Associations have the power, without the joinder of any unit owner or mortgagee, 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 recreation area, and to grant access easements or relocate any existing access easements in any portion of the recreation area as the Associations shall deem necessary or desirable for the proper operation and maintenance of the recreational facilities. The Associations 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 portion of the recreation area encroaches upon any of the common elements of Association I or Association II or if any common element of Association I or Association II encroaches upon any portion of the recreational facilities, 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 in the Fairway Woods Complex, their respective guests, tenants, licensees and invitees for pedestrian traffic, over, through, and across sidewalks, paths, halls, lobbies and other portions of the recreational facilities as from time to time may be intended and designated for such purpose and use, and for vehicular traffic over, through and across such portions of the recreational facilities 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. Restraint Upon Separation and Partition:

The undivided share of ownership in the recreational area cannot be conveyed or encumbered separately by either Association I, Association II or their unit owners as long as either Association I or Association II exists.

8. Use Restrictions:

A. Rules & Regulations. The use of the recreational facilities shall be in accordance with the rules and regulations promulgated by the Associations, as amended from time to time.

B. Committee. Association I and Association II may (but are not required to), should their respective Boards of Directors desire, each designate two representatives to a committee to be named the Fairway Woods Complex Recreation Area Committee. If, upon the affirmative vote of the majority of the members of the respective Boards of Directors of Association I and Association II those Associations vote to delegate responsibility to the Committee, the Committee shall have rule making authority with respect to the imposition, modification or rescission of rules and regulations governing the use and enjoyment of the recreation areas; provided, however, that the Committee shall only have that authority after approval by a majority vote of all unit owners in the Fairway Woods Complex at a meeting duly noticed in writing at least two days prior to such meeting to discuss such imposition, modification or rescission of rules and regulations.

C. Enforcement by Boards. Association I and Association II shall enforce and administer all such rules and regulations and shall bear responsibility for maintenance, repair, purchasing of materials and general management of said recreation area in proportion to their ownership interest in the same.

9. Insurance:

In order to adequately protect Association I and Association II and their members, insurance shall be carried and kept in force at all times in accordance with the following provisions:

A. Duty and Authority to Obtain. Association I and Association II shall obtain and keep in force the insurance coverage which they are required to carry by law and under the respective Declarations of Condominium, and they may obtain and keep in force any or all additional insurance coverage as they may deem necessary. The name of the insured shall be Association I and Association II and their unit owners without naming them, and their mortgagees, as their interests shall appear. To the extent permitted by law, the

Associations may self-insure.

B. Required Coverage. The Association shall maintain adequate insurance covering all of the buildings and common areas in amounts determined annually by Association I and Association II, such insurance to afford the following protection:

(1) Property. Loss or damage by fire, extended coverage, including wind storms, vandalism and malicious mischief, and other hazards covered by the standard "all risk" property contract.

(2) Flood. In amounts deemed adequate by the Board of Directors, if available, through the National Flood Insurance Program.

(3) Liability. Premises and operations liability for bodily injury and property damage in such limits of protection and with such coverages as are determined by Association I and Association II with cross liability endorsement to cover liabilities of the unit owners as a group to a unit owner.

(4) Compensation. The Association I and Association II shall maintain workers compensation insurance on at least a minimum premium basis.

C. Insurance Proceeds. All insurance policies purchased by Association I and Association II shall be for the benefit of the Associations, the unit owners and their mortgagees as their interests may appear, and all proceeds shall be payable to the Associations in proportion to their pro-rata share of ownership. The duty of Association I and Association II shall be to receive such proceeds as are paid and hold and disburse the same in trust for the purposes stated in their respective Declarations of Condominium and for the benefit of the unit owners and their respective mortgagees.

10. Reconstruction or Repair After Casualty:

If any part of the recreational facilities is damaged by casualty, whether and how it shall be reconstructed or repaired shall be determined as follows:

A. Damage to Recreational Facilities - Less than "Very Substantial". Where loss or damage occurs to the recreational facilities, but the loss is less than "very substantial", as hereinafter defined, it shall be mandatory for the Associations to repair, restore and rebuild the damage caused by the loss, and the following procedures shall apply:

(1) The Boards 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.

- (2) If the proceeds of insurance and available reserves are insufficient to pay for the cost of repair and reconstruction of the common elements, the Associations shall promptly, upon determination of the deficiency, levy a special assessment against all unit owners in proportion to their shares in the recreational facilities 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.

B. "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 recreational facilities are rendered destroyed. Should such "very substantial" damage occur then:

- (1) The Boards of Directors shall promptly obtain reliable and detailed estimates of the cost of repair and restoration.
- (2) 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 recreational facilities, subject to the following:
  - a. 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 recreational facilities 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 general types of facilities, in either of which cases the recreational facilities shall be terminated.
  - b. 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 recreational facilities, it shall be terminated and the property shall be dealt with according to the majority of the total voting interests at the Fairway Woods Complex. If two-thirds (2/3rds) of the total voting interests approve the special assessment, the Associations, through their Boards 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.

- (3) If any dispute shall arise as to whether "very substantial" damage has occurred, a determination by a majority vote of the Boards of Directors shall be binding upon all unit owners.

C. 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.

D. Equitable Relief. In the event of damage to the recreational facilities which renders them unusable, and the damage is not repaired, reconstructed, or rebuilt within a reasonable period of time, any unit owner may petition a court for equitable relief, which may include a termination of the recreational facilities 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.

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

11. Maintenance and Repair of Property: Association I and Association II shall keep, maintain and replace the pool, patio areas, water and sewer distribution systems and facilities, walkways, fixtures and any other improvements which may be at any time situated on the recreation area and all appurtenances thereto and keep the same in good and substantial repair and in a clean and sanitary condition. Association I and Association II

shall use, keep, maintain and replace the foregoing described facilities and improvements in conformity with all orders, ordinances, rules and regulations of all Federal, State and local governments having jurisdiction thereof. Expenses therefore shall be disbursed by Association I (after collection of the Association II pro rata share) and collection of such expenses shall be in accordance with the terms of Paragraph 12 below.

12. Apportionment and Collection of Recreation Expenses:

A. Apportionment. The expenses of the recreation area shall be paid and apportioned in the following manner: Association I shall pay a sum equal to thirty-six/seventy-sixths (36/76) of the recreation expenses. Association II shall pay a sum equal to forty/seventy-sixths (40/76) of the recreation expenses.

B. Collected as Common Expense. Association I and Association II shall each provide in their respective Declarations of Condominium that the recreation expenses are common expenses. Accordingly, each Association shall assess and collect the recreation expenses due hereunder to the same extent as all of the common expenses of each condominium in the complex. In the event, for any reason, either Association I or Association II shall fail to collect or pay over the recreation expense due hereunder, the other Association shall have the right, but not the obligation, to collect said expenses from the other Condominium Association (and/or the respective individual unit owners, who shall be jointly and severally liable for payment of said expenses), in accordance with the following:

(1) Action at Law or Equity. The Association may file an action at law or in equity to collect the sums due hereunder from the other Association and/or the unit owners or to otherwise enforce the terms and provisions hereof. In any such action, the prevailing party shall be entitled to attorneys' fees and costs.

(2) Lien. In order to secure performance of the payment of the recreational expenses, each Association shall have the right to a lien upon the entire Fairway Woods Complex and each unit thereof, including all appurtenances and fixtures thereto or other improvements, for the payment of all sums due hereunder, which lien shall also secure attorneys' fees and costs of collection. The lien shall not be effective until the recordation of a claim of lien executed by the Association pursuant to the terms hereof in the Public Records of Lee County, Florida, which describes the property against which said lien is claimed, the name of the record owner thereof, the amount and date when due. Said lien shall at all times be subordinate and inferior to the lien of any institutional mortgage recorded prior to the recordation of the Association Lien.

13. Termination:

Unless the provisions of Paragraph 10 apply, the recreational facilities 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.

14. Amendment:

All amendments to this Agreement shall be proposed and adopted in the following manner:

A. Proposal. Amendments to this Agreement 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.

B. Procedure. Upon any amendment or amendments to this Agreement 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.

C. Vote Required. Except as otherwise provided by law, or by specific provision of this Agreement, this Agreement 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 the Bylaws of the Associations.

D. 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 Agreement, which certificate 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.

E. Provision. No amendment may change the proportion or percentage by which the owner of a unit shares the common expenses and owns the common surplus, 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.

F. Enlargement of Recreational Facilities. The recreational facilities may be enlarged to add real property acquired by the Associations through amendment of this Agreement. 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.

15. Miscellaneous:

A. 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 Agreement, or any recorded exhibit to this Agreement, shall not affect the remaining portions thereof.

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

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

D. Interpretation. The Boards of Directors are responsible for interpreting the provisions of this Agreement 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 Boards is not unreasonable shall conclusively establish the validity of such interpretation.

E. 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.

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

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IN WITNESS WHEREOF, the Associations have executed this Amended and Restated Recreational Land Use Agreement 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 A. Meagher, Sec.  
PATRICIA A. MEAGHER, Secretary

(CORPORATE SEAL)

STATE OF FLORIDA

COUNTY OF

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

Printed Name of Notary  
My Commission Number is:  
My Commission Expires:

RESTATED AND AMENDED RECREATIONAL  
LAND USE AGREEMENT

Signed in the presence of:

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

Beverly Stephenson  
Witness

BEVERLY Stephenson  
Printed Name of Witness

Valerie G Goodwin  
Witness

Valerie G Goodwin  
Printed Name of Witness

BY: [Signature]  
JAMES CAMPBELL, President

AND BY: Kathleen MacDonald  
KATHLEEN MAC DONALD, Secretary

(CORPORATE SEAL)

STATE OF FLORIDA

COUNTY OF

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared JAMES CAMPBELL and KATHLEEN MAC DONALD, (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 II 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 9  
day of MAY, 1995.



(SEAL)

"OFFICIAL SEAL"  
David J. Workman  
My Commission Expires 3/21/98  
Commission #CC 357627

[Signature]  
NOTARY PUBLIC

Printed Name of Notary  
My Commission Number is:  
My Commission Expires:

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