

THIS INSTRUMENT PREPARED BY:

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STATE OF FLORIDA:  
COUNTY OF SANTA ROSA

**DECLARATION OF CONDITIONS, COVENANTS AND RESTRICTIONS**

**OF**

**WHITLEY ESATES SUBDIVISION**

THIS DECLARATION OF CONDITIONS, COVENANTS AND RESTRICTIONS (this "Declaration") is made this \_\_\_\_ day of April, 2022, by WHITLEY ESTATES DEVELOPMENT, L.L.C., a Florida limited liability company ("Declarant", as further defined below).

**WITNESSETH:**

WHEREAS, on \_\_\_\_\_, 2022, Declarant recorded in Plat Book 14, Page 32 of the Office of the Clerk of the Circuit Court of Santa Rosa County, Florida, a residential subdivision plat for Whitley Estates ("Plat of Subdivision," as further defined below) pertaining to certain real property owned by Declarant in Santa Rosa County, Florida, as more specifically described on Exhibit "A" hereto; and

WHEREAS, the real property shown on the Plat of Subdivision described above is intended to be developed as a single subdivision known as Whitley Estates, a Residential Subdivision.

NOW, THEREFORE, DECLARANT HEREBY DECLARES, that subject to the provisions hereof, all of the Lots (hereinafter defined) shall be held, sold and conveyed by the Owners and the Common Area (hereinafter defined) shall be held by the Association subject to the restrictions, covenants and conditions contained herein for the purposes of protecting the value and desirability of, and which shall run with, the Community Property (hereinafter defined) and be binding on all parties having any right, title or interest in the Community Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner of any portion thereof.

## ARTICLE ONE GENERAL PROVISIONS

1.1 Restrictive Covenants and Easements Running with the Land. The use of the Community/Property shall be in accordance with the provisions and restrictions of this Declaration, all of which are to be construed as restrictive covenants and/or easements, as applicable, running with the land and with the title to each and every Lot and shall be binding upon all Owners and other persons having interests therein and upon their heirs, personal representatives, successors, grantees and assigns.

1.2 Terminology. Whenever the context requires, words used in the singular shall be construed to mean or to include the plural and vice versa, and pronouns of any gender shall be deemed to include and to designate the masculine, feminine or neuter gender.

1.3 Definitions. The following terms, when capitalized herein, shall have the meaning set forth in this Section 1.03:

- (a) "Act" means Chapter 720, Florida Statutes, as amended from time to time.
- (b) "Additional Property" shall have the meaning given such term in Section 10.02 hereof.
- (b) "Architectural Review Committee" means the Architectural Review Committee as established by the Board of Directors in accordance with the Bylaws.
- (c) "Articles of Incorporation" means the Articles of Incorporation of WHITLEY ESTATES HOMEOWNERS' ASSOCIATION, INC., a Florida non-profit corporation, as filed in the records of the Florida Department of State, Division of Corporations, as the same may hereafter be amended, altered or repealed from time to time, a copy of which is attached hereto as Exhibit "B".
- (d) "Association" means WHITLEY ESTATES HOMEOWNERS' ASSOCIATION, INC., a Florida non-profit corporation.
- (e) "Board" or "Board of Directors" means the Board of Directors of the Association, established in accordance with the Articles of Incorporation and Bylaws of the Association.
- (f) "Builder" means any commercial home builder or contractor who owns one or more Lots in the Subdivision and is in the business of constructing residential structures to sell to owner-occupants.
- (g) "Bylaws" means the Bylaws of the Association, as the same may hereafter be amended, altered or repealed from time to time, a copy of which is attached hereto as Exhibit "C".

- (h) "Common Area" means all real property within the Subdivision which is owned or leased by the Association or dedicated for use or maintenance by the Association or its members, regardless of whether title has been conveyed to the Association, and any and all personal property or fixtures owned by the Association, whether now owned or hereinafter acquired, and/or held and operated by the Association for the benefit of the Owners.
- (i) "Common Expense" means any and all expenses of the Association (i) associated with the ownership, maintenance, repair and/or replacement of the Common Area; (ii) in obtaining and maintaining any and all insurance required or otherwise permitted in accordance with Article Twelve hereof; and (iii) otherwise denominated hereunder as a Common Expense.
- (j) "Community Property" means all of the Lots and the Common Area, collectively.
- (k) "Declarant" means WHITLEY ESTATES DEVELOPMENT, L.L.C., a Florida limited liability company, its successors and assigns which expressly are assigned and assume the Declarant's rights as "Declarant" hereunder.
- (l) "Landscaping Work" means all landscape installation, maintenance, repair and/or replacement, as applicable, performed by the Association upon any and all Lots.
- (m) "Lot" means each and every numbered lot shown on the Plat of Subdivision.
- (n) "Member" means every person or entity who is a member of the Association.
- (o) "Mortgagee" means a holder or beneficiary of any mortgage, deed with vendor's lien reserved, or any other form of instrument used for the purpose of encumbering or conveying real property as security for payment or satisfaction of any obligation.
- (p) "Owner" means the record owner, whether one or more persons or entities, of a fee simple title to any Lot, including contract sellers, but excluding mortgagees, lien holders, lessees, tenants, and those having such interests solely as security for the performance of an obligation.

- (q) "Person" means any individual, corporation, trust, partnership, joint venture, limited liability company or other entity.
- (r) "Plat of Subdivision" has the meaning ascribed to such term hereinabove and shall also include any additional plat or plats or real property that are hereafter recorded, where such real property is annexed to this Declaration in accordance with the terms of Section 10.02 hereof.
- (v) "Stormwater Management System" shall mean a surface water management system that is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, over drainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges from the system.
- (w) "Subdivision" means Whitley Estates Subdivision, a residential subdivision as shown on the Plat of Subdivision, plus any Additional Property made subject to this Declaration in accordance with the terms of Section 10.02.
- (x) "Turnover" means the earlier to occur of (i) Declarant relinquishing control of the Association in a written instrument recorded in the real property records of Santa Rosa County, Florida, (ii) any event described in Florida Statutes, Section 720.307(1), or (iii) December 31, 2024; provided however, in the event of a conflict between the Florida Statutes and the foregoing, the applicable Florida Statute controls.

## **ARTICLE TWO** **COMMON AREA**

2.1 Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, the Articles of Incorporation and the Bylaws, shall be responsible for the exclusive maintenance, management, and control of the Common Area (including all improvements constructed on the Common Area), and shall keep the Common Area in good, clean, attractive, and sanitary condition, order, and repair pursuant to the terms and conditions of this Declaration. Buildings and improvements of a permanent nature erected or placed on the Common Area and any activities that alter the nature of the Common Area shall require the prior

approval of the Members. The Association has the right to restrict the use and govern the operation of the Common Area by promulgating reasonable rules and regulations, including with respect to any Common Area, the right to charge reasonable one-time or monthly fees for the use thereof by the Owners as the Association deems necessary or appropriate. Rules and regulations may be established by the Association to regulate the use of the Common Area. The necessary work or maintenance, repair and replacement of the Common Area and the making of any additions or improvements thereto shall be carried out only as provided in this Declaration, the Articles of Incorporation and the Bylaws.

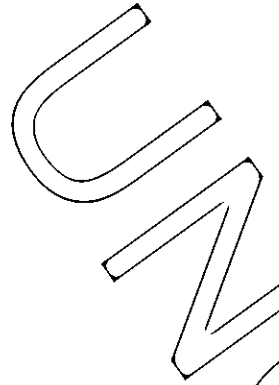
2.2 Right of Enjoyment. Subject to any rules and regulations promulgated by the Board of Directors, every Member shall have a right and easement of enjoyment of the Common Area, and such easement shall be appurtenant to and pass with the title to each Lot.

2.3 Restrictive Covenant on Common Area. A restrictive covenant is hereby imposed on the Common Area such that no part of the Common Area may be developed for residential or commercial purposes; provided, however, that the Declarant and/or the Association shall have the right, but not the obligation, to construct and install amenities on the Common Area that are for the use and enjoyment of the Members, subject to the terms and conditions hereof and any rules and regulations adopted by the Association. This restrictive covenant shall run with each Lot and shall exist for the benefit of the Owners and be binding upon, their successors and assigns.

2.4 Lots Subject to Covenants, Restrictions, Limitations and Term. Each Lot that shall be conveyed, held, devised, leased, or demised at any time hereafter shall be subject to all the terms, conditions, covenants, restrictions, and limitations herein contained, and the obligation to observe and perform the same whether or not it be so expressed in the deed or other instrument of conveyance of the Lot or real property, and such shall run with the Lot or real property and be appurtenant thereto as if fully set out in such deed or instrument of conveyance, subject to the terms and conditions hereof.

2.5 Easements.

- (a) Access Easement. An easement for vehicular and pedestrian access is hereby reserved over and across all private roadways in the Subdivision for the benefit of the Association, all Owners, and all tenants and guests of all Owners (the "Access Easement"). The Association shall have the right to promulgate rules and regulations for the use of the Access Easement. The maintenance and repair of the road surface that constitutes the Access Easement shall be performed by the Association.
- (b) Easements and Buffer Strips. All easements and buffer strips shown on the Plat of Subdivision, if any, are hereby adopted as part of this Declaration and all Lots in the Subdivision shall be subject to such easements and buffer strips.
- (c) Structures. No dwelling unit, house, home, and/or other structure of any kind shall be built, erected, or maintained upon any easement, and said easements shall



at all times be open and accessible to public and quasi-public utility corporations, and to other persons erecting, constructing, or servicing such utilities, and to the Association, its successors or assigns, all of whom shall have the right of ingress and egress thereto and therefrom, and the right and privilege of doing whatever may be necessary in, under, and upon said locations for the carrying out of any of the purposes for which said easements are hereby reserved and may hereafter be reserved.

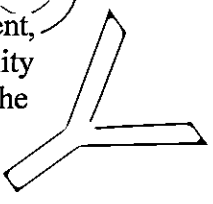
- (c) Overhead Wires. No Lot shall be served with any overhead electrical or communications service, and no Owner shall erect power poles for such service; provided, however, that nothing herein shall be construed to prohibit overhead street lighting or ornamental yard lighting provided that such lighting is constructed in accordance with the terms and conditions hereof.

- (e) Easement for Landscaping Work. An easement is hereby reserved over each and every Lot to permit the Association to perform the Landscaping Work in accordance with the terms and conditions hereof.

2.6 Control of Common Area. The Association may, upon approval by the Members, sell, subdivide, lease, mortgage, grant easements over or otherwise encumber the Common Area, or exchange all or any portion of the Common Area for Lots or other real or personal property, or purchase or acquire any additional real or personal property and dedicate the same as Common Area subject to the terms of this Declaration.

2.7 Condemnation. In the event of a taking by eminent domain of any portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements so taken on the remaining Common Area, unless within sixty (60) days after such taking, an alternative plan is approved by at least seventy-five percent (75%) of the voting interests of the Members. The provisions of this Declaration applicable to replacement or restoration of damaged improvements on the Common Area shall also apply to and govern the actions to be taken in the event that the improvements are not restored or replaced after a condemnation.

2.8 Liability. Owners, occupants and their guests shall use and enjoy the Common Area at their own risk and shall assume sole responsibility for their personal belongings used or stored there. The Association, the Declarant and their respective officers, directors, employees, representatives and agents shall not be held liable for personal injury to any person, nor for loss or damage to personal belongings used or stored on any of the Common Area. The Association shall not be liable for injury or damage to any person or property (a) caused by the elements or by an Owner or any other person, (b) resulting from any rain or other surface water which may leak or flow from any street, pipe, plumbing, drain, conduit, appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association, or (c) caused by any street, pipe, plumbing, drain, conduit, appliance, equipment, security system, utility line, facility or from any portion of the Common Area, the responsibility for the maintenance of which is that of the Association, becoming out of repair. Nor shall the



Association be liable to any Owner or occupant for loss or damage, by theft or otherwise, of any property of such Owner or occupant.

### **ARTICLE THREE** **ASSOCIATION MEMBERSHIP AND VOTING RIGHTS**

3.1 The Association. The operation and administration of the Common Area shall be handled by the Association. The Association shall have exclusive authority and power to maintain a class action and to settle a cause of action on behalf of Owners with reference to the Common Area and with reference to any and all other matters in which all of the Owners have a common interest. The Association shall have all the powers and duties set forth in the Articles of Incorporation and the Bylaws. The Association shall have a reasonable right of entry upon any Lot to make emergency repairs and to do other work reasonably necessary for the proper maintenance and operation of the Common Area and further, shall have the right to grant permits, licenses, and easements over the Common Area for utilities and other purposes reasonably necessary or useful for the proper maintenance or operation of the Common Area. The Board of Directors shall have the authority and duty to levy and enforce the collection of general and specific assessments for Common Expenses and is further authorized to provide adequate remedies for failure to pay such assessments.

3.2 Membership. Each Owner shall be a Member, subject to the terms and conditions of the Articles of Incorporation and the Bylaws.

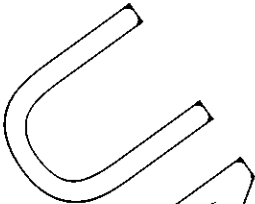
3.3 Voting. Voting by Owners shall be in accordance with the Bylaws.

3.4 Assignment. The share of a Member in the funds and assets of the Association cannot be assigned, hypothecated, or transferred in any manner except as an appurtenance of said Owner's Lot.

3.5 Reserve Fund. The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of improvements to the Common Area (the "Reserve Account"). The Reserve Account shall be maintained out of regular assessments for common expenses. The Reserve Account shall be established, budgeted, and maintained in accordance with Section 720.303 of the Act, as may be amended from time to time. In no way limiting the foregoing, the Reserve Account is intended to fund capital expenditures, deferred maintenance, and items of expense that do not occur on a regular basis.

### **ARTICLE FOUR** **COVENANT FOR MAINTENANCE ASSESSMENTS**

4.1 Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Lot, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, (2) special assessments for capital improvements to the Common Area, and (3) the lien for assessments for capital improvements to the Common Area by any governmental entity ("Governmental Assessments"), as such

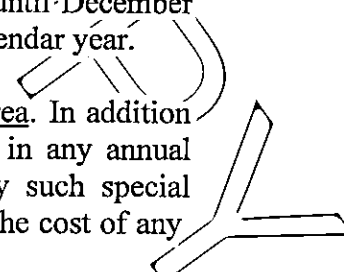


assessments are hereinafter established and shall be collected as hereinafter provided. The annual, special, and Governmental Assessments, together with interest, costs, an administrative late fee not to exceed the greater of twenty-five and no/100 dollars (\$25.00) or five percent (5%) of the amount of each installment that is paid past the due date, and reasonable attorneys' fees, shall be a charge on the Lot and shall be a continuing lien upon the property against which each such assessment is made. Any payment received and accepted by the Association shall be applied first to any interest accrued, then to any administrative late fee, then to any costs and reasonable attorney's fees, and then to the delinquent assessments. Each such assessment, together with interest, costs, the administrative late fee and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. Each Owner is jointly and severally liable with the previous Owner for all unpaid assessments that came due up to the time of transfer of title; provided, however, that "previous Owner" shall not include an association, mortgagee, lien holder, or other lender that acquires title to a delinquent Lot through foreclosure or by deed in lieu of foreclosure. This liability is without prejudice to any right the present Lot Owner may have to recover any amounts paid by the present Owner from the previous Owner.

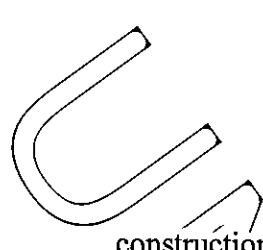
4.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to provide for the management, care and maintenance of the Common Area and any improvements constructed thereon, including provision for appropriate insurance against casualty and liability. The Association shall have the obligation to maintain the Common Area (including, without limiting the generality of the foregoing, any and all easements, drainage facilities, landscaping, structures, holding and retention ponds, and the like, whether denominated as such or otherwise) and shall pay all ad valorem property taxes assessed upon them. The Association may fund in the Reserve Account such sums as it determines in good faith are necessary and adequate to make periodic repairs and improvements to any part of the Common Area. The Association may fund in the Reserve Account such sums as it determines in good faith are necessary and adequate to make periodic repairs and improvements to any part of the Common Area.

4.3 Annual Assessments. To provide the total sum necessary for the insurance purchased by the Association hereunder, the Reserve Account, the maintenance, repair and replacement (as applicable) of any improvements located on the Common Areas, and any and all other expenses of the Association, 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 calculated as set forth in the Articles of Incorporation. Once assessed, the Association has a lien on each Lot for any unpaid assessments, interest, late fees, attorneys' fees, and costs incurred by the Association incident to the collection of the assessment or enforcement of the lien. The initial annual assessment period will commence on the date the Board of Directors fixes the initial annual assessment and continue until December 31 of that calendar year. Thereafter, each annual assessment period will be the calendar year.

4.4 Special Assessments for Capital Improvements Upon Common Area. In addition to the annual assessments authorized above, the Board of Directors may levy, in any annual assessment period, a special assessment applicable to that calendar year. Any such special assessment may only be levied for the purpose of defraying, in whole or in part, the cost of any



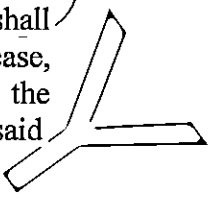


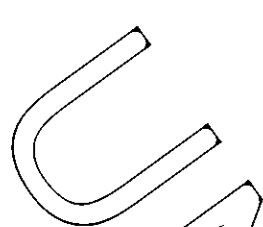


construction, reconstruction, repair or replacement of a capital improvement upon the Common Area and any entrance wall or signage, including fixtures and personal property related thereto, and to cover unbudgeted expenses, expenses in excess of those budgeted, and other common expenses of the Association. Notwithstanding the foregoing, before Turnover, the Board of Directors may not levy a special assessment unless a majority of Members, other than the Declarant, has approved the special assessment at a duly called special meeting and in accordance with the requirements of the Act.

4.5 Date of Commencement of Assessments and Due Dates. The assessments provided for herein shall only be assessed against any Lot upon which a Townhome has been constructed, and will commence as to a particular Lot upon constructed conveyance of the Lot to any Owner who is not the Declarant or a Builder. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. At least thirty (30) days prior to each annual assessment period, and in accordance with the requirements of the Act, the Board of Directors shall prepare and adopt a budget for the estimated common expenses and reserves of the Association during the coming assessment period. Except as otherwise provided in this Section 4.05, each Owner shall pay an equal amount of the annual assessment. The aggregate amount of the assessments shall be set at a level which is reasonably expected to produce income for the Association equal to the total budgeted common expenses, including any reserves. The Board of Directors shall send a copy of the budget and notice the amount of the annual assessments for the following year to each Owner in accordance with the requirements of the Act, as may be amended from time to time. If the Board of Directors fails for any reason to determine the budget for any year, then until such time as the budget is determined, the budget in effect for the immediately preceding year shall continue for the current year. Any revised budget prepared and adopted by the Board of Directors shall become effective in accordance with the requirements of the Act, as may be amended from time to time. The Board of Directors shall determine if annual and special assessments will be collected annually, quarterly or at some other interval and shall set due dates for assessment payments.

4.6 Effect of Nonpayment of Assessments and Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest thereon until the date such unpaid assessments are paid at a rate to be set by the Board of Directors but in no event greater than the maximum percentage rate as may then be permitted under the laws of the State of Florida. The Association may bring an action at law or in equity against the Owner personally obligated to pay the same, foreclose a lien against the property or seek injunctive relief. Interest, late fees, costs, and reasonable attorneys' fees of any such action shall be added to the amount of such assessment. Each such Owner, by his acceptance of a deed to or other conveyance of an interest in a Lot, hereby expressly vests in the Association the right and power to bring all actions against such Owner personally for the collection of each charge as a debt and to foreclose the aforesaid lien by all methods available for the enforcement of such liens, including foreclosures by an action brought in the name of the Association in a like manner as a mortgage lien on real property. The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all Owners. The Association, acting on behalf of the Owners, shall have the power to bid for an interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of said





Owner's Lot. The Board of Directors may also suspend the use rights of any Owner of the Common Area in the event of a failure to pay any assessment within ninety (90) days of the applicable due date or as otherwise mandated by the Act. Prior to such suspension, any Owners will be given fourteen (14) days' notice of the suspension and an opportunity for hearing, if required, pursuant to Florida law.

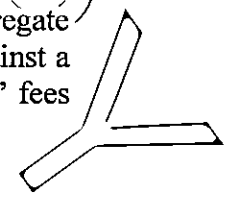
4.7 Subordination of the Lien to Mortgages. The priority of the Association's lien and the obligation for payment of past due assessments or other sums due in relation to first mortgagees who obtain title as a result of foreclosure or deed in lieu of foreclosure shall be determined by the Act, and specifically, §720.3085(2) of the Act, as amended from time to time. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof or relieve the prior Owner from any personal liability for any unpaid assessments occurring prior to said sale or transfer.

4.8 Estoppel Letter. The Association shall, upon request from an Owner or on behalf of an Owner, provide estoppel certificates in accordance with the requirements of the Act.

4.9 Working Capital Contribution. In addition to annual and special assessments levied hereunder, the first Owner acquiring title to a Lot from Declarant and/or a Builder and all subsequent Owners of each Lot upon acquisition of such Lot shall pay to the Association at their closing on their Lot a contribution to the Association's working capital an amount equal to three (3) months of assessments for Common Expenses and Common Expenses then being levied by the Association against such Lot. This working capital contribution may be used by the Association for any purpose not expressly prohibited by applicable law.

4.10 Declarant Exemption; Assessments During Declarant Control. Notwithstanding anything contained herein to the contrary, all Lots owned by Declarant shall be exempt from assessments of any type by the Association until the first to occur of (i) Declarant's execution and recording in the real property records of Santa Rosa County, Florida of a written waiver of the exemption from assessments set forth in this Section 4.10 or (ii) Turnover; provided, however, that for so long as Declarant's Lots are exempt from assessments, Declarant shall be responsible for and shall pay any and all operating expenses of the Association that exceed the amount of assessments receivable hereunder from the other Members and other income sources (if any) of the Association.

4.11 Fines. The Association may levy reasonable fines against any Owner for violations of the provisions of this Declaration, the Articles, the Bylaws, or the rules and regulations of the Association. A fine may not exceed \$100.00 per violation of any Owner or Owner's tenant, guest, or invitee for failure of the Owner of the Lot or its occupant, licensee, or invitee to comply with any provision of the Declaration, the Articles, the Bylaws, or the reasonable rules and regulations of the Association unless otherwise provided herein. A fine may be levied by the Board of Directors for each day of a continuing violation, with a single notice and opportunity for hearing, except that the fine may not exceed \$1,000.00 in the aggregate unless otherwise provided herein. A fine of less than \$1,000.00 may not become a lien against a Lot. In any action to recover a fine, the prevailing party is entitled to reasonable attorneys' fees and costs from the non-prevailing party as determined by the court.



## ARTICLE FIVE MAINTENANCE AND REPAIR

5.1 Maintenance. The Association shall provide maintenance of the Common Area. In addition, the Association shall have the right, but not the obligation, to maintain other property not owned by the Association, whether within or without the Subdivision and to enter into easement and covenant to share costs agreements regarding such property where the Board has determined that such action would benefit the Owners.

5.2 [INTENTIONALLY DELETED.]

5.3 Damage to Common Area. Notwithstanding anything contained in this Article Five to the contrary, each Owner shall be personally responsible and personally liable for any damage to the Common Area, or any portion thereof, caused by the Owner and/or the Owner's family members, guests, invitees, lessees or licensees as a consequence of the negligence, recklessness or willful misconduct of such person. The cost of repair for any damage so caused by the Owner, the Owner's family members, guests, invitees, lessees or licensees shall be a special assessment against the Owner responsible therefor and the Lot of such Owner.

5.4 Landscaping Work.

- (a) Subject to the remaining terms of this Section, the Association shall perform the Landscaping Work. Whether to make certain plantings and when and how to maintain all such landscaping shall be in the sole and absolute discretion of the Association. Any Landscaping Work performed on a Lot shall be a Common Expense.
- (b) Notwithstanding clause (a) of this Section, nothing in this Declaration shall be construed to prohibit any Owner from implementing "Florida-friendly landscaping", as defined under Florida law, on his or her Lot or create any requirement or limitation in conflict with Chapter 373 of the Florida Statutes ("Owner Landscaping"). In the event an Owner desires to install any Owner Landscaping, Owner shall first submit a landscaping plan to the Architectural Review Committee detailing Owner's plans therefor (a "Landscaping Plan"). Every Landscaping Plan shall include, without limitation, a list of all plantings and any other improvements proposed by the Owner, the locations within the Owner's Lot where the Owner proposes to make such plantings and other improvements, and such additional information as shall be reasonably necessary to demonstrate that such plantings constitute Florida-friendly landscaping and that such plantings will comply with the terms and conditions of this Declaration. Owner shall install, maintain, repair and replace, as applicable, all Owner Landscaping strictly in accordance with a Landscaping Plan approved by the Architectural Review Committee. In the event an Owner thereafter desires to cease maintaining the landscaping on such Owner's Lot, the Owner can return control of all landscaping to the Association for the Association to perform in

accordance with subparagraph (a) of this Section by delivering written notice thereof to the Association. Notwithstanding anything contained in this subparagraph to the contrary, no election by an Owner to self-perform the landscaping on such Owner's Lot shall in any way exempt such Owner from any assessment(s) associated with the Landscaping Work.

## **ARTICLE SIX** **ARCHITECTURAL CONTROL**

6.1 Submission of Plans and Specifications. No Townhome, building, fence, wall, or other structure or improvement shall be constructed, erected, or maintained upon any Lot, nor shall any exterior addition to, or change or alteration therein be made until the plans and specifications of the same shall have been submitted by an Owner to and approved in writing as in harmony with this Declaration by the Architectural Review Committee. Two (2) copies of the building or construction plans and specifications (collectively, the "Plans") shall be submitted to the Architectural Review Committee. Prior to commencement of any construction activities on a Lot, an Owner's Plans must be approved by the Architectural Review Committee as to conformity and harmony with this Declaration. The Architectural Review Committee may, from time to time, establish additional written design guidelines for the Subdivision, and a copy of any such guidelines then in effect shall be made available to any Member requesting a copy of same from the Association.

6.2 Approval or Disapproval. The Architectural Review Committee shall indicate its approval or disapproval of such plans and specifications by delivering, in writing, notice of such approval or disapproval to the requesting Owner. In the event the Architectural Review Committee fails to approve or disapprove such design and location within sixty (60) days after said plans and specifications have been submitted to it, approval shall be deemed automatically given.

6.3 Right of Inspection. The Architectural Review Committee shall have the right, but not the obligation, to inspect the Owner's Lot and improvements during construction and prior to occupancy to insure construction in accordance with the construction plans submitted and approved by the Architectural Review Committee. Failure of an Owner to comply with the provisions of this Section 6.03, or failure of an Owner to carry out construction in accordance with the provisions of this Article, shall subject such Owner to such remedies as might be available at law or in equity (including, but not limited to, specific performance and injunction, payment of the prosecuting parties' reasonable legal fees and expenses).

6.4 Limited Review. The scope of review by the Architectural Review Committee is limited to appearance only and does not include any responsibility for structural soundness, suitability of construction or materials, compliance with building or zoning codes or standards, this Declaration, or any other similar or dissimilar factors.

6.5 Waiver of Liability. Neither the Architectural Review Committee nor any architect nor agent thereof nor the Association nor any agent or employee of any of the foregoing shall be responsible in any way for the failure of any improvements to comply with the

requirements of this Declaration, nor for any defects in any plans and specifications submitted, revised or approved in accordance with the foregoing provisions, nor for any structural or other defects in any work done according to such plans and specifications, and all persons relying thereon or benefiting therefrom agree not to sue or claim against the entities and persons referred to in this Section for any cause arising out of the matters referred to herein and further agree to and do hereby release said entities and persons for any and every such cause.

## **ARTICLE SEVEN** **USE RESTRICTIONS**

7.1 Residential Use; Commercial Activity. Except as is hereinafter provided in this Section and in Section 10.01(c) hereof, each Lot is hereby restricted to a private, single-family dwelling for residential use. No commercial activities of any kind whatsoever shall be conducted in any home, any other building located on a Lot, or any portion of any Lot; provided, however, that (a) an Owner may conduct a business entirely within their home so long as (i) such business uses only ten percent (10%) of the total square footage of such home, (ii) such business does not result in parking of additional vehicles on the Subdivision streets or Common Areas, (iii) such business is secondary to the use of the Lot for residential purposes, and (iv) such business shall not violate any applicable zoning ordinances, and (b) Builders shall have the right to use one or more homes as a "model home" and to operate a sales office from such model home.

7.2 Subdivision of Lots. Each Lot shall be conveyed as a separately designated and legally described freehold estate subject to the terms, conditions, and provisions hereof, to easements and rights-of-way, and matters of public record. No Lot may be subdivided into a smaller Lot or Lots unless approved by the Association; provided, however, that an entire Lot may be combined with an entire adjacent Lot and occupied as one Lot but assessed and governed as two Lots.

7.3 Signs. No sign of any kind shall be displayed on any Lot, except (i) that any Owner actively attempting to sell his Lot may place a "for sale" sign of less than four (4) square feet on his Lot; (ii) during the building of homes in the Subdivision, the Declarant and/or the Builders in the Subdivision may place signs at the entrance and/or on any Lot to advertise the Subdivision and the Lots for sale therein; and (iii) any Owner may display a sign of reasonable size provided by a contractor for security services within 10 feet of any entrance to the home.

7.4 Noxious and Offensive Activity. No noxious or offensive activity shall be carried on, in or upon any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to any other Owner.

7.5 Design Criteria; Structure. All improvements to be constructed or otherwise located on a Lot by an Owner shall comply with the following requirements:

- (a) Any home shall contain a minimum of one thousand two hundred (1,200) square feet of heated and cooled living space.

- (b) No home may exceed three (3) habitable stories above grade.
- (c) [INTENTIONALLY DELETED].
- (d) [INTENTIONALLY DELETED.]
- (e) No window air-conditioning units shall be permitted without prior approval from the Architectural Review Committee.
- (f) Underground electrical distribution facilities are required and no overhead electrical or similar wiring or lines shall be permitted.
- (g) All outside radio and T.V. antennas (including satellite dishes and other signal receiving/transmitting equipment) shall be installed in such a way as minimize visibility from the front of the Lot and shall be placed on the back or side of any roof. Notwithstanding the foregoing, the Architectural Review Committee shall regulate antennas, satellite dishes, and/or other signal-receiving equipment of any kind in strict compliance with all federal laws and regulations.
- (h) All plumbing or heating vent locations and colors shall be first approved by the Architectural Review Committee.
- (i) Driveway must be made of concrete, or if not, the alternative surface must be approved by the Architectural Review Committee; provided, however, that in no event may any Driveway be painted, scored or otherwise colored.
- (j) [INTENTIONALLY DELETED.]
- (k) [INTENTIONALLY DELETED.]
- (l) Fences are only permissible in the back yard of any Lot or Lots. The materials and design of such fencing must be approved by the Architectural Review Committee prior to constructing or installing such fencing. In addition to the foregoing, no fences may be constructed on any Lot in a manner that impedes stormwater flow within the Drainage Easements.
- (m) No outside clothes lines shall be permitted.
- (n) Existing drainage shall not be altered in any manner, and specifically shall not be altered in such a manner as to divert the flow of water onto an adjacent Lot.
- (o) Any roof constructed over any structure on any Lot must be covered with composite shingles or such other types of roof coverings of a higher grade and quality than composite shingles as are approved by the Architectural Review Committee.

7.6 Animals. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot except that dogs, cats, and other household pets may be kept subject to the rules and regulations adopted by the Association, provided that they are not kept, bred, or maintained for any commercial purpose. Pets must be kept leashed and/or under control at all times. Notwithstanding the foregoing, the restrictions in this Section 7.06 shall not apply to any service animals, support animals, and any other animals permissible under the Americans with Disabilities Act.

7.7 Waste. No rubbish, trash, garbage, or other waste material shall be kept or permitted upon any Lot except in sanitary containers located in appropriate area, screened and concealed from view.

7.8 Miscellaneous. Except as otherwise provided for herein, no patio cover, building or storage unit of any kind shall be erected, placed or set on any Lot unless (a) such structure is attached to the Townhome erected on the same Lot, (b) the architecture and character of such structure matches that of said Townhome, and (c) such structure has been approved in writing by the Architectural Review Committee.

7.9 Temporary Structures. No structure of a temporary character, trailer, mobile home, motor home, modular building unit, basement, tent, shack, garage, barn, or other outbuilding shall be used at any time on the Lots as a residence, either temporarily or permanently.

7.10 Vehicles.

- (a) No inoperative cars, trucks, trailers, boats, campers or other types of vehicles shall be allowed to remain either on or adjacent to any Lot for a period in excess of forty-eight (48) hours; provided, however, this provision shall not apply to any such vehicle being kept in an enclosed garage.
- (b) No trucks larger than a one-ton pickup shall be parked in the Subdivision, except those reasonably necessary to complete approved improvements.
- (c) Recreational vehicles and campers shall not be parked or stored on any Lot. Boats shall be parked in garages or shall be stored out of sight from all neighbors.
- (d) No overnight parking on streets is allowed. Parking in yards is strictly prohibited.
- (e) There shall be no major repair performed on any motor vehicle on or adjacent to any Lot unless performed inside an enclosed garage.
- (f) No noxiously loud or dangerous vehicles shall be allowed to be operated on any Lot.

### 7.11 Construction.

(a) [INTENTIONALLY DELETED.]

(b) No residence constructed on any Lot may be occupied prior to its substantial completion.

(c) In addition to compliance with the requirements set forth under this Declaration, any and all improvements on any Lot shall comply with the standards and provision of Santa Rosa County, and its applicable building code.

7.12 Pollution. There shall be no noxious emission of smoke, dust, odor, fumes, glare, noise, vibration, electrical or magnetic disturbance, detectable at the lot line or beyond.

7.13 Outdoor Lighting. All outside lights shall be of an intensity and be placed so as to avoid an annoyance to any neighbor. Said lighting shall be turned toward the ground and shall be shielded completely or by frosted glass or plastic in all directions so that it does not shine toward neighboring Lots. Flood lights which shine all night are specifically prohibited.

7.14 Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish, trash, garbage, or waste. All storage equipment for such material shall be kept in a clean and sanitary condition.

7.15 Oil and Mining Operations. No activity or hardware used for the purpose of exploration or extraction of minerals, oil, or gas shall be allowed on any Community Property at any time.

7.16 Firearms and Fireworks. The display or discharge of firearms or fireworks on any Lot or any Common Area is prohibited; provided, however, that the display of lawful firearms on the Common Area is permitted by law enforcement officers and also is permitted for the limited purpose of transferring firearms across the Common Area to or from an Owner's Lot. The term "firearms" includes "B-B" guns, pellet guns and other firearms of all types, regardless of size.

7.17 No Hanging of Items. No clothes, sheets, blankets, towels, laundry of any kind or other articles shall be hung out or exposed on any balconies, patios, or railings. Notwithstanding the foregoing, in the event the Association purchases any flags or other decorative items, each Owner shall hang any such flag or other decorative item from the exterior of such Owner's home at the location, in the manner and at such times as shall be required by the Association in the Association's sole and absolute discretion.

7.18 Hazardous Items. No one shall use or permit to be brought onto any Lot or upon any of the Common Area any flammable oils or fluids such as gasoline, kerosene, naphtha or benzene, or other explosives or articles deemed hazardous to life, limb or property, without the written consent of the Board of Directors; provided, however, that an Owner may store and possess gasoline and other flammable or hazardous materials typically used in the operation and maintenance of a single-family residence and yard, in reasonable quantities for personal use upon



such Owner's Lot without obtaining such written consent. The Board of Directors may require removal of any flammable or hazardous materials from the Subdivision if it determines, in its sole and absolute discretion, that any type or quantity of material is in violation of this Section.

7.19 Water and Sewer Service. The Owner of each Lot shall be required to connect to and use the central water distribution system and central sanitary sewage disposal system serving the Subdivision, and shall be responsible for paying all connection fees and assessments. No septic tanks or wells will be permitted.

7.20 Windows and Window Treatments. Reflective glass shall not be permitted on the exterior of any Townhome or other structure. No foil or other reflective materials shall be installed on any windows or used for sunscreens, blinds, shades or for other purposes. All exterior window styles, materials, and colors must be approved by the Architectural Review Committee; provided, however, that in no event shall burglar bars and/or wrought iron doors be permitted.

7.21 Lots on Wetland Areas, Body of Water. No Lot shall be increased in size by filling in of any wetlands, body of water, creek or any waterway on which it may abut without appropriate governmental permits (if any are required) and prior written approval of the Architectural Review Committee.

7.22 Compliance With Law. In all cases, each Owner shall comply in all respects with all applicable laws, rules and regulations (including, without limitation, applicable zoning ordinances) promulgated by any governmental authority having jurisdiction over the Lots and the Common Area.

7.23 Swimming Pools. Swimming pools of any type are expressly prohibited on all Lots.

7.24. Energy Conservation Equipment. No solar energy collector panels or attendant hardware or energy conservation equipment (collectively, "Energy Conservation Equipment") shall be constructed or installed on any Lot or Home without the prior written approval of the Architectural Review Committee in accordance with Article Six hereof. Energy Conservation Equipment shall be installed in such a way as to minimize visibility from any Common Area or road within the Subdivision. Notwithstanding the foregoing, the Association shall have the right to promulgate rules and regulations regarding the use and location of Energy Conservation Equipment; provided, however, that such rules and regulations shall not impair the effective operation of such Energy Conservation Equipment and shall comply with the requirements set forth in the Act.

7.25 Outdoor Equipment. No outdoor equipment, tools, generators, or sporting equipment (including but not limited to basketball goals) may be installed or affixed to any Lot or Home without prior written approval from the Architectural Review Committee; provided, however, that portable outdoor equipment, tools, generators, or sporting equipment may be used on a temporary basis for no more than twenty-four (24) hours and promptly removed from view after use. Notwithstanding the foregoing, portable generators may be used

and located on a Lot for more than twenty-four (24) hours in the event of an emergency or power outage but must be promptly removed once power is restored.

7.26 Holiday Displays. Notwithstanding anything to the contrary in this Declaration, holiday lighting and holiday decorations shall be permitted to be placed, installed, located, and/or erected upon the exterior portion of a Home or Lot beginning no earlier than one (1) week before Thanksgiving and shall be removed in their entirety no later than January 15<sup>th</sup> of the next calendar year. In no way limiting the foregoing, the Architectural Review Committee and/or the Association may establish additional standards and/or rules and regulations regarding holiday lights and/or holiday decorations. The Association may require the removal of any holiday lighting that creates a nuisance (for example, unacceptable spillover to adjacent Lots, excessive noise, shining directly onto adjacent Homes, and/or excessive travel through the Subdivision).

7.27 Lawn Decoration. Notwithstanding anything contained in this Declaration to the contrary and except as otherwise set forth in Section 7.26 above, exterior decorations, ornaments, and/or statuary shall not be permissible on any Lot or the exterior of any Home without the prior written approval of the Architectural Review Committee; provided, however, that such decorations, ornaments, and/or statuary shall be permissible on the rear of Lots without the prior written approval of the Architectural Review Committee so long as the same is not visible from the front of any Lot or Home.

## **ARTICLE EIGHT** **ADDITIONAL RESTRICTIONS**

8.1 Leasing. Homes and Lots may be leased by an Owner for residential purposes only; provided, however, that such lease and the rights of any tenants thereunder are hereby made expressly subject to the power of the Association to prescribe reasonable rules and regulations relating to the lease and rental of Lots and Homes and to enforce the same directly against such tenant or other occupant by the exercise of such remedies as the Board of Directors deems appropriate, including eviction. Further, all leases must be in writing, with a copy provided to the Association upon request by the Association. Any Owner who leases his Home or any portion thereof shall be responsible for the acts of his tenants, including, without limitation, the violation of this Declaration and/or any rules and regulations promulgated by the Association hereunder.

8.2 Restrictions on Mortgaging Lots. Nothing contained herein shall be construed to place any restrictions on an Owner's right to mortgage his Lot.

8.3 Regulations. Reasonable regulations concerning the use of the Lots and the Common Area may be made and amended from time to time by the Board of Directors.

8.4 Lender's Notices. Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and the Lot number or address, any mortgage holder, insurer, or guarantor will be entitled to timely written notice of:

(a) Any condemnation or casualty loss that affects either a material portion of the Common Area or the Lot securing its mortgage.

(b) Any sixty (60) day delinquency in the payment of assessments or charges owed by the Owner of any Lot on which it holds the mortgage.

## ARTICLE NINE ENFORCEMENT; DURATION; AMENDMENT

9.1 Enforcement. The Association, the Board of Directors, the Architectural Review Committee and/or any Owner shall have the right to enforce by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges imposed by the provisions of this Declaration. Failure by the Association, the Board of Directors, the Architectural Review Committee and/or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

9.2 Enforcement by Owners. An Owner may file a legal action for the violation of this Declaration (the "Complainant"), provided that the following procedure is strictly followed:

- (a) The Complainant must first give the Association written notice of the alleged violation of this Declaration together with a demand seeking that the Association enforce the terms of this Declaration as against said violator; and
- (b) The Association must fail to cause a cure of the alleged violation or, if the alleged violation has not been cured, fail to commence legal proceedings against said violator for the enforcement of the terms and conditions of this Declaration within one hundred twenty (120) days of the date of the Association's receipt of the notice referenced in subsection (a) hereof.

9.3 Attorneys' Fees. In any action (whether in advance of or prior to the initiation of any legal or equitable proceeding, in arbitration, in trial, in any administrative or other similar proceedings, or in any appeal from any of the same) pertaining to any condition, restriction or covenant herein contained (due to their alleged violation or breach) or for the enforcement of any lien against any Lot or against any Person, unless otherwise expressly provided in this Declaration to the contrary for specific instances and conflicts, the prevailing party shall be entitled to recover all costs, including reasonable legal fees and expenses.

9.4 Term. This Declaration is to take effect upon recordation and shall be binding upon the Association and all Owners and all persons and entities claiming title under and through them for thirty (30) years after the date this Declaration is recorded in the public records, after which it shall be automatically extended for successive ten (10) year periods unless an instrument in writing, signed by Members holding at least eighty percent (80%) of the voting interests in the Association, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated as specified therein.

9.5 No Additional Burden. No amendment of this Declaration shall place an additional burden or restriction or requirement on any Lot where the Owner of such Lot does not join in said amending instrument.

9.6 Amendments. This Declaration may be amended by vote of the Members having sixty-seven percent (67%) of the voting interests in the Association, or by a written instrument signed by the same percentage of Members provided, however, that any amendment to this Declaration that alters the Stormwater Management System, beyond maintenance in its original condition, including mitigation or preservation areas and the water management portions of the Common Area, must have the prior approval of NFWFMD. Notwithstanding the foregoing, Declarant shall have and reserves the right at any time and from time to time, without the joinder or consent of any other party to amend this Declaration by any instrument in writing duly signed, acknowledged and filed for record for the purpose of correcting any typographical or grammatical error, ambiguity or inconsistency appearing herein, provided that any such amendment shall be consistent with and in furtherance of the general plan and scheme of development as evidenced by this Declaration and shall not impair or adversely affect the vested property or other rights of any Owner or such Owner's Mortgagee.

## ARTICLE TEN RESERVED DECLARANT RIGHTS

10.1 General Reserved Rights. Declarant reserves unto itself, its successors and assigns:

- (a) A right-of-way and easement for ingress and egress and easement for utilities, drainage, maintenance, repairs and other related uses over, along, and across the Common Area for all purposes relating in any manner to the subdividing, developing or aiding in the development of the Subdivision or any parts or parts thereof or additions thereto by Declarant or others.
- (b) The right to grant easements and rights-of-way of ingress and egress and for drainage, utilities, maintenance and repairs along, over, across and under the Common Area to any person, firm, corporation or entity for use as ingress or egress or for drainage, utilities, maintenance and repairs.
- (c) The right to maintain, and grant Builders the right to maintain, a sales office and/or a management office and/or one or more model homes in the Subdivision and to maintain signs therein advertising the Subdivision and to conduct its business and sales activities pertaining to the Subdivision therein and therefrom.

All of the above rights and interests reserved by Declarant may be exercised by Declarant without the consent or concurrence of the Association or any Member.

10.2 Right to Annex Property. Declarant hereby reserves the right, exercisable in its sole and absolute discretion, to (a) make any real property adjacent to the Subdivision, including

but not limited to the Additional Phases (the "Additional Property") subject to all or any of the terms and conditions of this Declaration and/or (b) permit owners of Additional Property to become Members of the Association. No assurances can be made as to whether any Additional Property will be annexed. Furthermore, Declarant expressly reserves the right to exercise this right on multiple occasions until such time as all Additional Property has been annexed into the Subdivision and made subject to this Declaration. No assurances can be made with respect to the boundaries of any portions of any Additional Property that might be annexed. The Additional Property may be annexed in accordance with this Section by an amendment to this Declaration, which amendment may be made and entered into by Declarant in its sole and absolute authority and discretion without the consent, approval or signature of the Association or any Member. Notwithstanding anything contained in this Section to the contrary, (i) no Additional Property shall be subject to this Declaration unless and until Declarant executes an amendment to this Declaration affirmatively exercising Declarant's rights hereunder and records such amendment in the office in which this Declaration is recorded, and (ii) in the event Declarant exercises its right to annex any Additional Property in accordance with this Section, Declarant shall also have the sole and exclusive right to alter, or otherwise replace with other terms, the terms of Section 7.05 hereof as those terms pertain to any Lots created out of such Additional Property.

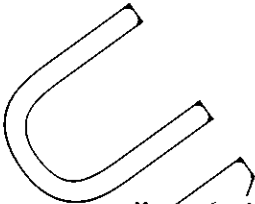
10.3 Amendment of Declaration by Declarant. Until Turnover, Declarant reserves unto itself the right, authority and power to amend this Declaration in any manner Declarant deems necessary and appropriate. Any amendment to this Declaration made in accordance with this Section shall require only the signature of Declarant and shall not require the signature of any other Owner or any Mortgagee of any Owner.

10.4 [INTENTIONALLY DELETED].

10.5 Turnover. All rights of Declarant hereunder shall automatically terminate upon Turnover, except those rights that Declarant holds as an Owner and not by virtue of being the declarant under this Declaration, which shall continue as long as Declarant is an Owner.

**ARTICLE ELEVEN**  
**INSURANCE; CASUALTY**

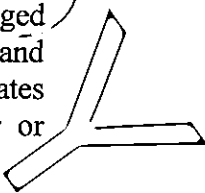
- 11.1.1 Insurance on Common Area. Except as is provided in Section 12.07 hereof to the contrary, the Association shall obtain the insurance coverage necessary to satisfy the requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the U.S. Department of Veterans Affairs, and the U.S. Department of Housing and Urban Development, as applicable to the Subdivision. Without limiting the foregoing, the Board shall obtain casualty insurance for all insurable improvements, whether or not located on the Common Area, which the Association is obligated to maintain. This insurance shall provide, at a minimum, fire and extended coverage and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. The Board shall obtain a public liability policy applicable to the Common Area covering the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents, and, if reasonably available, directors' and officers' liability insurance. Policies may contain a reasonable deductible as determined by the Board. In addition to the other insurance required by this section, the Board shall obtain worker's compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws, and a fidelity bond or bonds on directors, officers, employees and other persons handling or responsible for the Association's funds, if reasonably available. If obtained, the amount of fidelity coverage shall cover the maximum funds that will be in the custody of the Association or its management agent at any time while the policy is in force, or any lesser amount of fidelity coverage allowable under the applicable Fannie Mae guidelines. Fidelity coverage shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation. All such insurance coverage shall be written in the name of the Association. The expense of all insurance coverage obtained by the Association in accordance with this Section shall be a Common Expense.
- 11.1.2 Insurance on Homes – Association. The Association shall obtain and maintain at all times a policy or policies of multi-peril type hazard insurance, including insurance for such other risks of a similar or dissimilar nature, as are or shall hereafter customarily be covered with respect to other home-style projects similar in construction, design, location and use, insuring the Homes against loss or damage by the perils of fire, lightning and those

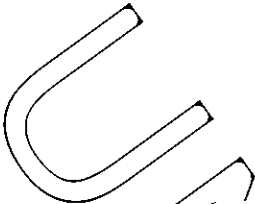


perils contained in extended coverage, vandalism and malicious mischief endorsements. If the Lots are located in an area identified by the Secretary of Housing and Urban Development as having special flood hazards, the Association shall, to the extent obtainable, insure the Homes and the Lots against the perils of flood under the National Flood Insurance Act of 1968 and acts amendatory thereto. The amount of insurance coverage shall be determined on a replacement cost basis in an amount not less than one hundred percent (100%) of the then current replacement cost of the Home (but excluding interior sheetrock, wallboard, fixtures, appliances, and improvements or betterments made to an Townhome by the applicable Owner after the initial construction of such Townhome) and any accessory structures attached to an Home (but excluding land, foundations, excavations and other items usually excluded from such insurance coverage) (collectively, the "Covered Property"). Such insurance coverage shall be written in the name of, and the proceeds thereof shall be payable to, the Association for the use and benefit of the individual Owners. Periodically, and in any event at least once every two (2) years, prior to the renewal of any such policy or policies of insurance, the Association shall either obtain an opinion or an appraisal from a qualified insurance appraiser for the purpose of determining the full replacement cost of the Covered Property for the amount of insurance to be obtained pursuant hereto. The cost of any such opinion or appraisal shall be a Common Expense. All such policies of insurance shall comply with the provisions of this Article and shall (i) contain a standard mortgagee loss payable clause endorsement in favor of the Mortgagee or Mortgagees of each Home, if any, as their respective interests may appear; and (ii) provide that the insurance shall not be invalidated by any act or neglect of any Owner. Premiums upon insurance policies purchased by the Association in accordance with this Section shall be paid by the Association as a Common Expense; except that the amount of increase over the usual premium occasioned by the use, misuse, occupancy or abandonment of a Home or its appurtenances by an Owner of a Home shall be specially assessed against that Owner.

11.2 Home Owner Insurance. The Owner of each Lot shall be responsible for, at the Owner's expense, obtaining insurance coverage for (a) loss of or damage to any sheetrock, wallboard, fixtures, furniture, appliances, furnishings, decorations, personal effects, and other property belonging to such Owner and located within such Owner's Home or otherwise on such Owner's Lot, (b) loss of or damage to any improvements or betterments made to such Owner's Home, and (c) personal liability for injury to the person or property of another while within such Owner's Home or upon such Owner's Lot. Risk of loss of or damage to any fixtures, furniture, furnishings and personal property belonging to or carried on the person of the Owner, or which may be stored upon any Lot, and any improvements or betterments made to such Owner's Home shall be borne by the Owner of each Lot. All insurance obtained by the Owner of each Lot shall, whenever such provisions shall be available, provide that the insurer waives its right of subrogation as to any claims against other Owners, the Association or the Declarant, and their respective servants, agents, employees and guests.

11.3 Damage and Destruction – Insured by Association. Not later than ninety (90) days after damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the name of the Association (as applicable, the "Damaged Property"), the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or

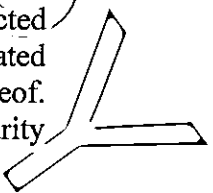




reconstruction, as used in this Section, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. Any Damaged Property shall be repaired or reconstructed unless, within 120 days after the casualty, a proposal not to repair or reconstruct such Damaged Property is approved by at least seventy-five percent (75%) of the voting interests of the Members. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed one hundred eighty (180) days. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Members, levy a special assessment against the Owner of each Lot. Additional assessments may be made in like manner, as necessary, at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited to the benefit of the Association. In the event that it should be determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, the property shall thereafter be maintained by the Association in a neat and attractive condition.

11.4 Destruction of Townhome. In the event of damage or destruction to one or more Homes due to fire or other disaster (whether one or more, a "Damaged Home"), the insurance proceeds, if sufficient to reconstruct the Damaged Home, shall be deposited into a bank account which requires, for withdrawals, the signatures of the Owner of such Damaged Home and an officer of the Association. Thereafter, the Owner of such Damaged Home and the Association shall promptly authorize the necessary repair and reconstruction work, and the insurance proceeds shall be applied by the Association and the Owner of the Damaged Home to pay for the cost and expense thereof. "Repair and reconstruction" of a Damaged Home, as used herein, shall mean restoring the improvements to substantially the same condition in which they existed prior to the event causing such damage.

11.5 Damaged Townhome – Insufficient Insurance Proceeds. If the insurance proceeds are insufficient to repair and reconstruct any Damaged Townhome, such damage or destruction shall be promptly repaired and reconstructed by the Association, using all available insurance proceeds and the proceeds of a special assessment levied against the Owner of such Damaged Townhome. Any such special assessment shall be equal to the amount by which the cost of reconstruction and repair of the Damaged Townhome exceeds the sum of the insurance proceeds allocable to such Damaged Townhome. Such special assessment shall be due and payable as provided by resolution of the Board of Directors, but not sooner than thirty (30) days after the levy of such special assessment. (The special assessment provided for in this Section shall be a debt of the Owner of the affected Damaged Townhome and a lien against such Owner's Lot and any improvements located thereon and may be enforced and collected in accordance with Article Four hereof. Notwithstanding the foregoing to the contrary, each Owner and Mortgagee holding a security interest in a Damaged Townhome may agree that a Damaged





Townhome shall promptly be demolished and all debris and rubble caused by such demolition be removed from the Subdivision and the Lot be re-graded and landscaped in a manner that is reasonably acceptable to the Board of Directors. The cost of such demolition work, re-grading and landscaping shall be paid for by any and all insurance proceeds available. Any excess insurance proceeds remaining therefrom shall be disbursed to such Owner and such Owner's Mortgagee, jointly, in accordance with their respective interests.

11.6 Insurance and Maintenance During Construction. Notwithstanding anything contained herein to the contrary, the Association shall have no obligation to insure or maintain the Townhomes located in a particular Townhome Building until such time as at least one (1) or more of the Townhomes located in such Townhome Building is occupied by an Owner or the lawful tenant of an Owner. During such time, the Owner(s) of the Lots on which such Townhome Building is located shall be obligated to insure and maintain all Townhomes that are a part of such Townhome Building.

## **ARTICLE TWELVE** **STORMWATER MANAGEMENT**

### 12.01 Stormwater Management

- (a) The Stormwater Management System, with the exception of the roof drainage system easements, shall be maintained by Santa Rosa County.
- (b) Fences or other structures shall not be installed in public or private drainage or access easements. These easements shall be accessible at all times.
- (c) There are 10 foot private drainage easements along each property line, being 5 feet on each lot. Fences or other structures in these easements shall not impede stormwater flow.

## **ARTICLE THIRTEEN** **INTENTIONALLY DELETED**

## **ARTICLE FOURTEEN** **MISCELLANEOUS**

14.1 Savings. If any provision or provisions of this Declaration, or any article, section, sentence, clause, phrase, or word herein, or the application thereof, is in any circumstances held invalid, the validity of the remainder of this Declaration and the application thereof shall not be affected thereby.

14.2 Captions. The captions in this Declaration are for convenience only and are not a part of this Declaration and do not in any way limit or amplify the terms and provisions of this Declaration.

14.3 Applicable Law. The laws of the State of Florida shall govern this Declaration. All actions or proceedings in any way, manner or respect, arising out of or from or related to this Declaration shall be litigated only in courts having situs within the county in which the Subdivision is located. Each Owner hereby consents and submits to the jurisdiction of any local, state or federal court located within said county and state and hereby waives any rights it may

have to transfer or change the venue of any such litigation. The prevailing party in any litigation in connection with this Declaration shall be entitled to recover from the other party all costs and expenses, including, without limitation, fees of attorneys and paralegals, incurred by such party in connection with any such litigation.

14.4 Effect of Waiver or Consent. A waiver or consent, express or implied, to or of any breach or default by any Person in the performance by that Person of its obligations hereunder is not a consent or waiver to or of any breach or default in the performance by that Person of the same or any other obligations of that Person. Failure on the part of a Person to complain of any act or to declare any Person in default hereunder, irrespective of how long that failure continues, does not constitute a waiver by that Person of its rights with respect to that default.

14.5 Headings. The headings and captions herein are used solely as a matter of convenience and shall not define, limit or expand any term or provision of this Declaration.

14.6 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a subdivision in accordance with Florida law. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision or any other provision hereof.

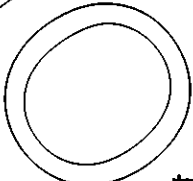
14.7 Notice. All notices required or desired under this Declaration to be sent to the Association shall be sent certified mail, return receipt requested, by hand delivery or by a recognized overnight courier who maintains verification of delivery, to the Secretary of the Association, at such address as the Association may designate from time to time by notice in writing to all Owners. All notices to any Owner shall be delivered by hand delivery, by a recognized overnight courier who maintains verification of delivery in person, or sent by first (1<sup>st</sup>) class mail to the address of such Owner's Lot, or to such other address as he may have designated from time to time, in a writing duly received, to the Association.

14.8 Conflict Between Documents. If there is any conflict or inconsistency between the terms and conditions of this Declaration and the terms and conditions of the Articles of Incorporation, the Bylaws or any rules and regulations promulgated hereunder, the terms and conditions of this Declaration shall control. If there is any conflict or inconsistency between the terms and conditions of the Articles of Incorporation and the terms and conditions of the Bylaws or any rules and regulations promulgated hereunder, the terms and conditions of the Articles of Incorporation shall control. If there is any conflict or inconsistency between the terms and conditions of the Bylaws and the terms and conditions of any rules and regulations promulgated hereunder, the terms and conditions of the Bylaws shall control.

14.9 Fair Housing Amendments Act of 1988. This Declaration, the Articles, the Bylaws, and any rules and regulations of the Association shall be subordinate to and interpreted and applied in a manner so as to be consistent with 42 U.S.C. §3601, *et seq*

IN WITNESS WHEREOF, Declarant has executed this Declaration by and through its duly authorized representative as of the date first set forth above.

WITNESS:



Jennifer Bass

Print Name:

Print Name:

Jennifer J. Bass

DECLARANT:

WHITLEY ESTATES DEVELOPMENT, L.L.C.,  
a Florida limited liability company

[Signature]

By: PAUL A. BATTLE

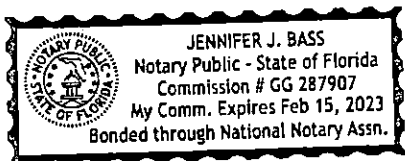
Its: MANAGER

STATE OF FLORIDA

COUNTY OF Escambia

The foregoing instrument was sworn to and subscribed before me by means of ☒ physical presence or ☐ online notarization, this 28 day of April, 2022 by PAUL A. BATTLE its Manager of WHITLEY ESTATES DEVELOPMENT, L.L.C., a Florida limited liability company, who ☒ is personally known or ☐ has produced a driver's license as identification.

[Notary Seal]



[Signature]  
Notary Public

Printed Name:

Jennifer J. Bass

My Commission

Expires:

2-15-23

COPY

**EXHIBIT "A"**  
**DESCRIPTION OF THE SUBDIVISION**  
**PROPERTY**

All property within the Whitley Estates Subdivision as shown on the plat recorded in Plat Book 14, Page 32 in the Office of the Clerk of the Circuit Court of Santa Rosa County, Florida.

**EXHIBIT "B"**  
**ARTICLES OF INCORPORATION**

UNOFFICIAL COPY

**ARTICLES OF INCORPORATION OF  
WHITLEY ESTATES HOMEOWNERS' ASSOCIATION, INC.**

**ARTICLE I - NAME**

The name of this non-profit corporation is **WHITLEY ESTATES HOMEOWNERS' ASSOCIATION, INC.** (the "Association").

**ARTICLE II - PURPOSES**

The Association does not contemplate pecuniary gain or profit, direct or indirect, to its members and is formed for the following purposes:

To promote the health, safety and welfare of the Lot Owners of Whitley Estates Subdivision, which is a proposed residential subdivision to be located in Santa Rosa County, Florida, as more particularly described in the Declaration, and the preservation of all Common Area appurtenant to the ownership of a Lot including:

- A. The ownership, acquisition, and maintenance of the Common Area, and improvements thereon, for the benefit of Lot Owners.
- B. The discharge of all obligations of the Declarations of Covenants, Conditions and Restrictions of Whitley Estates Subdivision, as may be amended from time to time to the extent provided therein (the "Declaration").
- C. The enforcement and administration of any and all covenants, restrictions and conditions of the Declaration.
- D. The discharge of such further actions deemed convenient or desirable to the purposes hereof by the Board.
- E. The assessment, collection and disbursement of the Lot Owners' pro rata shares of the costs and expenses incurred in accordance with these Articles, the Bylaws, the Declaration and the rules and regulations of the Subdivision.

**ARTICLE III - DEFINITIONS**

The definition of all terms set forth in the Declaration are by reference incorporated herein and shall have the meanings as set forth in the Declaration.

Reference to the terms "Member" or "Members" and the percentage of votes required for any action shall in all instances refer to the Lot Owners and the percentage vote of the Lots necessary to take such action, unless it is otherwise provided.

**ARTICLE IV - MEMBERSHIP**

Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject to the Declaration and to assessments by the Association shall be a member of the Association from the date such member acquires title to or an interest in a Lot, provided, however,

that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a member.

## ARTICLE V – MEETINGS

The Bylaws shall provide for an annual meeting of Members, and may make provision for regular and special meetings of Members other than the annual meeting.

## ARTICLE VI – TERM

This Association shall have perpetual existence.

## ARTICLE VII – THE INCORPORATORS

The names and addresses of the incorporators of this Association are:

Paul A. Battle  
2301 N 9<sup>th</sup> Ave,  
Pensacola, Florida 32503

Jason Rebol  
2301 N 9<sup>th</sup> Ave,  
Pensacola, Florida 32503

Kerry Anne Schultz  
2779 Gulf Breeze Parkway  
Gulf Breeze, Florida 32563

## ARTICLE VIII – OFFICERS

The officers shall be a president, a vice president, a secretary and a treasurer, and such other officers as may be determined by the Board of Directors. All officers shall be a member of the Board of Directors. The officers shall be chosen by majority vote of the directors. All officers shall hold office at the pleasure of the Board of Directors and all shall serve for a term of one year or until the successor has been appointed and accepted the position. Vacancy in office shall be filled within sixty (60) days of occurrence.

## ARTICLE IX – INITIAL OFFICERS

The initial officers of the Association are as follows:

<u>NAME</u>	<u>OFFICE</u>	<u>ADDRESS</u>
Paul A. Battle	President	2301 N 9 <sup>th</sup> Ave, Pensacola, Florida 32503
Jason Rebol	Vice-President	2301 N 9 <sup>th</sup> Ave, Pensacola, Florida 32503
Kerry Anne Schultz	Secretary	2779 Gulf Breeze Parkway Gulf Breeze, Florida 32563

## ARTICLE X – 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, or the Declaration to the contrary, until Turnover, WHITLEY ESTATES DEVELOPMENT, L.L.C. a Florida 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 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 of the Association; (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.

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:
1.	Paul A. Battle	2301 N 9 <sup>th</sup> Ave, Pensacola, Florida 32503
2.	Jason Rebol	2301 N 9 <sup>th</sup> Ave, Pensacola, Florida 32503
3.	Kerry Anne Schultz	2779 Gulf Breeze Parkway Gulf Breeze, Florida 32563

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. The number of directors may be changed by amendment of the Bylaws.

## ARTICLE XI – INITIAL REGISTERED OFFICE, ADDRESS AND NAME OF REGISTERED AGENT

The initial principal office of this Association shall be 2301 N 9<sup>th</sup> Ave, Pensacola, Florida 32503, with the privilege of having its office and branch offices at other places within or without the state of Florida. The initial registered agent shall be Kerry Anne Schultz, Esq., 2779 Gulf Breeze Parkway, Gulf Breeze Florida, 32563.





## ARTICLE XII – INDEMNIFICATION

1. **Indemnity.** The Association shall indemnify any person who was or is a part or is threatened to be made a part to any threatened, pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a director, employee, officer or agent of the Association, against expenses (including attorneys' fees and appellate attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding, unless (a) a court of competent jurisdiction determines, after all available appeals have been exhausted or not pursued by the proposed indemnitee, that he did not act in good faith, nor in a manner he reasonably believed to be in or not opposed to the best interest of the Association, and, with respect to any criminal action or proceeding, that he had reasonable cause to believe his conduct was unlawful, and (b) the court hearing that matter further rules that indemnification should be denied. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner in which he reasonably believed to be in or not opposed to the best interest of the Association, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

2. **Expenses.** To the extent that a director, officer, employee or agent of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 1 above, or in defense to any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees and appellate attorneys' fees) actually and reasonably incurred by him in connection therewith.

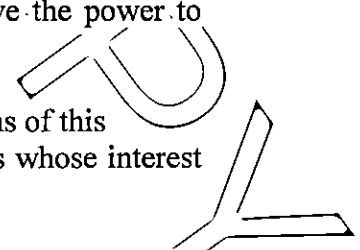
3. **Advanced.** Expenses incurred in defending a civil or criminal action, suit or proceeding shall be paid by the Association in advance of the final disposition of such action, suit or proceeding upon receipt of an agreement by or on behalf of the affected director, officer, employee or agent to repay such amount unless it shall ultimately be determined that he is not entitled to be indemnified by the Association as authorized in this Article XII.

4. **Miscellaneous.** The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any by-law, agreement, vote of members or otherwise, and shall continue in favor of a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs and personal representatives of such person.

5. **Insurance.** The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Association, or is or was serving, at the request of the Association, as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, to protect such person against any liability asserted against him or incurred by him in any such capacity, or arising out of his status in such a capacity, whether or not the Association would have the power to indemnify him against such liability under the provisions of this Article.

6. **Amendment.** Anything to the contrary notwithstanding, the provisions of this Article XII may not be amended without the prior written consent of all persons whose interest would be adversely affected by such amendment.

7. **Stormwater Management System.** The Association shall operate, maintain, manage the stormwater management system in a manner consistent with the requirements of Northwest Florida Water Management District Permit and applicable Northwest Florida Water



Management District rules and regulations, and shall assist in the enforcement of the Declaration. The Association shall levy and collect adequate assessments against members of the Association for the costs and maintenance and operation of the Stormwater Management System. The assessments shall be used for the maintenance and repair of the Stormwater Management System and mitigation or preservation areas, including but not limited to work within retention areas, drainage structures and drainage easements.

### ARTICLE XIII – BYLAWS

The Bylaws of the Association shall be adopted by the initial Board of Directors and may be altered, amended or rescinded by the Board in the manner provided in the Bylaws, the Declaration, these Articles and Florida law.

### ARTICLE XIV – VOTING RIGHTS

1. The membership shall consist of those Lot Owners as defined in Article IV hereof. A Member shall be entitled to one vote for each Lot owned.

2. If more than one person owns a Lot, the person entitled to cast the vote or votes for the Lot may be designated by a certificate signed by all of the record owners of the Lot and filed with the Secretary of the Association. If a Lot is owned by a corporation, partnership, trust, company or other legal entity, the person entitled to cast the vote or votes for the Lot may be designated by a certificate of appointment signed by a duly authorized representative of the entity and filed with the Secretary of the Association. Such certificates shall be valid until revoked or until superseded by a subsequent certificate or until a change in the ownership of the Lot, and a certificate may be revoked by any owner of an interest in the Lot. Any such revocation shall be in writing and signed by any owner of an interest in the Lot or a duly authorized representative of the entity, as the case may be, and filed with the Secretary of the Association.

3. If a Lot is owned by more than one (1) person and such owners do not designate a voting Member as required hereinabove, the following provisions shall apply:

A. If more than one (1) such owner is present at any meeting, and said owners are unable to concur on a decision on any subject requiring a vote, said owners shall lose their right to vote on that subject at that meeting; however, said vote or votes shall be included in the determination of the presence of a quorum.

B. If only one (1) such owner is present at a meeting, such person attending shall be entitled to cast the vote or votes pertaining to the Lot.

C. If more than one (1) such owner is present at the meeting and said owners concur, any one (1) such owner may cast the vote or votes for the Lot.

### ARTICLE XV – ASSIGNMENT

No right to any funds or assets of the Association can be assigned, hypothecated or transferred except as an appurtenant right to the ownership of a Lot or an interest therein or by dissolution of the Association.

## ARTICLE XVI – QUORUM FOR OTHER ACTIONS

Except as otherwise provided in the Declaration, the presence at a meeting of one-third (1/3) of the Members who own one-third (1/3) or more of the Lots who are entitled to cast a vote or who appear by proxy shall constitute a quorum for any action governed by these Articles.

## ARTICLE XVII – DEDICATION OF PROPERTIES OR TRANSFER OF FUNCTION TO PUBLIC AGENCY OR UTILITY

The Association shall have the power to dispose of its real properties only as authorized under the Declaration.

## ARTICLE XVIII – DISSOLUTION

The Association may be dissolved upon the written assent signed of fifty-one percent (51%) of the Lot Owners entitled to vote, or as otherwise provided in the Declaration. Written notice of a proposal to dissolve, setting forth the reasons therefor and disposition to be made of the assets (which shall be consistent with Article XVIII hereof) shall be mailed to every Lot Owner or posted on the front door of any building or structure on the Lot of an owner at least ninety (90) days in advance of date of the proposed action. In the event of termination, dissolution or final liquidation of the Association, the responsibility for the operation and maintenance of the Stormwater Management System must be transferred to and accepted by any entity which complies with Rule 62-330.310, Florida Administrative Code, and be approved by the Northwest Florida Water Management District prior to such termination, dissolution or liquidation.

## ARTICLE XIX – DISPOSITION OF ASSETS UPON DISSOLUTION

1. Upon dissolution of the Association, the assets, both real and personal of the Association, shall be dedicated to an appropriate public agency or utility that is or will be devoted to the same or similar purposes as those of the Association. In the event that such dedication is refused, such assets shall be granted, conveyed and assigned to any not for profit corporation, association, trust or other organization having the same orientation, with due regard, however, for the practicalities of such a situation.

2. No disposition of the properties of the Subdivision shall be effective to divest or diminish any right or title of any Member under the Declaration and the deeds applicable to the properties unless made in accordance with the provisions of the Declaration.

## ARTICLE XX – AMENDMENTS TO ARTICLES

Until Turnover, these Articles may be amended at any time and from time to time by Declarant, without the consent or approval of any of the other members of the Association. After Turnover, these Articles may be amended, subject to the terms and provisions of the Declaration, by the affirmative vote or at least sixty-seven percent (67%) of the total voting interests of all members of the Association. No amendment to these Articles of Incorporation shall be effective until same has been filed with the Department of State and approved by the Department of State.

# ARTICLE XXI – CONFLICT

In the event of any conflict between these Articles and the Declaration, the latter shall control, provided such provisions are not contrary to law.

IN WITNESS WHEREOF, the incorporators have executed these Articles of Incorporation on this \_\_\_\_ day of April, 2022.

PAUL A. BATTLE

JASON REBOL

KERRY ANNE SCHULTZ

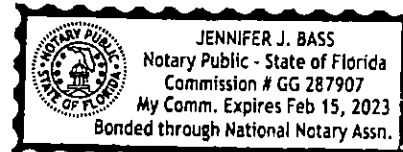
STATE OF FLORIDA  
COUNTY OF Escambia

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 28 day of April, 2022, by PAUL A. BATTLE, who is ☒ personally known to me or ☐ who has produced \_\_\_\_\_ as identification and has not taken an oath.

Jennifer J. Bass  
NOTARY PUBLIC

Commission No.:

My Commission Expires:



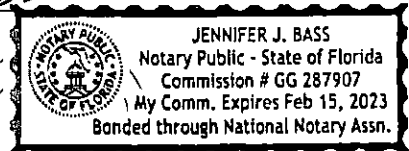
STATE OF FLORIDA  
COUNTY OF Escambia

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 28 day of April, 2022, by JASON REBOL, who is ☒ personally known to me or ☐ who has produced \_\_\_\_\_ as identification and has not taken an oath.

Jennifer J. Bass  
NOTARY PUBLIC

Commission No.:

My Commission Expires:



STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_ day of April, 2022, by KERRY ANNE SCHULTZ, who is ☐ personally known to me or ☐ who has produced \_\_\_\_\_ as identification and has not taken an oath.


NOTARY PUBLIC

Commission No.:

My Commission Expires:


CERTIFICATE DESIGNATING REGISTERED AGENT

In compliance with Chapter 48.091, *Florida Statutes*, WHITLEY ESTATES HOMEOWNERS' ASSOCIATION, INC., desiring to organize under the laws of the State of Florida, has designated Kerry Anne Schultz, Esquire, 2779 Gulf Breeze Parkway, Gulf Breeze Florida, 32563, as its registered agent to accept service of process within this State.

  
\_\_\_\_\_  
PAUL A. BATTLE, President

ACKNOWLEDGMENT

Having been named to accept service of process for the above stated corporation, at the place designated in this certificate, I hereby accept said appointment and agree to comply with the provisions of said act relative to keeping open said office.

  
\_\_\_\_\_  
Kerry Anne Schultz, Esquire

**EXHIBIT "C"**  
**BYLAWS OF ASSOCIATION**

UNOFFICIAL COPY

**BYLAWS**  
**OF**  
**WHITLEY ESTATES HOMEOWNERS' ASSOCIATION, INC.**

A NONPROFIT CORPORATION  
UNDER THE LAWS OF THE STATE OF FLORIDA

These Bylaws (these "Bylaws") of **WHITLEY ESTATES HOMEOWNERS' ASSOCIATION, INC.** (hereinafter called the "Association"), a nonprofit corporation, incorporated under the laws of the State of Florida are hereby created and adopted pursuant to the Articles of Incorporation of the Association filed in the Florida Department of State, Division of Corporations (the "Articles of Incorporation"). The Association has been organized for the purpose of providing various services and benefits with regard to the Subdivision (as that term is defined in the Articles of Incorporation).

**ARTICLE I**  
**ASSOCIATION**

1.1 **Office.** The office of the Association shall be at 2301 N 9<sup>th</sup> Ave, Pensacola, Florida 32503, or such other place as shall be selected by the Board of Directors.

1.2 **Fiscal Year.** The fiscal year of the Association shall be the calendar year.

**ARTICLE II**  
**MEMBERS**

2.1 **Qualification.** The members of the Association shall be determined in accordance with Article VII of the Articles of Incorporation. "Owner", as used herein, shall mean and refer to the record owner, whether the same shall consist of one or more persons or entities, of the fee simple title to any platted lot in the Subdivision (a "Lot"), but excluding those having such interest merely as security for the performance of the obligation.

2.2 **Voting Rights.** All Owners shall be entitled to one (1) vote for each Lot owned.

2.3 **Designation of Voting Members.**

2.3.1 If a Lot is owned by more than one (1) person, the person entitled to cast the vote or votes for the Lot may be designated by a certificate signed by all of the record owners of the Lot and filed with the Secretary of the Association. If a Lot is owned by a corporation, partnership, trust, company or other legal entity, the person entitled to cast the vote or votes for the Lot may be

designated by a certificate of appointment signed by a duly authorized representative of the entity and filed with the Secretary of the Association. Such certificates shall be valid until revoked or until superseded by a subsequent certificate or until a change in the ownership of the Lot, and a certificate may be revoked by any owner of an interest in the Lot. Any such revocation shall be in writing and signed by any owner of an interest in the Lot or a duly authorized representative of the entity, as the case may be, and filed with the Secretary of the Association.

2.3.2 If a Lot is owned by more than one (1) person and such owners do not designate a voting Member as required hereinabove, the following provisions shall apply:

2.3.2.1 If more than one (1) such owner is present at any meeting, and said owners are unable to concur on a decision on any subject requiring a vote, said owners shall lose their right to vote on that subject at that meeting; however, said vote or votes shall be included in the determination of the presence of a quorum.

2.3.2.2 If only one (1) such owner is present at a meeting, such person attending shall be entitled to cast the vote or votes pertaining to the Lot.

2.3.2.3 If more than one (1) such owner is present at the meeting and said owners concur, any one (1) such owner may cast the vote or votes for the Lot.

2.4 Restraint Upon Alienation of Assets. A member shall have no vested right, interest, or privilege of, in, or to the assets or funds of the Association, or any right, interest or privilege which may be transferable or inheritable, or which shall continue after his membership ceases, except as an appurtenance to the ownership of his Lot.

2.5 Change of Membership. A change of membership in the Association shall be established by recording in the Office of the Clerk of the Circuit Court of Santa Rosa, County, Florida, a deed or other instrument establishing a record title to a Lot (the "Record Property") and the delivery to the Association of a certified copy of such instrument, the owner designated by such instrument thereby becoming a member of the Association (the "Record Property Owner"). The membership of the prior Record Property Owner shall be thereby terminated, provided he is not an owner of other Record Properties in the Subdivision. Any change in ownership shall be subject to the relevant Subdivision documents, including the Declaration (as that term is defined in the Articles of Incorporation).

### ARTICLE III MEMBERS' MEETINGS

3.1 Place. All meetings of members of the Association shall be held at such place within the County of Santa Rosa, Florida, as may be stated in the notice of the meeting.

3.2 Membership List. At least ten (10) days before every election of the directors, a complete list of the members of the Association, arranged alphabetically, shall be prepared by the



Secretary. Such list shall be maintained by the Secretary of the Association and shall be open to examination by any member at any reasonable time and on reasonable notice.

### 3.3 Regular Meetings.

3.3.1 After Turnover (as defined in the Declaration), regular or annual meetings of the members of the Association shall be held on the second Tuesday of October of each year; provided, however, if the day set for annual meetings is a legal holiday, the meeting shall be held the same hour on the next day following which is not a legal holiday.

3.3.2 The time of holding the annual meeting of members may be changed at any time prior to fifteen (15) days before the regular day for holding such meeting by a resolution duly adopted by the Board of Directors or by the members, provided that notice of such change be mailed to each member of record, at such address as appears upon the records of the Association, not less than ten (10) days before the holding of such meeting; and further provided that each annual meeting of members shall be held within one (1) month of the date on which it should regularly have been held but for such change.

3.3.3 The purpose of the annual meeting is for electing directors and for transacting any other business authorized to be transacted by the members.

### 3.4 Special Meetings.

3.4.1 Special meetings of the members for any purpose may be called at any time by the President, and shall be called by the President or Secretary at the request, in writing, of either a majority of the Board of Directors or twenty percent (20%) of the members. Such request shall state the purpose of the proposed meeting.

3.4.2 Business transacted at all special meetings shall be confined to the objects stated in the notice thereof.

3.5 Notice. Written notice of every meeting, special or regular, of the members of the Association, stating the day and hour and place and, in the case of special meetings, the object or objects thereof, shall be delivered or mailed to each member at such member's address as shown in the books of the Association at least ten (10) days, but no more than fifty (50) days, prior to such meeting unless waived in writing.

3.6 Waiver of Notice. Whenever any notice is required to be given to any member under the provisions of the Florida Constitution, the Florida Statutes, or the Articles of Incorporation or these Bylaws, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

3.7 Proxies. At any meeting of the members of the Association, each member shall be entitled to vote in person or by proxy. However, no proxy shall be valid unless it is filed with the

Secretary prior to a meeting. Proxies are only valid for the particular meeting designated therein. No proxy vote may be cast on behalf of a member who is present at a meeting.

3.8 Vote Required to Transact Business. When a quorum is present at any meeting, the holders of a majority of voting rights shall decide any question brought before the meeting. If the question is one which requires more than a majority vote by express provision of any statute, the Articles of Incorporation, the Declaration or these Bylaws, the express provision shall govern and control the number of votes required. In all cases where reference is made to percentage of the vote of members, percentage of the members, or percentage of the members for purposes of determining the vote thereof, the percentage stated shall mean the percentage of the voting rights of the members.

3.9 Quorum. Thirty (30%) percent of the total number of voting rights of the Association present in person or represented by proxy, shall constitute a quorum at all meetings of the members for the transaction of business, except as otherwise provided by statute or these Bylaws. If a quorum is not present at any meeting, the members may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present. Any business may be transacted at any adjourned meeting until a quorum is present. Any business may be transacted at any adjourned meeting which could have been transacted at the meeting called.

3.10 Proviso. Notwithstanding anything contained herein to the contrary, until sixty percent (60%) of the Lots in the Subdivision have been sold to the original purchasers thereof, or until Turnover, whichever shall first occur, there shall be no meeting of the members of the Association unless a meeting is called by the Board of Directors.

3.11 Order of Business. The order of business at annual members' meetings and, as far as practicable, at all other members' meetings, shall be:

1. Call to order.
2. Calling of roll and certifying of proxies.
3. Proof of notice of meeting or waiver of notice.
4. Reading and disposal of any unapproved minutes.
5. Reports of officers.
6. Reports of committees.
7. Election of Directors.
8. Unfinished business.
9. New business.
10. Adjournment.

3.12 Action by Written Consent. Action required or permitted to be taken at a Members meeting may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the Members entitled to vote with respect to the subject matter thereof. The consent

shall have the same force and effect as a unanimous vote and may be stated as such in any filing instrument filed with either the Clerk of the Circuit Court or Secretary of State. Action taken under this Section 3.12 shall be effective on the date the last consenting Member signs the consent, unless the consent specifies a different effective date.

#### ARTICLE IV DIRECTORS

4.1 Number. The affairs and business of the Association shall be managed by a Board of Directors, consisting of not less than three (3) nor more than five (5) persons. The number of directors shall be determined pursuant to these Bylaws. Each director shall be a person entitled to cast a vote in the Association, except for the members of the initial Board of Directors. The number of directors constituting the initial Board of Directors shall be as designated in the Articles of Incorporation.

4.2 Term. Each director shall be elected to serve a term of one (1) year or until his successor shall be elected and shall qualify.

4.3 Vacancy and Replacement. If the office of any director becomes vacant by reason of death, resignation, retirement, disqualification, removal from office or otherwise, a majority of the remaining directors, though less than a quorum, at a special meeting of directors duly called for this purpose, shall choose a successor or successors who shall hold office for the unexpired term in respect to which such vacancy occurred.

4.4 Election of Directors. Election of directors shall be conducted in the following manner.

4.4.1 Directors shall be elected at the annual meeting of the members.

4.4.2 The election shall be by secret ballot (unless dispensed with by unanimous consent). The nominees receiving the greatest number of votes cast shall be elected to the Board.

4.5 Removal. Directors may be removed with or without cause by an affirmative vote of a majority (more than 50%) of the voting interests of the members of the Association that are entitled to vote for the election of such Director. Except with respect to the initial Board of Directors, no director shall continue to serve on the Board if, during his term of office, his membership in the Association shall be terminated for any reason whatsoever.

4.6 Powers and Duties of Board of Directors. All of the powers and duties of the Association under Florida law shall be exercised by the Board of Directors, or its delegate, subject only to approval by the members when such approval is specifically required. The powers and duties of the directors shall include, but are not limited to, the following:

4.6.1 Assess. To make and collect an annual maintenance charge against members to pay the expenses incurred by the Association in carrying out the objects and purposes of the Association.

4.6.2 Disburse. To use the proceeds of assessments in the exercise of its powers and duties.

4.6.3 Enforce. To enjoin or seek damages from the members for violation of these Bylaws, the Declaration and the terms and conditions of any rules and regulations applicable to the use of the Subdivision or any portion thereof.

4.6.4 Employ. To employ and contract with service contractors in connection with carrying out the objects and purposes of this Association.

4.6.5 Adopt and publish Rules and Regulations governing the use of the common areas and facilities within the Subdivision, and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof.

4.6.6 To maintain a class action, and to settle a cause of action, on behalf of Record Property Owners with reference to the common areas, the roof and structural components of a building or other improvement, and mechanical, electrical and plumbing elements serving an improvement or a building; and to bring an action, and to settle the same, on behalf of two (2) or more of the Record Property Owners their respective interests may appear, with respect to any cause of action relating to the common areas; all as the Board deems available.

4.6.7 To elect the officers of the Association and otherwise exercise the powers regarding officers of the Association as set forth in these Bylaws.

4.6.8 To determine who shall be authorized to make and sign all instruments on behalf of the Association and the Board.

4.6.9. To employ a management agent or manager, at a compensation established by the Board, to perform such duties and services as the Board shall authorize including, but not limited to, the duties listed in this Section; and such duties so conferred upon the managing agent or manager by the Board of Directors may upon five (5) days' notice be revoked, modified or amplified by the majority of the votes of the Directors in a duly constituted meeting.

4.6.10 To take appropriate action to enforce the provisions of the Declaration, any rules and regulations adopted by the Association, and the Bylaws. In connection with same, the Board is authorized to file or defend appropriate suits or request for arbitration filed under any of said instruments, acts or provided for by the laws of Florida.

4.6.11 To employ attorneys, accountants, and other persons or firms reasonably necessary to carry out the provisions of the Declaration, Bylaws and Articles of Incorporation of the Association and the rules and regulations.

4.7 Eligibility. A person who is delinquent in the payment of any fee, fine, or other mandatory obligation to the Association for more than ninety (90) days is not eligible for Board membership. A person who has been convicted of any felony in Florida or in a United States District or Territorial Court, or has been convicted of any offense in another jurisdiction which would be considered a felony if committed in Florida, is not eligible for Board membership unless such felon's civil rights have been restored for at least 5 years as of the date on which such person seeks election to the Board.

4.8 Annual Statement. The Board will present a full and clear statement of the business and condition of the Association and an account of the financial transactions of the past year at the annual meeting of the members.

4.9 Compensation. The directors shall not be entitled to any compensation for service as directors.

## ARTICLE V DIRECTORS MEETINGS

5.1 Organizational Meetings. The first meeting of each new Board elected by the members shall be held immediately upon adjournment of the meeting at which they were elected or as soon thereafter as may be practicable. The annual meeting of the Board shall be held at the same place as the general members' meeting.

5.2 Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined, from time to time, by a majority of the directors. Notice of regular meetings shall be given to each director, personally or by mail, telephone or telegraph, at least three (3) days prior to the day named for such meeting.

5.3 Special Meetings. Special meetings of the Board may be called by the President on five (5) days notice to each director. Special meetings shall be called by the President or Secretary in like manner and on like notice upon the written request of one-third (1/3) of the directors.

5.4 Notice. Unless in an emergency, notice of a Board meeting shall be posted in a conspicuous place in the Subdivision at least 48 hours in advance.

5.5 Quorum. A quorum at a directors' meeting shall consist of a majority of the entire Board. The acts approved by a majority of those present at a meeting at which a quorum is present, shall constitute the act of the Board, except when approval by a greater number of directors is required by statute or by these Bylaws.

5.6 Adjourned Meetings. If at any meeting of the Board there is less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is

present. At any adjourned meeting any business that might have been transacted at the meeting as originally called, may be transacted without further notice.

5.7 Joinder in Meeting by Approval of Minutes. The joinder of a director in any action taken at a meeting by signing and concurring in the minutes of that meeting shall constitute the presence of such director for the purpose of determining a quorum.

5.8 Presiding Officer. The presiding officer of a directors' meeting shall be chairman of the Board if such an officer has been elected; and if none, the President of the Association shall preside. In the absence of the presiding officer, the directors present shall designate one of their number to preside.

## ARTICLE VI ARCHITECTURAL REVIEW COMMITTEE; OFFICERS

6.1 Architectural Review Committee. The Architectural Review Committee (herein "ARC") shall consist of three (3) members at all times, who initially shall be PAUL A. BATTLE whose address is 2301 N 9<sup>th</sup> Ave, Pensacola, Florida, 32503, JASON REBOL whose address is 2301 N 9<sup>th</sup> Ave, Pensacola, Florida, 32503, KERRY ANNE SCHULTZ whose address is 2779 GULF BREEZE PARKWAY, GULF BREEZE, FLORIDA, 32563, and the point of contact is PAUL A. BATTLE. If any member of the Architectural Review Committee shall resign, become unable to serve or die, then the remaining member(s) shall appoint a successor member(s) to the Architectural Review Committee, who need not be an Owner. If no member of the ARC remains to appoint new members of the ARC, then the Declarant (as that term is defined in the Articles of Incorporation) shall have the exclusive right to appoint members of the ARC until the Declarant causes the first meeting of the Members of the Association to be held as provided for under Section 3.3 herein. Thereafter, the ARC members will be elected, appointed and removed in the same manner as the executive officers of the Association.

6.2 Officers. The executive officers of the Association shall be a President, Vice President, and Secretary, each of whom shall be elected at the annual meeting of the Board of Directors. The Board may elect more than one Vice President. The Board may appoint such other officers and agents that it may deem necessary, who shall hold office at the pleasure of the Board and have such authority and perform such duties as from time to time may be prescribed by said Board.

The initial officers are as follows:

PAUL A. BATTLE - President  
JASON REBOL - Vice President  
KERRY ANNE SCHULTZ -  
Secretary/Treasurer

6.3 Qualification. Except with respect to the office of the Secretary, no person shall be entitled to hold office except a member of the Association. The President and Vice President must be members of the Board.

6.4 Term. The officers of the Association shall hold office until their successors are chosen and qualify in their stead. Any officer elected or appointed by the Board may be removed at any time by the affirmative vote of sixty-seven percent (67%) of the voting interests of the members of the Association.

6.5 President. The President shall be the chief executive officer of the Association; he shall preside at all meetings of the members and directors; shall be an ex-officio member of all standing committees; shall have general management of the business of the Association, and shall see that all orders and resolutions of the Board are carried into effect.

6.6 Secretary.

6.6.1 The Secretary shall keep the minutes of the members' meetings and of the Board of Directors' meetings in one or more books provided for that purpose. Resolutions shall be maintained in one such minute book.

6.6.2 The Secretary shall see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law.

6.6.3 The Secretary shall be custodian of the corporate records and of the seal of the Association.

6.6.4 The Secretary shall keep a register of the post office address of each member, which shall be furnished to the Secretary by such member.

6.6.5 In general, the Secretary shall perform all duties incident to the office of the Secretary and such other duties as may be assigned to him by the President or by the Board of Directors.

6.7 Vice President. The Vice President shall be vested with all the powers and required to perform all the duties of the President in his absence, and such other duties as may be prescribed by the Board of Directors.

6.8 Vacancies. If any office becomes vacant by reason of death, resignation, disqualification or otherwise, the remaining directors by a majority vote may choose a successor or successors who shall hold office for the unexpired term.

6.9 Resignations. Any director or other officer may resign his office at any time. Such resignation shall be made in writing, to the Secretary, and shall take effect at the time of its receipt by the Association, unless some time be fixed in the resignation, and then from that date. The acceptance of a resignation shall not be required to make it effective.

6.10 Compensation. The compensation, if any, of all employees of the Association shall be fixed by the Directors. This provision shall not preclude the Board of Directors from employing a Director as an employee of the Association.

## ARTICLE VII LIABILITY

7.1 Liability. The Association assumes no responsibility for injuries sustained by or damages resulting from the acts or omissions of members or contractors of the Association.

7.2 Conflicts of Interest. No contract or other transaction between the Association and one or more of its directors, officers or any other corporation, firm, association or entity in which one or more directors or officers of the Association are directors or officers or are financially interested, shall be either void or voidable because of such relationship or interest. Any director of the Association, or any corporation, firm, association or entity of which any director or officer of the Association is a director or officer or is financially interested, may be a party to, or may have a pecuniary or other interest in such contract or transaction shall be disclosed or known to the Association Board at the meeting of the Association Board or a committee thereof which authorizes, approves or ratifies such contract or transaction and, if such fact shall be disclosed or known, any director or officer of the Association so related or interested. Any director or officer of the Association may vote on any contract or other transaction between the Association and any affiliated corporation without regard to the fact that he or she is also a director or officer of such affiliated corporation.

## ARTICLE VIII AMENDMENT OF BYLAWS

8.1 Bylaws. The Bylaws of the Association may be altered, amended or repealed by a majority vote of the Directors.

## ARTICLE IX CONFLICT

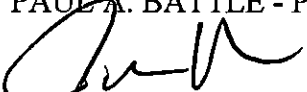
9.1. Conflict. In the event there shall exist a conflict between these Bylaws and the Articles of Incorporation, the Articles of Incorporation shall govern. In the event there shall exist a conflict between these Bylaws and the Declaration, the Declaration shall govern.

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IN WITNESS WHEREOF, we, being all of the directors of the WHITLEY ESTATES HOMEOWNERS' ASSOCIATION, INC., have hereunto set our hands this \_\_\_\_ day of April, 2022, and certify that these are the duly adopted Bylaws of Whitley Estates Homeowners' Association, Inc.

  
\_\_\_\_\_  
PAUL A. BATTLE - President

  
\_\_\_\_\_  
JASON REBOL - Vice President

  
\_\_\_\_\_  
KERRY ANN SCHULTZ - Secretary