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**FLORIDA PROFIT/NON PROFIT CORPORATION  
WHISPER CREEK PHASE 2 AND 3 HOMEOWNER'S ASSOCIATION,**

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Prepared By:  
Stephen R. Moorhead, Esq.  
127 Palafox Place, Suite 500  
Pensacola, FL 32502

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

STATE OF FLORIDA:  
COUNTY OF SANTA ROSA:

**ARTICLES OF INCORPORATION**  
**OF**  
**WHISPER CREEK PHASE 2 AND 3 HOMEOWNER'S ASSOCIATION, INC.**

A NONPROFIT CORPORATION  
UNDER THE LAWS OF THE STATE OF FLORIDA

**BE IT KNOWN** that the undersigned, acting as incorporator of a nonprofit corporation under the laws of the State of Florida, and in particular, Chapter 617 and Chapter 720, Florida Statutes does hereby adopt the following Articles of Incorporation for such nonprofit corporation (the "Articles").

**ARTICLE I**  
**NAME**

The name of the nonprofit corporation shall be Whisper Creek Phase 2 and 3 Homeowner's Association, Inc. (hereinafter referred to as the "Association").

**ARTICLE II**  
**PERIOD OF DURATION**

The period of duration of the Association shall be perpetual unless terminated according to the terms of these Articles.

**ARTICLE III**  
**PURPOSE AND POWERS**

The Association is not organized for pecuniary profit or financial gain, and no part of the Association's assets or income shall inure to the benefit of any director, officer or member of the Association except as may be authorized by the Board of Directors in accordance with the terms

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and provisions of the Bylaws of the Association with respect to the compensation of Directors, Officers or Members of the Association for the rendition of unusual or exceptional services to the Association.

The purposes for which the Association is formed, and the powers that may be exercised by the Board of Directors of the Association, are:

- (a) To own, operate, maintain, preserve or replace, and to provide architectural control over Whisper Creek Subdivision, Phases 2 and 3 (the "Subdivision"), which is more particularly described on Exhibit A attached hereto (the "Property"), including the common areas of the Subdivision, and to those properties that may be annexed to the Property from time to time pursuant to the Declaration; and
- (b) To acquire by gift, purchase, or otherwise, and to own, build, improve, operate, repair, maintain and replace, lease, transfer, and otherwise dispose of, real property, buildings, improvements, fixtures and personal property in connection with the business and affairs of the Association; and
- (c) To dedicate, sell or transfer all or any part of the common area to any public agency, authority, or utility for such purposes; and
- (d) To establish, levy, collect, and enforce payment of, all assessments and charges pursuant to the terms and provisions of the Declaration or Bylaws of the Association, and to use the proceeds thereof in the exercise of its powers and duties; and
- (e) To borrow money and to pledge, mortgage or hypothecate any or all of the real or personal property owned by the Association as security for money borrowed or debts incurred by the Association; and
- (f) To annex additional real property to the Property pursuant to the terms and provisions of the Declaration of Conditions, Covenants, Restrictions and Easements of Whisper Creek Subdivision, Phases Two and Three (the "Declaration"); and
- (g) To exercise such powers which are now or may hereafter be conferred by law upon an association organized for the purposes set forth herein, or which may be necessary or incidental to the powers so conferred; and
- (h) To grant easements on or through the common area or any portion thereof; and
- (i) To exercise all of the powers and privileges, and to perform all of the duties and obligations, of the Association as set forth in the Declaration, as the same may be amended from time to time; and
- (j) To promulgate or enforce rules, regulations, bylaws, covenants, restrictions or agreements to effectuate the purposes for which the Association is organized; and

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(k) To contract for the management of the Association and to delegate in such contract all or any part of the powers and duties of the Association, and to contract for services to be provided to owners of lots in the Subdivision (the "Owners"), including, but not limited to, trash removal and other utilities or services; and

(l) To purchase insurance upon the Property or any part thereof and insurance for the protection of the Association, its Officers, its Directors and the Owners/members; and

(m) To employ personnel to perform the services required for the proper operation of the Association.

The foregoing clauses shall be construed both as purposes and powers, and the enumeration of specific purposes and powers shall not be construed to limit or restrict in any way the purposes and powers of the Association that may be granted by applicable law and any amendments thereto.

ARTICLE IV  
NAME AND ADDRESS OF INCORPORATOR

The name and address of the incorporator herein are as follows:

Stephen R. Moorhead  
127 Palafox Place, Suite 500  
Pensacola, FL 32502

ARTICLE V  
NAME AND ADDRESS OF INITIAL PRINCIPAL OFFICE

The name and address of the initial principal office are as follows:

McDonald Fleming Moorhead  
Attn: Stephen R. Moorhead  
127 Palafox Place, Suite 500  
Pensacola, FL 32502

ARTICLE VI  
MEMBERSHIP AND VOTING RIGHTS

There are two classes of membership as set forth in the Declaration. The members of the Association shall be all of the record owners of platted lots within the Subdivision. Membership in the Association shall be established by recordation in the records of the Office of the Clerk of Santa Rosa County, Florida, a deed of conveyance transferring record title to a platted lot in the Subdivision and the delivery to the Association of an executed true copy of said deed. The owner designated by such instrument shall thereby automatically become a member of the

Association. Membership shall be appurtenant to and may not be separated from ownership of any lot in the Subdivision, and shall cease as to any owner upon transfer of title from such owner to another owner.

Each member, other than Declarant, shall be entitled to one (1) vote for each lot owned. When more than one (1) person holds an interest in any lot all such persons shall be members. The vote for such lot shall be exercised as they, among themselves, shall determine, but in no event shall more than one (1) vote be cast with respect to any single lot of any member other than Declarant.

#### ARTICLE VII NONPROFIT CORPORATION

The Association shall be without capital stock, will not be operated for profit and will not distribute gains, profits or dividends to any of its members. The members of the Association shall not be personally liable for the debts, liabilities or obligations of the Association, but shall be personally liable to the Association for their pro rata share of costs and expenses that are attributable to members of the Association under these Articles, the Bylaws of the Association or the Declaration. The purposes of the Association shall be served without pecuniary profit to any director or member of the Association.

#### ARTICLE VIII NAME AND ADDRESS OF INITIAL REGISTERED AGENT

The name of the initial registered agent of the Association, and the address of the initial registered office of the Association are as follows:

Stephen R. Moorhead  
127 Palafox Place, Suite 500  
Pensacola, FL 32502

The initial registered agent's written acceptance of appointment as a registered agent as required by s. 617.0501 of the Florida Statutes is attached hereto as Exhibit B.

#### ARTICLE IX BOARD OF DIRECTORS

Except as provided herein, the affairs of the Association shall be managed by a Board of Directors. Notwithstanding anything contained in these Articles, the Bylaws of the Association, or the Declaration to the contrary, until Turnover, BIEL REO, LLC, a Delaware limited liability company (the "Declarant"), shall have the sole and exclusive right to (1) appoint all of the members of the Board of Directors of the Association (subject to the rights of members other than the Declarant to elect at least one member of the Board of Directors under Section

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720.307(2) of the Florida Statutes); (2) appoint all of the officers of the Association; (3) remove and replace any members of the Board of Directors of the Association; (4) appoint the members of the Architectural Review Committee ("ARC") of the Association as defined in and in accordance with the Bylaws; (5) amend these Articles and the Bylaws of the Association; and (6) take all other action on behalf of the Association and vote on all other matters required to be voted on or approved by the members of the Association. "Turnover" has the meaning set forth in the Declaration. Upon Turnover, the then-current members of the Association shall be entitled to vote on all the foregoing matters subject to any restrictions set forth in the Declaration and the Bylaws of the Association.

The initial Board of Directors of the Association shall be composed of three (3) Directors, none of which must be a member of the Association. The names and addresses of the initial three (3) Directors of the Association are as follows:

NAME:	ADDRESS:
John Crowley	99 High Street, 7th Floor Boston, MA 02110-2359
James McLoughlin	99 High Street, 7th Floor Boston, MA 02110-2359
Shane H. Ikerman	25366 Profit Drive Daphne, AL 36526

Within sixty (60) days after Turnover, Declarant shall call a meeting of the Members for the purposes of (i) transitioning control of the Association to the Members, (ii) electing new directors to the Board, and (iii) electing new members of the ARC. After Turnover, all Directors must be members of the Association, or representatives of entities that are members of the Association, the number of directors shall be as set forth in the Bylaws and the members of the Association shall have the right to elect the Board of Directors as provided in the Bylaws. The number of directors may be changed by amendment of the Bylaws of the Association. The initial Bylaws of the Association shall be adopted by the Board of Directors. The power to alter, amend or repeal the Bylaws or adopt new Bylaws shall be vested in the Board of Directors of the Association.

#### ARTICLE X OFFICERS

The affairs of the Association shall be administered by the Officers holding the offices designated in the Bylaws. The Officers shall be elected by the Board of Directors of the Association at its first meeting following the Annual Meeting of the Members and shall serve at the pleasure of the Board of Directors. The Bylaws may provide for the removal of Officers, for the filling of vacancies and for the duties of the Officers. The names and addresses of the Officers who shall serve until their successors are designated by the Board of Directors are as follows:

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President John Crowley  
99 High Street, 7th Floor  
Boston, MA 02110-2359

Vice President/  
Secretary/Treasurer James McLoughlin  
99 High Street, 7th Floor  
Boston, MA 02110-2359

ARTICLE XI  
INDEMNIFICATION

The Association shall indemnify every officer and director of the Association against any and all expenses, including counsel fees, reasonably incurred by or imposed upon any officer or director in connection with any action, suit or other proceeding (including the settlement of any such suit or proceeding, if approved by the then Board of Directors of the Association) to which he may be made a party by reason of being or having been an officer or director of the Association, whether or not such person is an officer or director at the time such expenses are incurred. The officers and directors of the Association shall not be liable to the members of the Association for any mistake of judgment, negligence or otherwise, except for their own individual willful misconduct or bad faith. The officers and directors of the Association shall have no personal liability with respect to any contract or other commitment made by them in good faith on behalf of the Association and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director of the Association may be entitled.

The directors shall exercise their powers and duties in good faith and with a view to the interest of the Association and the subdivision. No contract or other transaction between the Association and any corporation, firm or association (including the Declarant) in which one (1) or more of the directors of the Association is a director or officer or is pecuniarily or otherwise interested, shall be either void or voidable for such reason or because such director or directors are present at the meeting of the Board of Directors or any of the committee thereof which authorizes or approves the contract or transaction or because his or their votes are counted for such purpose, if any of the conditions specified in any of the following paragraph exists:

(a) The fact of the common directorate or interest is disclosed or known to the Board of Directors or a majority thereof or noted in the minutes and the Board authorizes, approves or ratifies such contract or transaction in good faith by a vote sufficient for the purpose;

(b) The fact of the common directorate or interest is disclosed or known to the members or a majority thereof and they approve or ratify the contract or transaction in good faith by a vote sufficient for the purpose; and

(c) The contract or transaction is commercially reasonable to the Association at the time it is authorized, ratified, approved or executed.

Common or interested directors may be counted in determining the presence of a quorum at any meeting of the Board of Directors or committee thereof which authorizes, approves or ratifies any contract or transaction and may vote thereat to authorize any contract or transaction with like force and effect as if he were not such director or officer of such other corporation or not so interested.

#### ARTICLE XII ASSESSMENTS

1. To provide the total sum necessary for the insurance, reserve fund for replacements, maintenance and operation of the common areas and improvements within the Subdivision, each member for each lot owned shall pay a portion of the total amount necessary for such purposes to the Association. The portion to be paid by each member for each lot owned shall be equal to a fraction, the numerator of which shall be the number of lots owned by such lot owner and the denominator of which shall be the total number of lots in the Subdivision, and which the quotient of such fraction shall be multiplied by the total sum necessary for such purposes. The total number of lots in the Subdivision may be increased from time-to-time by the Declarant in its sole and absolute discretion so long as the Declarant continues to have the right to add additional property to the Subdivision in accordance with the terms of the Declaration.

2. The amount of assessment against each member as provided under the paragraph immediately above, shall be assessed by the Association as a lien as provided in the Declaration.

3. In addition to the annual assessments authorized above, the Association may levy in any assessment year special assessments for the purposes and in the manner set forth in the Declaration, as the same may be amended from time to time.

4. Each assessment shall be assessed and shall be due and payable as provided in the Declaration and the Bylaws, and upon default or payment within such period of time, the assessment shall be a lien against each lot owned by the defaulting member and against that undivided portion of the common area owned by the defaulting member, and the Association shall be entitled to enforce the payment of said lien according to the laws of the State of Florida and to take any other actions for collection from the defaulting party or parties. Any such lien against a lot or against the common area shall be subordinate to a recorded first mortgage covering such lot.

5. Both annual and special assessments shall be collected in the time and manner specified in the Declaration or as otherwise directed by the Association's directors.



ARTICLE XIII  
AMENDMENT

Amendments to these Articles shall be made in the following manner:

A. PROPOSAL. Notice of the subject matter for a proposed amendment shall be included in the notice of any meeting at which the proposed amendment is to be considered.

B. ADOPTION. The resolution for the adoption of a proposed amendment may be proposed by either a majority of the Board of Directors or by not less than one third (1/3) of the Members. Directors and Members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, provided that the approval is delivered to the Secretary at or prior to the meeting. The approval must be by not less than a majority of the votes of all the Members represented at a meeting at which a quorum of Members is present.

C. LIMITATION. No amendment shall make any changes in the qualifications for membership, nor in the voting rights or property rights of Members, nor any changes in Article V or Article XI of the Articles entitled "Purposes and Powers" and "Indemnification," respectively, without the approval in writing of all Members and the joinder of all record owners of mortgages on Lots. No amendment shall be made that is in conflict with the Declaration or Bylaws, nor shall any amendment make changes that would in any way affect the rights, privileges, powers or options herein provided in favor of, or reserved to, Declarant, or an affiliate of Declarant, unless Declarant shall join in the execution of the amendment. No amendment to this Paragraph C of Article XIII shall be effective.

D. DECLARANT'S AMENDMENT. The Declarant may amend these Articles consistent with the provisions of the Declaration allowing certain amendments to be effected solely by the Declarant.

E. RECORDING. A copy of each amendment shall be filed with the Secretary of State pursuant to the provisions of applicable Florida law, and a copy certified by the Secretary of State shall be recorded in the Public Records of Santa Rosa County, Florida.

ARTICLE XIV  
BYLAWS

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

ARTICLE XV  
DISSOLUTION

Unless the Board of Directors determines that because of a conflict of interest or other substantial reason it should not make any recommendation, the Board of Directors must adopt a resolution recommending that the Association be dissolved and directing that the question of

such dissolution be submitted to a vote at a meeting of Members entitled to vote thereon, which may be either an annual or special meeting. Written notice stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of dissolving the corporation must be given to each Member (as of thirty (30) days prior to the date of mailing such notice) entitled to vote at such meeting. This notice shall be sent at least ten (10) days and not more than sixty (60) days before the date named for the meeting to each Member by United States mail, or by telegram, charges prepaid, to his address appearing on the books of the Association. A resolution to dissolve the corporation shall be adopted upon receiving 80% of the votes which Members present at such meeting or represented by proxy are entitled to cast. At any time after dissolution is authorized, the corporation may dissolve by delivering to the Department of State articles of dissolution for filing.

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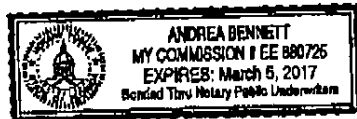
IN WITNESS WHEREOF, the incorporator has executed these Articles of Incorporation, by and through its duly authorized representative, on this the 30 day of July 2015.

By: [Signature]  
Name: Stephen R. Moorhead

STATE OF FLORIDA  
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this 30<sup>th</sup> day of July 2015 by Stephen R. Moorhead. He is personally known to me.

[SEAL]



[Signature]  
Notary Public Signature

Andrea Bennett  
Notary Public Printed Name

**EXHIBIT "A"**

**Description of Subdivision Property**

Whisper Creek Phase Two as shown on the plat thereof recorded at Plat Book 11, Pages 26 and 27 in the Office of the Clerk of the Circuit Court of Santa Rosa County, Florida; and

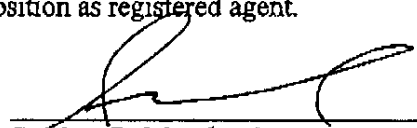
Whisper Creek Phase Three as shown on the plat thereof recorded at Plat Book 11, Pages 46 and 47 in the Office of the Clerk of the Circuit Court of Santa Rosa County, Florida

and any additional real property made subject to the Declaration in accordance with the terms thereof.

**EXHIBIT "B"**

**Acceptance of Appointment as Registered Agent**

I hereby accept the appointment as registered agent for Whisper Creek Phase 2 and 3 Homeowner's Association, Inc. and agree to act in this capacity. I further agree to comply with the provisions of all statutes relative to the proper and complete performance of my duties, and I am familiar with and accept the obligation of my position as registered agent.

  
\_\_\_\_\_  
Stephen R. Moorhead