

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

**AMENDED AND RESTATED ARTICLES OF INCORPORATION  
OF  
SPANISH WELLS UNIT THREE HOMEOWNERS ASSOCIATION, INC.**

Spanish Wells Unit Three Homeowners Association, Inc., is a Florida not-for-profit corporation which was originally named Spanish Wells Master Association, Inc. The Articles of Incorporation were originally filed under the name of Spanish Wells Master Association, Inc., on July 16, 1991. The name was changed to Spanish Wells Unit Three Homeowners Association, Inc. by an amendment filed on June 10, 1996. The Articles of Incorporation for Spanish Wells Unit Three Homeowners Association, Inc. are hereby amended and restated in their entirety. All amendments included herein have been adopted pursuant to Section 617.1002, Florida Statutes, and there is no discrepancy between the corporation's Articles of Incorporation as heretofore amended and the provisions of these Amended and Restated Articles of Incorporation other than the inclusion of amendments adopted pursuant to Section 617.1002, Florida Statutes, and the omission of matters of historical interest. The Amended and Restated Articles of Incorporation of Spanish Wells Unit Three Homeowner's Association, Inc., shall henceforth be as follows:

**ARTICLE I**

**NAME.** The name of the corporation is Spanish Wells Unit Three Homeowners Association, Inc., (hereinafter "Association").

**ARTICLE II**

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

**ARTICLE III**

**PURPOSE AND POWERS.** The Association will not permit pecuniary gain, profit, or distribution of its income to its members, Directors, or Officers. It is a non-profit corporation formed for the purpose of establishing a corporate residential community homeowners association that is subject to the Declaration of Protective Covenants Declaration originally recorded in the Public Records of Lee County, Florida, at Official Records Book 2199, at Page 1697, *et seq.*, and as amended, has the powers described herein. The Association shall have all of the common law and statutory powers of a Florida corporation not-for-profit consistent with these Articles, the Bylaws, and with said Declaration, and shall have all of the powers and authority reasonably necessary or appropriate for the operation and regulation of a residential community, subject to said recorded Declaration, as it may from time to time be amended, including, but not limited to, the power:

- (A) To fix, levy, collect, and enforce payment by any lawful means, all charges, assessments, or liens pursuant to the terms of the Declaration, and to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the corporation, including all license fees, taxes, or governmental charges levied or imposed against the property or the corporation;
- (B) To make, amend, and enforce reasonable rules and regulations governing the use of the common areas and the operation of the Association;
- (C) To sue and be sued, and to enforce the provisions of the Declaration, the Articles, the Bylaws, and the reasonable rules of the Association;
- (D) To contract for the management and maintenance of the common areas and to delegate any powers and duties of the Association in connection therewith, except such as are specifically required by the Declaration to be exercised by the Board of Directors or the membership of the Association;
- (E) To employ accountants, attorneys, architects, and other professional personnel to perform the services required for proper operation of the properties;
- (F) To dedicate, sell, or transfer all or any part of the common areas to any public agency, authority, or utility for such purposes, and subject to such conditions as may be agreed to by the members.
- (G) To borrow money, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred if first approved by the Board of Directors.
- (H) To maintain, repair, replace, and operate the property and business of the Association;
- (I) To provide insurance upon the property of the Association and its Board of Directors;
- (J) To acquire (by gift, purchase, or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, or otherwise dispose of real or personal property in connection with the affairs of the corporation;
- (K) To grant, modify, or move easements;
- (L) To exercise any and all powers, rights, and privileges which a corporation organized under Chapters 617 and 720 of the Florida Statutes may now or hereafter have or exercise, subject always to the Declaration and as amended from time to time.

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

#### **ARTICLE IV**

##### **MEMBERSHIP AND VOTING RIGHTS.**

(A) No person except an owner is entitled to membership in the Association. "Owner" means the record owner of legal title to the Lot.

(B) Every owner who holds record title to a residential Lot that is subject to assessment under the Declaration shall be a member of the Association. A membership may not be transferred except by transfer of record title to the residential Lot to which it is appurtenant. An owner of more than one residential Lot is entitled to one membership for each residential Lot to which the owner holds title.

(C) Each residential Lot is entitled to one (1) vote. If more than one person holds record title to a residential Lot, there shall only be one vote, exercised as the owners determine among themselves.

#### **ARTICLE V**

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

#### **ARTICLE VI**

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

#### **ARTICLE VII**

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

(A) Proposal. Amendments to these Articles shall be proposed by a majority of the Board or upon petition of one-tenth (1/10) of the voting interests, and shall be submitted to a vote of the members not later than the next annual meeting.

(B) Vote Required. Except as otherwise required by Florida law or as provided elsewhere in these Articles, these Articles may be amended if the proposed amendment is approved by the affirmative vote of at least a majority of the voting interests of the Association.

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

## **ARTICLE VIII**

### **DIRECTORS AND OFFICERS.**

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

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

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

## **ARTICLE IX**

### **INDEMNIFICATION.**

(A) Indemnity. The Association shall indemnify any Director, Officer, or committee member who was or is a party to, or is threatened to be made a party to, any threatened, pending, or contemplated action, suit, or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that he is or was a Director, Officer, or committee member of the Association, against expenses (including attorney's fees and appellate attorney's fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit, or proceeding, unless (1) a Court of competent jurisdiction finally determines, after all appeals have been exhausted or not pursued by the proposed indemnitee, that he did not act in good faith or in a manner he reasonably believed to be in or not opposed to the best interest of the Association, and with respect to any criminal action or proceeding, that he had reasonable cause to believe his conduct was unlawful, and (2) such Court also determines specifically that indemnification should be denied. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner that he

reasonably believed to be in or not opposed to the best interest of the Association, and with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful. It is the intent of the membership of the Association, by the adoption of this provision, to provide the most comprehensive indemnification possible to their Directors, Officers, and committee members as permitted by Florida law.

(B) Defense. To the extent that a Director, Officer, or committee member of the Association has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to above, or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses (including attorney's fees and appellate attorney's fees) actually and reasonably incurred by him in connection therewith.

(C) Advances. Expenses incurred in defending a civil or criminal action, suit, or proceeding shall be paid by the Association in advance of the final disposition of such action, suit, or proceeding, upon receipt of an undertaking by or on behalf of the affected Director, Officer, or committee member to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Association as authorized by this Article IX.

(D) Miscellaneous. The indemnification provided by this Article IX shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any Bylaw, agreement, vote of the members, or otherwise, and shall continue as to a person who has ceased to be a Director, Officer, or committee member and shall inure to the benefit of the heirs and personal representatives of such person.

(E) Insurance. The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was a Director, Officer, committee member, employee, or agent of the Association, or a Director, Officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the provisions of this Article IX.

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

## **ARTICLE X**

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