

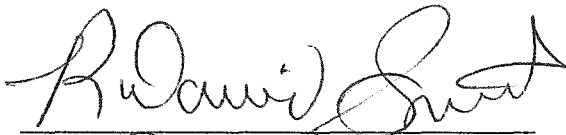
THIS INSTRUMENT PREPARED BY:  
Amanda K. Barritt, Esq.  
Henderson, Franklin, Starnes, & Holt, P.A.  
P.O. Box 280  
Fort Myers, FL 33902-0280

**CERTIFICATE OF THIRD AMENDED AND RESTATED DECLARATION OF  
PROTECTIVE COVENANTS FOR SPANISH WELLS COMMUNITY  
AND  
THIRD AMENDMENT AND RESTATEMENT OF BYLAWS  
AND ARTICLES OF INCORPORATION  
OF SPANISH WELLS COMMUNITY ASSOCIATION, INC.**

THE UNDERSIGNED being the President of SPANISH WELLS COMMUNITY ASSOCIATION, INC., a Florida non-profit corporation (the "Association"), does hereby certify that the Third Amended and Restated Declaration of Protective Covenants for Spanish Wells Community as attached hereto as Exhibit "A", the Third Amended and Restated Articles of Incorporation of Spanish Wells Community Association, Inc., as attached hereto as Exhibit "B", and the Third Amended and Restated ByLaws of Spanish Wells Community Association, Inc., as attached hereto as Exhibit "C", were duly adopted ratified and approved by the Association membership at a duly noticed meeting of the members of the Association held on the 8th day of July, 2020. The original Declaration of Protective Covenants for Spanish Wells Community was recorded at Official Records Book 2582, Page 189, of the Public Records of Lee County, Florida.

WITNESSES:

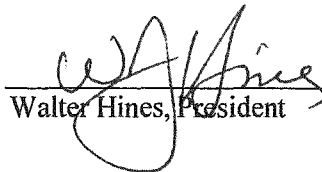
SPANISH WELLS COMMUNITY  
ASSOCIATION, INC.

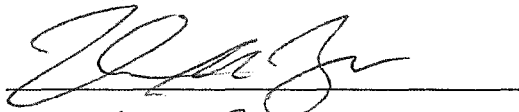


Print:

R. David Smith

BY:

  
Walter Hines, President



Print:

John Lizzo (Assoc. MGR.)

STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument was acknowledged before me by means of  physical presence OR  online notarization this 10<sup>th</sup> day of July, 2020 by Walter Hines, as President of Spanish Wells Community Association, Inc., a Florida not for profit corporation, on behalf of the corporation, who is personally known to me or who has produced \_\_\_\_\_ as identification.



\_\_\_\_\_  
Notary Public

Kristine Beaver

\_\_\_\_\_  
Printed Name

Commission Expires: 9/20/22

## EXHIBIT "A"

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

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### **THIRD AMENDED AND RESTATED DECLARATION OF PROTECTIVE COVENANTS FOR SPANISH WELLS**

#### **KNOW ALL MEN BY THESE PRESENTS:**

The original Declaration of Protective Covenants for Spanish Wells was recorded in Book 2582 at page 189, *et seq*, of the Official Records of Lee County, Florida (the "Original Declaration"). The Amended and Restated Declaration of Protective Covenants for Spanish Wells was recorded in Book 2798 at page 2499, *et seq*, of the Official Records of Lee County, Florida. The Second Amended and Restated Declaration of Protective Covenants for Spanish Wells was recorded as Instrument No. 2006000138085 in Official Records of Lee County, Florida. Amendments to the Second Amended and Restated Declaration were recorded as Instruments 2011000083578, 2017000104079 and 2017000197712 in the Official Records of Lee County Florida. The Second Amended and Restated Declaration of Protective Covenants for Spanish Wells is hereby amended and restated in its entirety.

No land is being added or subtracted by this instrument. The land subject to this Declaration (hereinafter the "Property") is legally described in Exhibit "A" to the Original Declaration which Exhibit is hereby incorporated by reference herein.

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 Parcel or any other ownership interest in the property, or the lease, occupancy, or use of any portion of a Parcel or the property, constitutes an acceptance and ratification of all provisions of this Third Amended and Restated Declaration of Protective Covenants for Spanish Wells, and any future amendments thereto, and an agreement to be bound by its terms.

1. **DEFINITIONS.** The following words and terms used in this Third Amended and Restated Declaration of Protective Covenants 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 Assessments, Special Assessments, and Individual Assessments.

1.2 "**Articles**" and "**Bylaws**" as used herein mean the Third Amended and Restated Articles of Incorporation and Third Amended and Restated Bylaws for Spanish Wells Community Association, Inc., respectively, which are attached as Exhibit B and C to this Declaration.

1.3 "**Association**" means Spanish Wells Community Association, Inc., a Florida corporation not-for-profit.

**1.4** "**Association Property**" means all the personal and real property owned by the Association, regardless of location.

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

**1.6** "**Common Areas**" means all real property within the Community which is owned or leased by the Association or dedicated for use or maintenance by the Association or its Members, regardless of whether title has been conveyed to the Association.

**1.7** "**Common Expenses**" means the expenses incurred by the Association in the course of performing its duties under the governing documents and the law.

**1.8** "**Communication Services**" means the transmission, conveyance or routing of voice, data, audio, video or any other information or signals, including cable services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. The term includes such transmission, conveyance or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added. Communication services as referenced shall also include security alarm system monitoring services.

**1.9** "**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.

**1.10** "**Club**" or "**Country Club**" means any of the land within the Property designated or referred to as Spanish Well Country Club or similar designation, containing amenities, including but not limited to a 27 hole golf course, cart paths, tennis courts, bocce courts, exercise facilities and a club house as well as any parcel owned by the owner of the Club where equipment is stored. The Country Club is roughly depicted on the "General Plan", attached as Exhibit A. The Country Club is more particularly described in a Deed to the Association recorded as Instrument No. 2018000006316 in the Official Records of Lee County Florida. The Country Club is currently owned by the Association.

**1.11** "**Declaration**" means this Third Amended and Restated Declaration of Protective Covenants and as may be amended from time to time.

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

(A) One (1) natural person.

(B) Two (2) 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 (2) or more natural persons meeting the requirements of Section 1.12(B) above, except that there is among them one person who is not related to some or all of the others.

**1.13 "Governing Documents"** means and includes this Third Amended and Restated Declaration, the Third Amended and Restated Articles of Incorporation, the Third Amended and Restated Bylaws, and the Rules and Regulations adopted by the Association, and as any of these may be amended from time to time.

**1.14 "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.

**1.15 "Home"** means a residential dwelling unit intended for residential use.

**1.16 "Individual Assessment"** means an Assessment levied against a particular Parcel or a group of Parcels where the Association has incurred a reimbursable expense on behalf of an Owner due to the action or inaction of the Owner of such Parcel or Parcels in accordance with this Declaration.

**1.17 "Institutional Mortgagee"** shall mean and refer to a bank, life insurance company, federal or state savings and loan association, real estate or mortgage investment trust, qualified pension, profit sharing, IRA accounts or trusts, or lender generally recognized in the community as an institutional lender.

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

**1.19 "Mailing"** shall include transmission by email or facsimile unless otherwise specified herein or required by law.

**1.20 "Maintenance," "Repair," and "Replacement"** 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 or to restore to a former condition after destruction.

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

**1.22 "Neighborhood"** means the eight residential subdivisions of the Spanish Wells, which are:

Spanish Wells Unit One  
Spanish Wells Unit Two  
Spanish Wells Unit Three

The Golf Condominiums  
Lake Club  
Cordova- f/k/a Lakehurst  
Las Brisas  
Marbella

1.23 **"Neighborhood Association"** means the condominium association or homeowners' association responsible for operating one of the Neighborhoods.

1.24 **"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.

1.25 **"Owner"** or **"Parcel Owner"** means the record owner of legal title to a Parcel.

1.26 **"Parcel"** includes the platted lots and condominium units within the Property. At such time as the Country Club ceases to be owned by the Association, the Country Club shall be deemed to be a Parcel.

1.27 **"Primary Occupant"** means the natural person approved for occupancy of a home when title to the Parcel 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, the term "Primary Occupant" shall be synonymous with the term "Owner."

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

1.29 **"Regular Assessment"** shall mean the share of funds required for the payment of Common Expenses assessed against each Parcel by the Association annually based on the annual budget adopted by the Board.

1.30 **"Rules and Regulations"** means the administrative rules and regulations which may be adopted and amended by the Board from time to time as provided for in the Bylaws.

1.31 **"Special Assessment"** means any Assessment levied against all of the Parcels other than the Regular Assessment, for the purpose of capital expenses or other unbudgeted expenses.

1.32 **"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, dog runs, flagpoles, antennas, playground equipment, storage sheds, pergolas, gazebos, trellises and arbors.

1.33 **"SWMS"** means the Surface Water Management Systems serving the Community.

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

**1.35** "**Water Management Facilities**" means those portions of the property that are designated as conservation areas or designed or intended to be used as part of the surface water management system, also sometimes referred to as "SWMS" to include the surface water drainage for the Community, that are designated by the Association or dedicated to the Association on a plat or recorded easement instrument, or which are so provided for in applicable permits.

## **2. ASSOCIATION.**

**2.1** **Membership.** Every Owner of a Parcel shall be a Member of the Association, and by acceptance of a deed or other instrument evidencing his ownership interest, each Owner accepts his 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. Notwithstanding the foregoing, the Country Club shall not be entitled to a membership for so long as the Country Club is owned by the Association. At such time, if any, as the Association no longer owns the Country Club, the Owner of the Country Club shall be a Member.

**2.2** **Voting Rights.** There shall be one (1) vote per Parcel.

**2.3** **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 Regulations, and Maintenance, Repair and Replacement of both the Common Areas and Association Property with funds made available by the Association for such purposes.

**2.4** **Acts of the Association.** Unless the approval or affirmative vote of the 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 Parcel Owners. The Officers and Directors of the Association have a fiduciary relationship to the Parcel Owners. A Parcel Owner does not have the authority to act for or bind the Association by reason of being a Parcel Owner.

**2.5** **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 Association Property and duties defined by this Declaration and the Bylaws. The Association has the power to borrow money, enter into agreements to acquire leaseholds, memberships, and other ownership, possessory, easement, or use interests in lands or facilities, for the use and enjoyment of the Owners.

**2.6 Purchase of Foreclosure Parcels.** The Association has the power to purchase or lease Parcels within 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.

**2.7 Acquisition and Disposition of Interests in Real Property.** The Association has the power to acquire and dispose of property, both real and personal. The power to acquire or dispose of 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 the two-thirds (2/3) of the Members present in person or by proxy and voting at a membership meeting called for that purpose at which there is quorum.

**2.8 Country Club Premises and Facilities.** The owner of the Club has the right to impose user fees and other terms and conditions for access to the Country Club and the use of the Club facilities and amenities. So long as the Club is owned by the Association, all rights of the owner of the Club shall be exercised by the Board of Directors.

**2.9 Alterations, Additions to Common Areas and Association Property.** The Association has the power to make material alterations, and additions to the Common Areas, and Association property. Examples include, but are not limited to, construction of walls, fences, gates, speed bumps, monuments and signs, as well as making material, changes to existing structures. These powers shall be exercised by the Board of Directors unless the incremental cost involved exceeds ten percent (10%) of the annual budget, exclusive of reserves. If the cost exceeds the ten percent (10%) threshold then the approval of the majority of the members present in person or by proxy and voting at a meeting called for that purpose, at which there is quorum, is required. The approval requirement does not apply to expenditures required to maintain, repair and replace the common areas and Association Property or to expenditures required to comply with court orders, laws and ordinances.

**2.10 Rules, Regulations, Fines, Suspensions.** The Association has the power to make reasonable rules regarding the use of the Common Areas, facilities, amenities, Association Property and the use of the Parcels.

**2.11 Bulk Communication Contracts.** The Board of Directors has the power, but not the obligation, to enter into contracts for bulk Communication Services.

**3. ASSESSMENTS.** The provisions of this Section shall govern Assessments payable by all



Owners of the Parcels, for the Common Expenses of the Association not directly attributable to one of the Parcels.

**3.1 Covenant to Pay Assessments.** Each Owner of a Parcel, by the act of becoming an Owner, covenants and agrees, and each subsequent owner of any Parcel (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 Owner's share of Regular Assessments based on the annual budget adopted by the Board of Directors of the Association;
- (B) The Owner's share of Special Assessments for capital improvements or other Association expenditures not provided for by Regular Assessments; and
- (C) Any charges properly levied against an individual Parcel (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 Parcel, regardless of how title was acquired, is liable for all Assessments or installments thereon coming due while he is the Owner. Multiple Owners are jointly and severally liable for all Assessments coming due while they are the Owners. Whenever title to a Parcel 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 Parcel, 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 his Parcel. 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 from liability for past due Assessments only if and to the extent required under Section 720.3085, Florida Statutes.

**3.2 Purposes of Assessments.** The Assessments levied by the Association shall be used for the purposes of promoting the general welfare of the Owners and residents of the Community to operate, maintain, repair, improve, construct, and preserve (on a not-for-profit basis) the Common Areas of the Community and Association Property 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 Association Property and for emergency and other repairs required as a result of storm, fire, natural disaster, or other casualty loss.

**3.3 Share of Assessments.** For so long as the Club is owned by the Association, the operating budget and reserve budget shall be divided equally by the total number of residential Parcels subject to assessment and levied against all of the residential Parcel Owners as Regular Assessments. If ownership of the Club is transferred to another Owner other than the Association, twenty percent (20%) of the Assessments shall be the responsibility of the Owner of the Club and the remaining eighty percent (80%) of those Assessments would be divided equally by the number of residential Parcels and levied against all of the other Parcel Owners as Regular Assessments. Special Assessments, if levied, shall be charged to all Owners in the same share as Regular Assessments. All charges against an Owner for maintenance work that is the obligation of the Owner and 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 Parcel, which may be foreclosed or otherwise collected as provided herein.

**3.4 Lien.** The Association has a lien on each Parcel for unpaid past due Association Assessments and charges, together with interest, late payment penalties, costs, and reasonable attorney's fees incurred by the Association for collecting such amounts and 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, costs, and attorney's fees 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 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 a final judgment is obtained, such judgment shall include late fees and interest on the Assessments as above provided and reasonable attorney's fees to be fixed by the Court, together with the costs of the action, and the Association shall be entitled to recover reasonable attorney's fees in connection with any appeal of such action.

**3.6 Priority of Liens.** 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 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 except when otherwise expressly required by law.

**3.7 First Mortgage Holders.** The liability of a first mortgage holder taking title to a Lot by foreclosure or deed in lieu of foreclosure shall be limited only to the least extent required by the Chapter 720, Florida Statutes, or any other law, as amended from time to time. The Association's lien shall be superior to, and take priority over, any other mortgage or lien regardless of when the mortgage or lien was recorded, except as otherwise expressly provided by law.

**3.8 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 shall also charge a minimum late fee of \$25.00 and may also charge an additional 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 Parcel 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 Parcel Owner shall be applied first to interest, then to late fees, then to costs (including, but not limited to, collection charges imposed by the management company, attorney, and Court), then to attorney's fees, 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 Parcel are due, but have not been paid to the Association.

**3.9 Collection of Rents.** In addition to or in lieu of all other remedies, the Association has the right to collect the rents from the tenants of Owners who are delinquent in their financial obligations to the Association pursuant to the procedures set forth in Chapter 720, Florida Statutes.

**3.10 Lien for Charges.** There is hereby created a common law and contractual lien to secure payment of any charge for any service that the Association provides for an individual member and which is not otherwise secured by the statutory lien for Common Expenses. By way of example, but not limitation, a lien for charges exists to secure repayment to the Association when it must perform Parcel Owner maintenance responsibilities, or address emergency situations on behalf of a Parcel Owner. Attorney's fees and costs incurred by the Association in any mortgage foreclosure, tax deed application or other similar action against a Parcel shall also be charged against the Parcel. The lien for charges shall be of equal priority to a Common Expense lien and shall be foreclosed in the same manner. The lien shall also secure interest, late charges, attorney's fees, and costs.

**3.11 Suspensions of Right for Delinquency.** 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 areas and facilities.

**3.12 Certificate as to Assessment; Mortgagee Questionnaires.** Within ten (10) business days after request by a Parcel 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 Parcel Owner with respect to the Lot have been paid. Any person other than the Parcel Owner who relies upon such certificate shall be protected thereby. The Association may charge a fee of \$250, or more if allowed by law, plus any related attorney's 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's fees for doing so.

**3.13 Third Party Purchaser In Connection With Mortgage Foreclosure.** All persons or entities acquiring title to a Parcel as the result of a mortgage 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 except as expressly limited by law.

**3.14 Resale Capital Contribution Assessment.** The Association may establish a resale capital contribution Assessment in an amount not to exceed the greater of \$2,000.00 or the total annual Regular Assessment for a residential Parcel. The amount shall be determined annually in conjunction with adopting the annual budget. The resale capital contribution shall not apply to transfer of title resulting from the foreclosure of a lien, nor death of the transferee nor to transfer of title to an Owner's spouse nor a transfer of title to an owner's household member solely for estate planning or tax purposes. The resale capital contribution shall otherwise be due upon transfer of title by whatever means as well as on execution of any agreement for deed. The resale capital contribution shall be the personal obligation of the transferee and shall also be a lien against Lot. The personal obligation of the Owner shall include and the lien shall also secure interest at the highest rate allowed by law and all attorney's fees and costs of collection. The funds generated from the resale capital contribution may be used at the discretion of the Board for capital improvements and deferred maintenance.

**3.15 Neighborhood Associations Collect Assessments.** The Association is not required to exercise its rights to collect Assessments due from the individual Parcel Owners. Each Neighborhood Association is responsible to timely pay all Regular and Special Assessments due from its members to the Association whether or not it has collected from the Parcel Owner. Notwithstanding each Neighborhood Association's obligation to timely collect and remit such Assessments to the Association, the Association may, in its sole discretion, elect to collect delinquent Assessments and other charges directly from any Owner personally and may impose a lien against such Owner's Parcel for such delinquent payments as further provided in this Article 3.

#### 4. EASEMENTS.

**4.1 Appurtenant Easements.** Subject to the restrictions found elsewhere in this Section, the Owner of each Parcel, his guests, lessees, and invitees, shall have as an appurtenance to his Parcel a perpetual, non-exclusive easement for ingress and egress over, across, and through the Common Areas, for the use and enjoyment of all Common Areas, such use and enjoyment to be shared in common with the other Owners, their guests, lessees, and invitees, subject to the provisions of this Declaration.

**4.2 Utility Easements.** A perpetual easement shall exist upon, over, under, and across all of the Property, including the Parcels, for the purpose of maintaining, installing, repairing, altering, and operating sewer lines, water lines, waterworks, sewer works, force mains, lift stations, water mains, sewer mains, water distribution systems, sewage disposal systems, effluent disposal systems, pipes, valves, gates, pipelines, television and telephone lines, and all machinery and apparatus appurtenant thereto, as may be necessary for the installation and maintenance of utilities servicing all Parcels and the Common Areas, all such easements to be of a size, width, and location so as to minimize and not unreasonably interfere with the use of any improvements which are now, or will be, located upon said property. The Association, through its Board of Directors, has the authority to grant additional such easements, and to modify, move, or vacate such existing easements as may be necessary to efficiently and effectively provide utility and other services to the Parcels, common elements of the Neighborhoods, and Common Areas.

**4.3 Water Management.** Each Owner shall have a perpetual, non-exclusive easement, right, license and servitude to use the SWMS. The Association may reconfigure such parts of the SWMS, provided same is then in accordance with sound engineering practices and governmental approvals. In such event, the perpetual, non-exclusive drainage easement rights of the Association and all Owners shall, without necessity of written documentation, be transferred from the previous existing SWMS to the reconfigured system. The Association may dedicate to any public or quasi-public agency, community development district or similar entity, under such terms as the Association deems appropriate, all or any part of the drainage lines, structures and facilities that are part of the SWMS.

**4.4 Maintenance Easement.** The Association has a non-exclusive easement over, across, and through each Parcel as necessary to meet the Association's maintenance, repair and replacement responsibilities.

**4.5 Additional Easements.** The Association has the power, without the joinder of any Owner, to grant, modify, or relocate easements in any portion of the Common Area or Association Property, as the Board shall deem necessary or desirable for the Association. Such easements, or the relocation of existing easements, may not prevent or unreasonably interfere with the use of the Parcels.

**4.6 Subordination.** Notwithstanding any of the foregoing to the contrary, it is understood that these covenants and restrictions are subordinate, and will be subordinate

without the necessity of any other instrument, to any existing easement or easements to any public or quasi-public utility for the installation and maintenance of service lines in the Common Areas.

**4.7 Golf Course/Golf Balls.** The Club facilities are not open for walking, jogging, biking, fishing or other use. Only authorized Club personnel and workers and persons authorized to be playing golf are permitted to be on the golf course, cart paths and lake banks of the Club. Golfers have the right to enter any Parcel to retrieve their golf balls.

**5. SURFACE WATER MANAGEMENT SYSTEMS & CONSERVATION AREAS.**

**5.1 General Provisions and Restrictions.** The Association shall be responsible for overall management of the SWMS.

(A) Owners shall not excavate or fill or do anything to alter the flow of water on through SWMS.

(B) Owners shall not install rip rap or otherwise alter the lake and pond banks or any part of the SWMS.

(C) No residential Parcel Owner shall draw water for irrigation or other purposes from any lake, pond or other water management area.

(D) Owners are responsible to insure that activities on their Parcel do not result in chemicals, grass clippings or any foreign substances being introduced into the lakes or ponds or conservation areas.

(E) No Owner or other person or entity shall unreasonably deny or prevent access to water management areas for maintenance, repair, or landscaping purposes by the Association or any appropriate governmental agency that may reasonably require access. Nonexclusive easements therefore are hereby specifically reserved and created.

**5.2 Recreational Use of the Lakes and Ponds.** Fishing is not permitted from any part of the Club or Golf Course. Otherwise, fishing is permitted from the Common Areas and from the Parcels, with permission of the Parcel Owner but subject to Rules and Regulations that may be adopted by the Board of Directors. No boating or swimming is permitted. Bodies of water present a variety of risks and hazards, especially to small children, and the Association has no liability for the safety of the residents and their Guests for injuries caused by conditions of the lakes, ponds, canals and swales.

**6. MAINTENANCE.**

**6.1. Association Maintenance.** The Association is responsible for the protection, maintenance, repair, and replacement of all Common Areas and Association Property including any recreational amenities that the Association may own, lease or license and

further including, but not limited to the roads, lakes ponds and all aspects of the SWMS, and conservation areas. The Association is responsible for all gates at the entrances to Spanish Wells.

**6.2 Parcel Owner Maintenance.** The individual Parcel Owner shall have the maintenance, repair, and replacement responsibility for the Parcel and all improvements on the Parcel in accordance with the standards of a first class community, as may be defined by the Board of Directors (the "Community Standards"). The Parcel Owner's responsibilities include maintenance repair and replacement of the swales, conduits and drains which the Parcel owner has constructed on the Parcel.

**6.3 Enforcement of Maintenance.** If the Owner of a Parcel fails to maintain the Parcel according to the Community Standards, the Association shall have the right but not the obligation 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 Parcel and remedying the violation, with or without consent of the Parcel Owner. The Association may also 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 charged as an Individual Assessment against the Parcel Owner to which such services are provided, and shall be secured by a lien against the Parcel which may be foreclosed according to the provisions set forth in Section 3 of this Declaration. Except in cases of emergency, the Association shall give the Parcel Owner prior written notice of its intent to enter the Parcel and a reasonable opportunity to cure.

**6.4 Negligence.** Each Parcel owner shall be liable for the expenses of any maintenance, repair, or replacement of common areas, Association Property other Parcels, or personal property made necessary by his act or negligence or by that of any member of his family or his guests, employees, agents, or lessees.

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

**7.1 Residential Use.** Each residential Parcel shall be used as location for a Home and shall be occupied by only one single Family at any time. Each Home shall be used as a Family residence 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.

**7.2 No Material Changes in the Plan of Development.** Spanish Wells is a fully developed community. Each Neighborhood has its own character and the Neighborhood

Associations have jurisdiction over changes to the appearance of the individual Homes and lots and any new construction. However, there shall be no material changes to the character or the type of housing in each residential Neighborhood or to the general scheme of development. Likewise, the Country Club parcels shall continue to be used as a 27 hole golf course and country club facility unless a change is approved by the vote of two-thirds (2/3) of the Members present in person, or by proxy, and voting at a meeting called for that purpose at which there is a quorum.

**7.3 Nuisances.** No Owner shall use his Home, or permit it to be used, in any manner which constitutes or causes an unreasonable amount of annoyance or nuisance to the Occupant of another Home, or which would not be consistent with the maintenance of the highest standards for a first class residential community, or 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.

**8. 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:

**8.1 Association; Required Coverage.** The Association shall maintain adequate general liability insurance, and Directors and Officers insurance. The amounts of coverage shall be determined annually by the Board of Directors. Other insurance coverage is within the discretion of the Board of Directors.

**8.2 Owner's Duty to Insure.** Each Parcel Owner is responsible for insuring their own real and personal property. Each Owner must recognize that he bears financial responsibility for any damage to his property or liability to others that would otherwise be covered by such insurance, including all risk, windstorm, flood, and general liability.

**8.3 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 Parcel Owner(s), 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.

**8.4 Damage to Common Areas and Association Property.** Where loss or damage occurs to the Common Areas or Association Property, it shall be mandatory for the Association to repair, restore, and rebuild the damage caused by the loss, and the following procedures shall apply:

- (A) The Board of Directors shall promptly obtain reliable and detailed estimates of the cost of repair and restoration, and shall negotiate and contract for repair and reconstruction.



- (B) If the proceeds of insurance and available reserves are insufficient to pay for the cost of repair and reconstruction of the Common Areas and Association Property, the Association shall promptly, upon determination of the deficiency, levy a Special Assessment against all Parcel Owners for the deficiency which Special Assessments need not be approved by the Parcel Owners.

**9. LEASING.**

**9.1 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 or one calendar month. No new lease may begin until at least thirty (30) days, or one calendar month, have elapsed since the first day of the last lease;
- (C) The lessee must be a natural person and only the lessee and the lessee's Family may occupy a leased Home;
- (D) An Owner may lease only his entire Home and no room rental or sub-leasing or assignment of lease rights by the lessee or Owner is allowed; and
- (E) The Association may require the Owners to provide the Association with a copy of the lease and information on the lessees and their vehicles.

**10. FORMS OF OWNERSHIP; TRANSFERS OF THE LOTS.** 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 residential Parcel shall be subject to the following provisions:

**10.1 Forms of Ownership.**

- (A) **Individual.** A Parcel may be owned by one (1) natural person.
- (B) **Co-Ownership by Natural Persons.** If the co-owners are not husband and wife, then the Owners shall designate one (1) natural person as the Primary Occupant. No more than one (1) 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, Limited Liability Companies, Partnerships, or Trusts.** A Parcel may be owned in trust, or by a corporation,

limited liability company, partnership, or other entity which is not a natural person, conditioned upon designation by the Owner of not more than one (1) natural person to be the Primary Occupant. No more than one (1) change of Primary Occupant will be permitted in any twelve (12) month period.

(D) **Life Estate.** A life tenant shall be treated as the only Owner of the Parcel and shall exercise the voting rights and be liable for all Assessments and charges against the Parcel. If there is more than one life tenant, they shall be treated as co-owners and shall be subject to the provisions of Section 10.1 (B).

(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.

## 11. AMENDMENTS; TERMINATION.

**11.1 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 Parcels and three-quarters (3/4) of all Institutional Mortgagees holding a first mortgage on a Parcel 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 which 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.

**11.2 Amendments by Members.** Except as otherwise provided herein or by law, this Declaration may be amended at any time by the affirmative vote of at least two-thirds (2/3) of the Members present, in person or by proxy, and voting at a duly called meeting of the Members of the Association at which there is a quorum. 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 copy of the amendment are recorded in the Public Records of Lee County, Florida.

## **12. ENFORCEMENT; GENERAL PROVISIONS.**

**12.1 Enforcement.** Enforcement of these covenants, conditions, and restrictions 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 covenant, condition, or restriction, either to restrain violation or to recover damages, and against any Parcel to enforce any lien created by these covenants. Failure of the Association or any Owner to enforce any covenant, condition, or restriction herein contained for any period of time shall not be deemed a waiver or estoppel of the right to enforce same thereafter.

**12.2 Owner and Member Compliance.** The protective covenants, conditions, restrictions and other provisions of the Governing Documents and the Rules and Regulations promulgated by the Association shall apply to Members and all persons to whom a Member has delegated his 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 his tenants (express or implied), and their licensees, invitees, or guests. Failure of any Owner to notify any person of the existence of the Rules and Regulations, or the covenants, conditions, restrictions, 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 his tenants, licensees, invitees, or Guests and by the Guests, licensees, and invitees of his tenants, at any time.

**12.3 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 and Regulations, may be brought by any Owner, or the Association against:

- (A) The Association;
- (B) An Owner;
- (A) 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.

**12.4 Attorney's 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's fees as may be awarded by the court.

**12.5 Assumption of Risk and Indemnification.** Each Owner hereby expressly assumes all risk and responsibility for noise, personal injury or property damage caused by maintenance, operation or use of Common Areas, and agrees that neither the Association nor any other entity owning or managing the Common Areas or the Country Club shall be liable to Owner or any other person claiming any loss or damage, including, without limitation, indirect, special or consequential loss or damage arising from personal injury, destruction of property, trespass, loss of enjoyment or any other alleged wrong or entitlement to remedy based upon, due to, arising from or otherwise related to the proximity of Owner's Parcel to the Common Areas or the Country Club, including, without limitation, any claim arising in whole or in part from the negligence of the Association or any other entity owning or managing the Common Area or the Country Club. Each Owner hereby agrees to indemnify and hold harmless the Association and any other entity owning or managing the Common Area or Country Club against any and all claims by such Owner's family, visitors, tenants and other invitees upon such Owner's Parcel. Without limiting the foregoing, all persons using the Common Areas, including, without limitation, any pool area or area adjacent to a lake, do so at their own risk. By taking title to any Parcel, each Owner further accepts and assumes all the risks and hazards of ownership and occupancy attendant to the ownership of such Parcel.

**BY ACCEPTANCE OF A DEED, EACH OWNER ACKNOWLEDGES THAT THE COMMON AREAS MAY CONTAIN WILDLIFE SUCH AS, BUT NOT LIMITED TO, ALLIGATORS, DEER AND SNAKES. ASSOCIATION SHALL HAVE NO RESPONSIBILITY FOR MONITORING SUCH WILDLIFE OR NOTIFYING OWNERS OR OTHER PERSONS OF THE PRESENCE OF SUCH WILDLIFE.**

**12.6 Security.** THE ASSOCIATION SHALL NOT IN ANY WAY BE CONSIDERED AN INSURER OR GUARANTOR OF SECURITY WITHIN THE PROPERTY AND SHALL NOT BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS AND OCCUPANTS OF ANY PARCEL, TENANTS, GUESTS AND INVITEES OF ANY OWNER, AS APPLICABLE, ACKNOWLEDGE THAT THE ASSOCIATION AND ITS BOARD OF DIRECTORS DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM, ACCESS CONTROL GATES OR SECURITY SYSTEM INSTALLED WITHIN THE PROPERTY MAY NOT BE COMPROMISED OR CIRCUMVENTED, THAT ANY FIRE PROTECTION, ACCESS CONTROL GATES, OR SECURITY SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP, OR OTHERWISE OR THAT FIRE PROTECTION, ACCESS CONTROL GATES, OR SECURITY SYSTEMS WILL, IN ALL CASES, PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED.

**EACH OWNER AND OCCUPANT OF ANY PARCEL, AND EACH TENANT, GUEST AND INVITEE OF AN OWNER, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS AND COMMITTEES, ARE NOT INSURERS, AND THAT EACH OWNER AND OCCUPANT OF ANY PARCEL AND EACH TENANT, GUEST AND INVITEE OF ANY OWNER ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO HOMES AND TO THE CONTENTS OF HOMES AND FURTHER ACKNOWLEDGES THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS AND COMMITTEES HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER, OCCUPANT, TENANT, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE RELATIVE TO ANY ACCESS CONTROL GATES, FIRE AND/OR SECURITY SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY OR ACCESS CONTROL MEASURES UNDERTAKEN WITHIN THE PROPERTIES.**

**12.7 Disclaimer of Association Liability. NOTWITHSTANDING ANYTHING CONTAINED HEREIN OR IN THE ARTICLES, BYLAWS, ANY RULES OR REGULATIONS OF THE ASSOCIATION OR ANY OTHER DOCUMENT GOVERNING OR BINDING THE ASSOCIATION (COLLECTIVELY, THE "ASSOCIATION DOCUMENTS"), THE ASSOCIATION SHALL NOT BE LIABLE OR RESPONSIBLE FOR, OR IN ANY MANNER A GUARANTOR OR INSURER OF, THE HEALTH, SAFETY OR WELFARE OF ANY OWNER, MEMBER, OCCUPANT OR USER OF ANY PORTION OF THE COMMUNITY, OR THEIR GUESTS, INVITEES, AGENTS, SERVANTS, CONTRACTORS OR SUBCONTRACTORS, OR FOR ANY PROPERTY OF ANY SUCH PERSONS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING:**

**(A) IT IS THE EXPRESS INTENT OF THE ASSOCIATION DOCUMENTS THAT THE VARIOUS PROVISIONS THEREOF WHICH ARE ENFORCEABLE BY THE ASSOCIATION AND WHICH GOVERN OR REGULATE THE USES OF THE COMMUNITY, HAVE BEEN WRITTEN AND ARE TO BE INTERPRETED AND ENFORCED FOR THE SOLE PURPOSE OF ENHANCING AND MAINTAINING THE ENJOYMENT OF THE COMMUNITY AND THE VALUE THEREOF; AND,**

**(B) THE ASSOCIATION IS NOT EMPOWERED, AND HAS NOT BEEN CREATED, TO ACT AS AN AGENCY WHICH ENFORCES OR ENSURES COMPLIANCE WITH THE LAWS OF THE STATE OF FLORIDA OR LEE COUNTY OR THE PREVENTION OF TORTIOUS ACTIVITIES.**

**EACH MEMBER (BY VIRTUE OF HIS OR HER ACQUISITION OF A PARCEL) AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN UPON, OR MAKING ANY USE OF, ANY PORTION OF THE COMMUNITY (BY VIRTUE OF ACCEPTING SUCH INTEREST OR LIEN OR MAKING SUCH USE) SHALL**

**BE BOUND BY THIS ARTICLE AND SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ANY AND ALL RIGHTS, CLAIMS, DEMANDS AND CAUSES OF ACTION AGAINST WHICH THE LIABILITY OF THE ASSOCIATION HAS BEEN DISCLAIMED IN THIS ARTICLE. EACH MEMBER DOES HEREBY RELEASE THE ASSOCIATION FROM ALL LIABILITY FROM INJURY AND/OR ACCIDENTAL DEATH DUE TO ADVERSE WEATHER AND ALL EFFECTS AND RESULTS THEREOF.**

**12.8 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.

**12.9 Notices.** Any notice required to be sent to any Member or Owner under the provisions of this Declaration or Bylaws shall be deemed to have been properly sent, and notice thereby given, when sent to the last known address of the Owner appearing in the records of the Association, or to the Member's email, facsimile (for those Members who have consented to receive Association notices by electronic transmission) or by regular mail with the proper postage affixed thereto. Notice to one (1) of two (2) or more co-Owners of a Home or Parcel 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.

**12.10 Severability.** Should any covenant, condition, or restriction herein contained, or any section, sub-section, sentence, clause, phrase or term of this Declaration, or its recorded 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 which 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.

**12.11 Interpretation; Disputes.** The Board of Directors is responsible for interpreting the provisions of this Declaration, its Exhibits, and the Rules and Regulations. 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 or a portion thereof complies with the covenants, conditions, and restrictions contained in this Declaration, its Exhibits, or the Rules and Regulations, 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.

**12.12 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.

**12.13 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.

**12.14 Waiver of Jury Trial.** In the event there is a dispute concerning the rights, obligations or remedies of an Owner or the Association under this Declaration, such matter will be submitted to a court of competent jurisdiction. ALL OWNERS HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY DISPUTE CONCERNING THE RIGHTS, OBLIGATIONS OR REMEDIES OF ANY OWNER OR THE ASSOCIATION UNDER THE DECLARATION OR ANY LITIGATION (INCLUDING BUT NOT LIMITED TO ANY COUNTERCLAIMS, CROSS-CLAIMS OR THIRD PARTY CLAIMS) BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS DECLARATION, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF EITHER PARTY.

### **EXHIBITS**

Exhibit "A" - General Plan of Development.

Exhibit "B" - Third Amended and Restated Articles of Incorporation for Spanish Wells Community Association, Inc.

Exhibit "C" - The Third Amended and Restated Bylaws for Spanish Wells Community Association, Inc.





FAX AUDIT NO.: H20000221441 3

# EXHIBIT "B"

## ARTICLES OF AMENDMENT AND RESTATEMENT OF ARTICLES OF INCORPORATION OF SPANISH WELLS COMMUNITY ASSOCIATION, INC.

Document Number: N94000004941

Pursuant to the provisions of Section 617.1006, Florida Statutes, this Florida Not For Profit Corporation adopts the following Articles of Amendment to its Articles of Incorporation:

**FIRST:** The name of the corporation is Spanish Wells Community Association, Inc.

**SECOND:** The attached Third Amended and Restated Articles of Incorporation was adopted by the membership to amend and restate the Second Amended and Restated Article of Incorporation in its entirety.

**THIRD:** The attached Third Amended and Restated Articles of Incorporation was adopted by the required vote of the members on the 8<sup>th</sup> day of July, 2020.

**FOURTH:** The number of votes cast were sufficient for approval.

The undersigned President of this Corporation has executed these Articles of Amendment on the 10<sup>th</sup> day of July 2020.

WITNESSES:

SPANISH WELLS COMMUNITY ASSOCIATION, INC.

R. David Smith

BY: W. J. Hines  
Walter Hines, President

Print: R. David Smith

[Signature]  
Print: John Lizzo (Assoc. MGR.)

STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument was acknowledged before me by means of  physical presence OR  online notarization this 10 day of July, 2020 by Walter Hines, as President of Spanish Wells Community Association, Inc., a Florida not for profit corporation, on behalf of the corporation, who is personally known to me or who has produced \_\_\_\_\_ as identification.

[Signature]  
Notary Public

Kristine Beaver  
Printed Name

Commission Expires: 9/20/22



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

**THIRD AMENDED AND RESTATED ARTICLES OF INCORPORATION  
OF SPANISH WELLS COMMUNITY ASSOCIATION, INC.**

Spanish Wells Community Association, Inc., a Florida corporation not-for-profit, was originally incorporated under the same name on October 7, 1994. The Second Articles of Incorporation of Spanish Wells have been previously amended and are hereby amended and restated in their entirety.

**ARTICLE I**

**NAME & ADDRESS.** The name of the Corporation is Spanish Wells Community Association, Inc. (hereinafter the "Association"). The principal address of the Association is currently 9240 Bonita Beach Road, Suite 3318, Bonita Springs, FL 34135 and may be changed from time to time, at the discretion of the Board of Directors, without the necessity of amending these Articles of Incorporation.

**ARTICLE II**

**PURPOSE AND POWERS.** The purpose for which the Association is organized is to provide an entity pursuant to the Florida law for the operation of the Spanish Wells subdivision, located in Lee County, Florida.

The Association is organized and shall exist on a non-stock basis as a not-for-profit corporation under the laws of the State of Florida, and no portion of any earnings of the Association shall be distributed or inure to the private benefit of any member, Director or Officer. For the accomplishment of its purposes, the Association shall have all of the common law and statutory powers and duties of a corporation not-for-profit under the laws of the State of Florida, except as expressly limited or modified by these Third Amended and Restated Articles of Incorporation (hereinafter "Articles"), the Third Amended and Restated Declaration of Protective Covenants for Spanish Wells (hereinafter "Declaration"), the Third Amended and Restated Bylaws for Spanish Wells Community Association, Inc. (hereinafter "Bylaws") or the Florida Homeowners' Association Act; and it shall have all the powers and duties reasonably necessary to operate the subdivision pursuant to said Declaration, as it may hereafter be amended, including, but not limited to, the following:

- (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 parcels, common areas, and Association owned property, and the operation of the

**EXHIBIT "B"  
THIRD AMENDED AND RESTATED ARTICLES OF INCORPORATION  
OF SPANISH WELLS COMMUNITY ASSOCIATION, INC.**

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Association;

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

(F) To dedicate, sell, or transfer all or any part of the common areas to any public agency, authority, or utility;

(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;

(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 for 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; and

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

### ARTICLE III

#### MEMBERSHIP.

(A) The Members of the Association shall be the record owners of a Parcel in the subdivision as further provided in the Bylaws.

EXHIBIT "B"  
THIRD AMENDED AND RESTATED ARTICLES OF INCORPORATION  
OF SPANISH WELLS COMMUNITY ASSOCIATION, INC.

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(B) The Member's interest in the funds and assets of the Association cannot be assigned or transferred in any manner, except as an appurtenance to a Parcel.

(C) The Owners of each Parcel, collectively, shall be entitled to one vote in Association matters, provided that, for so long as the Country Club is owned by the Association, it shall not be entitled to a vote. Should title to the Country Club be transferred to an Owner who is not the Association, the Owner of the Country Club shall be entitled to one vote in Association matters. The manner of exercising voting rights shall be as set forth in the Bylaws.

ARTICLE IV

TERM. The term of the Association shall be perpetual.

ARTICLE V

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

ARTICLE VI

DIRECTORS AND OFFICERS.

(A) The affairs of the Association shall be administered 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.

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

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

ARTICLE VII

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

(A) Proposal. Amendments to these Articles may be proposed by a majority of the Board or by a written petition to the Board, signed by at least one-tenth (1/10) of the voting interests of the Association.

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(B) Procedure. Upon any amendment to these Articles being proposed by said Board or Members, such proposed amendment shall be submitted to a vote of the owners not later than the next annual meeting for which proper notice can be given.

(C) Vote Required. These Articles may be amended if the proposed amendment is approved by at least a majority of the Members present in person or by proxy and voting at a duly noticed meeting called for that purpose at which there is a quorum.

(D) 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 formalities required by the Florida law.

ARTICLE VIII

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 service as a Director, Officer, or committee member of the Association, against expenses (including attorney fees and appellate attorney fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred 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, that such person did not act in good faith or in a manner they 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 the person had reasonable cause to believe such 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 they 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 their 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) Advances. The Association shall pay any expenses described above upon presentation by the affected Director, Officer, or committee member, as they accrue and in advance of the final disposition of such action, suit, or proceeding, and shall then seek repayment of such amounts if it shall ultimately be determined that the Director, Officer, or committee member is not entitled to be indemnified by the Association.

(C) Miscellaneous. The indemnification provided herein may 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

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ceased to be a Director, Officer, or committee member, and shall inure to the benefit of the heirs and personal representatives of such person.

(D) 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 against any liability asserted against them and incurred by them in any such capacity, or arising out of their status as such, whether or not the Association would have the power to indemnify him against such liability under the provisions of this Article.

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

## EXHIBIT "C"

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

### **THIRD AMENDED AND RESTATED BYLAWS OF SPANISH WELLS COMMUNITY ASSOCIATION, INC.**

1. **GENERAL.** The Second Amended and Restated Bylaws of Spanish Wells Community Association, Inc. were recorded on April 4, 2006, in the Official Records of Lee County, Florida as Instrument No. 2006000138085 and were subsequently amended and are hereby amended and restated in their entirety.

1.1 **Principal Office.** The principal address of the Association is currently 9240 Bonita Beach Road, Suite 3318, Bonita Springs FL 34135 and may be changed from time to time, at the discretion of the Board of Directors, without the necessity of amending these Bylaws.

1.2 **Definitions.** The definitions set forth in the Third Amended and Restated Declaration of Protective Covenants for Spanish Wells ( hereinafter the "Declaration"), as it stands and as it may be further amended, shall apply to terms used in these Amended and Restated Bylaws (hereinafter referred to as the "Bylaws").

#### 2. **MEMBERS.**

2.1 **Qualifications.** The Members of the Association shall be the record owners of legal title to the Parcels. In the case of the Parcels subject to an agreement for deed, the purchaser in possession shall be deemed the Owner of the Parcel for purposes of determining voting and use rights. Membership shall become effective upon the occurrence of the last to occur of the following events:

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

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

2.2 **Voting Interests.** The Members of the Association are entitled to one vote for each Parcel owned by them. The total number of possible votes (the "**Voting Interests**") is equal to the total number of Parcels. The vote of a Parcel is not divisible. If a Parcel is owned by one natural person, the right to vote shall be established by the record title to the Parcel. If a Parcel is owned jointly by two or more natural persons, then the Parcel's vote may be cast by any one of the record Owners. If two or more Owners of a Parcel do not agree among themselves on how their one vote shall be cast, that vote shall not be counted for any purpose. If the Owner of a Parcel is not a natural person, then the Owner shall designate a person to cast the vote for the Parcel and in the absence of such designation, the Association may accept a vote from any partner, corporate officer, trustee or other person having apparent authority to act for the Owner unless more than one vote is cast for the Parcel in which case no vote will be counted for that Parcel.

2.3 Association Owned Parcels. No vote shall be cast for any Parcel owned by the Association and Association owned Parcels shall be deducted from the total number of Voting Interests used as the denominator for the purpose of establishing a quorum or the number votes required to approve a proposed amendment to the governing documents or any other-proposition presented to the Parcel Owners for a vote.

2.4 Approval or Disapproval of Matters. Matters requiring approval of the Parcel Owners are to be decided by the vote of the majority of the Voting Interests present at a meeting at which a quorum has been attained, except where a greater or different number of votes are expressly required by law or by any provision of the Governing Documents.

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

2.6 Termination of Membership. The termination of membership in the Association does not relieve or release any former Owner from liability or obligation incurred under or in any way connected with the Parcel during the period of membership, nor does it impair any rights or remedies that 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.

2.7 Notices to Members. Unless otherwise required by law, mailing includes the delivery by electronic transmission to Owners who have provided an email address to the Association.

### 3. MEMBERS MEETINGS; VOTING.

3.1 Annual Meeting. There shall be an annual meeting of the Members in the first quarter of each calendar year. The annual meeting shall be held in Lee County, Florida, on a date and at a time, and place designated by the Board of Directors, for the purpose of transacting any 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 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 meeting notice.

3.3 Notice of Meetings. Notice of all Members meetings must state the date, time, and place of the meeting and include an agenda for the meeting. The notice must be mailed to each Member at the address that appears on the books of the Association, or may be furnished by personal delivery. Each Member is responsible for providing the Association of any change of address. The notice must be mailed or delivered at least fourteen (14) days before the meeting. An affidavit of the Officer or other person making such mailing shall be retained in the Association's records as proof of mailing. If ownership of a Parcel changes after notice has been mailed, no separate notice to the new Owner is required. Notice of the annual meeting shall be posted in a



conspicuous place in the community for at least fourteen (14) continuous days prior to the annual meeting.

3.4 **Waiver of Notice.** 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 waive notice of any meeting at any time, but only by written waiver.

3.5 **Quorum.** A quorum at meetings of the Members shall be attained by the presence either in person or by proxy, of persons entitled to cast at least twenty-five percent (25%) of the votes of the entire membership.

3.6 **Vote Required.** The acts approved by a majority of the votes cast at a duly called meeting of the Members at which a quorum has been attained shall be binding upon all Parcel Owners for all purposes, except where a greater or different number of votes are expressly required by law or by any provision of the governing Documents.

3.7 **Proxy Voting.** Members are entitled to attend and vote at a Members meeting by proxy, provided that proxies shall not be used for election of the at large Director. A proxy shall be valid only for the specific meeting for which originally given and any lawful adjournment of that meeting, and no proxy is 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, signed and dated by the person authorized to cast the vote for the Parcel, specify the date, time, and place of the meeting for which it is given, and the original, or an electronic copy of the original, which may include, but not be limited to, a facsimile or PDF copy sent via e-mail, must be delivered to the Secretary by the appointed time of the meeting or adjournment thereof. Holders of proxies need not be Members. No proxy shall be valid if it names more than one 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.

3.8 **Adjourned Meetings.** Any duly called meeting of the Members may be adjourned to be reconvened at a specific later time by vote of the majority of the Voting Interests present, regardless of whether a quorum has been attained. If the date, time, and place of its continuance are announced at the meeting being adjourned, then it shall not be necessary to give further notice of the meeting. Any business which might have been conducted at the meeting as originally scheduled may instead be conducted at the continuance, provided a quorum is then 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) Proof of notice of the meeting
- (C) Reading or disposal of minutes of last Members meeting
- (D) Report of Officers
- (E) Reports of Committees
- (F) Election of the at large Director
- (G) Unfinished business

- (H) New business
- (I) Adjournment

3.10 Minutes. Minutes of all meetings of Members and of the Board of Directors shall be kept in a businesslike manner, and available for inspection by Members or their authorized representatives and Board members at all reasonable times for a period of at least seven (7) years after the meeting. Minutes must be reduced to written form within thirty (30) days after the meeting at which they were taken.

3.11 Parliamentary Rules. Robert's Rules of Order (latest edition) may guide the conduct of the Association meetings when not in conflict with the law, with the Declaration, or with these 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.

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 these Bylaws, shall be exercised by the Board, subject to approval or consent of the Parcel Owners only when such is specifically required.

4.1 Number and Terms of Service. There shall be one Director from each of the eight (8) Neighborhood Associations. For so long as the Club is owned by the Association, a ninth (9<sup>th</sup>) Director shall be elected, at large, at the annual meeting and shall serve a one year term. If the Club is no longer owned by the Association, then the Owner of the Club shall appoint the ninth (9<sup>th</sup>) Director.

4.2 Qualifications. Each Director must be a Member or the spouse of a Member. When the Owner is not a natural person then the Member is the person designated to vote for the Parcel.

4.3 Nominations and Elections. At the annual meeting, each Neighborhood Association shall designate its representative for Board according to the provisions of its own governing documents. In absence of a designation or in event of a dispute, the President of Neighborhood Association shall be the Neighborhood Association's representative on the Board. For so long as the Club is owned by the Association, a ninth (9<sup>th</sup>) Director shall be elected, at large, at the Annual Meeting of the Association as further provided for in this section. The at large Director shall be elected by written ballot or an electronic voting system which complies with the requirements of Chapter 720, Florida Statutes. Proxies may not be used in electing the at large Director. At least forty (40) days before the election of the at large Director, which shall occur at the annual meeting of the Members, the Association shall mail, deliver, or electronically transmit, by separate Association mailing or included in another Association mailing, delivery, or transmission, including regularly published newsletters, to each Member entitled to a vote, a first notice of the date of the election. A Member or other eligible person desiring to be a candidate for the Board must give written notice of his or her intent to be a candidate to the Association at least twenty-one (21) days before a scheduled election. Together with the written notice and agenda as set forth in Section 3.3 hereof, the Association shall mail, deliver, or electronically transmit a second notice of the election to all Members entitled to vote, together with a ballot that lists all candidates. Upon request of a

candidate, an information sheet, no larger than 8 1/2 inches by 11 inches, which must be furnished by the candidate at least 21 days before the election, must be included with the mailing, delivery, or transmission of the ballot, with the costs of mailing, delivery, or electronic transmission and copying to be borne by the Association. The Association is not liable for the contents of the information sheets prepared by the candidates. In order to reduce costs, the Association may print or duplicate the information sheets on both sides of the paper. The Board of Directors shall, by Rule, establish voting procedures consistent with this sub-subparagraph, including Rules establishing procedures for giving notice by electronic transmission and Rules providing for the secrecy of ballots. Elections shall be decided by a plurality of ballots cast. There is no quorum requirement and Members need not be present at the annual meeting to cast a ballot for the at large Director; however, at least twenty-five percent (25%) of the eligible voters must cast a ballot in order to have a valid election. An Owner may not authorize any other person to vote his or her ballot, and any ballots improperly cast are invalid. Notwithstanding anything to the contrary in these Bylaws, an election is not required unless more candidates file notices of intent to run or are nominated than board vacancies exist. If title to the Club is transferred so that the Club is no longer owned by the Association, the current at large Director will remain in office until the next annual meeting, at which time, and at each subsequent annual meeting thereafter, the Owner of the Club shall appoint the ninth (9<sup>th</sup>) Director.

4.4 Vacancies on the Board. Vacancies shall be filled according the procedures specified in the governing documents for each Neighborhood. Should a Neighborhood fail to designate a representative to fill the seat, or in the interim during the selection process, the President of Neighborhood Association shall be the Neighborhood Association's representative on the Board. A vacancy in the seat held by the at large Director shall be filled by the majority vote of the remaining Board Members.

4.5 Removal of Directors. Any Director may be removed, with or without cause, according to the procedures set forth in the governing documents for the Neighborhood he or she represents. The at large Director may only be recalled by written agreement of the majority of the Owners in accordance with the procedures specified for Condominium elections under Chapter 718, Fla. Stat., as may be amended from time to time.

4.6 Organizational Meetings. The organizational meeting of the a new Board of Directors shall be held within ten (10) days after the annual meeting at such date, time, and place 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 in Lee County, Florida, as shall be determined from time to time by the President or a majority of the Directors. Notice of meetings shall be given to each Director personally, or by mail, telephone, or telegram at least two (2) days prior to the date named for such meeting.

4.8 Notice to Owners. All meetings of the Board of Directors shall be open to Members, and notices of all Board meetings (including an agenda) shall be posted conspicuously on the community owned property for at least forty-eight (48) continuous hours in advance of each Board meeting, except in an emergency. Notice of any Board meeting at which a budget will be adopted or amended shall conform to the requirements of Section 6.2 below. Notice of any Board

meeting at which a non-emergency Special Assessment will be discussed, proposed, or approved shall conform to the requirements set forth in Section 6.6 below. The right of Owners to attend Board meetings includes the right to speak for up to three minutes on designated agenda items, subject to the rules of the Association as to the manner of doing so.

4.9 Waiver of Notice. Any Director may waive notice of a meeting before or after the meeting, and such waiver shall be 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 exist when at least a majority of all Directors are present in person at a duly called meeting. Directors may participate in any meeting of the Board by conference telephone call or other 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. Directors may not vote or participate by proxy at Board meetings.

4.11 Vote Required. The acts approved by a majority of those Directors present and voting at a meeting at which a quorum exists 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 shall be deemed to have voted in favor of any 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.

4.12 Adjourned Meetings. The majority of the Directors present at any meeting of the Board, regardless of whether a quorum exists, may adjourn the meeting to be reconvened at a later time. If the date, time, and place of the reconvened meeting are announced, then no further notice is required. Any business that might have been transacted at the meeting as originally called may be transacted at the reconvened meeting, provided a quorum is present.

4.13 The Presiding Officer. The President of the Association, or in his absence, the Vice-President, shall be the presiding Officer at all meetings of the Board of Directors. If neither is present, the presiding Officer shall be selected by majority vote of the Directors present.

4.14 Compensation of Directors and Officers. Neither Directors nor Officers shall receive compensation for their services, as such. Directors and Officers may be reimbursed for all actual and proper out-of-pocket expenses relating to the proper discharge of their respective duties.

4.15 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. If required by law, committee meetings shall be open to attendance by any Owner, and notice of committee meetings shall be posted in the same manner as required in Section 4.8 above for Board meetings.

4.16 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 the Board of Directors.

## 5. OFFICERS.

5.1 Officers and Elections. The Executive Officers of the Association shall be a President, a Vice President, a Treasurer and a Secretary. The President and Vice President must be Directors. Otherwise, none of the Officers are required to be Directors. Any Officer may be removed with or without cause by the majority vote of the Directors at any meeting. Any person except the President may hold two 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.

5.2 President. The President shall be the Chief Executive Officer of the Association and shall preside at all meetings of the Members and Directors, shall be an ex-officio member of all standing and temporary committees, shall have the responsibility for the general 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, except when 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 term of office of any President may not exceed 5 consecutive years.

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 all meetings of the Board of Directors and all meetings of the Members, 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 the standing committees when required. The Secretary shall give, or cause to be given, 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 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 be responsible for Association funds and securities, the keeping of full and accurate accounts of receipts and disbursements in books belonging to the Association, and the deposit of all monies and other valuable effects in the name and to the credit of the Association in such depositories as may be designated by the Board of Directors. The Treasurer shall oversee the disbursement of the funds of the Association, keeping proper vouchers for such disbursements, and shall render to the President and Directors, at the meetings of the Board, or whenever they may require it, an accounting of all transactions and of the financial condition of the Association. Any of the foregoing duties may be performed by an Assistant Treasurer, if one has been designated.

## 6. FISCAL MATTERS.

6.1 **Depository.** The Association shall maintain its funds in federally insured accounts in such financial institutions authorized to do business in the State of Florida, as shall be designated from time to time by the Board. Withdrawal of monies from such accounts shall be only by such persons as are authorized by the Board.

6.2 **Budget.** The Board of Directors shall adopt a budget of operating expenses for each fiscal year. A copy of the proposed budget and a notice stating the date, time, and place of the meeting of the Board at which the budget will be adopted shall be mailed to or served on the Owner of each Parcel not less than fourteen (14) days prior to the meeting. The proposed budget shall be detailed and shall show the amounts budgeted by income and expense classifications.

6.3 **Reserves.** The Board may also establish one or more reserve accounts for contingencies, major improvements, capital expenditures and deferred maintenance. The purpose of these reserves is to provide financial stability and to avoid the need for Special Assessments on a frequent basis. The amounts proposed to be so reserved shall be shown in the proposed annual budget each year. These funds may be spent for any purpose approved by the Board.

6.4 **Assessments.** Regular Assessments based on the adopted annual budget shall be paid in monthly installments, in advance, due on the first day of each month. If an annual budget has not been adopted at the time that the first installment for a fiscal year is due, it shall be presumed that the amount of each installment is the same as the last installment and shall be continued at such rate until a new budget is adopted.

6.5 **Special Assessments.** Special Assessments may be imposed by the Board of Directors when necessary to meet unusual, unexpected, unbudgeted, or non-recurring expenses. Special Assessments are due on the day specified in the resolution of the Board approving such Assessments. Written notice of any Board meeting at which a non-emergency Special Assessment will be considered, discussed, or proposed must be mailed to all Parcel Owners at least fourteen (14) days in advance. The notice to Owners that any Special Assessment has been levied must contain a statement of the purpose of the Assessment, and the funds collected must be spent for the stated purpose or returned to the Members as provided by law.

6.6 **Delinquent Assessments.** Assessments that are not paid within ten (10) days of the due date shall bear interest from the due date until paid at the highest rate allowed by law. The Association shall also be entitled to collect a late fee in the highest amount allowed by law but not less than \$25.00 per installment. Owners are also responsible for all costs and attorney's fees incurred by the Association in the collection process. The Association's lien also secures interest, late fees, costs and attorneys' fees. Assessments shall be applied first to any interest accrued, then to any late fee, then to any costs and attorney's fees and then to the oldest delinquent assessment. The Association is not bound by any restrictive endorsement, designation, or instruction placed on or accompanying a payment. A late fee is not subject to the provisions of Chapter 687, Fla. Stat. and is not a fine. Collection costs also include the cost of defending the Association's lien priority in any mortgage foreclosure, proceeding in connection with tax deed and any similar proceeding.

6.7 **Fidelity Bonds.** The Treasurer, all other Officers who are authorized to sign checks, and all other persons having access to or control of Association funds, 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 shall be a common expense.

6.8 **Financial Statements.** Not later than 120 days after the close of each fiscal year, the Board shall prepare and distribute to the Owners of each Parcel, financial statements meeting the minimum standards of the Homeowners' Association Act, showing in reasonable detail the financial condition of the Association as of the close of its fiscal year, detailed by accounts.

6.9 **Fiscal Year.** The fiscal year for the Association shall begin on the first day of January of each calendar year. The Board of Directors may change to a different fiscal year in accordance with the provisions and regulations from time to time prescribed in the Internal Revenue Code of the United States of America.

7. **RULES AND REGULATIONS; USE RESTRICTIONS.** The Board of Directors may, from time to time, adopt and amend administrative Rules and Regulations governing the operation of the Association; the use, maintenance, management, and control of the Common Areas and property owned by the Association; and the use of the Parcels. Any Rule or Regulation created and imposed by the Board must be reasonably related to the promotion and preservation of property values and of the health, happiness, and peace of mind of the Parcel Owners, and uniformly applied and enforced.

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

8.1 **Fines and Suspensions.** The Board of Directors may levy fines and/or impose suspensions against Members, a Member's tenants or guests, or both, who commit violations of law, 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 Parcel. Suspensions of the use of Common Areas and facilities, and common non-essential services 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, which 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 law, the governing documents, or the rules that 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 suspension may be levied or imposed shall have a reasonable opportunity to respond, to present evidence, 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 a Director, Officer, 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 or impose 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 may 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 Governing Documents or Rules and Regulations that creates conditions of the Parcel 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 Parcel Owner.

8.5 **Availability of Remedies.** Each Member, his heirs, successors, and assigns, agrees to the foregoing provisions relating to default and abatement of violations, regardless of the harshness of the remedy utilized by the Association and regardless of the availability of other legal remedies. It is the intent of all Members to give the Association methods and procedures that will enable it to operate on a businesslike basis, to collect those monies due it, and to preserve the majority's right to enjoy the property free from unreasonable restraint and annoyance.

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

9.1 **Proposal.** Amendments to these Bylaws may be proposed by a majority of the Board or upon written petition signed by at least one-tenth (1/10) of the Voting Interests.



9.2 **Procedure.** Upon any amendment or amendments to these Bylaws being proposed by the Board or Parcel Owners, such proposed amendment or amendments shall be submitted to a vote of the Owners not later than the next annual meeting for which proper notice can still be given.

9.3 **Vote Required.** These Bylaws may be amended if the proposed amendment is approved by at least a majority of the Voting Interests present in person or by proxy and voting at any annual or special meeting called for that purpose which proper notice is given and a quorum is obtained. Amendments may also be approved by the written consent of a majority of the total Voting Interests. The Board of Directors may amend the governing documents to correct scrivener's errors or omissions, and amend and restate the governing documents in order to consolidate into one document amendments previously adopted by Members.

9.4 **Recording; Effective Date.** A copy of each amendment shall be attached to a Certificate of Amendment stating that the amendment was duly adopted at an annual meeting or a special Members meeting, give the date of the meeting at which the amendment was adopted, and identify the Official Records Book and Page of the Public Records where the Declaration of Covenants, Conditions, Restrictions and Easements was first originally recorded. The Certificate shall be executed by President or the Vice-President of the Association with the formalities of a deed. The amendment shall be effective when the fully-executed Certificate of Amendment and the amendment are recorded in the Public Records of Lee County, Florida.

## 10. **MISCELLANEOUS.**

10.1 **Gender.** 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.** Should any portion of these Bylaws be void or unenforceable, the remaining provisions of the Bylaws 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 the Declaration, Articles of Incorporation, or these Bylaws, the provisions of the Declaration or Articles shall prevail over the provisions of these Bylaws.