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AND RETURN TO:  
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**SECOND AMENDED AND RESTATED BY-LAWS**

**OF**

**FAIRWAY OAKS CONDOMINIUM, INC.**

**SUBSTANTIAL REWORDING OF BY-LAWS -  
SEE CURRENT BY-LAWS FOR CURRENT TEXT**

**1. IDENTITY.** These are the Second Amended and Restated By-Laws (hereinafter "By-Laws") of Fairway Oaks Condominium, Inc., a Florida not-for-profit Corporation formed for the purpose of administering the Fairway Oaks, a Condominium according to the Declaration thereof, as it was originally recorded in Official Records Book 915, Page 837, et seq., of the Public Records of Sarasota County, Florida and has or may be amended from time to time (hereinafter "the Condominium") which is located in Sarasota, Sarasota County, Florida, upon the lands described in the Declaration of Condominium. (The corporation may hereafter be referred to as the "Association.")

**1.1 Office.** The office of the Association shall be at 245 Amherst Avenue, Sarasota, Florida, or such other location within Sarasota County, as may from time to time be determined by the Board of Directors.

**1.2 Fiscal Year.** The fiscal year of the Association shall be the calendar year, unless otherwise determined by the Board of Directors.

**1.3 Seal.** The corporate seal of the Association shall be adopted and may be changed by the Board of Directors and shall bear the name or abbreviated name of the Association, the word "Florida," the year of establishment, and shall identify the Association as a not-for-profit corporation. A common seal may be used in lieu of a raised corporate seal and in no event shall a seal be required to validate corporate actions unless specifically required by law.

**1.4 Definitions.** All terms used in these By-Laws shall have the same meaning, to the extent applicable, as set forth in the Articles of Incorporation for the Association, the Declaration of Condominium for the Condominiums and the Florida Condominium Act (Chapter 718, Florida Statutes, 2001), all as amended from time to time.

**1.4.1 Condominium Documents.** The term Condominium Documents shall mean the Declaration of Condominium, Surveys, Plot Plans, Site Plans, Articles of Incorporation of the Association, these By-Laws, and the Rules and Regulations of the Association and any other document referenced in the Declaration of Condominium as constituting part of the Condominium Documents, all as amended from time to time.

**2. MEMBERS' MEETINGS.**

**2.1 Annual Meetings.** Annual members' meetings shall be held at such convenient location in Sarasota County as may be determined by the Board of Directors. The annual meeting shall be held on the date and time determined by the Board for the purpose of transacting any business authorized to be transacted by the members.





**2.2 Special Meetings.** Special members' meetings shall be held whenever called by the President or by a majority of the Board of Directors and shall be called by the President within a reasonable time of receipt of written notice from 25% of the voting interests of the Association. Members' meetings to recall a member or members of the Board of Directors may be called by 10% of the voting interests of the Association who shall give notice of the meeting, stating the purpose of the meeting, pursuant to F.S. 718.112(2)(j) (2001), as amended from time to time.

**2.3 Notice of Members' Meetings.** Notice of all members' meetings, stating the time, place, and purpose(s) of the meeting, shall be sent to each unit owner by United States regular mail, unless waived in writing, at least 14 days prior to the meeting as to annual meetings and 10 days as to special meetings. Hand delivery is acceptable where permissible by law. Any members' meeting or election at which one or more Directors are to be elected must be noticed as provided for in Section 2.4 next following. An officer of the Association or other person providing notice shall execute an affidavit of mailing per F.S. 718.112(2)(d)(2) (2001), as amended from time to time, which shall be retained in the official records of the Association as proof of such mailing. The notice of the annual meeting shall include an agenda for all known substantive matters to be discussed, or have such an agenda attached to it. A copy of the notice and agenda shall be posted at a conspicuous location, designated by Board resolution, on the Condominium Property.

Notice of specific meetings may be waived before or after the meeting and the attendance of any member (or person authorized to vote for such member) shall constitute such member's waiver of notice of such meeting, except when his (or his authorized representative's) attendance is for the sole and express purpose of objecting at the beginning of the meeting to the transaction of business because the meeting is not lawfully called.

**2.4 Board of Directors Election Meetings - Notice and Procedure.** The regular election of Directors shall occur as the first item of business at the annual meeting.

**2.4.1** Not less than 60 days before a scheduled election, the Association shall mail or deliver, whether by separate Association mailing or included in another Association mailing or delivery including regularly published newsletters, to each unit owner entitled to vote, a first notice of the date of the election. Any person desiring to be a candidate for the Board of Directors shall give written notice to the Association not less than 40 days before scheduled election. Not less than 14 days before the election, the Association shall mail or deliver a second notice of the election to all unit owners entitled to vote therein, together with a written ballot which shall include an information sheet (if provided by the candidate), no larger than 8½ inches by 11 inches furnished by the candidate, to be included with the mailing of the ballot, with the costs of mailing and copying to be borne by the Association.

**2.4.2** There is no quorum requirement necessary for an election. However, at least twenty percent (20%) of the units must cast a ballot in order to have a valid election and elections shall be decided by a plurality of those votes cast.

**2.4.3** In the event that there are only as many (or fewer) candidates pre-qualified for election as there are open seats on the Board, no election shall be held and the pre-qualified candidates shall automatically become members of the Board after the annual meeting.

**2.4.4** It is the intention of this Article 2.4 to "opt out" of the statutory election procedures found at Section 718.112(2)(d), Florida Statutes (2001). To this end, the Board may establish additional election rules as it deems appropriate to ensure a fair election process. Substantial compliance with these By-Laws relative to election procedures is sufficient.

**2.5 Quorum.** A quorum at members' meetings shall consist of persons entitled to cast forty (40%) percent of the voting interests of the entire membership. Decisions made by a majority of the voting interests present and voting, in person or by proxy, at a meeting at which a quorum is present shall be

binding and sufficient for all purposes except such decisions as may by F.S. 718 or the Condominium Documents require a larger percentage in which case the percentage required in F.S. 718 or the Condominium Documents shall govern.

**2.6 Indivisible Vote.** Each unit shall have one indivisible vote. If multiple owners of a unit cannot agree on a vote, the vote shall not be counted as to the issue upon which disagreement exists. Voting certificates are not necessary.

**2.7 Proxies.** Votes may be cast in person or by proxy held by other members of the Association or the Association, through its Board of Directors. A proxy designating the Secretary or any other Board member/Officer, on behalf of the Association, is a proxy delivered to the Association. Proxies shall be in writing, signed and dated, and shall be valid only for the particular meeting designated therein or an adjournment thereof, but in no event for more than 90 days, and must be filed with the Association before or at the voter registration immediately preceding the meeting, or adjournment thereof. Except as specifically otherwise provided by law, unit owners may not vote by general proxy, but may vote by limited proxies substantially conforming to a limited proxy form adopted by the Division of Florida Land Sales, Condominiums and Mobile Homes. Limited proxies and general proxies may be used to establish a quorum. No proxy, limited or general, shall be used in the election of Board members. An executed telegram or cablegram appearing to have been transmitted by the proxy giver, or a photographic, photostatic, facsimile, or equivalent reproduction of a proxy is a sufficient proxy. Owners may retroactively cure any alleged defect in a proxy by signing a statement ratifying the owner's intent to cast a proxy vote. The use of proxies is to be liberally construed.

**2.8 No Quorum/Adjournment.** If any meeting of members cannot be organized because a quorum is not present, the members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present. Any meeting in which a quorum has been obtained may be adjourned and reconvened from time to time by vote of a majority of the membership present and voting.

**2.9 Order of Business.** The order of business at annual members' meetings and, as far as applicable at all other members' meetings, shall be:

- 2.9.1 Call to order by the President;
- 2.9.2 At the discretion of the President, appointment by the President of a chairman of the meeting (who need not be a member or a director);
- 2.9.3 Appointment by the Chair of inspectors of election;
- 2.9.4 Election of Directors;
- 2.9.5 Calling of the roll, certifying of proxies and determination of a quorum; or, in lieu thereof, certification and acceptance of registration procedures establishing the number of persons present in person or by proxy;
- 2.9.6 Proof of notice of the meeting or waiver of notice;
- 2.9.7 Disposal of unapproved minutes;
- 2.9.8 Reports of officers;
- 2.9.9 Reports of committees;



C. **Advances.** Expenses incurred in defending a civil or criminal action, suit or proceeding shall be paid by the Association in advance of the final disposition of such action, suit or proceedings upon receipt of an undertaking by or on behalf of the affected director, officer, or committee member to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Association as authorized in this Article XI, or as otherwise permitted by law.

D. **Miscellaneous.** The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any by-law, agreement, vote of members or otherwise, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs and personal representatives of such person.

E. **Insurance.** The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, or committee member against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the provisions of this Article. Notwithstanding anything in this Article XI to the contrary, the provisions herein provided for indemnification shall only be applicable to the extent insurance coverage does not apply or is insufficient.

The recitals set forth in these Amended and Restated Articles of Incorporation are true and correct and are certified by the Board of Directors.

#### ACCEPTANCE OF REGISTERED AGENT

Having been named to accept services of process for Fairway Oaks Condominium, Inc. at the place designated in these Articles of Incorporation, Becker & Pollakoff, P.A. accepts the appointment to act in this capacity and agree to comply with the laws of the State of Florida in keeping open said office.

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a meeting shall constitute waiver of notice of the meeting.

**3.7 Notice to Owners of Board Meetings.** Notice of meetings, which notice shall specifically include an agenda, shall be posted conspicuously as provided in Section 2.3 of these By-Laws at least 48 continuous hours in advance of the meeting for the attention of unit owners, except in an emergency. Meetings at which a regular monthly or quarterly assessment is to be considered shall contain a statement that assessments will be considered and the nature of such assessments. However, written notice of any meeting at which non-emergency special assessments, or at which amendment to rules regarding unit use will be considered, shall be mailed or delivered to the unit owners and posted conspicuously as provided in Section 2.3 of these By-Laws not less than 14 continuous days prior to the meeting. Evidence of compliance with this 14-day notice shall be by an affidavit executed by the person giving notice and shall be filed among the official records of the Association.

**3.8 Owner Participation in Board Meetings.** Meetings of the Board of Directors at which a majority of the members of the Board are present, shall be open to all unit owners. The right to attend such meetings includes the right to speak with reference to all designated agenda items; provided, however, the Board may adopt reasonable rules governing the frequency, duration, and manner of unit owner statements. Unless otherwise provided by the Board, each unit owner is entitled to speak for three minutes with reference to designated agenda items. Board meetings subject to the attorney-client privilege shall not be subject to unit owner observation.

**3.9 Board Meetings, Quorum, and Voting.** The designation of the agenda for Board meetings shall be at the discretion of the President. However, the President shall be obligated to include any item on the agenda for a Board meeting, if requested, in writing, by two Board members. A quorum at Directors' Meetings shall consist of a majority of the Directors. The acts approved by a majority of the entire Board of Directors present at a meeting shall constitute the acts of the Board. Directors may not vote by proxy or by secret ballot at Board meetings (except that Directors may vote by secret ballot when electing Officers) and a vote or abstention for each member present shall be recorded in the minutes. Directors may not abstain from voting except in the case of an asserted conflict of interest. If at any meeting of the Board there be less than a quorum present, the Director(s) present may adjourn the meeting from time to time until a quorum is present. At any adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted. Absent Directors may later sign written joinders in Board actions, but such joinders may not be used for purposes of creating a quorum.

**3.10 Presiding Officer.** The presiding officer at Directors' meetings shall be the President, and in his absence, the Vice President. In the absence of the presiding officer, the Directors present shall designate one of their number to preside.

**3.11 Director Compensation.** Directors shall serve without pay but shall be entitled to reimbursement for expenses reasonably incurred.

**4. POWERS AND DUTIES OF THE BOARD OF DIRECTORS.** All of the powers and duties of the Association existing under the laws of Florida generally, Florida Not For Profit Corporation Statute, the Condominium Act, and the Condominium Documents, all as amended from time to time, shall be exercised exclusively by the Board of Directors, or its duly authorized agents, contractors, or employees, subject only to the approval by unit owners when such is specifically required. Such powers and duties of the Directors shall include, but shall not be limited to, the following:

**4.1 To Assess.** The Directors shall adopt budgets and make and collect special and periodic assessments against owners to defray the costs of the Association.

**4.2 To Expend Association Funds.** The Directors shall use the proceeds of assessments in the exercise of its powers and duties.

**4.3 To Maintain The Condominium Property.** The Directors shall maintain, repair,



replace, and operate the property within the Condominium.

**4.4 To Adopt Regulations.** The Directors shall enact and may amend Rules and Regulations concerning the transfer, use, appearance, maintenance, and occupancy of the units, common elements, limited common elements, and Association property, and to enact rules, policies, and resolutions pertaining to the operation of the Association.

**4.5 To Reconstruct After Casualty.** The Directors may reconstruct the units, common elements, limited common elements, and association property improvements after casualty and to further improve the property, as specified in the Declaration of Condominium.

**4.6 To Approve Transfers.** The Directors may approve or disapprove proposed transactions or transfers in the manner provided by the Declaration of Condominium, and to charge a preset fee, not to exceed the maximum permissible by law, in connection with such right of approval. In connection with the lease of units, the Board may require the posting of a security deposit to protect against damages to the common elements or Association property, in the manner provided by law.

**4.7 To Enforce.** The Directors may enforce by legal means the provisions of applicable laws and the Condominium Documents, and to interpret said Condominium Documents, as the final arbiter of their meaning.

**4.8 To Contract.** The Directors may contract for management, maintenance and operation of the Condominium. The Directors may delegate such powers to said entities to the extent lawful.

**4.9 To Insure.** The Directors shall carry insurance for the protection of the unit owners and the Association, pursuant to requirements contained in the Declaration of Condominium and Chapter 718 (2001), Florida Statutes, both as amended from time to time.

**4.10 To Pay Utility Bills.** The Directors shall pay the cost of all utility services rendered to the Condominium and not billed to owners of individual units.

**4.11 To Hire and Discharge.** The Directors may employ personnel and designate other officers to be paid a reasonable compensation and grant them such duties as seem appropriate for proper administration of the purposes of the Association.

**4.12 To Sue and Be Sued.** The Directors may bring and defend suits, make and execute contracts, deeds, mortgages, notes, and other evidence of indebtedness, leases, and other instruments by its officers and to purchase, own, lease, convey, and encumber real and personal property. The Directors grant easements and licenses over the condominium property necessary or desirable for proper operation of the Condominiums.

**4.13 To Enter Into Contracts for Products and Services.** All contracts for the purchase, lease, or renting of materials or equipment, or which are not to be fully performed within one year, and all contracts for services shall be in writing. As to any such contract which requires payment exceeding 5% of the gross budget (including reserves) except for contracts with employees of the Association, attorneys, accountants, architects, engineers and landscape architects, and community association managers, the Association shall obtain competitive bids unless the products and services are needed as the result of an emergency or unless the desired supplier is the only source of supply within the County serving the Association. The Association need not accept the lowest bid. A contract executed before January 1, 1992 and any renewal thereof is not subject to competitive bid requirements of this Section. If a contract was awarded under the competitive bid procedures of this Section, any renewal of that contract is not subject to such competitive bid requirements if the contract contained a provision that allowed the Board to cancel a contract on thirty days' notice. Materials, equipment, or services provided to a condominium under a local government franchise agreement by a franchise holder are not subject to the competitive bid requirements of this Section. The Association may opt out of competitive bidding requirements, by a unit owner vote, in the

manner provided by law.

**4.14 To Levy Fines.** The Directors may, pursuant to Section 718.303, Florida Statutes (2001) impose fines against a unit not to exceed the maximum permissible by law, for failure to comply with the provisions of the Board policies and resolutions, the Condominium Documents, including the Rules and Regulations, and applicable laws by owners, occupants, licensees, tenants, and invitees.

**4.14.1** A fine may be imposed for each day of continuing violation at the highest rate allowed by law per violation with a single notice and opportunity for hearing, provided that no fine shall in the aggregate exceed the maximum amount permissible by law.

**4.14.2** The party against whom the fine is sought to be levied shall be afforded an opportunity for hearing and be given notice of the Board's intent not less than fourteen (14) days before the fine is levied. Notice shall be deemed effective when deposited in the United States Mail, certified, return receipt requested, to the address of the unit owner listed in the official records of the Association, and as to tenants, to the mailing address for the unit. Said notice shall include:

- (a) A statement advising of the opportunity for a hearing;
- (b) A statement of the provisions of the Declaration, Articles of Incorporation, By-Laws, Rules and Regulations, Board policies and resolutions or laws which have allegedly been violated; and
- (c) A short and plain statement of the matters asserted by the Association.

**4.14.3** The party against whom the fine may be levied shall have an opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge, and respond to any material considered by the Association. The hearing, if requested, shall be held before a Committee of other unit owners. If the Committee does not agree with the fine, the fine may not be levied. Should the Association be required to initiate legal proceedings to collect a duly levied fine, the prevailing party in an action to collect said fine shall be entitled to an award of costs, and a reasonable attorney's fee incurred before trial (including in connection with the preparation for and conduct of fine hearings), at trial, and on appeal.

**4.15 To Appoint Committees.** The Directors may appoint committees. All committees and committee members shall serve at the pleasure of the Board. Meetings of a Committee to take final action on behalf of the Board or make recommendations to the Board regarding the Association budget shall conduct their affairs in the same manner as provided in these By-Laws for Board of Director meetings. All other committees may meet and conduct their affairs in private without prior notice or owner participation, unless otherwise directed by the Board of Directors.

**4.16 To Ensure Fire Safety Compliance.** The Directors may accept a Certificate of Compliance from a licensed electrical contractor or electrician as evidence of compliance of the condominium units with the applicable Fire and Life Safety Code.

**4.17 To Approve the Installation of Hurricane Shutters.** The Directors shall adopt hurricane shutter specifications for the Condominium which shall include color, style, and other factors deemed relevant by the Board. All specifications adopted by the Board shall comply with the applicable building code, or shall be structured to ensure that installed shutters are in compliance with the applicable building code. The Board shall not refuse to approve the installation or replacement of hurricane shutters conforming to the specifications adopted by the Board, provided that the Board may condition approval upon the unit owner's agreement to execute appropriate documentation regarding same.

**4.18 To Exercise Emergency Powers.** In the event of any "emergency" as defined in



Section 4.18.8 below, the Board of Directors may exercise the emergency powers described in this Section, and any other emergency powers authorized by Sections 617.0207, and 617.0303, Florida Statutes, as amended from time to time.

**4.18.1** The Board may name as assistant officers persons who are not Directors, which assistant officers shall have the same authority as the executive officers to whom they are assistant during the period of the emergency, to accommodate the incapacity of any officer of the Association.

**4.18.2** The Board may relocate the principal office or designate alternative principal offices or authorize the officers to do so.

**4.18.3** During any emergency the Board may hold meetings with notice given only to those Directors with whom it is practicable to communicate, and the notice may be given in any practicable manner, including publication or radio. The Director or Directors in attendance at such a meeting shall constitute a quorum.

**4.18.4** Corporate action taken in good faith during an emergency under this Section to further the ordinary affairs of the Association shall bind the Association; and shall have the rebuttable presumption of being reasonable and necessary.

**4.18.5** Any officer, director, or employee of the Association acting with a reasonable belief that his actions are lawful in accordance with these emergency Bylaws shall incur no liability for doing so, except in the case of willful misconduct.

**4.18.6** These emergency Bylaws shall supersede any inconsistent or contrary provisions of the Bylaws during the period of the emergency.

**4.18.7** For purposes of this Section only, an "emergency" exists only during a period of time that the condominium, or the immediate geographic area in which the condominium is located, is subjected to:

- (a) a state of emergency declared by local civil or law enforcement authorities;
- (b) a hurricane warning;
- (c) a partial or complete evacuation order;
- (d) federal or state "disaster area" status; or
- (e) a catastrophic occurrence, whether natural or manmade, which seriously damages or threatens to seriously damage the physical existence of the condominium, such as an earthquake, tidal wave, fire, hurricane, tornado, war, civil unrest, or act of terrorism.

## 5. OFFICERS.

**5.1 Executive Officers.** The executive officers of the Association shall be the President, a Vice President, a Secretary, a Treasurer, and such assistant officers as may be desired, all of whom shall be elected annually by and from the Board of Directors, and who may be peremptorily removed by a majority vote of the Directors at any meeting. Any person may hold two or more offices except that the President shall not also be the Secretary. Assistant officers need not be Directors.

**5.2 President — Powers and Duties.** The President shall be the chief executive officer of the Association, shall preside at all meetings of the Board of Directors and Association meetings.



The President shall have general supervision over the affairs of the Association and shall have all of the powers and duties which are usually vested in the office of President of a corporation.

**5.3 Vice-President — Powers and Duties.** The Vice-President shall, in the absence or disability of the President, exercise the powers and perform the duties of the President. He shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the Directors. If directed to do so, the Vice President will be responsible for development of a long range plan for Fairway Oaks.

**5.4 Secretary — Powers and Duties.** The Secretary shall keep the minutes of all proceedings of the Directors and the members. He shall attend to the giving and serving of all notices to the members and Directors and other notices required by law. He shall have custody of the seal of the Association and affix the same to instruments requiring a seal when duly signed. He shall keep and have custody of the records of the Association, except those of the Treasurer. He shall perform all other duties incident to the office of Secretary of the Association and as may be required by the Directors or the President.

**5.5 Treasurer — Powers and Duties.** The Treasurer shall have custody of all property of the Association, including funds, securities, and evidences of indebtedness. He shall keep the assessment rolls and accounts of the members. He shall keep the books of the Association in accordance with good accounting practices and shall perform all other duties incident to the office of the Treasurer of a corporation.

**5.6 Officers' Compensation.** Officers shall not be entitled to compensation for service as such, but shall be entitled to reimbursement of expenses reasonably incurred. This provision shall not preclude the Board of Directors from employing an Officer or Director as an agent or employee of the Association.

**5.7 Indemnification.**

**5.7.1 Indemnity.** The Association shall indemnify any officer, director, or committee member who was or is a party or is threatened to be made a party to any threatened, pending, or contemplated action, suit or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that he is or was a director, officer, or committee member of the Association, against expenses (including attorney's fees and appellate attorney's fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit, or proceeding, unless (i) a court of competent jurisdiction finally determines, after all appeals have been exhausted or not pursued by the proposed indemnitee, that he did not act in good faith or in a manner he reasonably believed to be in or not opposed to the best interest of the Association, and, with respect to any criminal action or proceeding, that he had reasonable cause to believe his conduct was unlawful, and (ii) such court also determines specifically that indemnification should be denied. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interest of the Association, and with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful. It is the intent of the membership of the Association, by the adoption of this provision, to provide the most comprehensive indemnification possible to their officers, directors, and committee members as permitted by Florida law.

**5.7.2 Defense.** To the extent that a director, officer, or committee member of the Association has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in Section 5.7.1 above, or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses (including attorney's fees and appellate attorney's fees) actually and reasonably incurred by him in connection therewith.

**5.7.3 Advances.** Expenses incurred in defending a civil or criminal action, suit, or proceeding shall be paid by the Association in advance of the final disposition of such action, suit, or proceeding upon receipt of an undertaking by or on behalf of the affected director, officer, or committee



member to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Association as authorized by this Article 5.7.

**5.7.4 Miscellaneous.** The indemnification provided by this Article 5.7 shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any by-law, agreement, vote of members, or otherwise, and shall continue as to a person who has ceased to be a director, officer, or committee member and shall inure to the benefit of the heirs and personal representatives of such person.

**5.7.5 Insurance.** The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, committee member, employee, or agent of the Association, or a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the provisions of this Article.

**5.7.6 Amendment.** Anything to the contrary herein notwithstanding, the provisions of this Article 5.7 may not be amended without the approval in writing of all persons whose interest would be adversely affected by such amendment.

**5.8 Delegation.** To the extent permitted by law, the powers and duties of the directors and officers may be delegated for the purpose of management.

**6. MINUTES AND INSPECTION OF RECORDS.** Minutes of all meetings of unit owners and of the Board of Directors shall be kept in a business-like manner and shall be reduced to written form within thirty (30) days and these, plus records of all receipts and expenditures and all other official records, as defined in F.S. 718.111 (2001), as amended from time to time, shall be available for inspection by unit owners and Board members at all reasonable times. Provided, however, that the Directors may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and any copying.

**7. FISCAL MANAGEMENT.** Shall be in accordance with the following provisions:

**7.1 Budget.** Proposed annual budgets of common expenses shall be prepared and adopted by the Board of Directors which shall include all anticipated expenses for operation, maintenance, and administration of the Condominiums. The proposed budget may also include expenses of security, in-house communications, directors and officers insurance, transportation services, bulk cable or master antenna/satellite television, and interior pest control, all of which are declared to be common expenses under these By-Laws as well as any other expense determined by the Board of Directors to benefit the condominium as a whole. The proposed budget shall include reserves per F.S. 718.112(2)(f)2 (2001), as amended from time to time, the funding of which may be waived or reduced by the owners. The budget will contain a reasonable allowance for contingencies and provide funds for all operating expenses previously incurred. If at any time a budget shall prove insufficient, it may be amended by the Board of Directors for the remaining portion of the fiscal year, provided that notice of the Board meeting at which the revised budget will be considered along with a copy of the proposed revisions to the budget shall be mailed to each member as provided in Article 7.2 hereof.

**7.2 Mailing.** A copy of the proposed annual budget shall be mailed or delivered to the unit owners not less than 14 days prior to the meeting of the Directors at which the budget will be adopted together with a notice of the meeting.

**7.3 Assessments.** The annual shares of the unit owners of the common expenses shall be made payable in installments due monthly or quarterly (as determined by the Board) in advance and shall become due on the first day of each such period and shall become delinquent 10 days thereafter. The Association shall have the right to accelerate assessments of an owner delinquent in the payment of common



expenses. Accelerated assessments shall be due and payable on the date a claim of lien is filed and may include the amounts due for the remainder of the fiscal year for which the claim of lien was filed.

**7.4 Special Assessments.** Assessments for common expenses which are not provided for and funded in the Budget or an amendment to the Budget may be made by the Board of Directors, and the time of payment shall likewise be determined by them. Notice of the Board meeting at which such assessments shall be considered shall be posted and mailed to each unit owner as provided in Article 3.7 hereof, except in the event of an emergency. The funds collected pursuant to a special assessment shall be used only for the specific purpose or purposes set forth in such notice. However, upon completion of such specific purpose or purposes, any excess funds will be considered common surplus, and may, at the discretion of the Board, either be returned to the unit owners or applied to the operating budget as a credit towards future assessments.

**7.5 Assessment Roll.** The assessments for common expenses and charges shall be set forth upon a roll of the units which shall be available for inspection at all reasonable times by unit owners. Such roll shall indicate for each unit the name and address of the owner, and the assessments and charges paid and unpaid. A certificate made by a duly authorized representative of the Association or by the Board of Directors as to the status of a unit's account may be relied upon for all purposes by any person for whom made.

**7.6 Liability for Assessments and Charges.** A unit owner shall be liable for all assessments and charges coming due while the owner of a unit, and such owner and owner's grantees or successors after a voluntary conveyance or other acquisition of title shall be jointly and severally liable for all unpaid assessments and charges due and payable up to the time of such voluntary conveyance. Liability may not be avoided by waiver of the use or enjoyment of any common elements or Association property or by abandonment of the unit for which the assessments are due. Where a mortgagee holding a first mortgage of record obtains title to a unit by foreclosure, such mortgagee and its successors and assigns shall only be liable for such unit's assessments, charges, or share of the common expenses which became due prior to acquisition of title as provided in the Florida Condominium Act (1997), as amended from time to time.

**7.7 Liens for Assessments.** The unpaid portion of an assessment, including an accelerated assessment which is due, together with all costs, interest, late fees, and reasonable attorney's fees for collection, including appeals, shall be secured by a continuing lien upon the unit.

**7.8 Lien for Charges.** Unpaid charges due to the Association together with costs, interest, late fees, and reasonable attorney's fees shall be secured by a common law and contractual lien upon the unit and all appurtenances thereto when a notice claiming the lien has been recorded by the Association.

**7.9 Collection — Interest; Administrative Late Fee; Application of Payments.** Assessments or charges paid on or before ten days after the date due shall not bear interest, but all sums not paid on or before ten days shall bear interest at the highest rate permitted by law from the date due until paid. In addition to such interest the Association may charge an administrative late fee in an amount not to exceed the greater of \$25 or 5% of each installment of the assessment for which payment is late, or the maximum late fee permissible by law. All payments upon account shall be first applied to interest, then the late fee, then to any costs and reasonable attorney's incurred, and then to the assessment payment first due.

**7.10 Collection — Suit.** The Association, at its option, may enforce collection of delinquent assessments or charges by suit at law, by foreclosure of the lien securing the assessments or charges, or by any other remedy available under the laws of the State of Florida, and in any event the Association shall be entitled to recover the payments which are delinquent at the time of collection, judgment, or decree, together with those which have become due by acceleration or which have thereafter become due, plus interest thereon, and all costs incident to the collection and the proceedings, including reasonable attorney's fees, incurred before trial, at trial, and on appeal. The Association may attach rental income for delinquent units and may withhold approval for the sale, lease, or other transfer of a unit, or any interest



therein, until all past due assessments, interest, late fees, costs, and attorney's fees have been paid in full. The Association must deliver or mail by certified mail to the unit owner a written notice of its intention to foreclose the lien as provided by law.

**7.11 Accounts.** All sums collected from assessments or charges shall be credited to accounts from which shall be paid the expenses for which the respective assessments or charges are made.

**7.12 Association Depository.** The depository of the Association shall be a bank or banks or state or federal savings and loan associations with offices in Florida and other governmentally insured or guaranteed depositories as shall be designated from time to time by the Directors and in which the monies for the Association shall be deposited. Withdrawal of monies from such accounts shall be only by checks signed by such persons as are authorized by the Directors.

**7.13 Commingling of Funds Prohibited.** All funds shall be maintained separately in the Association's name. No community association manager or business entity required to be licensed or registered under F.S. 468.432, and no agent, employee, officer, or Director of the Association shall commingle any Association funds with his funds or with the funds of any other condominium association or community association as defined in F.S. 468.431, or with those of any other entity. Reserve funds and operating funds of the Association may not be commingled for investment purposes, as provided by law.

**7.14 Financial Reports.** A complete financial report of actual receipts and expenditures of the Association shall be made annually which shall comply with Rule 61B-22.006, Florida Administrative Code (2001), as amended from time to time, and with F.S. 718.111(13) (2001), as amended from time to time, as determined in the Rule based upon the amount of the Association's budget from time to time.

**7.15 Fidelity Bonding.** The Association shall obtain and maintain adequate fidelity bonding pursuant to in F.S. 718.111(11)(d) (2001), as amended from time to time, for each person (whether or not a Director) who controls or disburses Association funds, and the President, Secretary and Treasurer. The Association shall bear the cost of bonding. In the case of a licensed manager, the cost of bonding may be reimbursed by the Association as the parties may agree. All persons providing management services to the Association, or otherwise having the authority to control or disburse association funds, shall provide the Association with a certificate of insurance evidencing compliance with this paragraph, naming the Association as an insured under said policy.

**8. PARLIAMENTARY RULES.** Robert's Rules of Order (latest edition) shall be used as a guide in the conduct of members' meetings, Board meetings, and committee meetings to ensure fairness, impartiality, and respect for minority views without unduly burdening majority rights. Meetings shall also be conducted in accordance with these By-Laws and the procedures established by the Board from time to time, including the form of voting documents to be used. The ruling of the Chair of the meetings unless he or the Board of Directors designates a third person, as Parliamentarian, shall be binding unless contrary to law.

**9. BY-LAW AMENDMENTS.** Amendments to the By-Laws shall be adopted in the following manner:

**9.1** Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is considered.

**9.2 Proposal of Amendments.** An amendment may be proposed by either a majority of the Directors or by twenty (20%) percent of the voting interests.

**9.3 Adoption of Amendments.** A proposed amendment shall be adopted by the affirmative vote of two-thirds (2/3rds) of the members present (in person or by proxy) and voting at a duly noticed meeting at which a quorum is present, or by the written agreement of a majority of the entire voting interests.



**9.4 Effective Date.** An amendment when adopted shall become effective only after being recorded in the Sarasota County Public Records according to law.

**9.5 Automatic Amendment.** These By-Laws shall be deemed amended, if necessary, so as to make the same consistent with the provisions of the Declaration of Condominium or the Articles of Incorporation. Whenever Chapter 718, Florida Statutes (2001) Chapter 617, Florida Statutes (2001) or other applicable statutes or administrative regulations are amended to impose procedural requirements less stringent than set forth in these By-Laws, the Board may operate the Association pursuant to the less stringent requirements. The Board of Directors, without a vote of the owners, may adopt by majority vote, amendments to these By-Laws as the Board deems necessary to comply with such operational changes as may be enacted by future amendments to Chapters 607, 617, and 718 of the Florida Statutes (2001), or such other statutes or administrative regulations as required for the operation of the Association.

**9.6 Proposed Amendment Format.** Proposals to amend existing By-Laws shall contain the full text of the By-Laws to be amended. New words shall be underlined and words to be deleted shall be ~~lined through~~ with hyphens. If the proposed change is so extensive that this procedure would hinder rather than assist understanding, a notation must be inserted immediately preceding the proposed amendment saying, "SUBSTANTIAL REWORDING OF BY-LAW. SEE BY-LAW NUMBER \_\_\_\_\_ FOR PRESENT TEXT."

## **10. DISPUTE RESOLUTION.**

**10.1 Mandatory Arbitration.** If unresolved, disputes between the Board and unit owners as defined in F.S. 718.1255(1) (2001), as amended from time to time, must be arbitrated in mandatory non-binding arbitration proceedings as provided in the Condominium Act prior to commencing litigation, so long as the Condominium Act requires such arbitration.

**10.2 Unit Owner Inquiries.** When a unit owner files a written inquiry by certified mail with the Board, the Board shall respond in writing to the unit owner within 30 days of receipt of said inquiry. The Board's response shall either give a substantive response to the inquirer, or notify the inquirer that legal advice has been requested, or notify the inquirer that advice has been requested from the Association's counsel or the Division. If the Board requests advice from the Division, the Board shall, within ten days of its receipt of the advice, provide in writing a substantive response to the inquirer. If a legal opinion is requested, the Board shall, within 60 days after the receipt of the inquiry, provide in writing a substantive response to the inquirer. The failure to provide a substantive response to the inquirer as provided herein precludes the Association from recovering attorney's fees and costs in any subsequent litigation, administrative proceeding, or arbitration arising out of the inquiry. Absent a different rule adopted by the Board of Directors, the Board shall only be obligated to respond to one inquiry per month pertinent to any particular unit. In the event of a grievance of a unit owner against the Association, the Board of Directors, or a member thereof, written notice in detail of the grievance shall be given the Directors prior to the institution of litigation, (including but not limited to arbitration) and they shall be allowed a period of 30 days in which to resolve the grievance.

**10.3 Other Remedies.** Nothing herein shall preclude the Association from pursuing any remedy for the violation of the Condominium Documents or disputes with a unit owner or other party as may be available to the Association under the laws of the State of Florida or the Condominium Documents.

**11. MISCELLANEOUS.** The following miscellaneous provisions shall apply to these By-Laws and the Condominium Documents.

**11.1 Conflicts.** The term "Condominium Documents," as used in these By-Laws and elsewhere shall include the Declaration of Condominium, Articles of Incorporation, these By-Laws, the Rules and Regulations of the Association, the Plats, Surveys, Plot Plans, and graphic descriptions of improvements of record, and all other exhibits to the original Declaration of Condominium. In the event of a conflict between the language in the Declaration of Condominium and the graphic descriptions of record, the graphic description of record shall control. In the event of a conflict between language in any of the other

Condominium Documents, the following priorities shall control:

1. Declaration of Condominium;
2. Articles of Incorporation;
3. By-Laws; and
4. Rules and Regulations.

11.2 **Gender.** The use of the term "he," "she," "his," "hers," "their," "theirs" and all other similar pronouns should be construed to include all genders and encompass the plural as well as the singular.

11.3 **Severability.** In the event that any provisions of these By-Laws is deemed invalid, the remaining provisions shall be deemed in full force and effect.

93211\_1.DOC



✓ THIS INSTRUMENT PREPARED BY  
AND RETURN TO:  
KEVIN L. EDWARDS, ESQ.  
BECKER & POLIAKOFF, P.A.  
630 S. ORANGE AVENUE  
SARASOTA, FL 34236

RECORDED IN OFFICIAL RECORDS  
INSTRUMENT # 2006022547 3 Pgs  
2006 FEB 03 02:45 PM  
KAREN E. RUSHING  
CLERK OF THE CIRCUIT COURT  
SARASOTA COUNTY, FLORIDA  
FMILLER Receipt#744766

**CERTIFICATE OF AMENDMENT  
TO THE  
SECOND AMENDED AND RESTATED  
DECLARATION OF CONDOMINIUM  
OF  
FAIRWAY OAKS, A CONDOMINIUM**



The undersigned officers of Fairway Oaks Condominium, Inc., a not for profit Florida corporation organized and existing to operate and maintain Fairway Oaks, A Condominium according to the Declaration of Condominium thereof as originally recorded in O.R. Book 915, page 837, et seq. of the Public Records of Sarasota County, Florida, as amended, hereby certify that the following amendments to the Declaration of Condominium were duly adopted in the manner provided in the governing documents of the Association at an annual membership meeting held on January 11, 2006. The undersigned further certify that the amendments were proposed and adopted in accordance with the condominium documentation, and applicable law.

(Additions indicated by underlining, deletions by strike-through)

1. *Amendment to Article 5, entitled "Common Expenses" shall read as follows:*

The common expenses and common surplus for the Condominium shall be apportioned among the Units based on the unit's ownership share in the common elements as depicted in the Original Declaration of Condominium recorded in Official Records Book 915, Page 837 et seq., of the Public Records of Sarasota County, Florida, which are: villas - 0.008501% (6), 2 BR TWN - 0.006376% (31), 3 / 4 BR TWN - 0.007438% (101).

(The remainder of Article 5 will remain unchanged.)

2. *Amendment to Article 8, entitled "Maintenance, Alteration and Improvement", Section 8.2.1 shall read as follows:*

Except for the installation of a lanai or fence approved by the Board of Directors, no Unit Owner may alter, modify, improve or otherwise change the appearance of any exterior surface of Unit, the common elements or Association Property.

(The remainder of Article 8.2.1 shall remain unchanged.)

3. *Amendment to Article 8, entitled "Maintenance, Alteration and Improvement", to include a new section 8.2.5 to read as follows:*

8.2.5 A special limited common element was established for a fenced-in area formed extending the two sides of the condominium unit to the rear of the unit to a perpendicular line that is two feet short of a line equidistant between that unit and its rear neighbor. Where a unit is situated so that there is no rear neighbor, the rear line of the fence may not be closer than six (6) feet to the adjacent street. When a unit is on a corner, the side line of the fence will still be an extension of the side line of the unit and not approach closer than six (6) feet to the side street. The maximum depth of a fence from a unit shall not exceed fifteen (15) feet. The fence shall be constructed of a design and material approved by the Association for uniformity. All requests to erect fences shall be subject to the prior approval of the Board of Directors who shall have the authority to require the requesting owner to submit a sketch of the proposed work. The Board may reject plans upon finding that the fence is not harmonious in appearance with other fences in the condominium or considerations of structural integrity.

4. *Amendment to Article 11, entitled "Transfers Subject to Approval Sales, Leases and Other Transfers", Section 11.4 shall read as follows:*

**11.4 Disapproval of Leasing.** If the Association disapproves a proposed lease or renewal, the unit owner shall receive a statement so indicating and the lease shall not be made or renewed. Any lease made in violation of this Declaration shall be voidable and the Association may institute suit to evict the tenant. The Association shall neither have a duty to provide an alternate tenant nor shall it assume any responsibility for the denial of a lease application. The Board shall consider the following factors and may confer with counsel in reaching its decision. The following may be deemed to constitute good cause for disapproval:

11.4.1 The application for approval on its face, or subsequent investigation thereof, indicates that the person seeking approval intends to conduct himself or herself, or the occupancy, in a manner which is inconsistent with the Condominium Documents.

11.4.2 The person seeking approval (which shall include all proposed occupants) has been convicted of a felony involving violence to persons or property, or demonstrating dishonesty or moral turpitude.

11.4.3 The person seeking approval has a record of financial irresponsibility, including without limitation bankruptcies, foreclosures or bad debts.

11.4.4 The owner allows a prospective tenant to take possession of the premises prior to approval by the Association as provided for herein.

11.4.5 The person seeking approval has a history of disruptive behavior or disregard for the rights and property of others as evidenced by his or her conduct in other



social organizations, communities or associations, or by conduct in the condominium as a tenant, unit owner or occupant of a unit.

11.4.6 The person seeking approval failed to provide the information, fees, or appearance required to process the application in a timely manner.

FAIRWAY OAKS CONDOMINIUM, INC.

[Signature]  
Witness Signature

Douglas Janca  
Printed Name

Valerie Meloni  
Witness Signature

VALERIE MELONI  
Printed Name

BY: [Signature]  
Sandra Riley, President

STATE OF FLORIDA  
COUNTY OF SARASOTA

The foregoing instrument was acknowledged before me this 14 day of JANUARY, 2006 by SANDRA RILEY, as President of FAIRWAY OAKS CONDOMINIUM, INC., a Florida corporation, on behalf of the corporation. He/She is personally known to me or has produced \_\_\_\_\_ as identification. If no type of identification is indicated, the above-named person is personally known to me.

Notary Public

Printed Name

State of Florida

My Commission Expires

SAR\_DB: 132558\_1



Valerie Meloni  
My Commission DD356643  
Expires November 01, 2008