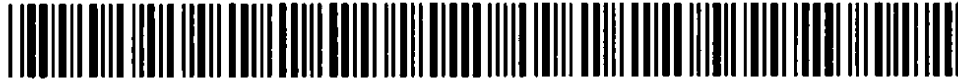


N44113

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**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 [●] [●], 2022, 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

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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

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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

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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.

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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.

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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

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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,

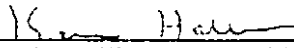
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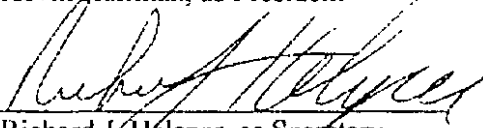
**ARTICLE 15
AUTHORITY**

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 15 day of APRIL, 2022.

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

By: 
Kevin Hallinan, as President

By: 
Richard J. Helsper, as Secretary