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S & S DEVELOPMENT, LLC

Declaration Of Protective Covenants For The Glades at Whippoorwill

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State of Alabama)

Shelby County)

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**Declaration
of protective covenants for
the Glades at Whippoorwill**

KNOWN ALL MAN BY THESE PRESENTS, that:

Whereas, S&S development (" developer"), owns certain land in Shelby County, Alabama (hereinafter sometimes referred to as the "subject property"), more particularly described as the Glades at Whippoorwill as recorded in map book 39, page 98, space in the probate office of Shelby County, Alabama; and

WHEREAS, Developer desires to establish certain protective covenants with respect to be Subject Property as set forth herein, which protective covenants will run with the Subject Property and be binding on all parties having any right, title or interest in the Subject Property or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each owner thereof;

WHEREAS, Developer may acquire additional land in Shelby County adjacent, or in close proximity, to the subject property, and may, at developer's discretion without any requirement to do so, subject the additional land are portions thereof to this Declaration of Protective Covenants at which time the additional land will become a part of the subject property.

NOW, THEREFORE, Developer does hereby declare that the subject property shall hereafter be subject to the following restrictions, conditions, exceptions, liens and protective covenants, to-wit:

ARTICLE I

DEFINITIONS

- 1.1 **Articles.** The articles of incorporation of the Association.
- 1.2 **Association.** They Glades at Whippoorwill Association, its successors and assigns (the articles of incorporation and bylaws for which our record and in the office of the judge of Probate of Shelby County, Alabama, currently here with).
- 1.3 **Association Land.** That part of the Subject Property which may any time hereafter being owned by Association for so long as the Association or successor thereof may be the owner thereof.
- 1.4 **Board.** The Board of Directors of the Association.
- 1.5 **Bylaws.** The bylaws of the Association.
- 1.6 **Builder.** A builder licensed under the laws of the state of Alabama to construct residential dwellings.
- 1.7 **Common areas.** Those portions of the subject property which are conveyed to the Association by deed or other conveyance or which are defined are defined or designated as Common Areas pursue it to this Declaration or by notation on any record map or plat of the subject property.
- 1.8 **Declaration.** This declaration of protective covenants for the Glades at Whippoorwill shall be recorded in the probate records of Shelby County, Alabama, as the same may from time to time be supplemented or amended in the manner described here in.

- 1.9 **Developer.** S&S Development, and any successor thereof and any purchaser from any portion of the subject property to S&S Development also conveys and assigns its rights hereunder as developer.
- 1.10 **Development plan.** The development plan for a parcel (including any future modifications thereto), includes plat plans, grading plans, building plans and specifications showing site and plot layout and all exterior elevations, exterior materials and colors therefore, foundation plans, schedule of proposed materials, landscaping, irrigation and drainage plans, design and location of all improvements including, without limitation, the dwelling, mailboxes, and entrance columns and other construction related plans requested by the Architectural Review Committee.
- 1.11 **Improvement.** Any dwelling, building, wall, encloser, fence, mailbox, parking facility, storage facility, utility facility, or any other structure of any type, road, curb cut, landscaping (including removal or placement of vegetation), excavation (including removal of trees), irrespective of whether the improvement is temporary or permanent.
- 1.12 **Member.** A Parcel Owner.
- 1.13 **The Glades at Whippoorwill or the Glades at Whippoorwill property.** The name of the subject property.
- 1.14 **Parcel.** Any unit, lot, part or parcel of the subject Property designed for a residence and platted of record, regardless of whether a dwelling has or has not been constructed there on.
- 1.15 **Parcel owner.** The owner or owners of record title to any parcel.
- 1.16 **Resident.** Any person or persons occupying a parcel.
- 1.17 **Subject Property.** The property subjected to this declaration, including both the property more particularly described as the Glades at Whippoorwill, Townhomes Sector I, as recorded in the map book and page number, in the Probate Office of Shelby County, Alabama, as set forth on page 1 of this declaration, and any other real property which may be subjected to this declaration by separate instrument executed by Developer.
- 1.18 **Trmination of Developer voting rights.** The date which is the earlier of(i) the expiration of one (1) year during which the Developer does not own any portion of the subject property or (ii) the time when Developer notifies the Association in writing that Developer relinquishes and terminates Developer's control over the Association.

ARTICLE II

ARCHITECTURAL REVIEW COMMITTEE; ARCHITECTURAL CONTROL

- 2.1 **Architectural review committee.** The Architectural Review Committee (the "Architectural Review Committee") shall be composed of at least two and no more than three individuals designated and redesignated from time to time by the Developer until termination of Developer Voting Rights. The initial members of the Architectural Review Committee shall be Steve Allen, 170 Jennifer's Cove, Montevallo, Al, 35115, and Doug Thompson, 44 Buckeye Trail, Columbiana, AL 35051. The members of the Architectural Review Committee will be designated and may be removed at any time by the Developer, until such time as there is a termination of Developer Voting Rights. Upon termination of Developer Voting Rights, the Board of Directors of the Association shall have the right to appoint and terminate, with or without cause, all members of the Architectural Review Committee. At that time, the Association shall become vested with the rights, duties and functions of the Architectural Review Committee, all of which should be enforceable by the Association.
- 2.2 **Approval Required; Development Plan.** Before commencing the construction or alteration of any improvement on any parcel, two (2) copies of the development plan must first be submitted in writing to and approved in writing by The Architectural Review Committee. The Architectural Review Committee shall have the right to establish and demand from time to time written rules, regulations and standards



governing construction and alteration of any dwellings or other improvements on any Parcel, as well as the content and types of information required to be submitted to the Architectural Review Committee for its approval, each of which shall be in addition to the provisions and requirements set forth here in.

2.3 **Alterations.** Any exterior remodeling, reconstruction, alteration or additions to an existing dwelling or any activity which would change or alter the exterior appearance of a dwelling or other structure or other improvement must be approved in writing by the Architectural Review Committee. Interior remodeling, reconstruction or alteration of a dwelling not affecting the exterior appearance of the dwelling shall not require the written approval of the Architectural Review Committee, but shall comply with all restrictions and covenants set forth herein.

2.4 **Application process.**

- (a) No improvement shall be erected, placed, altered, maintained or permitted on any Parcel until two (2) copies of the development plan shall have been submitted in writing to and approved in writing by the Architectural Review Committee. The development plan shall be submitted in writing over the signature of any parcel owner or its authorized agent, and shall be accompanied by the request of any parcel owner or its agent, specifying for which part of the development plan approval is sought.
- (b) In any case in which the architectural review committee shall disapprove a development plan or shall approve the development plan only upon specified modifications or conditions, they disapprove all are qualified approval shall be accompanied by a statement of the grounds upon which such action is based. Upon approval by the architectural review committee of the any development plans submitted hereunder, a copy of the development plan, as approved, shall be deposited for permanent record with the architectural review committee.
- (c) If the architectural review committee dealt either to approve or to disapprove the development plan within thirty (30) business days after the development plan has been submitted in writing to the architectural review committee, it shall be conclusively presented the architectural review committee has approved the development plan, subject, however, to the covenants contained here in, and provided that the applicant provides conclusive proof that the architectural review committee actually receive the development plan. This proof may be provided only by an acknowledgment of receipt of the development plan signed by the architectural review committee or by a return receipt for certified mail, signed by the architectural review committee, which certified mail forwarded the development plan to the architectural review committee.
- (d) The architectural review committee shall, in its sole discretion, determines whether the development plan and other data submitted by any parcel owner for approval are acceptable. Any approval granted by the architectural review committee shall be effective only if the approval is in writing. The architectural review committee shall have the right to disapprove any development plan upon any ground, which is consistent with the objectives and purposes of this declaration, including, without limitation, purely aesthetic considerations, failure to comply with any of the provisions of this declaration, failure to provide requested information, objection to exterior design, appearances or material, objection on the ground of incompatibility with the overall scheme of development for the parcel or for the subject property, objection to location a any proposed improvement on any parcel, objection to the color scheme, finish, proportions, style of architecture, height, block our appropriateness of any dwellings are other improvement on any parcel or any other matter, which is so old and absolute judgment of the architectural review committee would render the proposed dwelling or other improvement inharmonious with the general plan of development for the subject property. The approval of the development plan or any one specific dwelling or other improvement shall not be deemed an appraisal or otherwise obligate the architectural review committee to approve a similar development plan for any other improvement to be considered are located on any parcel within the subject property.

- 2.5 **Inspection Rights.** The developer, the Association are the architectural review committee, or any agent or employee thereof, may at any reasonable time or times enter upon and inspect any parcel and any improvement in their on for the propose of ascertaining whether the maintenance of such parcel and the maintenance, construction, or alteration of any improvement thereon are in compliance with the provisions here of; and neither developer, nor the Association nor the architectural review committee, nor an agent, officer or employee thereof shall be deemed to have the committed a trespass or other wrongful act by reason of the entry or inspection. Any inspection shall be for the sole purpose of determining compliance with this declaration, and neither the making of any inspection, nor the failure to make any inspection, shall be relied upon by the parcel owners or any third persons or entities for any purpose whatsoever; nor shall any inspection obligate developer, the Association or the architectural review committee to take any particular action based on its inspection.
- 2.6 **Condition of Property.** The subject property may be located in an area which includes underground mines, tunnels, sink holes and subsurface conditions. The appraisal of development plan by the architectural review committee shall not be constructed in any respect as a representation or warranty by the architectural review committee, the association or developer or of any director, officer, employee or agent of any of them, to any parcel owner or any other persons that the surface or subsurface conditions of any parcel are suitable for the construction of a dwelling or other improvement thereon. It shall be the sole responsibility of each parcel owner to determine the suitability and adequacy of the surface and the subsurface conditions of the parcel. None of the entities are persons referred to in this section shall be liable are responsible for any damage or injuries suffered or incurred by any parcel owner or any other person as a result of surface or subsurface conditions affecting a parcel or any portion thereof, including, without limitation, any surface or subsurface drainage or underground mines, tunnels, sink holes or other condition or types of ground subsidence occurring on or under any parcel
- 2.7 **Waiver of Liability.** The scope of the review by the architectural review committee is limited to appearances only and does not include any responsibility or authority to review for structural soundness, compliance with building or zoning codes or standards, or any other similar or dissimilar factors. None of the architectural review committee, or the association, or developer, or any architect, agent, officer or employee of any of the foregoing, shall be responsible in any way for any failure of any improvement to comply with requirements of this declaration, even if the certificate of compliance has been issued, nor for any defects in any development plans submitted, revised or approved, nor for any structural or other defects in any work done according to any development plans; and all persons relying thereon agree not to sue or claim against the entities and persons referred to in this section. Section for any cause arising out of the matters referred to in this section and further agreed to do hereby release each of these entities and persons from any and every such case. **Each parcel owner, by acceptance of the deed to any parcel, hereby releases the architectural review committee, the association, the developer and their respective agents, officers, directors, members and successors and assigns, from all liability of every nature whatsoever arising from damage, loss or expense suffered, claimed, paid or incurred by any parcel owner or from any injury to property or injury or death to any person, related in any way to any defects in any development plans submitted to or approved by the architectural review committee, any defects resulting in any work done under the development plan or other data submitted, or any action taken or not taken by the architectural review committee, developer or the association related thereto.**
- 2.8 **Variances.** The architectural review committee shall have the right, in its sole and absolute discretion, to grant any variances from any of the restrictions contained in this declaration upon written application to the architectural review committee requesting a variant; provided, however, that the grant of a variance to one party shall not vest in any other party a right to receive the same or a similar variants. I'll variances shall be in writing and signed by the Chairman are vice-chairman of the architectural review committee.
- 2.9 **Charges for review uplands, certificates.** The architectural review committee shall have the right to establish from time to time reasonable charges and fees for the review of any development plans, and for issuing any certificate or statement required by, or requested pursuant to, this declaration. The architectural review committee shall, upon request, and at reasonable charges, furnished to any parcel owner a written certificate setting forth whether all necessary approvals have been obtained from the architectural review committee in connection with any dwelling or other improvement on a parcel.

2.10 **Developer's Exemption.** Developer and any parcel or other portion of the subject property owned by developer shall be exempt from the cabinets and other requirements of this Article II.

ARTICLE III

GENERAL RESTRICTIONS

- 3.1 **Land Use and Building Type.** No partial shall be used except for single-family residential purposes. No building shall be erected, placed, or permitted to remain on any parcel other than one single-family dwelling. Not to exceed two (2) stories or forty (40) feet in height, and any additional detached structures shall be approved by the architectural review committee. No mobile home or modular house may be placed on a parcel.
- 3.2 **Construction Standards.** Except as otherwise specifically approved or required by the architectural review committee with respect to any particular parcel, each parcel and the improvements thereon shall be constructed and maintained in accordance with the following requirements and standards:
- (a) the exterior finish of each dwelling shall be brick, stone, vinyl or wood siding, shake or a combination thereof. The front portion of the dwelling must show brick or stone to the extent required by the architectural review committee.
 - (b) Wood frame, vinyl or painted aluminum windows will be used exclusively on the sides, bronze, and rears of all dwellings, no unpainted or un-primed aluminum windows will be allowed.
 - (c) Each dwelling constructed on a partial shall contain a minimum of 950 square feet of heated and cooled living area, excluding porches, garages, basements and decks.
 - (d) The improvements on each parcel within the subject property must include adequate, off street parking to accommodate at least two (2) vehicles
 - (e) No concrete block work, including foundations, concrete blocks steps, walkways, walk or any other concrete block work, whether painted or otherwise, shall show above the ground or from the exterior of any dwelling in excess of eight (8) inches.
 - (f) No window unit, air conditioning shall be placed on any parcel. Outside air conditioning units may not be located in the front yard of any parcel or within any side yard adjacent to any street or corner lots.
 - (g) The roof pitch on any dwelling shall not be less than 6 to 12. Unless otherwise approved in writing by the architectural review committee. All roof vents and pipes shall be painted as near the color of the roof as practicable, and shall be located on the rear of the dwelling and not visible from the front. No solar or other energy collection device or equipment shall be maintained on any parcel or dwelling if the same would be visible from the street. No projections of any kind shall be allowed above the roof of any dwelling except for chimneys and vent stacks approved by the architectural review committee.
 - (h) No open carports shall be allowed on any parcel.
 - (i) Utility service shall be underground. No utility poles or aboveground wires shall be permitted except during the construction phase and except for streetlights as approved by the architectural review committee. The size and location of any propane gas tanks in similar facilities shall be subject to the approval of the architectural review committee
 - (j) No individual water supply systems shall be permitted on any parcel unless the system, in all respects, complies with the requirements and recommendations of all state and local

laws and regulations. Approval of any system as installed shall be obtained from all government agencies.

- (k) No individual sewage disposal systems shall be permitted on any parcel unless the system, in all respects, complies with the requirements and recommendations of all state and local laws and regulations, appraisal of any system as installed must be obtained from all government agencies
- (l) No shrubs or trees shall be planted on street corners or beside driveways that will impede the view or site of pedestrians or operators of automobiles.
- (m) Upon the completion of a dwelling, all front and side yards must be landscaped with sod and other landscaping approved by the architectural review committee. The rear yard must be hayed, seeded or sodded.
- (n) No outside radio, television, ham broadcasting, or other electronic antenna, Aerial or tower shall be visible from the front of any dwelling. Satellite dish no larger than 24 inches in diameter, must be installed to the rear of the dwelling and shall not be visible from the front of dwelling.
- (o) All driveways must be concrete finish. All parcel owners shall install concrete sidewalks on each parcel parallel with the street.
- (p) To ensure the maintenance of the natural beauty, no parcel owners shall damn up the creeks which flow through the subject property nor shall any parcel owner change the flow of any creek or any wet weather streams.

- 3.3 **Fences.** All fences are subject to the approval of the architectural review committee. All fences must be wood with the finished side on the outside and must be at least six (6) feet in height. No fence, wall, hedge shrub planting which obstruct sightlines from any roadways within the subject property shall be placed or permitted to remain on any parcel.
- 3.4 **Mailboxes and House Numbers.** All mailboxes and House numbers will be erected in strict conformity with the design criteria and development plan approved by the art architectural review committee, which shall be common for each parcel within a specific sector of the subject property. \$200 will be paid on or before closing for the mailbox and installation.
- 3.5 **Temporary and Auxiliary Structures.** No structure of a temporary character, trailer, basement, tent, shack, garbage, barn, or other outbuilding shall be used on any parcel at any time as a residence, either temporarily or permanently. No auxiliary structures may be placed on a parcel unless same have been approved by the architectural review committee.
- 3.6 **Storage of Boats, Trailers and Other Vehicles.** No boats, utility trailers, recreational vehicles, travel trailers or other vehicles of any kind will be stored on any parcel or a common area. Operational automobiles, only maybe parked in owner parking spaces. No tractor-trailer trucks, panel vans or other commercial trucks in excess of one (1) ton classification shall be parked or stored on any parcel or common area, and except during initial construction of a dwelling on a parcel. The prohibitions in this section shall not apply to temporary parking of trucks and other commercial vehicles providing commercial services to the parcel or to the efforts and activities of developer in connection with developing the subject property.
- 3.7 **Certain Yard Restrictions.** The following shall be located or maintained only at the rear of, or behind, a dwelling: wood piles, articles such as children's toys, jungle and gyms, trampolines and other outdoor recreational equipment and appurtenances, statues, water fountains, birdbath, flagpoles, bird feeders, woodcarvings, plaques, other home crafts or furniture. Barbecue grills and other outdoor cooking equipment, and apparatus shall be located only at the rear of a dwelling and should not be visible from any public street. Freestanding playhouses and treehouses must be approved by the architectural review committee. No aboveground swimming pool shall be located on any parcel. Outside close lines and other facilities for drying or airing of clothes are prohibited.



No clothing, rugs or other items shall be hung, placed or allowed to remain on any railing,, fence or wall. No rocks, rock walls, fencing or other substance shall be placed on any parcel as a front or side your border or to prevent vehicles from parking on or pedestrians from walking on any portion and of a parcel or to otherwise impede or limit access thereto. Seasonal our holiday decorations (Christmas trees and lights, pumpkins, Thanksgiving decorations) shall be removed promptly from any parcel or dwelling within thirty (30) days following the holiday.

- 3.8 **Completion of Construction.** Completion of any dwelling or other improvement must be completed within twelve (12) months from the date construction commenced, and must be prosecuted diligently and continuously. There shall be no occupancy of a dwelling until the dwelling is completed and finally inspected by the appropriate government authority.
- 3.9 **Oil and Mining Operations.** No oil drilling, oil development operations, oil refining, quarrying, mining operations of any kind, oil wells, tanks, tunnels, mineral excavation, or shafts shall be permitted upon or in any Parcel. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained, or permitted upon any Parcel.
- 3.10 **Livestock and Poultry.** No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Parcel, except that dogs, cats, or other household pets, not to exceed two (2) in number, maybe kept provided they are not kept, bread, or maintained for any commercial purpose and that the animals do not violate any applicable law, ordnance or regulation.
- 3.11 **Garbage and Refuse Disposal.** No parcel shall be used or maintained as a dumping ground for rubbish. Trash, garbage, or other waste shall not be kept except in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.
- 3.12 **Crops, Gardens.** No Parcel shall be cultivated for crops of any sort, except gardens of reasonable size, which are to be located at the rear of the dwelling and not visible from any public street..
- 3.13 **Comment Area Traffic.** Motorized vehicular traffic of any type is prohibited on any Common Area except as may be required or permitted by the Developer or the Association for maintenance or construction.
- 3.14 **Proscribed Uses.** No operation or uses shall be permitted or maintained on any Parcel, which causes or produced any of the following effects discernible within any portion of the Subject Property except during the period of construction of Improvements thereon:
- a. Noise or sound that is unusual and inappropriate for the Subject Property and is objectionable because of its volume, duration, and intermittent beat, frequency are shrillness;
 - b. Noxious, toxic, or corrosive fumes or gases;
 - c. Obnoxious odors;
 - d. Dust, dirt or fly ash; or
 - e. Unusual fire or explosive hazards.
- 3.15 **Covenant with Respect to Maintenance of Parcel and Improvements; Liens.** Each Parcel Owner shall keep all Parcels owned by the Parcel Owner, and all Improvements therein, thereon or appurtenant thereto, and good order and repair, including the feeding, watering and mowing of all lawns, the pruning and cutting of all trees and shrubbery and the painting (or other appropriate external care) of all buildings and other Improvements, all in a manner and with such frequency as is consistent with good property management. There shall be no outside burning of wood, leaves, or trash except during construction of a dwelling or with the approval of the fire department. If in the opinion of the Association any Parcel Owner fails to perform the duties imposed by the preceding sentence after thirty (30) days written notice from the Association to the Parcel Owner to remedy the condition in question, the Association shall have the right, through its agents and employees, to enter upon the parcel in question (or upon the improvements which may be appurtenant thereto) and to repair, maintain, repaint and restored the Parcel or Improvement and the cost and thereof shall be a binding, personal obligation of the Parcel Owner as well as a liens

(enforceable in the same manner as a mortgage) upon the Parcel and question. Any landscaping approved by the Architectural Review Committee cannot be changed pursuant to this section. With the exception of seasonal bedding plants within unchanged and previously approved bedding areas.

- 3.16 Priority of Lien.** The Lien provided in section 3.15 here shall not be valid as against a bona fide purchaser (or bona fide mortgagee) all of the Parcel in question, unless a notice of the lien shall have been recorded in the office of the Judge of Probate of Shelby County, Alabama, prior to the recordation in the office of the deed (or mortgage) conveying the Parcel and question to a purchaser (or subjecting the same to such mortgage).
- 3.17 Insect, and Fire Control.** In order to implement effective insect and fire control, the Association and/or Developer and their agents shall have the right to enter upon any Parcel on which a dwelling has not been constructed and upon which no landscaping plans have been approved as set forth herein, such injury may be made by personnel with tractors or other suitable devices, for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds or other unsightly growths, which in the opinion of the Association award Developer detracts from the overall beauty, setting and safety of the Subject Property. Entrance for these purposes shall not be deemed as trespass. The Association and/or Developer and their agents likewise, may enter upon any Parcel to remove any trash which has collected on the Parcel and the entrance and removal shall not be a trespass. The provisions in this Section shall not be construed as an obligation on the part of the Association or Developer to know, clear, cut or puring any Parcel nor to provide garbage or trash removal service.
- 3.18 Signs.** No signs shall be nailed or attached to trees. No commercial signs, including "for rent," "for sale," and other similar signs, shall be erected or maintained on any Parcel unless authorized in writing by the Association, except that one sign advertising be Parcel for sale or lease, not in excess of 5 ft.², and not greater than 5 feet above ground level, shall be permitted without the consent of the Architectural Review Committee if the permission is granted, the Architectural Review Committee may restrict the size, color, and the contents of all signs.
- 3.19 Fireplaces and Chimneys.** No cantilever fireplaces or chimneys shall be erected or maintained with any structure on any Parcel. All chimney chases must touch the ground or be supported by the foundation of the dwelling.
- 3.20 Subdivided Parcels.** No Parcel shall be subdivided or its boundary lines changed except with the written consent of Developer and a Architectural Review Committee. However, Developer hereby expressly reserves to itself the right, without the approval of the Architectural Review Committee, (i) to combine any two or more Parcels shown on the planet of any subdivision in order to create a modified Parcel or Parcels; and (ii) to subdivide any Parcel shown on the planet of any subdivision. Developer may take such other steps, as are reasonably necessary to make such replatted or subdivided Parcels suitable and fit as building sites, including, but not limited to, the relocation of the easements, walkways and right of ways to conform to the new boundaries of the said replatted Parcels.
- 3.21 Changes to Roadways.** Developer reserves the right to make any road or other improvements within the Subject Property, to extend roads and streets, and to change or extend the present road or any street grades, without liability to any Parcel Owner for any claims for damages. Except with the prior written consent of Developer, no Parcel shall be sold or used by a Parcel Owner for the purposes of extending any public or private road, street or alley or to provide a means of access to any other real property situated adjacent to or in close proximity with the Property.
- 3.22 Developer's Exemption.** Developer and any Parcel or other portion of the Subject Property owned by Developers shall be exempt from the covenants and requirements of this Article III.

ARTICLE IV

SPECIAL RESTRICTIONS AFFECTING COMMON AREAS

- 4.1 **Natural Areas.** Certain parts of the Common Area may be designated by the Developer or the Association as "natural" or "open". No structure may be placed on this area without the consent of the Developer, the Association Architectural Review Committee.
- 4.2 **Improvement of Areas.** Developers shall have the right, but not the obligation, to improve the common areas or any portion thereof with such amenities as developer, in it's sole discretion, might deem appropriate. Developer has no persent plan to make any such improvements, and no presentation is hereby made that such will or will not be made.
- 4.3 **Use of Common Areas.** Developer expressly reserves to itself, its successors and assigns, including Parcel Owners, the reasonable use and enjoyment of said Common Areas in a manner not inconsistent with the provisions of this Declaration and subject to such limitations and rules and regulations as might be promulgated by the Association
- 4.4 **Comments Areas and Facilities; Conveyance to Association.** The Association shall have the right to maintain or help maintain the common areas and facilities within the Subject Property which serve the are so Owners, regardless of whether the Common Areas and facilities are owned by Developer are have been conveyed to the Association is Common Areas. Developer shall have the right, but not the obligation, at such time or times as may be determined by Developer, in its sole discretion, to convey portions of the Subject Property to the Association as Common Areas.

ARTICLE V

THE GLADES AT WHIPPOORWILL

- 5.1 **General.** The structure of the Association is contained in its Articles of Incorporation and Bylaws, which should be consulted for a full explanation of the rights and obligations are appurtenant to membership in the Association.
- 5.2 **All Parcel Owners Are Members of the Association.** Every parcel owner shall, by virtue of such ownership, be a Member of the Association. Membership shall be appurtenant to a may not be separated from the ownership of any Parcel.
- 5.3 **Maintenance Fund; Assessment.** In order to (i) provide a fund to maintain, landscape and repair, the entranceway improvements, streets (except those located within a privately owned Parcel), walkways, and other community areas, and in general provide those services important to the development and preservation of an attractive community appearance; (ii) provide a fund to maintain, landscape and repair the Common Areas; and (iii) provide additional funds for purposes as may be deemed appropriate by the Board, the Board may each year and assess against each Parcel owned by a Member. An annual assessment equal to a specified number of dollars per parcel. The assessment may be collected periodically in twelve (12) even in monthly installments, four (4) even in quarterly installments, one (1) advance annual installment, or in such other manner as the Board shall deem appropriate. Unless otherwise determined by the Board, the assessment shall be fixed at a uniform dollar amount per Parcel. : **Yearly – \$325.00, Quarterly - \$95.00, Monthly - \$60.00.**
- 5.4 **Lien.** The assessment set forth in section 5.3 here, together with interest thereon (at such rate as the Board determines) and the cost of collection thereof (including reasonable attorneys fees) shall be a charge on and shall be a continuing lien (enforceable in the same manner as a mortgage, with power of sale) upon the Parcel against which each such fee, assessment or charges made.
- 5.5 **Subordination of Lien to Mortgages.** The lien of any fee, assessment or charge authorized by this Article with respect to a Member's Parcel is subordinate to the lien of any bonafide mortgage; if and only if, all fees, assessment and charges levied against the Parcel. Do you and payable on our prior to the date to mortgages recorded have been paid. The sale or transfer of any Members Parcel pursuant to a sale under power contained in a mortgage on a Parcel or pursuant to a deed in later foreclosure thereof or pursuant to a judicial foreclosure thereof, shall extinguish the lien for

an assessment falling due prior to the date of the sale, transfer or foreclosure, but the Association shall have a lien on the proceeds of the sale senior to the equity of redemption of the mortgagor. The foregoing subordinate, shall not relieve a Member whose parcel has been mortgaged of the Members personal obligation to pay all assessments and charges falling due during that time. Member is the owner of the Parcel. The Board may at any time, either before or after the mortgage of any Members Parcel, wave, relinquish our quitclaim in whole or in part the right of the Association to assessments and other charges collectible by the Association with respect to the Parcel coming due during the period while the Parcel is or may be held by a mortgagee he are mortgagee's pursuant to sale or transfer.

- 5.6 **Developer's and Builder Exemption.** Unless waived in writing by Developer and Builder, Developer and Builder and any Parcel or other portion of the Subject Property owned by Developer and Builder shall be exempt from the payment or levy of any and all assessments by the Board until the occurrence of Termination of Developer Voting Rights.

ARTICLE VI

EASEMENTS

- 6.1 **Townhouses Easements.** The Developer intends to sell Parcels to Builders who will construct townhomes and other Improvements. The construction of townhomes may require that certain eaves, roof overhangs, brick vaneers, siding and other architectural features and building materials encroach upon or hang over contiguous Parcels. Accordingly, there is hereby created, granted, and reserved, as in a pertinence to each Parcel, a perpetual easement over and across each Parcel, contiguous thereto for all encouragements and overhangs as well as for all encouragements and overhangs resulting from any natural movement or settling in any townhouse. In addition, there is hereby created, granted and reserved the Parcel Owner a license and right an entry across contiguous Parcels as may be reasonably needed to maintain and repair encouraging or overhanging structures. If any townhomes shall be damaged or destroyed, the Parcel Owner shall be permitted to repair and reconstruct the townhouse with encouragements and overhangs not more intrusive than those existing at the time of the damage or destruction and thereafter the license and right of entry shall continue in effect.
- 6.2 **General Construction and Drainage Easements.** The Developer plans to develop additional residential subdivisions in the future on property adjacent or in close proximity to the Subject Property. Developer reserved for itself, and its successors and assigns, and easement for ingress and egress over and across Subject Property as may be necessary for the construction and development of additional residential subdivisions on adjoining property adjacent or in close proximity to the Subject Property. There also is reserved and easement for drainage across the Subject Property as may be required resulting from the topography thereof or the additional land. Easements for installation and maintenance of utilities and drainage facilities may, but are not required to be, shown on the record map.
- 6.3 **Rear Access Easement.** There is hereby reserved for each Parcel Owner within a townhouse building a perpetual access easement five (5) feet in width of on the rear of each other Parcel within the townhouse building to serve as access over and across the five (5) foot easement areas and a perpetual access easement five (5) feet in width on the outside portion of each corner or and parcel of each townhouse building to serve as access over and across the five (5) foot easement area. All fences installed at rear of property must be to inside of five (5) easement.
- 6.4 **Inspection Easement.** Developer does hereby established and reserve for itself, the Association, the Architectural Review Committee and their respective successors and assigns, a permanent and perpetual, nonexclusive easement over, across, through and upon each Parcel for the purpose of inspecting each Parcel and any dwelling or other improvement constructed there on in order to determine compliance with the provisions of this Declaration and to otherwise perform any of their duties or undertake any of the action authorized or permitted to be taken by any of them pursuant to this Declaration.

6.5 Utility Easements. Developer does hereby established and reserve for itself, its successors and assigns, a permanent and perpetual, nonexclusive easement over, across, through, upon and under those proportions of any Parcel upon which the Developer has reserved an easement, as reflected on the recorded map, plat or other instrument for such Parcel, which easements may be used for the purpose of installing, a wrecking, maintaining and using above and below ground utility and cable television lines, poles, wires, cables, conduits, storm sewers, sanitary sewers, conveniences, appurtenances and other utilities.

6.6 Common Areas. Developer does hereby established in reserve for itself, its successors and assigns, a permanent and perpetual nonexclusive easement over, across, through, upon and under all portions of the Common Area for the purpose of installing, erecting, maintaining and using thereon above and below ground utility and cable television lines, pipes, poles, wires, cables, conduits, storm sewers, conveniences and other utilities.

ARTICLE VIII

GENERAL

7.1 Grantee's Acceptance. The grantee of any Parcels subject to this Declaration, by acceptance of deed or other instrument conveying an interest in or title to, or the execution of a contract for the purchase thereof, whether from Developer or a subsequent owner of a Parcel, shall accept the deed or other contract upon and subject to each and all of these restrictions, means, easements and provisions herein contained.

7.2 Indemnity For Damages. Each and every Parcel Owner and future Parcel Owner, in accepting and deed contract for any Parcel subject to this Declaration, agrees to indemnify Developer and the Association from and against(i) any damage caused by the Owner, or the contractor, agent, or employees of the Owner, two roads, streets, gutters, what ways are other aspects of public ways, including all surfacing there on, or to water, drainage or storm sewer lines or sanitary sewer lines owned by, developer are the Association, or for which Developer or the Association has responsibility, and the time of such damage, and (ii) any loss damage, claim reliability that Developer or the Association might suffer, including cost of defense in attorneys' fees, arising out of any breach or violation of the provisions of this Declaration.

7.3 Severability. Every one of the provisions and restrictions here is hereby declared to be independent of, and favorable from the rest of the provisions and restrictions here and and from every other one of the provisions in restrictions and of end from every combination of the provisions in restrictions. In this Declaration, and the invalidity of any one or more of the provisions are restrictions here shall in no way affect any of the other provisions or restrictions which shall remain in full force and effect.

7.4 Developer's Right to Remove Portions of or Add to the Subject Property. Other provisions here in to the contrary notwithstanding, Developer shall have the right at any time, to (i) remove from the provisions of this Declaration, the Articles and Bylaws, any portion or portions of the Subject Property as Developer might determine, and it's no discretion, provided that, at the time of the removal, the portions of the Subject Property removed are owned by Developer, and (ii) add to the provisions of this Declaration, the Articles in the Bylaws. Additional parcels of real property whether presently owned or subsequently aquired by Developer. Any portion of the Subject Property so removed by Developer shall no longer be affected or encumbered in any manner by the provisions of this Declaration, the Articles or the Bylaws. Developers shall have and does hereby reserve unto itself the power and authority to execute and effectuate, without the approval of any other persons or entities, amendments to this Declaration, the Articles and Bylaws as Developers shall deem appropriate to a man the legal description of the Subject Property and to carry out and enforced the rights reserved unto itself under this section.


7.5 No Development Scheme. The size, configuration, style, location and any other of the characteristics of any particular Parcels or Improvements thereto shall not in any manner bind or restrict Developer with respect to the characteristics of the development of any other portion of the Subject Property. Developers shall have the right to redesign and relocate the roads, drives and

entrances on the Subject Property and to change the size, configuration, style, location and other characteristics of any lots or Parcels to be created within the Subject Property in such manner as Developer deems appropriate.

- 7.6 Captions.** The captions preceding the various sections, paragraphs and subparagraphs of this Declaration are for the convenience of reference only, and none of them shall be used as an aid to the construction of any provisions of this Declaration. Wherever and whenever applicable, the singular form of any word shall be taken to mean or applied to the plural, and the masculine form shall be taken to mean or applied to the feminine or to the neuter.
- 7.7 Effect of Violation on Mortgage Lien.** No violation of any provision of this Declaration shall defeat or render invalid the lien of any mortgage made in good faith and for value upon any portion of the Subject Property; provided, however, that any mortgage in actual possession, or any purchaser at any mortgages' or foreclosure sale shall be bound by and subject to this Declaration as fully as any other Parcel Owner.
- 7.8 Zoning and Similar Restrictions.** This Declaration shall not be construed to permit any action or thing prohibited by applicable zoning laws, rules or regulations of any governmental authority, or by specific restrictions imposed by any deed or other conveyance. In the event of any conflict, the most restrictive positive shall govern.
- 7.9 No Reverter.** No restriction herein is intended to be, or shall be construed as, a condition subsequent or as creating a possibility of reverter.
- 7.10 Duration and Amendment.** The restrictions and provisions contained in this Declaration shall run with and bind the Subject Property, shall inure to the benefit of and shall be enforceable by Developer, the Association, the Architectural Review Committee, and any Parcel Owner, their respective legal representatives, heirs, successors and assigns until the first day of June in the year 2032, after which time said restrictions and provisions shall be automatically extended for successive periods of ten (10) years. Except as provided in section 7.11, this Declaration may not be amended in any respect (except with regard to the addition of other property) except by the execution of an instrument signed by not less than 75% of the Parcel Owners, which instrument shall be filed in the probate office of Shelby County, Alabama, or in such other place of the recording as may be appropriate at the time of execution of such instrument. After June 1, 2032, this Declaration may be amended and/or terminated in its entirety by an instrument signed by not less than 55% of the Parcel Owners, which instrument shall be filed in the probate office of Shelby County, Alabama or in such other place of recording as may be appropriate at the time of the execution of such instrument.
- 7.11 Amendment by Developer.** Notwithstanding any provision to the contrary, but subject to the next sentence, at all times prior to the occurrence of Termination of Developer Voting Rights, Developer, at Developer's discretion, may amend any provision of this Declaration, the Bylaws and the Articles of Incorporation without consent or vote of any Member or other person or entity including, without limitation, it amendments intend to satisfy requirements of any governmental agency or mortgage lender to make an extent mortgages on any Parcel. The Developer may not demand any provision of this Declaration, Bylaws and the Articles of Incorporation (i) in a manner which would adversely affect the rights specifically given in this Declaration to holders of mortgages upon any Parcel without the mortgagee's prior written consent; (ii) to accept a Parcel from the piece, charges and assessments provided in this Declaration; (iii) to lessen our extending voting and membership rights of Parcel Owners without the prior written consent of the percentage of Parcels owners as set forth in section 7.10; or (iv) in a manner which would materially and adversely alter a Parcel Owner's right to use the parcel for residential purposes. Until the occurrence of Termination of Developer Voting Rights, none of this Declaration, the Bylaws or at the Articles of Incorporation may be amended without the prior written consent of the Developer. Amendments by the Developer may apply to all of the Subject Property or to any portion there in.
- 7.12 Enforcement.** In the event of a violation or breach of any provision of this Declaration or any amendments thereto by any Parcel Owner, resident, or employee, agent, or least of the Parcel

Owner or resident, any Parcel Owner, the Association, Developer, their successors and assigns, or any other to whose benefit. This Declaration insurers shall have the right to proceed at law or in equity to compel compliance with the terms and conditions here of, to prevent a violation or breach of said restrictions and provisions, to save for and recover damages or other dues, or to take all such courses of action at the same time, or such other legal remedy. It made deem appropriate. No delay or failure on the part of an aggrieved party to initiate an available remedies set forth herein shall be held to be a waiver of the party or an estoppel cause of that party or of any other party to assert any right available to him upon the recurrence of continuation of said violation or the occurrence of a different violation.

- 7.13 Certificate of Violation.** In addition to any other rights or remedies available to be Association hereunder or at law or equity, the Association shall have the right to file in the probate office of Shelby County, Alabama, a Certificate or Noticed of Violation of this Declaration (which violation shall include, without limitation, non-payment of fees, and assessments or charges, or failure to comply with architectural guidelines) upon failure of a Parcel Owner to correct a violation of this Declarations within 10 days (unless a longer period of time is provided here in) after written notice that the violation has been given by the Association to the Parcel Owner.
- 7.14 Interpretation by Developer and in the Association.** The Developer and the Association shall have the right to construed and interpret the provisions of this Declaration, and in absence of an adjudication by a court of competent jurisdiction to the contrary, its construction or interpretation shall be final and binding as to all persons or property benefited or bound by this Declaration.
- 7.15 Assignment by Association.** The Association shall be empowered to assign its rights hereunder and its properties to any successor nonprofit membership corporation (here in referred to as the "Successor Corporation") and, upon such assignment, the Successor Corporation shall have all the rights and be subject to all the duties of the Association hereunder.
- 7.16 No Waiver.** The failure of any party entitled to enforce any of the provisions of this Declaration shall he know it can't be considered a waiver of the right to do so. They're after, as to the same violation or breach or as to such a violation or breach are occurring prior or subsequent thereto; provided, however, that approval of Development Plan pursuant to ArticleII shall be binding on any and all parties. As a conclusive determination that the development plan are in conformity with this Declaration.


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Shelby Cnty Judge of Probate, AL
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IN WITNESS WHEREOF, this Declaration of Protective Covenants for The Glades At Whippoorwill has been executed by Developer. Effective 4-7-08.

S&S Development

By:

Steve Allen

Steve Allen
President

STATE OF ALABAMA)
Shelby :
~~JEFFERSON~~ COUNTY)

I, the undersigned, and notary public in and for said county in said State, hereby certify that Steve Allen, whose name as president of S&S development, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of this instrument, he, as such Member and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal the 7th day of April 2008

Kelly B. Mullin
Notary Public

Kelly B. Mullin

[NOTARIAL SEAL]

My commission expires: Notary Public State At Large
Commission Expires
June 28, 2009



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Shelby Cnty Judge of Probate, AL
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