

PREPARED BY:
Susan M. McLaughlin, Esq.
Pavese Law Firm
1833 Hendry Street
Fort Myers, FL 33901

CERTIFICATE OF AMENDMENT
TO
THE AMENDED AND RESTATED DECLARATION OF RESTRICTIONS,
RESERVATIONS, COVENANTS AND EASEMENTS
FOR SPANISH WELLS UNIT TWO

THE UNDERSIGNED, being the President and Secretary for SPANISH WELLS UNIT TWO HOMEOWNER'S ASSOCIATION, INC., a Florida non-profit corporation, do hereby certify that the attached Amended and Restated Declaration of Restrictions, Reservations and Covenants for Spanish Wells Unit Two, Amended and Restated Articles of Incorporation for Spanish Wells Unit Two Homeowner's Association, Inc. and Amended and Restated Bylaws for Spanish Wells Unit Two Homeowner's Association, Inc. were duly approved, adopted and enacted by the requisite affirmative vote of the members, at a meeting held on the 4th day of March, 2019. The original Declaration of Restrictions, Reservations and Covenants for Spanish Wells Unit Two was recorded in Official Records Book 1392, at Page 1801, *et seq.* of the Public Records of Lee County Florida.

Dated this 14 day of March, 2019.

WITNESSES:

(Sign) Nancy C. Riley
(Print) Nancy C. Riley

SPANISH WELLS UNIT TWO HOMEOWNER'S,
ASSOCIATION, INC.

By: Donald C. Meek
Donald C. Meek,
President of the Association

(Sign) Marlene K. Diedrich
(Print) MARLENE K DIEDRICH

STATE OF FLORIDA
COUNTY OF LEE

THE FOREGOING INSTRUMENT was acknowledged before me this 14 day of March, 2019, by Donald C. Meek President, Spanish Wells Unit Two Homeowner's Association, Inc., a Florida non-profit corporation, on behalf of said corporation. Said person is

personally known to me or has produced Association President as identification and did take an oath.

SEAL



NOTARY PUBLIC:

Kristine R Beaver
STATE OF FLORIDA
My Commission Expires: 9/20/22

Attested to:

By: Karen Kayser Benson
Karen Kayser Benson
Secretary of the Association

STATE OF FLORIDA
COUNTY OF LEE

THE FOREGOING INSTRUMENT was acknowledged before me this 14 day of March, 2019, by Karen Benson Secretary, Spanish Wells Unit Two Homeowner's Association, Inc., a Florida non-profit corporation, on behalf of said corporation. Said person is personally known to me or has produced Association Secretary as identification and did take an oath.

SEAL



NOTARY PUBLIC:

Kristine R Beaver
STATE OF FLORIDA
My Commission Expires: 9/20/22

NOTE: SUBSTANTIAL AMENDMENT OF ENTIRE DECLARATION. FOR PRESENT TEXT, SEE EXISTING DECLARATION.

**AMENDED AND RESTATED DECLARATION OF RESTRICTIONS,
RESERVATIONS, COVENANTS AND EASEMENTS
FOR
SPANISH WELLS UNIT TWO**

KNOW ALL MEN BY THESE PRESENTS:

The original Declaration of Restrictions, Reservations and Covenants for Spanish Wells Unit Two was recorded in Official Records Book 1392, at Page 1801, *et seq.*, in the Official Records of Lee County, Florida on November 30, 1979. It was last amended by the Amended and Restated Declaration of Restrictions, Reservations and Covenants for Spanish Wells Unit Two which was recorded in the Official Records of Lee Florida as Instrument No. 2013000145379 on June 20, 2013. Said Declaration is hereby further amended and restated in its entirety.

The land subject to this Amended and Restated Declaration of Restrictions, Reservations, Covenants and Easements, (hereinafter "Declaration"), is known as Spanish Wells Unit Two, and is more particularly described in Exhibit "A" attached hereto, according to the Plat for Spanish Wells Unit Two recorded in Plat Book 33, at Pages 51, 52 and 53, in the Public Records of Lee County, Florida, (hereinafter "property").

No additional land is being added by this instrument and no land is being removed by this instrument. The covenants, conditions, and restrictions contained in this Declaration shall run with the land and be binding upon and inure to the benefit of all present and future owners. The acquisition of title to a Lot or any other ownership interest in the property, or the lease, occupancy, or use of any portion of a Lot or the property constitutes an acceptance and ratification of all provisions of this Declaration, and as may be amended from time to time, and an agreement to be bound by its terms.

1. DEFINITIONS. The following words and terms used in this Declaration or any of the governing documents (unless the context shall clearly indicate otherwise) shall have the following meanings:

1.1 "Assessments" means a share of the funds required for the payment of common expenses and individual expenses that from time to time are assessed by the Association against an owner as regular, special, and individual assessments.

1.2 "Articles" and "Bylaws" as used herein mean the Amended and Restated Articles of Incorporation and the Amended and Restated Bylaws of Spanish Wells Unit Two Homeowner's Association, Inc., and as may be amended from time to time. The Amended and Restated Articles of Incorporation are attached hereto as Exhibit "B." The Amended and Restated Bylaws are attached hereto as Exhibit "C."

1.3 "**Association**" means Spanish Wells Unit Two Homeowner's Association, Inc., a Florida corporation not-for-profit.

1.4 "**Board**" means the Board of Directors responsible for administering, governing, and managing the Association.

1.5 "**Common Areas**" means all real property, including any improvements and fixtures thereon, owned, leased, or the use of which has been granted or dedicated to the Association, for the common use and enjoyment of its members. The common areas of the Association include all land described above and subject to this Declaration, save and except for the individual Lots.

1.6 "**Common Expenses**" means the expenses incurred by the Association in the course of performing its duties under the governing documents and the law. Common expenses of the Association include the costs of operating the Association; the costs of administration, maintenance, operation, repair, and replacement of the common areas; other expenses declared by the governing documents to be common expenses; and any other valid expenses or debts of the common property as a whole of the Association that are assessed against the Lot owners.

1.7 "**Common Surplus**" means the excess of all receipts of the Association, including, but not limited to, assessments, rents, profits, and revenues over the common expenses.

1.8 "**Declaration**" means this Declaration, and as may be amended from time to time.

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

(A) One natural person.

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

(C) Two or more natural persons meeting the requirements of Section 1.9(B) above, except that there is among them one person who is not related to some or all of the others.

1.10 "**Governing Documents**" means and includes this Declaration, the Articles, the Bylaws, and all recorded Exhibits thereto, and as may be amended from time to time.

1.11 "**Guest**" means any person who is not the owner or a lessee of a home, who is physically present in or occupies a home overnight, legally, at the invitation of the owner without payment or consideration of rent.

1.12 "**Home**" means a residential dwelling unit intended for residential use that is constructed on the Lot.

1.13 "**Lease**" means the grant by an owner of a temporary right of use of the owner's home, with or without valuable consideration.

1.14 "Lot" means the Lots of land located within Spanish Wells Unit Two subdivision.

1.15 "Maintenance," "Repair," and "Replacement." Maintenance means the upkeep or preservation of the condition of the property. Repair means to mend, remedy, or restore to a sound or good state after decay, injury, dilapidation, or partial destruction. Replace means to place again; restore to a former condition after destruction.

1.16 "Member" means and refers to those persons who are entitled to membership in the Association as provided in the Articles and Bylaws.

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

1.18 "Owner" or "Lot Owner" means the record owner of legal title to a Lot.

1.19 "Primary Occupant" means the natural person approved for occupancy of a home when title to the Lot is held in the name of two or more persons who are not husband and wife, or by a trustee or a corporation or other entity that is not a natural person. When used in reference to a home owned in one of the forms listed above, the term "primary occupant" shall be synonymous with the term "owner."

1.20 "Property" or "Community" means all of the real property which is subject to this Declaration.

1.21 "Spanish Wells Community Association" is the "Master Association" for Spanish Wells. All lot owners in Spanish Wells Unit Two are also members of the Master Association and are subject to the assessment by the Master Association.

1.22 "Structure" means that which is built or constructed, or any piece of work artificially built up or composed of parts joined together in some definite manner, the use of which requires a more or less permanent location on the ground. The term shall be construed as if followed by the words "or part thereof." The term includes, without limitation, swimming pools, fences, flagpoles, antennas, playground equipment, and storage sheds.

1.23 "Voting Interests" means the voting rights distributed to the Association members.

2. ASSOCIATION.

2.1 Membership. Every owner of a Lot shall be a member of the Association, and by acceptance of a deed or other instrument evidencing their ownership interest, each owner accepts their membership in the Association, acknowledges the authority of the Association as herein stated, and agrees to abide by and be bound by the provisions of this Declaration, the Articles, and Bylaws, and the rules and regulations of the Association, as amended from time to time.

2.2 Number of Lots. There are 167 Lots. No Lot may be subdivided or joined together

without the consent of the Association.

2.3 Voting Rights. There shall be one (1) vote per each of the Lots as originally platted.

2.4 Delegation of Management. The Association may contract for the management and maintenance of those portions of the property it is required to maintain, and may authorize a licensed management agent to assist the Association in carrying out its powers and duties by performing functions which may include, but are not limited to, the submission of proposals, collection of assessments, keeping of records, enforcement of rules, and maintenance, repair and replacement of the common areas with funds made available by the Association for such purposes.

2.5 Acts of the Association. Unless the approval or affirmative vote of the Lot owners is specifically made necessary by some provision of the law or the governing documents, all approvals or actions permitted or required to be given or taken by the Association may be given or taken by its Board of Directors, without a vote of the Lot owners. The Officers and Directors of the Association have a fiduciary relationship to the Lot owners. A Lot owner does not have the authority to act for or bind the Association by reason of being a Lot owner.

2.6 Powers and Duties. The powers and duties of the Association include those set forth in Chapters 617 and 720, Florida Statutes, and in the governing documents. The Association may contract, sue, or be sued with respect to the exercise or non-exercise of its powers and duties. For these purposes, the powers of the Association include, but are not limited to, the maintenance, management, and operation of the common areas and duties defined by this Declaration and the Bylaws. The Association has the power to enter into agreements to acquire leaseholds, memberships, and other ownership, and possessory, easement, or use interests in lands or facilities for the use and enjoyment of the owners.

2.7 Purchase of Lots. The Association has the power to purchase Lots in the community in connection with the foreclosure of an Association lien for assessments, charges or fines, or any other foreclosure of an interest that affects the Association's lien, and to hold, lease, mortgage, encumber, or convey them with such power to be exercised by the Board of Directors.

2.8 Interests in Real Property. The Association has the power to acquire property, both real and personal. The power to acquire personal property shall be exercised by the Board of Directors. The power to acquire, encumber, or convey ownership interests in real property shall be exercised by the Board of Directors only after approval by two-thirds (2/3) of the members of the Association.

2.9 Disposition of Personal Property. Any personal property owned by the Association may be mortgaged, sold, or otherwise encumbered or disposed of by the affirmative vote of a majority of the entire Board of Directors, without need for authorization by the Lot owners.

2.10 Alterations, Improvements, Additions. The Association has the power to make material alterations, improvements, and additions to the common areas, including, but not limited to, installation of gates, gate houses, speed bumps and other traffic controls, as well as any other

alterations or additions, and the power shall be exercised by the Board of Directors unless the cost involved exceeds \$16,700.00. If the costs exceed \$16,700.00, then the approval of the majority of the members is required.

2.11 Rules, Regulations, Fines, Suspensions. The Association has the power to make reasonable rules regarding the use of the common areas and facilities, the use and appearance of the Lots and homes, and to levy fines and suspend the rights of the members and residents to use the common facilities in cases of violations.

3. ASSESSMENTS. The provisions of this Section shall govern assessments payable by all owners of Lots, for the common expenses of the Association not directly attributable to one of the Lots.

3.1 Covenant to Pay Assessments. Each owner of a Lot, by the act of becoming an owner, covenants and agrees, and each subsequent owner of any Lot (including any purchaser at a judicial sale) by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association:

(A) The Lot owner's share of annual assessments based on the annual budget adopted by the Board of Directors of the Association.

(B) The Lot owner's pro-rata share of special assessments for capital improvements or other Association expenditures not provided for by annual assessments.

(C) The Lot owner's pro-rata share of any regular or special assessments levied by the Master Association.

(D) Any charges properly levied against an individual Lot owner (i.e. individual assessments) without participation from other owners.

Assessments and charges shall be established and collected as provided herein and elsewhere in the governing documents. The owner of each Lot, regardless of how title was acquired, is liable for all assessments or installments thereon coming due while they are the owner. Multiple owners are jointly and severally liable. Whenever title to a Lot is transferred for any reason, the transferee is jointly and severally liable with the transferor for all unpaid assessments and charges against the transferor, regardless of when incurred, without prejudice to any right the transferee may have to recover from the transferor any amounts paid by the transferee. No owner may waive or otherwise escape liability for the assessments and charges provided for herein by waiver or non-use of the common areas, abandonment of the home or Lot, or otherwise. No owner may be excused from the payment of assessments unless all owners are similarly excused. Assessments and other funds collected by or on behalf of the Association become the property of the Association. No owner has the right to claim, assign, or transfer any interest therein except as an appurtenance to their Lot. No owner can withdraw or receive distribution of his prior payments to the common surplus or Association reserves, except as otherwise provided herein or by law. First mortgage holders have a partial exemption for liability for past due assessments only as required under Section 720.3085, Florida Statutes, as it

may be amended from time to time.

3.2 Purposes of Assessments. The assessments levied by the Association shall be used for the purposes of promoting the general welfare of the Lot owners and residents of the community to operate, maintain, repair, improve, construct, and preserve (on a non-profit basis) the common areas owned of the Association for the benefit of its members, their guests, tenants, and invitees; and to perform all other duties and responsibilities of the Association as provided in the governing documents. Common expenses also include the funds necessary to provide reserve accounts for renovation or major repairs to the common areas and for emergency and other repairs required as a result of storm, fire, natural disaster, or other casualty loss.

3.3 Share of Assessments – Regular, Special, and Individual. The owner of each Lot shall be liable for an equal share of the regular annual and special assessments levied by the Association for common expenses of the Association. All monetary fines assessed against an owner pursuant to the governing documents, or any expense or charge of the Association attributable to or on behalf of an individual owner pursuant to the governing documents, shall be an individual assessment and shall become a lien against such owner's Lot, which may be foreclosed or otherwise collected as provided herein.

3.4 Lien. The Association has a lien on each Lot for unpaid past due assessments and charges, together with interest, late payment penalties, reasonable attorney fees, and costs incurred by the Association in enforcing the lien. The lien is perfected by recording a Claim of Lien in the Public Records of Lee County, Florida, which Claim of Lien shall state the description of the property encumbered thereby, the name of the record owner, the amounts then due, and the dates when due. The Claim of Lien must be signed and acknowledged by an Officer or agent of the Association. The lien shall continue in effect until all sums secured by said lien have been fully paid, and the lien satisfied or discharged. The Claim of Lien shall secure all unpaid assessments, fines and charges, interest, late fees, attorney fees, and costs, and which are due and which may accrue or come due after the recording of the Claim of Lien and before the entry of a final judgment of foreclosure. Upon full payment, the person making payment is entitled to a satisfaction of the lien.

3.5 Foreclosure of Lien. The Association may bring an action in its name to foreclose its lien for unpaid assessments or charges by the procedures and in the same manner as is provided in Section 720.3085, Florida Statutes, and as may be amended from time to time, for the foreclosure of a lien upon a Lot for unpaid assessments. All unpaid assessments and charges also constitute a personal obligation of the owner, and the Association may, in addition to any other remedy herein provided, bring an action at law against any owner liable for unpaid charges or assessments. If final judgment is obtained, such judgment shall include interest on the assessments as above provided and reasonable attorney fees to be fixed by the Court, together with the costs of the action, and the Association shall be entitled to recover reasonable attorney fees in connection with any appeal of such action.

3.6 Priority of Liens. Except in regard to any exemption that the Association is required to provide to a first mortgage holder under Section 720.3085, Florida Statutes, the Association's lien for unpaid charges, assessments, and all other amounts shall relate back to the date the

original Declaration was recorded in the Public Records and be superior to, and take priority over, any other mortgage, lien, or interest recorded after that date. Any lease of a Lot shall be subordinate and inferior to the lien of the Association, regardless of when the lease was executed.

3.7 Application of Payments; Failure to Pay; Interest. Assessments, charges, and installments thereon paid on or before ten (10) days after the date due shall not bear interest, but all sums not so paid shall bear interest at the highest rate allowed by law, calculated from the date due until paid. In addition to interest, the Association may also charge an administrative late payment fee in an amount not to exceed the maximum amount allowed by law. Assessments, charges, and installments thereon shall become due, and the Lot owner shall become liable for said assessments or installments on the date established in the Bylaws or otherwise set by the Board of Directors for payment. Any restrictive endorsement on or accompanying a payment notwithstanding, all payments made to the Association by or on behalf of a Lot owner shall be applied first to interest, then to late fees, then to attorney fees, then to costs (including, but not limited to, collection charges imposed by the management company, attorney, and Court), then to fines (if allowed by law), then to other charges, and then to the oldest outstanding unpaid regular, special, or individual assessments. No payment by check is deemed received until the check has cleared the Bank. The Association shall also have the right to require any tenant occupying the home to pay the rent to the Association during any period in which assessments for the Lot are due, but have not been paid to the Association.

3.8 Suspensions. The right of a delinquent owner to vote may be suspended and the Association may also suspend the rights of delinquent owners, their household members, tenants, and guests, to use the common facilities.

3.9 Certificate as to Assessment; Mortgagee Questionnaires. Within ten (10) days after request by a Lot owner or mortgagee, the Association shall provide a certificate (sometimes referred to as an "estoppel letter") stating whether all assessments and other monies owed to the Association by the Lot owner with respect to the Lot have been paid. Any person other than the Lot owner who relies upon such certificate shall be protected thereby. The Association may charge a fee of \$250.00, or more if allowed by law, plus any related attorney fees, to issue the certificate. The Association may, but is not obligated to, respond to mortgagee questionnaires. If the Association chooses to respond to a mortgagee questionnaire, the Association may charge a fee (in addition to any charge for an estoppel letter), plus any related attorney fees for doing so.

3.10 Mortgage Foreclosure. All persons or entities acquiring title to a Lot as the result of a foreclosure or other Court ordered sale, shall be obligated to pay all past due assessments due and owing at the time of sale regardless of whether or not the Association has filed a Claim of Lien. No owner or acquirer of title to a Lot by foreclosure, or by a deed in lieu of foreclosure, may be excused from the payment of any assessments coming due during the period of his ownership, except as specifically required by law. The Association shall be entitled to reimbursement from the Lot owner or any other subsequent owner for any costs incurred as the result of being named as a party in a mortgage foreclosure action.

4. MAINTENANCE.

4.1 Lot Owner Maintenance. The individual Lot owner shall have the maintenance, repair, and replacement responsibility for the Lot and all improvements on the Lot including, but not limited to, replacement of any dead or diseased plants, bushes, trees, or sod, in accordance with the standards of a first class community, as may be defined by the Board of Directors.

4.2 Enforcement of Maintenance. If the owner of a Lot fails to maintain the Lot according to the community standards, the Association shall have the right to institute legal proceedings to enforce compliance, or may take any and all other steps necessary to remedy such violation, including, but not limited to, entering the Lot and remedying the violation, with or without consent of the Lot owner, but only after fourteen (14) days written notice of intent to do so. The Association may repair, replace, or maintain any item which constitutes a hazard to other property or residents, prevents the Association from fulfilling its maintenance responsibilities, or which has a materially adverse effect on the appearance of the properties. Any expenses so incurred by the Association shall be billed directly to the owner of the Lot to which such services are provided, and shall be an individual assessment charged against the Lot, secured by a lien against the Lot as provided above.

4.3 Negligence. Each Lot owner shall be liable for the expenses of any maintenance, repair, or replacement of common areas, other Lots, or personal property made necessary by the owner's act or negligence or by that of any member of the owner's family or the owner's guests, employees, agents, or lessees.

5. ARCHITECTURAL CONTROL.

5.1 Alterations and Additions Require Approval. No building, structure, enclosure, or other improvement shall be erected or altered, nor shall any grading, excavation, landscaping, change of exterior color, or other work which in any way alters the exterior appearance of any structure or Lot, shall occur unless and until the plans, specifications, and location of same shall have been submitted to, and approved in writing by, the Board of Directors. All approved modifications or improvements shall be completed within one hundred eighty (180) days from the date of approval. All changes to an approved plan shall also be approved pursuant to these same requirements. It shall be the right and duty of the Board of Directors to adopt architectural standards. All new homes and renovations shall conform to the height, size, and architecture of the existing homes in Spanish Wells Unit Two. The Board of Directors may delegate all or part of its responsibility under this Section to a committee.

5.2 Homes. All homes must be a minimum of 2,000 square feet under air. The front set-back is thirty feet (30'), the side set-backs are ten feet (10'), and the rear set-back is twenty feet (20'). Set-backs are measured from the eaves or overhang of roof. The unroofed portion of an attached lanai may extend into the rear set-back so long as it is ten feet (10') from the rear property line. All lanais, patios, and garages must be attached to the main structure of the home. There shall be no sheds, gazebos, pergolas or detached structures of any kind. Garages must be able to accommodate at least two (2) full sized automobiles. All driveways must have sufficient space for parking two (2) additional vehicles. Driveways must be covered with pavers or concrete, and existing non-conforming driveways must be replaced with pavers or concrete upon

obsolescence.

5.3 Pools, Spas and Recreational Equipment. No above ground swimming pools, hot tubs or spas are permitted. All swimming pools, hot tubs and spas must be on or incorporated into a caged lanai. No swings, sliding boards, basketball hoops or similar equipment are permitted outside of a caged lanai.

5.4 Fences, Hedges, Walls. No pens, dog runs, or other similar enclosures are permitted. Fencing and masonry walls are permitted, with prior written approval of the Board of Directors, but may only be used in the rear and side yards to screen air conditioners and other equipment. Privacy hedges are permitted in the side and back yards, with prior written approval of the Board of Directors, but may not extend into the front yards and may be otherwise restricted to preserve an open design. No fence, hedge or wall may exceed eight feet (8') in height in the side and back yards. No fence, hedge or wall may be placed within twenty feet (20') of the property line appurtenant to the golf course.

5.5 Antennas and Dishes. No antenna, satellite dish, or similar device of any kind shall be placed or erected upon any Lot or affixed in any manner to the exterior of any building other than a satellite antenna less than one meter in diameter, an aerial designed to receive over-the-air television broadcast, or an antenna designed to receive multi-channel, multi-point distribution service, which may be installed only at a location on a Lot approved by the Board of Directors. In approving the installation and location of any antenna, the Directors shall comply with all applicable laws, whether state or federal.

5.6 Mailboxes. All mailboxes shall be uniform. The Board of Directors may require owners to replace mailboxes and address markers prior to obsolescence in order to maintain uniformity.

5.7 Address Markers. Each home must display the street address number on the home that is easy to read from the street. The numbers must be at least 4 inches tall and displayed, horizontally, on the wall of the garage that faces street. The Board of Directors may adopt additional rules concerning the appearance of the address markers and may grant exceptions consistent with the intent that the street number of the homes is easy to identify.

5.8 Storm Protection. Adding or replacing storm protection (including but not limited to roll-down shutters, accordion shutters, fabric panels, metal panels or acrylic panels) requires the written approval of the ARC. The color of storm protection must be harmonious with the colors of the house,

5.9 Dumpsters, PODS. The placement of storage containers (such as "PODS"), dumpsters and similar equipment must be approved in advance by the Board of Directors. Storage containers (such as "PODS"), dumpsters and similar equipment must be removed within two (2) weeks unless the Board Directors approves an extension of time for good cause.

5.10 LP Gas Tanks. Below ground LP gas tanks are permitted, including in the setback, but

must conform to all state and local building codes and not be closer than five feet from the property line. Up to two 100-pounds above ground LP gas cylinders are permitted but may not be placed in the setback and must be shielded from view from the street and from the side yard.

6. USE RESTRICTIONS. The following rules and standards apply to the community:

6.1 Home. Each home shall be occupied by only one single family at any time. Each home shall be used as a home and for no other purpose. However, “no impact” home-based businesses in and from a home are allowed. Such uses are expressly declared customarily incident to residential use. Examples of businesses which are prohibited and are considered “impact” businesses are businesses or commercial activity or ventures that create customer traffic to and from the home, create noise audible from outside the home, or generate fumes or odors noticeable outside the home, including, but not limited to, a home day care, beauty salon/barber shop, and animal breeding. Signs and other advertising material visible from the street are prohibited.

6.2 Pets. A maximum of three (3) pets are permitted per household. Pets must be carried under the owner's arm or leashed at all times when outside the owner's property. Owners must immediately remove feces from the common areas and lawns and dispose of the fecal matter in their own sanitary trash containers. The ability to keep pets is a privilege, not a right, and the Board of Directors is empowered to fine an owner and/or order and enforce the removal of any pet that becomes a source of unreasonable annoyance to other residents, or a danger to the health, safety, and welfare of other residents. No wolf hybrids, reptiles, monkeys, rodents, amphibians, poultry, swine, rabbits, ferrets, or livestock may be kept anywhere on the premises. No commercial breeding or boarding of animals of any type is allowed.

6.3 Nuisances. No owner shall use their home, or permit it to be used, in any manner that constitutes or causes an unreasonable amount of annoyance or nuisance to the occupant of another home, or that would not be consistent with the maintenance of the highest standards for a first class residential community, nor permit the premises to be used in a disorderly or unlawful way. The use of each home shall be consistent with existing laws and the governing documents, and occupants shall at all times conduct themselves in a peaceful and orderly manner. No solicitation will be allowed at any time within the community. The Board of Directors' determination as to what constitutes a nuisance or annoyance shall be dispositive and shall control without regard to any legal definition of such terms.

6.4 Camping. No tents or camping facilities shall be permitted on the common areas or Lots.

6.5 Signs, Flags, Banners, Decorations. The Board of Directors may make rules limiting or entirely precluding "For Sale," "For Rent," "Open House," and other signs, flags, banners, or decorations.

6.6 Lighting. No exterior lighting shall be installed without prior written approval of the Board of Directors, and no lights shall be placed or used in any way that the lighting becomes a nuisance to another Lot. Seasonal holiday lights are allowed, but shall be subject to regulation

by the Board of Directors.

6.7 Garages; No On-Street Parking. No garage shall be converted to any other use that interferes with parking (2) standard size automobiles inside the garage. Parking is only permitted in the driveways. Parking on the grass or other landscaped areas is not allowed. Overnight parking on the street is not allowed.

6.8 No Trucks, Commercial or Recreational Vehicles, Motor Homes, Boats, or Repairs. No maintenance or mechanical repairs of vehicles or boats is permitted on the properties outside of garages, except in an emergency. No trucks, boats, ATV's, swamp buggies, dune buggies, go-carts, golf carts, wave runners, jet skis, motorcycles, mopeds, trailers, motor homes, travel trailers, campers, recreational vehicles, or commercial vehicles shall be parked anywhere on the Lot outside of the garage unless the vehicle is on the premises to provide services to an owner or the Association. This does not apply to non-commercial pick-up trucks. As used herein, the term "commercial vehicle" means any vehicle used for business purposes, including, but not limited to, any vehicle that displays a company name or logo on its exterior; is adorned with signs, flags, advertisements, or any type of lettering or graphic of a commercial nature; or any vehicle with racks, ladders, staging, or other equipment or attachments of a commercial nature, including supplies used for commercial purposes, on or visible in the vehicle. Additionally, and notwithstanding the foregoing, any vehicle, by whatever name designated, which is used for transporting goods, equipment, or paying customers shall be considered a commercial vehicle, regardless of any definition found elsewhere to the contrary. In addition any pick-up truck, or other vehicle, which cannot be parked in the garage attached to home where is being kept, with the door closed, may not be parked anywhere on the premises. Further, any vehicle, whether commercial or non-commercial, with body parts such as the hood, door, quarter-panel, bumper, or bed removed shall be placed in a garage. Notwithstanding the above restrictions, an owner may park a motor home in the driveway on the Lot for up to forty-eight (48) hours at a time, no more than twelve (12) times per year, for the purpose of loading and unloading.

6.9 Towing and Booting. Any vehicle that is parked in violation of the Association's restrictions may be towed or booted whether it is on property owned by the Association or on a Lot. The Association may take action, with prior notice being required. However, if giving notice is not effective to remedy the situation or the vehicle inhibits access to property or reasonably constitutes a potential safety issue, then action may be taken without notice. All costs and expenses shall be borne by the owner of the vehicle. Such costs and expenses shall not be considered a fine or suspension of the right to use the common facilities, and do not preclude the Association from pursuing those remedies instead of or in addition to towing or booting a vehicle. The Association is not liable for any damage to a vehicle that is towed or booted by a licensed and insured contractor. Owners and lessees are responsible to see that all of the occupants of their homes, as well as guests, visitors, and invitees, comply with the Association's parking restrictions. Owners are responsible to indemnify, defend, and hold the Association harmless from all claims relating to enforcement of the parking rule against the Association asserted by any occupant of a home, as well as any guests, visitors, and invitees to a home, excepting only if it has been judicially determined that the Association is guilty of gross negligence or a higher degree of culpability.

6.10 No Garage Sales. No garage sales, estate sales, tag sales, or other similar activities are allowed to be conducted on the Lots or common areas without prior written approval of the Board of Directors.

6.11 General.

(A) No towels, garments, rugs, etc., may be hung from windows or other parts of the home.

(B) No weeds, underbrush (other than indigenous growth), or other unsightly growths shall be permitted to grow or remain upon any part of the Lot, and no refuse pile or unsightly objects shall be allowed to be placed or remain anywhere thereon.

(C) Trash, garbage, and other waste shall be kept only in sanitary containers, which shall be kept in a clean and sanitary condition and in the garage or an enclosed area except when out for pick-up. Recycle bins and trash receptacles shall not be put on the curb before 4:00 p.m. the day prior to the scheduled pick-up, and shall be removed from the curb before midnight on the day of pick-up.

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

7.1 Association; Required Coverage. The Association shall maintain adequate property insurance covering all the common areas and all Association property. The Association shall also provide adequate general liability insurance. The amounts of coverage shall be determined annually by the Board of Directors. The insurance carried by the Association shall afford at least the following provisions:

(A) Liability. Premises and operations liability for bodily injury and property damage in such limits of protection and with such coverage as are determined by the Board of Directors, with cross-liability endorsement to cover liabilities of the Lot owners as a group to a Lot owner.

(B) Automobile. Automobile liability for bodily injury and property damage for all owned and non-owned motor vehicles when used for Association business, in such limits of protection and with such coverage as may be determined by the Board of Directors.

(C) Workers' Compensation. The Association shall maintain workers' compensation insurance.

(D) Directors and Officers Liability Coverage. The Association shall maintain liability coverage for all Directors, Officers, and committee members.

7.2 Owner's Duty to Insure. Each Lot owner is responsible for insuring the real and

personal property within their Lot and home. Each owner must recognize that they bear financial responsibility for any damage to their property or liability to others that would otherwise be covered by such insurance, including, but necessarily limited to, all risk, windstorm, sink hole flood and liability.

7.3 Owner's Duty to Reconstruct. If any home or other improvements located on any Lot and home are destroyed or damaged as a result of fire, windstorm, flood, tornado, hurricane, or other casualty, the owner of such improvements shall cause repair or replacement to be commenced within ninety (90) days from the date that such damage or destruction occurred, and to complete the repair or replacement within nine (9) months thereafter. All such repairs or replacements must restore the improvements to substantially their original character, design, and condition, and shall utilize and conform with the original foundation and appearance of the original improvements, except as otherwise approved by the Board of Directors. The Board of Directors may, based on its sole and exclusive discretion, extend the time periods for reconstructions contained herein.

7.4 Failure to Reconstruct. If the owner of any home fails to commence or complete construction to repair or replace any damaged or destroyed improvements within the time periods provided above, the Association shall give written notice to the owner of the default. If after thirty (30) days the owner has not made satisfactory arrangements to meet the owner's obligations, the Association shall be deemed to have been granted the right by the owner, as such owner's attorney-in-fact, to take any necessary and proper action to restore the Lot to a safe and aesthetically acceptable condition by demolishing the structure and providing appropriate landscaping, or by commencing and/or completing the repairs sufficient to substantially restore the improvements to their original condition, according to the plans and specifications of the original improvements or to demolish. If the Association exercises the rights afforded to it by this Section, which shall be in the sole discretion of the Board of Directors, the owner of the home shall be deemed to have assigned to the Association any right the owner may have to insurance proceeds that may be available because of the damage to or destruction of the improvement. The Association shall have the right to recover from the owner any costs not paid by insurance, and shall have a lien on the Lot and home to secure payment.

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

8. OCCUPANCY IN THE ABSENCE OF THE OWNER; LEASING.

8.1 Occupancy in Absence of Owner. If the owner and the owner's family who permanently reside with him are not occupying the home, then any occupancy shall be considered a lease whether or not the occupants are paying rent, and shall be subject to provisions pertaining to leases, except that the owner may permit the owner's home to be occupied without compliance with the provision pertaining to leasing under the following circumstances and limitations:

(A) Any person, who is the grandparent, parent, child, or adult grandchild of the owner or the owner's spouse, if any, may occupy the home in the absence of the owner without limitation as to the number of occasions or length of stays.

(B) In order not to be challenged by owners, security, or management, all overnight guests who are not accompanied by owners must be registered in accordance with policies and procedures established by the Board of Directors from time to time.

(C) Only eight (8) people may stay overnight in a home in the absence of the owner.

(D) Upon prior written application by the owner, the Board of Directors may make such limited exceptions to the foregoing restrictions as may be deemed appropriate in the Board's discretion for the sole purpose of avoiding undue hardship or inequity.

8.2 Leasing of Homes. The following restrictions shall apply to the leasing of the homes in the community:

(A) All leases must be in writing, even if no rent or other consideration is involved.

(B) The minimum lease term is thirty (30) continuous days. No new lease may begin until at least thirty (30) days have elapsed since the first day of the last lease. No lease may be for a period of more than one (1) year, and no automatic option for the lessee to extend or renew the lease for any additional period shall be permitted. However, the Board of Directors may, in its discretion, approve the same lease from year to year.

(C) An owner may lease only the entire home and no room rental or sub-leasing or assignment of lease rights by the lessee or owner is allowed.

(D) The lessee must be a natural person as opposed to an artificial entity, such as a corporation, partnership, trust, etc.

(E) The Association may determine the form of the application for approval of leases, may prescribe a form of lease to be used by the owners, and may conduct interviews and background checks on all proposed occupants.

(F) The owner shall provide the Association with a copy of the proposed lease and fully completed application for approval of the lease not less than twenty (20) days prior to the proposed occupancy.

(G) The lease and lease application must include the identification of all persons who will be occupying the home during the term of the lease.

(H) The Association may charge an application fee.

(I) The Association may file suit to evict any tenants in its own name, and without consent of the owner, in the event that any lessee violates the provisions of the governing documents or the rules or regulations of the Association. In such cases, the owner and the

lessee shall be jointly and severally liable for all attorney's fees and costs, including those incurred prior to the filing of the lawsuit.

(J) Any owner who is in arrears on the obligation to pay regular or special maintenance assessments or other financial obligation is deemed to have assigned the right to collect rents to the Association and, solely upon demand by the Association, the lessee shall make payment of all or such portion of the future rents that the Association specifies for so long as the Association specifies. The Association shall apply the rent to the owner's unpaid account in accordance with the priority established under Section 720.3085, Florida Statutes, and shall promptly remit any excess over the amounts due on the account to the owner.

(K) A proposed lease may only be disapproved for good cause. Appropriate good cause grounds for disapproval shall include, but not be limited to, the following:

(1) The owner is delinquent in the payment of assessments at the time the application is considered.

(2) The owner has a history of leasing the home without obtaining approval, or leasing to troublesome lessees, and/or refusing to control or accept responsibility for the occupancy of his home.

(3) The real estate company or rental agent handling the leasing transaction on behalf of the owner has a history of screening lessee applicants inadequately, recommending undesirable lessees, or entering into leases without prior Association approval.

(4) The application on its face indicates that the prospective lessee or any proposed occupant intends to act in a manner inconsistent with the restrictions applicable to the property.

(5) The prospective lessee or any proposed occupants have been convicted of a crime involving violence to persons or property, drug dealing, or are registered as a sexual predator and/or offender.

(6) The prospective lessee or any proposed occupants have a history of conduct that evidences disregard for the rights and property of others.

(7) The prospective lessee or any proposed occupants evidence a strong possibility of financial irresponsibility.

(8) The prospective lessee or any proposed occupants have, during previous occupancy, evidenced an attitude of disregard for the Association rules.

(9) The prospective lessee or any proposed occupants have given false or incomplete information to the Board of Directors as part of the application

procedure, or the required transfer fee and/or security deposit is not paid.

(10) The owner fails to give proper notice to the Association of the intention to lease the home.

8.3. Unapproved Leases. Any lease of a home that has not been approved by the Association may, at the option of the Association, be treated as a nullity, and the Board shall have the power to evict the lessee without securing consent for such eviction from the owner.

8.4 Additional Restrictions on Use and Occupancy During Lease Term.

(A) If the lessee and all of the family members who are approved to reside in the leased home are all absent, then no other person may occupy a leased home.

(B) Lessees may not have pets without prior approval of the Board of Directors.

(C) The Association may also impose additional conditions on lease approval and rules for lessees that are stricter than those that apply to owners, including, but not limited to, the number of vehicles that lessees and their visitors and guests may park in the community.

9. FORMS OF OWNERSHIP AND TRANSFERS OF THE LOTS. No approval of the Association is required to transfer the ownership of a Lot, but in order to maintain a community of congenial, financially responsible residents, with the objectives of protecting the value of the homes, inhibiting transiency, preventing fractional or vacation club-type ownership, facilitating the development of a stable, quiet community, and enhancing peace of mind for all residents, the transfer of ownership of a Lot shall be subject to the following provisions:

9.1 Forms of Ownership.

(A) Individual. A Lot may be owned by one natural person.

(B) Co-Ownership by Natural Persons. If the co-owners are not husband and wife, then the owners shall designate one natural person as the "primary occupant." No more than one change of primary occupant will be permitted in any twelve (12) month period. The use of the home by other persons shall be as if the primary occupant were the only actual owner.

(C) Ownership by Corporations, Partnerships, or Trusts. A Lot may be owned in trust, or by a corporation, partnership, or other entity that is not a natural person, conditioned upon designation by the owner of not more than one natural person to be the "primary occupant." No more than one change of primary occupant will be permitted in any twelve (12) month period. The use of the home by other persons shall be as if the primary occupant were the only actual owner.

(D) Life Estate. A life tenant shall be treated as the only owner of the Lot and shall exercise the voting rights and be liable for all assessments and charges against the Lot. If

there is more than one life tenant, they shall be treated as co-owners and shall be subject to the provisions of Section 9.1(B) above.

(E) Designation of Primary Occupant. If any owner fails to designate the primary occupant, then the Board of Directors may make the initial designation for the owner, and shall notify the owner in writing of its action.

9.2 Fees Related to Transfers of the Lots. The Association may charge the owner a fee for processing the transfer up to the maximum amount allowed by law.

10. AMENDMENTS; TERMINATION.

10.1 Duration. The conditions of this Declaration shall run with the land and shall inure to the benefit of and be enforceable by the Association or the owner of any real property subject to this Declaration, their respective legal representatives, heirs, successors, and assigns for thirty (30) years from the date of recording, and this Declaration shall be automatically renewed and extended for successive ten (10) year periods. The number of ten (10) year renewal periods hereunder shall be unlimited, with this Declaration being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period; provided, however, and subject to existing laws and ordinances, that there shall be no renewal or extension of this Declaration if prior to one (1) year in advance of an effective date of a proposed termination, at least three-quarters (3/4) of all owners of Lots and three-quarters (3/4) of all institutional mortgagees on Lots affirmatively vote, in person or by proxy, at a duly held meeting of the members of the Association, in favor of terminating this Declaration. It shall be required that written notice of any meeting at which such proposal to terminate this Declaration is to be considered, and setting forth the fact that such a proposal will be considered, shall be given at least ninety (90) days in advance of said meeting. If the Association votes to terminate this Declaration, the President and Secretary shall execute a certificate that shall set forth the resolution of termination adopted by the Association, the date of the meeting of the Association at which such resolution was adopted, the date that notice of such meeting was given, the total number of votes of members of the Association, the total number of votes required to constitute a quorum at a meeting of the Association, the number of votes necessary to adopt a resolution terminating this Declaration, and the total number of votes cast against such resolution. Said certificate shall be recorded in the Public Records of Lee County, Florida, at least one (1) year prior to the effective date of termination, and may be relied upon for the correctness of the facts contained therein as they relate to termination of this Declaration.

10.2 Amendments by Members. Except as otherwise provided herein or by law, this Declaration may be amended at any time by a majority vote of the Lot owners. A copy of each adopted amendment shall be attached to a certificate stating that the amendment was duly adopted as an amendment to the Declaration, which certificate shall identify the recorded Instrument Number or Official Records Book and Page Number of the Public Records where the Declaration is recorded, and shall be executed by the President of the Association with the formalities of a deed. The amendment shall be effective when the certificate and the amendment are recorded in the Public Records of Lee County, Florida.

11. ENFORCEMENT; GENERAL PROVISIONS.

11.1 Enforcement. Enforcement of these restrictions, reservations, covenants, and easements may be by a proceeding at law or in equity and may be instituted by the Association, its successors or assigns, or by any owner against any person or persons violating or attempting to violate or circumvent any restriction, reservation, covenant, or easement, either to restrain violation or to recover damages, and against any Lot to enforce any lien created by these restrictions, reservations, covenants, and easements. Failure of the Association or any owner to enforce any restriction, reservation, covenant, or easement herein contained for any period of time shall not be deemed a waiver or estoppel of the right to enforce same thereafter.

11.2 Owner and Member Compliance. The protective restrictions, reservations, covenants, easements, and other provisions of the governing documents and the rules promulgated by the Association shall apply to members and all persons to whom a member has delegated their right of use in and to the common areas, as well as to any other person occupying any home under lease from the owner or by permission or invitation of the owner or the owner's tenants (express or implied), and their licensees, invitees, or guests. Failure of any owner to notify any person of the existence of the rules, or the restrictions, reservations, covenants, and easements, and other provisions of the governing documents shall not in any way act to limit or divest the Association of the power to enforce these provisions. Each owner shall be responsible for any and all violations by the owner's tenants, licensees, invitees, or guests and by the guests, licensees, and invitees of the owner's tenants, at any time.

11.3 Litigation. Enforcement actions for damages, injunctive relief, or both, on account of any alleged violation of law, or of the governing documents or Association rules, may be brought by any owner, or the Association against:

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

11.4 Attorney Fees. In any legal proceeding arising out of an alleged failure of a guest, tenant, owner, Director, Officer, or the Association to comply with the requirements of the law, or the governing documents, and as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such attorney fees as may be awarded by the Court.

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

11.6 Notices. Any notice required to be sent to any member or owner under the provisions of this Declaration or its Exhibits shall be deemed to have been properly sent, and notice thereby given, when mailed with the proper postage affixed, or, if permitted by law, emailed, to the last known address of the owner appearing in the records of the Association, or to the address of the member's home. Notice to one of two or more co-owners of a home or Lot shall constitute notice to all co-owners. It shall be the obligation of every member to immediately notify the Secretary of the Association, in writing, of any change of address.

11.7 Severability. Should any covenant, condition, or restriction herein contained, or any Section, Sub-Section, sentence, clause, phrase or term of this Declaration, or its Exhibits, be declared to be void, invalid, illegal, or unenforceable, for any reason, by any Court having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no way affect the other provisions hereof, which are hereby declared to be severable and that shall remain in full force and effect. Nothing contained in this Declaration is intended to affect vested rights. If any provision contained herein is deemed by a competent Court of law to have such affect, then such provision will be deemed null and void, but have no effect on the remaining provisions herein.

11.8 Interpretation; Disputes. The Board of Directors is responsible for interpreting the provisions of this Declaration, its Exhibits, and the rules promulgated by the Board. Such interpretation shall be binding upon all parties unless wholly unreasonable. A written opinion rendered by legal counsel retained by the Board that an interpretation adopted by the Board is not unreasonable shall conclusively establish the validity of such interpretation. In the event there is any dispute as to whether the use of the property complies with the restrictions, reservations, covenants, and easements contained in this Declaration, its Exhibits, or the rules promulgated by the Board, the matter shall be referred to the Board of Directors and the determination of the Board with respect to such dispute shall be dispositive on the issue.

11.9 Non-Profit Status. Notwithstanding anything contained herein to the contrary, the Association will perform no act nor undertake any activity inconsistent with its non-profit status under applicable state or federal law.

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

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

EXHIBITS

- Exhibit "A" Subdivision Plat
- Exhibit "B" Amended and Restated Articles of Incorporation
- Exhibit "C" Amended and Restated and Bylaws

NOTE: SUBSTANTIAL AMENDMENT OF THE ENTIRE ARTICLES OF INCORPORATION. FOR PRESENT TEXT, SEE EXISTING ARTICLES OF INCORPORATION.

AMENDED AND RESTATED ARTICLES OF INCORPORATION
OF
SPANISH WELLS UNIT TWO HOMEOWNER'S ASSOCIATION, INC.

Pursuant to Section 617.1007, Florida Statutes, the Articles of Incorporation of Spanish Wells Unit Two Homeowner's Association, Inc., a Florida corporation not-for-profit, which was originally incorporated under the same name on November 26, 1979, are hereby amended and restated in their entirety. All amendments included herein have been adopted pursuant to Section 617.1002, Florida Statutes, and there is no discrepancy between the corporation's Articles of Incorporation as heretofore amended and the provisions of these Amended and Restated Articles of Incorporation other than the inclusion of amendments adopted pursuant to Section 617.1002, Florida Statutes, and the omission of matters of historical interest. The Amended and Restated Articles of Incorporation of Spanish Wells Unit Two Homeowner's Association, Inc., shall henceforth be as follows:

ARTICLE I

NAME. The name of the corporation is Spanish Wells Unit Two Homeowner's Association, Inc., (hereinafter "Association").

ARTICLE II

PRINCIPAL OFFICE. The principal office of the corporation shall be as established by the Board of Directors from time to time.

ARTICLE III

PURPOSE AND POWERS. The Association will not permit pecuniary gain, profit, or distribution of its income to its members, Directors, or Officers. It is a non-profit corporation formed for the purpose of establishing a corporate residential community homeowners association that, subject to the Declaration originally recorded in the Public Records of Lee County, Florida, at Official Records Book 1392, at Page 1801, *et seq.*, and as amended, has the powers described herein. The Association shall have all of the common law and statutory powers of a Florida corporation not-for-profit consistent with these Articles, the Bylaws, and with said Declaration, and shall have all of the powers and authority reasonably necessary or appropriate for the operation and regulation of a residential community, subject to said recorded Declaration, as it may from time to time be amended, including, but not limited to, the power:

- (A) To fix, levy, collect, and enforce payment by any lawful means, all charges, assessments, or liens pursuant to the terms of the Declaration, and to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the

business of the corporation, including all license fees, taxes, or governmental charges levied or imposed against the property or the corporation;

(B) To make, amend, and enforce reasonable rules and regulations governing the use of the common areas and the operation of the Association;

(C) To sue and be sued, and to enforce the provisions of the Declaration, the Articles, the Bylaws, and the reasonable rules of the Association;

(D) To contract for the management and maintenance of the common areas and to delegate any powers and duties of the Association in connection therewith, except such as are specifically required by the Declaration to be exercised by the Board of Directors or the membership of the Association;

(E) To employ accountants, attorneys, architects, and other professional personnel to perform the services required for proper operation of the properties;

(F) To dedicate, sell, or transfer all or any part of the common areas to any public agency, authority, or utility for such purposes, and subject to such conditions as may be agreed to by the members. No such dedication, sale, or transfer shall be effective unless first approved by two-thirds (2/3) of the voting interests, present and voting in person or by proxy, at a duly called meeting of the membership;

(G) To borrow money, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred if first approved by the Board of Directors.

(H) To maintain, repair, replace, and operate the property and business of the Association;

(I) To provide insurance upon the property of the Association and its Board of Directors;

(J) To acquire (by gift, purchase, or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, or otherwise dispose of real or personal property in connection with the affairs of the corporation;

(K) To grant, modify, or move easements;

(L) To exercise any and all powers, rights, and privileges which a corporation organized under Chapters 617 and 720 of the Florida Statutes may now or hereafter have or exercise, subject always to the Declaration and as amended from time to time.

All funds and the title to all property acquired by the Association shall be held for the benefit of the members in accordance with the provisions of the Declaration, these Articles, and the Bylaws.

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS.

- (A) No person except an owner is entitled to membership in the Association. "Owner" means the record owner of legal title to the Lot.
- (B) Every owner who holds record title to a residential Lot that is subject to assessment under the Declaration shall be a member of the Association. A membership may not be transferred except by transfer of record title to the residential Lot to which it is appurtenant. An owner of more than one residential Lot is entitled to one membership for each residential Lot to which the owner holds title.
- (C) Each residential Lot is entitled to one (1) vote. If more than one person holds record title to a residential Lot, there shall only be one vote, exercised as the owners determine among themselves.

ARTICLE V

TERM; DISSOLUTION. The term of the Association shall be perpetual. The Association may be dissolved with the consent given in writing and signed by not less than a majority of the total voting interests of the Association. Upon dissolution of the Association, other than incident to a merger or consolidation, its assets, both real and personal, shall be dedicated to an appropriate public agency to be used for purposes similar to those for which the Association was formed. In the event there is a refusal to accept such dedication, then such assets shall be granted, conveyed, or assigned to any non-profit corporation, association, trust or other organization which is devoted to purposes similar to those of the Association.

ARTICLE VI

BYLAWS. The Bylaws of the Association may be altered, amended, or rescinded in the manner provided therein.

ARTICLE VII

AMENDMENTS. Amendments to these Articles shall be proposed and adopted in the following manner:

- (A) Proposal. Amendments to these Articles shall be proposed by a majority of the Board or upon petition of one-tenth (1/10) of the voting interests, and shall be submitted to a vote of the members not later than the next annual meeting.
- (B) Vote Required. Except as otherwise required by Florida law or as provided elsewhere in these Articles, these Articles may be amended if the proposed amendment is

approved by the affirmative vote of at least a majority of the voting interests, present and voting in person or by proxy, at a duly called meeting of the members of the Association.

(C) Effective Date. An amendment shall become effective upon filing with the Secretary of State and recording a certified copy in the Public Records of Lee County, Florida, with the same formalities as are required in the Declaration for recording amendments to the Declaration.

ARTICLE VIII

DIRECTORS AND OFFICERS.

(A) The affairs of the Association will be administered, managed, and governed by a Board of Directors consisting of the number of Directors determined by the Bylaws, but not less than three (3) Directors, and in the absence of such determination shall consist of three (3) Directors. Directors must be members of the Association.

(B) Directors of the Association shall be elected by the members in the manner determined in the Bylaws. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided in the Bylaws.

(C) The business of the Association shall be conducted by the Officers designated in the Bylaws. The Officers shall be elected by the Board of Directors at its first meeting following the annual meeting of the members of the Association and shall serve at the pleasure of the Board.

ARTICLE IX

INDEMNIFICATION.

(A) Indemnity. The Association shall indemnify any Director, Officer, or committee member who was or is a party to, 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 (1) 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 (2) 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 that 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 Directors, Officers, and committee members as permitted by Florida law.

(B) 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 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.

(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 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 IX.

(D) Miscellaneous. The indemnification provided by this Article IX shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any Bylaw, agreement, vote of the 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.

(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, 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 IX.

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

ARTICLE X

SEVERABILITY. Should any provision, sub-section, or clause be declared unenforceable or void, the remaining provisions shall remain in full force and effect.

NOTE: SUBSTANTIAL AMENDMENT OF ENTIRE SET OF BYLAWS. FOR PRESENT TEXT, SEE EXISTING BYLAWS.

**AMENDED AND RESTATED BYLAWS
OF
SPANISH WELLS UNIT TWO HOMEOWNER'S ASSOCIATION, INC.**

1. GENERAL. These are the Amended and Restated Bylaws of Spanish Wells Unit Two Homeowner's Association, Inc., (hereinafter "Association"), a corporation not-for-profit, organized under the laws of Florida as a homeowners association for the purpose of operating a residential community. All prior Bylaws are hereby revoked and superseded in their entirety.

1.1 Principal Office. The principal office of the Association shall be at a place established by the Board of Directors from time to time.

1.2 Seal. The seal of the Association shall be inscribed with the name of the Association, the year of its organization, and the words "Florida" and "corporation not-for-profit." The seal may be used by causing it, or a facsimile of it, to be impressed, affixed, reproduced, or otherwise placed upon any document or writing of the corporation where a seal may be required.

2. MEMBERS. The members of the Association are the record owners of legal title to the Lots. In the case of a Lot subject to an agreement for deed, the purchaser in possession shall be deemed the owner of the Lot solely for purposes of determining use rights. If a Lot is subject to a life estate, then the tenant(s) shall be considered the owners for purposes of determining both use and voting rights.

2.1 Change of Membership. A change of membership shall become effective after all the following events have occurred:

(A) Recording in the Public Records of a deed or other instrument evidencing legal title to the Lot in the member.

(B) Delivery to the Association of a copy of the recorded deed or other instrument evidencing title.

(C) Designation, in writing, of a primary occupant, which is required when title to a Lot is held in the name of two (2) or more persons who are not husband and wife, or by a trustee or a corporation or other entity that is not a natural person.

2.2 Voting Interests. The members of the Association are entitled to one (1) vote for each Lot owned by them. The vote of a Lot is not divisible. The right to vote may be suspended for non-payment of regular annual assessments that are delinquent in excess of ninety (90) days. If a Lot is owned by one (1) natural person, the right to vote shall be established by the record title to the Lot. If a Lot is owned jointly by two (2) or more natural persons, that Lot's vote may be cast by any one (1) of the record owners. If two (2) or more owners of a Lot do not agree among themselves how their one (1) vote shall be cast on any issue, that vote shall not be counted for

any purpose. If the owner of a Lot is other than a natural person, the vote of that Lot shall be cast by the Lot's primary occupant. All votes must be cast by an owner or primary occupant.

2.3 Approval or Disapproval of Matters. Whenever the decision or approval of a Lot owner is required upon any matter, whether or not the subject of an Association meeting, the decision or other response may be expressed by any person authorized to cast the vote of the Lot at an Association meeting, as stated in Section 2.2 above, unless the joinder of all record owners is specifically required.

2.4 Change of Membership. A change of membership in the Association shall be established by the new member's membership becoming effective as provided for in Section 2.1 above. At that time the membership of the prior owner shall be terminated automatically.

2.5 Termination of Membership. The termination of membership in the Association does not relieve or release any former member from liability or obligation incurred under or in any way connected with the Association during the period of membership, nor does it impair any rights or remedies the Association may have against any former owner or member arising out of or in any way connected with such ownership and membership and the covenants and obligations incident thereto.

3. MEMBERS MEETINGS; VOTING.

3.1 Annual Meeting. There shall be an annual meeting of the members in each calendar year. The annual meeting shall be held in Lee County, Florida, in the first quarter of each year at a date, time, and place designated by the Board of Directors, for the purpose of electing Directors and transacting any other business duly authorized to be transacted by the members.

3.2 Special Members Meetings. Special members meetings must be held whenever called by the President or by a majority of the Board of Directors, and may also be called by members having at least ten percent (10%) of the voting interests. The business at any special meeting shall be limited to the items specified in the notice of meeting.

3.3 Notice of Meetings; Waiver of Notice. Notices of all members meetings must state the date, time, and place of the meeting. Notice of special meetings must include a description of the purpose or purposes for which the meeting is called. The notice must be mailed to each member at the member's address as it appears on the books of the Association, or may be furnished by personal delivery or electronic transmission. If a member has provided the Association with an e-mail address, then the member is deemed to have consented to receive notices by e-mail. The members are responsible for providing the Association with any change of address. The notice must be mailed, transmitted, or delivered at least fourteen (14) days prior to the date of the meeting. If ownership of a Lot is transferred after notice has been mailed or transmitted, no separate notice to the new owner is required. Attendance at any meeting by a member constitutes waiver of notice by that member, unless the member objects to the lack of notice at the beginning of the meeting. A member may also waive notice of any meeting at any time by written waiver.

3.4 Quorum. A quorum at members meeting shall be attained by the presence, either in person or by proxy, of persons entitled to cast at least twenty percent (20%) of the votes of the entire membership.

3.5 Vote Required. The acts approved by a majority of the votes cast by eligible voters at a meeting of the members at which a quorum has been attained shall be binding upon all Lot owners for all purposes, except where a different number of votes is expressly required by law or by any provision of the governing documents.

3.6 Proxy Voting. Members may cast their votes at a meeting in person or by proxy. A proxy shall be valid only for the specific meeting for which originally given and any lawful adjournment of that meeting. No proxy shall be valid for a period longer than ninety (90) days after the date of the first meeting for which it was given. Every proxy shall be revocable at the pleasure of the person executing it. To be valid, a proxy must be in writing, dated, and signed by the person authorized to cast the vote for the Lot, and specify the date, time and place of the meeting for which it is given, and the original must be delivered to the Secretary of the Association by the appointed time of the meeting or adjournment thereof. No proxy shall be valid if it names more than one (1) person as the holder of the proxy, but the holder shall have the right, if the proxy so provides, to substitute another person to hold the proxy. Holders of proxies must be members.

3.7 Participation at Meeting by Remote Communication. Unless prohibited by Chapter 720, Florida Statutes, if authorized by the Board of Directors as provided in Section 617.0721, Florida Statutes, and subject to such guidelines and procedures as the Board of Directors may adopt, members and proxy holders who are not physically present at a meeting may, by means of remote communication:

(A) Participate in the meeting.

(B) Be deemed to be present in person and vote at the meeting if:

(1) The corporation implements reasonable means to verify that each person deemed present and authorized to vote by means of remote communication is a member or proxy holder; and

(2) The corporation implements reasonable measures to provide such members or proxy holders with a reasonable opportunity to participate in the meeting and to vote on matters submitted to the members, including an opportunity to communicate and to read or hear the proceedings of the meeting substantially concurrent with the proceedings.

3.8 Adjourned Meetings. Any duly called meeting of the members may be adjourned to be reconvened at a later time by vote of the majority of the voting interests present, regardless of whether a quorum has been attained. When a meeting is so adjourned it shall not be necessary to give further notice of the time and place of its continuance if such are announced at the meeting

being adjourned. Any business which might have been conducted at the meeting as originally scheduled may instead be conducted when the meeting is reconvened, but only if a quorum is present.

3.9 Order of Business. The order of business at members meetings shall be substantially as follows:

- (A) Call of the roll or determination of quorum
- (B) Reading or disposal of minutes of last members meeting
- (C) Reports of Officers
- (D) Reports of Committees
- (E) Election of Directors (annual meeting only)
- (F) Unfinished business
- (G) New Business
- (H) Adjournment

3.10 Minutes. Minutes of all meetings of the members and of the Board of Directors shall be kept in a businesslike manner, and available for inspection by members or their authorized representative at all reasonable times. Minutes must be reduced to written form within thirty (30) days after the meeting.

3.11 Parliamentary Rules. Robert's Rules of Order (latest edition) shall guide the conduct of the Association meetings when not in conflict with the law, with the Declaration, with the Articles, or the Bylaws. The presiding Officer may appoint a parliamentarian whose decision on questions of parliamentary procedure shall be final. Any question or point of order not raised at the meeting to which it relates shall be deemed waived.

3.12 Action by Members Without Meeting. Except for the holding of the annual meeting and annual election of Directors, any action required or permitted to be taken at a meeting of the members may be taken by mail, without a meeting, if written consents or other instruments expressing approval of the action proposed to be taken are signed and returned by members, having not less than the minimum number of votes that would be necessary to take such action at a meeting at which all of the voting interests were present and voting. If the requisite number of written consents are received by the Secretary within sixty (60) days after the earliest date that appears on any of the consent forms received, the proposed action so authorized shall be of full force and effect as if the action had been approved by a vote of the members at a meeting of the members held on the sixtieth (60th) day. Within ten (10) days thereafter the Board shall send written notice of the action taken to all members. If the vote is taken by the method described in this Section 3.12, the list of Lot owners on record with the Secretary at the time of mailing the voting material shall be the list of qualified voters.

4. BOARD OF DIRECTORS. The administration of the affairs of the Association shall be by a Board of Directors. All powers and duties granted to the Association by law, as modified and explained in the Declaration, Articles, and Bylaws, shall be exercised by the Board of Directors, subject to approval or consent of the owners only when such is specifically required.

4.1 Number and Terms of Office. The number of Directors that shall constitute the whole Board of Directors shall be seven (7). All Directors shall be elected for three (3) year staggered terms. A Director's term will end at the annual election at which the Director's successor is duly elected, unless he sooner resigns or is removed as provided for in Section 4.5 below.

4.2 Qualifications. Each Director must be a Lot owner or primary occupant or the spouse of a Lot owner or primary occupant. In the case of a Lot owned by a corporation, any officer is eligible for election to the Board of Directors. If a Lot is owned by a partnership, any partner is eligible to be a Director. If a Lot is held in trust, the trustee, grantor, or settlor of the trust, or any one of the beneficial owners residing in the home on the Lot is eligible to be elected to the Board of Directors.

4.3 Nominations and Elections. Any person qualified to serve must have an opportunity to nominate themselves. The procedures for submitting nominations and voting shall be as established by the Board of Directors from time to time. The persons receiving the largest number of votes shall be elected, except that a tie vote shall be decided by the toss of a coin. Cumulative voting is not permitted.

4.4 Resignations; Vacancies on the Board. Any Director may resign at any time by giving written notice to the Association, and unless otherwise specified therein, the resignation shall become effective upon receipt. If the office of any Director becomes vacant for any reason, a successor shall be appointed by the Board at a special meeting of the Board of Directors of the Association. The successor so appointed shall fill the term of the Director being replaced until the next annual meeting. If for any reason there shall arise circumstances in which no Directors are serving and the entire Board is vacant, the members shall elect successors at a special meeting.

4.5 Removal of Directors. Any Director may be removed, with or without cause, by a majority vote of the Lot owners, by a written agreement in accordance with the procedures set forth under in Chapter 720, Florida Statutes. Any Director who is removed from office is not eligible to stand again for election to the Board until the next annual election.

4.6 Organizational Meeting. The organizational meeting of a new Board of Directors shall be held within ten (10) days after the election of new Directors, at such place and time as may be fixed and announced by the Directors at the annual meeting at which they were elected.

4.7 Other Meetings. Meetings of the Board may be held at such time and place as shall be determined from time to time by the President or by a majority of the Directors. Notice of meetings shall be given to each Director, personally or by mail, telephone, or electronic transmission, at least forty-eight (48) hours before the meeting.

4.8 Notices to Owners. Meetings of the Board of Directors shall be open to members except for meetings between the Board and its attorney with respect to proposed or pending litigation and meetings concerning personnel matters, and notices of all Board meetings, together with the agenda for the meeting, shall be posted conspicuously in the community at least forty-eight (48) continuous hours in advance of each Board meeting, except in an emergency. Notice of any

Board meeting at which rules affecting the use of a Lot or special assessments are to be considered shall specifically contain a statement that rules or special assessments will be considered and the nature of the rule or assessments and shall be mailed, delivered, or electronically transmitted and posted at least fourteen (14) days in advance.

4.9 Waiver of Notice. Any Director may waive notice of a meeting before or after the meeting, and such waiver is deemed equivalent to the giving of notice. If all Directors are present at a meeting, no notice to Directors shall be required.

4.10 Quorum of Directors. A quorum at a Board meeting shall be attained by the presence in person of a majority of all Directors. Directors may participate in any meeting of the Board, or meeting of an executive or other committee, by means of a conference telephone call or similar communicative arrangement whereby all persons present can hear and speak to all other persons. Participation by such means shall be deemed equivalent to presence in person at a meeting.

4.11 Vote Required. The acts approved by a majority of those Directors present and voting at a meeting at which a quorum has been attained shall constitute the acts of the Board of Directors, except when approval by a greater number of Directors is required by the governing documents or by applicable statutes. A Director who is present at a meeting of the Board is deemed to have voted in favor of every action taken, unless he voted against such action or abstained from voting because of an asserted conflict of interest. The vote or abstention of each Director present on each issue voted upon shall be recorded in the minutes of each meeting. Directors may not vote by proxy or secret ballot at Board meetings, except that secret ballots may be used in the election or removal of Officers.

4.12 Adjourned Meetings. A majority of the Directors present at any meeting of the Board of Directors, regardless of whether a quorum exists, may adjourn the meeting to be reconvened at a specified later time. When the meeting is reconvened, provided a quorum is present, any business that might have been transacted at the meeting originally called may be transacted.

4.13 Committees. The Board of Directors may appoint from time to time such standing or temporary committees as the Board may deem necessary and convenient for the efficient and effective operation of the Association. Any such committee shall have the powers and duties assigned to it in the resolution creating the committee. Only committees assigned with the power to make final decisions regarding the expenditure of Association funds or committees vested with the power to approve or disapprove architectural decisions with respect to a specific parcel of residential property owned by a member of the community are required to hold meetings that are open to members and notice and hold their meetings with the same formalities as required for Board meetings. Committees vested with the power to approve or disapprove architectural decisions with respect to a specified parcel of residential property owned by a member of the community may not vote by proxy or secret ballot.

4.14 Emergency Powers. In the event of any emergency, 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 including:

(A) 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.

(B) The Board may relocate the principal office or designate alternative principal offices or authorize the Officers to do so.

(C) 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.

(D) Corporate action taken in good faith during what is reasonably believed to be an emergency under this Section to further the ordinary affairs of the Association shall bind the Association, and shall have the rebuttal presumption of being reasonable and necessary.

(E) 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.

(F) These emergency Bylaws shall supersede any inconsistent or contrary provisions of the Bylaws during the period of the emergency.

(G) An "emergency" exists for purposes of this Section during the time when a quorum of the Board cannot readily be assembled because of the occurrence or imminent occurrence of a catastrophic event, such as a hurricane, act of war, civil unrest or terrorism, or other similar event. An "emergency" also exists during the period of time that civil authorities have declared that a state of emergency exists in, or have ordered the evacuation of, the area in which Spanish Wells Unit Two is located, or have declared that area a "disaster area." A determination by any two (2) Directors, or by the President, that an emergency exists shall have presumptive validity.

4.15 Delinquent Directors. Any Director who is more than ninety (90) days delinquent in his or her obligation to pay assessments to the Association is deemed to have resigned from office.

5. OFFICERS.

5.1 Officers and Election of Officers. The Executive Officers of the Association shall be a President and a Vice-President, who must be Directors, and a Secretary and a Treasurer, all of whom shall be elected annually by a majority vote of the Board of Directors. Any Officer may be removed with or without cause at any meeting by vote of a majority of the Directors. Any Officer so removed shall return all books, records, and property of the Association to the Association within seventy-two (72) hours of their removal. Any person except the President may hold two (2) or more offices. The Board may, from time to time, appoint such other

Officers and designate their powers and duties as the Board shall find to be required to manage the affairs of the Association. If the Board so determines, there may be more than one (1) Vice-President.

5.2 President. The President shall be the Chief Executive Officer of the Association; shall preside at all meetings of the members and Directors; shall be *ex-officio* a member of all standing committees; shall have general and active management of the business of the Association; and shall see that all orders and resolutions of the Board are carried into effect. The President shall execute bonds, mortgages, and other contracts and documents requiring the seal of the Association, except where such are permitted by law to be otherwise signed and executed, and the power to execute is delegated by the Board of Directors to some other Officer or agent of the Association. The President shall also serve as the Association's representative on the Board of Directors of Spanish Wells Community Association, Inc. unless the Board has appointed another person to represent Spanish Wells Unit Two.

5.3 Vice-President. The Vice-President shall, in the absence or disability of the President, perform the duties and exercise the powers of the President, and shall perform such other duties as the Board of Directors shall assign.

5.4 Secretary. The Secretary shall attend meetings of the Board of Directors and all meetings of the members and shall cause all votes and the minutes of all proceedings to be recorded in a book or books to be kept for the purpose, and shall perform like duties for standing committees when required. The Secretary shall give, or cause to be given, proper notice of all meetings of the members, and of the Board of Directors, and shall perform such other duties as may be prescribed by the Board or the President. The Secretary shall keep in safe custody the seal of the Association and, when authorized by the Board, affix the same to any instrument requiring it. The Secretary shall be responsible for the proper recording of all duly adopted amendments to the governing documents. Any of the foregoing duties may be performed by an Assistant Secretary, if one has been designated.

5.5 Treasurer. The Treasurer shall have the custody of Association funds and securities, and be responsible for the keeping of full and accurate accounts of receipts and disbursements in books belonging to the Association. The Treasurer is responsible for the deposit of all monies and other valuable effects in the name and to the credit of the Association in such depositories as are selected by the Board of Directors. The Treasurer shall oversee the disbursement of Association funds, keeping proper vouchers for such disbursements, and shall render to the President and Directors, at meetings of the Board or whenever they may require it, a full accounting of all transactions and of the financial condition of the Association. The Treasurer shall prepare an annual budget of estimated revenues and expenses to present to the Board of Directors for approval. Any of the foregoing duties may be performed by an Assistant Treasurer, if one is elected.

5.6 Compensation of Officers and Directors. Directors and Officers may be reimbursed for out-of-pocket expenses, but no compensation shall be paid to any Director or Officer for services as a Director or Officer of the Association.

6. FISCAL MATTERS. The provisions for fiscal management of the Association set forth in the Declaration shall be supplemented by the following provisions:

6.1 Depository. The Association shall maintain its funds in such federally insured accounts at financial institutions in the State of Florida as shall be designated from time to time by the Board of Directors. Withdrawal of monies from such accounts shall only be by such persons as are authorized by the Board. The Board may invest Association funds in interest-bearing accounts, money market funds, certificates of deposit, U.S. Government securities, and other similar investment vehicles.

6.2 Accounts of the Association. The Association shall maintain its accounting books and records according to generally accepted accounting principles. There shall be an account for each Lot. Such accounts shall designate the name and mailing address of each Lot owner, the amount and due date of each assessment or charge against the Lot, amounts paid, date of payment, and the balance due.

6.3 Budget. The Treasurer shall prepare and the Board of Directors shall adopt a budget of the Association's estimated revenues and expenses for each coming fiscal year. Once adopted, the Association shall provide to each member a copy of the annual budget or a written notice that a copy of the budget is available upon request at no charge to the member. The proposed budget shall be detailed and shall show the amounts budgeted by accounts and revenue and expense classifications. The estimated surplus or deficit as of the end of the current year shall be shown.

6.4 Reserves. The Board of Directors may establish in the budget one (1) or more reserve accounts for capital expenditures, deferred maintenance, or contingency reserves for unanticipated operating expenses. Board adopted reserve funds are not controlled by Chapter 720, Florida Statutes, and, therefore, may be spent, waived, or used as approved by the Board. Membership adopted reserves are restricted by Chapter 720, Florida Statutes, and, therefore, membership adopted reserves may only be used, waived, or reduced on a yearly basis according to Chapter 720, Florida Statutes. The purpose of reserves is to provide financial stability and to avoid the need for special assessments. The annual amounts proposed to be so reserved shall be shown in the annual budget.

6.5 Assessments. The regular annual assessment based on an adopted budget is due on the first day of January and shall be paid in advance. Written notice of the annual assessment shall be sent to the owner of each Lot prior to the due date, but failure to send (or receive) such notice does not excuse the obligation to pay. If an annual budget for a new fiscal year has not been adopted, or if notice of any increase has not been made before the due date of the payment, it shall be presumed that the amount of the annual assessment is the same as for the prior year, and payments shall be continued at such rate until a new budget is adopted. Any assessment that is not paid when due shall be delinquent. If the assessment is not paid within ten (10) days after the due date, it shall accrue interest from the due date at the highest rate allowed by law and shall incur a late fee in the highest amount allowed by law.

6.6 Special Assessments. Special assessments may be imposed by the Board of Directors when necessary to meet unusual, unexpected, unbudgeted, or non-recurring expenses, or for such

other purposes as are authorized by the Declaration and these Bylaws. Special assessments are due on the day specified in the resolution of the Board approving such assessment. The notice of any Board meeting at which a special assessment will be considered shall be given as provided in Section 4.8 above, and the notice to the owners that the assessment has been levied must contain a statement of the purpose(s) of the assessment.

6.7 Fidelity Bonds. The President, Treasurer, and all other persons who are authorized to sign checks, shall be bonded in such amounts as may be required by law or otherwise determined by the Board of Directors. The premiums on such bonds are a common expense.

6.8 Financial Reports. Not later than ninety (90) days after the close of each fiscal year, the Board of Directors shall cause to be prepared a financial report as prescribed in Section 720.303, Florida Statutes. The Association shall provide each member with a copy of the financial report or a written notice that a copy of the financial report is available upon request at no charge to the member.

6.9 Audits. Unless required by law, the Board of Directors may, but is not required, to order a formal audit of the Association's financial reports to be performed by a certified public accountant, and a copy of the audit report shall be available to all members if one is prepared and the cost is a common expense.

6.10 Application of Payments and Co-Mingling of Funds. All monies collected by the Association may be co-mingled in a single fund or divided into two (2) or more funds, as determined by the Board of Directors. Regardless of any restrictive endorsement, all payments on account by a Lot owner shall first be applied to interest, then to late fees, then to attorney fees, then to costs, then to other charges and fines, and then to the regular or special assessments.

6.11 Fiscal Year. The fiscal year for the Association shall begin on January 1st of each calendar year and end on December 31st of that same calendar year.

6.12 Contracts. The Board of Directors shall obtain competitive bids on any contract exceeding ten percent (10%) of the annual budget, including reserves. However, the Board of Directors shall not be obligated to accept the lowest bid so long as the action is taken at a duly noticed meeting of the Board of Directors. Any contract that obligates the Association for a term of more than one (1) year must be approved by a majority of the vote of the members. The Board shall not enter into contracts with automatic renewal clauses that obligate the Association for a period in excess of thirty (30) days.

7. RULES AND REGULATIONS; USE RESTRICTIONS. The Board of Directors may, from time to time, adopt and amend administrative rules and regulations governing the use, maintenance, management, and control of the common areas, the Lots, and the operation of the Association. Copies of such rules and regulations shall be furnished to each Lot owner.

8. COMPLIANCE AND DEFAULT; REMEDIES. In addition to the remedies provided in the Declaration, the following shall apply:

8.1 Fines and Suspensions. The Board of Directors may levy fines and/or suspensions against members, or members' tenants or guests, or both, who commit violations of Chapters 617 or 720, Florida Statutes, the provisions of the governing documents, or the rules and regulations. Fines shall be in amounts deemed necessary by the Board of Directors to deter future violations. The maximum fine for a single violation shall be \$100.00. The maximum fine for a continuing violation shall not be limited to \$1,000.00, except if the law requires such limit. If allowed by law, fines shall be secured by a lien on the owner's Lot. Suspensions of the use of common areas, facilities, and common non-essential services (e.g. bulk cable television and/or internet) may be imposed for a reasonable period of time to deter future violations. The procedure for imposing fines or suspending use rights shall be as follows:

(A) Notice. The party against whom the fine and/or suspension is sought to be levied or imposed shall be afforded an opportunity for a Hearing after reasonable notice of not less than fourteen (14) days, and the notice shall include:

- (1) A statement of the date, time, and place of the Hearing, or instruction on how to request a Hearing;
- (2) A specific designation of the provisions of the Chapters 617 or 720, Florida Statutes, the governing documents, or the rules which are alleged to have been violated;
- (3) A short and plain statement of the specific facts giving rise to the alleged violation(s); and
- (4) The possible amounts of any proposed fine and/or possible use rights of common areas or facilities to be suspended.

(B) Hearing. At the Hearing the party against whom the fine and/or suspensions may be levied shall have a reasonable opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved, and to review, challenge, and respond to any evidence or testimony presented by the Association. The Hearing shall be conducted before a panel of three (3) owners appointed by the Board, none of whom may then be serving as Directors or Officers, or who are employees of the Association, or the spouse, parent, child, brother or sister of an Officer, Director or employee. If the committee, by majority vote, does not agree with the proposed fine and/or suspension, it may not be levied or imposed. If the committee agrees with the proposed fine and/or suspension, the Board of Directors shall levy same.

8.2 Fines and Suspensions Without Hearing. The foregoing notwithstanding, unless prior notice and a Hearing is specifically required by law, no prior notice or opportunity for a Hearing is required for the imposition of a fine or suspension upon any member because of the failure of the member to pay assessments or other charges when due.

8.3 Suspension of Voting Rights. If an owner is more than ninety (90) days overdue in payment of assessments or other financial obligation to the Association, then the owner's voting

rights shall automatically be suspended until such time as the owner's account is paid in full.

8.4 Correction of Health and Safety Hazards. Any violation of the Association's rules that creates conditions of the property that are deemed by the Board of Directors to be a hazard to the public health or safety may be dealt with immediately as an emergency matter by the Association, and the cost thereof shall be charged to the Lot owner.

9. AMENDMENT OF BYLAWS. Amendments to these Bylaws shall be proposed and adopted in the following manner:

9.1 Proposal. Amendments to these Bylaws shall be proposed by a majority of the Board.

9.2 Vote Required. These Bylaws may be amended if the proposed amendment is approved by a majority of the Lot owners.

9.3 Effective Date. An amendment shall become effective upon the recording of a copy in the Public Records of Lee County, Florida, with the same formalities as are required in the Declaration for recording amendments to the Declaration.

10. MISCELLANEOUS.

10.1 Gender; Number. Whenever the masculine or singular form of a pronoun is used in these Bylaws, it shall be construed to mean the masculine, feminine, or neuter; singular or plural, as the context requires.

10.2 Severability. If any portion of these Bylaws is void or becomes unenforceable, the remaining provisions shall remain in full force and effect.

10.3 Conflict. If any irreconcilable conflict should exist or hereafter arise with respect to the interpretation of these Bylaws, the Declaration, or the Articles, the provisions of the Declaration or Articles shall prevail over the provisions of these Bylaws.