

IN THE SIXTH JUDICIAL CIRCUIT COURT IN AND FOR PASCO COUNTY, FLORIDA
CIRCUIT CIVIL DIVISION, CASE NO.: 51-2005 CC 000463 WS; DIVISION G

THE PRESERVE AT FAIRWAY OAKS
HOMEOWNERS' ASSOCIATION, INC.,

Plaintiff,

v.

FAIRWAY OAKS HOMEOWNERS'
ASSOCIATION, INC.,

Defendant.

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (hereinafter the "**Agreement**") is entered into by and between Plaintiff, The Preserve at Fairway Oaks Homeowners' Association, Inc., and Defendant, Fairway Oaks Homeowners' Association, Inc. (hereinafter collectively referred to as the "**Parties**" or individually as the "**Party**"), as of the date on which the last of the Parties executed this Agreement (the "**Effective Date**"), as follows:

WHEREAS, the Parties are parties in the above-captioned cause of action (the "**Lawsuit**"); and

WHEREAS, the Parties wish to fully and finally resolve their disputes, as raised in the Lawsuit, in accordance with the following settlement terms;

NOW, THEREFORE, the parties hereto, in consideration of the mutual promises contained herein and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, agree as follows:

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by reference, along with any definitions contained therein.

2. **Definitions.**

- a. **"The Preserve"** shall mean and refer to The Preserve at Fairway Oaks Homeowners' Association, Inc., its officers, directors, agents, successors and assigns.
- b. **"Fairway Oaks"** shall mean and refer to Fairway Oaks Homeowners' Association, Inc., its officers, directors, agents, successors and assigns.
- c. **"Beacon Woods"** shall mean and refer to Beacon Woods East Master Association, Inc., a Florida not-for-profit corporation, its officers, directors, agents, successors and assigns.
- d. **"The Preserve Declaration"** shall mean and refer to that Declaration of Covenants, Conditions and Restrictions recorded in O. R. Book 3184, Page 0179, et. seq. of the Public Records of Pasco County, Florida, and all lawful amendments thereto which are recorded prior to the Effective Date of this Agreement.
- e. **"The Fairway Oaks Declaration"** shall mean and refer to Declaration of Covenants, Conditions and Restrictions recorded in O. R. Book 1777, Pages 0328, et seq. of the Public Records of Pasco County, Florida, and all lawful amendments thereto which are recorded prior to the Effective Date of this Agreement.
- f. **"Beacon Woods Agreement"** shall mean and refer to that certain Agreement recorded in O.R. Book 1739, Page 0327, et. seq. of the Public Records of Pasco County, Florida, and all lawful amendments thereto which are recorded prior to the Effective Date of the Agreement.
- g. **"Property South of Hudson Avenue"** shall mean and refer to property located on the South side of Hudson Avenue within the subdivisions of The Preserve at

Fairway Oaks and Fairway Oaks in Pasco County, Hudson, Florida that is: (1) owned by either Fairway Oaks or The Preserve; or (2) the subject of any maintenance or drainage easement in favor of Fairway Oaks or The Preserve, in addition to any improvements, additions, expansions, or entrance amenities thereon, including, but not limited to the following:

Tracts A, B, C, E and F, together with a 5.0' buffer easement over, through, under and across Lots 2 through 12, THE PRESERVE AT FAIRWAY OAKS UNIT ONE, according to the map or plat thereof recorded in Plat Book 30, Pages 137-140, Public Records of Pasco County, Florida.

AND

Tract D, together with a 5.0' buffer easement over, through, under and across Lots 13 through 35 and Lot 38, THE PRESERVE AT FAIRWAY OAKS UNIT TWO, according to the map or plat thereof recorded in Plat Book 33, Pages 28-30, Public Records of Pasco County, Florida.

AND

Tracts G, H, K and M, together with a 5.0' buffer easement over, through, under and across Lots 434 and 435, THE PRESERVE AT FAIRWAY OAKS UNIT THREE, according to the map or plat thereof recorded in Plat Book 35, Pages 27-30, Public Records of Pasco County, Florida.

AND

Tracts S and T, together with a 5.0' landscape buffer easement over, through, under and across Lots 456, 457, 462 and 463, Lots 466 through 481, Lots 484 through 503, Lots 511 through 513, Lots 520 through 522, Lots 530 and 531 and Lots 369 through 376, THE PRESERVE AT FAIRWAY OAKS UNIT FOUR, according to the map or plat thereof recorded in Plat Book 39, Pages 23-29, Public Records of Pasco County, Florida.

AND

Tract J, together with a 5.0' buffer easement over, through, under and across Lot 356, FAIRWAY OAKS UNIT SEVEN, according to the map or plat thereof recorded in Plat Book 32, Pages 56-57, Public Records of Pasco County, Florida.

To the extent that any property is inadvertently omitted herein, the Parties agree to effect an Amendment to this Settlement Agreement to include same. **“Property South of Hudson Avenue”** does not include the commercial parcels or the improvements thereon which are situated immediately to the west of the Preserve, including the monument at the corner of Little Road and South Hudson Avenue (**“The Commercial Parcel”**).

3. Settlement.

The Parties hereby agree to the following:

a. **Dismissals.** With the execution of this Agreement, the Parties hereby waive each of their legal and equitable claims against one another, as set forth in the Lawsuit, and hereby stipulate to the voluntary dismissal of such claims, with prejudice, by the Court, in the manner set forth herein. The Preserve agrees to file a Notice of Voluntary Dismissal with prejudice, as set forth in Paragraph 3(f) herein. The Parties agree that the Court will retain jurisdiction over the Lawsuit and the Parties for purposes of performing and enforcing the terms of this Agreement, and entering any and all stipulated Orders and Judgments provided for herein or otherwise agreed to by the Parties.

b. **Order to Show Cause and Order Approving Settlement.** The Parties shall jointly submit this Agreement to the Court for preliminary approval within ten (10) days of the Effective Date, or as soon thereafter as the Parties can reasonably appear before the Court at a Status Conference. Upon submission of this Agreement to the Court, the Parties stipulate to the immediate entry of an Order to Show Cause (the "**Order to Show Cause**") directed to the members of The Preserve and Fairway Oaks. The Order to Show Cause shall be in the form attached hereto as Exhibit "A" and shall direct the members of The Preserve and Fairway Oaks to show cause as to why this Agreement shall not be approved by the Court and a Court Order entered acknowledging same. Should the members of The Preserve and Fairway Oaks fail to show sufficient cause in accord with the Order to Show Cause, following the Parties' members' approval of the Amendments to Declarations which is provided for in Paragraph 3(c) herein, the Parties stipulate to the entry of an Order of the Court (the "**Settlement Order**") in the form attached hereto as Exhibit "B," approving this Agreement. Notwithstanding anything

contained herein to the contrary, the final approval of this Agreement shall remain contingent upon the proper approval of the Amendments to Declarations by the Parties and their respective membership, as provided for in Exhibit "B" and Paragraph 3(c) herein.

c. **Amendments to Declarations.** In consideration for the settlement of all claims in the present cause of action, provided that the members of The Preserve and Fairway Oaks fail to show sufficient cause why this Agreement should not be approved, following the hearing on the Court's Order to Show Cause (Exhibit "A"): (1) Fairway Oaks shall draft all necessary amendments to The Fairway Oaks Declaration within thirty (30) days of the hearing on the Court's Order to Show Cause (Exhibit "A") which are necessary to facilitate the Parties' intentions hereunder; and (2) The Preserve shall draft all necessary amendments to The Preserve Declaration within thirty (30) days of the hearing on the Court's Order to Show Cause (Exhibit "A") which are necessary to facilitate the Parties' intentions hereunder. Thereafter, upon delivery of the proposed amendments to The Fairway Oaks Declaration to the undersigned counsel for The Preserve, and delivery of the proposed amendments to The Preserve Declaration to the undersigned counsel for Fairway Oaks, the respective Parties shall have ten (10) days within which to review said proposed amendments. Provided that the proposed amendments are acceptable to Fairway Oaks and The Preserve, within twenty (20) days of the respective Parties' approval of the proposed amendments to The Fairway Oaks Declaration and The Preserve Declaration, the Parties shall individually present the proposed amendment(s) to their respective Declaration to their respective membership for approval within an additional thirty (30) days. Thereafter, if the amendments to the Declaration are duly approved by the members of the Parties, the Parties shall have Amendment Certificates to the Declarations drafted, executed and recorded in the Public Records of Pasco County, Florida within fifteen (15)

days of the members' votes approving the proposed Amendments to Declarations and the Parties shall jointly submit the Settlement Order (Exhibit "B") to the Court for entry. In the event that the Parties cannot agree to the form or content of a proposed amendment to either The Fairway Oaks Declaration or The Preserve Declaration, or in the event that the membership of either Party fails or refuses to timely approve any proposed amendment to either Declaration which is required to fulfill the Parties' intentions hereunder, this Agreement shall be deemed null and void, and the Parties shall stipulate to the entry of an Order immediately dissolving this Agreement, and they may then proceed with the litigation of the present cause of action as though this Agreement never existed.

d. **Deeds to Property.** Fairway Oaks shall execute and record within five (5) days of the Court's entry of the Settlement Order, a Quit Claim Deed (the "**Deed**"), conveying all of Fairway Oaks's interest in the Property South of Hudson Avenue, which is more specifically described above, to The Preserve. Fairway Oaks shall bear all costs of execution and recording of the Deed, as well as all applicable taxes related thereto through the date of recording of the Deed. Thereafter, counsel of record in this cause of action for Fairway Oaks shall deliver the recorded Deed to counsel of record for The Preserve within ten (10) days of receipt of a copy of the recorded Deed from the Clerk of Court. The Preserve hereby agrees to accept the property deeded to it pursuant to the Deed in "as-is" condition, and Fairway Oaks provides no warranties or representations as to the condition of the Property upon such transfer of ownership or maintenance obligations.

e. **Settlement Payments.** Within thirty (30) days of the entry of the Settlement Order, Fairway Oaks shall pay to The Preserve, in full and final settlement of all claims in the Lawsuit, including all claims for damages, attorneys' fees, costs and interest which

are the subject of this cause of action, the amount of \$26,000.00 (the "**Settlement Amount**"). Payment shall be remitted by Fairway Oaks to The Preserve, in care of Eric N. Appleton, Esquire, Bush Ross, P.A., P.O. Box 3913, Tampa, Florida 33601. In the event that any portion of the Settlement Amount is not paid, in full, when due, The Preserve shall provide Fairway Oaks with written notice of the delinquency, via certified mail, return receipt requested, to Fairway Oaks's counsel of record in the present cause of action. Upon receipt of said notice, Fairway Oaks shall have five (5) calendar days within which to cure said delinquency. If said delinquency is not cured within the time provided herein above, the unpaid sum shall bear interest at the statutory rate. The Court in the present cause of action shall specifically reserve jurisdiction to enter judgment for said sums; time being of the essence in this Agreement.

f. **Notice of Dismissal.** Within five (5) days of The Preserve's receipt of the Settlement Amount, The Preserve shall file a Notice of Dismissal with prejudice in the form attached hereto as Exhibit "C," dismissing all claims asserted by The Preserve against Fairway Oaks in the Lawsuit.

g. **Release of Funds in Court Registry.** Provided that all other conditions precedent to this Agreement are fulfilled by Plaintiff and Defendant, upon entry of the Settlement Order, Fairway Oaks relinquishes any and all claims that it has or may have had to recover the funds presently in the Registry of the Clerk of Court in the present cause of action.

h. **Maintenance and Repair.** Notwithstanding any prior agreements or obligations between The Preserve and Fairway Oaks, The Preserve hereby releases Fairway Oaks from any obligations that Fairway Oaks has or may have had to maintain, repair, replace or insure the Property South of Hudson Avenue, which is more specifically described hereinabove. Upon execution of the Deed, The Preserve, as title holder of the

Property South of Hudson Avenue, shall be responsible for the maintenance, repair, replacement and insurance of the Property South of Hudson Avenue, including the improvements located thereon and therein. Due to the presence and location of property of Fairway Oaks members, The Preserve hereby agrees to maintain Tracts "F" and "J" and keep same in good repair equal to the remainder of the Property South of Hudson Avenue. The Preserve shall not, however, have any obligation to maintain, repair, replace or insure the Commercial Parcel, which is specifically excluded from the definition of the phrase "Property South of Hudson Avenue."

i. **Fairway Oaks Assessments.** Fairway Oaks stipulates and agrees that, as of the execution of the Deed, it shall not impose or collect any assessments of any kind, including but not limited to regular assessments, special assessments, or specific assessments against or from The Preserve or any property or member of The Preserve, or their successors or assigns. The intent of the Parties' herein is to eliminate assessment liability of members of The Preserve to Fairway Oaks, as The Preserve is undertaking the exclusive obligation and expense to maintain, repair, replace and insure real property which was formerly the obligation of Fairway Oaks prior to the execution of this Agreement. Until the Settlement Order is entered by the Court, the Parties shall continue to operate based upon the existing documents, contracts and agreements that govern them. Specifically, The Preserve and its members shall continue to fulfill all of their obligations to Fairway Oaks, including but not limited to the timely payment of 2007 assessments directly to Fairway Oaks, without withholding such 2007 assessments. Similarly, Fairway Oaks and its members shall continue to fulfill all of their obligations to The Preserve, including maintenance of common property and improvements thereon. Upon entry of the Settlement Order, though, the Settlement Agreement and the documents contemplated by the Settlement Agreement shall control the Parties' business relationship, including their respective

rights and obligations. As part of the Settlement Agreement, Fairway Oaks shall provide The Preserve with a refund of all 2007 assessments which were paid to Fairway Oaks by The Preserve or the members of The Preserve, excluding any and all payments made by Fairway Oaks to Beacon Woods as part of the 2007 assessments due to Beacon Woods, minus per diem assessments that accrue from January 1, 2007 through the date of the Settlement Order, whenever that may be.

j. **Beacon Woods Assessments.** The Preserve and its individual members shall pay assessments imposed by Beacon Woods against The Preserve and its individual members directly to Fairway Oaks in the form of an annual payment to Fairway Oaks due on or before February 1st of each year (the "**Beacon Woods Payment**"). The Beacon Woods Payment shall consist of the collective amount imposed against The Preserve and its individual members by Beacon Woods for the year of the payment, and shall commence February 1, 2008. The Preserve agrees to indemnify Fairway Oaks in the amount of any payment Fairway Oaks remits to Beacon Woods in satisfaction of any assessments or other payments due to Beacon Woods on behalf of The Preserve or members of The Preserve for assessments imposed against them which The Preserve or its members fail to pay.

k. **Voting.** As of the execution of the Settlement Order, The Preserve and members of The Preserve hereby agree that their voting rights coinciding with membership in Fairway Oaks, and established by the Fairway Oaks Declaration, are hereinafter suspended, and members of The Preserve shall not be entitled to any position on the Board of Fairway Oaks. Members of The Preserve shall not be entitled to notice of any meetings of Fairway Oaks, including those of the Board or membership of Fairway Oaks. Members of The Preserve shall not be entitled to any benefits granted to Fairway Oaks members pursuant to the Fairway Oaks

Declaration, or to enforce any rights of covenants.

1. **Entrance Signs.** The Preserve shall be permitted to add one (1) sign which bears the name "The Preserve at Fairway Oaks" at the Pimberton Drive entrance of The Preserve ("**The Preserve Pimberton Drive Sign**"). The Preserve Pimberton Drive Sign shall be added at the expense of The Preserve. The Preserve shall permit Fairway Oaks to keep one sign at the entrance to Fairway Oaks on the South side of Hudson Avenue at Pimberton Drive which states "Fairway Oaks" (the "**Fairway Oaks Pimberton Drive Sign**"). The Fairway Oaks Pimberton Drive Sign shall be maintained, repaired, replaced and insured by The Preserve. The Fairway Oaks Pimberton Drive Sign shall be maintained, repaired, replaced and insured in the same manner as the signage in The Preserve development bearing the name "The Preserve at Fairway Oaks." The Preserve shall perform all maintenance, repairs and replacements of the Fairway Oaks Pimberton Drive Sign in the same manner as the signage in the development bearing the name "The Preserve at Fairway Oaks." In no event may The Preserve alter the size or general appearance of the Fairway Oaks Pimberton Drive Sign without the advance, written consent of Fairway Oaks. Fairway Oaks shall no longer have any obligation to maintain, repair, replace or insure the Fairway Oaks Pimberton Drive Sign or The Preserve Pimberton Drive Sign.

4. **Remedies for Violation and Breach.** If any legal action or other proceeding is brought for the enforcement of this Settlement Agreement or because of an alleged dispute, breach, default, or misrepresentation in connection with any provision of this Settlement Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees, including attorneys' fees incurred on appeal or in bankruptcy, court costs and all reasonable expenses from the non-prevailing party even if not taxable as court costs incurred in the action or proceeding, in addition to any other relief to which such party or parties may be entitled.

5. **Choice of Law and Jurisdiction.** This Settlement Agreement may be enforced to the maximum extent permitted by law with proper venue lying exclusively in Pasco County, Florida, and shall be construed in accordance with the laws of the State of Florida. The parties hereby agree to subject themselves to the personal jurisdiction of Florida courts. In the event that any provision of the Settlement Agreement is found to be unenforceable, void, or invalid, that finding shall not affect the enforceability or validity of any other provision hereof, unless such determination of invalidity or unenforceability deprives any Party of the substantial benefit of its bargain. The Parties agree, however, that any determination by any authority regarding treatment of the terms and conditions of this Settlement Agreement, and payment(s) under this Settlement Agreement, under any laws regarding taxation, shall not constitute an event depriving any party of the substantial benefit of its bargain.

6. **Entire Agreement, Modification, Construction.** This Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective successors, assigns, heirs and representatives. This Agreement is the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior agreements and understandings. Any modification of this Agreement shall be in writing and executed by each Party. The Parties agree that this Agreement has been drafted jointly by the Parties, that each Party has had an opportunity to review this document with legal counsel, prior to execution, and that this document should not be construed more strongly in favor of one or the other of the Parties, or with regard to any presumption or rule requiring interpretation against the drafter or the Party causing this Settlement Agreement to be prepared.

7. **No Waiver.** The failure by any Party to enforce any right or covenant in this Agreement on one or more occasions shall not be construed as a waiver of such Party's right to enforce all terms of this agreement, as written, at any time in the future.

8. **Recordation.** It is the intent of the Parties hereto that this Agreement shall not be filed, of record, in the Official Records of Pasco County, Florida. The Settlement Order shall be filed, of record, in the Official Records of Pasco County, Florida.

9. **Counterparts.** This Agreement may be executed in counterparts.

10. **Time.** Time is of the essence of this agreement. Time shall be calculated by using calendar days, including holidays and weekends, unless otherwise specifically indicated herein.

11. **Notice.** Unless otherwise directed by a recipient in writing, any and all notices or communications required by or pursuant to this Settlement Agreement shall be sent via certified mail, return receipt requested, to the following addresses:

(a) The Preserve at Fairway Oaks Homeowners' Association, Inc., Attention President, Attention Judy Johnson, President, 9141 Halberg Drive, Hudson, Florida 34667.

(b) Fairway Oaks Homeowners' Association, Inc., Attention President, Tampa Bay Property Management, 8249 Kristle Circle, Port Richey, FL 34668.

THE PARTIES TO THIS AGREEMENT ACKNOWLEDGE THAT THEY HAVE CAREFULLY READ THIS AGREEMENT, THAT THEY FULLY UNDERSTAND ITS FINAL AND BINDING EFFECT, AND THAT THE ONLY PROMISES OR REPRESENTATIONS MADE TO THEM IN CONNECTION WITH THE EXECUTION OF THIS AGREEMENT ARE SET FORTH HEREIN.

[Signature]
Print Name: _____

Print Name: _____

By: [Signature]

Its: _____

Date: _____

FAIRWAY OAKS HOMEOWNERS
ASSOCIATION II, INC.

Margaurite Mikolajczyk (President)
Print Name: _____

Print Name: _____

By: Margaurite Mikolajczyk

Its: President

Date: 12/12/06

Print Name: _____

Print Name: _____

By: Judy Johnson
Its: President
Date: 12/8/2006

FAIRWAY OAKS HOMEOWNERS
ASSOCIATION II, INC.

Print Name: _____

Print Name: _____

By: _____

Its: _____

Date: _____