



# A 9800000 2234

ACCOUNT NO. : 072100000032

REFERENCE : 629812 82724A

AUTHORIZATION :

*Patricia Pizito*

COST LIMIT : \$ 105.00

ORDER DATE : June 19, 2002

ORDER TIME : 1:39 PM

ORDER NO. : 629812-010

CUSTOMER NO: 82724A

CUSTOMER: Ms. Diane Whitacre  
Conroy Coleman & Hazzard, P.a.  
2640 Golden Gate Boulevard  
Suite 115  
Naples, FL 34105

RECEIVED 02 JUN 19 PM 1:07  
02 JUN 19 PM 2:40  
DEPARTMENT OF STATE  
DIVISION OF CORPORATIONS  
TALLAHASSEE, FLORIDA

APPROVED  
AND  
FILED

DOMESTIC AMENDMENT FILING

NAME: FAIRWAY PRESERVE APARTMENTS  
AT OLDE CYPRESS, LTD.

EFFECTIVE DATE:

800005868439--1

XX ARTICLES OF AMENDMENT

PLEASE RETURN THE FOLLOWING AS PROOF OF FILING:

XX CERTIFIED COPY

CONTACT PERSON: Angie Glisar -- EXT# 1124

EXAMINER'S INITIALS:

*JP*  
*6-24-02*

02250, 60712, 06671



FLORIDA DEPARTMENT OF STATE

Katherine Harris  
Secretary of State

June 19, 2002

CSC  
ANGIE GLISAR

SUBJECT: FAIRWAY PRESERVE APARTMENTS AT OLDE CYPRESS, LTD.  
Ref. Number: A98000002234

We have received your document for FAIRWAY PRESERVE APARTMENTS AT OLDE CYPRESS, LTD. and the authorization to debit your account in the amount of \$105.00. However, the document has not been filed and is being returned for the following:

A general partner must sign the document.

Please return your document, along with a copy of this letter, within 60 days or your filing will be considered abandoned.

If you have any questions concerning the filing of your document, please call (850) 245-6097.

Marsha Thomas  
Document Specialist

Letter Number: 902A00039832

02 JUN 19 PM 1:07  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

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AND  
FILED

**CERTIFICATE OF AMENDMENT  
TO  
CERTIFICATE OF LIMITED PARTNERSHIP  
OF  
FAIRWAY PRESERVE APARTMENTS AT OLDE CYPRESS, LTD.  
a Florida limited partnership**

Pursuant to the provisions of Section 620.109, Florida Statutes, this Florida limited partnership, whose certificate was filed with the Florida Department of State on September 23, 1998, adopts the following certificate of amendment to its certificate of limited partnership.

**FIRST:** For so long as that certain loan (hereinafter "Loan") made by GMAC Commercial Mortgage Corporation, a California corporation, it's successors and/or assigns, (hereinafter "Lender") or any other amounts owed to Lender with respect to the Loan remain outstanding, the following amendments shall remain in full force and effect .

**SECOND:** The following amendments to the Certificate of Limited Partnership are hereby adopted by the limited partnership:

7. The Partnership covenants and agrees that it has not and shall not:

(a) engage in any business or activity other than the ownership, operation and maintenance of the property known as Fairway Preserve located at 7995 Preserve Circle, Naples, Florida 34119 and activities incidental thereto;

(b) acquire or own any material assets other than (i) the Property, and (ii) such incidental personal property as may be necessary for the operation of the Property;

(c) merge into or consolidate with any person or entity or dissolve, terminate or liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure without, in each case, the consent of Lender;

(d) (i) fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its organization or formation, or (ii) without the prior written consent of Lender, amend, modify, terminate or fail to comply with the provisions of Partnership's Partnership Agreement, Articles of Organization or similar organizational documents, as the case may be, whichever is applicable;

(e) own any subsidiary or make any investment in, any person or entity without the consent of Lender;

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TALLAHASSEE, FLORIDA

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(f) commingle its assets with the assets of any of its members, general partners, affiliates, shareholders, principals or of any other person or entity;

(g) incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than the Loan, except for trade payables in the ordinary course of its business, provided that such debt (i) is not evidenced by a note, (ii) is paid within sixty (60) days of the date incurred, and (iii) does not exceed in the aggregate four percent (4%) of the outstanding principal balance of the Loan;

(h) fail to maintain its records, books of account and bank accounts separate and apart from those of the members, general partners, shareholders, principals and affiliates of Partnership, the affiliates of a member, general partner, shareholder or principal of Partnership, and any other person or entity; (i) enter into any contract or agreement with any member, general partner, shareholder, principal or affiliate of Partnership, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any general partner, member, shareholder, principal or affiliate of Partnership, or any general partner, member, principal or affiliate thereof;

(j) seek the dissolution or winding up in whole, or in part, of Partnership;

(k) maintain its assets in such a manner that it will be costly or difficult to segregate, ascertain or identify its individual assets from those of any general partner, member, shareholder, principal or affiliate of Partnership, or any general partner, member, shareholder, principal or affiliate thereof or any other person;

(l) hold itself out to be responsible for the debts of another entity or person;

(m) make any loans or advances to any third party, including any member, general partner, shareholder, principal or affiliate of Partnership, or any member, general partner, shareholder, principal or affiliate thereof;

(n) fail to file its own tax returns;

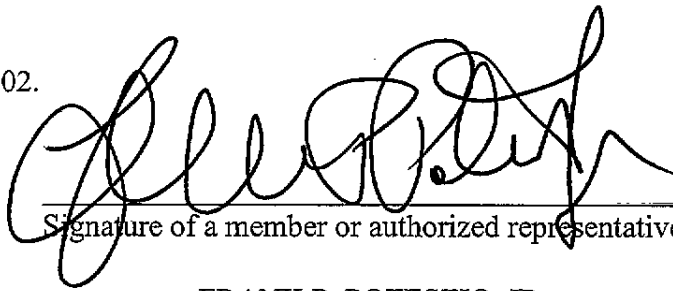
(o) agree to, enter into or consummate any transaction which would render Partnership unable to furnish the certification or other evidence referred to in Section 4.2(b) of the Mortgage and Security Agreement securing the Loan;

(p) fail either to hold itself out to the public as a legal entity separate and distinct from any other entity or person or to conduct its business solely in its own name in order not (i) to mislead others as to the identity with which such other party is transacting business, or (ii) to suggest that Partnership is responsible for the debts of any third party (including any member, general partner, shareholder, principal or affiliate of Partnership or any member, general partner, shareholder, principal or affiliate thereof);

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- (q) fail to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;
- (r) file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any applicable insolvency, bankruptcy, liquidation or reorganization statute, or make an assignment for the benefit of creditors;
- (s) fail to conduct its business so that the assumptions made with respect to Partnership in that certain opinion letter pertaining to substantive consolidation to be delivered in connection with the Loan shall be true and correct in all respects; or
- (t) file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any applicable insolvency, bankruptcy, liquidation or reorganization statute, or make an assignment for the benefit of creditors without the affirmative vote of the Independent Director (defined below) and of all other general partners/managing members/directors.
- (u) fail at any time to have on the Board of Directors of its General Partner at least one independent director (an "Independent Director") who shall not have been at the time of such individual's initial appointment, and may not have been at any time during the preceding five years, and shall not be at any time while serving as a director of the General Partner either (i) a shareholder of, or an officer, director, partner or employee of, Corporation or any of its shareholders, partners, members, subsidiaries or affiliates, (ii) a customer of, or supplier to, Partnership or General Partner or any of its shareholders, partners, members, subsidiaries or affiliates, (iii) a person or other entity controlling or under common control with any such shareholder, officer, director, partner, member, employee, supplier or customer, or (iv) a member of the immediate family of any such shareholder, officer, director, partner, member, employee, supplier or customer. As used herein, the term "control": means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policy of a person or entity, whether through ownership of voting securities, by contract or otherwise; or
- (v) permit the Board of Directors of its General Partner to take any action which, under the terms of any articles of incorporation, bylaws or any voting trust agreement with respect to any common stock, requires a vote of the board of directors of the General Partner unless at the time of such action there shall be at least one member of the board of directors who is an Independent Director.

Dated: June 18, 2002.



Signature of a member or authorized representative of a member

FRANK P. POTESIO, JR., PRESIDENT OF  
FAIRWAY PRESERVE APARTMENTS AT OLDE CYPRESS, INC., THE  
GENERAL PARTNER