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SALVATORI & WOOD

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N44113

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Amended And Restated Art.

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**THIRD AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
QUAIL WEST FOUNDATION, INC.
(a Florida Corporation not for profit)**

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MGF Quail West, LLC, a Florida limited liability company, Managing Member of Quail West Development Company, LLC, f/k/a QW 2009 INVESTORS, LLC, a Florida limited liability company, successor in interest to GINN-LA QUAIL WEST LTD. LLLP, a Georgia limited liability limited partnership (the "Declarant"), as the sole voting member and sole member of QUAIL WEST FOUNDATION, INC., a Florida corporation not for profit, hereby amends and restates in their entirety the Amended and Restated Articles of Incorporation, filed November 7, 1991, with the Secretary of State, State of Florida, bearing Document Number N44113 and by these Third Amended and Restated Articles of Incorporation (these "Articles") hereby certifies 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 Amended and Restated Declaration and General Protective Covenants for Quail West, as amended and 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;

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- (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 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 of the Foundation (the "Bylaws") and the Foundation Rules and Regulations to effectuate the purposes for which the Foundation is organized and to enforce the Bylaws and the Foundation Rules and Regulations governing the use of the Common Area 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 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 and as directed by Declarant, or 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; provided, however, until Turnover, no such dedication, sale or transfer shall be effective unless an instrument has been signed by Declarant agreeing to such dedication, sale or transfer;
- (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 in accordance with Article 9.3(a) of the Declaration and 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;

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- (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 of Directors 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 of Directors 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 of Directors and other policies of insurance upon the Property and to use the proceeds from such policies to effectuate Foundation purposes;
- (xv) To approve transfer of ownership of a Lot 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 seven (7) classes of Voting Membership: Class A, Class B, Class C, Class D, Class E (subject to Section 5.1(e) of these Articles and the terms, conditions and provisions the Founding Documents), Class Q, and Founders. The Foundation shall have the following five (5) classes of Nonvoting Membership: House, Social, Interim, Annual, and Honorary. Declarant reserves the right to amend the Founding Documents and to create and define such additional classes of Membership as Declarant, in its sole discretion, may elect. 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".

- (a) Class A Membership. The Class A Member shall be an Owner who concurrently owns both a Lot and a "Full Golf Membership". The terms, conditions, rights and obligations of Class A Membership shall be as set forth in the Declaration. A Class A Member shall be required to pay annual dues and special Assessments in the amount and manner as established by the Board for Class A Members.
- (b) Class B Membership. The Class B Member shall be Declarant, and shall be the sole voting Member of the Foundation (except for the right of the Members to vote to elect non-Declarant representative Board members) until the occurrence of either of the

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following events ("Turnover"): (i) Thirty (30) days after the date upon which ninety percent (90%) of the Lots in the Development have been sold to third-party purchasers other than Declarant, or (ii) Declarant delivers to the Foundation written notice that Declarant irrevocably terminates and cancels its Class B Membership. In the event of termination by Declarant as set forth in (i) above, Declarant shall become a convertible Class Q Member as to each Lot owned by Declarant (which Lots shall each have a convertible Class Q Full Facility Membership which shall run with each such Lot) and shall be entitled to Class Q Membership privileges as set forth in the Declaration.

- (c) Class C Membership. The Class C Member shall be the owner of a Full Golf Membership but not the Owner of a Lot. The terms, conditions, rights and obligations of Class C Membership shall be as set forth in the Declaration. A Class C Member shall be required to pay the Membership Fee for the Full Golf Membership and pay annual dues and special Assessments in the amount and manner as established by the Board for Class C Members.
- (d) Class D Membership. A Class D Member shall be the Owner of a Lot who is not concurrently the Owner of a Membership. The terms, conditions, rights and obligations of Class D Membership shall be as set forth in the Declaration. A Class D Member shall be required to pay special Assessments in the amount and manner as established by the Board for Class D Members.
- (e) Class E Membership. A Class E Member shall be the owner of a Full Golf Membership which may be repurchased by the Declarant, but not the Owner of a Lot. The terms, conditions, rights and obligations of Class E Membership shall be set forth in the Declaration. A Class E Member is required to pay an initial Membership Fee for the Class E Membership and shall be required to pay annual dues and special Assessments in the amount and manner as established by the Board for Class E members.
- (f) Founders Membership. The Founders Membership shall no longer be offered. Any Founders Memberships existing on the date of the recording of this Amendment shall remain in effect and shall have the same rights then existing, including the following: (i) Founders Members shall have the same rights as Full Golf Members; (ii) Founders Members shall be required to pay special Assessments and annual dues in the same amount and manner as established for Class C Members; (iii) Founders Memberships shall run in perpetuity and shall be assignable to their heirs or nominees; and (iv) Founders Memberships shall survive the death of the Founders Member and is subject to devise or inheritance upon the death of the Founders Member and any successors thereafter.
- (g) Declarant Guests. In consideration of Declarant's efforts to continue promoting the development of Quail West, and recognizing the need of Declarant in this regard, there is hereby reserved unto Declarant the right, in its sole and absolute discretion, to designate Declarant Guests as Declarant should so elect, without notice to the Foundation. A Declarant Guest shall have the right to use the Country Club Facility to the extent designated by Declarant (up to the rights granted to a Full Golf Member) for a period to be designated by Declarant, in its sole and absolute discretion. Each Declarant Guest shall be required to pay individual expenses and to comply with the Founding Documents to the same extent as a Full Golf Member, except that a Declarant Guest shall not be required to pay a Membership Fee, annual dues or Assessments. No Declarant Guest shall have the right to sell, assign, or otherwise transfer any of its rights and privileges as

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a Declarant Guest. A Declarant Guest is not a Voting Member of the Foundation and accordingly has no voting rights.

- (h) Interim Membership. All current Interim Memberships shall terminate on December 31, 2005. Beginning January 1, 2006, Declarant and the Board reserve the right to offer an Interim Membership to potential purchasers of Lots. An Interim Membership shall only be provided to a potential purchaser of a Lot and shall terminate upon the earlier of (i) the closing on such Lot or (ii) the early termination of the purchase contract for such Lot in the event the closing of the Lot does not occur. Each Interim Member shall pay a Membership Fee and dues in an amount to be determined by the Board. An Interim Member shall have all of the rights, privileges and obligations to use the Country Club Facility to the extent designated by the Declarant (up to the rights granted to a Full Golf Member), for a period to be designated by the Declarant, in its sole discretion, including the obligations to pay individual expenses incurred. No Interim Member shall have the right to sell, assign, or otherwise transfer any of its rights and privileges as an Interim Member. An Interim Member is not a Voting Member of the Foundation and accordingly has no voting rights.
- (i) Honorary Membership. Declarant 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 Country Club Facility and will enhance the enjoyment and quality of the Membership of others. In consideration of the aforementioned, until Turnover, Declarant may confer upon individuals it determines to be such assets an Honorary Membership in the Foundation. No more than six (6) such Honorary Memberships shall be outstanding at any one time. Declarant shall have the right, in its sole and absolute discretion, to designate a Person as an Honorary Member by written notice to the Foundation, and to revoke any such designation and name a replacement Person as an Honorary Member by written notice to the Foundation. The Honorary Member shall not be required to pay a Membership Fee, annual dues or special Assessments, but shall have all the rights, privileges and other obligations of a Full Golf Member, including the obligation to pay individual expenses incurred. An Honorary Member shall have the right to use all of the facilities to the same extent as a Full Golf Member. Each Honorary Membership shall terminate at the end of the Calendar Year in which Turnover occurs, unless the Board, elected thereafter by the Membership, votes to continue any such Honorary Membership. Following Turnover, the Board shall have the right to confer Honorary Membership designations on such Persons as it should so elect, in accordance with and subject to the provisions contained herein. 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 Member is not a Voting Member of the Foundation and accordingly has no voting rights.
- (j) Class Q Full Facility Membership and House Membership (formerly known as Class N Membership/Sports Membership). The Class N Membership and the Sports Memberships shall no longer be offered. Any Class N Membership or Sports Membership existing on the date of the recording of this Amendment shall be converted to a House Membership. A House Membership shall include the Class Q Full Facility Membership (also referred to as Class Q-H) and shall have the same rights of a Class N Membership or Sports Membership then existing, including the following:

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- (i) A Class Q Full Facility Member, House Member, Class N Member, and Sports Member shall have full use of the Country Club Facility except for use of the Golf Facility; provided, however, these Members shall be entitled to full use of the Golf Facility from May 16 through October 15th of each year. These Members shall be required to pay any cart fees applicable for play during this period.
- (ii) The Golf Facility will not be available to Class Q Full Facility Members, House Members, Class N Members and Sports Members from October 16th through May 15th. During such period, these Members may only use the Golf Facility as a guest of a Full Golf Member if all appropriate guest fees are charged to the host Full Golf Member's club account.
- (iii) The Class Q Full Facility Member, House Member, Class N Member and Sports Member shall not be entitled to a refund of its Membership Fee but shall be entitled to apply the amount paid for its Membership Fee towards the conversion to and acquisition of Full Golf Membership, in accordance with the terms and conditions set forth herein, if such Membership is available.
- (iv) The Class Q Full Facility Member and those who were House Members and Class N/Sports Members prior to the date of this Amendment and End Users as defined herein, shall also be responsible for paying annual dues in the amount and manner as established by the Board. Notwithstanding the foregoing, the dues, fees and assessments allocable to Class Q Full Facility Membership owned by Declarant/Master Developer shall be limited to the maximum amount of Assessments due from Declarant/Master Developer, as provided in the Declaration.
- (v) The Class Q Full Facility Membership shall only be available to Master Developer Lot Owners in Quail West (referred to as Class Q-H). All other House Members, Class N Members, and Sports Members shall be House Members (referred to as Class H Members).
- (k) Social Membership. The Social Membership shall be available to owners and non-Owners, as determined by the Board. A Social Member shall be entitled to full use of the Country Club Facility except for the Golf Facility; provided, however, a Social Member may use the Golf Facility as a guest of a Full Golf Member if all appropriate guest fees are charged to the host Full Golf Member's club account. The Social Member shall be required to pay a Membership Fee, annual dues and special Assessments in the amount and manner as established by the Board for Social Members. The Social Membership shall be offered at the discretion of the Board and shall be NonVoting.
- (l) Suspension and Revocation of Membership Rights. No Member shall have any vested right or privilege in the functions or affairs of the Foundation or the Country Club Facility after such Member's Membership ceases or while such Membership is not in good standing. A Member shall be considered "not in good standing" during any period of time in which it is delinquent in the payment of any Assessment, or Membership Fee or other dues or charges of the Country Club Facility, or in violation

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of any provision of the Declaration, or of the Rules and Regulations. While not in good standing, a Member shall not be entitled to vote or use the Country Club Facilities, or exercise any other rights or privileges of a Member of the Foundation. The Foundation may suspend the voting rights of a Member for non-payment of assessments or other charges or fees that are delinquent in excess of ninety (90) days. In addition to the foregoing, in the event that an owner of a Membership (unless such Membership is appurtenant to a Lot) fails to pay any Assessment, or Membership Fee or other dues or charges for a period of one hundred eighty (180) days, such Member's Membership may be revoked in accordance with the provisions hereof:

- (i) Prior to the Revocation of a Membership, the Board of Directors, or its delegate shall serve the Member with written notice which shall provide: (1) the nature of the violation, (2) the fact that the Board has decided to consider revocation of the Membership, (3) a period of not less than fourteen (14) days within which the alleged violator may present written request for a hearing, and (4) a statement that the revocation shall become effective unless a hearing is requested or, unless such Member pays all past due Assessments, or Membership Fees or other dues or charges of any type levied by the Foundation within thirty (30) days.
- (ii) If a hearing is requested within the allotted fourteen (14) day period, the revocation shall be stayed pending the hearing, which shall be held before the Board of Directors or a committee appointed by the Board, comprised of at least three (3) members (the "Appeals Committee"). The Board or the Appeals Committee shall set the date, time and place of the hearing which shall be held within twenty (20) days of the receipt of the notice requesting the hearing. Hearings shall be informal and shall provide the Member with an opportunity to explain or resolve the issue. The Foundation shall not be required to provide evidence or testimony at the hearing.
- (iii) Following the presentation of testimony and evidence, the Board or the Appeals Committee shall decide, by a vote of a majority of the Board or Appeals Committee members present whether to revoke such Membership or take another action with regard to the membership. The decision of the Board or the Appeals Committee shall be final and such Member shall not have the right to reinstate a revoked Membership in the future.
- (iv) A Member whose Membership has been revoked shall not be entitled to any refund or reimbursement for any sums paid to acquire or maintain the Membership. In the event the Foundation resells the Membership, the Foundation shall be solely entitled to the proceeds of such sale.
- (m) Voting. The right to vote on matters relating to the Foundation and/or the Country Club Facility is determined by the class of Membership a Member holds. Members who are eligible to vote, were in good standing, and who's membership has not been suspended or revoked may vote on matters as follows:

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Matters Relating to the Foundation and/or the Country Club Facility	Matters Relating to the Foundation only	Matters Relating to the Country Club Facility only
1. Class A 2. Class B 3. Class Q Full Facility	1. Class D	1. Class C 2. Founders 3. Class E

Prior to Turnover, Declarant shall have sole voting control of the Foundation and no Member shall be entitled to vote on any matters except for the Members right to vote to elect *non-Declarant representative Board members*. Prior to Turnover, the Board of Directors shall be composed of nine (9) members. Within ninety (90) days after Turnover, the number of members of the Board shall be reduced from nine (9) members to seven (7) members, and the Foundation shall hold an election in which Membership shall elect the non-Declarant representative Board of Directors of the Foundation and shall then assume control of the Foundation, provided, however, the member-elected Board Members at Turnover shall be allowed to fulfill their remaining terms of office.

Following Turnover, until ninety five percent (95%) of the Master Developer Lots in the Development have been sold to End Users, Master Developer shall have the right to designate three (3) members of the seven-member Board. Further, ninety (90) days after the date upon which ninety-five percent (95%) of the Master Developer Lots in the Development have been sold to End Users, the Master Developer shall retain the right to designate two (2) total members of the seven-member Board and the Membership shall elect five (5) members of the seven-member Board. Finally, ninety (90) days after the date upon which ninety-seven percent (97%) of the Master Developer Lots in the Development have been sold to End Users, the Master Developer shall relinquish all rights to designate members of the Board and the Membership shall elect all seven (7) members of the seven-member Board.

After Turnover, each Voting Member shall be entitled to one (1) vote for each Lot owned or each Membership held by such Voting Member, as applicable. Thus, a lot owner who also has a Country Club Facility Membership shall have only one (1) vote for both the Lot owned and the Membership, regardless of whether the membership is appurtenant or non-appurtenant. However, where such Voting Member owns more than one (1) Lot, such owner shall have one (1) vote per Lot owned. When more than one (1) Person holds an interest in any Lot or Membership, as applicable, such Persons shall decide among themselves and advise the Foundation, in writing, which Person shall be designated as the sole Member, and only such designated Person shall qualify for Membership or continuation of Membership.

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

Notwithstanding anything to the contrary contained in this Article 5, for so long as Declarant holds a Class B Membership, no Member (other than Declarant) shall be allowed to vote on any Foundation or Country Club Facility matters except for the right of the Members to vote to elect non-Declarant representative Board members. After Turnover, each class of voting Member shall be allowed to vote as provided in this Article 5.

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Further, notwithstanding anything to the contrary contained in this Section 5.1, in addition to and subject to any other voting rights provided in this Section 5.1, an Owner of a Lot shall have the right to vote on matters relating to the Foundation and shall be considered a Voting Member for purposes hereunder.

(n) Annual Memberships. The Declarant reserves the right to offer annual memberships to individuals who do not own a Lot or Home in Quail West ("Annual Membership"). An Annual Member shall not be required to pay a Membership Fee or special Assessments, but shall have all the rights, privileges and other obligations of a Full Golf Member, including the obligation to pay individual expenses incurred and annual dues for the Country Club Facility in the same amount and manner as established by the Board for Class A Members. Each Annual Membership shall terminate one (1) year from the date of execution of the Membership Agreement, unless the Board votes to continue any such Annual Membership. No Annual Member shall have the right to sell, assign, or otherwise transfer any of its rights and privileges as an Annual Member. An Annual Member is not a Voting Member of the Foundation and accordingly has no voting rights.

(o) Lessee Privileges. A Member who leases his or her residence in Quail West for a period of at least thirty (30) consecutive days may designate the lessee of his or her Home as the beneficial user of the 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 Membership, the lessor Member will not have any Membership privileges but will continue to be obligated to pay dues with respect to the Membership. The Member will 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 Country Club Facility.

(p) Reciprocal Access Arrangements. The Board may, in its sole discretion, enter into reciprocal use privileges and access agreements with other clubs, as the Board determines appropriate from time to time. The Board and/or owners of the other clubs may charge Members such additional Membership deposit, dues, fees or charges for use of the facilities of the other clubs and/or charge members of the other clubs such Membership deposit, dues, fees or charges for use of the Country Club Facility, as they determine from time to time. The Board shall give the members of the other clubs such privileges as it determines from time to time, and the owners of the other clubs shall give Members such privileges as such owners of other clubs determine from time to time.

ARTICLE 6 MEMBERSHIP

6.1 Membership.

(a) Classes of Membership. Twelve (12) classes of Membership, as set forth above, have been or are hereby established which are 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) Family Members.

(i) Immediate Family Privileges. The spouse of a Member, and all unmarried children under the age of twenty-three (23), living in the home of a Member, attending school on a full-time basis or in the military (collectively, "Family Members" and, individually, "Family Member") shall have the right to use of the

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Membership and shall enjoy all of the rights and privileges of such Member ("Immediate Family Privileges"). The name of each 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 in the home, 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, "Family Member" shall also include any "Significant Other", which shall be defined as an individual living with a Member in the same household as a family unit. A Significant Other shall have the right to use the Country Club Facility 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 Members" shall include a Member's and such Member's spouse's or Significant Other's parents, adult children (who are not included as "Family Members" as defined hereinabove), grandparents, grandchildren and great-grandchildren. Each Extended Family Member shall have the right to use of the Country Club Facility 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 Facility 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.
- (c) Membership Fees. As set forth in the Declaration, the Master Developer shall have the sole right to determine the Membership Fees for all Memberships until ninety five percent (95%) of all Master Developer Lots are sold to End Users. After which, the Membership Fees for Memberships shall be determined by the Board. Notwithstanding the foregoing, the Membership Fees for Memberships sold by Declarant/Master Developer shall be paid directly to the Master Developer.
- (d) Termination. Except for a Full Golf Membership which is appurtenant to and runs with a Full Golf Designated Lot or a House Membership which is appurtenant to and runs with a House Designated Lot, or an Annual Membership, any Member may terminate its Membership upon surrender of such Membership to the Foundation. Notwithstanding the foregoing, a Member who acquires a Lot after March 31, 2009,

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and who desires to terminate its Membership must purchase one of the Available Lot Owner Memberships. Upon resignation and election of a new level of Membership from the Available Lot Owner Memberships, the terminating Lot Owner member shall pay all assessments, fees and membership dues applicable to the new Membership. All terminated Memberships shall be added to a resign list for that class of Membership consisting of resigned Memberships ("Resign List"). The Foundation shall repurchase such Membership only if, and at such time as, the Foundation admits a new Member to the same Membership class as the resigning Member. However, Class A (which includes Class Q-A) and Class C Memberships shall be sold from the same Resign List. The Foundation shall not be obligated to repurchase a terminated Membership until a successor Member has been admitted and has paid in full the Membership Fee currently being charged for the class of such Membership, such Membership Fee to be established in accordance with the terms of the Declaration. Accordingly, if a Member desires to sell and discontinue its Membership (the "Terminating Member") at a time when the number of such Memberships that are outstanding is less than the maximum number authorized by Declarant (prior to Turnover) or by the Board (after Turnover), the Membership shall be submitted to the Foundation to be held in escrow. While the Membership is held in escrow, the Terminating Member shall continue to pay all dues, Assessments and individual expenses relating to the Country Club Facility until the Membership is sold; provided, however, such Terminating Member shall only be required to pay all dues, Assessments and individual expenses relating to the Country Club Facility for twelve (12) months after the Membership is held in escrow and shall have the right to use the Country Club Facility, as designated by their respective Membership class, for so long as the Terminating Member continues to pay all dues, Assessments and individual expenses relating to the Country Club Facility. A terminated Membership will be placed on the Resign List and will be reissued on a first-resigned, first reissued basis as follows, unless the Member arranges for the subsequent purchaser of his or her Lot or Home to acquire his or her Membership: i) prior to the initial sale of all Memberships within a Membership category, every third Membership issued in that category (1 in 3) will be a terminated Membership from the Resign List, provided there is a terminated Membership on the Resign List; ii) after the initial sale of all Memberships within a Membership class, each Membership sold in that class will be a terminated Membership from the Resign List. When the Membership is resold, such Membership shall be released from escrow and the Foundation shall pay to the Terminating Member an amount equal to the Membership Fee currently being charged for such Terminating Member's class of Membership, less the Transfer Fee and less any amounts due and owing to the Foundation or the Declarant at the time such Membership is released from escrow. If a Terminating Member submits its Membership to the Foundation at a time when the total Membership stands at the maximum limit, such Membership shall be sold by the Foundation to an accepted and elected Member as provided herein except that the escrow provisions shall not apply. Notwithstanding the foregoing, if a Terminating Member is a Class A Member that is selling or transferring its Lot (a "Terminating Class A Member"), in accordance with the terms and conditions provided in the Declaration, such Terminating Class A Member shall have the right to either (i) terminate its Class A Membership pursuant to the terms and conditions of this paragraph or (ii) upon approval of the Foundation, transfer its Class A Membership to the purchaser of such Terminating Class A Member's Lot; provided, however, such Member shall pay to the Foundation

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concurrently with the closing of the purchase and sale of such Member's Lot (A) the Golf Membership Fee Difference and (B) the Transfer Fee. Notwithstanding anything to the contrary contained in this Section 6.1, a Member who holds a Full Golf Membership or a House Membership that runs with and is appurtenant to such Member's Lot shall not be allowed to terminate such Membership, unless agreed to in writing between the Member and the Board of the Foundation.

- (e) Repurchase and Transfer Fee. In the event a Membership is repurchased as provided herein (other than a Full Golf Membership which is appurtenant to and runs with a full Golf Designated Lot or a House Membership which is appurtenant to and runs with a House Designated Lot), the Foundation shall pay to such Member an amount equal to the Membership Fee currently being charged for the class of Membership, less the Transfer Fee and less any amounts due and owing to the Foundation or the Declarant at the time such Membership is transferred. Upon the transfer of a Full Golf Membership which is appurtenant to and runs with a Full Golf Designated Lot, when such Lot is sold or transferred, the new Owner of such Lot shall pay to the Foundation (i) the Golf Membership Fee Difference and (ii) the Transfer Fee and any amounts due and owing to the Foundation or the Declarant prior to obtaining the Full Golf Membership which runs with such Lot. Upon the transfer of a House Membership which is appurtenant to and runs with a House Designated Lot, when such Lot is sold or transferred, the new Owner of such Lot shall pay to the Foundation (1) the House Membership Fee Difference and (2) the Transfer Fee and any amounts due and owing to the Foundation or the Declarant prior to obtaining the House Membership which runs with such Lot. Upon the repurchase of a Class E Membership, the Declarant shall pay to such Member an amount equal to ninety percent (90%) of the Membership Fee actually paid by the Class E Member for the Class E Membership. 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 Article 9.5 of the Declaration.
- (i) There shall be no Transfer Fee charged by the Foundation on the transfer of a Master Developer owned Membership from the Master Developer to a Qualified Builder, Qualified Developer or End User. With respect to Master Developer Lots, the only Transfer Fees shall be charged on the transfer of a membership from an End User to a subsequent End User.
- (f) Qualification for Membership. Until Turnover, Membership is subject to approval by Declarant, in its sole discretion, and after Turnover, by the Board, in its sole discretion. The final decision on qualification of an applicant for Membership rests solely with Declarant or the Board, as applicable. Upon the acceptance of an application, the applicant shall be notified by either Declarant or the Board, as applicable, and the applicant shall become a Member for the class of Membership for which the applicant applied and shall pay the Membership Fee and any other fees associated with such Membership, within ten (10) days of the date of said notification; otherwise, such Membership approval shall be canceled.
- (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 except to the Foundation pursuant to the terms and provisions contained herein. Except as otherwise provided

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herein for certain classes of Membership, upon the death of a Member, unless otherwise dictated by devise or inheritance, such Member's Membership shall automatically pass to the surviving spouse, if any; otherwise, the Membership shall be terminated and surrendered to the Foundation for repurchase as provided for herein.

- (h) Transfer of Lot. In addition to the terms, conditions and restrictions set forth in Section 6.3 regarding notice of proposed transfers of Lots, if any Person acquires title by devise, inheritance or gift, such Person's right to occupy or use the Lot shall be subject to the approval of the Board. 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, sex, creed, ethnic background or national origin.
- (j) Right of Declarant. Declarant (and the Board after Turnover) shall have the power and authority to promulgate rules and policies incident to the surrender of Memberships, issuance of new 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.

6.2 Mandatory Membership. All Master Developer Lot Owners (excluding Declarant and Qualified Builders and Qualified Developers who acquire Master Developer Lots from Master Developer), and their successors-in-title, must acquire and maintain in good standing a Membership within one of the Available Lot Owner Membership categories for each Lot owned. Notwithstanding anything to the contrary contained herein, an Owner of more than one (1) Lot, who combines the Lots in a manner acceptable to the Board and in the manner provided in this Section 6.2, so that only one (1) residence may be built thereon, shall be required to maintain only one Membership for the combined Lot and may resign the additional Memberships. If the Owner of more than one Lot enters into an agreement to combine Lots that is acceptable to the Board, such Owner shall not be required to acquire and maintain more than one (1) Membership, provided such Owner complies with such agreement. The obligation of such Owner to pay for any resigned Membership shall cease upon resignation of any such Membership after the combination of any Lot in accordance with this Section 6.2. All Owners of non-Master Developer Lots may, but are not required to purchase a Membership within one of the Available Lot Membership categories. Once a Lot Owner purchases a Membership after March 31, 2009, said owner, and his or her successor in interest, shall be required to maintain its Membership at a level within the Available Lot Owner Membership categories.

6.3 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, other than Declarant, and excluding any sale or transfer pursuant to a decree of foreclosure or pursuant to any proceeding in lieu of foreclosure, such 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"). 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

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to the proposed purchaser a copy of the Declaration and any amendments thereto. 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. 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 the 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 Law. 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 6.3(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 Assessment due and owing to the Foundation and shall remain, together with the transferee, jointly and severally liable for the payment of Assessments.
- (c) Certificate of Approval. Within thirty (30) days after receiving the required Notice, the Board shall approve the transfer or state in writing to the Owner why such approval is withheld or denied. The approval shall be stated in the Certificate (in addition to setting forth whether the Assessments have been paid) and such Certificate shall be executed by an officer of the Foundation. The Certificate shall be recorded in the Public Records of either of the Counties, or both, if applicable, at the transferee's expense.

ARTICLE 7 BOARD OF DIRECTORS

- 7.1 The affairs of the Foundation shall be managed by the Board of Directors. 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. The Board shall have the power to employ and discharge all employees and officers of the Foundation.

In addition to the powers conferred upon and delegated to the Board by these Articles and the Bylaws, and subject to these Articles and the 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 full, absolute and uncontrolled discretion of the Board to which such power is hereby specifically delegated. Further, the Board shall adopt, amend and rescind 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 Foundation Rules and Regulations shall be uniform and shall not conflict with the Founding Documents.

- 7.2 Each member of the Board ("Director") must be a Class A (which includes Class Q-A) Member, Class C Member (if permitted in the Declaration and subject to the limitations and restrictions set forth in Article 8.1(m) of the Declaration), or a Class D Member (or other Property Owner Class of Membership) and be at least eighteen (18) years of age; provided,

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however, any Director appointed by the Class B Member (or by the Master Developer following Turnover) need not be an Owner or a Member. Each member-elected Director must be an active Member in good standing, whose membership is not on the Resign List. A Director who resigns his or her Membership, pursuant to the requirements set forth in the Declaration, regardless of whether such Director continues to pay Assessments, dues and other charges, must, upon termination or resignation of the Membership, resign from the Board.

- 7.3 The Board of Directors shall consist of the number provided by the Bylaws.
- 7.4 Until Turnover, the Class B Member and its successors and assigns shall have and hereby reserves the absolute right and authority to manage and control the Foundation and its affairs and decisions and the exclusive right to elect or appoint five (5) of the nine (9) Directors, the remaining four (4) Directors to be elected by the Members and each of which must be a Class A Member, Class C Member (if permitted in the Declaration and subject to the limitations and restrictions set forth in Article 8.1(m) of the Declaration), or a Class D Member (or other Property Owner Class of Membership). Prior to Turnover, the Board shall exercise all rights, powers and privileges that would otherwise be exercisable by the Members.

Following Turnover, the number of Directors shall be reduced from nine (9) to seven (7), and the Master Developer as well as its successors and assigns shall have and hereby reserves the absolute right and authority to initially elect or appoint three (3) of the seven (7) Directors, the remaining four (4) Directors to be elected by the Members and each of which must be a Class A Member, Class C Member (if permitted in the Declaration and subject to the limitations and restrictions set forth in Section 8.1(m) of the Declaration), or a Class D Member (or other Property Owner Class of Membership). Thereafter, Directors shall be elected and serve in accordance with the provisions of the Bylaws. Notwithstanding the foregoing, the member-elected Board Members at Turnover shall be allowed to fulfill their remaining terms of office.

The Class B Member may, at its option, at any time in writing, waive its right to control the Foundation and turn over control to the Members.

- 7.5 Reserved.
- 7.6 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.
- 7.7 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 of Directors. Notwithstanding the foregoing, for so long as Declarant is a Class B Member, it shall have the absolute right to amend any of the Founding Documents without any other Member's consent. Directors may participate in any meeting of the Board by any communication arrangement whereby all persons present can hear and speak to all other persons. Participation by such means shall be deemed equivalent to presence in person at a meeting.

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**ARTICLE 8
OFFICERS**

8.1 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. 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. After the Class B Member no longer appoints a majority of the Board of Directors in accordance with these Articles and the Bylaws, the Officers shall be elected by the Board of Directors at its annual meeting, which shall immediately follow the annual meeting of the Members, and each Officer shall serve 1-year terms in accordance with the procedures set forth in the Bylaws.

8.2 Reserved.

**ARTICLE 9
INDEMNIFICATION OF DIRECTORS AND OFFICERS**

Each and every Director and Officer (and the Directors and/or Officers as a group) 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 he 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 a Director or Officer admits that he is or is adjudged guilty by a court of competent jurisdiction of willful misfeasance or malfeasance in the performance of his 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 a Director or Officer 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 he 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 of Directors which authorized the contract or transaction.

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**ARTICLE 11
AMENDMENT TO ARTICLES OF INCORPORATION**

- 11.1 Until Turnover, Declarant, in its sole discretion, may modify, change or amend these Articles. Thereafter, amendments to these Articles shall be proposed by unanimous consent of the Board of Directors and adopted by two-thirds (2/3) of the Members of the Foundation who are eligible to vote, who are in good standing, and whose membership has not been suspended or revoked, (subject to the provisions of Article 8.1 (l) of the Declaration), who are voting in person or by proxy, at any annual or special meeting 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 Declarant or after Turnover 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.
- 11.3 In no event may an amendment to these Articles or the Bylaws be passed which in any way destroys the Class B Membership rights, or any rights of Declarant, or in any way dilutes or modifies the rights, obligations or benefits thereof, without the consent of Declarant.

**ARTICLE 12
BYLAWS**

The first Bylaws of the Foundation shall be adopted by the Board of Directors and may be altered, amended or rescinded in the manner provided for by the Bylaws.

**ARTICLE 13
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 14
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.

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**ARTICLE 15
REGISTERED OFFICE AND REGISTERED AGENT**

The street address of the registered office of the Foundation is 9530 Marketplace Road, Suite 301, Fort Myers, Florida 33912 and the registered agent of the Foundation at that address shall be William Price.

**ARTICLE 16
AUTHORITY**

These Third Amended and Restated Articles of Incorporation were adopted by Declarant as the Class B Member, and no further action is necessary to accomplish the changes made.

IN WITNESS WHEREOF, the undersigned, constituting the sole voting member of the corporation with respect to the matters herein, has executed these Third Amended and Restated Articles of Incorporation, to be effective the 30th day of December, 2009.

**Quail West Development Company, LLC, a
Florida limited liability company, f/k/a QW 2009
INVESTORS, LLC, a Florida limited liability
company**

**By: MGF Quail West, LLC, A Florida limited
liability company, Managing Member**

By:  _____

William G. Price, Jr., Manager

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**CERTIFICATE OF AMENDMENT
QUAIL WEST FOUNDATION, INC.
ARTICLES OF INCORPORATION**

THE UNDERSIGNED CERTIFIES the attached Third Amended and Restated Articles of Incorporation of Quail West Foundation, Inc., was duly adopted by the Declarant, at a meeting called for that purpose on December 30, 2009.

IN WITNESS WHEREOF, the Declarant has affixed our hands this 30th day of December, 2009, in Lee County, Florida.

**Quail West Development Company, LLC
a Florida limited liability company, f/k/a
QW 2009 INVESTORS, LLC, A Florida
limited liability company**

**By: MGF Quail West, LLC, a Florida limited
liability company, Managing Member**

Witnesses:

Alan C. Freeman

Print Name: Alan C. Freeman

Maria L. Cecilli

Print Name: Maria L. Cecilli

By: William G. Price, Jr.
William G. Price, Jr., Manager

STATE OF FLORIDA
COUNTY OF Lee

The foregoing instrument was sworn to, subscribed and acknowledged before me this 30th day of December, 2009, by William G. Price, Jr., as Manager of MGF Quail West, LLC, a Florida limited liability company, as Managing Member or Quail West Development Company, LLC, a Florida limited liability company, on behalf of said company, who is [] personally known to me or [] who has produced _____ as identification.

[SEAL]

Maria L. Cecilli
Print Name: Maria L. Cecilli
Notary Public
My Commission Expires: April 4, 2011

