

THIS INSTRUMENT WAS PREPARED BY,  
AND AFTER RECORDING RETURN TO:

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Naples, Florida 34102

**CERTIFICATE OF AMENDMENT AND**  
**NOTICE OF NAME CHANGE**

**AMENDED AND RESTATED DECLARATION OF  
RESTRICTIONS, RESERVATIONS, AND COVENANTS  
FOR  
SPANISH WELLS UNIT ONE  
AND  
AMENDED AND RESTATED BY-LAWS  
AMENDED AND RESTATED ARTICLES OF INCORPORATION  
FOR  
SPANISH WELLS UNIT ONE HOMEOWNERS ASSOCIATION, INC.**

I, the undersigned President of Spanish Wells Unit One Homeowners Association, Inc., hereby certify that on April 13, 2016, at a duly-called and properly-noticed meeting of the Association members at which a quorum was present, the following amendments to the Amended and Restated Declaration of Restrictions, Reservations, and Covenants for Spanish Wells Unit One, the Amended and Restated By-Laws of Spanish Wells Unit One Homeowners Association, Inc, and the Amended and Restated Articles of Incorporation for Spanish Wells Unit One Homeowners Association, Inc. were approved by the required percentage of voting interests of the Association.

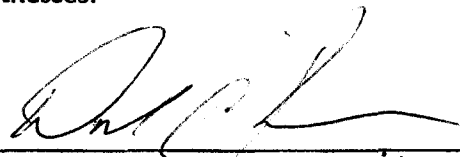
See Exhibit A attached hereto for amendments.

**NOTICE IS HEREBY GIVEN THAT THE NAME OF THE ASSOCIATION SHALL BE AMENDED FROM "SPANISH WELLS HOMEOWNERS ASSOCIATION, INC." TO "SPANISH WELLS UNIT ONE HOMEOWNERS ASSOCIATION, INC."**

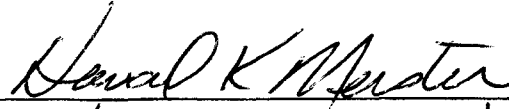
Dated this 4<sup>th</sup> day of May, 2016.

Witnesses:

**SPANISH WELLS UNIT ONE HOMEOWNERS  
ASSOCIATION, INC.**

  
By: David C. Jacobson

  
By: Kenneth Neyhart  
Association President

  
By: Howard K Meister

(Corporate Seal)

STATE OF FLORIDA  
COUNTY OF LEE

Subscribed before me this 4th day of May 2016, by Kenneth Neyhart,  
Association President, who is personally known to me.



Kristin K. Freeland  
NOTARY PUBLIC  
STATE OF FLORIDA  
Comm# FF922848  
Expires 9/30/2019

Kristin K Freeland  
NOTARY PUBLIC

Kristin K Freeland  
Printed Name of Notary Public

My Commission Expires: 9/30/2019

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

**SUBSTANTIAL REWORDING OF DECLARATION OF RESTRICTIONS, RESERVATIONS AND COVENANTS –  
SEE CURRENT DECLARATION OF RESTRICTIONS, RESERVATIONS AND COVENANTS FOR CURRENT TEXT**

**KNOWN ALL MEN BY THESE PRESENTS:**

On April 25, 1979, the original Declaration of Restrictions, Reservations and Covenants affecting the real property subject hereto was recorded in Official Records Book 1344, at Page 2196, *et seq.*, of the Public Records of Lee County, Florida. Said Declaration was amended on July 6, 1979 as evidenced in Official Records Book 1361, at Page 141, *et seq.*, in the Public Records of Lee County, Florida; and was amended again on July 26, 2013 as evidenced by Instrument Number 2013000173700 of the Public Records of Lee County, Florida. The Declaration is hereby further amended and restated in its entirety as follows:

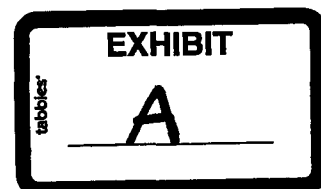
The land subject to this Amended and Restated Declaration of Restrictions, Reservations and Covenants, (hereinafter "Declaration"), is known as Spanish Wells Unit One, and is legally described as:

Spanish Wells Unit One, a subdivision lying in part of Section 3, Township 48 South, Range 25 East, less and except lot 35 in Block B and lot 1A in Block C, recorded April 24, 1979 in Plat Book 32 at pages 137 to 140, inclusive, in the records of Lee County, Florida, hereinafter ("Property").

Lots 58 and 59, Block A, Spanish Wells, Unit One, a subdivision according to the plat thereof recorded in Plat Book 32, Page 137, in the Public Records of Lee County, Florida were vacated, abandoned, discontinued and closed pursuant to Resolution Number 95-06-57 for Petition to Vacate Number 94-44, recorded in Official Records Book 2623, at Pages 4144, *et seq.*, of the Public Records of Lee County, Florida. The vacation shall not affect the ten foot wide utility easement adjacent to Tasca Drive. As a result, those lots are not subject to this Declaration and are not part of the Property.

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

**ARTICLE I – DEFINITIONS.** The following words, when used in this Declaration or any supplemental Declaration, shall have the following meanings:



(1) "Assessments" means a sum or sums of money due to the Association by the Owners, which includes regular assessments, special assessments, and specific assessment, which if not paid, can result in a lien against the parcel.

(2) "Association" shall mean and refer to Spanish Wells Unit One Homeowners Association, Inc., a Florida corporation.

(3) "Board of Directors" or "Board" when referred to herein shall mean the Board of Directors of Spanish Wells Unit One Homeowners Association, Inc., a Florida corporation.

(4) "Charge" means any legal or equitable indebtedness or sums owed to or due to the Association, incurred by or on behalf of an Owner, other than Assessments. Said obligations may arise by oral or written contract, by law or in equity, or may be created by these Governing Documents.

(5) "Common Area" means all real property, including any improvements and fixtures thereon, owned, leased, or the use of which has been granted or dedicated to the Association for the common use and enjoyment of its members.

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

(7) "Community Association" means Spanish Wells Community Association, Inc., a Florida not-for-profit corporation, the corporate entity responsible for the operation and maintenance of the Spanish Wells, including by way of illustration and not limitation, the roads, access control and surface water management system, and providing other services in Spanish Wells, as authorized by the Community Association's governing documents and applicable statutes.

(8) "Declaration" refers to this document and all amendments and additions thereto.

(9) "Dwelling Unit" or "Home" means a residential dwelling intended for residential use that is constructed on the Lot.

(10) "Family" or "Single Family" shall refer to any one of the following: (i) one natural person, the person's spouse, if any, and their custodial children, or (ii) not more than two natural persons not meeting the description in (i), but who customarily and continuously reside together as a single housekeeping unit, and the custodial children and dependent parents of said parties, if any.

(11) "Governing Documents" means this Declaration, the Articles of Incorporation, Bylaws and Rules and Regulations for the Association, as amended from time to time.

(12) "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, at the invitation of the Owner or Lessee without payment or consideration of rent.

(13) "Lease" means the grant by an Owner of a temporary right of use of the Owner's Home, with or without valuable consideration.

(14) "Lot" shall mean each of the 207 parcels of land as intended or designed for the construction thereon of one private dwelling unit, as depicted on the recorded Plat of Spanish Wells Unit One. "Lot" shall not include Lots 58 and 59 in Block A, as depicted on the original Plat of Spanish Wells Unit One as said lots were subsequently vacated and removed from the Declaration. "Lot" shall also not include Lot 35 in Block B or Lot 1A in Block C.

(15) "Member" shall mean and refer to a member of the Spanish Wells Unit One Homeowners Association, Inc., which members are the record Owners of fee simple title to lots situated in Spanish Wells Unit One.

(16) "Owner" shall mean and refer to the record title owner and the beneficiaries of any land trust which is record title owner, whether one or more persons or entities, of the fee simple title to any Lot situated within Spanish Wells Unit One, but shall not include a mortgagee.

(17) "Plat" refers to the Plat of Spanish Wells Unit One as recorded in the Public Records of Lee County, Florida.

(18) "Spanish Wells Unit One" shall mean and refer to all existing properties and additions thereto as are subject to this Declaration.

(19) "Subdivision" shall mean Spanish Wells Unit One.

(20) "Voting Interests" means and refers to the arrangement established in the Governing Documents by which Owners of each Lot (i.e., Members) are collectively entitled to one vote in Association matters for which a vote of the Members is called for or required. There are 207 Lots. Therefore, the total number of Voting Interests is 207.

## **ARTICLE II –ASSOCIATION MEMBERSHIP AND VOTING RIGHTS.**

1. **Membership:** Every person or entity who is the Owner of record of a fee interest in any Lot will automatically become a Member of the Association subject to and bound by the Association's Articles of Incorporation, By-laws, Rules and Regulations and this Declaration upon recording of the instrument of conveyance through which title was acquired. The foregoing is not intended to include persons or entities who hold an interest in any Lot merely as security for the performance of an obligation. Ownership of such Lot shall be the sole qualification for membership. When any Lot is owned of record in joint tenancy or tenancy in common or by some other legal entity, the membership as to such Lots will be joint and the right of such membership shall be exercised only as stipulated in Section 3 below.

**2. Member in Default:** During any period in which a Member shall be in default in the payments of any monetary obligation due to the Association, the voting rights and common area use rights of the Member may be suspended by the Board of Directors until such assessment is paid. In the event of violation by a Member of any rules or regulations established by the Board of Directors, such Member's voting and use rights may be suspended by the Board of Directors after a hearing in accordance with applicable law, if required, at which the general requirements of due process shall be observed. Such hearing shall only be held by the Board of Directors after giving such Member ten (10) days prior written notice by certified mail specifying such alleged violations and setting the time, place and date of the hearing. Determination of violation shall be made by a majority vote for the Board of Directors and such action shall thereby be conclusive. During any suspension of voting rights, the total number of Voting Interests in the Association shall be reduced accordingly, but it shall not affect the basis for which Common Expenses are shared or Common Surplus is owned.

**3. Voting Rights:** The voting rights of the membership shall be appurtenant to the ownership of the fee interest in the Lot. There shall be one (1) Voting Interest per Lot. When two or more persons hold an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised by one of such Members as proxy and nominee for all Members holding an interest in a Lot and in no event shall more than one vote be cast with respect to any Lot.

### **ARTICLE III –ASSESSMENTS.**

**1. Creation of the Lien and Personal Obligation of Assessments:** Each owner of any Lot, including any purchaser at a judicial sale, by acceptance of the conveyance, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association Assessments and Charges to be fixed, established and collected from time to time as hereinafter provided, including:

- (a) Annual assessments or charges,
- (b) Special Assessments ; and
- (c) Specific Assessments.

The annual and special Assessments together with such interest, late fees, attorney's fees, and costs of the collection incurred by the Association incident to the collection of the Assessment or enforcement of the lien as hereinafter provided shall be a Charge on the Lots herein and shall be continuing lien in the nature of a mortgage upon the Lots against which each such Assessment or Charge is made. The Association's lien is in effect until all it secures have been fully paid or until barred by law. A claim of lien shall be signed and acknowledged by an Officer or agent of the Association. Upon recording, the Association's claim of lien shall relate back to the date on which the Declaration was originally recorded (April 25, 1979). Upon payment in full, the Owner of the Lot is entitled to a satisfaction of the lien. The Association may bring an action in its name to foreclose a lien for Assessments or Charges in the manner that a mortgage of real property is foreclosed and may also bring an action to recover a money judgment for the unpaid Assessments or Charges without waiving any claim of lien.

An Owner, regardless of how title is acquired, including a purchaser at a judicial sale, shall be liable for all Assessments and Charges coming due while he is the Owner. Any person or entity which acquires title to a Lot shall be jointly and severally liable with their predecessors in title for all unpaid Assessments and Charges against the predecessors for their share of the Charges and Assessments, including interest, late fees, attorney's fees and other costs and expenses of collection incurred by the Association up to the time of the transfer, without prejudice to any right the transferee may have to recover from the transferor the amounts paid by the transferee. The liability for Assessments or Charges may not be avoided by waiver of the use or enjoyment of any Common Areas or by the abandonment of the Lot for which the Assessments or Charges are made.

**2. Purpose of Assessments:** The annual assessments levied by the Association shall be used to provide funds for such purposes as the Association may determine are for the benefit of its Members which purposes may include by way of illustration and not of limitation, maintenance, landscaping and beautification of certain areas in the subdivision, as more fully set forth in Article IX, Section 2, the procurement of insurance, and the employment of attorneys, accountants and other persons to represent the Association, when necessary or useful. Said assessments shall be paid annual on or before January 1st, the due date.

**3. Special Assessments:** In addition to the annual assessment authorized above, the Association may levy from time to time in any assessment year a special assessment, provided such assessment shall have the approval of at least two-thirds of the Voting Interests of the Association present, in person or by proxy, and voting at a duly noticed meeting at which a quorum is present.

**4. Specific Assessment:** In addition to the annual assessment and special assessments authorized above, the Association may levy from time to time specific assessments. Specific assessments are other fees or charges, including fines, against the Owner of a specific Lot for services as provided to the Lot by the Association at the request of the Owner or as required to enforce the provisions in this Declaration of Restrictions, Reservations and Covenants, Articles of Incorporation, Bylaws and Rules and Regulations ("Charges").

There is created by this Declaration a common law and contractual lien to secure payment for any service which the Association provides for an individual Owner or expenses which the Association incurs in regard to an Owner 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 maintain, repair or replace property that is the responsibility of the Owner. The Lien for Charges shall be of equal priority to, shall accrue interest and late fees, and shall be foreclosed in the same manner as the Common Expense lien, including the right to recover attorney's fees, costs and expenses of collection.

**5.** Furthermore, the Association may levy against each new Member at the time they purchase a Lot in the Subdivision a one-time specific assessment to fund an account for deferred maintenance and capital expenditures in an amount not to exceed \$450.00. The amount of this specific assessment shall be set from time to time by the Board of Directors in its sole discretion. The amount of the specific assessment shall be set forth in a written Board resolution adopted at a duly-called and properly noticed meeting of the Board at which a quorum is present.

**6. Application of Payment; Non-payment of Assessments for Common Expenses or Charges; Interest:** Each annual assessment shall be due and payable by January 1st, of each year. Any special assessment shall be due within the time specified by the Board of Directors. Any assessment not paid within thirty (30) days after due date shall bear interest from the date due at the highest rate permitted by applicable law. Furthermore, a late charge shall be levied by the Association against any Member who fails to pay any assessment within thirty (30) days after the due date of the assessment. The late fee shall be at the highest rate permitted by applicable law. All payments made to the Association by or on behalf of an Owner shall be applied first to interest, then to late fees, then to attorney's fees, then to costs (including, but not limited to, collection charges imposed by the management company, attorney, and Court), then to fines, then to other charges, and then to the oldest outstanding unpaid regular, special, or individual assessment. No payment by check is deemed received until the check has cleared the Bank.

**7. Attachment of Rental Income When Lot is Delinquent:** Notwithstanding any other remedy available to the Association under this Declaration, the Bylaws, or applicable law, the Association shall have the following options when payment of Assessments or Charges are in default (more than ten days in arrears). The Association may, without order of the Court, direct rental income (by written notice to the Tenant with copy to Owner) from Lots in default to be paid directly to the Association until all outstanding Assessments, Charges, other monetary obligations, interest, late fees, costs, collection expenses, attorney's fees and receiver's fees, if applicable, are paid in full. As an alternative, the Association may apply to a Court of competent jurisdiction, either in connection with a foreclosure suit, a personal suit, or otherwise, to have rental proceeds paid on account of a Lot in default paid directly to the Association, the court registry, or a receiver, as the Court may direct. The Association may choose any of these courses of action, or other remedies as may be prescribed by law or elsewhere in the Governing Documents, as the Board deems appropriate, without same constituting a waiver or election of remedies.

**8. First Mortgagee:** The priority of the Association's lien and the obligation for payment of past due Assessments or other sums due in relation to first mortgagees who obtain title as a result of foreclosure or deed in lieu of foreclosure, shall be determined by applicable law in effect when the Declaration was recorded (April 25, 1979).

**9. Certificate of Unpaid Assessments or Charges:** Any Owner has the right to require from the Association a certificate showing the amount of unpaid Assessments or Charges against him with respect to his Lot. The Association, its agents, and counsel shall be entitled to charge a fee for preparing such information.

**10. Other Remedies:** The Board of Directors shall have the authority to impose such other remedies or sanctions permitted by Florida law pertaining to non-payment of monetary obligations to the Association. Without limitation, same includes suspension of use rights in Common Areas and Association Property; suspension of voting rights; suspension of the right to serve on the Board; the attachment of rental income; denial of lease approval requests; and acceleration.



**ARTICLE IV – ARCHITECTURAL, MAINTENANCE AND USE RESTRICTIONS:**

1. **Enforcement:** The Board of Directors shall have the right and power to enforce the covenants, conditions, restrictions, reservations and other provisions of the Declaration, and to delegate or assign, either exclusively or non-exclusively, any or all such rights, powers, duties or privileges hereunder to a Committee.

2. **The Committee:** The Committee shall consist of not less than three (3) nor more than seven (7) persons elected by the Board. The Committee shall have the power and authority to approve or reject plans and specifications for improvements to be placed on the Lots. The Committee shall have the right to waive the procedural requirements as stated above from time to time on a case by case basis.

3. **Approval of Plant, Standards and Procedures:** For the purpose of further insuring the development of Spanish Wells Unit One as a residential area of high quality and standards and in order that all improvements on each Lot, including adjoining rights-of-way, shall present an attractive and pleasing appearance from all sides of view, the Association through the Board or a Committee established by the Board has the exclusive power and discretion to control and approval all of the buildings, structures, other improvements and exterior color schemes on improvements on each Lot in the manner and to the extent set forth herein. No residence or other building, fence, wall, utility yard, driveway, swimming pool or other structure or improvement, regardless of size or purpose, whether attached to or detached from the main residence shall be commenced, placed, erected or allowed to remain on any Lot, nor shall any addition to or exterior change or alteration thereto be made unless and until buildings plans and specifications covering same, showing the nature, kind, shape, heights, size, materials, floor plans, exterior color schemes, location and orientation on the Lot and approximate square footage, construction schedule, front, side and rear elevations and such other information as the Association shall require, have been submitted to and approved in writing by the Association. Residences shall be constructed of new and durable materials and shall be of a design in keeping with other residences in the Subdivision. Hedges are to be maintained at a height no greater than eight feet. Fences are to be maintained at a height no greater than four feet. No fence, wall or hedge shall be permitted within 20 feet of the lot lines adjacent to the golf course except by the written permission of the Association. In the event the Association rejects such plans and specifications as submitted, the Association shall so inform the owner in writing and along with reasonable detail, the reason or reasons for disapproval and the Association's recommendations to remedy same if in the sole opinion of the Association a satisfactory remedy is possible.

As a prerequisite to consideration for approval, and prior to beginning the contemplated work, two complete sets of plans and specifications must be submitted to the Association.

The Association shall be entitled to stop any construction in violation of these restrictions. Any such exterior addition to or change or alteration of any structure, or the construction of any new structure made without application having first been made and approval obtained as provided above, shall be deemed to be in violation of this covenant and the Owner may be required to restore the structure or Lot to the original condition at Owner's cost, plus any attorney's fees incurred, if any, by the Association.

In the event the Association fails within forty-five (45) days to approve or disapprove such plans and specifications, approval will not be required, and the Owner shall be deemed to have been fully complied with this section. Plans and specifications shall be prepared by an architect or builder registered in the State of Florida. The architect or builder submitting the plans must state in writing that he has visited the site and is familiar with all existing site conditions.

**ARTICLE V – SETBACK LINES:**

1. **Placement of Dwellings:** All buildings and structures shall be situated no nearer than thirty (30) feet to the front line, and no nearer than ten (10) feet to any side lot lines and no nearer than twenty-five (25) feet to any rear line. However, the rear set back line shall not be construed to prevent the construction of an inground swimming pool within twenty-five (25) feet of the rear lot lines. Plans for any pool any fence or enclosure of a pool must also be approved by the Association pursuant to Article V, Section 3 hereof. The front side of all dwellings shall face the street, except on corner lots where dwellings may be placed on an angle to face two streets.

**ARTICLE VI – LAWNS AND LANDSCAPING:**

At the time plans for any buildings and additions thereto are submitted to the Association, a complete landscaping plan shall also be furnished. The landscaping plan may include well planned tree and rock gardens and planting areas with some rock areas in lieu of lawn. Sodded lawn areas may be required to supplement the overall plan. The landscaping in accordance with said plan must be completed within ninety (90) days after the building or addition has been completed. The Association may reject any plan that is not in keeping with the area. The Association's decision shall be final and binding.

**ARTICLE VII – BUILDING SPECIFICATIONS:**

Single-family residence shall exceed 1,600 square feet. No portable buildings, trailers, mobile homes or prefabricated homes may be placed on the Lot, except that a construction shed may be placed on a Lot and remain there temporarily during the course of active construction of a residence. No building erected upon a Lot or any part thereof for use as a garage shall ever be used as a residence.

**ARTICLE VIII – MAINTENANCE**

1. **Responsibility of Owner:** All Lots, together with the exterior of all improvements located thereon, shall be maintained in neat and attractive condition by the respective owners. Such maintenance shall include, but shall not be limited to painting, repairing, replacing and caring for roofs, screens, windows, gutters, downspouts, building surfaces, trees, shrubs, walks and other exterior improvements. Each Owner shall also be responsible for maintaining, repairing, and replacing all lawn and landscaping, trees and shrubs on the Property between their Lot and the edge of the street pavement on the adjoining right-of way.

2. **Enforcement of Maintenance:** If, after reasonable notice, the Owner fails to maintain his Lot and the improvements situated thereon in a manner satisfactory to the Association, the Association shall have the right, through its agents and employees to enter upon said Lot and/or the strip of land

and the exterior of the buildings and any other improvements erected thereon and perform such maintenance as shall be approved by the Board of Directors. The cost of such exterior maintenance, including attorney's fees incurred by the Association shall be secured by a lien for Charges.

3. **Responsibility of Association:** The Association shall be responsible for maintenance of the lighting, landscaping and lawn at the areas surrounding the entrance to the Subdivision, and on rights-of-way dedicated to the county (to the extent additional work is desired by the Association in such county maintained areas) and on unimproved Lots. The Association shall be responsible for the annual trimming of queen palms along the street.

4. **Negligence:** Each Owner shall be liable to the Association and/or other Owners for the expenses of any maintenance, repair or replacement of the Common Areas, Association Property, Lots, or improvements thereon made necessary by his intentional act or negligence, or by that of any member of his Family or his or their Occupants, Guests, Tenants or Invitees.

**ARTICLE IX – OTHER USES:**

All owners shall use and improve their Lots in accordance with the following:

1. Clotheslines and drying areas shall be located as not to be visible from the street or adjoining properties.
2. All driveways shall be paved with a bonded material other than asphalt.
3. All Lots and adjoining rights-of-way shall be maintained to the edge of the street pavement. The Owner shall be responsible for regularly irrigating the Lot.
4. No permanent or semi-permanent swimming pools will be installed or constructed above-ground.
5. Installation of temporary structures, buildings, tents, athletic equipment, swing sets, large thematic statues, fountains, ponds, or waterfalls shall be subject to the prior approval of the Board of Directors. The Board of Directors shall take into account the opinions of adjoining neighbors.
6. No trucks, buses, boats, travel trailers, boat trailers or any other type of trailers or commercial vehicles shall be permitted to park overnight on the Lot or in streets abutting a Lot, unless in an enclosed garage. All trucks shall be stored in the garage. A "truck" means all vehicles of every kind, including pick-up trucks, which are manufactured, designed, marketed or used for transporting goods of any nature. Truck shall include, but shall not be limited to step, panel, or cargo vans, and mini-vans. The term truck shall exclude passenger vans primarily designed for the carriage of eight or less passengers, and not primarily designed for the carriage of goods and sport utility vehicles primarily designed, marketed, or used for the carriage of eight or less passengers, and not primarily designed, marketed or used for the carriage of goods. Notwithstanding the above restrictions, an Owner may park a motor home in the driveway on the Lot for up to forty-eight (48) hours at a time, no more than twelve (12) times per year, for the purpose of loading and unloading.

The Board of Directors of the Association is authorized to order the towing of any vehicle (at the vehicle Owner's expense) for a violation of this section.

7. All garbage and trash containers, oil tanks and bottled gas tanks on all Lots must be placed underground or in walled-in areas so that they are not visible from adjoining properties.
8. No Lot Owner or his agent shall pump, use or discharge water from the lakes or ponds in the subdivision for irrigation or any other purpose without permission of the Committee.
9. Real estate signs, for a residence or a Lot, shall conform to the requirements set forth in the Spanish Wells Community Association, Inc.'s Sign Rules, Regulations and Guidelines.
10. No Lot Owner shall place more than six inches of fill on a portion of his Lot without the written permission of the Committee.
11. The use of unmanned aerial vehicles ("UVA") and remotely piloted aircrafts ("RPA"), commonly known as drones, are not permitted in Spanish Wells Unit One.

#### **ARTICLE X – ANIMALS.**

No animals, birds, reptiles of any kind shall be raised, bred or kept on any Lot, except that dogs, cats and other normal household pets may be kept, provided, they are not kept, bred or maintained for any commercial purpose. No animal, bird or reptile shall be kept in such manner as to constitute a nuisance. It is hereby established that more than three (3) animals of any kind shall constitute a nuisance hereunder. If, on the effective date of this Amended and Restated Declaration of Restrictions, Reservations and Covenants, an Owner has more than three (3) animals, the Owner must register the animals within 30 days after the effective date of this Amended and Restated Declaration of Restrictions, Reservations and Covenants. The registered pets shall be "grandfathered" and not subject to the amendments to this Article related solely to the number of pets. Upon the death of any "grandfathered" pet, the Owner shall fully comply with this Article, as amended. Notwithstanding the foregoing, "grandfathered" pets are subject to permanent removal by order of the Board of Directors if such pet becomes a source of unreasonable annoyance to other residents. No vicious animal may be kept within the community. "Vicious animal" means any animal of the order carnivore that has a propensity to attack, to cause injury to or to otherwise endanger the safety of human beings without provocation, or that has been so declared. The Board of Directors shall have the authority to determine if a breed of animal or specific animal is considered "vicious".

#### **ARTICLE XI – DRILLING AND MINING OPERATIONS.**

No oil drilling or oil development operations or refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot. No derrick or other structure designed for use and drilling for oil or natural gas shall be erected and maintained or permitted upon any Lot.

#### **ARTICLE XII – NOXIOUS ACTIVITIES.**

The pursuit of hobbies or other inherently dangerous activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices which might cause disorderly, unsightly or unkempt conditions, the shooting of firearms, fireworks or pyrotechnic devices of any type or size, and other such activities shall not be pursued or undertaken on any part of any Lot without the consent of the Association. No unlicensed motor vehicles of any type should be permitted to remain overnight on a Lot or streets abutting a Lot, unless garaged. The use of unmanned aerial vehicles ("UVA") and remotely piloted aircrafts ("RPA"), commonly known as drones are not permitted in Spanish Wells Unit One.

#### **ARTICLE XIII – MISCELLANEOUS MATTERS**

1. **Duration:** These Restrictions shall be construed to be covenants running with the land and shall automatically extend for successive periods of ten (10) years each unless revoked, in whole or in part, by a majority of the Voting Interests.
2. **Amendments:** These covenants and restrictions as they pertain to the Lots, may be amended at any time and from time to time during the period of any extension or renewal thereof by a majority of the Voting Interests of the Association. Any such amendment shall not become effective until the instrument evidencing such change has been filed of record. This amendment procedure does not apply to "additions" to the subdivision or areas affected by this Declaration.
3. **Enforcement:** If any person, firm or corporation shall violate or attempt to violate any of these restrictions, covenants or conditions it shall be lawful for any other person, firm or corporation owning a Lot to bring an action against the violating party for any claim or right which these restrictions may create in said Owner or interested party either to prevent said person, firm or corporation from doing such acts which violate the provision of this Declaration or to recover damages for such violation. The provisions of this section are in addition to, and separate from, the rights of the Association to enforce the provisions as contained in this Declaration or to collect Association assessments as hereunder provided.
4. **Attorney's Fees:** The prevailing party in any action by any Owner to enforce the provisions of these restrictions or an action by the Association to enforce the provisions of this Declaration shall recover reasonable attorney's fees and court costs from the losing party.
5. **Waiver:** Any failure by Trustee, Developer, Association, or any Owner to enforce any of the terms and conditions of this Declaration, shall in no event be deemed a waiver of the right to do so thereafter.

#### **ARTICLE XIV – GOLFER'S EASEMENT.**

All Owners and occupants of any Lot adjoining the golf course may be urged but shall not be required to extend to any and all golfers lawfully using the golf course, the courtesy of allowing such golfers to retrieve any and all errant golf balls, provided such golf balls may be removed without damaging any flowers or shrubs of any owner of any Lot.

**ARTICLE XV – GUEST OCCUPANCY.** The right to have Guests within the Community is a privilege, not a right. The privilege may be revoked by the Board of Directors if it is abused by an Owner or Tenant. Guest visitation in the Community and Guest occupancy of Homes shall be regulated as follows:

1. Non-overnight visitation by Guests in a Home when the Owner or Tenant is in residence shall be permitted, provided that the visitation does not create a nuisance or annoyance to other Community residents. The Association may restrict or prohibit Guest visitation by convicted felons, including but not limited to registered sex offenders and persons who have been convicted of narcotic and/or violent offenses. The Board may require non-overnight Guests to register with the Association. The Board may establish additional restrictions on non-overnight Guests, including but not limited to, the maximum numbers of Guests who may be present.

2. Overnight Guest occupancy when the Owner or Tenant is in residence shall be permitted, provided that the occupancy does not create a nuisance or annoyance to other Community residents. The Association may restrict or prohibit overnight Guest occupancy by convicted felons, including but not limited to registered sex offenders and persons who have been convicted of narcotic and/or violent offenses. The Board may require overnight Guests to register with the Association. The Board may establish additional restrictions on overnight Guest occupancy.

3. Non-overnight Guests in the absence of the Owner or Tenant are not permitted. Owners and Tenants may have Homes inspected by caretakers, friends or relatives. However, such individuals shall not be permitted to use the Home or Spanish Wells recreational facilities.

4. Overnight Guests in the absence of the Owner are permitted, without notice to the Association, if the period of Guest occupancy is not more than seven (7) days. Such seven (7)-day Guest occupancies without notice to the Association are limited to two occupancies per calendar year.

Overnight Guests in the absence of the Owner for occupancy periods of more than seven (7) days require notification to the Association ten (10) days prior to the commencement of occupancy. Notification shall include the names addresses and contact information for each individual Guest occupant.

Each Owner, his Family, Tenants, Guests, Invitees and all Occupants and the Association shall be governed by and shall comply with the provisions of the Governing Documents. Action for damages or for injunctive relief, or both, for failure to comply may be brought by the Association or by an Owner against anyone who occupies a Home as an Owner, Family member, Tenant, Occupant or Guest.

5. **Additional Board Authority:** The Board may promulgate such rules, restrictions policies, and procedures as are necessary to implement this Section. In the event that Owners are suspected of circumventing rental restrictions by receiving consideration for occupancies which are held out as Guest occupancies, the Association may require alleged Guests to submit proof of familial relationship, an affidavit as to absence of payment for the right to occupy the premises, or other proof that the leasing provisions are not being violated.

**ARTICLE XVI – LEASING.** The lease of a Home is defined as occupancy of the Home by any person other than the Owner, whether pursuant to verbal or written agreement, where said occupancy by the non-

owner involves consideration (the payment of money, the exchange of goods or services, or any other exchange of value). The term "leasing" and "renting" shall be used interchangeably for the purpose of this Declaration of Restrictions, Reservations and Covenants. The term "tenant" and "lessee" shall likewise be used interchangeably. All leases must be in writing. Should an Owner wish to lease his Home, he shall furnish the Association with a copy of the proposed lease and the name of the proposed lessee, as well as all proposed occupants. Any person occupying the Home after initial approval shall be subject to a separate application and approval process. The Association shall have thirty (30) days from the receipt of notice and all required information within which to approve or disapprove of the proposed lease or proposed lessees or occupants. The Association shall give the Owner written notice of its decision within said period. No individual rooms may be rented and no transient tenants may be accommodated. "Rent-sharing" and subleasing are prohibited. No lease shall be approved for a term of less than thirty (30) days or one calendar month. All leases shall be for a maximum period of one year. Leases may be renewed, subject to Board approval. This section shall apply to all Owners, regardless of when the Home was purchased or title acquired.

**1. Board Right of Approval.** The Board of Directors shall have the authority to approve all leases and renewals or extensions thereof, which authority may be delegated to a committee or agent. No person may occupy a Home as a tenant, family member of a tenant, occupant, or otherwise without prior approval of the Board of Directors. The Board shall have the authority to promulgate or use a uniform lease application and require such other information from the proposed tenant and all proposed occupants as the Board deems appropriate under the circumstances. The Board may require an interview of any proposed tenant and all proposed occupants of a Home, as a condition for approval.

**2. Tenant Conduct; Remedies.** All leases shall be on a uniform form of lease or lease addendum if so promulgated by the Association. Uniform leases, addenda and all other leases will provide, or be deemed to provide that the tenants have read and agreed to be bound by this Declaration, Articles of Incorporation, Bylaws, and Rules and Regulations as the same may be amended from time to time (the "Governing Documents"). The uniform lease or addendum and other leases shall further provide or be deemed to provide that any violation of the Governing Documents shall constitute a material breach of the lease and subject the tenant to eviction as well as any other remedy afforded by the Governing Documents or Florida law. If a tenant, other Home occupant, guest or invitee fails to abide by the Governing Documents, the Owner(s) shall be responsible for the conduct of the tenants, occupants, guests and invitees and shall be subject to all remedies set forth in the Governing Documents and Florida law, without waiver of any remedy available to the Association as to the tenant. The Owner shall have the duty to bring his tenant's conduct (and that of the other Home occupants, guests and invitees) into compliance with the Governing Documents by whatever action is necessary, including without limitation the institution of eviction proceedings without notice to cure, where legally permissible. If the Owner fails to bring the conduct of the tenant into compliance with the Governing Documents in a manner deemed acceptable by the Association, the Association shall have the authority to act as agent of the Owner to undertake whatever action is necessary to abate the tenants' noncompliance with the Governing Documents (or the other noncompliance of other occupants, guests or invitees), including without limitation the right to institute an action for eviction against the tenant in the name of the Association in its own right, or as agent of the Owner. The Association shall have the right to recover any costs or fees, including attorney's fees, incurred in connection with such actions, from the Owner which shall be secured by a continuing lien in the same manner as assessments for common expense. Any uniform lease or lease addendum will provide, or be deemed to provide that the Association shall have the authority to direct that all rental income related to the Home be paid to the Association until

all past due and current obligations of the Association have been paid in full, including but not limited to all past due Assessments, charges, other monetary obligations, late fees, interest, attorneys' fees and cost and expenses of collection.

**3. Approval Process; Disapproval.** Any Owner intending to lease his Home shall submit a copy of the proposed lease, an application, and any other requested information and required fees at least thirty (30) days in advance of the commencement of the lease or renewal or extension term. Upon receipt of all information and fees required by Association and an interview (if requested by the Board), the Association shall have the duty to approve or disapprove all proposed leases within thirty (30) days of receipt of such information for approval and the completion of the tenant/occupant interview (if required), by sending written notification to the Owner within such time frame. All requests for approval not acted upon within thirty (30) days shall be deemed approved. Applications for renewals or extensions of lease agreements shall be submitted at least thirty (30) days in advance of the expiration of the lease agreement. If the Association disapproves a proposed lease or renewal or extension, the Owner shall receive a short statement indicating the reason for the disapproval, and the lease shall not be made, renewed, or extended. The Association shall neither have a duty to provide an alternate lessee nor shall it assume any responsibility for the denial of a lease application if any denial is based upon any of the following factors:

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

(b) The application for approval on its face, facts discovered in connection with the Association's investigation, or the conduct of the applicant, indicate that the person seeking approval intends to conduct himself in a manner inconsistent with the Governing Documents. By way of example, but not limitation, a tenant taking possession of the premises prior to approval by the Association as provided for herein shall constitute a presumption that the applicant's conduct is inconsistent with the Governing Documents and may constitute grounds for denial;

(c) The person seeking approval has a history of disruptive behavior or disregard for the rights and property of others as evidenced by his conduct in other housing facilities or associations, or by his conduct in this Community Association as a tenant, occupant or guest;

(d) The Owner or person seeking approval has failed to provide the information, fees, or appearances required to process the application in a timely manner;

(e) All assessments, fines and other charges and monetary obligations against the Home and/or Owner have not been paid in full.

**4. Liability.** The liability of the Owner under the Governing Documents shall continue notwithstanding the fact that he may have leased or rented his interest in the Home as provided herein.

**5. Association Fee.** The Owner or lessee seeking approval of a lease of a Home shall pay a transfer fee for each applicant in an amount determined by the Board, which unless otherwise specified, shall be



the maximum amount permitted by law. A charge may be made in connection with an extension or renewal of a lease.

**ARTICLE XVII – MAINTENANCE OF COMMUNITY INTERESTS.** In order to maintain a community of congenial Owners and thus protect the value of the Homes, the use and transfer of Homes by any Owner shall be subject to the following provisions as long as the Community Association exists upon the land, which provisions each Owner covenants to observe:

**1. Notice to Association.** Owners shall notify the Association in writing of his or her intention to sell or lease his or her Home and furnish with such notification a copy of the contract for purchase and sale. It is not the intention of this Article to grant the Association a right of approval or disapproval of purchasers. It is, however, the intent of this paragraph to impose an affirmative duty on the Owners to keep the Association fully advised of any changes in occupancy or ownership for the purposes of facilitating the management of the Association's membership records.

**2. Transfer Fee.** The Association may charge a processing fee for the transfers of title. The fee may not exceed the maximum permitted by law per transaction. The Association or its authorized agent may also charge a reasonable fee for the preparation of a certificate, commonly known as an estoppel certificate, stating all assessments and other monies owed to the Association by the Owner with respect to the Home. The fee for the preparation of such certificate shall be established by a written resolution of the Board or provided for in a management, bookkeeping, or maintenance contract.

AMENDED AND RESTATED ARTICLES OF INCORPORATION  
FOR  
SPANISH WELLS UNIT ONE HOMEOWNERS ASSOCIATION, INC.  
(A Corporation Not-For-Profit)

SUBSTANTIAL REWORDING OF ARTICLES OF INCORPORATION – SEE CURRENT ARTICLES OF  
INCORPORATION FOR CURRENT TEXT

Pursuant to Section 617.1007, Florida Statutes, the Articles of Incorporation for Spanish Wells Homeowners Association, Inc., a Florida corporation not for profit, which was originally incorporated under the same name on March 20, 1979, are hereby amended and restated in their entirety, and the name of the corporation is changed. All amendments included herein have been adopted pursuant to Section 617.1002(4), Florida Statutes, and there is no discrepancy between the corporation's Articles of Incorporation as heretofore amended, and the provisions of these Amended and Restated Articles, other than the inclusion of amendments adopted pursuant to Section 617.1002 and the omission of matters of historical interest. The name of the corporation is now changed, and shall hereafter be Spanish Wells Unit One Homeowners Association, Inc. The Amended and Restated Articles of Incorporation of Spanish Wells Unit One Homeowners Association, Inc. shall be as follows:

ARTICLE I – NAME

The name of this corporation, which is hereinafter called the Association, is:

SPANISH WELLS UNIT ONE HOMEOWNERS ASSOCIATION, INC.

ARTICLE II – PURPOSES AND POWERS

2.1 The purpose for which this Association is organized are to promote the health, safety, and welfare of the residents within the property described in Exhibit "A" .

2.2 This Association is organized and operated On a non-stock basis as a corporation not-for-profit under the laws of the State of Florida, and no income of the Association shall be distributed or inure to the private benefit of any Owner, Director or officer. For the accomplishment of its purposes, the Association has 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 Articles and the Declaration of Restrictions, Reservations and Covenants for Spanish Wells Unit One. The Association also has all of the powers and duties reasonably necessary or appropriate as they 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; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the corporation, including all license fees, taxes or governmental charges levied or imposed against the property or the corporation;

b) To make, amend and enforce reasonable rules and regulations governing the use of the Common Areas and the operation of the Association;

c) To sue and be sued, and to enforce the provisions of the Declaration, these Articles, and the Bylaws of the Association;

d) To contract for the management and maintenance of the property within Spanish Wells Unit One 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 professionals to perform the services required for proper operation of the Properties;

f) To dedicate, sell or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication, sale or transfer shall be effective unless an instrument has been signed by two-thirds (2/3rds) of the voting interests agreeing to such dedication, sale or transfer or where such action has been approved by two-thirds (2/3rds) of the voting interests present in person or by proxy and voting at any annual or special meeting called for that purpose;

i) 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;

j) To enforce the provisions of the Declaration of Restrictions, Reservations and Covenants, these Articles, the Bylaws and any Rules and Regulations of the Association.

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

All funds and the title to any 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 – TERM; DISSOLUTION

The term of its existence shall be perpetual. The Association may be dissolved with the consent given in writing and signed by not less than two-thirds (2/3rds) of the voting interests. Upon dissolution of the Association, other than incident to a merger or consolidation, its assets, both real and personal, shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was formed. In the even there is a refusal to accept such dedication, then such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization which is devoted to purposes similar to those of this Association.

#### ARTICLE IV – MEMBER AND VOTING RIGHTS

Membership and Voting Rights shall be as set forth in the Bylaws of the Association.

#### ARTICLE V – MANAGEMENT OF CORPORATE AFFAIRS

Amended and Restated Articles of Incorporation

5.1 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 seven (7) Directors.

5.2 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.

5.3 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 VI – INDEMNIFICATION

To the fullest extent permitted by Florida law, the Association shall indemnify and hold harmless every Director and every officer of the Association against all expenses and liabilities including attorney's fees, actually and reasonably incurred by or imposed on him in connection with any legal proceeding (or settlement or appeal of such proceeding) to which he may be a party because of his being or having been a Director or officer of the Association. The foregoing right of indemnification shall not apply to:

- a) Willful misconduct of a conscious disregard for the best interests of the Association, in a proceeding by or in the right of the Association to procure a judgment in its favor.
- b) A violation of criminal law, unless the Director or officer had no reasonable cause to believe his action as unlawful or had reasonable cause to believe his action was lawful.
- c) A transaction from which the Director or officer derived an improper personal benefit.
- d) Wrongful conduct by Director or officers, in a proceeding brought by or on behalf of the Association.

In the event of a settlement, the right to indemnification shall not apply unless a majority of the disinterested Directors approves the settlement as being in the best interest of the Association. The foregoing rights of indemnification shall be in addition to, and not exclusive of all other rights to which a Director or officer may be entitled.

#### ARTICLE VII – BY-LAWS

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

ARTICLE VIII – AMENDMENTS

Amendments to the Articles of Incorporation shall be proposed and adopted in the following manner:

8.1 Proposal. Amendments to these Articles shall be proposed by a majority of the Board or upon petition of one-fourth(1/4<sup>th</sup>) of the voting interests, and shall be submitted to a vote of the members not later than the next annual meeting.

8.2 Vote Required. Except as otherwise required by Florida law, these Articles of Incorporation may be amended if the proposed amendment is approved by at least a majority of the voting interests,

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

AMENDED AND RESTATED BY-LAWS OF  
SPANISH WELLS UNIT ONE HOMEOWNERS ASSOCIATION, INC.

ARTICLE I  
NAME AND LOCATION

The name of the corporation is SPANISH WELLS UNIT ONE HOMEOWNERS ASSOCIATION, INC., hereinafter referred to as the "Association" which is located in Bonita Springs, Florida. The office of the Association shall be at such location within Lee County, as may from time to time be determined by the Board of Directors.

ARTICLE II  
DEFINITIONS

The terms as used herein shall have the same meaning as the Declaration of Restrictions, Reservations and Covenants hereinafter referred to as the "Declaration" of Spanish Wells Unit One.

ARTICLE III  
MEETING OF MEMBERS

Section 1. Annual Meetings. Annual meetings of the Members shall be held during February or March of each year, on the day, time and the place in Lee County, Florida, as established by the Board of Directors. Such day shall not be a legal holiday.

Section 2. Special Meetings. Special meetings of the Members may be called at any time by the President or by the Board of Directors, or upon written request issued pursuant to a vote of one-fourth (1/4) of all the votes appurtenant to the Lots.

Section 3. Notice of Meetings. Written notice of each meeting of the Members shall be given by, or at the direction of the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, hand-delivering, or electronically transmitting (when permitted by law) at least 14 days before such meeting to each Member entitled to vote thereat, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Hand delivery and electronic notice is acceptable where permissible by law. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting. If the matter of a special assessment or a vote on a matter specified in the Declaration is to be taken up at a regular meeting, the notice shall give the particulars of said proposed matter.

Section 4. Quorum. The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, 30% of the votes appurtenant to the Lots shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these By-Laws. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 5. Proxies. At all meetings of Members, the vote appurtenant to each Lot may be cast in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his Lot. All proxies, and written designations of the voter's representative, as required by the Declaration, shall be filed with the Secretary at least two (2) business days prior to a regular or special meeting.

ARTICLE IV  
BOARD OF DIRECTORS: SELECTION: TERM OF OFFICE:

Section 1. Number and Term of Office. The affairs of this Association shall be managed by a Board of not less than three (3) but no more than seven (7) directors, who must be Members of the Association. To maintain a staggered Directorate, the Board may hold seats in future elections open for two or three year terms, when necessary or appropriate. In such cases, those receiving the higher number of votes shall be elected to the longer terms and when no election is held, the decision shall be made by agreement of the affected parties, or by lot. The term of each Director's service shall extend until their elected term is completed. Resignations of Directors are effective when received by the Association in writing, unless a later date is stated.

Section 2. Removal. Any director may be removed from the Board, with or without cause, by a vote of a majority of the voting interests present, in person or by proxy, and voting at a duly-called and properly-noticed meeting of the membership. In the event of death, resignation or removal of a director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor. A director or officer charged by information or indictment with a felony theft or embezzlement offense involving the Association's funds or property is removed from office. The Board shall fill the vacancy according to law until the end of the period of the suspension or the end of the director's term of office, whichever occurs first. However, if the charges are resolved without finding of guilt or without acceptance of a plea of guilty or nolo contendere, the director or officer shall be reinstated for any remainder of his or her term of office. A member who has such criminal charges pending may not be appointed or elected to a position as a director or officer.

Section 3. Compensation. No director shall receive compensation for any service he may render to the Association as a director, or officer. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties, at the discretion of the Board. An officer or director may not solicit, offer to accept, or accept any good or service of value for which consideration has not been provided for his or her benefit or for the benefit of a member of his or her immediate family from any person providing or proposing to provide goods or services to the Association. If the Board finds that an officer or director has violated this section, the Board shall immediately remove the officer or director from office.

If the Association enters into a contract or other transaction with any of its directors or a corporation, firm, association that is not an affiliated homeowners' association, or other entity in which an Association director is also a director or officer or is financially interest, the Board must:

- (a) Comply with the requirements Section 617.0832, Florida Statutes regarding director conflicts of interest.
- (b) Enter the disclosures required by Section 617.0832, Florida Statutes into written minutes of the meeting.

- (c) Approve the contract or other transaction by an affirmative vote of two-thirds of the directors present.
- (d) At the next regular or special meeting of the members, disclose the existence of the contract or other transaction to members. Upon motion of any member, the contract or transaction shall be brought up for a vote and may be canceled by a majority vote of the members present. If the members cancel the contract, the Association is only liable for the reasonable value of goods and services provided up to the time of cancellations and is not liable for any termination fee, liquidated damages, or other penalty for such cancellation.

Section 4. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

#### ARTICLE V NOMINATION AND ELECTION OF DIRECTORS

Section 1. Board Qualification. A person who is delinquent in the payment of any fee, fine, or other monetary obligation to the Association for more than 90 days is not eligible for Board membership. A person who has been convicted of any felony in this state or in a United States District or Territorial Court, or has been convicted of any offense in any other jurisdiction which would be considered a felony if committed in this state, is not eligible for Board membership unless such felon's civil rights have been restored for at least 5 years as of the date on which such person seeks election to the Board. The validity of any action by the Board is not affected if it is later determined that a member of the Board is ineligible for Board membership.

Section 2. Nomination. Nominations shall be made in accordance with procedures adopted by the Board from time to time. Such nomination procedures may permit nominations made from the floor at the annual meeting or by written notice of intent to be a candidate submitted to the Association prior to a meeting of the members at which an election is to be conducted.

Section 3. Election. Election to the Board of Directors, shall be by secret written ballot. At such election the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the Declaration. The persons receiving the largest number of votes in each class shall be elected. Cumulative voting is not permitted.

Section 4. Board Member Certification. Within 90 days after being elected to the Board, each director shall certify in writing to the Secretary of the Association that he or she has read the Association's Declaration of Covenants, Articles of Incorporation, Bylaws, and current written Rules and Policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the Association's members. In lieu of such written certification, the newly elected or appointed director may submit a certificate of having satisfactorily completed the educational curriculum administered by a division-approved education provider.



ARTICLE VI  
MEETING OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held monthly without notice, at such place and hour as may be fixed from time to time by resolution of the Board, except as hereinafter provided. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday. The Board may vote to waive a regular monthly meeting provided that there are at least eight (8) monthly meetings during a year.

Section 2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the President of the Association, or by any two directors, after not less than three (3) days notice to each director.

Section 3. Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

ARTICLE VII  
POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers. All of the powers and duties of the Association existing under the laws of Florida generally, Florida Not For Profit Corporation Statute, Chapter 720, Florida Statutes, and the Governing Documents, all as amended from time to time, shall be exercised exclusively by the Board of Directors, or its duly authorized agents, contractors, or employees, when said powers and duties have been delegated by the Board, subject only to the approval by Members when such is specifically required. The powers of the Directors shall include, but shall not be limited to, the power:

(a) Adopt and publish rules and regulations governing the use of the Common Area and/or the Community Facilities, and the personal conduct of the Members and their guests thereon, and to establish fines or penalties for the infraction thereof;

(b) Suspend the voting rights and right to use of the Community Facilities of a Member during any period in which such Member shall be in default in the payment of any assessment or fine levied by the Association or its Board of Directors. Such rights may be suspended only after notice and an opportunity for hearing has been given to the offending party.

(c) Exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these By-Laws, the Articles of Incorporation, or the Declaration;

(d) Declare the office of a Member of the Board of Directors to be vacant in the event such Member shall be absent from three (3) consecutive regular meetings of the Board of Directors, unless excused by the President;

(e) Enter into a Management Contract to provide maintenance and service to the Common Area and Community Facilities;

(f) Establish levy and assess and collect assessments or charges referred to in the Declaration; and

(g) Call special meetings when the provisions of Article III, Section 2, herein, are complied with.

(h) **To Levy Fines.** The Directors may, pursuant to Section 720.305, Florida Statutes, impose fines against a Lot not to exceed the maximum permissible by law, for failure to comply with the provisions of the Board policies and resolutions, the Governing Documents, including the Rules and Regulations, and applicable laws by Members, their families, Occupants, Tenants, and Invitees.

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

ii. The party against whom the fine is sought to be levied shall be afforded an opportunity for hearing by being given notice of not less than twenty (20) days. Notice shall be effective when mailed by United States Mail, certified, return receipt requested, to the address of the Member listed in the official records of the Association, and as to Tenants, to the mailing address for the Lot. Said notice shall include:

(a) A statement of the date, time, and place of the hearing;

(b) A statement of the provisions of the Declaration, Articles of Incorporation, Bylaws, Rules and Regulations, Board policies and resolutions, or laws which have allegedly been violated; and,

(c) A short and plain statement of the matters asserted by the Association.

The party against whom the fine may be levied shall have an opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge, and respond to any material considered by the Association. The hearing shall be held before a Committee of Members appointed by the Board, which may not include Board Members nor persons residing in a Board Member's household. If the Committee does not agree with the fine, the fine may not be levied. Should the Association be required to initiate legal proceedings to collect a duly levied fine, the prevailing party in an action to collect said fine shall be entitled to an award of costs, and a reasonable attorney's fee incurred before trial (including in connection with the preparation for and conduct of fining hearings), at trial, and on appeal. Members shall be jointly and severally liable for the payment of fines levied against Tenants, Guests, Invitees, or other Occupants of a Unit.

(i) **To Appoint Committees.** The Directors may appoint Committees and delegate to such Committees those powers and duties of the Association as the Board deems advisable. All Committees and Committee Members shall serve at the pleasure of the Board. Committees of the Association shall conduct their affairs in the same manner as provided in these Bylaws for Board of Director meetings. All other Committees may meet and conduct their affairs in private without prior notice or Owner participation, unless otherwise directed by the Board of Directors.

Section 2. Duties. It shall be the duty of the Board of Directors to:

(a) Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing issued pursuant to a vote of one-fourth (1/4) of all the voting interests;

(b) Supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;

(c) As more fully provided in the Declaration, to:

(1) Fix the amount of the annual assessment against each Lot.

(2) Send written notice of each assessment to every Owner subject thereto at least ten (10) days in advance of each annual assessment period; and

(3) Foreclose the lien against any property for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the Owner personally obligated to pay the same.

(d) Issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

(e) Procure and maintain adequate liability and hazard insurance on real and personal property owned by the Association;

(f) Cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

(g) Cause the common area and community facilities to be maintained.

#### ARTICLE VIII OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Offices. The officers of this Association shall be a president, who shall at all times be a Member of the Board of Directors, and a secretary-Treasurer, and such other officers as the Board may from time to time by resolution create.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members, which shall be held not less than ten (10) days following such meeting.

Section 3. Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time giving written notice to the Board, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officers appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. Multiple Offices. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. Duties. The duties of the officers are as follows:

#### PRESIDENT

(a) The president shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, promissory notes, deed and other written instruments, which are required to be signed from time to time.

#### SECRETARY-TREASURER

(b) As secretary, this officer shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association together with their addresses, and shall perform such other duties as required by the Board. The secretary may enlist the assistance of the Management Contractor for the performance of his administrative duties hereunder.

(c) As treasurer, this officer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a certified public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be represented to the membership at its regular annual meeting, and deliver a copy of each to the Members. The treasurer may enlist the services of the Management Contractor in the performance of his administrative duties hereunder.

ARTICLE IX  
COMMITTEES

The Board of Directors shall appoint an architectural control "Committee", as provided in the Declaration and the President shall appoint other standing Committees, as follows: Social Committee, Maintenance Committee, and Audit Committee. Unless otherwise provided herein, each Committee shall consist of a Chairman and two (2) or more Members and shall include a Member of the Board of Directors for Board contacts. The President and/or the Board of Directors may appoint such other Committees as deemed advisable.

Section 1. The Social Committee shall advise the Board of Directors on all matters pertaining to the Social Program and activities of the Association and shall perform such other functions as the Board, in its discretion, determine.

Section 2. The Maintenance Committee shall advise the Board of Directors on all matters pertaining to the maintenance, repairs or improvement of the Common Properties and the Community Facilities of the Association, and shall perform such other functions as the Board in its discretion determines.

Section 3. The Budget Committee shall supervise the annual audit of the Association's books, if requested by the Treasurer, and shall work on the annual budget, as requested by the Board. The Treasurer shall be an ex official Member of the Committee.

Section 4. Sub-Committee. Each Committee shall have the power to appoint a sub-committee from among its Membership and may delegate to any such sub-committee any of its powers, duties and functions.

ARTICLE X  
BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member upon 24 hours' written notice. The Declaration, the Articles of Incorporation and the By-Laws of the Association shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable cost.

ARTICLE XI  
ASSESSMENTS

As more fully provided in the Declaration, each Member (Lot Owner) is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the Lot upon which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessments shall bear interest from the date of delinquency at the highest rate allowed by law, and the Association, its agent or representative, may bring an action at law against the Owner personally obligated to pay the same and/or foreclose the lien against the Lot, and interest, costs, and reasonable attorney's fees of any such

action shall be added to the amount of such assessments. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area and/or Community Facilities and/or abandonment of his Lot.

ARTICLE XII  
CORPORATE SEAL

The Association shall have a seal in circular form having within its circumference the words: SPANISH WELLS UNIT ONE HOMEOWNERS ASSOCIATION, INC., a corporation not for profit.

ARTICLE XIII  
AMENDMENTS

Section 1. These By-Laws may be amended, at a regular or special meeting of the Members, by a vote of a majority of the Members.

Section 2. In the case of any conflict between the Articles of Incorporation and these By-Laws, the Articles shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

Section 3. If these By-Laws are amended, a copy of same, certified by the Secretary, shall be filed on the Public Records of Lee County as an amendment to the Declaration.

ARTICLE XIV  
MISCELLANEOUS

The fiscal year of the Association shall begin on the first day of January and end on the 31<sup>st</sup> day of December of every year.

ARTICLE XV  
FISCAL MANAGEMENT

Section 1. Budget. The budget shall be adopted by the Board. A proposed annual budget of Common Expenses and anticipated revenues shall be prepared by the Board of Directors which shall include all anticipated income/revenue and expenses for operation, maintenance, and administration of the Association. The proposed budget may also include expenses of Directors and Officers insurance, transportation services, bulk cable or master antenna television, and interior pest control, all of which are declared to be Common Expenses under these Bylaws. The budget may contain a reasonable allowance for contingencies and provide funds for all operating expenses previously incurred. If at any time a budget shall prove insufficient, it may be amended by the Board of Directors for the remaining portion of the fiscal year, provided that notice of the Board meeting at which the revised budget will be considered along with a copy of the proposed revisions to the budget shall be mailed to each Member as provided herein.

Section 2. Mailing and Posting. A copy of the proposed annual budget shall be mailed, hand-delivered, or electronically transmitted (when permitted by law) to the Members not less than 14 days prior to the meeting of the Directors at which the budget will be adopted together with a notice of the meeting. The notice shall also be posted in a conspicuous location on the Property as provided by law.

The Board may include notice of its meeting to set the insurance deductible with notice of the budget meeting.

Section 3. Special Assessments. Special Assessments for Common Expenses which are not funded through the budget may be made by the Board of Directors provided such assessment shall have the approval of at least two-thirds of the Voting Interests of the Association present, in person or by proxy, and voting at a duly noticed meeting at which a quorum is present. The time of payment shall likewise be determined by the Board of Directors. Notice of the meeting at which such Assessments shall be considered shall be posted and mailed, hand-delivered, or electronically transmitted (where permitted by law) to each Member as provided herein, except in the event of an emergency. The funds collected pursuant to a Special Assessment shall be used only for the specific purpose or purposes set forth in such notice. However, upon completion of such specific purpose or purposes, any excess funds will be considered Common Surplus, and may, at the discretion of the Board, either be returned to the Members or applied as a credit towards future Assessments.

Section 4. Assessment Roll. The Assessments for Common Expenses and Charges shall be set forth upon a roll of the Units which shall be available for inspection at all reasonable times by Members. Such roll shall indicate for each Lot the name and address of the Owner, and the Assessments and Charges paid and unpaid. A certificate made by a duly authorized representative of the Association or by the Board of Directors as to the status of a Lot's account may be relied upon for all purposes by any person for whom made.

Section 5. Association Depository. The Depository of the Association in which the funds of the Association shall be deposited, shall be financial institutions authorized to do business in Florida which carry FDIC insurance. Alternatively, the Association may deposit funds with brokerage houses or institutions which are members of the National Association of Securities Dealers, Inc. and insured by industry insurance backed by the full faith and credit of the United States of America. Principal of Association funds, whether reserves or operating funds, may not be placed at risk for investment purposes. Withdrawal of money from those accounts shall be only by checks or other withdrawal instruments signed by those persons as are authorized by the Directors.

Section 6. Commingling of Funds. All funds of the Association shall be maintained separately in the Association's name. No community association manager or business entity required to be licensed or registered under Section 468.432, Florida Statutes as amended from time to time, no agent, employee, Officer, or Director of the Association shall commingle any Association funds with his funds or with the funds of any other condominium association or community association as defined in Section 468.431, Florida Statutes, as amended from time to time, or with those of any other entity. Reserve funds and operating funds of the Association may be commingled for investment purposes, as provided by law.

Section 7. Fidelity Bonding. The Association shall obtain and maintain adequate fidelity bonding in the minimum principal sum set forth in Chapter 720.3033, Florida Statutes, for each person (whether or not a Director) who controls or disburses Association funds, and the President, Secretary and Treasurer. The Association shall bear the cost of bonding of Directors and Officers. In the case of a community association manager or management firm, the cost of bonding may be allocated as the parties may agree. All persons providing management services to the Association, or otherwise having the authority to control or disburse Association funds, shall provide the Association with a certificate of

insurance evidencing compliance with this paragraph, naming the Association as an insured under said policy.

ARTICLE XVI  
DISPUTE RESOLUTION

Section 1. Mandatory Arbitration. If unresolved, disputes between the Board and Members as defined in Section 720.311, Florida Statutes, as amended from time to time, must be arbitrated in mandatory non-binding arbitration proceedings as provided in Chapter 720, Florida Statutes prior to commencing litigation, so long as Chapter 720, Florida Statutes requires such arbitration.

Section 2. Other Remedies. Nothing herein shall preclude the Association from pursuing any remedy for the violation of the Governing Documents or disputes with a Member or other party as may be available to the Association under the laws of the State of Florida or the Governing Documents.