

**This Instrument Prepared By:
Michelle F. Tanzer, Esquire
Nelson Mullins Riley & Scarborough LLP
1905 NW Corporate Blvd., Suite 310
Boca Raton, Florida 33431**

**FOURTH AMENDED AND RESTATED
DECLARATION AND GENERAL PROTECTIVE COVENANTS
FOR
QUAIL WEST
*EFFECTIVE AS OF _____, 2021***

TABLE OF CONTENTS

PAGE

ARTICLE I DEFINITIONS 2

1.1 “Additional Property” 2

1.2 “Adjacent Owner” 2

1.3 “Amendment” 2

1.4 “Annual Member” 2

1.5 “Annual Membership” 2

1.6 “Approved Builder” 2

1.7 “Approved Builder List” 2

1.8 “Approved Plans” 2

1.9 “Architectural Review Board” or “ARB” 2

1.10 “Articles” 2

1.11 “Assessment” 2

1.12 “Board of Directors” or “Board” 2

1.13 “Bylaws” 2

1.14 “Certificate” 3

1.15 “Club Rules and Regulations” 3

1.16 “Commencement of Construction” or “Commence Construction” 3

1.17 “Common Areas” 3

1.18 “Community-Wide Standard” 3

1.19 “Completion of Construction” 3

1.20 “Conservation Buffer Easement” 3

1.21 “Conservation Buffer Zone” 3

1.22 “Conservation Lands” 3

1.23 “Costs of Improvements” 3

1.24 “Country Club Facility” or “Country Club Facilities” 3

1.25 “Country Club Facility Owner” 4

1.26 “Declaration” 4

1.27 “Development” 4

1.28 “Dues” 4

1.29 “Effective Date” 4

1.30 “End User” 4

1.31 “Extended Family Members” 4

1.32 “Extended Family Privileges” 4

1.33 “Family Members” 4

1.34 “Foundation” 4

1.35	“Foundation Guest”	4
1.36	“Founding Documents”	4
1.37	“Golf Facilities”	4
1.38	“Golf Member”	4
1.39	“Golf Membership”	4
1.40	“Governmental Authority”	4
1.41	“Grandfathered Until Participating Member”	5
1.42	“Grandfathered Until Sale Member”	5
1.43	“Guidelines”	5
1.44	“HOA Act”	5
1.45	“Home”	5
1.46	“Honorary Member”	5
1.47	“Honorary Membership”	5
1.48	“House Member”	5
1.49	“House Membership”	5
1.50	“Immediate Family Member(s)”	5
1.51	“Immediate Family Privileges”	5
1.52	“Improvements”	5
1.53	“Institutional Mortgagee”	5
1.54	“Laws”	6
1.55	“Lot”	6
1.56	“Maintenance”	6
1.57	“Member”	6
1.58	“Membership”	6
1.59	“Membership Agreement”	6
1.60	“Membership Exchange Program”	6
1.61	“Membership Fee” or “Initiation Fee”	7
1.62	“Neighborhood”	7
1.63	“Neighborhood Association”	7
1.64	“Neighborhood Common Areas”	7
1.65	“Neighborhood Covenants”	7
1.66	“Non-Participating Member”	7
1.67	“Non-Participating Membership”	7
1.68	“Non-Residential Member”	7
1.69	“Non-Residential Membership”	7

1.70	“Non-Transferable”	7
1.71	“Non-Voting Membership(s)”	7
1.72	“Notice”	8
1.73	“Owner”	8
1.74	“Participating Member”	8
1.75	“Participating Membership”	8
1.76	“Person”	8
1.77	“Preview Member”	8
1.78	“Preview Membership”	8
1.79	“Prior Declaration”	8
1.80	“Property”	8
1.81	“Property Rules and Regulations”	8
1.82	“PUD”	8
1.83	“PUD Master Development Plan”	8
1.84	“Quail West”	8
1.85	“Qualified Builder”	8
1.86	“Qualified Developer”	9
1.87	“QWDC”	9
1.88	“QWH”	9
1.89	“Reasonable”	9
1.90	“Regular Assessment”	9
1.91	“Repurchase”	9
1.92	“Repurchase Price”	9
1.93	“Residential Member”	9
1.94	“Residential Membership”	9
1.95	“Resign List”	9
1.96	“Resigned Golf Member”	9
1.97	“Resigned Member”	9
1.98	“RPD”	9
1.99	“Rules and Regulations”	9
1.100	“Significant Other”	9
1.101	“Special Assessment”	9
1.102	“Special Preserve Easement”	10
1.103	“Structure”	10
1.104	“Super Majority Vote”	10

1.105	“Transfer Fee”	10
1.106	“Transferable”	10
1.107	“Violation”	10
1.108	“Voting Membership”	10
1.109	“Water Management Systems and Drainage Areas”	10
1.110	“Working Fund Contribution”	10
ARTICLE II TURNOVER HAS OCCURRED		10
2.1	Turnover	10
ARTICLE III PROPERTY RIGHTS AND FOUNDATION COMMON AREAS		11
3.1	Members' Common Property Easements	11
3.2	Delegation of Right.	12
3.3	Conveyance and Use.	12
3.4	Foundation's Rights and Powers.	12
3.5	View Impairment.	13
ARTICLE IV COUNTRY CLUB FACILITY		13
4.1	Description and Ownership.	13
4.2	Easements.	13
4.3	Country Club Facility Operations.....	14
4.4	Right to Improve Common Areas.	14
4.5	Sale of Country Club Facility.	14
ARTICLE V LAKE AND WATER RIGHTS		14
5.1	Ownership of Lakes.	14
5.2	Maintenance of Lake Embankments and Lake Bottoms.	14
5.3	Improvements on Lakes.	15
5.4	Easements.	15
5.5	Lake Use Restrictions and Covenants.....	15
ARTICLE VI NEIGHBORHOOD ASSOCIATIONS.....		15
6.1	Neighborhood.	15
6.2	Neighborhood Common Areas.	15
6.3	Priority.....	16
ARTICLE VII USE RESTRICTIONS		16
7.1	General Use Restrictions.	16
7.2	Subdivision and Regulation of Land.	16
7.3	Architectural Review Board.	16
7.4	Review of Proposed Construction.	17

7.5	Air Conditioners.	21
7.6	Antennae and Flagpoles.	21
7.7	Colors.	21
7.8	Clothes Drying Area.	21
7.9	Construction Requirements for a Structure on an Owner's Lot.	21
7.10	Driveways and Parking.	23
7.11	Dwelling Foundation and Grade of Lot.	23
7.12	Dwelling Roofs, Roof Stacks, Vents and Flashing.	23
7.13	Dwelling Setback, Size and Height Restrictions.	24
7.14	Elevations.	24
7.15	Enclosures.	24
7.16	Entry Rights.	24
7.17	Factory-Built Structures.	24
7.18	Garages, Carports and Storage Areas.	25
7.19	Garbage, Trash and Refuse.	25
7.20	Golf Carts.	25
7.21	Health and Safety Hazards.	25
7.22	Landscaping.	25
7.23	Lighting.	26
7.24	Mailboxes.	26
7.25	Nuisances.	26
7.26	Outdoor Equipment.	26
7.27	Pets.	26
7.28	Sidewalks.	27
7.29	Signs.	27
7.30	Solar Collectors.	27
7.31	Swimming Pools.	27
7.32	Utility and Other Easements.	27
7.33	Utility Lines.	28
7.34	Walls and Fences.	29
7.35	Water Management Systems and Drainage Areas and Conservation Area Restrictions and Easements.	29
7.36	Leases.	30
7.37	Foundation's Exculpation.	31
7.38	Owner and Member Compliance.	31

7.39	Timeshare or Interval Ownership Program.....	31
7.40	Trade, Business, and Similar Activities.	31
7.41	Fines for Violation of Infractions.	31
7.42	Applicability of Article.	32
ARTICLE VIII VOTING RIGHTS AND MEMBERSHIP.....		32
8.1	Voting Rights.....	32
8.2	Mandatory Participating Membership.....	32
8.3	Restrictions on Membership and Family Use.....	36
8.4	Resignation of Participating Membership.....	37
8.5	Repurchase of Transferable Memberships.	38
8.6	Mandatory Membership.	39
ARTICLE IX FOUNDATION ASSESSMENT AND LIEN RIGHTS		40
9.1	Determination of Lots Subject to Assessment.....	40
9.2	Foundation Functions.....	40
9.3	Assessments.	40
9.4	Assessment and Other Liens.....	42
ARTICLE X GENERAL AND PROCEDURAL PROVISIONS		43
10.1	Notice Procedures for Proposed Sale of Lot and Leasing	43
10.2	Insurance.	44
10.3	Other Documents.....	44
10.4	Duration of Restrictions.	45
10.5	Modification and Amendment of Declaration.....	45
10.6	Acceptance of Declaration by Owners.	45
10.7	Remedies.....	45
10.8	Severability.....	45
10.9	Singular and Plural; Gender.....	45
10.10	Construction.....	45
10.11	Administration.....	45
10.12	Nonliability of Foundation.....	46
10.13	Notices.....	46
10.14	Interpretation.....	46
10.15	Applicable Statutes.....	46
10.16	Security.....	46
ARTICLE XI REMAINING RIGHTS OF QWDC AND QWH.....		47
11.1	QWDC and QWH Sale of Memberships.....	47

THIS IS A SUBSTANTIAL REWORDING OF THE THIRD AMENDED AND RESTATED DECLARATION AND GENERAL PROTECTIVE COVENANTS FOR QUAIL WEST ORIGINALLY RECORDED IN OFFICIAL RECORDS BOOK 5770, PAGE 1876, ET SEQ., OF THE PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA, AND AT DOCUMENT NUMBER 2020000127067 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, EACH AS AMENDED.

**FOURTH AMENDED AND RESTATED
DECLARATION AND GENERAL PROTECTIVE COVENANTS
FOR
QUAIL WEST**

THIS FOURTH AMENDED AND RESTATED DECLARATION AND GENERAL PROTECTIVE COVENANTS FOR QUAIL WEST (this “Declaration”) is entered into and made effective this ____ day of _____, 202__ (the “**Effective Date**”), by Quail West Foundation, Inc., a Florida not-for-profit corporation (the “**Foundation**” as further defined below).

R E C I T A L S

WHEREAS, the Foundation is a Florida not-for-profit corporation organized for the purpose of managing and operating the residential community known as “Quail West” which is located partially in Lee County and partially in Collier County, Florida (“**Quail West**”);

WHEREAS, Quail West Development Company, LLC, a Florida limited liability company (“**QWDC**”) and the Foundation recorded that certain SECOND AMENDED AND RESTATED DECLARATION AND GENERAL PROTECTIVE COVENANTS FOR QUAIL WEST on April 20, 2010 in the Public Records of Lee County at Instrument Number 2010000099111 and also recorded the same document on April 21, 2010 in the Public Records of Collier County at Official Records Book 4558, Pages 1473, et. seq., as amended and restated by that certain THIRD AMENDED AND RESTATED DECLARATION AND GENERAL PROTECTIVE COVENANTS FOR QUAIL WEST recorded on June 3, 2020 in the Public Records of Collier County at Official Records Book 5770, Page 1876 and also recorded on June 4, 2020 in the Public Records of Lee County at Instrument Number 2020000127067 (the “**Prior Declaration**”); and

WHEREAS, the Prior Declaration provides that, after Turnover (as that term is defined in the Prior Declaration) has occurred, the Foundation has the right to amend and restate the Declaration pursuant to Article X, Section 10.5 of the Prior Declaration; and

WHEREAS, Turnover has occurred in accordance with the provisions of the Prior Declaration; and

WHEREAS, at a duly called special meeting of the members of the Foundation (“**Members**, as further defined below), the Members affirmatively voted to amend and restate the Prior Declaration as set forth herein;

NOW THEREFORE, in consideration of the premises and covenants herein contained, the Foundation does hereby declare that the Prior Declaration shall be amended and restated in its entirety, and that the Property shall be owned, held, used, transferred, sold, conveyed, demised and occupied subject to the covenants, conditions, restrictions, easements, reservations, regulations, burdens and liens hereinafter set forth, all of which shall run with and be appurtenant to the Property and any part thereof and which shall be binding upon all parties, having any right, title or interest in the Property or any part thereof, and their heirs, successors and assigns.

ARTICLE I

DEFINITIONS

The following words and phrases when used in this Declaration (unless context should clearly reflect another meaning) shall have the following meanings:

1.1 “**Additional Property**” means any real property that may be submitted by Foundation to the terms and provisions of this Declaration by Amendment which shall be executed by the owner of the Additional Property and need not be joined in by any other Person or Owner. No portion of any Additional Property shall be encumbered by this Declaration unless and until such property is added by Amendment by the fee owner thereof. In the event any Additional Property becomes encumbered by this Declaration, then, and only then, shall the term Property as used herein also include the Additional Property.

1.2 “**Adjacent Owner**” has the meaning given to such term in Section 5.2.

1.3 “**Amendment**” means any and all amendments to this Declaration, each of which shall be properly adopted pursuant to the terms of the Founding Documents and recorded in the Public Records of either Collier County or Lee County, Florida, or both, if applicable. The failure to number each Amendment consecutively shall not impair their validity hereunder and any such Amendment to the extent not otherwise numbered shall be deemed to have been numbered in chronological order of their appearance in the Public Records of the county in which any such Amendment is recorded.

1.4 “**Annual Member**” shall refer to those Persons who hold an Annual Membership as provided in, and subject to, the Governing Documents.

1.5 “**Annual Membership**” shall have the meaning given to such term in Section 8.2(f).

1.6 “**Approved Builder**” means Persons who satisfy the criteria and requirements established by Foundation to undertake construction of a Home or other Improvements within the Property, as further described in Section 7.4(f).

1.7 “**Approved Builder List**” shall have the meaning given to such term in Section 7.4(f).

1.8 “**Approved Plans**” has the meaning given to such term Section 7.9(h).

1.9 “**Architectural Review Board**” or “**ARB**” means the committee created pursuant to Section 7.3.

1.10 “**Articles**” means the Fourth Amended and Restated Articles of Incorporation of the Foundation, a true and correct copy of which being attached hereto as Exhibit B, as the same may hereafter be amended.

1.11 “**Assessment**” means any charge imposed by the Foundation on any or all Members, including, without limitation, Regular Assessments and Special Assessments as authorized by the Founding Documents.

1.12 “**Board of Directors**” or “**Board**” means the Board of Directors of the Foundation.

1.13 “**Bylaws**” means the Fourth Amended and Restated Bylaws of the Foundation, a true and correct copy of which being attached hereto as Exhibit C, as the same may be hereafter be amended.

1.14 “**Certificate**” shall have the meaning given to such term in Section 10.1.

1.15 “**Club Rules and Regulations**” means the use restrictions, rules and regulations governing the use of and activities at the Country Club Facility, as they may be amended from time to time, in the Board's sole and absolute discretion.

1.16 “**Commencement of Construction**” or “**Commence Construction**” shall have the meaning given in Section 7.9(h)(ii).

1.17 “**Common Areas**” means all real property, easements and improvements thereon owned, contracted for, leased, or otherwise held by the Foundation for the common use and enjoyment of its Members. Common Areas include, but are not limited to, the Country Club Facility, roadways, gate houses, lakes and Conservation Lands; provided however, only Participating Members are allowed to access and use the Country Club Facilities in accordance with the Founding Documents.

1.18 “**Community-Wide Standard**” means the standard of conduct, maintenance, management, operation, use or other activity generally prevailing throughout the Property, which shall never be lower than the standards established by the ARB for the Property, or lower than the standards of construction and quality required by the ARB for the initial approval and construction of Improvements. Such standard is expected to evolve over time as development progresses and may be more specifically determined by the Board and/or the ARB from time to time.

1.19 “**Completion of Construction**” shall have the meaning given in Section 7.9(h)(i).

1.20 “**Conservation Buffer Easement**” means an easement granted to the Board of County Commissioners of Collier County and/or Lee County, Florida, or other governmental entity, over any portion of the Conservation Buffer Zone deeded to an Owner, as designated in any plats or replats of the Property. The Foundation shall be responsible for the enforcement of all Conservation Buffer Easements in compliance with all applicable governmental regulations and permits.

1.21 “**Conservation Buffer Zone**” means the 20-foot vegetation buffer required by the PUD, which is located on the side and/or rearmost twenty (20) feet of those platted or replatted Lots whose property line is adjacent to Conservation Lands as designated as such on any plats or replats of the Property. With the exception of exotic vegetation removal, the Conservation Buffer Zone may not be altered from its natural state.

1.22 “**Conservation Lands**” means all areas designated as such on any plats or replats of the Property and shall also include any Conservation Buffer Easements and any Special Preserve Easements. Conservation Lands are required to be kept in their natural state, except for exotic vegetation removal and for Improvements for which permits have been issued by the proper Governmental Authority, so as to prevent destruction of said areas or the alteration of the water flow at variance to the design standard for the Water Management Systems and Drainage Areas.

1.23 “**Costs of Improvements**” means the actual costs of construction of a Home and landscaping a Lot, but shall not include any interest charges, other loan fees or carrying charges, costs associated with the repurchase, attorneys' fees or personal expenses of Owner or its successors-in-title. The Costs of Improvements shall be documented by invoices submitted to the Foundation.

1.24 “**Country Club Facility**” or “**Country Club Facilities**” means the clubhouse, golf course and maintenance lands, and other recreational and social facilities and Improvements constructed on portions of the Common Areas.

1.25 “**Country Club Facility Owner**” means the record holder of fee simple title or ground lessee of the Country Club Facility which, as of the Effective Date, is the Foundation.

1.26 “**Declaration**” means this Fourth Amended and Restated Declaration and General Protective Covenants for Quail West, as the same may hereafter be amended from time to time.

1.27 “**Development**” means the Property and all Improvements located or constructed thereon, and being a part of the overall plan, from time to time existing hereunder and commonly known as “Quail West”.

1.28 “**Dues**” means Regular Assessments and/or Special Assessments relating to the costs of the Foundation associated with the Country Club Facilities which are payable by Participating Members.

1.29 “**Effective Date**” shall have the meaning given to such term the Preamble.

1.30 “**End User**” means a purchaser of a Lot other than a Qualified Builder or Qualified Developer, whether such purchase is from the Foundation or from a Qualified Builder or Qualified Developer.

1.31 “**Extended Family Members**” shall have the meaning given to such term in Section 8.3(b)(ii).

1.32 “**Extended Family Privileges**” shall have the meaning given to such term in Section 8.3(b)(ii).

1.33 “**Family Members**” means collectively Immediate Family Members and Extended Family Members.

1.34 “**Foundation**” means Quail West Foundation, Inc., a Florida not-for-profit corporation, which has its principal place of business in Collier County, Florida, its successors or assigns.

1.35 “**Foundation Guest**” has the meaning given to such term in Section 8.2(e).

1.36 “**Founding Documents**” means this Declaration, the Articles, the Bylaws and any and all Rules and Regulations, each as they may be amended, restated or supplemented from time to time.

1.37 “**Golf Facilities**” means the golf courses and golf practice facilities at the Country Club Facility.

1.38 “**Golf Member**” means each Owner who holds a Golf Membership as provided in, and subject to, the Founding Documents. Golf Members were formerly known as “Class A Members” and/or “Full Golf Members”.

1.39 “**Golf Membership**” means the class of Membership held by Golf Members which allows full access and use of County Club Facility in accordance with the Founding Documents. Unless the context expressly indicates otherwise, the term Golf Memberships includes both Transferable Golf Memberships and Non-Transferable Golf Memberships, as applicable. Golf Memberships were formerly known as “Class A Memberships” and/or “Full Golf Memberships”.

1.40 “**Governmental Authority**” means the United States of America, and any state, county, city or political subdivision thereof, and any board, bureau, council, commission, department, agency, court,

legislative body or other instrumentality of the United States of America or any state, county, city or political subdivision thereof.

1.41 **“Grandfathered Until Participating Member”** means each Non-Participating Member who acquired a Lot prior to November 30, 2009 who was not required to, and who did not, acquire a Participating Membership, unless and until such Person acquires a Participating Membership and becomes a Participating Member.

1.42 **“Grandfathered Until Sale Member”** means each Non-Participating Member who acquired a Lot prior to November 30, 2009 who was not required to acquire a Participating Membership, unless and until such Person sells or otherwise conveys such Member’s ownership interest in such Lot.

1.43 **“Guidelines”** shall have the meaning given to such term in Section 7.4(c).

1.44 **“HOA Act”** shall have the meaning given to such term in Section 8.2(h).

1.45 **“Home”** means a residential dwelling constructed on a Lot, which is designed and intended for use and occupancy as a single-family residence.

1.46 **“Honorary Member”** means each Person who holds an Honorary Membership as provided in, and subject to, the Founding Documents.

1.47 **“Honorary Membership”** shall have the meaning given to such term in Section 8.2(g).

1.48 **“House Member”** means each Owner who holds a House Membership as provided in, and subject to, the Founding Documents. House Members were formerly known as “Class H Members” and “Class Q-H Members”.

1.49 **“House Membership”** means the class of Membership held by House Members which allows access to the County Club Facility except for use of the golf course and golf practice facilities; provided, however, these Members shall be entitled to full use of the Golf Facilities during the hours designated for House Membership usage from May 16th through October 15th of each year, or such other dates as may otherwise be determined appropriate by the Board from time to time, in each case subject to payment of the applicable fees, and otherwise in accordance with the Founding Documents. Unless the context expressly indicates otherwise, the term House Memberships includes both Transferable House Memberships and Non-Transferable House Memberships, as applicable. House Memberships were formerly known as “Class H Memberships” and “Class Q-H Memberships”.

1.50 **“Immediate Family Member(s)”** shall have the meaning given to such term in Section 8.3(b)(i).

1.51 **“Immediate Family Privileges”** shall have the meaning given to such term in Section 8.3(b)(i).

1.52 **“Improvements”** means all Homes and Structures of any kind, including, but not limited to, any building, fence, wall, sign, paving, grading, parking and building addition, alteration, screen enclosure, sewer, drain, disposal system, decorative building, recreational facility, landscaping, exterior lighting or landscape device or object.

1.53 **“Institutional Mortgagee”** means (i) any lending institution owning a first mortgage encumbering any Home or Lot, which owner and holder of said mortgage shall either be a bank, life

insurance company, federal or state savings and loan association, real estate or mortgage investment trust, building and loan association, mortgage banking company licensed to do business in the State of Florida, or any subsidiary thereof, licensed or qualified to make mortgage loans in the State of Florida, or a national banking association chartered under the laws of the United States of America; (ii) any secondary mortgage market institution, including the Federal National Mortgage Association, Government National Mortgage Association and Federal Home Loan Mortgage Corporation, and such other secondary mortgage market institutions as the Board shall hereafter approve in writing; (iii) any pension or profit-sharing funds qualified under the Internal Revenue Code; or (iv) the Veterans Administration, the Federal Housing Administration or the Department of Housing and Urban Development or such other lender as is generally recognized in the community as an institutional lender.

1.54 “**Laws**” means all constitutions, statutes, ordinances, codes, regulations, resolutions, rules, requirements and directives of any Governmental Authority, and all decisions, judgments, writs, injunctions, orders, decrees or demands of courts, administrative bodies or other authorities construing any of the foregoing.

1.55 “**Lot**” means a platted lot, a platted parcel or any quantity of land within the Property which is designated to be used, developed and conveyed as a site for a Home. Unless provided otherwise in this Declaration, the term “Lot” includes any Home constructed on or within the applicable Lot.

1.56 “**Maintenance**” means the upkeep by the Foundation of the Common Areas which are owned, leased or otherwise held by the Foundation. This includes, but is not limited to, maintenance of entrance and interior roadway systems and features, gate house areas, the Country Club Facility, street lighting, signage, lakes, landscaping, Water Management Systems and Drainage Areas, and Conservation Lands. The Foundation shall have the obligation to maintain those areas designated as Conservation Lands and to keep such areas free of debris and exotic and other undesirable vegetation. Each Owner of a Lot which includes land in the Conservation Buffer Zone shall be responsible for maintaining the Conservation Buffer Zone in compliance with all applicable Laws.

1.57 “**Member**” means each Person who holds a Membership as provided in, and subject to, the Founding Documents. References to Members in this Declaration include all categories of Members unless specifically provided otherwise.

1.58 “**Membership**” means a membership in the Foundation in accordance with the Founding Documents and applicable Laws, regardless of the category. Membership does not automatically entitle the Member to use of the Country Club Facility. A Member who desires to use the Country Club Facilities is required to become a Participating Member by acquiring a Participating Membership as provided in, and subject to, the Founding Documents.

1.59 “**Membership Agreement**” shall have the meaning given to such term in Section 8.2(1).

1.60 “**Membership Exchange Program**” means a program offered by the Foundation in which certain Members exchanged their Transferable Memberships for Non-Transferable Memberships in the same category by entering into a Membership Exchange Program Participation Agreement with the Foundation. The parties to each such Membership Exchange Program Participation Agreement shall be bound by the terms and conditions of their agreement. Any individual contractual agreement for the Membership Exchange Program shall be honored by the Foundation in accordance with the terms of the Membership Exchange Program. The Foundation, through action of the Board of Directors, reserves the right to offer a Membership Exchange Program to Members in the future or to terminate the option for future selection of this program at any time within the sole discretion of the Board of Directors.

1.61 “**Membership Fee**” or “**Initiation Fee**” means the sum of money required to be paid to acquire a Membership as determined by the Foundation from time to time, subject to any applicable limitations, as further provided in Section 8.2. No privileges associated with Membership shall be available to the applicable Member unless and until all, or the applicable portion, of the Membership Fee or Initiation Fee is paid in full to the Foundation or its designee.

1.62 “**Neighborhood**” means any portion of the Property made a part of this Declaration, and to any Additional Property which may in the future be subject to this Declaration, that have been granted Neighborhood status by Foundation.

1.63 “**Neighborhood Association**” means any property owners' association or other such entity, its successors and assigns, which may be formed or approved by Foundation for any particular Neighborhood within the Property.

1.64 “**Neighborhood Common Areas**” means any of the Property, including any Improvements and fixtures thereon, owned, leased or the use of which has been granted to a Neighborhood Association for the common use and enjoyment of its Members.

1.65 “**Neighborhood Covenants**” means any and all covenants, conditions, restrictions and other provisions which may be imposed by recorded instrument applicable to any Neighborhood in Quail West.

1.66 “**Non-Participating Member**” means each Owner who does not hold a Participating Membership. Non-Participating Members include only the Grandfathered Until Participating Members and Grandfathered Until Sale Members. No other Members may become Non-Participating Members under any circumstances. Non-Participating Members were formerly known as “Class D Members”.

1.67 “**Non-Participating Membership**” means the class of Membership held by Non-Participating Members, formerly known as “Class D Membership”.

1.68 “**Non-Residential Member**” means each Person who holds a Participating Membership but is not an Owner as provided in, and subject to, the Founding Documents. Non-Residential Members were formerly known as “Class C Members”.

1.69 “**Non-Residential Membership**” means the class of Membership held by Non-Residential Members which allows access and use of County Club Facility in accordance with the Founding Documents. Unless the context expressly indicates otherwise, the term Non-Residential Memberships includes both Non-Residential Golf Memberships and Non-Residential House Memberships (as defined in Section 8.2(b)). Non-Residential Memberships were formerly known as “Class C Memberships”.

1.70 “**Non-Transferable**” means a Membership that is neither transferable (other than to the Foundation or the applicable Member’s spouse or Significant Other), nor redeemable, and which shall not be eligible to be placed on the Resign List. Upon resignation or termination of any Non-Transferable Membership, the Membership shall automatically be deemed transferred back to the Foundation and all rights of the Member to use the Country Club Facility shall cease, with no right to any refund from the Foundation, unless specifically provided otherwise pursuant to a Membership Exchange Program Participation Agreement.

1.71 “**Non-Voting Membership(s)**” means the classes of Memberships that have no voting rights, which shall include Preview Memberships, and Honorary Memberships; provided, however, the

Board reserves the right to create and define such additional classes of Non-Voting Membership by a Super Majority Vote.

1.72 “**Notice**” shall have the meaning given to such term in Section 10.1.

1.73 “**Owner**” means the record owner, whether one or more Persons, of the fee simple title to any Lot, but not including those having an interest merely as security for the performance of an obligation.

1.74 “**Participating Member**” means each Member who holds either a Golf Membership, House Membership, Non-Residential Membership or any additional class or category of Membership that may be held by a Member which allows access and use of the Country Club Facility as provided in, and subject to, the Founding Documents and as determined appropriate by the Board from time to time.

1.75 “**Participating Membership**” means the classes and categories of Membership which allow access and use of County Club Facility as provided in, and subject to, the Founding Documents.

1.76 “**Person**” means an individual, corporation, governmental agency, business trust, estate trust, partnership, association, two or more persons having a joint or common interest, or any other legal entity.

1.77 “**Preview Member**” shall refer to those Persons who hold a Preview Membership.

1.78 “**Preview Membership**” shall have the meaning given to such term in Section 8.2(g).

1.79 “**Prior Declaration**” shall have the meaning given to such term in the Recitals.

1.80 “**Property**” means the real property described on Exhibit “A”, all which has become subject to this Declaration, together with any Additional Property which may from time to time be annexed thereto.

1.81 “**Property Rules and Regulations**” means the use restrictions, rules and regulations governing the use of and activities on the Lots and the Property, each as may be amended from time to time, in the Board's sole and absolute discretion.

1.82 “**PUD**” means Collier County Ordinance No. 90-56 establishing a Planned Unit Development zoning classification, adopted by the Board of County Commissioners of Collier County, Florida, on June 19, 1990, as it has or may from time to time be modified or amended.

1.83 “**PUD Master Development Plan**” means Collier County Resolution No. 91-158 approved by the Board of County Commissioners of Collier County, Florida on February 12, 1991, as it has or may from time to time be modified or amended.

1.84 “**Quail West**” shall have the meaning given to such term in the Recitals.

1.85 “**Qualified Builder**” means an individual or entity which holds and maintains a Florida general contractor's license throughout the period of its ownership of any property in the Development and demonstrates a bona fide and continuous intent to utilize such property in the ordinary course of its construction business.

1.86 “**Qualified Developer**” means an individual or entity which acquires and maintains ownership of at least three (3) Lots, exclusive of their personal residence, and demonstrates a bona fide and continuous intent to develop such property in the ordinary course of its business.

1.87 “**QWDC**” means Quail West Development Company, LLC, a Florida limited liability company.

1.88 “**QWH**” means Quail West Holdings, LLC, a Florida limited liability company.

1.89 “**Reasonable**” means the reasonable interpretation determined by the Board from time to time, unless expressly provided otherwise in this Declaration.

1.90 “**Regular Assessment**” means those Assessments based on the adopted budget of the Foundation and payable quarterly in advance on the first day of each January, April, July, and October of each year, as further described in Section 9.3 and elsewhere in the Founding Documents.

1.91 “**Repurchase**” has the meaning given to such term in Section 11.18.

1.92 “**Repurchase Price**” has the meaning given to such term in Section 11.18(ii).

1.93 “**Residential Member**” means each Person who holds a Membership and is also an Owner. Residential Members are either Participating Members or Non-Participating Members.

1.94 “**Residential Membership**” means collectively each Membership held by a Residential Member as provided in, and subject to, the Founding Documents.

1.95 “**Resign List**” shall have the meaning given to such term in Section 8.5.

1.96 “**Resigned Golf Member**” shall have the meaning given to such term in Section 8.5.

1.97 “**Resigned Member**” shall have the meaning given to such term in Section 8.5.

1.98 “**RPD**” means Lee County Resolution Number Z-02-044 establishing a Residential Planned Development zoning classification, adopted by the Lee County Board of County Commissioners of Lee County, Florida, on October 5, 1992, and recorded October 9, 1992 in the Public Records of Lee County, Florida, as the same has or may be modified and amended from time to time, and as modified, amended, or approved by governing bodies having jurisdiction including the City of Bonita Springs.

1.99 “**Rules and Regulations**” means collectively the Club Rules and Regulations and the Property Rules and Regulations, or other rules, obligations or restrictions set forth in any of the Founding Documents or otherwise promulgated by the Board in accordance with the Founding Documents, as they may be amended, restated or supplemented from time to time.

1.100 “**Significant Other**” shall have the meaning given to such term in Section 8.3(b)(i).

1.101 “**Special Assessment**” shall be all Assessments other than Regular Assessments. Special Assessments may be levied by the Foundation for any purpose of defraying any deficiency of funds needed to operate the services and operations of the Foundation including, but not limited to, costs of construction or replacement of any capital improvements, for making up for deficits for any damages that were not insured or underinsured, or to make up for a deficiency in the operating budget of the Foundation, as further described in Section 9.3 and elsewhere in the Founding Documents.

1.102 “**Special Preserve Easement**” means all areas designated as such on any plats or replats of the Property. Special Preserve Easements are required to be kept in their natural state, except for exotic vegetation removal and for improvements for which permits have been issued by the proper Governmental Authority, so as to prevent destruction of said areas or the alteration of the water flow at variance to the design standard for the Water Management Systems and Drainage Areas. The Foundation shall be responsible for the enforcement of all Special Preserve Easements in compliance with all applicable governmental regulations and permits.

1.103 “**Structure**” means any Improvement which is built, constructed, or any piece of work artificially built up or composed of parts joined together in some definite manner, the use of which requires more or less permanent location on the ground, or which is attached to something having a permanent location on the ground. The term shall be construed as if followed by the words “or part thereof”.

1.104 “**Super Majority Vote**” means a vote of at least three-fourths (3/4) of the Board of Directors.

1.105 “**Transfer Fee**” means the fee to be paid to the Foundation for the reissuance of a Participating Membership by the Foundation to another Member. The Transfer Fee shall be equal to an amount not to exceed ten percent (10%) of the then-current Membership Fee for the applicable Membership as determined by the Board from time to time, provided however, the Transfer Fee for a Golf Membership shall not be less than \$10,000.00.

1.106 “**Transferable**” means a Membership that is transferable through the Foundation, and may be conveyed or reissued by the Foundation incident to or in connection with the purchase or sale of a Member’s Lot.

1.107 “**Violation**” shall have the meaning given to such term in Section 7.41.

1.108 “**Voting Membership**” means the classes of Memberships that have voting rights in accordance with the Founding Documents which include Golf Memberships, House Memberships, Non-Residential Memberships and Non-Participating Members; provided, however, Non-Participating Members shall not be permitted to vote on matters related to the Country Club Facilities. The Board reserves the right to create and define such additional classes of Voting Membership by Super Majority Vote.

1.109 “**Water Management Systems and Drainage Areas**” means the constructed surface and/or underground system and facility for the drainage and/or the storage of surface water and sanitary sewer water throughout Quail West, including Conservation Lands, Special Preserve Easements, lakes and/or ponds, as further defined in Section 7.35.

1.110 “**Working Fund Contribution**” shall have the meaning given to such term in Section 9.3(k).

ARTICLE II

TURNOVER HAS OCCURRED

2.1 Turnover. Turnover of the control of the Foundation has occurred in accordance with the Prior Declaration and the Foundation is currently vested with title to all Common Areas (which by definition includes the Country Club Facility), together with personalty serving the same.

ARTICLE III

PROPERTY RIGHTS AND FOUNDATION COMMON AREAS

3.1 Members' Common Property Easements. Subject to the provisions of the Founding Documents and any prior use rights granted in the Common Areas, every Member, their successors and assigns, their Family Members and every guest, tenant and invitee of such Member is hereby granted a right and nonexclusive easement of ingress and egress and enjoyment in and to the Common Areas owned by the Foundation subject to the following provisions:

(i) The right of the Foundation to require Persons who desire use and access to the Country Club Facility to become a Participating Member and pay any and all applicable assessments, fees and charges in accordance with the Founding Documents;

(ii) The right of the Foundation to suspend a Member's right to vote, and/or to suspend a Member's right to the use of the Country Club Facility, for any period during which any Assessment or charge of the Foundation remains unpaid, and for a reasonable period during or after any infraction of the Rules and Regulations, including the right of the Foundation to levy a fine against a Member for any infraction of the Rules and Regulations as set forth in Section 7.41;

(iii) The right of the Foundation, without further consent from the Members or their Institutional Mortgagees, to declare, grant and record perpetual easements granting the full free right, power and authority to lay, operate and maintain landscaping, drainage water lines, storm sewers, gas and electric lines, communication lines, cable television lines, and such other further service facilities or other uses as Foundation may deem necessary, along, through, in, over and under a strip of land up to ten (10) feet in width from all side, front and rear lines of any Lot and along, through, in, over and under all Common Areas. Such easements may benefit the Property or other property not located within Quail West. Further, the Foundation shall have the right to acquire, extend, assign, terminate or abandon such easements;

(iv) The right of Foundation, and all Persons lawfully on and entitled to occupancy rights on any of the Property and Members with an interest in and to any Property, to have a nonexclusive perpetual right of ingress and egress over and across lands owned by the Foundation subject to this Declaration and the other Founding Documents;

(v) The right of the Foundation to ingress and egress over and across the Property for the purpose of maintaining the Conservation Lands, Conservation Buffer Zones and Special Preserve Easements;

(vi) The right of the Foundation to access over and across all Common Areas, lakes, Conservation Lands, Conservation Buffer Zones and Special Preserve Easements for the purpose of fulfilling all rights or obligations required by various permits issued to Foundation by any Governmental Authorities;

(vii) The right of the Foundation to borrow money for the purpose of acquiring or improving the Common Areas and in aid thereof to mortgage the Common Areas, subject to any limitations in the Articles;

(viii) The right to take such steps as are reasonably necessary to protect the Common Areas against foreclosure; and

(ix) The right of the Foundation to convey any unused and/or unneeded surplus Common Areas to Owners, including Foundation, or to convert any Common Areas to Lots in Quail West without consideration of any kind to the Foundation. Foundation, in its sole discretion, shall determine what parts of the Common Areas are to be considered unused and/or unneeded surplus lands.

3.2 Delegation of Right.

(a) A Member may delegate its right of use in and to the Common Areas to such Member's Family Members, the residential tenants who reside in a Home on such Member's Lot, and to the Member's guests, but only to the extent and subject to conditions, limitations and restrictions as may be provided for, and in accordance with, the Founding Documents.

(b) Each Member shall be responsible for the actions of any Person to whom the Member has delegated its right to use the Common Areas. Any unpaid charge against such Person relating to the Common Areas shall be charged against such Member personally and until paid shall be a lien against the Membership and any Lot(s) held by such Member. Any infraction of the Rules and Regulations by such Person shall be deemed to be an infraction by such Member.

3.3 Conveyance and Use. Any property conveyed, leased, or the use of which has been granted by any third party to the Foundation as a Common Area, is not and shall not be deemed dedicated for use by the general public but is, and shall be, deemed restricted for the common use and enjoyment of Members in accordance with the Founding Documents, or to those parties to which any use right has been granted, unless reconveyed by the Foundation to a third party as provided herein.

3.4 Foundation's Rights and Powers. Subject to the provisions of this Declaration, or any other applicable recorded instrument and the other Founding Documents, the Foundation shall have the right and the power to develop, promulgate and enforce Rules and Regulations for the use and enjoyment of the Common Areas.

(a) Foundation shall enforce all governmental regulations and monitoring responsibilities in the Conservation Lands and Conservation Buffer Zone.

(b) Foundation shall have the right and the power to regulate and control the design and appearance of the Common Areas to promote a quality environment which will preserve the value of an Owner's Lot and to foster the attractiveness and functional utility of Quail West as a place to live, work and play, including a harmonious relationship among Homes, vegetation and topography. Foundation, in its sole discretion, shall determine what constitutes a quality environment and the attractiveness and functional utility of Quail West.

(c) Foundation shall have the right to receive refunds of deposits or payments made to utility companies or Governmental Authorities, if originally paid by the Foundation.

(d) The Common Areas shall be subject to, and the uses of the Common Areas shall be in conformity with, the provisions of Article VII; provided, however, the Board shall determine the uses allowed on any Common Areas applicable to any property owned by Foundation, provided the uses are consistent with the functions of the Foundation.

(e) No nuisance or obnoxious or offensive activity shall be conducted or permitted on the Common Areas. Foundation shall have the right and the power, in the exercise of its reasonable discretion, to determine what activities or uses constitute nuisances or obnoxious or offensive activity. Nothing shall be done within the Common Areas which may be or might become a nuisance to Owners and/or Members.

3.5 View Impairment. No Owner shall have any easement for a view or similar right over and across any lake or over any portion of the Country Club Facility including, but not limited to, the golf courses thereon. The Foundation may, in its sole and absolute discretion, add or change the location, configuration, size and elevation of trees, mounds, tee complexes, bunkers, fairways, greens and golf cart paths from time to time, which additions or changes may diminish or obstruct the view from one or more Lots. By acceptance of a deed to a Lot or by ratification of this Declaration, each Owner acknowledges that they do not have any express or implied easements for view or for the passage of light over and across any lake or the Country Club Facility inclusive of its golf courses, and to the extent any such easements may be deemed to exist they are hereby expressly disclaimed.

ARTICLE IV

COUNTRY CLUB FACILITY

4.1 Description and Ownership.

(a) The Foundation shall own, operate and maintain the Country Club Facility for the pleasure, recreation and social benefit of its Members in accordance with the Founding Documents. The use of said facilities shall be limited to Participating Members, and to certain Family Members, guests and invitees, all as provided in the Founding Documents, and to such others as Foundation shall determine subject to this Declaration and the other Founding Documents. The Foundation shall be responsible for the management and operation of all such Country Club Facilities, including, but not limited to, the golf clubhouse, the golf courses, the tennis facilities, the maintenance facilities, the playgrounds, and the related Common Areas including the lakes, preserves and fountains located within the Development. The Foundation shall maintain these facilities, and shall provide for the operation and use of these facilities during normal business hours, in a first-class manner as contemplated in the Founding Documents. Other than seasonal adjustments to operations as at similarly situated country clubs in Florida, there shall be no reductions in service unless approved by a Super Majority Vote of the Board. For purposes of this Section 4.1(a), a “reduction in service” which requires a Super Majority Vote of the Board shall be defined as a reduction in service to the Members which would reduce the use or value of a Membership to a current Member or a prospective Owner. Notwithstanding the foregoing, any facility schedule change or service reduction for a duration of less than 30 days would require only an affirmative vote of a majority of the Board.

(b) No Member shall have any interest in the assets or property of the Country Club Facility except as specifically set forth in the Founding Documents, and no part of the income related to the Country Club Facility shall inure to the benefit of any Member or director or officer of the Foundation, nor shall any Member or director or officer of the Foundation receive remuneration of any kind except that which may be paid as reasonable compensation for services rendered in connection with the Country Club Facility.

(c) Each Member acknowledges that activities involving the Country Club Facility may produce smells and noises that go beyond the boundaries of the Country Club Facility. By acceptance of a deed to a Lot or by ratification of this Declaration, the Owner of a Lot adjacent to the Country Club Facility does hereby acknowledge and consent to said smells and noises emanating from the Country Club Facility.

4.2 Easements. The right of ingress and egress and nonexclusive easements therefor for all lands included in the Country Club Facility is hereby reserved or granted in favor of the Foundation or any appropriate governmental or quasi-governmental agency that may reasonably require such ingress and egress.

4.3 Country Club Facility Operations. Neither the Foundation nor any Owner may exercise their respective rights under any easement reserved in this Declaration in a manner that would materially and adversely impact the operation of the Country Club Facility.

4.4 Right to Improve Common Areas. Foundation hereby expressly reserves for itself and for any successor Country Club Facility Owner or the operator of the Country Club Facility, the right to construct Improvements upon the Common Areas and to upgrade the Improvements constructed on the Common Areas, including Lots or Properties now or hereafter owned by Foundation. For purposes of this Section 4.4, “upgrades” shall include, without limitation, (i) the installation of additional landscaping and plantings, (ii) the installation and replacement of Improvements and (iii) the replacement of building materials with materials deemed superior by the Foundation, any successor Country Club Facility Owner or operator of the Country Club Facility, in their sole discretion, such as the replacement of asphalt surfaces with decorative brick surfaces. All installations made pursuant to this Section 4.4 shall become Common Areas upon completion. Any and all initial construction and upgrade costs shall be the sole responsibility of the Foundation, successor Country Club Facility Owner or the operator of the Country Club Facility, as applicable, and any and all future Maintenance or replacement costs shall be the responsibility of such Person. All installations made pursuant to this Section 4.4 shall be maintained by the Foundation or successor Country Club Facility Owner, as applicable in accordance with the Community-Wide Standard in which the installations are located, which shall be established for such installations at the time that the installations are conveyed to the Foundation or otherwise deemed to be Common Areas.

4.5 Sale of Country Club Facility. No portion of the real estate constituting the Country Club Facility may be sold without the affirmative vote of no less than an aggregate sixty (60%) percent of the Golf Members, and Non-Residential Members voting at a duly called meeting of the Members called for that purpose.

ARTICLE V

LAKE AND WATER RIGHTS

5.1 Ownership of Lakes. Certain portions of the Property, as designated from time to time by Foundation, shall constitute “lakes”. The lakes subjected to this Declaration were conveyed to the Foundation, which shall be the owner of the lakes for the purposes set forth in this Declaration. The waters, water quality, littoral plantings and Maintenance of such lakes shall be controlled by, and shall be the responsibility of, the Foundation.

5.2 Maintenance of Lake Embankments and Lake Bottoms. The Foundation shall maintain and control the quality of the lakes and shall maintain the embankment from the top edge of such embankment to the lake bottom; provided, however, the Foundation shall not be responsible for maintaining the water level of any lakes. The Foundation shall have the power and right, as it deems appropriate, and subject to applicable public regulations, to control and eradicate plants, fowl, reptiles, animals, fish and fungi in and on any lakes, as well as to maintain any drainage device and/or water devices so as to ensure compliance with applicable governmental regulations as they exist from time to time. The owner of land which lies adjacent to or includes part of the embankment (the “**Adjacent Owner**”) shall maintain all land to the top edge of the embankment. Maintenance of the embankment by the Foundation shall be conducted so that the grass, planting or other natural support of the embankment shall exist in a clean and safe manner and so as to prevent erosion. If the Adjacent Owner shall fail to maintain the property adjacent to and to the top edge of the embankment, the Foundation shall have the right, but not the obligation, to enter onto the Adjacent Owner's property and perform the maintenance at the expense of such Adjacent Owner, which expense shall be a Special Assessment against such Adjacent Owner and its Lot as provided herein.

5.3 Improvements on Lakes. In the event Foundation or a Person designated by the Foundation shall construct any bridges, docks or other Improvements which may extend over or into a lake, or shall construct any bulkheads or similar Improvements to support or enhance a lake, the Foundation shall maintain any and all such Improvements in good repair and condition. No Owner, except Foundation or its designee, shall be permitted to construct any Improvements, permanent or temporary, on, over or under any lakes without the prior written consent of Foundation, which consent may be withheld for any reason.

5.4 Easements. An Owner's use and access to the lakes shall be subject to and limited by this Declaration and the other Founding Documents. The use of lakes shall be limited solely to fishing from the banks thereof, and no canoeing, kayaking or recreational boating of any kind is permitted. The Foundation is hereby granted a nonexclusive easement for ingress and egress over the lakes and over any Lot for the purpose of providing the Maintenance required herein.

5.5 Lake Use Restrictions and Covenants. In connection with the use of any lake, the following restrictions shall apply:

(a) No recreational boating of any kind, whether motorized or not, shall be permitted on any lake with the exception of boats authorized or used by the Foundation for Maintenance thereof.

(b) No bottles, trash, cans, grass clippings or other landscape materials, or garbage of any kind or description, shall be placed in any lake.

(c) No activity shall be permitted on any lake which may become an annoyance or nuisance to the adjacent property and the Owners thereof, or which is not allowed by the South Florida Water Management District or any other applicable Governmental Authority. The Foundation's determination of whether any activity constitutes an annoyance or nuisance shall be final.

(d) No Person, except the Foundation, shall have the right to pump or otherwise remove any water from any lake for the purpose of irrigation or other use.

(e) No lake shall be used in conjunction with any business enterprise or public use whatsoever.

(f) Only Owners shall be permitted to fish in the lakes from the banks thereof, and only in areas and during such times as may be designated by the Foundation. No other recreational use of the lakes shall be permitted.

(g) The Board shall be entitled to establish, amend and modify the Rules and Regulations governing the use of the lakes as the Board deems necessary or convenient.

ARTICLE VI

NEIGHBORHOOD ASSOCIATIONS

6.1 Neighborhood. Foundation reserves the right, in its sole discretion, to grant, from time to time, Neighborhood status to any portion of the Property made a part of this Declaration, and to any Additional Property Foundation may in the future elect to subject to this Declaration.

6.2 Neighborhood Common Areas. The Foundation may contract with a Neighborhood Association, if any, to provide for the operation and maintenance of its Neighborhood Common Areas.

6.3 Priority. The terms and provisions of the Founding Documents, inclusive of the Declaration, shall have priority over all Neighborhood Association documents. In the event of any inconsistency or conflict, the terms of the provisions of the Founding Documents shall prevail.

ARTICLE VII USE RESTRICTIONS

7.1 General Use Restrictions.

(a) The Property may be used for those purposes as provided in the PUD Master Development Plan and the RPD, as applicable. The PUD and the RPD contain certain provisions which allow various land uses of the Property. Foundation reserves solely unto itself the right and the power to assign and reassign various land uses to Property, subject to the PUD and the RPD, and to inaugurate and implement variations from, modifications to, and amendments of the PUD and the RPD and any other governmental plans, land development regulations, development orders and development permits applicable to Quail West.

(b) Except for those Lot(s) owned by the Foundation, a Lot may be used for one detached single-family residence and for no other purpose. No business buildings may be erected on a Lot that is not owned by the Foundation and no business may be conducted on any part thereof, nor shall any Lot or portion thereof not owned by the Foundation be used or maintained as a professional office. For clarity, a Lot may be used as a home office provided such use does not generate any additional traffic or commercial activity on the Common Areas.

(c) The provisions of this Section 7.1 shall not restrict Foundation in its use or occupancy of any Lot.

7.2 Subdivision and Regulation of Land.

(a) No Lot shall be divided or subdivided without the express written consent of Foundation, who may impose certain requirements on the Owner of such Lot to comply with the provisions of the PUD or the RPD. Foundation shall assign one (1) Membership for each Lot in accordance with the classes of Membership defined herein, subject to the availability of each such class of Membership. If more than one (1) Lot is used for a single Home, Foundation may assign one (1) Membership only for the enlarged Lot.

(b) An Owner shall not inaugurate or implement any variation from, modification to, or amendment of the PUD or the RPD or any other governmental plans, land development regulations, development orders or development permits applicable to Quail West, the Property or any Lot without the express written consent of the Foundation.

7.3 Architectural Review Board.

(a) Members of the ARB. The Architectural Review Board shall be comprised of no less than three (3) Residential Members. The members of the ARB shall be appointed by the Board. Each member of the ARB shall hold office until such time as he or she has resigned or has been removed or his or her successor has been appointed, as provided herein. The Foundation, its successors or assigns, shall have the right to change the number of Residential Members on the ARB so long as there are at least three (3) Residential Members serving at all times.

(b) Meetings of the ARB. The ARB shall meet from time to time as necessary to perform its duties hereunder. The ARB may from time to time, by resolution unanimously adopted in writing, designate an ARB representative (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the ARB, except the granting of variances pursuant to Section 7.4(p). In the absence of such designation, the vote of any two (2) members of the ARB shall constitute an act of the ARB.

(c) Compensation of Members. The members of the ARB shall not receive compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties; provided, however, if a licensed professional is hired by Foundation as a consultant or representative of the ARB, such licensed professional shall be entitled to fair compensation for services rendered as the licensed professional and Foundation may agree.

7.4 Review of Proposed Construction.

(a) Improvements. No Improvements, including, by way of example and not of limitation, Homes, accessory Structures, exterior lighting fixtures, brick pavers, stamped concrete, concrete flatwork, basketball goals, buildings, fences, walls, pools, roofs, gutters or rain spouts, antennae, aerials, microwaves, reception devices, mailboxes, external enclosures (including entry screen and patio screen enclosures), or landscaping (including hedges and massed plantings) shall be commenced, erected, installed, altered, modified, painted, planted or maintained on the Property, nor shall any canopy, shutters or window coverings be attached to or placed upon outside walls or roofs of any Home by any Owner, unless such Improvements have been reviewed by and received the written approval of the ARB in accordance with paragraph (b) below. Any Owner desiring to make Improvements shall submit three (3) complete sets of plans and specifications prepared by an architect, landscape architect, engineer or other Person determined by the ARB to be qualified, showing the nature, dimensions, materials and location of the same.

(b) Plans and Specifications. The ARB shall approve proposed plans and specifications submitted for its approval only if it deems that the construction, alterations or additions contemplated will not be detrimental to the appearance of the surrounding area of the Property as a whole, and that the appearance of any Structure affected thereby will be in harmony with the surrounding Structures and is otherwise desirable. The ARB may also issue rules or Guidelines setting forth procedures for the submission of plans and specifications. If the proposed construction, alterations or additions are to a portion of the Improvements which the Foundation is obligated to maintain, said approval shall also be subject to approval by the Board. The ARB may condition its approval of proposed plans and specifications in such a manner as it deems appropriate including, but not limited to, the approval of any committee charged with oversight or recommendation pertaining to the golf courses as to those Lots bordering a golf course; and may require the submission of additional information prior to approving or disapproving such plans.

(c) Guidelines. The ARB may, but shall not be required to, establish design and construction guidelines and review procedures (the “**Guidelines**”) to provide guidance to Owners, developers and builders. The Guidelines shall not be the exclusive basis for decisions hereunder and compliance with the Guidelines shall not guarantee approval of an application. Any such Guidelines may contain general provisions applicable to all of the Property, as well as specific provisions which vary from one portion of the Property to another depending upon the location, type of construction or use, and unique characteristics of such portion of the Property. It is intended that a portion of the Guidelines that are enacted will provide flexibility and substantial discretion to the ARB and that plans will be reviewed on a case-by-case basis with a variety of architectural styles and finishes being approved for use. Any Guidelines adopted pursuant to this Declaration may be amended at any time without notice in the sole discretion of the entity adopting it. All such Guidelines shall be consistent with the Founding Documents. In the event of any

conflict between the Guidelines and the Founding Documents, the terms and provisions of the Founding Documents shall control.

Foundation makes no representation, express or implied, to any Owner or any other party whatsoever with regard to the Guidelines, including, without limitation, (i) the compliance of the Guidelines with building codes and other requirements, rules, Laws and ordinances of federal, state and local governmental and quasi-governmental bodies and agencies relating to the construction of Improvements and other activities engaged in by developers or builders from time to time, (ii) the appropriateness of use of any substance or material required by the Guidelines, (iii) the compliance of the Guidelines with any licensing requirements imposed by federal, state and local governmental and quasi-governmental bodies and agencies from time to time, and (iv) the failure or alleged failure of the Guidelines to comply with any industry standard or any other reasonable standard or practice with respect to the work or materials used in the construction of Lots and other activities engaged in by Owners, developers or builders within the Property in accordance with the Guidelines.

(d) ARB Approval. The ARB shall have forty-five (45) days after delivery of all required materials to approve or reject any plans, and, if not approved within such forty-five (45) day period, such plans shall be deemed rejected, provided that, in no event shall any addition, construction or alteration be made by any Owner which is detrimental to or inconsistent with the harmony, appearance or general scheme of the Property as a whole.

(e) Plan Requirements. All plan submissions to the ARB shall include the site layout, exterior elevations, exterior materials and colors, landscaping, all existing trees measuring three (3) inches or more in diameter at breast height (DBH), drainage, lighting, irrigation, and other features of the proposed construction, as required by the Guidelines and as applicable. The ARB shall have the right to require minimum landscaping requirements for each Lot, based on Lot type or other characteristics, and such provisions may require the expenditure of a minimum level of funds toward the landscaping and hardscaping of each Lot.

(f) Approved Builder. Each Owner, by acceptance of a deed to a Lot, acknowledges that Foundation, on behalf of itself and the Owners, has a legitimate interest in assuring that all construction undertaken within the Development is of the highest quality and is conducted expeditiously and with the least possible disruption to adjacent and neighboring lots and properties so that Foundation's vision for the Development will be demonstrated and property values within the Development may at all times be protected and maintained at the highest possible levels. All plans and specifications for the construction of a residential dwelling unit or other Improvements shall provide evidence that the applicant is utilizing a builder that has been approved by Foundation and included on the "list of builders approved and promulgated by Foundation from time to time in its sole, absolute and unfettered discretion ("**Approved Builder List**")", as a condition to the Commencement of Construction of any Improvements to a Lot. Foundation shall provide the then-current Approved Builder List to Owners upon request. To qualify as an "**Approved Builder**", a builder must satisfy the criteria and requirements established by Foundation from time to time. The criteria and requirements established by Foundation for a builder to qualify as an Approved Builder are solely for Foundation's protection and benefit and are not intended to, and shall not be construed to, benefit any Owner or any other party whatsoever. Foundation makes no representation, express or implied, to any Owner or any other party whatsoever with regard to the Approved Builders, including, without limitation, (i) the existence, nature and extent (including coverage amounts and deductibles) of insurance policies that may be maintained by the Approved Builders from time to time, (ii) the solvency or financial status of the Approved Builders from time to time, (iii) the nature and amount of any bonds that may be maintained by the Approved Builders from time to time, (iv) the performance (or the ability to perform) by the Approved Builders of their contractual obligations (including any contractual obligations of any of the Approved Builders in favor of any Owner or any other party whatsoever), (v) the

compliance by the Approved Builders with building codes and other requirements, rules, Laws and ordinances of federal, state and local governmental and quasi-governmental bodies and agencies relating to the construction of Improvements on the Lots and other activities engaged in by the Approved Builders from time to time, (vi) the use of any substance or material, including, without limitation, any stucco or synthetic material by the Approved Builders in connection with the construction of Improvements, (vii) the compliance by any Approved Builder with any licensing requirements imposed by federal, state and local governmental and quasi-governmental bodies and agencies from time to time, including, without limitation, maintaining any required builder's and/or contractor's license, and (viii) the failure or alleged failure of any Approved Builder to comply with any industry standard or any other reasonable standard or practice with respect to such Approved Builder's work or materials used in the construction of Homes and other activities engaged in by such Approved Builder within Quail West. Furthermore, neither Foundation, nor the officers, directors, Members, employees, agents or affiliates of Foundation, shall have any responsibility whatsoever for any sum that any Owner or any other party may deposit with an Approved Builder, including, without limitation, any earnest money or other deposit that any Owner may deliver to an Approved Builder. The selection of an Approved Builder by an Owner shall be conclusive evidence that such Owner is independently satisfied with regard to any and all concerns such Owner may have about the Approved Builder's work product and/or qualifications. Owners shall not rely on the advice or representations of Foundation or the officers, directors, Members, employees, agents or affiliates of Foundation in that regard.

(g) Compliance. All plans and specifications submitted shall comply with (i) any Guidelines that may be in effect and all other recorded covenants, conditions and restrictions applicable to the Property, including, but not limited to, this Declaration, (ii) all requirements of any development order concerning the Property, and (iii) all Laws. The ARB may require the submission of such additional information as it deems necessary to consider any application. All plans that are submitted concerning proposed construction of an Improvement shall include, as applicable, information concerning the extent of proposed clearing of the site, landscaping materials to be utilized and the amount of impervious surface to be incorporated. In addition to the ARB's own standards of review and the general scheme of development applicable to the Property at such time, all plans will be required to comply with applicable permits, regulations, development agreements and other conditions that may be imposed. It is contemplated that any Guidelines which are adopted will incorporate these and other standards that may be applicable from time to time.

(h) Lot Views. In its review of proposed plans and specifications of landscape design and materials for Lots, including, but not limited to, all trees and any massed plantings, the ARB will take into consideration the benefit to the Property as a whole, including the effect on lake views and golf course views and golf course play from the perspective of the Country Club Facility, and on views of the Conservation Lands, all at the proposed time of installation and at the time when maximum growth shall have occurred.

(i) Hurricane Shutters. The ARB shall, from time to time, establish hurricane shutter specifications which comply with the applicable building code, and establish permitted colors, styles and materials for hurricane shutters. Subject to the provisions of this Article VII, the ARB shall approve the installation or replacement of hurricane shutters to conform with the ARB's specifications. All shutters shall remain open unless and until a storm watch or storm warning is announced by the National Weather Hurricane Center or other recognized weather forecaster, except that hurricane shutters may be left in the closed position between June 1st and November 30th, or such other time periods as approved by the Board. An Owner or occupant who plans to be absent during all or any portion of the hurricane season must prepare their Lot prior to his or her departure by designating a responsible firm or individual to care for the Lot should a hurricane threaten the Lot, or should the Lot suffer hurricane damage, and by furnishing the Foundation with the name(s) of such firm or individual. Such firm or individual shall be subject to the

approval of the Board. The Board may approve additional policies for closure of hurricane shutters by adopting rules and regulations governing same from time to time.

(j) Interior Changes. Notwithstanding any provision in this Article VII to the contrary, the approval of the ARB shall not be required for any additions, changes or alterations within any Home if such additions, changes or alterations are not visible from the outside of such Home. All changes and alterations shall be subject, independently, to all applicable Laws.

(k) Inapplicability to Foundation. Notwithstanding anything to the contrary herein contained, no construction, reconstruction, addition or alteration by Foundation shall require the prior approval or any certificate of consent of the ARB.

(l) Inapplicability to Country Club Facility. Notwithstanding anything to the contrary herein contained, no construction, reconstruction, addition or alteration by Foundation or any successor Country Club Facility Owner upon the Country Club Facility shall require the prior approval or any certificate of consent of the ARB.

(m) No Waiver of Future Approvals. The approval of the ARB of any plans and specifications or drawings for any work performed or proposed shall not be deemed to constitute a waiver of any right to withhold approval or consent to any identical or similar proposal subsequently or additionally submitted for approval or consent, whether such submission is by that applicant or another applicant. Similarly, the denial of approval by the ARB of any plans and specifications or drawings for any work done or proposed shall not be deemed to constitute a waiver of any right to approve or consent to any identical or similar proposal subsequently or additionally submitted for approval or consent, whether such submission is by that applicant or another applicant.

(n) Inspection of Work. Inspection of work and correction of defects therein shall proceed as follows:

(i) Upon the completion of any work for which Approved Plans are required under this Article VII, the submitting party shall give written notice of completion to the ARB.

(ii) Within thirty (30) days after written notice of completion, the ARB or its duly authorized representatives may inspect such Improvement. If the ARB finds such work was not done in substantial compliance with the Approved Plans, it shall notify the submitting party in writing of such noncompliance within such thirty (30) day period, specifying the particulars of noncompliance, and shall require the submitting party to remedy such noncompliance.

(iii) If upon the expiration of fifteen (15) days from the date of such notification the submitting party shall have failed to remedy such noncompliance, notification shall be given to the Board in writing of such failure. Upon such notice, the Board shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If noncompliance exists, the submitting party shall remedy or remove the same within a period of not more than thirty (30) days from the date of announcement of the Board's ruling. If the submitting party does not comply with the Board's ruling within such period, the Board, at its option, may remove the Improvement, remedy the noncompliance, or proceed in court to enjoin compliance, and the submitting party shall reimburse the Foundation, upon demand, for all expenses incurred in connection therewith, including any interest and attorneys' fees. If such expenses are not repaid within fifteen (15) days of such demand by the submitting party to the Foundation, the Board shall levy a Special Assessment against such submitting party for reimbursement, and said Assessment shall constitute a lien upon the applicable Lot as permitted pursuant to the terms and conditions of Section 9.4.

(iv) If, for any reason, notification is not given to the submitting party of acceptance within thirty (30) days after receipt of said written notice of completion from the submitting party, the Improvement and/or alteration shall be deemed to be in compliance with said Approved Plans.

(o) Nonliability of ARB Members. Neither the ARB nor any member thereof, nor its duly authorized ARB representative, nor Foundation, shall be liable to the Foundation or to any Owner or any other Person for any loss, damage or injury arising out of or in any way connected with the performance of the ARB's duties hereunder, unless due to the willful misconduct or bad faith of a member of the ARB and then only that member shall have any liability. The ARB's review and approval or disapproval of plans submitted to it for any proposed Improvement shall be based solely on considerations of the overall benefit or detriment to the Development as a whole. The ARB shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes. Furthermore, approval by the ARB of any plans does not excuse any Owner from also receiving approvals as required by all applicable Governmental Authorities.

(p) Variance. The ARB may authorize variances from compliance with any of the architectural provisions of this Declaration, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may require. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the Improvements for which the variance was granted.

7.5 Air Conditioners. No window or wall air conditioning units shall be permitted.

7.6 Antennae and Flagpoles. No outside antennae, antenna poles, antenna masts, satellite television reception devices, electronic devices, antenna towers or citizen band (CB) or amateur band (HAM) antennae shall be permitted except as approved in writing by the ARB. A flagpole for display of the American flag or any other flag shall be permitted if first approved by all Governmental Authorities and approved in writing by the ARB as to both its design and location. An approved flagpole shall not be used as an antenna.

7.7 Colors. No exterior colors on any Structure shall be permitted that would, in the judgment of the ARB, be inharmonious or discordant or incongruous with the Development. The initial exterior color of Structures and any later changes thereto must be approved in writing by the ARB in advance.

7.8 Clothes Drying Area. No outdoor clothes drying areas shall be permitted that can be viewed from any other Lot or Common Area, including, but not limited to, the Country Club Facility.

7.9 Construction Requirements for a Structure on an Owner's Lot.

(a) During the period of construction of any Structure, the construction site (defined as a Lot on which a Structure is being built) shall be maintained in a neat and orderly manner.

(b) All parking of construction vehicles and placement of building materials shall be confined to the construction site to the fullest extent possible, or to a site provided by the Foundation for such purpose. No construction vehicles may be parked on the streets or road right-of-ways at any time for any reason without prior written permission of the Foundation, which may be denied in Foundation's sole and absolute discretion.

(c) During the construction period, the construction site shall at all times be surrounded by a protective barrier of material to be approved by the ARB.

(d) Each construction site shall have a commercial trash receptacle and a portable toilet located thereon which is emptied on a regular and timely basis.

(e) No temporary trailers shall be placed on any construction site without the prior written approval of the ARB.

(f) The Foundation shall have the right to require builders and contractors to remove all debris and store all materials in a sightly fashion at the builder's or contractor's or Owner's sole cost and expense.

(g) The failure by a builder or contractor to abide by Sections 7.9(a) through (f) shall result in the Owner of the Lot, whose Structure is being constructed, to be charged for all monies incurred by the Foundation for cleaning up the site and such daily fines and penalties as the Foundation may seek to impose. During construction of a Structure, the Owner shall be liable, and will be assessed by the Foundation, for any damage to the road right-of-way abutting such Owner's Lot, including but not limited to all surface and subsurface utilities, landscaping and other Improvements, whether or not the cause of the damage is known.

(h) Construction Requirement. Construction and completion of any and all Improvements shall be performed and completed by each Owner at its sole cost and expense in substantial conformance, in all material respects, with the plans approved by the ARB for such Improvements (the "Approved Plans"), by a builder on the Approved Builder List.

(i) For purposes hereof, "Completion of Construction" shall have occurred only upon the satisfaction of the following conditions: (a) the Improvements, including, without limitation, all equipment, fittings and fixtures and all exterior painting, landscaping, patios and driveways required to be installed pursuant to the Approved Plans, shall have been substantially completed and installed in substantial conformance, in all material respects, with the Approved Plans and in accordance with all applicable Laws relating to the construction of the Improvements, and that direct connection has been made to all abutting public utilities (including water, electricity, storm and sanitary sewer), as certified in writing by the architect, engineer, or architectural or engineering firm responsible for the creation of the Approved Plans; and (b) permanent certificate(s) of occupancy for the Improvements shall have been issued by the appropriate Governmental Authorities to the Owner, and a copy thereof delivered to the Foundation, and all other certificates, licenses, permits, authorizations, consents and approvals necessary for the full use and occupancy of the Improvements for their intended purposes shall have been issued by the appropriate Governmental Authority to the Owner, and a copy thereof delivered to the Foundation.

(ii) For purposes of this Section 7.9, "Commencement of Construction" or "Commence Construction" means that (a) a building permit has been issued for the Home by the appropriate jurisdiction, (b) construction of the Home has physically commenced beyond site preparation, and (c) the Home's foundation or slab has been inspected by the ARB.

(iii) Unless specifically waived or modified in writing by the Foundation, Completion of Construction of a Home shall be achieved no later than eighteen (18) months after the Commencement of Construction. The Foundation shall be under no obligation to modify or extend the Completion of Construction deadline for any Home for any reason. Failure of a Home to achieve Completion of Construction no later than eighteen (18) months after Commencement of Construction shall entitle the Foundation to impose such fines or penalties against the Owner for the Owner's failure to do so, which fines or penalties may be secured by a lien on the Owner's Lot to the extent permitted by applicable Laws.

7.10 Driveways and Parking.

(a) All Driveways shall have textured or featured paving with materials and colors approved by the ARB. Driveways may connect to roadways at only two (2) points which have been predetermined by the Foundation.

(b) At such time as the ARB has approved the Owner's site plan, which includes the location of and materials for the driveway, the Foundation shall be responsible for installation of that portion of the driveway that lies within the road right-of-way. The Owner shall be responsible for any and all expenses incurred by the Foundation for such work and the Owner shall be charged by the Foundation accordingly. Notwithstanding the foregoing, the Foundation reserves the right to assign this work to others. Such assignment, if any, shall be at the Foundation's sole discretion and may or may not include the Owner's general contractor.

(c) All cars belonging to an Owner must be kept fully enclosed inside a garage located on such Owner's Lot.

(d) No truck or commercial vehicle shall be permitted to be parked or stored on a Lot overnight unless kept fully enclosed inside a Structure.

(e) No motor vehicle, boat, boat trailer or other trailer of any kind, recreation vehicle, camper, mobile home or disabled vehicle shall be permitted to be parked or stored on a Lot overnight unless kept fully enclosed inside a Structure.

(f) If an Owner is unable to comply with the provisions of this Section 7.10 solely because the number of vehicles owned or leased by those Persons in residence at any given time exceeds the number of bays available inside the garage, the Owner may request an exception from the Foundation to accommodate said vehicle overage, which the Foundation shall consider in accordance with rules, guidelines and criteria established by the Board of Directors from time to time.

7.11 Dwelling Foundation and Grade of Lot. All Homes shall be placed on a masonry foundation. The top of the masonry foundation slab shall be no less than eighteen inches (18") nor more than thirty-six inches (36") above the crown of the road abutting the front of the Lot; provided, however, that this measurement may be increased with the prior written approval of the ARB.

7.12 Dwelling Roofs, Roof Stacks, Vents and Flashing.

(a) All roofing material must be approved by the ARB. The type of material proposed for a Structure must be included in the building plans submitted to the ARB for approval. Asphalt roofs or materials of a similar nature are not allowed.

(b) Roofs shall have a minimum pitch of 5:12 unless otherwise approved in writing by the ARB.

(c) Roof stacks and vents shall be (i) placed so as not to be clearly or readily visible from any street or neighboring Property, (ii) treated and painted with exterior paint to match the roof color and (iii) repainted as often as necessary to maintain the aesthetic appeal of the Development and to meet the Community-Wide Standard.

(d) Any exposed flashing must be made of copper and may not be galvanized steel.

7.13 Dwelling Setback, Size and Height Restrictions.

(a) The determination of all applicable setback lines shall be made by the ARB on a Lot-by-Lot basis subject to the restrictions of the PUD and the RPD. The side setback lines shall apply to the lines bordering adjoining Property owned by others. The ARB shall have the right to impose additional setback requirements for all Lot lines. The approval of setbacks for one Lot shall not be construed as creating any obligation on the part of the ARB to approve such setbacks or similar setbacks for any other Lot. The judgment and determination of the ARB shall be final and binding.

(b) Minimum floor area per Home shall be three thousand square feet (3,000 sq. ft.); or in the case of specific single-family villa home neighborhoods, as identified and approved by the Board, two thousand five hundred square feet (2,500 sq. ft.) and only such areas as are air conditioned shall be included in the square foot computation for minimum floor area. Notwithstanding the foregoing, garages, porches, patios, terraces, swimming pool enclosures and other similar areas and Structures shall not be taken into account in calculating the minimum floor area required.

(c) The building height of a Home shall not exceed forty-five feet (45'). Building height as used herein means the distance measured from the top of the first-floor slab to the highest point of the Home. Chimney heights may exceed the limitation, subject to written approval by the ARB and Governmental Authorities.

7.14 Elevations. In order to enhance the quality of the Development, it is desirable for the Development to have a diverse character. The ARB, in its sole and absolute discretion, shall have the right to reject any plans for the construction of any Improvements submitted to it by or on behalf of any Owner, which the ARB, in its sole and absolute judgment, determines to be substantially similar to any Improvement then already existing in the Development, or already approved by the ARB but not yet constructed.

7.15 Enclosures.

(a) All enclosures, including spa, hot tub and swimming pool enclosures (screened or otherwise), shall be constructed and maintained with compatible design, color and materials as the Home for which it is utilized. No flat-roofed screen enclosures are permitted, unless part of an approved mansard screen enclosure. The sloped portions of the screen enclosure shall have a pitch compatible with the pitch of the roof of the Home to which it is attached.

(b) The location of all swimming pools, enclosures and screens must be approved by the ARB, in writing, prior to construction.

7.16 Entry Rights. Each Owner shall permit the Foundation, or any employee thereof, to enter upon the Owner's Lot at reasonable times to carry out the provisions of this Declaration, and the same shall not constitute a trespass. Such entry shall include, but not be limited to, the right to use the Owner's water from an outside spigot if used for maintenance of the Owner's Lot, as the case may be. This provision shall not be construed as authorizing the entry into any Home located on any Lot.

7.17 Factory-Built Structures. No Structure of any kind that is commonly known as "factory-built", "modular" or "mobile home" type of construction shall be allowed on a Lot.

7.18 Garages, Carports and Storage Areas.

(a) Each Home shall have a garage which shall accommodate no less than two (2) automobiles. No garage shall have a front access, and all shall be side loading unless otherwise approved in writing, by the ARB, provided however, front access garages shall be allowed in single family villa neighborhoods as an approved design element. Repair of vehicles shall be permitted only inside the garage. All garage doors shall include an automatic closing device and shall be closed when not in use for ingress and egress to the garage. If an Owner shall have a golf cart garage, it too shall be equipped with an electric door opener and shall be closed when not in use for ingress and egress to such golf cart garage.

(b) Carports shall not be permitted.

(c) No enclosed storage area shall be erected which is separated from the Home.

7.19 Garbage, Trash and Refuse. All garbage, trash and refuse shall be placed in containers which must be placed in walled-in, sight-screened or fenced-in areas so that they shall not be readily visible from any adjacent streets or Lots. No garbage, trash or refuse containers shall be placed within the front yard of any Lot, or in any right-of-way or street abutting any Lot, and all Lots must provide for removal of garbage, trash and refuse from the garage entry area.

7.20 Golf Carts. A Member may purchase and own a golf cart provided it is stored in such Member's golf cart garage when not in use in accordance with Section 7.18. An annual trail fee, to be determined by the Board in its sole discretion, shall be charged by the Foundation to any such Member in lieu of cart fees. No Member may utilize their golf cart on any Common Area, inclusive of streets and the Country Club Facility lands, unless and until the Owner has complied with the Rules and Regulations governing the use of golf carts within Quail West.

7.21 Health and Safety Hazards. Any conditions which are deemed by the Foundation to be a hazard to the public health or safety may be corrected immediately as an emergency matter by the Foundation and the cost thereof shall be charged to the responsible Owner.

7.22 Landscaping. In order to create a consistent appearance within the Property (exclusive of the Country Club Facility), including all landscaped and grassed areas on all Lots up to the perimeter edge of the Home, the Foundation shall approve all initial landscape design, all of which the Foundation shall accomplish in accordance with the Guidelines, as detailed therein, and as may be amended from time to time. Unless specifically identified herein as the responsibility of the Foundation, each Owner shall be responsible for maintaining its Lot (vacant or with a Home) in a neat, clean and sanitary condition, and such responsibility shall include the maintenance and care of all exterior surfaces of all Lot dwellings, buildings and other Structures and all lawns, trees, shrubs, hedges, grass and other landscaping. All maintenance and care performed in accordance with this Section 7.22 shall be consistent with the Community-Wide Standard. All hedges, shrubs or any other type of materials that have been previously approved by the ARB that are within the rear fifty feet (50') of the Lot must be maintained at a height not to exceed four feet (4') and cannot obstruct any view. Landscape maintenance and care shall include (i) scheduling, checking and repairing of irrigation systems, (ii) periodic fertilization of trees, shrubs and turf areas, (iii) spraying of turf and landscape areas as required to control disease or insects, (iv) pruning and trimming of trees and shrubs, (v) edging, (vi) landscape bed maintenance, and (vii) other related activities at a service level and frequency determined by the Foundation. Related landscape service specifications shall be outlined by the Foundation and updated periodically in accordance with the ongoing maintenance and care needs within the Property. All areas on a Lot not covered by Structures, walkways or paved parking facilities, and designated as a Conservation Buffer Zone or Special Preserve Easement shall be maintained by such Lot Owner as lawn or landscaped areas. Any areas designated as a Conservation Buffer Zone or Special Preserve Easement

shall remain in a natural or unimproved state except for removal of exotic vegetation. Each Lot Owner shall be responsible to keep the landscaping in a first class manner consistent with the initially approved landscape design. In the event of tree removal, home improvement, or other changes in landscape material or design, the Owner shall restore the landscaping to conform to the Community-Wide Standard, subject to the review and approval of the ARB. Each Lot Owner shall be responsible to use irrigation water, from a well or otherwise, that does not stain any Improvements or sidewalks within the Property. Each Owner shall also be obligated to pay for the costs incurred by the Foundation for repairing, replacing, maintaining or cleaning any item which is the responsibility of such Owner, but which responsibility such Owner fails or refuses to discharge. Such costs and expenses, including reasonable costs and expenses of collection, and such fines as may be established by the Foundation from time to time to reimburse the Foundation for the administrative costs incurred thereby or otherwise, shall be a Special Assessment under Section 9.3.

7.23 Lighting. All exterior lighting of a Lot shall be accomplished in accordance with a lighting plan approved, in writing, by the ARB prior to installation. Lighting for landscape, pool, recreation and security purposes shall be designed so as not to be an annoyance to the surrounding residences. Time clock controls may be used.

7.24 Mailboxes. No mailbox, paperbox or other receptacle of any kind for use in the delivery of mail, newspapers, magazines or similar materials shall be erected on any Lot other than that approved and provided by the Foundation at the Owner's expense. Each Owner of a Lot will be assessed for the cost of such items at time of installation by the Foundation.

7.25 Nuisances. Nothing may or shall be done which may be, or may become, an annoyance or nuisance to any Person or to a Neighborhood. No obnoxious, unpleasant or offensive activity shall be carried on, nor may anything be done which can be reasonably construed to constitute a nuisance, public or private, in nature. The determination of a nuisance shall be made by the Board, which may exercise legal action to correct any nuisance and shall charge the respective Owner the costs of any legal fees and expenses incurred.

7.26 Outdoor Equipment. All oil tanks, bottled gas tanks, swimming pool equipment and housing, air conditioning equipment, and other outdoor equipment, (i) must be placed underground, walled-in or placed in sight-screened or fenced-in areas or (ii) shall be surrounded by landscaping so that they are not visible from adjacent streets or Lots. Non-fixed outdoor game and play structures (including, but not limited to, portable basketball goals, trampolines, soccer nets and the like) are subject to the same location and sight screening requirements of similar fixed structures unless they are stored inside Owner's Home or garage when not in use.

7.27 Pets. Only common domesticated household pets may be kept on any Lot or in a Home, but in no event for the purpose of breeding or for any commercial purposes whatsoever. No other animals, livestock, reptiles or poultry of any kind shall be kept, raised, bred or maintained on any portion of the Property. Permitted pets shall only be kept subject to and in accordance with the Rules and Regulations. Under no circumstances shall a pit bull be permitted on the Property. Any pet must be carried or kept on a leash when outside of a Home or in a fenced-in area. No pet shall be kept tied up outside of a Home or in any screened porch or patio, unless someone is present in the Home. An Owner shall immediately pick up and remove any solid animal waste deposited by his pet on the Property. An Owner is responsible for the cost of repair or replacement of any Common Areas damaged by his pet. No pets shall be allowed in or on the Country Club Facility unless, and to the extent, required by applicable Laws. Each Owner who determines to keep a pet thereby agrees to indemnify and hold the Foundation harmless against any loss or liability of any kind or character whatsoever arising from, relating to or growing out of such Owner having any animal on the Property.

7.28 Sidewalks. Sidewalks shall be in accordance with the subdivision master plan or as determined by the Foundation and shall be installed by the Foundation at any time, including after construction of Homes has commenced within the Development. The Foundation shall be responsible for repair and Maintenance of sidewalks. No engine-driven motor vehicle, motorcycle or moped shall be used on the sidewalks. The Foundation shall charge an Owner for any and all damages caused by or derived from any activity related to the Owner.

7.29 Signs. No signs, freestanding or otherwise installed, shall be erected or displayed on any of the Common Areas or an Owner's Lot, unless the placement, character, form, size, lighting and time of placement of such sign is first approved, in writing, by the ARB. Notwithstanding the foregoing, no signs, freestanding or otherwise, indicating that a Home, Lot or personal property is "For Sale", or words to that effect, shall be permitted on the Common Areas or any Owner's Lot, unless in accordance with an established policy of the Board which details the type and location of signs permitted. The prohibition on the use and display of "For Sale" signs do not apply to Foundation or its agents. All signs must conform with governmental codes and regulations and with any master design plans for signs, as may be established by Foundation or the ARB. Notwithstanding anything to the contrary contained in this Section 7.29, subject to approval by the ARB, "Special Permit Boards" shall be permitted.

7.30 Solar Collectors. Subject to the provisions Section 163.04, *Florida Statutes*, the ARB shall have the right to approve the location of and materials used in the construction of solar collectors, taking into account the importance of maintaining the Community-Wide Standard and a high-level aesthetic quality throughout the Development.

7.31 Swimming Pools. Any swimming pool to be constructed on any Lot shall be subject to the requirements of the ARB which include, but are not limited to, the following:

- (a) Composition shall be of material thoroughly tested and accepted by the industry for such construction.
- (b) Swimming pools, pool decks, and patio and terrace slabs may not extend into the minimum front yard and side yard setbacks. The rear yard setback for the pool edge coping of an open swimming pool shall require prior approval by the ARB. The rear yard setback for patio and terrace slabs and for pool decks shall require prior written approval of the ARB.
- (c) Swimming pools shall not be constructed or erected above ground.

7.32 Utility and Other Easements.

- (a) Utility Easements.
 - (i) There is hereby reserved and granted, for the purpose of installing, operating and maintaining governmental, public or private utility facilities, and for other purposes incidental to the development of the Property, those easements shown upon any recorded plat or replat and as may be shown on any future recorded plats or replats of the Property, and there is also hereby reserved within the Property such easements, areas and rights-of-way for such other purposes as Foundation, in its sole discretion, may in the future determine. Within these easement areas, no Structure, planting or other material (other than sod), which may interfere with the installation and maintenance of underground utility facilities, shall be placed or permitted to remain unless such Structure, planting or other material was installed by Foundation and/or approved by Foundation or the ARB.

(ii) Foundation hereby reserves the right and the power during a period of twenty (20) years from the date of the recordation of this Declaration or of the recordation of the plat or replat of any other applicable recorded instrument, whichever is later, to declare and file of record, additional easements granting the full free right, power and authority to lay, operate and maintain such drainage facilities, sanitary sewer lines, potable and irrigation water lines, storm sewers, gas and electric lines, communication lines, cable television lines, and such other and further public service facilities as Foundation may deem necessary, along, through, in, over, across and under a strip of land up to ten (10) feet in width from all side, front and rear lines of any Lot. The duration of any such easement shall be as set forth in an instrument of record. Said easements and the rights granted therein shall not be inconsistent with the then-existing Improvements on the applicable portions of the Lot.

(b) Non-Exclusive Easements.

(i) All Common Areas are hereby declared to be subject to a perpetual nonexclusive easement in favor of the Foundation in order that its employees and agents may carry out their duties on behalf of the Foundation.

(ii) Notwithstanding anything to the contrary set forth herein, Foundation reserves the right to grant perpetual nonexclusive easements over the Common Areas for utilities, water, sewer, cable television, drainage or other purposes for the benefit of certain parcels of land in accordance with the PUD or RPD or any other governmental requirements applicable to the Property; provided, however, in connection with any such grant of easement, the Members, or any other Person benefiting from such grant of easement shall pay a pro rata share of the cost of maintaining the Property subject to the easement based upon the relative use thereof by the respective Members or Person.

(iii) A nonexclusive easement is hereby granted for ingress and egress over, across and through all streets for access to and from the Country Club Facility by all Participating Members, their families, guests and invitees thereof, regardless of whether such Members are also Owners. In addition, golf carts meeting the requirements of Section 7.20 may be driven over all streets; provided, however, the Foundation shall have no liability arising from the use of golf carts on the streets. The Foundation may from time to time establish restrictions with regard to age requirements for golf cart operators.

(iv) Easements are hereby reserved throughout the Property by the Foundation for its use and the use of its agents, employees, licensees, tenants and invitees, for all purposes in connection with development, maintenance, operation or sale of any portion of the Property.

(c) Enforcement Easements. Each Owner hereby grants to the Foundation a nonexclusive easement for ingress and egress over the Common Areas and over the Owner's Lot, to enter upon the same at reasonable times to enforce the provisions of this Declaration, and the same shall not constitute a trespass.

(d) Emergency Right of Entry. In case of any emergency originating in, or threatening, any Lot, regardless of whether the Owner is present at the time of such emergency, the Foundation, or any other Person authorized by it, shall have the right, but not the obligation, to enter such Lot for the purpose of remedying or abating the cause of such emergency and such right of entry shall be immediate.

7.33 Utility Lines. All electric, telephone, cable television, gas and other utility lines must be installed underground.

7.34 Walls and Fences.

(a) No wall or fence shall be constructed, and no hedge or shrubbery abutting the Lot lines shall be permitted without the prior written approval of the ARB. No wall or fence shall be constructed on any Lot until its height, length, type, design, composition, material and location shall have first been approved in writing by the ARB. The height of any wall or fence shall be measured from the existing property elevations. Where practical, approved walls and fences shall be screened from view by hedge material to prevent a clear view of the rear yard from adjacent properties as prescribed by the ARB. Any dispute as to height, length, type, design, composition or material shall be resolved by the ARB, whose decision shall be final.

(b) No chain link fencing shall be allowed.

(c) No walls, fences, hedges, shrubs or other materials which materially obstruct the view of a lake or the golf course lands which are a part of the Country Club Facility, shall be permitted or approved.

7.35 Water Management Systems and Drainage Areas and Conservation Area Restrictions and Easements.

(a) Water Management Systems and Drainage Areas means lakes, ditches, culverts, lines and constructed surface and/or underground systems and facilities for the drainage and/or storage of surface water. Water Management Systems and Drainage Areas may be entirely located on the Property, but may also be comprised of property owned, managed or operated by the Foundation, or may be comprised of public and/or private easements not located on the Property, provided such areas service all or some portion of the Property on an exclusive or nonexclusive basis. Water Management Systems and Drainage Areas, (i) if the Foundation so elects, may service other property that do not form a part of the Property, or (ii) if the Foundation so determines, may require the service of other property outside of the Property, for which the Foundation may be required to pay a fee. Each Owner and the Foundation shall have a perpetual, nonexclusive easement, right, license and servitude to use the Water Management Systems and Drainage Areas consistent with applicable permits, and subject to the Rules and Regulations applicable to their use. The Foundation, with the consent of the fee owner underlying any part of the Water Management Systems and Drainage Areas that is or is not part of the Property, may reconfigure any such part of the Water Management Systems and Drainage Areas, provided such reconfiguration is in accordance with sound engineering practices and all governmental approvals; provided, however, the perpetual nonexclusive drainage easement rights of each Owner and the Foundation shall, without necessity of additional written documentation, be transferred from the existing Water Management Systems and Drainage Areas to any such revised system. The Foundation may dedicate to any applicable Governmental Authority, all or any part of the drainage lines, structures and facilities which are part of the Water Management Systems and Drainage Areas. The Foundation may execute such instruments as may be necessary or desirable to effect such dedication without joinder or consent of the Owner or the holder of any mortgage or other lien on the Property. The Foundation shall maintain the Water Management Systems and Drainage Areas consistent with all applicable permits, or if the Foundation elects, may contract with third parties of its choosing to maintain the Water Management Systems and Drainage Areas. The cost of maintaining the Water Management Systems and Drainage Areas, inclusive of all monitoring and mitigation expenses, shall be a common expense of the Foundation.

(b) No Structure, planting or other material (other than sod) of any kind shall be constructed, erected or installed, unless constructed, erected or installed by the Foundation, nor shall an Owner in any way change, alter, impede, revise or otherwise interfere with the flow and the volume of water, in any portion of a Water Management Systems and Drainage Areas reserved for, or intended by the

Foundation to be reserved for, drainage ways, sluice-ways or for the accumulation of run-off waters, as reflected in any plat or replat or instrument of record, without the specific written permission of the Foundation.

(c) An Owner shall in no way deny or prevent ingress and egress by the Foundation to any Water Management Systems and Drainage Areas for Maintenance or landscape purposes. The right of ingress and egress, and easements therefor, are hereby granted in favor of the Foundation, or any appropriate governmental or quasi-governmental agency that may reasonably require such ingress and egress, and easements therefor are hereby specifically reserved and created.

(d) No Lot shall be increased in size by the filling in of any water retention or Water Management Systems and Drainage Areas on which it abuts. Owners shall not fill, dike, rip-rap, block, divert or change the established water retention and Water Management Systems and Drainage Areas that have been or may be created by easement. No Owner may draw water for irrigation or other purposes from any lake, pond or other Water Management Systems and Drainage Areas nor is any boating or swimming in such areas allowed.

(e) The Conservation Lands, Conservation Buffer Zones and Special Preserve Easements may not be altered from their natural state other than to remove exotic vegetation, or to install and maintain Common Area facilities, or to provide the utilities and drainage, as shown on the plat or replat and approved construction plans for each phase. Each Owner of a Lot containing a Conservation Buffer Zone and/or Special Preserve Easement shall retain use of the Conservation Buffer Zone and/or Special Preserve Easement, but the Owner may in no way alter such area from its natural state as provided hereinabove. Activities prohibited within the Conservation Lands, Conservation Buffer Zones and Special Preserve Easements include, but are not limited to, construction or placing of Structures on or above the ground, dumping or placing soils or other substances such as trash, removal or destruction of trees, shrubs or other vegetation, with the exception of exotic vegetation removal, dredging or removal of soil material, diking or fencing, and any other activities detrimental to drainage, flood control, water conservation, erosion control, or fish and wildlife habitat conservation or preservation.

(f) All surface Water Management Systems and Drainage Areas will be the ultimate responsibility of the Foundation. The Foundation may enter any Lot or Common Area and make whatever improvements or repairs are deemed necessary to restore proper water management. The cost shall be an expense of the Foundation; provided however, if such improvements or repairs are necessary due to the action or inaction of a particular Owner(s), the related expense shall be a Special Assessment against such Owner(s) and such Owner's Lot(s) as provided herein.

(g) Nothing in this Section 7.35 shall be construed to allow construction of any new water management facility or alteration of Water Management Systems and Drainage Areas without first obtaining the necessary permits from all applicable Governmental Agencies.

7.36 Leases.

(a) An Owner intending to lease a Home shall give the Foundation written notice of such intention at least thirty (30) days before the intended commencement date of such lease. Such notice shall be on forms as prescribed by the Foundation and shall contain, among other things, the name and address of the intended lessee, a copy of the proposed lease, references of the proposed lessee, and such other information concerning the intended lease as the Foundation may reasonably require. The Foundation shall have the power and authority, but not the obligation to run a credit check and background check on any proposed tenant for the benefit of the Foundation and not that of the Owner. Within fifteen (15) business days after receipt of such notice and information, the Foundation must either approve or disapprove the

lease. If approved, the approval shall be stated in a certificate executed by an officer of the Foundation and delivered to the lessee. If disapproved, then the lease shall not be made by such Owner and the Foundation shall have no liability to such Owner for such disapproval. If the Foundation does not notify the Owner of any such approval or disapproval within such fifteen (15) business day period, such proposed lease shall be deemed disapproved by the Foundation.

(b) The Foundation shall not be required to approve any lease (A) proffered by an Owner who is not current in the payment of all Assessments then due and owing, (B) for a term of less than one hundred eighty (180) days, (C) for the entire Home, or (D) of a Home that has already been leased on more than one (1) other occasion during the calendar year that the proffered lease is to commence.

(c) Any information discovered through the Foundation's credit and background investigation of a prospective tenant is intended solely for the benefit of the Foundation, and an Owner's written notice to the Foundation required in accordance with this Section 7.36 shall constitute such Owner's waiver of any right or interest in such information.

7.37 Foundation's Exculpation. The Foundation may grant, withhold or deny its permission or approval, in any instance where its permission or approval is permitted or required, without any liability of any nature or kind to any Owner or any Person for any reason whatsoever, and any permission or approval granted or denied shall be binding upon such Owners and Persons.

7.38 Owner and Member Compliance. The protective covenants, conditions, restrictions and other provisions of this Declaration shall apply not only to Owners, Members and Persons to whom a Member has delegated its right of use in and to the Common Areas, but also to any other Person occupying an Owner's Lot under lease from the Owner, or by permission or invitation of the Owner or his tenants, expressed or implied, licensees, invitees or guests. Failure of an Owner to notify any Person of the existence of the covenants, conditions, restrictions, and other provisions of this Declaration shall not in any way act to limit or divest the right of the Foundation of enforcement of these provisions and, in addition, the Owner shall be responsible for any and all violations of these provisions by his tenants, delegates, licensees, invitees or guests, and by guests, licensees and invitees of his tenants at any time.

7.39 Timeshare or Interval Ownership Program. No timeshare plans, fractional plans, exchange programs or clubs, or travel or vacation clubs comprised of a trust, corporation, cooperative, limited liability company, partnership, equity plan, non-equity plan, membership program, or any such other similar programs, structures, schemes, devices or plans of any kind (i) shall be created, established, operated or maintained with respect to the Property or the Lots, or (ii) shall be permitted to incorporate a Lot into such entity, program, structure, scheme, device or plan.

7.40 Trade, Business, and Similar Activities. Garage sales, rummage sales or similar sales, including, without limitation, auctions for the sale of any personal property, or the auction of an Owner's Lot shall be prohibited, unless otherwise allowed by the Foundation in its sole and reasonable discretion.

7.41 Fines for Violation of Infractions. Any Member that is violation of any the obligations or restrictions set forth in this Article VII or the Rules and Regulations shall be subject to any actions available to the Foundation at law or in equity, or both, to redress any failure or refusal to comply with the Rules and Regulations or any of the provisions set forth in Chapter 720, *Florida Statutes*. In addition, in the event any Member or such Member's tenant, guest and/or invitee is in violation of any of the Rules and Regulations or any of the provisions set forth in Chapter 720, *Florida Statutes* (a "**Violation**"), the Foundation shall have the right, but not the obligation, to (i) suspend the rights of such Member and such Member's tenant, guest and/or invitee for a Violation to use the Country Club Facility and/or the Common Areas, (ii) suspend the voting rights of such violating Member for a Violation, and/or (iii) levy a fine for

each Violation by such violating Member and/or such violating Member's tenant, guest and/or invitee not to exceed such amounts as the Board may establish from time to time for each such Violation for each day that any Violation continues without any maximum limit, but subject to any limitation established by applicable Law. Notwithstanding the foregoing, any fine levied against a Member by the Foundation for any Violation shall become a lien against such Member's Lot, if any, to the extent allowed by applicable Laws. Further, in any action to recover any fine levied against a Member for a Violation, the Foundation shall be entitled to collect any and all costs associated with the collection of any such fine, including reasonable attorneys' fees and court costs.

7.42 Applicability of Article. Notwithstanding anything to the contrary in this Declaration, neither the Country Club Facility nor the Foundation or any successor Country Club Facility Owner shall be subject to the provisions of this Article VII.

ARTICLE VIII

VOTING RIGHTS AND MEMBERSHIP

8.1 Voting Rights. The Foundation shall have Voting Memberships and Non-Voting Memberships, and Members holding Voting Memberships in good standing may vote on Foundation matters to the extent permitted in the Founding Documents. The Board, by Super Majority Vote, reserves the right to create and define such additional classes of Membership as the Board, in its sole discretion, may elect, and if the Board should so elect, the Board may amend the Founding Documents to reflect the creation of said additional Memberships without a vote of the Members.

8.2 Mandatory Participating Membership. Every Residential Member, other than a Grandfathered Until Participating Member or a Grandfathered Unit Sale Member, shall be required to purchase and maintain in good standing some level of Participating Membership (as such Membership levels may be determined by the Board, in its sole discretion, from time to time). This requirement shall be a covenant appurtenant to and shall run with the land. Notwithstanding anything to the contrary in the Founding Documents, there shall be only one (1) Participating Membership for each Lot outstanding at any one time. Participating Memberships include:

(a) Golf Membership. There are two different types of Golf Memberships, Transferable and Non-Transferable, as further described below:

(i) Upon the closing of the sale of the Transferable Golf Member's Lot, the Membership shall, at the Member's election either be: (i) transferred through the Foundation to the successor Owner of the Member's Lot subject to payment of any applicable Transfer Fee; (ii) resigned and placed on the Resign List for reissuance by the Foundation to another Owner in accordance with Section 8.4; (iii) converted to a Non-Transferable Non-Residential Golf Membership, if one is available, and thereafter the Member shall have the rights and obligations of a Non-Transferable Non-Residential Golf Member; or (iv) if the Member owns another Lot, retained by the Member in connection with such other Lot.

(ii) Upon the closing of the sale of the Non-Transferable Golf Member's Lot, the Membership shall, at the Member's election either: (i) revert back to the Foundation and all rights of the Member to use the Country Club Facility shall cease, with no right to any refund from the Foundation, unless specifically provided otherwise pursuant to a Membership Exchange Program Participation Agreement; (ii) be converted to a Non-Transferable Non-Residential Golf Membership, if one is available, and thereafter the Member shall have the rights and obligations of a Non-Transferable Non-Residential

Golf Member, or (iii) if the Member owns another Lot, retained by the Member in connection with such other Lot.

(iii) The Board may, but is not obligated to, provide alternatives in addition to subsection (i) and subsection (ii) above, as determined necessary and appropriate by the Board from time to time.

(iv) Dues and Assessments. A Golf Member shall be required to pay regular Dues and Special Assessments in the amounts and manner as established by the Board for Golf Members from time to time.

(b) Non-Residential Memberships.

(i) A Non-Transferable Non-Residential Membership may be resigned and reverted back to the Foundation and all rights of the Member to use the Country Club Facility shall cease, with no right to any refund from the Foundation. However, if a Non-Residential Member acquires a Lot, the Membership shall automatically be converted to a Non-Transferable Residential Membership and thereafter the Member shall have the rights and obligations of a Non-Transferable Residential Member.

(ii) Non-Transferable Non-Residential Memberships may be issued with privileges equal to those of Golf Memberships (“**Non-Residential Golf Membership**”) and/or House Memberships (“**Non-Residential House Membership**”), as determined by the Board from time to time.

(iii) A Non-Residential Member shall be required to pay regular Dues and Special Assessments in the amounts and manner as established by the Board from time to time, for Non-Residential Members holding Non-Residential Golf Memberships and Non-Residential House Memberships, respectively.

(c) Non-Participating Membership.

(i) Failure to meet all of the criteria for Non-Participating Membership shall result in the Member not being a Non-Participating Member, in which event the Member shall be required to obtain a Participating Membership. For clarity, if any Grandfathered Until Sale Member sells or otherwise conveys such Member’s ownership interest in the Lot, the purchaser of such Lot shall be required to obtain a Participating Membership. Subject to availability and approval by the Foundations, in its sole and absolute discretion, a Non-Participating Member may elect to acquire a Participating Membership by paying to the Foundation the then-current Membership Fee for the applicable category of Participating Membership and shall become a Participating Member for all purposes.

(ii) A Non-Participating Member shall be required to pay Regular Assessments or Special Assessments in the amount and manner as established by the Board for Non-Participating Members; provided however, Non-Participating Members shall not be required to pay amounts to the Foundation in connection with the Country Club Facility.

(iii) The Foundation shall not issue any new Non-Participating Memberships, and any purchaser of a Non-Participating Member’s Lot shall acquire a Participating Membership and become a Participating Member.

(d) House Membership. There are two different types of House Memberships, Transferable and Non-Transferable, as further described below:

(i) Upon the closing on the sale of the Transferable House Member's Lot, the Membership shall, at the Member's election: (i) be transferred through the Foundation to the successor Owner of the Member's Lot; (ii) revert back to the Foundation and all rights of the Member to use the Country Club Facility shall cease, with no right to any refund from the Foundation; or (iii) be converted to a Non-Transferable Non-Residential House Membership and thereafter the Member shall have the rights and obligations of a Non-Transferable Non-Residential House Member.

(ii) Upon the closing of the sale of the Non-Transferable House Member's Lot, the Membership shall, at the Member's election: (i) revert back to the Foundation and all rights of the Member to use the Country Club Facility shall cease, with no right to any refund from the Foundation, unless specifically provided otherwise pursuant to a Membership Exchange Program Participation Agreement; or (ii) be converted to a Non-Transferable Non-Residential House Membership and thereafter the Member shall have the rights and obligations of a Non-Transferable Non-Residential House Member.

(iii) Notwithstanding the foregoing, a Residential Member may not resign a House Membership except in connection with: (i) the sale of the Member's Lot; or (i) an upgrade of the House Membership to a Golf Membership pursuant to section (iv) below.

(iv) A House Member may upgrade to a Golf Membership upon payment of the then-current Membership Fee, less the amount such Member previously paid to acquire the House Membership, provided a Golf Membership is available. Unless such upgrade occurs, the House Member may only use the Golf Facilities on the days and times permitted for House Members, subject to the Club's Rules and Regulations related to guest usage of the Golf Facilities, and subject to payment of the applicable fees and charges, unless otherwise determined by the Board from time to time.

(v) A House Member shall be required to pay Regular Assessments or Special Assessments in the amount and manner as established by the Board for House Members.

(e) Foundation Guests. In consideration of the Foundation's efforts to continue promoting the development of Quail West, and recognizing the need of the Foundation in this regard, there is hereby reserved unto Foundation the right, in its sole and absolute discretion, to designate prospective purchasers of Lots and Memberships and/or other designated individuals ("Foundation Guests") as the Foundation should so elect. A Foundation Guest shall have the right to use the Country Club Facility to the extent designated by the Board (up to the rights granted to a Golf Member) for a period to be designated by the Board, in its sole and absolute discretion. Each of the Foundation Guests shall be required to pay individual expenses and to comply with the Founding Documents to the same extent as a Golf Member, except that a Foundation Guest shall not be required to pay a Membership Fee, Dues or Assessments. No Foundation Guest shall have the right to sell, assign, or otherwise transfer any of its rights and privileges as a Foundation Guest. A Foundation Guest does not obtain any rights to vote in any Foundation matters.

(f) Annual Membership or Preview Membership. The Foundation reserves the right to offer annual memberships and preview memberships which may be issued only to individuals: (i) who do not own a Lot ("Annual Membership"); and (ii) Residential Members considering an upgrade to a Golf Membership ("Preview Membership"). Annual Members and Preview Members shall not be required to pay a Membership Fee or Assessments, but shall have all the rights, privileges and other obligations of a Golf Member, including the obligation to pay individual expenses incurred and Dues in the same amount and manner as established by the Board for Golf Members. Each Annual Membership and Preview Membership shall terminate one (1) year from the date of execution of the Member's membership agreement with the Foundation unless the Board votes to continue any such Annual Membership or Preview Membership. No Annual Member or Preview Member shall have the right to sell, assign, or otherwise

transfer any of its rights and privileges as a Member. Neither an Annual Membership nor a Preview Membership provides any rights to vote in any Foundation matters.

(g) Honorary Membership. The Foundation believes that there are certain individuals who, either through their prowess in the game of golf, or through their contributions and support to the community in general, will be a valuable asset to the Foundation and will enhance the enjoyment and quality of the Membership experience. Therefore, the Foundation reserves the right to confer upon individuals determined appropriate by the Board an honorary Membership (“Honorary Membership”); provided however, no more than six (6) such Honorary Memberships shall be outstanding at any one time. Honorary Members shall not be required to pay a Membership Fee, Dues or Special Assessments, but shall have all the rights, privileges and other obligations of a Golf Member, including the obligation to pay individual expenses incurred. An Honorary Member shall have the right to use all of the Country Club Facilities to the same extent as a Golf Member. Honorary Memberships may be revoked by the Board at any time and no Honorary Member shall have the right to sell, assign, or otherwise transfer any of its rights and privileges as an Honorary Member. An Honorary Membership does not provide any rights to vote in any Foundation matters.

(h) Suspension and Revocation of Membership Rights. No Member shall have any vested right or privilege in the functions or affairs of the Foundation or to use all or any portion of the Common Areas when such Member's Membership is not in good standing, or after it has been suspended or terminated, except as otherwise required by applicable Laws for ingress and egress to the Member’s Lot. A Member shall be considered “not in good standing” during any period of time in which such Member is delinquent in the payment of any Assessment, Membership Fee, Dues or other charges payable to the Foundation. The Foundation may also suspend the voting rights of a Member for non-payment of any amounts payable to the Foundation which is due and unpaid for longer than ninety (90) days. In addition to the foregoing, the Foundation may levy reasonable fines and/or may suspend the right of a Member or a Member’s guest, tenant or invitee in accordance with, and to the fullest extent provided in Chapter 720, *Florida Statutes*, as amended from time to time (the “HOA Act”) for any violation of the Founding Documents; provided however, a fine or suspension may not be imposed without at least fourteen (14) days’ notice to the Member and an opportunity for a hearing before a committee of at least three (3) Members appointed by the Board who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee, all as further provided in the HOA Act and Article 15.3 of the Bylaws.

(i) Voting. The right to vote on matters relating to the Foundation and the Common Areas, and/or the Country Club Facilities specifically, is determined by the class of Membership a Member holds. “Foundation only” matters relate solely to the Property, exclusive of the Country Club Facilities. Members who are eligible to vote, who are in good standing and whose Membership has not been suspended or terminated, may vote on matters as follows:

Matters Relating to the Foundation and the Country Club Facilities	Matters Relating to the Foundation only	Matters Relating to the Country Club Facilities only
Residential Members that are Participating Members	All Residential Members	All Participating Members

Each Member shall be entitled to one (1) vote for each Voting Membership held by such Member.

Thus, an Owner who is a Participating Member in good standing shall have only one (1) vote for both the Lot owned and the Participating Membership. However, in the event a Member owns more than one (1) Lot, such Member shall have one (1) vote per Lot owned. When two (2) or more Persons (other than spouses) hold an interest in any Lot or Voting Membership, as applicable, such Persons shall decide among themselves and advise the Foundation, in writing, which Person shall be designated to cast the votes of the Voting Membership, and only such designated Person shall be entitled to cast the vote.

In no event shall more than one (1) vote be cast with respect to any one (1) Voting Membership.

Notwithstanding anything to the contrary contained in the Declaration, a Member who is not in good standing shall not be permitted to vote on any Foundation or Country Club Facility matters.

In addition to the foregoing and notwithstanding anything to the contrary, a Non-Residential Member may run for an open seat on the Board. However, for fair representation on the Board, the number of Non-Residential Members on the Board shall be limited to one (1) seat on the Board. Thus, Non-Residential Members may run for but may not occupy more than one (1) seat on the Board at any time.

(j) Lessee Privileges. A Residential Member who leases his or her Home for a period of at least one hundred eighty (180) consecutive days may designate the lessee of his or her Home as the beneficial user of the Member's Membership, subject to the prior approval of the Board in its sole discretion. The lessee must submit an application for lessee privileges, must be approved by the Board and must pay the required administrative fee established by the Board from time to time. During the period when a lessee is the designated user of the Member's Membership, the lessor Member will not have any Membership privileges but will continue to be obligated to pay Dues and Assessments with respect to such Membership. The Residential Member will also be responsible for the deportment of the lessee and for all charges incurred by the lessee which are not paid by the lessee within the customary billing and collection procedures of the Foundation.

(k) Reciprocal Access Arrangements. The Board may, in its sole discretion, enter into reciprocal use privileges and access agreements with the owners of other recreational facilities as the Board determines appropriate from time to time. The Foundation and/or the owner of the other recreational facilities may charge the Persons permitted to use their respective facilities such additional deposits, fees, dues, or charges for use of their facilities in accordance with the applicable reciprocal agreements. In addition to the foregoing, the Foundation may enter into agreements to purchase memberships at other clubs or to otherwise gain access for Participating Members to use recreational facilities other than the Country Club Facilities upon the terms and conditions determined appropriate by the Board from time to time.

(l) Membership Agreement. Notwithstanding anything to the contrary in this Declaration, the issuance of Participating Memberships is subject to any applicable terms and conditions contained in that certain Amended and Restated Membership Agreement dated as of July 15, 2021 by and among the Foundation, Quail West Development Company, LLC and Quail West Holdings, LLC (the "Membership Agreement") for so long as such Membership Agreement is in effect.

8.3 Restrictions on Membership and Family Use.

(a) Golf Membership. Classes of Membership, as set forth above, have been or are hereby established which are subject to this Declaration and the other Founding Documents and to the jurisdiction and powers of the Foundation, and particularly to the powers of the Foundation to fine, assess and lien Members and Memberships. The combined total number of Golf Memberships and Non-Residential Golf Memberships shall be limited to five hundred (500) that are issued and for which Dues are

required to be paid (of which no more than eight percent (8%) shall be Non-Residential Golf Memberships), unless either or both of such limits are increased or decreased by a Super Majority Vote.

(b) Family Members.

(i) Immediate Family Privileges. The spouse of a Member, and all unmarried children under the age of twenty-three (23), residing with the Member, attending school on a full-time basis or in the military (“**Immediate Family Member(s)**”) shall have the right to use of the Membership and shall enjoy all of the rights and privileges of such Member (“**Immediate Family Privileges**”). The name of each Immediate Family Member eligible for Immediate Family Privileges must be so noted on the Member's Application for Membership. If any change occurs in a Member's marital status or the status of related children living with the Member, such Member must notify the Foundation in writing of any such change, and the Member's Application for Membership shall be revised accordingly. In the event of any dispute, the Member's Application for Membership, as it may be amended from time to time, shall be used for clarification and the Board's determination thereof shall be final. In addition, Immediate Family Members shall also include any “**Significant Other**”, which shall be defined as an individual who is not married who is living with a Member who is not married in the same household as a family unit, provided such individual and Member could legally be married in the State of Florida. A Significant Other shall have the right to use the Country Club Facilities upon designation by the Member, on a yearly basis, and upon payment of a designee fee, to be determined by the Board, in its sole and absolute discretion. The Member may designate only one (1) Significant Other at any one time. The total number of adults who may have Immediate Family Privileges is limited to two (2) adults per Membership, that is, the Member and the Member's spouse or Significant Other, as applicable. Notwithstanding a Member's responsibility to pay all Assessments, Dues, charges and fees associated with such Member's Membership, such Member and such Member's Significant Other shall be jointly and severally responsible for the payment of all charges and fees incurred by the Significant Other. The Board reserves the right to establish such fees and other rules as it may deem appropriate, in its sole and absolute discretion.

(ii) Extended Family Privileges. “**Extended Family Member(s)**” shall include a Member's and such Member's spouse's or Significant Other's parents, adult children (who are not included in the definition of Immediate Family Members) and grandchildren. Each Extended Family Member shall have the right to use of the Country Club Facilities as a guest of such Member in accordance with such Member's category of Membership upon payment of preferred guest fees and other applicable fees, as determined by the Board, in its sole and absolute discretion, subject to the Club Rules and Regulations pertaining to guests (“**Extended Family Privileges**”). Extended Family Members shall not be subject to the limitation for use of the Golf Facilities by guests as set forth in the Club Rules and Regulations. The Board, in its sole and absolute discretion, shall have the right from time to time to modify or terminate Extended Family Privileges and establish rules with respect thereto.

8.4 Resignation of Participating Membership.

Subject to Section 8.6 below, a Participating Member may resign such Member's Participating Membership upon thirty (30) days' prior written notice of such resignation to the Foundation. For clarity, a Residential Member who is required to be a Participating Member pursuant to this Declaration may resign a Participating Membership only if acquiring a Participating Membership in another category. Upon resignation and acquisition of a new category of Participating Membership, the Member shall pay all Assessments, Dues, fees and other charges applicable to the new Participating Membership. Resigned Participating Memberships that are Transferable but are not transferred to the successor owner of the Member's Lot shall be added to a resign list for that category of Membership (“Resign List”) with Residential Memberships and Non-Residential Memberships in the same category (i.e. Golf Memberships

or House Memberships) on the same list. However, Non-Transferable Memberships are not eligible for placement on a Resign List.

8.5 Repurchase of Transferable Memberships.

(a) The Foundation shall repurchase a resigned Transferable Participating Membership that is not transferred to the successor owner of the Member's Lot only if, and at such time as: (i) the Foundation admits a new Participating Member in the same Membership category as the resigning Member; and (ii) a successor Member has been admitted and has paid in full the Membership Fee currently being charged for the class of such Membership. Accordingly, if a Member resigns such Member's Participating Membership (the "**Resigned Member**") at a time when the number of such Memberships that are outstanding is less than the maximum number authorized by the Foundation, the resigned Membership shall be listed on the Resign List unless and until the conditions in the preceding sentence have occurred. While the Membership remains on the Resigned List, the Resigned Member shall continue to pay all Assessments, Dues, fees and other charges and individual expenses relating to the Country Club Facilities until the earlier to occur of: (i) the Membership is acquired by a new Member; or (ii) twelve (12) months after the Membership is resigned; and during such time, the Remaining Member shall have the right to use the Country Club Facilities, in accordance with the applicable Membership category, for so long as the Resigned Member continues to pay all amounts due to the Foundation. A resigned Transferable Membership placed on the Resign List will be reissued on a first-resigned, first-reissued basis as follows: (i) during any period of time in which there are less than five hundred (500) Participating Memberships for which Assessments and Dues are required to be paid, every third (3rd) Membership issued in that category (1 in 3) issued by the Foundation will be a Membership from the Resign List, provided there is a resigned Membership on the Resign List; and (ii) during any period of time in which there are five hundred (500) or more Participating Memberships for which Assessments and Dues are timely paid, each Membership issued in that category by the Foundation will be a Membership from the Resign List. Further, the Foundation may, but shall not be obligated to, repurchase a Membership on the Resign List at any other time that the Board determines it is in the best interest of the Foundation to do so. When a Membership on the Resign List is issued by the Foundation, the Foundation shall pay to the Resigned Member an amount equal to the Membership Fee currently being charged for such Resigned Member's category of Membership, less the Transfer Fee and less any amounts due and owing to the Foundation at that time.

(b) The Board shall establish rules and regulations for the management and implementation of the Resign List including, but not limited to, rules concerning the resignation and issuance process for Memberships. Specifically, a Member shall not be permitted to resign solely to establish a position on the Resign List. Continuing to pay Assessments and Dues longer than the twelve (12) months required shall be prima facie evidence of an intent to resign solely to establish a position on the Resign List, and any such Member shall be removed from the Resign list until the Member actually resigns in accordance with this Declaration.

(c) A Resigned Member shall have the right to vote (provided the resigned Member holds a Voting Membership) for so long as such Resigned Member is current in the payment of all amounts owed to the Foundation. Notwithstanding the foregoing, as set forth more fully in the Bylaws, a Resigned Member shall not be eligible for service on the Board if the Resigned Member no longer holds an active Voting Membership and, in the event such Resigned Member is then serving on the Board, said Resigned Member shall be deemed to have immediately resigned from the Board.

(d) Each Participating Member on the Resign List has an affirmative obligation to keep the Foundation informed of their current contact information at all times. The Foundation shall have no obligation to make a diligent search to locate a resigned Member. Any effort made by the Foundation to locate a Member whose Membership is on the Resign List shall be deemed to be a courtesy only, and not

an undertaking or assumption of an obligation to locate a Member. If a Member fails or refuses to keep the Foundation advised of their contact information and if, as a result the Foundation is unable to locate such Member, then the Foundation shall have the right move the Resigned Membership to the last position on the Resign List.

(e) Transfer Fees. Upon the transfer of a Transferable Membership to the successor Owner of the Transferable Member's Lot, the successor Owner of such Lot shall pay the Transfer Fee to the Foundation prior to the Foundation reissuing the Transferable Membership to the successor Owner. Any unpaid Transfer Fee shall be considered an unpaid payment due the Foundation and subject to the lien rights granted the Foundation for such unpaid amount pursuant to Section 9.4.

(f) Qualification for Membership. Membership is subject to approval by the Board in its sole discretion. The final decision on qualification of an applicant for Membership rests solely with the Board, and acceptance of an applicant shall be subject to a satisfactory credit check and background check. Upon notice of acceptance of an applicant, the applicant shall pay the Membership Fee and any other Assessments, Dues and fees and charges associated with such Membership within ten (10) days of the date of said notification, failing which, acceptance shall be null and void.

(g) Transfer. No Member shall have the right to sell, assign, or otherwise transfer its Membership or any of the rights and privileges ascribed thereto to any Person other than the Foundation pursuant to the terms, provisions and limitations contained herein, except as otherwise permitted in accordance with the Founding Documents. The Board shall establish rules and regulations and fees, as it deems necessary and appropriate, related to the transfer of a Membership from one Person to another and from one category of Membership to another. However, upon the death of a Resident Member, such Member's Membership shall automatically pass to the surviving spouse, if any, and if none, the Membership shall be deemed resigned.

(h) Transfer of Lot. In addition to the terms, conditions and restrictions set forth herein regarding notice of proposed transfers of Lots, if any Person acquires title by any means whatsoever, such Person's right to occupy or use the Lot shall be subject to the approval of the Board. Acceptance of an applicant shall be subject to a satisfactory credit check and background check, at the discretion of the Board. However, the approval of the Board shall not be denied to any heir or devisee who was the prior Member's lawful spouse at the time of such Member's death.

(i) No Basis for Denial. Membership shall not be denied to anyone on the basis of race, religion, sex, creed, ethnic background or national origin.

(j) Right of Foundation. The Board of Directors shall have the power and authority to promulgate rules and policies incident to the resignation of Memberships, issuance of Memberships, Transfer Fees, payment of any additional Membership Fees, and any other matters pertaining to the change of Membership classifications as a result of the sale or acquisition of Memberships or Lots.

8.6 Mandatory Membership. All Owners (excluding the Foundation, QWDC, QWH, any Qualified Builders or Qualified Developers and Non-Participating Members), and their successors-in-title, must acquire and maintain in good standing a Membership within one of the categories of Participating Membership for each Lot owned. Notwithstanding anything to the contrary contained herein, an Owner of more than one (1) Lot, who combines the Lots so that only one (1) residence may be built thereon pursuant to an agreement acceptable to the Board, shall be required to maintain only one (1) Participating Membership for the combined Lots and may resign any additional Memberships, provided such Owner complies with the agreement approved by the Board. Thereafter, the applicable Owner shall pay the Assessments and Dues for one (1) Lot.

ARTICLE IX

FOUNDATION ASSESSMENT AND LIEN RIGHTS

9.1 Determination of Lots Subject to Assessment. All Lots, except those owned by the Foundation, shall be subject to the Assessment and lien rights of the Foundation, as described in this Article IX, upon platting of such Lots and amendment whereby such platted Lots are added to the Declaration by instruments recorded in the Public Records of either Collier County or Lee County, Florida, or both, if applicable, or of any other applicable county in the State of Florida. If a Lot is subdivided, the resultant subdivided Lots shall be subject to a proportionate Assessment and the combined total Assessment shall be equal to the total Assessment amount that would have been assessed against the Lot prior to subdivision.

9.2 Foundation Functions. As more fully described in the Articles, the purpose of the Foundation shall be to operate the Foundation, to exercise its right to enforce the covenants and restrictions contained within this Declaration, and to operate and maintain the Common Areas in an attractive and proper manner and to assess its Members for the expense of such operation and maintenance.

9.3 Assessments.

(a) The Foundation shall have the power to make and collect Assessments against Members to defray the costs, expenses and losses of the Property owned, leased, operated or maintained by the Foundation, including, but not limited to, the Country Club Facility, Conservation Lands, Conservation Buffer Zones and Special Preserve Easements. The Foundation may fix, levy, collect and enforce specific Assessments, Dues, fees and charges for Country Club Facility use or otherwise, including, but not limited to, the imposition of minimum use charges for food and beverage in order to provide appropriate Member use and support. The Assessments levied by the Foundation shall be used exclusively for the purposes set forth in the Founding Documents. The Board shall have the authority to consider current Maintenance costs and needs of the Foundation and to affix Regular Assessments for such costs to be paid by the Members. Each Member hereby covenants and agrees to pay to the Foundation (i) Regular Assessments, Dues or charges, (ii) Special Assessments for capital improvements or other purposes, all as may be fixed, established and collected from time to time by the Board, and (iii) any Special Assessment made against a Member to maintain a Conservation Buffer Zone and/or a Special Preserve Easement within such Member's Lot. The Regular and Special Assessments, together with interest thereon, and costs of collection, including attorneys' fees and costs, shall be a charge on each Lot and shall be a charge against the Membership held by Member and shall be a continuing lien upon the Lot or Membership against which such Assessment is made. Each such Assessment, together with interest thereon, and costs of collection, including attorneys' fees and costs, as hereinafter provided, shall also be the personal obligation of the Person who is the Member at the time the Assessment fell due. Each Member personally covenants and agrees to pay any such obligation coming due prior to or during the time of its Membership and such personal obligations shall survive any conveyance of a Lot or transfer of a Membership subject to the terms and conditions provided herein.

(b) In addition to Regular Assessments, the Foundation may levy, in any Assessment year, one or more Special Assessments applicable to that year for the purpose of defraying any deficiency of funds needed to operate the services and operations of the Foundation, including but not limited to, for the purposes of defraying, in whole or in part, the costs of any construction, reconstruction, repair or replacement of a capital improvement upon the Property; for deficits in the event that casualty insurance is insufficient to repair or replace Common Areas, or to make up a deficiency in the operating budget of the Foundation; provided, however the Board of Directors shall not have the power nor authority to incur debt in excess of One Million and 00/100 Dollars (\$1,000,000.00), the exclusive use of which is for purposes of

paying for operational expenses of the Foundation, unless imposition of the debt is authorized by a vote of sixty (60%) percent or more of the Voting Members voting at a meeting called for that purpose. Once and if so approved, the Board of Directors shall not have the power nor authority to incur any additional debt of the Foundation, the proceeds of which being utilized exclusively to pay for operational expenses of the Foundation, unless and until approved by a vote of sixty (60%) percent or more of the Voting Members voting at a meeting called for the purpose of approving additional debt in increments of no less than One Million and 00/100 Dollars (\$1,000,000.00). It is the intention of the Membership that the Board seek the consent of the Voting Members to borrow monies in increments of no less than One Million and 00/100 Dollars (\$1,000,000.00) as a disincentive for incurring debt to pay for operational expenses. Nothing herein shall limit or prohibit the Board of Directors from revising or modifying any existing loan indebtedness, or incurring any new loan indebtedness incurred hereafter with Member approval, nor any loan indebtedness hereafter incurred which replaces any existing indebtedness or line of credit so long as the effect thereof does not increase the principal amount of the loan so extended, modified or replaced.

(c) Notwithstanding anything to the contrary set forth in Section 9.3(b) above, the Board of Directors shall not have the power nor authority to levy Special Assessments for any single capital project in excess of the amounts shown below without the approval of no less than sixty (60%) percent of the votes cast at a meeting of the Voting Members called for that purpose:

<u>TYPE</u>	<u>AMOUNT</u>
Special Assessment for Golf Members only	\$1,000,000.00
Special Assessment for Participating Members only	\$1,000,000.00
Special Assessment for Residential Members only	\$1,000,000.00

(d) Notwithstanding the foregoing, the Board of Directors shall have the power and authority to levy Special Assessments without the necessity of a vote of the Voting Members in the event of an emergency, or to pay for costs of repair, Maintenance or renovation of existing facilities; or to pay for the costs of repair, Maintenance or replacement of equipment which the Board deems appropriate in its sole and reasonable discretion, or for purposes of entering into bulk services agreements with utility or other service providers.

(e) The maximum amount of Special Assessment that can be levied by the Board without a vote of the Voting Members shall increase by the same percentage as the Consumer Price Index for all Urban Consumers for All Items (1982-1984 = 100) published by the United States Department of Labor, Bureau of Labor Statistics for the preceding twelve (12) months, commencing January 1, 2021 and on the 1st day of each and every January thereafter.

(f) In addition to the foregoing, the Board of Directors shall not have the power nor authority to execute contracts for any single capital project in excess of Two Million and Five Hundred Thousand and 00/100 Dollars \$2,500,000.00, nor incur any additional debt in excess of Five Hundred Thousand and 00/100 Dollars \$500,000.00 incident to a single capital project without the approval of no less than sixty (60%) percent of the votes cast at a meeting of the Voting Members held for that purpose. Nothing herein shall limit or prohibit the Board of Directors from renewing or modifying any existing loan indebtedness, or any new loan indebtedness incurred hereafter with Voting Member approval, nor any loan indebtedness hereafter incurred which replaces any existing indebtedness or line of credit, so long as the effect thereof does not increase the principal amount of the loan so extended or modified or replaced.

(g) For that portion of an Assessment which relates to the functions of the Foundation, aside from those relating to the Country Club Facility, the share of each Member of the total Assessment shall be a fraction, the numerator of which is one (1) and the denominator of which is the total number of Lots then subject to Assessment. If Foundation determines that a Lot is to be increased by adding a portion of another Lot, then Foundation, at the time of sale, shall make a final and binding determination of what amount in excess of one (1) that such Lot shall constitute with regard to the charging of Assessments. For that portion of an Assessment which relates to the functions of the Foundation for the Country Club Facility, the Board at its annual meeting shall set the Dues and fees for the coming year to be charged to Members holding a Participating Membership.

(h) Regular Assessments based on the adopted budget shall be paid in quarterly installments, in advance, due on the first day of January, April, July and October for that portion of an Assessment which relates to the functions of the Foundation, aside from those relating to the Country Club Facility. Regular Assessments for that portion of the Foundation budget which relates to the functions of the Foundation for the Country Club Facility (i.e., the Dues) shall be paid in quarterly installments, in advance, due on the first day of January, April, July and October. Notwithstanding the foregoing, the Board reserves the right, in its sole discretion, to charge finance charges, and/or charge some or all of the Regular Assessments and Dues in a lump sum annual payment. Special Assessments may be imposed at any time and shall be payable in the manner required by the Board in its sole discretion.

(i) The purpose, exemption from, and nonpayment of Regular Assessments and Special Assessments, and the establishment of annual budgets, shall be as set forth in the Founding Documents.

(j) The failure or delay of the Board to prepare or adopt the annual budget for any fiscal year shall not constitute a waiver or release in any manner of the Member's obligation to pay any Assessment as herein provided, whenever the same shall be determined. In the absence of an annual budget, each Member shall continue to pay the Assessment as established for the previous year.

(k) Each Owner who purchases a Lot for which a Working Fund Contribution has not previously been paid shall make a payment to the Foundation in an amount equal to two (2) months of Regular Assessments applicable to such Lot for the then current fiscal year (the "**Working Fund Contribution**"), which shall be payable at the time legal title is conveyed to such Person. The purpose of the Working Fund Contribution is to assure that the Foundation will have the cash available for operating expenses, to meet unforeseen expenditures and to acquire additional equipment and services deemed necessary or desirable by the Board. Working Fund Contributions are not advance payment of any Assessments and shall have no effect on future Assessments, nor will they be held in reserve. Each Owner shall also pay any applicable Transfer Fee or such other monies as the Board may from time to time prescribe to be paid incident to the sale or transfer of a Lot.

9.4 Assessment and Other Liens.

(a) If any Member fails to pay any Assessment, or make any other payment herein required to be paid to the Foundation, within thirty (30) days of the date of invoice by the Foundation, then the Foundation is hereby granted a lien on: (i) the Member's Lot (if any) and a claim of lien encumbering such Residential Member's Lot may be recorded in the Public Records of the applicable county in accordance with applicable Laws; and (ii) a Member's Membership and a claim of lien encumbering such Membership may be recorded on the books of the Foundation. Any lien so recorded encumbering a Member's Lot or Membership shall secure all sums then due, and all sums coming due thereafter, up to the date of the satisfaction or other discharge of the lien, together with interest at the highest rate permitted under applicable Laws from the date of delinquency, and all costs of collection, including attorneys' fees and costs, which includes those resulting from appellate proceedings, which may be incurred by the

Foundation in enforcing such lien and the cost of performing any other work required to enforce compliance with this Article IX. Notwithstanding the foregoing, with respect to any amounts due the Foundation, the Foundation shall have all such lien rights and Assessment rights as set forth in this Section 9.4.

(b) The lien herein granted shall be effective from and after the date of: (i) recording of a claim of lien in the Public Records of either Collier County or Lee County, Florida, or both, if applicable, or as the situation may dictate, any other applicable county in the State of Florida, which claim of lien shall state the description of the property encumbered thereby, the name of the Owner, the amount then due and the date when due; and (ii) recording of a claim of lien against a Membership on the books of the Foundation, which claim of lien shall state the description of the Membership encumbered thereby, the name of the Member, the amount then due and the date when due. A lien shall continue in effect until all sums secured by said lien, as herein provided, shall have been fully paid and the lien satisfied or discharged.

(c) The Foundation may bring any action at law against a Member to pay its personal obligations to the Foundation, and it may foreclose the lien against a Member's Lot or suspend or terminate a Member's Membership. A Member against whom any such proceeding is successfully brought shall pay all costs of collection, including all attorneys' fees and costs, which include those resulting from appellate proceedings. In the event of termination of a Membership to satisfy a lien claimed by the Foundation, the Foundation shall have the right, but not the obligation, to sell the Membership and upon such sale, the Member in default shall receive the amount received by the Foundation from the sale to a new Member less the full amount of all Assessments and Dues then owed to the Foundation, together with expenses, accrued interest and Transfer Fees, and any other sums owed to the Foundation.

(d) No Member may waive or otherwise avoid liability for the payments provided for herein by non-use or abandonment of the Member's Lot or Membership.

ARTICLE X

GENERAL AND PROCEDURAL PROVISIONS

10.1 Notice Procedures for Proposed Sale of Lot and Leasing.

(a) **NOTICE TO THE FOUNDATION.** IN THE EVENT OF A PROPOSED SALE OF A LOT BY AN OWNER, AND EXCLUDING ANY SALE OR TRANSFER PURSUANT TO A DECREE OF FORECLOSURE OR PURSUANT TO ANY PROCEEDING IN LIEU OF FORECLOSURE, THE OWNER SHALL PROMPTLY NOTIFY THE FOUNDATION IN WRITING OF THE PROPOSED SALE WITHIN FIVE (5) DAYS AFTER EXECUTING A PURCHASE AND SALE AGREEMENT AND SHALL PROVIDE (I) THE NAME AND ADDRESS OF THE PROPOSED PURCHASER, (II) THE ESTIMATED CLOSING DATE FOR THE TRANSACTION AND (III) A FULLY COMPLETED AND EXECUTED APPLICATION FOR MEMBERSHIP IN THE FOUNDATION ("**NOTICE**"). SAID APPLICATION MAY INCLUDE CONSENTS TO FOUNDATION'S PERFORMANCE OF BOTH A CREDIT CHECK AND BACKGROUND CHECK ON THE APPLICANT, TO WHICH THE APPLICANT SHALL CONSENT. THE FOUNDATION SHALL FURNISH TO THE OWNER AND THE PROPOSED PURCHASER A CERTIFICATE IN WRITING SETTING FORTH WHETHER THE ASSESSMENTS HAVE BEEN PAID (THE "**CERTIFICATE**"). IN ADDITION, THE FOUNDATION SHALL FURNISH TO THE PROPOSED PURCHASER A COPY OF THE DECLARATION AND AMENDMENTS. AS A CONDITION TO THE ISSUANCE OF THE AFOREMENTIONED CERTIFICATE AND PROVIDING THE FOUNDING DOCUMENTS, THE FOUNDATION SHALL BE ENTITLED TO CHARGE AND COLLECT A FEE FROM THE OWNER FOR PROCESSING ANY PROPOSED SALE OR TRANSFER OF A LOT AND SUCH

FEE SHALL BE IN AN AMOUNT ESTABLISHED BY THE BOARD FROM TIME TO TIME IN ITS SOLE DISCRETION, SUBJECT TO ANY LIMITATION PROVIDED BY APPLICABLE LAWS. IN THE EVENT THAT THERE ARE UNPAID ASSESSMENTS OWED BY THE OWNER, THE FOUNDATION SHALL BE ENTITLED TO EXERCISE ALL RIGHTS AND REMEDIES AVAILABLE TO IT FOR COLLECTION OF THE ASSESSMENTS AS SET FORTH IN THIS DECLARATION. THE OWNER'S FAILURE TO PAY ALL UNPAID ASSESSMENTS, AND ACCRUED INTEREST THEREON, IF ANY, BEFORE THE CLOSING OF THE SALE OF A LOT MAY RESULT IN THE SUSPENSION OF CERTAIN RIGHTS AND PRIVILEGES PROVIDED TO THE NEW OWNER TO THE EXTENT PERMITTED BY APPLICABLE LAWS. THE FOUNDATION MAY DELEGATE ITS OBLIGATION TO FURNISH SUCH CERTIFICATE AND ITS RIGHT TO COLLECT THE FEE FOR PROVIDING SUCH SERVICE TO A MANAGEMENT COMPANY HIRED BY THE FOUNDATION.

(b) Failure to Give Notice. If the Owner fails to provide Notice as required pursuant to Section 10.1(a), then any transfer of the Owner's Lot shall be null, and void and the registered Owner shall not be relieved of its responsibility to pay any amounts due and owing to the Foundation in accordance with the Founding Documents and shall remain liable for the payment of all such amounts.

(c) Certificate of Approval. Within thirty (30) days after receiving the required Notice, the Board shall approve or disapprove of the transfer. Said approval may be withheld if, in the reasonable opinion of the Foundation, the applicant has a poor credit history or a propensity or inability to pay their debts timely and when due, or if a background check reveals that the applicant has been convicted or repeatedly accused of criminal behavior involving moral turpitude or sexual misconduct. Any and all such investigations are performed for the benefit of the Foundation, and not for the benefit of the selling Member or any other Members. The Foundation's determination to deny an application shall be determinative and final, and not subject to review. All Members acknowledge and agree that the Foundation shall rely upon third party reports in investigating the background and credit of applicants, and not its own investigation. All Members acknowledge and agree further that no Person other than the Foundation may act in reliance on any such background checks and the Foundation makes no guarantee whatsoever as to any Person approved for Membership. All Members hereby expressly covenant and agree that the Foundation, its employees, agents, contractors and Board and Board committee members shall have no liability whatsoever for any damages that may result from any errors or mistakes in the approval process, including, but not limited to, damages caused by the negligence or gross negligence of the Foundation or any employees, agents, contractors, Board or Board committee members, and forever waive any right to assert such a claim. The Members further agree to hold the Foundation, its employees, agents, contractors and Board and Board committee members harmless, and to indemnify said parties, against any and all losses or damages they may suffer as a result of anyone asserting such a claim. Approval or disapproval of an applicant shall be evidenced in a Certificate (in addition to setting forth whether the Assessments have been) and such Certificate shall be executed by an officer of the Foundation. The Certificate shall be recorded, when required, in the Public Records of either Collier County or Lee County, Florida, or both, if applicable, at the transferee's expense.

10.2 Insurance. The Foundation shall maintain insurance on the Property and Common Areas of such types, in such amounts, and with such companies, as the Board deems appropriate.

10.3 Other Documents. The Foundation, and all other Persons provided for herein, or in any applicable recorded instrument, shall have such rights, powers, duties and privileges as set forth herein or in the Founding Documents and other constituent documents of such Person; provided, however, no such Person may have rights, duties, powers or privileges that are in conflict with the provisions of this Declaration, which provisions shall prevail in all events of conflict.

10.4 Duration of Restrictions. The covenants, reservations, restrictions and other provisions of this Declaration shall run with and bind the Property subject hereto and shall inure to the benefit of Foundation or any Member subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time these covenants, conditions, restrictions and other provisions shall automatically be extended for successive periods of ten (10) years, unless an instrument signed by two-thirds ($\frac{2}{3}$) of the Members has been recorded, agreeing to change or termination of these covenants, conditions, restrictions and/or provisions in whole or in part.

10.5 Modification and Amendment of Declaration. Modifications and Amendments to this Declaration may be made from time to time with the affirmative vote of a two-thirds ($\frac{2}{3}$) of the votes cast by Members holding Voting Memberships in good standing, in person, by proxy or electronically, or any combination thereof, at a duly called meeting of the Members; provided however, only one (1) vote may be cast for each Voting Membership and no Amendment shall be effective which is in contravention of the duties, responsibilities or obligations of the Foundation or the Members as provided in this Declaration. The full text of any proposed Amendments shall be included in the notice of any such meeting of the Members. This Declaration is supplemental to and independent of any zoning, present or future, of either Collier County or Lee County, Florida, or both, if applicable, or of any other applicable county, or of any other governmental entity, and no variance or zoning change permitted by the appropriate Governmental Authority shall in any way be construed to reduce or modify the covenants contained herein.

10.6 Acceptance of Declaration by Owners. Each Owner and Member, by accepting an interest in any Lot or Membership, hereby agrees to be bound by all the covenants, conditions, limitations, reservations and restrictions as contained herein, and in the event of a breach agrees to pay all costs, including attorneys' fees and costs, incurred in the enforcement of any of the provisions of this Declaration.

10.7 Remedies. In the event of a violation or breach of any provision of this Declaration, the Foundation shall have the right to proceed at law, or in equity, to compel compliance with the terms hereof or to prevent the violation or breach of any of them. The failure to enforce any right, reservation, restriction, covenant, condition or limitation herein contained, however long delayed, shall not be deemed a waiver of the right to do so thereafter.

10.8 Severability. If any covenant, condition, restriction or other provision of this Declaration is held to be invalid in whole or in part by a final judgment or order of any court of competent jurisdiction, then such ruling shall in no way affect the validity of the remaining provisions of this Declaration, all of which shall remain in full force and effect. Waivers, omissions, errors, or other allowances, however made, shall not create a precedent or invalidate this Declaration, and no Member shall make a claim for relief based on any prior waiver or omission or error.

10.9 Singular and Plural; Gender. Whenever in this Declaration the context so requires, the singular number shall include the plural, and the converse, and the use of any gender shall be deemed to include all genders.

10.10 Construction. The provisions of this Declaration shall be liberally interpreted and construed to provide maximum flexibility consistent with the PUD and RPD and the purpose set forth herein, including the Recitals.

10.11 Administration. The administration of the Foundation shall be in accordance with the provisions of the Articles and Bylaws.

10.12 Nonliability of Foundation. The Foundation shall not in any way or manner be held liable or responsible for any violation of this Declaration.

10.13 Notices.

(a) To Foundation. Notice to Foundation, as may be required herein, or in the Bylaws, shall be in writing and delivered or mailed to the Foundation at its principal place of business as shown by the records of the Secretary of State of Florida, or at any other location designated by the Foundation.

(b) To Member. Notice to any Member for Assessments, of a violation of any of these restrictions, or any other notice as may be permitted or required herein, shall be in writing and shall be delivered to the Member at the address shown on the records of the Foundation in any manner permitted pursuant to applicable Laws.

10.14 Interpretation. The Board shall be responsible for interpreting the provisions of this Declaration and the other Founding Documents and of any of the exhibits attached hereto or thereto. Such interpretation shall be binding upon all parties unless wholly unreasonable. A written opinion rendered by legal counsel to the Board that an interpretation adopted by the Board is not unreasonable shall conclusively establish the validity of such interpretation.

10.15 Applicable Statutes. The validity, application and construction of this Declaration and its exhibits shall be governed by the Laws of the State of Florida as they exist on the date of the recording of this Declaration.

10.16 Security. THE FOUNDATION MAY, BUT SHALL NOT BE OBLIGATED TO, MAINTAIN OR SUPPORT CERTAIN ACTIVITIES WITHIN THE PROPERTY DESIGNED TO MAKE THE PROPERTY SAFER THAN IT OTHERWISE MIGHT BE. ADDITIONALLY, THE FOUNDATION MAKES NO REPRESENTATIONS WHATSOEVER AS TO THE SECURITY OF THE PREMISES OR THE EFFECTIVENESS OF ANY MONITORING SYSTEM OR SECURITY SERVICE. ALL OWNERS AGREE TO HOLD THE FOUNDATION HARMLESS FROM ANY LOSS OR CLAIM ARISING FROM THE OCCURRENCE OF ANY CRIME OR OTHER ACT. THE FOUNDATION SHALL NOT IN ANY WAY BE CONSIDERED AN INSURER OR GUARANTOR OF SECURITY WITHIN THE PROPERTIES. THE FOUNDATION SHALL NOT BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN, IF ANY. EACH MEMBER, OWNER AND OCCUPANT OF ANY LOT OR HOME, AND EACH TENANT, GUEST AND INVITEE OF ANY OWNER ACKNOWLEDGE THAT THE FOUNDATION AND ITS BOARD, DO NOT REPRESENT OR WARRANT THAT: (i) ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM, SURVEILLANCE SYSTEM OR OTHER SECURITY SYSTEM, IF ANY, DESIGNATED BY OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED BY FOUNDATION OR THE ARB MAY NOT BE COMPROMISED OR CIRCUMVENTED, OR (ii) THAT ANY FIRE PROTECTION, BURGLAR ALARM SYSTEMS, SURVEILLANCE SYSTEMS OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH MEMBER, OWNER AND OCCUPANT OF ANY LOT OR HOME, AND EACH TENANT, GUEST AND INVITEE OF ANY OWNER ACKNOWLEDGES AND UNDERSTANDS THAT THE FOUNDATION, ITS BOARD AND THE ARB, ARE NOT INSURERS, AND THAT EACH MEMBER, OWNER AND OCCUPANT OF ANY LOT OR HOME AND EACH TENANT, GUEST AND INVITEE OF ANY OWNER ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO LOTS OR HOMES, AND TO THE CONTENTS OF LOTS OR HOMES AND FURTHER ACKNOWLEDGES THE FOUNDATION, ITS BOARD AND THE ARB, HAVE MADE NO REPRESENTATIONS OR WARRANTIES NOR HAS ANY MEMBER, OWNER NOR

OCCUPANT OF ANY LOT OR HOME, NOR ANY TENANT, GUEST OR INVITEE OF ANY OWNER RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE ALARM SYSTEMS, BURGLAR ALARM SYSTEMS, SURVEILLANCE SYSTEMS OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED, IF ANY, OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTIES.

ARTICLE XI

REMAINING RIGHTS OF QWDC AND QWH

11.1 QWDC and QWH Sale of Memberships. Notwithstanding anything to the contrary set forth herein, QWDC and QWH may only sell Memberships in accordance with, and subject to, the Membership Agreement during the term of such Membership Agreement.

[END OF TEXT]

IN WITNESS WHEREOF, Foundation has caused these presents to be executed in its name and its seal to be affixed hereto as of the day and year first written above.

Signed, sealed and delivered
in our presence

(Corporate Seal)

QUAIL WEST FOUNDATION, INC., a not-for-profit corporation

Witness #1 (print name below)

By: _____
Angelo Rossi, as President

Witness #2 (print name below)

ATTEST:

Anthony G. D'Errico, as Assistant Secretary

STATE OF FLORIDA
COUNTY OF COLLIER

The foregoing instrument was sworn to and subscribed before me by means of physical presence or online notarization this _____ day of _____, 2021, by ROLLA HUFF, as President, and ANTHONY G. D'ERRICO, as Assistant Secretary, of QUAIL WEST FOUNDATION, INC., a Florida not for profit corporation, who are personally known to me or who produced _____ as identification.

[SEAL]

Signature of Notary Public

Name of Notary Printed, Typed or Stamped
My Commission Expires:

EXHIBIT "A"

PROPERTY

All of Section 7, Township 48 South, Range 26 East, lying East of Interstate I-75, Collier County, Florida.

All of Section 8, Township 48 South, Range 26 East, Collier County, Florida.

The South one-half (1/2) of Section 5, Township 48 South, Range 26 East, Lee County,

**FIFTH AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
QUAIL WEST FOUNDATION, INC.
(a Florida Not For Profit Corporation)**

The undersigned do hereby certify that at a duly called meeting of the Members of **QUAIL WEST FOUNDATION, INC.**, a Florida not for profit corporation, the Membership voted on [●] [●], 202 __, to amend and restate in their entirety the Amended and Restated Articles of Incorporation, filed May 29, 2020, with the Secretary of State, State of Florida, bearing Document Number N44113, as thereafter amended and restated, and by these Fifth Amended and Restated Articles of Incorporation (these “**Articles**”) hereby certify the following:

**ARTICLE 1
NAME AND ADDRESS**

The name of the corporation shall be QUAIL WEST FOUNDATION, INC., a Florida corporation not for profit (the “**Foundation**”) whose principal mailing address is 5950 Burnham Road, Naples, Florida 34119.

**ARTICLE 2
DEFINITIONS**

Capitalized terms used in these Articles shall have the same meanings ascribed to such terms in the Fourth Amended and Restated Declaration and General Protective Covenants for Quail West, as may be further amended from time to time (the “**Declaration**”), and as recorded in the Public Records of Collier County and Lee County, Florida (the “**Counties**”), unless the context otherwise requires and so states.

**ARTICLE 3
PURPOSES**

The Foundation is organized for the following purposes:

- (i) To establish a corporate residential community property owner’s foundation, which will have the specific purposes and powers described herein, subject to the Founding Documents;
- (ii) To take title to, operate, administer, manage, lease and maintain the Property in accordance with the terms of, and purposes set forth in, the Founding Documents and to carry out the covenants and enforce the provisions of the Founding Documents;
- (iii) To promote the health, safety, aesthetic enjoyment and social welfare of the residents of the Development;
- (iv) To provide for the management, operation and maintenance of the Common Areas and any Improvements which may be placed under the jurisdiction of the

Foundation pursuant to the Declaration and to any Neighborhood Covenants which may be recorded with respect to any Neighborhood;

- (v) To fulfill all the purposes and to exercise all of the powers stated herein with respect to all Additional Property which may be brought under the jurisdiction of the Foundation; and
- (vi) To enter into leases with third parties to provide services to the Members and, if appropriate in the sole discretion of the Board, to members of the general public including, but not limited to, real estate brokerage services, medical services, and expanded spa or wellness facilities or, if the Board should so elect, the Foundation may operate these services directly.
- (vii) To enforce the provisions of the Founding Documents consistent with the Declaration by whatever legal means are available under Florida law.

ARTICLE 4 GENERAL POWERS

The Foundation shall have and exercise all rights and powers conferred upon corporations under the common law and statutes of the State of Florida consistent with the Founding Documents. In addition, the Foundation shall have all powers and authority reasonably necessary or appropriate to operate and regulate a residential community, subject to the Declaration, including, but not limited to, the following;

- (i) To make and establish the Bylaws and the Rules and Regulations to effectuate the purposes for which the Foundation is organized and to enforce the Bylaws and the Rules and Regulations governing the use of the Common Areas consistent with the Declaration;
- (ii) To purchase, lease, hold, sell, mortgage or otherwise acquire or dispose of, real or personal property, except to the extent restricted hereby;
- (iii) To enter into, make, perform or carry out contracts of every kind with any Person;
- (iv) To do any and all of the activities and pursue any and all of the objects and purposes set forth in these Articles and not forbidden by the Laws of the State of Florida;
- (v) To hold all of the Property deeded to the Foundation in trust for the use and benefit of its Members, provided that the Foundation may dedicate, sell or transfer all or any part of any Common Areas deemed to be surplus to any public agency, authority or utility, for such purposes and subject to such conditions as may be agreed upon by the Members and consistent with the Declaration;
- (vi) To hold funds solely and exclusively for the benefit of the Members for purposes set forth in these Articles;
- (vii) To fix, levy, collect and enforce any Assessment, dues or other fees or charges for facility use or otherwise, including, but not limited to, the imposition of minimum

use charges for food and beverage in order to provide appropriate Member use and support of the Club Facilities as authorized by the Founding Documents for the purpose of obtaining funds from its Members to pay for the operational expenses of the Foundation and costs of collection and to use and expend the proceeds of any such Assessments in the exercise of its powers and duties hereunder.

- (viii) To pay taxes and other charges, if any, on or against any property owned, leased, licensed or accepted by the Foundation;
- (ix) To borrow money;
- (x) To maintain, repair, replace, approve, operate and manage the Common Areas and Improvements as may be placed under the jurisdiction of the Foundation, including but not limited to, the Conservation Lands, entrance roads and features, roadways, gate house areas, the Country Club Facility, street lighting, lakes, landscaping, irrigation systems and the Water Management Systems and Drainage Areas;
- (xi) To delegate power as may be deemed in the interest of the Foundation;
- (xii) To enter into a contract with any Person and employ personnel as may be selected by the Board to perform or accomplish any or all of the purposes of the Foundation, under such terms and conditions and for such compensation as the Board may consider in the best interest of the Foundation;
- (xiii) To enter into agreements with a Neighborhood Association, if any, and if necessary, with respect to, but not limited by, those items listed in paragraph (x) above;
- (xiv) To purchase liability insurance for members of the Board and other policies of insurance upon the Property and to use the proceeds from such policies to effectuate Foundation purposes;
- (xv) To approve transfers of ownership of Lots and Memberships in the manner and to the extent provided in the Declaration; and
- (xvi) To enforce any and all covenants, conditions, restrictions and agreements available to the Development, but only insofar as such powers of enforcement are conferred upon the Foundation by the Declaration.

ARTICLE 5 VOTING RIGHTS AND MEMBERSHIP

5.1 Voting Rights. The Foundation shall have the following classes of Voting Membership: Residential Participating Membership, Non-Residential Participating Membership, Grandfathered Until Participating Membership, and Grandfathered Until Sale Membership. The Foundation shall have the following classes of Nonvoting Membership: Annual Membership, Preview Membership, and Honorary Membership. The Board shall have the right to create and define such additional classes of Membership as the Board may elect in its sole discretion. Any Member owning a Voting Membership shall be referred to as a “**Voting Member**”, and any Member owning a Nonvoting Membership shall be referred to as a “**Nonvoting Member**”. The terms, conditions, rights and

obligations of each class of Membership shall be as set forth in the Declaration, as the same may be amended from time to time, the terms of which being incorporated herein by this reference and, in the case of those classes of Membership as may be created by the Board, as set forth in the applicable resolution of the Board.

5.2 Reciprocal Access Arrangements. The Board may, in its sole discretion, enter into reciprocal use privileges and access agreements with the owners of other club facilities, as the Board determines appropriate from time to time. The Board and/or owners of the club facilities may charge Members such additional membership fee, dues, fees or charges for use of the facilities of the other clubs and/or charge permitted users of such facilities the Membership Fees, Dues, fees or charges for use of the Country Club Facility, as they determine from time to time. The Board shall give the permitted users of the club facilities such privileges as it determines from time to time, and the owners of the other club facilities shall give Members such privileges as such owners determine from time to time. In addition to the foregoing, the Foundation may enter into agreements to purchase memberships providing access to other club facilities in order to provide additional privileges and access to Members, or specific classes of Members, and the Board shall determine the appropriate dues, fees, or charges for access or use of the facilities of the other club facilities, including, but not limited to, a beach access club or facility.

ARTICLE 6 MEMBERSHIP

6.1 Membership.

- (a) Membership. The classes of Membership set forth in the Declaration are or upon creation will be, subject to the Declaration and the other Founding Documents and to the jurisdiction and powers of the Foundation, and particularly to the fine, Assessment and Assessment lien powers of the Foundation.
- (b) Membership Fees. The Board shall have the sole right to determine the Membership Fee for all Memberships.
- (c) Termination. The process for termination of a Membership, and all rights, obligations and effects thereof, are as set forth in the Declaration as the same may be amended from time to time.

6.2 Mandatory Membership. All Owners (excluding only the Foundation and such other Persons as may be exempt pursuant to Section 6.2 of the Declaration), and their successors-in-interest, must acquire and maintain in good standing a Membership within one of the categories of Participating Membership for each Lot owned. Notwithstanding anything to the contrary contained herein, an Owner of more than one (1) Lot, who combines the Lots so that only one (1) residence may be built thereon pursuant to an agreement acceptable to the Board, shall be required to maintain only one (1) Participating Membership for the combined Lots and may resign any additional Memberships, provided such Owner complies with the agreement approved by the Board. Thereafter, the applicable Owner shall pay the Assessments and Dues for one (1) Lot.

ARTICLE 7
BOARD OF DIRECTORS

7.1 The affairs of the Foundation shall be managed by the Board. The Board shall have power to manage all the affairs of the Foundation and to make all contracts necessary for the proper transaction of its matters pertaining to the care, conduct, control, supervision and management of the Foundation, its finances and the Property, and to make any appropriations for the expenditures of the funds of the Foundation, all as set forth in the Declaration and the Bylaws, as the same may be amended from time to time.

7.2 Each member of the Board ("**Director**") shall meet the criteria set forth in the Bylaws, as the same may be amended from time to time.

7.3 The Board shall consist of the number provided by the Bylaws.

7.4 The Board shall have the power and authority to levy Regular Assessments, Special Assessments and fines, all as set forth in the Declaration and Bylaws as the same may hereafter be amended. In no event shall the Board have the power and authority to levy Special Assessments in excess of any limitations or caps set forth in the Declaration absent the consent of the Members, as also set forth in the Declaration.

7.5 The Board shall have the right, in its sole discretion, to charge finance charges, and/or charge some or all of the Regular Assessments and Dues in a lump sum annual payment consistent with the Declaration.

7.6 The purpose, exemption from, and nonpayment of Regular Assessments and Special Assessments, and the establishment of annual budgets, shall be as set forth in the Founding Documents.

7.7 The failure or delay of the Board to prepare or adopt the annual budget for any fiscal year shall not constitute a waiver or release in any manner of the Member's obligation to pay any Assessment as herein provided, whenever the same shall be determined. In the absence of an annual budget, each Member shall continue to pay the Assessment as established for the previous year.

7.8 The Directors may, pursuant to the Bylaws, fix the term of office for all Directors; provided, however, all Directors shall continue in office until their successors are duly elected and installed.

7.9 A majority of the Directors currently serving shall constitute a quorum. Except as otherwise specified (such as where a Super Majority Vote is required), the decision of a majority of the Directors present at a meeting at which a quorum is present shall be required and shall be sufficient to authorize any action on behalf of the Foundation. Each Director shall be entitled to one (1) vote on every matter presented to the Board. Directors may participate in any meeting of the Board by any means 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.

**ARTICLE 8
OFFICERS**

The affairs of the Foundation shall be administered by a President, one (1) or more Vice-Presidents, a Secretary and a Treasurer and such other officers as the Board may from time to time deem necessary. Officers need not be Members. All officers, who are not Members, must be an employee of the Foundation. Any two (2) or more offices may be held by the same person except that the offices of President and Secretary and the offices of President and Treasurer may not be held by the same person. The officers shall be elected by the Board at its annual meeting, which shall take place within seven (7) days following the annual meeting of the Members, and each officer shall serve 1-year terms in accordance with the procedures set forth in the Bylaws. The duties of each officer are as set forth in the Bylaws.

**ARTICLE 9
INDEMNIFICATION OF DIRECTORS AND OFFICERS**

Each and every Director and officer (each an “**Indemnitee**,” and the Directors and/or officers as a group, the “**Indemnitees**”) shall be indemnified by the Foundation against all costs, expenses and liabilities, including attorney and paralegal fees at all trial and appellate levels and post-judgment proceedings, reasonably incurred by or imposed upon such person or persons in connection with any negotiation, proceeding, arbitration, litigation or settlement in which an Indemnitee may become involved by reason of being or having been a Director or officer. The foregoing provisions for indemnification shall apply whether or not such person is a Director or officer at the time such costs, expenses and/or liabilities are incurred. Notwithstanding the foregoing, in the event of any settlement, the indemnification provisions provided in this Article 9 shall not be automatic and shall apply only when the Board approves such settlement and reimbursement for the costs and expenses of such settlement as being in the best interest of the Foundation, and in the event an Indemnitee admits or is adjudged guilty by a court of competent jurisdiction of willful misfeasance or malfeasance in the performance of an Indemnitee’s duties, the indemnification provisions of this Article 9 shall not apply. The foregoing right of indemnification shall be in addition to and not exclusive of any and all right of indemnification to which an Indemnitee may be entitled whether by statute or under common law. No amendment to these Articles which reduces or restricts the indemnity created in this Article 9 may be adopted without the prior consent of each and every Director and officer (whether current or former) affected by such amendment.

**ARTICLE 10
DIRECTORS AND OFFICERS CONFLICTS OF INTEREST**

No contract or transaction between the Foundation and one or more of its Directors or officers, or between the Foundation and any other corporation, agency, partnership, association or other entity in which one or more of its Directors or officers are directors or officers or have a financial interest, shall be invalid, void or voidable solely for this reason, or solely because such Director or officer is present at or participates in the meeting of the board or a committee of any such corporation, agency, partnership, association or other entity which authorized the contract or transaction, or solely because his or their votes are counted for such purpose. No Director or officer shall incur liability by reason of the fact that such Director or officer is or may be interested in any such contract or transaction. Interested Directors may be counted in determining the presence of a

quorum at a meeting of the Board which authorized the contract or transaction. Notwithstanding the foregoing, any such interest in the contract or transaction shall be disclosed to the Board by the interested Director or officer at least five (5) business days prior to the date such contract is entered into or such transaction occurs, as applicable.

**ARTICLE 11
AMENDMENT TO ARTICLES OF INCORPORATION**

11.1 Amendments to these Articles shall be proposed by a Super Majority of the Board, and adopted by the affirmative vote of no less than two-thirds (2/3) of the votes cast, in person or by proxy at any annual or special meeting of the Members called for that purpose, provided that the full text of any proposed amendments shall be included in the notice of such annual or special meeting, and provided further that the voting requirements specified for any action under any provision of these Articles shall apply also to any amendment of such provisions, and no amendment shall be effective which is in contravention of the duties, responsibilities or obligations of the Foundation or the Members as provided in the Declaration.

11.2 An amendment shall become effective at the time specified in the amendment documents approved by the Members. The amendment shall be filed with the Secretary of State of the State of Florida and a certified copy recorded in the Public Records either or both of the Counties, as applicable, and in any other applicable county.

**ARTICLE 12
DURATION**

The term of the Foundation shall be perpetual. In the event of dissolution of the Foundation (unless same is reinstated), other than incident to a merger or consolidation, all of the assets of the Foundation shall be conveyed to a similar homeowners association or a public agency having a similar purpose, or any Member may petition the appropriate circuit court of the State of Florida for the appointment of a receiver to manage the affairs of the dissolved Foundation and its properties in the place and stead of the dissolved Foundation and to make such provisions as may be necessary for the continued management of the affairs of the dissolved Foundation and its properties.

**ARTICLE 13
DECLARATION**

In the event of any conflict between the provisions of these Articles and the provisions of the Declaration, the provisions of the Declaration shall prevail.

**ARTICLE 14
REGISTERED OFFICE AND REGISTERED AGENT**

The street address of the registered office of the Foundation is 5150 Tamiami Trail North, Suite 304, Naples, Florida 34103 and the registered agent of the Foundation at that address shall be Salvatori Law Office, PLLC,

**ARTICLE 15
AUTHORITY**

These Fifth Amended and Restated Articles of Incorporation were adopted by the Members of the Foundation at a duly called meeting of the Members convened for that purpose, and no further action is necessary to accomplish the changes made.

IN WITNESS WHEREOF, the undersigned, has executed this Fifth Amended and Restated Articles of Incorporation, to be effective the ____ day of _____, 202__.

QUAIL WEST FOUNDATION, INC., a
Florida not for profit corporation

By: _____
Angelo J Rossi, as President

By: _____
Steven T. Norby, as Secretary

**FOURTH AMENDED AND RESTATED
BYLAWS
OF
QUAIL WEST FOUNDATION, INC.
(a Florida Not For Profit Corporation)**

These are the FOURTH AMENDED AND RESTATED BYLAWS OF QUAIL WEST FOUNDATION, INC. (these “**Bylaws**”), as duly adopted by its Board of Directors (the “**Board**”) and Members, and shall replace in their entirety the Third Amended and Restated Bylaws of Quail West Foundation, Inc., adopted at a meeting called for that purpose on May 14, 2020. Quail West Foundation, Inc. (the “**Foundation**”) is a Florida not for profit corporation.

Section 1 Office

The office of the Foundation shall be at 5950 Burnham Road, Naples, Florida 34119, or at such other location as may be determined by the Board.

Section 2 Definitions

Capitalized terms used in these Bylaws shall have the same meanings ascribed to such terms in the Declaration (as defined below) unless the context otherwise requires and so states.

Section 3 Seal

The seal of the Foundation shall be inscribed with the name of the Foundation, the year of its organization, and the words or a facsimile of it, to be impressed, affixed, reproduced or otherwise placed upon any document or writing of the Foundation where a seal may be required.

Section 4 Fiscal Year

The fiscal year of the Foundation shall be the calendar year unless the Board should otherwise elect in its sole and absolute discretion.

Section 5 Founding Documents

The Founding Documents shall include the following:

- (1) Fourth Amended and Restated Declaration and General Protective Covenants for Quail West, as recorded in the Public Records of Collier County and Lee County, Florida, as the same may be amended from time to time (the “**Declaration**”);
- (2) Fifth Amended and Restated Articles of Incorporation of Quail West Foundation, Inc., as the same may be amended from time to time (the “**Articles**”);
- (3) These Bylaws, as the same may be amended from time to time; and
- (4) The Rules and Regulations.

Section 6 Conflict

Except as may otherwise be provided in the Founding Documents, if there is a conflict among the provisions of the Founding Documents, the provisions of the Declaration shall prevail.

Section 7 Membership; Members' Meetings; Voting and Proxies

7.1. Membership. The classification of Memberships, the manner of admission to Membership, the manner of termination of Membership, the qualification of Members, and the voting by the Members shall be as set forth in the Articles and the Declaration.

7.2. Annual Members' Meetings. Members shall meet at least once in each calendar year (the "**Annual Members' Meeting**"). The Annual Members' Meeting shall be held at the office of the Foundation if available, and if not at such other place in Collier County or Lee County as the Board may determine and, on such day, and at such time as designated by the Board in the notice of such meeting. The purpose of the Annual Members' Meeting shall be to hear reports of the officers of the Foundation (the "**Officers**"), elect members of the Board (the "**Directors**") when the election of Directors shall be appropriate as determined in accordance with the terms and conditions of the Articles, and transact any other business authorized to be transacted at such Annual Members' Meeting.

7.3. Special Meetings. Special meetings of the Members (meetings other than the Annual Members' Meetings) ("**Special Meetings**") shall be held at any place within Collier or Lee County whenever called by the President or Vice President in the absence of the President, or by a majority of the Board, and must be promptly called by the Board upon receipt of a written request from twenty-five percent (25%) or more of the Members which have a right to vote ("**Voting Members**"). Such request shall be in writing, shall state the purpose or purposes of the meeting, and shall contain the names of each Voting Member making such request. Business at any Special Meeting shall be limited to the items specified in the request and contained in the notice of the meeting.

7.4. Notice of Meetings. Notice of all meetings of the Members ("**Notice**") must state the time, date and place of the meeting and the purposes for which the meeting is called. Each notice must be mailed to each Member at his address as it appears on the books of the Foundation or may be delivered personally or electronically. Each Notice must be mailed or, delivered or transmitted electronically not less than fourteen (14) days nor more than forty-five (45) days before the time of the meeting. If a Membership is transferred in accordance with the terms and conditions set forth in the Declaration after any Notice is given by the Foundation, the transferee need not be notified. By acceptance of a deed to a Lot, or by voting in favor of the adoption of these Bylaws, a Member shall be deemed to have consented to receipt of all notices hereunder through electronic means, subject to the right of a Member to later withdraw that consent by delivering written notice to the Foundation of the withdrawal of said consent at any time.

7.5. Membership List. At least forty-five (45) days before every Annual Members' Meeting, a complete list of Members entitled to vote at said election, arranged numerically by Lot, shall be prepared at the direction of the Secretary. Such list shall be produced and kept for such 45-day period and throughout the election at the office of the Foundation and shall be open to examination by any Member in good standing throughout the 45-day period.

7.6. Quorum. A quorum at meetings of Members shall be attained by the presence, either in person or by proxy, of thirty percent (30%) of the total voting interests of the Foundation. If a quorum is established, the subsequent withdrawal of Members that reduces the number below that originally required for determination of quorum shall not affect the validity of any action thereafter taken at the meeting or any adjournment thereof.

7.7. Vote Required. The acts approved by a majority of the votes cast at a meeting at which a quorum has been attained shall be binding upon all Members for all purposes, except where a higher vote is required by applicable Laws or by any provision of the Founding Documents.

7.8. Proxies. Votes may be cast at a meeting in person or by proxy. “**Proxy**” shall mean an instrument containing the appointment of a person who is substituted in the place and stead of the person entitled to vote. A Proxy may be given by any person entitled to vote but shall be valid only for the specific meeting for which originally given and/or any lawful adjournment of such meeting. No Proxy shall be valid for a period longer than sixty (60) days after the date of the first meeting for which it was given. Every Proxy shall be revocable at the pleasure of the person executing it. To be valid, a Proxy must be in writing, dated and signed by the person authorized to cast the vote and must specify the date, time and place of the meeting for which it was given. If the Proxy is a limited Proxy, such Proxy shall set forth those items which the holder of the Proxy may vote and the manner in which the vote is to be cast. The Proxy, or an electronic or facsimile copy thereof, must be delivered to the Secretary before the appointed time of the meeting or adjournment thereof. A holder of a Proxy need not be a Member. The holder shall have the right, if the Proxy so provides, to substitute another person to hold the Proxy.

7.9. Adjourned Meetings. Any duly called Members’ meeting may be adjourned to a later time by vote of the majority of the voting interests present, regardless of whether a quorum has been attained. When a meeting is adjourned, it shall not be necessary to give notice of the time and place of its continuance if such is announced at the meeting being adjourned. Any business which might have been conducted at the meeting as originally scheduled may instead be conducted at the continuance.

7.10. Minutes. Minutes of all meetings of the Members’ and of the Board shall be kept in a businesslike manner by the Secretary of the Foundation and available for inspection by Members or their authorized representatives and Directors at all reasonable times.

7.11. Action by Members Without Meeting. Any action required or permitted to be taken at a meeting of the Members may be taken without a meeting by written consent, setting forth the action to be taken, signed by the Members having not less than the minimum number of votes that would be necessary to take such action at a meeting, or fifty-one percent (51%) of the total votes. Upon receiving the requisite number of written consents, the Board, in its sole and absolute discretion, may take the authorized action upon adopting a resolution to that effect. Within ten (10) days after adopting the resolution, the Board shall send written notice of the action taken to all Members who have not consented in writing. Nothing in this Section shall be construed in derogation of Members’ rights to call a Special Meeting as provided hereinabove. The written consents used to authorize action without a meeting shall become a part of the Foundation’s records.

7.12. Parliamentary Rules. Roberts’ Rules of Order (latest edition) shall govern the conduct of the Foundation meeting when not in conflict with the applicable Laws, the Declaration or these Bylaws. The President may appoint a Parliamentarian whose decision on

questions of parliamentary procedure shall be final. Any questions or point of order not raised at the meeting to which it relates shall be deemed waived.

Section 8 Board; Directors; Directors' Duties; Board Meetings

8.1. General Powers. The affairs of the Foundation shall be managed by the Board. The Board shall have power to manage all the affairs of the Foundation and to make all contracts necessary for the proper transaction of its matters pertaining to the care, conduct, control, supervision and management of the Foundation, the Property and the finances of the Foundation. All appropriations for the expenditures of Foundation funds shall be made by the Board. The Board shall have the power to employ and discharge all employees of the Foundation.

In addition to the powers conferred upon and delegated to the Board by the Articles and these Bylaws, and subject to the Articles and these Bylaws, the Board shall have the power to hire, engage, employ and compensate experts and professionals of any and all fields of endeavor in order to further the objectives and purposes of the Foundation. Such power shall rest in the sole, absolute and unfettered discretion of the Board to which such power is hereby specifically delegated. Further, the Board shall adopt, amend and rescind the Rules and Regulations to govern the operation and use of the Property and the Common Areas, including but not limited to the Country Club Facility and the Conservation Lands. The Rules and Regulations shall not conflict with the Founding Documents.

8.2. Qualifications. Each Director must be an active Residential Member in good standing, and must be at least eighteen (18) years of age. A Director who fails to meet these requirements, regardless of whether such Director continues to pay Assessments, dues and other charges, shall be deemed to have resigned from the Board.

8.3. Number and Term of Service. The Board shall consist of no less than seven (7) Directors, and no more than nine (9) Directors, as the Board may elect from time to time upon a Super Majority Vote of the Board. The number of Directors shall never be less than seven (7), nor more than nine (9), without an amendment to these Bylaws.

8.4. Nominations and Elections. The number of Directors to be elected by the Members shall be in accordance with Section 8.3 above. There shall be held at each Annual Members' Meeting an election of Directors. A Director may serve no more than two (2) successive three (3) year terms, and no more than a total of six (6) years in any event, after which such Director shall not be permitted to serve for the next succeeding 3-year period. The Board shall appoint a Nominating Committee, which Nominating Committee may include the entire Board, a subset of the Board, non-Board Members or some combination of Board Members and non-Board Members, all as the Board may elect from time to time in its sole and absolute discretion. If the Board is not the Nominating Committee, the proposed slate of candidates shall be as the Board determines by the affirmative vote of a majority of the Board. No Member shall be entitled to be a candidate for election to the Board unless such candidate is nominated in writing to the Foundation, by such Member or by another Member with the nominee's written consent, within ten (10) days after the Board announces its approved slate of candidates. Nominations from the floor will not be allowed. The candidate(s) receiving the highest number of votes shall be declared elected; provided, however, a candidate may not be elected to the Board unless the candidate has received the affirmative vote of no less than sixty (60%) percent of the votes cast in the subject election. In the event any vacancy on the Board is not filled as a result of one (1) or more candidates receiving affirmative votes in an amount less than sixty (60%) percent of votes cast, then said Board seat(s) shall remain vacant, entitling the Board to fill the vacancy(ies) until the next Annual Members' Meeting, pursuant to the provisions of Section 8.5 hereof; provided, however, the Board shall not

have the power nor the authority to fill the vacant Board seat(s) with any candidate who failed to receive affirmative votes in an amount no less than sixty (60%) percent of votes cast in the subject election. Nothing herein shall prohibit the Nominating Committee from nominating an individual as a candidate to the Board who failed to receive the affirmative vote of sixty (60%) percent or more of votes cast in any previous election. In the election of Directors, there shall be appurtenant to each Membership as many votes for Directors as there are Directors to be elected. No Member may cast more than one (1) vote for any person nominated as Director, it being the intent hereof that voting for Directors shall be noncumulative.

8.5. Vacancies on the Board. If the office of any Director or Directors becomes vacant for any reason, a majority of the remaining Directors, though less than a quorum, shall promptly choose a successor, or successors who shall hold office until the next Annual Members' Meeting. At the next Annual Members' Meeting, the Members shall elect a person or persons to fill the remaining unexpired term, if any.

8.6. Removal of Directors. Any Director or all Directors may be removed with or without cause by a majority of the eligible Voting Members, either by a written petition or at any meeting called for such purpose. If a meeting is held or a petition is filed for the removal of more than one (1) Director, the question shall be determined separately as to each Director sought to be removed. If a Special Meeting is called by twenty-five percent (25%) of the Members for the purpose of the recall of a Director or Directors, the Notice of Meeting must be accompanied by a dated copy of the signature list stating the purpose of the recall effort. Such meeting must be held not less than fifteen (15) days nor more than thirty (30) days from the date that Notice of the meeting is given. The Board shall further have the right to remove a Director from the Board for cause upon a Super Majority Vote. For purposes of this Section 8.6, "cause" shall include, but not be limited to, a breach of fiduciary duty owed to the Foundation, self-dealing, accusations or conviction of a crime, actions in contradiction of the Founding Documents (inclusive of the Rules and Regulations), or behavior or conduct which reflects poorly on the Board or the Foundation, all as determined in the Board's reasonable discretion.

8.7. Organizational Meeting. The organizational meeting of a newly elected Board shall be held within ten (10) days of its election at such place and time as shall be fixed by the Directors at the meeting at which they were elected. Provided the organizational meeting is held directly following the Annual Members' Meeting, no further notice of the organizational meeting shall be necessary; provided, however, if not, notice of the organizational meeting shall be given in accordance with Section 720.303(2), *Florida Statutes*. All Directors shall attend the organizational meeting, either in person, telephonically or through electronic medium so long as all persons present can hear and speak to all other persons attending the meeting. If any Director fails or refuses to attend the organizational meeting, said organizational meeting shall adjourn and be re-convened at the next regularly or specially scheduled meeting of the Board.

8.8. Regular Meeting. Regular meetings of the Board shall be held at such time and place in either Collier County or Lee County, Florida as shall be determined from time to time by a majority of the Directors. Notice of regular meetings shall be given to each Director, personally or by mail, e-mail, telephone or telegram, at least five (5) days prior to the day named for such meeting.

8.9. Special Meetings. Special meetings of the Board may be called by the President and must be called by the Secretary at the written request of two-thirds (2/3) of the Directors. Not less than two (2) weeks' notice of a special meeting of the Board shall be given

to each Director, personally or by mail, e-mail, telephone or telegram, which notice shall state the time, place and purpose of the meeting.

8.10. Notice. Notice of all Board meetings shall be given to the Members in accordance with Section 720.303(2), *Florida Statutes*. By acceptance of a deed to a Lot, or by voting in favor of the adoption of these Bylaws, a Member shall be deemed to have consented to receipt of all notices hereunder through electronic means, subject to the right of a Member to later withdraw that consent by delivering written notice to the Foundation of the withdrawal of said consent at any time.

8.11. Waiver of Notice. Any Director may waive notice of a meeting before or after such 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.

8.12. Quorum of Directors. A quorum of the Board shall consist of the Directors entitled to cast a majority of the votes on the entire Board. Directors may participate in any meeting of the Board by any means 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 such meeting.

8.13. Vote Required. Except for those matters requiring a Super Majority Vote of the Board, as provided in the Founding Documents, and as defined in the Declaration, matters approved by a majority of the Directors present at a meeting at which a quorum is present shall constitute the official acts of the Board, except as may be otherwise specifically provided by applicable Laws, by the Articles or by the other Founding Documents. Directors may vote by proxy at Board meetings.

8.14. Presumption of Assent. 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.

8.15. Adjourned Meetings. If at any meeting of the Board there shall be less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present. At any meeting that takes place on account of a previously adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted. In the case of the adjournment of a meeting, no further notice of the adjourned meeting need be given unless otherwise determined by the Board.

8.16. The Presiding Officer. The Board shall by majority vote appoint the presiding Officer for meetings of the Board.

8.17. Directors' Fees and Reimbursement of Expenses. No compensation or fees shall be paid to the Directors for services as a Director. Directors may be reimbursed for any reasonable expenditures incurred for the benefit of the Foundation upon approval of the Board.

8.18. Minutes. Minutes of all meetings of the Board shall be kept in a businesslike manner and be available for inspection by Members and Directors at all reasonable times. Minutes shall be maintained in written form or in another form that can be converted into written form within a reasonable time. A vote or abstention from voting in each matter voted upon for each Director present at a Board meeting must be recorded in the minutes.

8.19. Open Meetings. Meetings of the Board shall be open to all Members and Members shall have the right to speak for at least three (3) and no longer than five (5) minutes on any matter placed on the agenda by petition of the Members. The Board may adopt written reasonable rules concerning the right of Members to speak and governing the frequency, duration, and other manner of Member statements. The Board may also hold closed meetings to the extent permitted by applicable Laws, including, but not limited to, when the discussion at a meeting is governed by attorney-client privilege. In the event a Member not serving as a Director or not otherwise invited by the Directors to participate in a meeting attempts to become more than a mere observer at the meeting or conducts himself in a manner detrimental to the carrying on of the meeting, then upon the majority vote of the Board, the Board may expel said Member from the meeting by any reasonable means which may be necessary to accomplish said Member's expulsion. The Board shall have the right to exclude from any meeting of the Board any person who is not able to provide sufficient proof that he is a Member or a duly authorized representative, agent or proxy holder of a Member, unless said person has been specifically invited by any of the Directors to participate in such meeting.

8.20. Permitted Actions. Any action required or permitted to be taken at a meeting of the Directors may be taken without a meeting if a consent in writing, specifically setting forth the action to be taken, shall be signed by all the Directors entitled to vote with respect to the subject matter thereof and such consent shall have the same force and effect as a unanimous vote of the Directors; provided, however, whenever Assessments are to be considered or when rules that regulate the use of the Property may be adopted, amended or revoked, they may be considered only at a meeting of the Directors properly noticed to all the Members in accordance with Section 720.303(2), *Florida Statutes*, which requires at a minimum that: (i) written notice containing a description regarding the nature of Assessments to be considered or levied be provided to all Members at least fourteen (14) days before such meeting of the Board; (ii) written notice containing a description regarding the nature of any Special Assessments to be considered or levied be mailed, delivered or electronically transmitted to all Members and posted conspicuously on the Property not less than fourteen (14) days before such meeting of the Board; or (iii) written notice containing a statement that changes to the rules regarding the use of the Property will be considered, adopted, amended or revoked be mailed, delivered or electronically transmitted to all Members and posted conspicuously on the Property not less than fourteen (14) days before such meeting of the Board.

Section 9 Officers

9.1. Officers. The Officers shall be a President, one (1) or more Vice Presidents, a Treasurer and a Secretary, all of whom shall be elected by the Board at its first meeting following the Annual Members' Meeting, and they shall serve one (1) year terms in accordance with the procedures set forth in these Bylaws. The Board shall, from time to time, appoint such other Officers and designate such Officers' powers and duties as the Board shall deem necessary to manage the affairs of the Foundation. If the Board so determines, there may be more than one (1) Vice President, an Assistant Secretary, and an Assistant Treasurer. Any two (2) or more offices may be held by the same person except that the offices of President and Secretary may not be held by the same person.

9.2. President. The President shall be the chief executive Officer, shall have general and active management of the business of the Foundation, and shall see that all orders and resolutions of the Board are carried into effect. The President shall execute bonds, mortgages and other contracts requiring the seal of the Foundation, except where such are permitted by applicable

Laws to be otherwise signed and executed, and the power to execute is delegated by the Board to some other Officer or agent of the Foundation.

9.3. Vice President. The Vice Presidents, if more than one, in the order of their seniority, 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 shall prescribe. In the event of the resignation of the President, the Senior Vice President (if more than one) shall act as President until the Board fills the office of the President. In the absence of both the President and any Vice President, the Board shall select a chairman to perform the duties of the President.

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

9.5. Treasurer. The Treasurer shall have the custody of the Foundation funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Foundation and shall deposit all monies and other valuable effects in the name and to the credit of the Foundation in such depositories as may be designated by the Board. The Treasurer shall disburse the funds of the Foundation, making proper vouchers for such disbursements, and shall render to the President and Directors, at the regular meeting of the Board, or whenever they may require it, an account of all of the Treasurer's transactions as Treasurer and of the financial condition of the Foundation. At the Annual Members' Meeting, the Treasurer shall make a report of all receipts and disbursements for the preceding and current fiscal year, and of all outstanding obligations of the Foundation. Any of the foregoing duties may be performed by an Assistant Treasurer, if any has been designated.

9.6. Compensation of Officers. No compensation shall be paid to any Member for service as an Officer. This provision does not preclude the Board from employing Officers as employees of the Foundation.

9.7. Removal of Officers. All Officers serve at the pleasure of the Board. Any Officer may be removed by a majority vote of the Board.

9.8. Vacancy of Office. A vacancy in office shall be filled by the Board as soon as is practicable following the creation of such vacancy.

Section 10 Committees

The Board shall have the power to appoint committees ("Committees"), as the Board deems necessary in its sole and absolute discretion, to advise the Board on Foundation matters. The chairman and members of any Committee related to the Country Club Facilities must be a Participating Member.

Section 11 Fiscal Management

11.1. Depository. The Foundation shall maintain its accounts in such financial institutions in the State of Florida as shall be designated from time to time by the Board.

Withdrawal of monies from such accounts shall only be by such persons as are authorized by the Board. The Board may invest Foundation funds in interest-bearing accounts, money market funds, certificates of deposit, U.S. Government securities and other similar investment vehicles.

11.2. Accounts of the Foundation. The Foundation shall maintain a set of accounting books in which there shall be an account for each Member. Such account shall designate the name and mailing address of each Member and the due date of any amounts due by such Member, all amounts paid and the balance due.

11.3. Budget. The Board shall cause the Foundation's employees to prepare an annual budget for Foundation expenses for each fiscal year and a copy of the proposed budget shall be presented to the Members no less than thirty (30) days in advance of the meeting at which the budget will be voted into effect by the Board. The proposed budget shall be detailed and shall show the amounts budgeted by account and expense classifications and shall include the proposed dues and charge structure necessary to support the budget.

11.4. Audits. A formal certified audit of the accounts of the Foundation shall be made by a Certified Public Accountant on an annual basis, and a copy of such audit report shall be available to all Members.

11.5. Fidelity Bonds. The Treasurer, and all other Officers who are authorized to sign checks, and all Directors and employees of the Foundation handling or responsible for Foundation funds, may be bonded in such amounts as may be required by the Board. The premiums on such bonds shall be paid by the Foundation.

Section 12 Assessments

12.1. Authority to Levy Assessments. The Foundation shall have the power to determine, levy and collect Assessments against Members in accordance with the Declaration. Any such Assessments, together with interest thereon, and costs of collection, including attorneys' fees and costs, shall be a charge and continuing lien on each Lot and shall be a charge and continuing lien against the Membership held by Member. Each such Assessment, together with interest thereon, and costs of collection, including attorneys' fees and costs, as hereinafter provided, shall also be the personal obligation of the person who is the Member at the time the Assessment fell due. Each Member personally covenants and agrees to pay any such obligations and such obligations shall survive any conveyance of a Lot or transfer of a Membership subject to the terms and conditions provided herein.

12.2. Administration. The purpose, exemption from, and nonpayment of Assessments, and the establishment of annual budgets, shall be as set forth in the Declaration.

12.3. No Waiver or Release. The failure or delay of the Board to prepare or adopt the annual budget for any fiscal year shall not constitute a waiver or release in any manner of the Member's obligation to pay any Assessment as herein provided, whenever the same shall be determined. In the absence of an annual budget, each Member shall continue to pay the Assessment as established for the previous year.

Section 13 Lien Rights

13.1. Right to Impose Lien. Subject to the provisions of the Founding Documents, if any Member fails to pay any Assessment, or make any other payment herein required to be paid

to the Foundation, within thirty (30) days of the date of invoice by the Foundation, then the Foundation is hereby granted a lien as set forth in Section 9.4 of the Declaration.

13.2. No Relief from Liability. No Member may waive or otherwise avoid liability for the payments provided for herein by non-use or abandonment of the Member's Lot or Membership.

Section 14 Rules and Regulations

14.1. Rules and Regulations. The Board shall adopt and amend Rules and Regulations and such other policies and procedures as the Board may determine from time to time. Copies of the Rules and Regulations shall be furnished or made available to each Member.

14.2. Nuisance. In addition to the use restrictions contained in the Declaration, no Member shall use or permit a Lot or the Common Areas to be used in any manner which would be unreasonably disturbing, detrimental or a nuisance to the occupant of another Lot and/or Members which would not be consistent with the maintenance of the highest standards for the Development, nor permit such Lot or Common Areas to be used in a disorderly or unlawful way. The use of each Lot and the Common Areas shall be consistent with existing applicable Laws and the Founding Documents, and occupants, invitees and licensees shall at all times conduct themselves in a peaceful and orderly manner. The Board shall be the sole judge of what constitutes improper conduct or conduct likely to endanger the welfare, safety, harmony or good reputation of the Development and the Foundation.

14.3. Maintenance and Appearance. Each Member shall maintain his Lot(s), and all Improvements appurtenant to such Lot(s), including roof structure and appearance, in good condition and repair at all times. Should any Member at any time fail or refuse, after written notice from the Foundation, to make repairs which in the opinion of the Board need to be made, the Foundation may make such repairs or otherwise perform actions necessary to bring the Lot and/or Improvements into compliance as detailed in such written notice from the Foundation, and may enter, or cause its agents to enter, upon the premises for such purpose, and all expenses incurred by the Foundation in doing so shall be paid by such violating Member. A Member who is also an Owner shall be liable for all costs incurred in any such action and the total costs thereof shall be a lien on the Lot, which lien may be foreclosed in the same manner as is provided herein for the enforcement of Assessment liens.

14.4. Common Areas. Common Areas shall be used only for the purposes intended and in accordance with the Declaration.

Section 15 Enforcement

15.1. Fines. The Foundation may levy reasonable fines, pursuant to the Founding Documents and in accordance with *Florida Statutes*, Chapter 617, (the "**Florida Not-For-Profit Corporation Act**") and Chapter 720 (the "**Homeowners' Association Act**" and, together with the Florida Not-For-Profit Corporation Act, both in their present form or as they may be amended, superseded, or otherwise modified from time to time, including any and all successor legislation thereto, any rules and regulations promulgated thereunder, and interpretation thereof by any governmental authority with the force of law, collectively, the "**Acts**"), against any Member, Family Members, or Member's tenant, guest, or invitee for the failure of the Member or its occupant, licensee, or invitee to comply with any provision of the Founding Documents. An

additional fine may be levied by the Board for each day of a continuing violation in accordance with the Acts.

15.2. Suspensions. Pursuant to the Founding Documents and in accordance with the Acts, the Foundation may suspend, for a reasonable period of time, the right of a Member, a Family Member, or a Member's tenant, guest, or invitee, to use the Common Areas for the failure of the member or its occupant, licensee, or invitee to comply with any provision of the Founding Documents. However, a suspension may not prohibit a Member or other resident of a parcel from having vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to the right to park.

15.3. Hearing Committee. Except as provided in Section 15.4, a fine or suspension may not be imposed by the Board without at least fourteen (14) days written notice to the person sought to be fined or suspended and an opportunity for a hearing before a hearing committee, which shall consist of at least three (3) Members appointed by the Board who are not either Officers, Directors, or employees of the Foundation, or the spouse, parent, child, brother, or sister of an Officer, Director, or employee ("Hearing Committee"). Such notice shall provide: (i) the summary of the violation; (ii) the fact that the Board has decided to levy a fine or suspension; (iii) a period of not less than fourteen (14) days within which the Member may submit a written request for a hearing; and (iv) a statement that the fine or suspension shall become effective unless a hearing is requested. The Hearing Committee shall set the date, time, and place of the hearing which shall be held within twenty (20) days of the receipt of a written notice requesting a hearing. Hearings shall be informal and shall provide the Member with an opportunity to show cause why the fine or suspension should not be imposed. The Foundation shall not be required to provide evidence or testimony at the hearing. If the Hearing Committee, by majority vote, does not approve a Board proposed fine or suspension, it may not be imposed. The role of the Hearing Committee is limited to determining whether to confirm or reject the fine or suspension levied by the Board. If the Board imposes a fine or suspension which is confirmed by the Hearing Committee, the Foundation shall provide written notice of such fine or suspension by mail or hand delivery (or electronic delivery to the fullest extent permitted under the Acts) to the Member and, if applicable, to any Family Members, tenant, licensee, or invitee of the Member.

15.4. Exceptions to Notice and Hearing Requirements. Notwithstanding anything to the contrary in Section 15.3, if a Member is more than ninety (90) days delinquent in paying any fee, fine, or other monetary obligation due to the Foundation, it may suspend without notice and hearing, either or both: (i) the rights of the Member, Family Members, tenant, licensee, or invitee of the Member to use the Common Areas; and (ii) the voting rights of a Member until the fee, fine, or other monetary obligation is paid in full. Suspensions under this Section 15.4 must be approved by the Board at a properly noticed meeting and, upon approval, the Board shall notify the Member and if applicable, the Family Members, tenant, licensee, or invitee of the Member.

Section 16 Amendment

Amendments to these Bylaws shall be proposed and adopted in the following manner:

16.1. Proposal of Amendments. Amendments to these Bylaws shall be proposed by a Super Majority Vote of the Board and adopted by two-thirds (2/3) of the votes cast by Members, who are voting in person or by proxy, at any Annual Members' Meeting or Special Meeting called for that purpose. The full text of any proposed amendments shall be included in the Notice of any such Annual Members' Meeting or Special Meeting and the voting requirements specified for any action under any provisions of these Bylaws shall also apply to any amendment

of such provisions, and no amendment shall be effective which is in contravention of the duties, responsibilities or obligations of the Foundation or the Members as provided in the Declaration.

16.2. Amendment Effective Date. An amendment shall become effective at the time specified in such amendment. Each amendment shall be filed with the Secretary of State and a certified copy recorded in the Public Records of Collier County and Lee County, Florida, and in any other applicable county.

16.3. Certification of Amendments. A copy of each amendment shall be attached to a certificate that such amendment was duly adopted, which certificate shall be executed by the appropriate Officer with the formalities of a deed.

Section 17 Transfer of Ownership. No Owner, or any other Person who acquires an interest in and to any Lot, shall dispose of or lease such Lot without approval of the Foundation in accordance with the Declaration.

Section 18 Construction

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, whenever the context so requires.

Section 19 Severability

Should any portion hereof be void or become unenforceable, the remaining provisions of this instrument shall remain in full force and effect.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Foundation has caused these presents to be executed in its name and its seal to be affixed hereto as of the day and year certified below.

(Corporate Seal)

QUAIL WEST FOUNDATION, INC., a
Florida not for profit corporation

By: _____
Angelo J. Rossi, as President

ATTEST:

Steven T. Norby, Secretary

**CERTIFICATE OF AMENDMENT
QUAIL WEST FOUNDATION, INC.
BYLAWS**

THE UNDERSIGNED CERTIFY the attached Fourth Amended and Restated Bylaws of Quail West Foundation, Inc., was duly adopted by the Members of the Foundation, at a meeting called for that purpose on _____.

IN WITNESS WHEREOF, the Foundation has caused these presents to be executed in its name and its seal to be affixed hereto as of the day and year certified below.

Witnesses:

(Corporate Seal)

QUAIL WEST FOUNDATION, INC., a
Florida not for profit corporation

Witnesses:

By: _____

Angelo J. Rossi, as President

ATTEST:

Steven T. Norby, Secretary

STATE OF FLORIDA)
) SS:
COUNTY OF)

The foregoing instrument was acknowledged before me by means of () physical presence or () online notarization, this ___ day of _____ 202_, by _____, as _____ of _____, on behalf of the company. He () is personally known to me or () has produced _____ as identification.

NOTARY PUBLIC, State of Florida
Print Name:
Commission No.