

This Instrument prepared by  
J. Corbitt Tate  
Balch & Bingham LLP  
1901 Sixth Avenue North, Suite 1500  
Birmingham, Alabama 35203  
(205) 251-8100

COUNTY OF SHELBY       )  
  
STATE OF ALABAMA       )

**AMENDMENT TO  
THE DECLARATION OF PROTECTIVE COVENANTS FOR  
THE GLADES AT WHIPPOORWILL**

THIS AMENDMENT TO THE DECLARATION OF PROTECTIVE COVENANTS FOR THE GLADES AT WHIPPOORWILL is made on this the 5th day of March, 2021 (this "Amendment"), by and among the parcel owners identified on the signature pages attached hereto (collectively, the "Parcel Owners"), which constitute at least seventy-five percent (75%) of the parcel owners in accordance with Section 7.10 of the Declaration, SDH Birmingham LLC, a Georgia limited liability company ("SDH"), Western REI, LLC, an Alabama limited liability company ("Western REI"), Renesha Byrd ("Byrd"), Jeffrey D. Layton ("Layton", together with SDH, Western REI and Byrd, the "Additional Property Owners").

**WITNESSETH**

**WHEREAS**, on April 7, 2008, S&S Development, LLC executed that certain Declaration of Protective Covenants for The Glades at Whippoorwill, as recorded in Instrument 20080407000139980 in the Probate Office of Shelby County, Alabama ("Declaration");

**WHEREAS**, the Declaration encumbers the real property situated on that certain plat map titled The Glades at Whippoorwill First Sector recorded in Map Book 39, Page 98 in the Office of the Judge of Probate of Shelby County, Alabama (the "Original Plat Map");

**WHEREAS**, the Original Plat Map depicts platted lots, common areas and additional property identified as "Future Development";

**WHEREAS**, Western REI recorded that certain Final Plat of The Glades in Map Book 53, Page 22 in the Office of the Judge of Probate of Shelby County, Alabama (the "Final Plat Map"), which depicts certain lots on the Original Plat Map as well as creates new lots approximately within the area identified as "Future Development" on the Original Plat Map;

**WHEREAS**, such new lots are more particularly described on Exhibit A attached hereto (the "Additional Property");

**WHEREAS**, the Additional Property Owners collectively own all of the Additional Property;

**WHEREAS**, the Additional Property Owners wish to clarify that the Additional Property is subject to the Declaration, and have requested that the Parcel Owners amend the Declaration to reflect the same;

**WHEREAS**, the Parcel Owners also wish to amend certain definitions in the Declaration;

**WHEREAS**, the Parcel Owners collectively own at least seventy five percent (75%) of the Parcels (as defined in the Declaration) set forth on the Original Plat Map; and

**WHEREAS**, as set forth below, the Parcel Owners desire to amend the Declaration in accordance with Section 7.10 of the Declaration to add the Additional Property to the Declaration and to amend certain definitions in the Declaration as set forth herein, and the Additional Property Owners wish to subject the Additional Property to the Declaration.

#### **AMENDMENT**

**NOW THEREFORE**, the Parcel Owners and Additional Property Owners hereby agree as follows:

1. **Capitalized Terms.** Capitalized terms used herein unless otherwise defined herein shall have the meaning ascribed to such terms in the Declaration.

2. **Recitals.** The foregoing recitals are true and correct in all material respects and form an integral part of this Amendment, the same as if said recitals were included in the numbered paragraphs hereof.

3. **Annexation of Additional Property.** The Additional Property, including any improvements located thereon and hereafter constructed, is hereby annexed and subjected to the provisions of the Declaration, and such property shall be held, sold, transferred, conveyed, used, and occupied subject to the covenants, conditions, restrictions, easements, and terms set forth in the Declaration, as amended hereby. Each Additional Property Owner hereby declares that the Additional Property is hereby subjected to the provisions of the Declaration and shall be sold, transferred, conveyed, used and occupied subject to the covenants, conditions, restrictions, easements and terms set forth in the Declaration, as amended hereby.

4. **Amendment to Declaration.** The Declaration shall be and the same hereby is amended as follows:

(i) Any and all references in the Declaration to the "Subject Property" shall include the Additional Property.

(ii) Any and all references to "Articles" in the Declaration shall be deleted and "Certificate of Formation" shall be inserted in place thereof.

(iii) The definition of "Articles" in Section 1.1 of the Declaration shall be deleted in its entirety and the following new definition shall be substituted in place thereof:

1.1 **Certificate of Formation.** The certificate of formation of the Association filed with the Office of the Judge of Jefferson County, Alabama, the form of which are attached hereto as Exhibit A.

(iv) The definition of "Association" in Section 1.2 of the Declaration shall be deleted in its entirety and the following new definition shall be substituted in place thereof:

1.1 **Association.** The Glades at Whippoorwill Association, Inc., its successors and assigns.

5. Certificate of Formation. The form of Certificate of Formation attached hereto as Exhibit B is hereby attached to and incorporated into the Declaration as Exhibit A. The Parcel Owners and Additional Property Owners hereby authorize the filing of such Certificate of Formation in the Office of the Judge of Probate of Jefferson County, Alabama, the Office of the Alabama Secretary of State and any other office deemed necessary by the Board of Directors of the Association. In addition, the Parcel Owners and Additional Property Owners hereby authorize the filing of that certain Homeowners' Association (HOA) Domestic Nonprofit Corporation Supplement to Certificate of Formation with the Alabama Secretary of State in form and substance approved by the Board of Directors of the Association.

6. Continued Effectiveness. Except as specifically amended hereby, all of the terms and conditions of the Declaration shall remain in full force and effect. In the event of a conflict between the provisions of this Amendment and the provisions of the Declaration, the provisions of this Amendment shall control.

*[Remainder of page left intentionally blank.]*



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RESTCOVNAMEN 4/15

IN WITNESS WHEREOF, SDH Birmingham, LLC, in its capacity as a Parcel Owner of Lots 19, 20, 21, 22, [REDACTED] 36A, and 40A and as an Additional Property Owner has caused this Amendment to the Declaration of Protective Covenant for The Glades at Whippoorwill to be duly executed and authorized as of the day and year above written.

**Parcel Owner / Additional Property Owner:**

**SDH BIRMINGHAM LLC,**  
a Georgia limited liability company

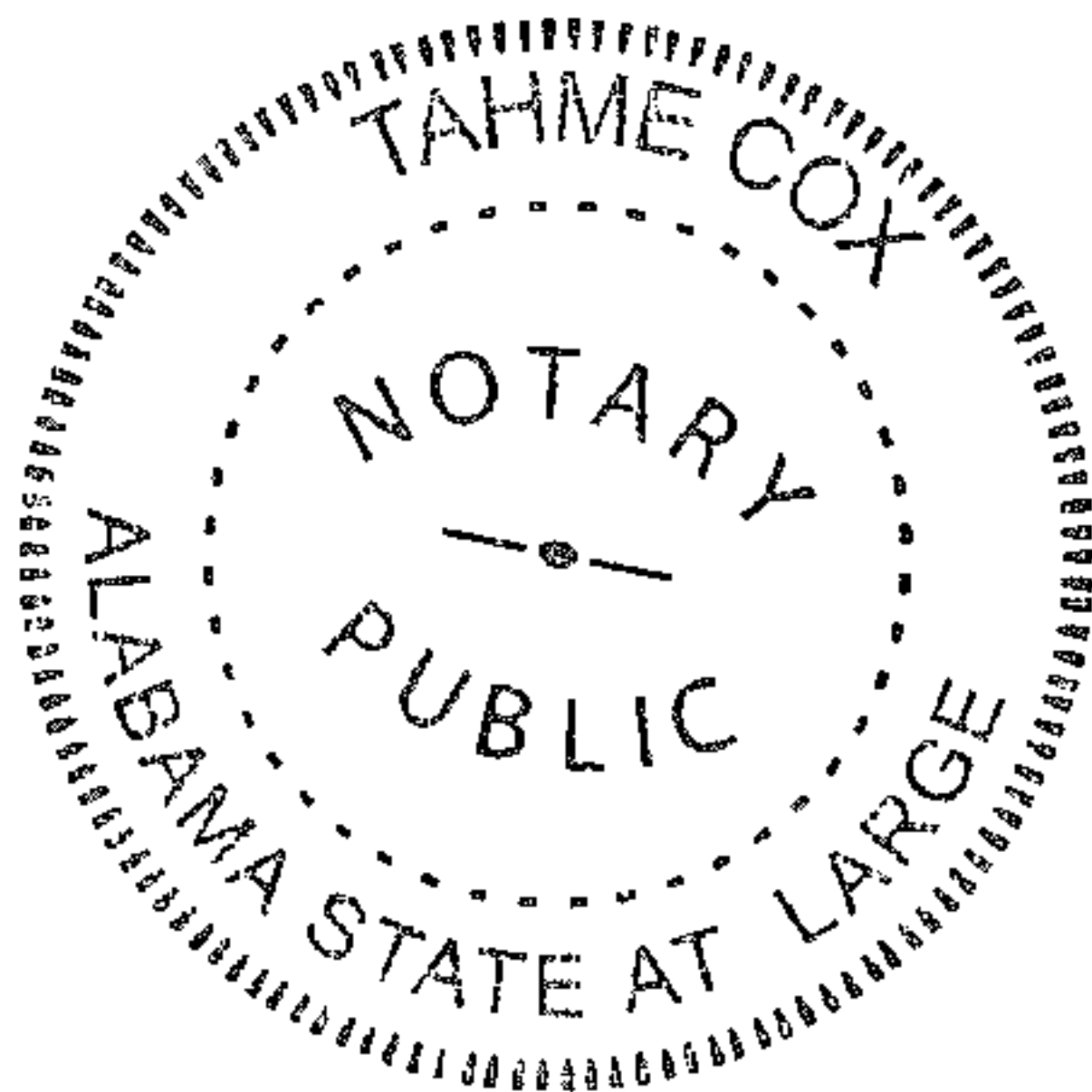
By: Connor Thorpe  
Name: Connor Thorpe  
Title: Land Acquisition Manager

STATE OF Alabama )

COUNTY OF Shelby )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Connor Thorpe, whose name as Land Acq. Mgr of SDH Birmingham LLC, a Georgia limited liability company, 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 the instrument, s/he, as such Manager and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand this 2nd day of March, 2021.



Tahme M. Cox  
Notary Public  
My Commission Expires: 8-21-23

IN WITNESS WHEREOF, Western REI, LLC, in its capacity as a Parcel Owner of Lots 54, 55, 56, and 57 and as an Additional Property Owner has caused this Amendment to the Declaration of Protective Covenant for The Glades at Whippoorwill to be duly executed and authorized as of the day and year above written.

**Parcel Owner / Additional Property Owner:**

WESTERN REI, LLC,  
an Alabama limited liability company

By: 

Name: Jason E. Spinks

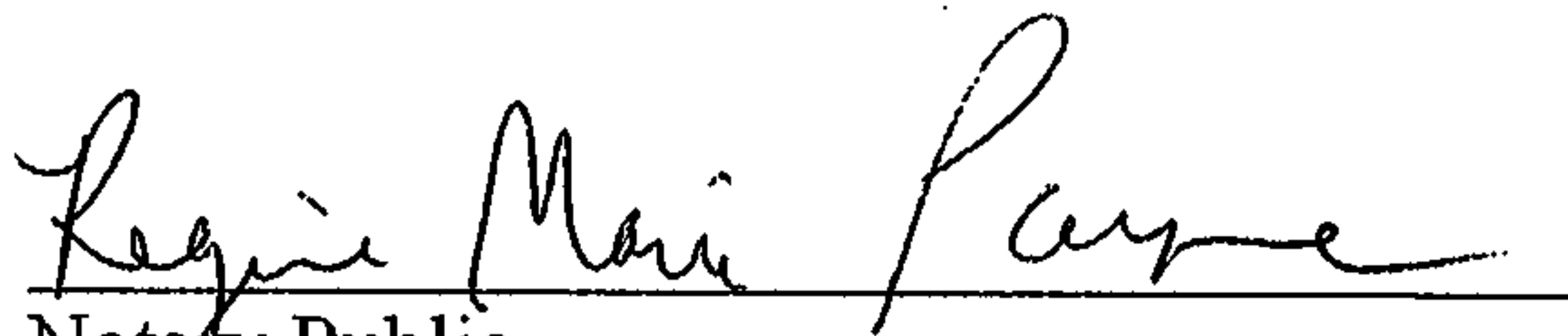
Title: Manager

STATE OF AL )

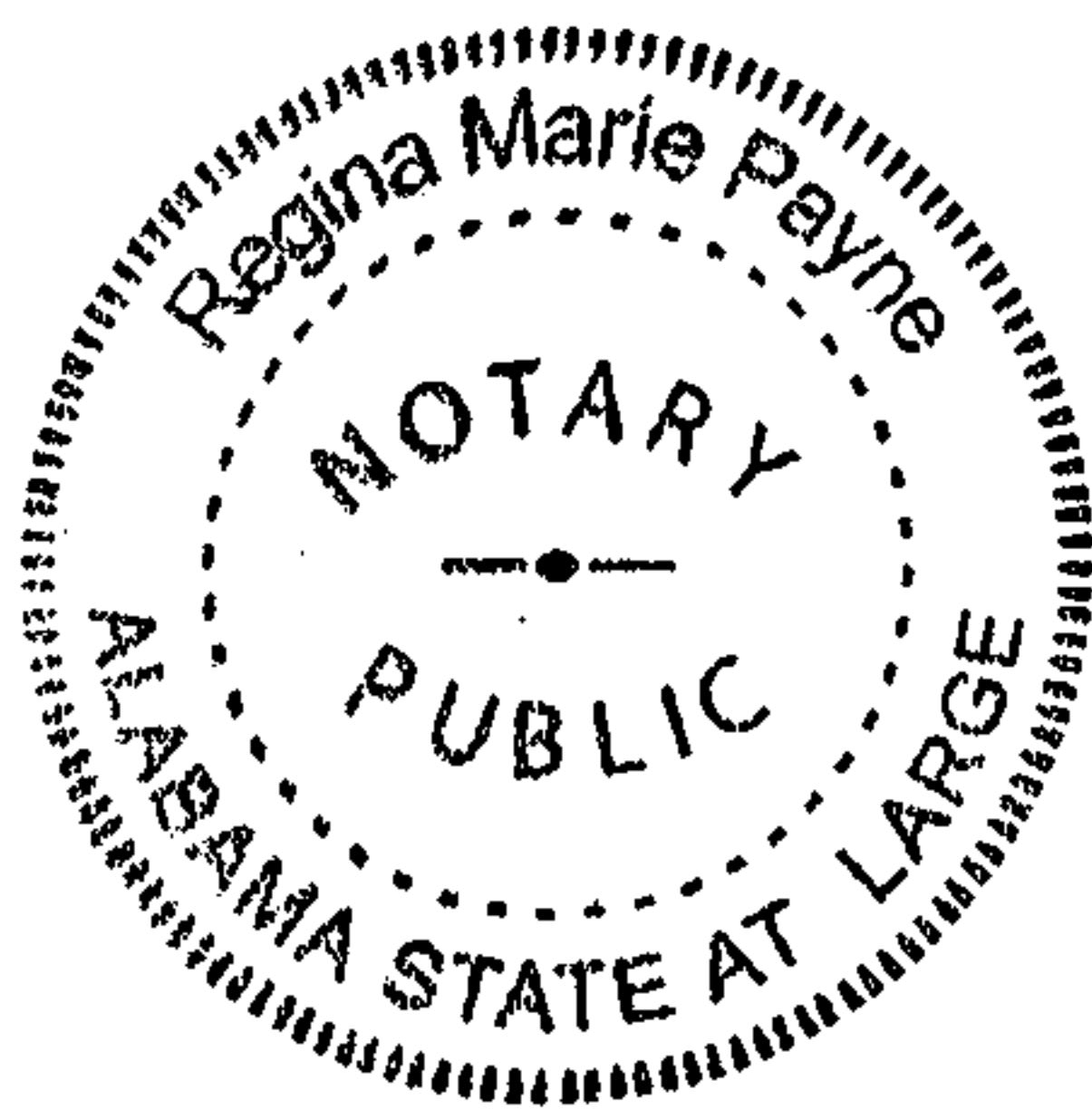
COUNTY OF Shelby )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Jason E. Spinks, whose name as Manager of Western REI, LLC, an Alabama limited liability company, 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 the instrument, he, as such manager and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand this 2<sup>nd</sup> day of March, 2021.

  
Notary Public

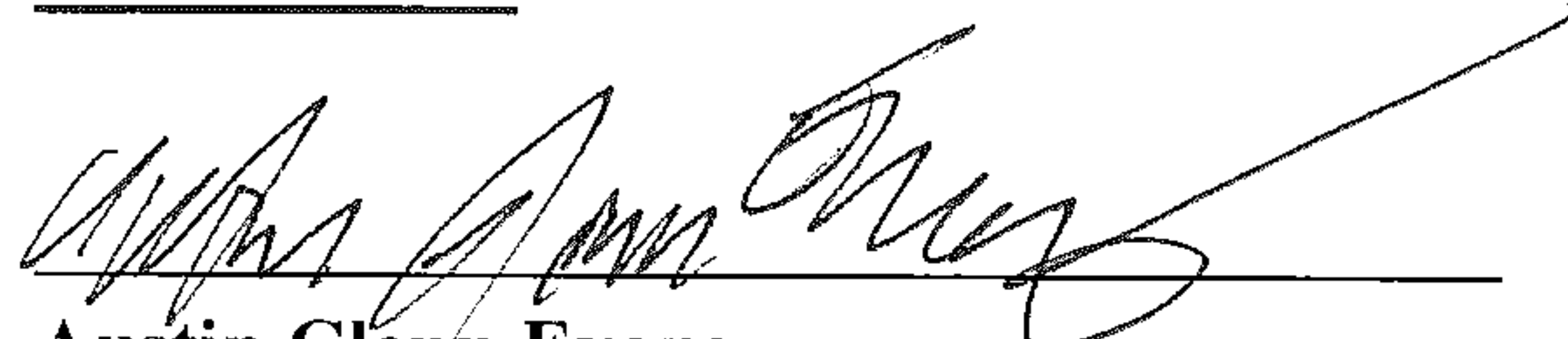
My Commission Expires: 4-6-22



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RESTCOVNAMEN 6/15

IN WITNESS WHEREOF, Austin Glenn Evans, as Parcel Owner of Lot 23, has caused this Amendment to the Declaration of Protective Covenant for The Glades at Whippoorwill to be duly executed and authorized as of the day and year above written.

Parcel Owner:


  
Austin Glenn Evans

STATE OF Alabama )

COUNTY OF Shelby )

I, Tahme M. Cox, a Notary Public in and for said County in said State, hereby certify that AUSTIN GLENN EVANS, whose name 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 the instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand this the 2nd day of March, 2021.

  
Notary Public

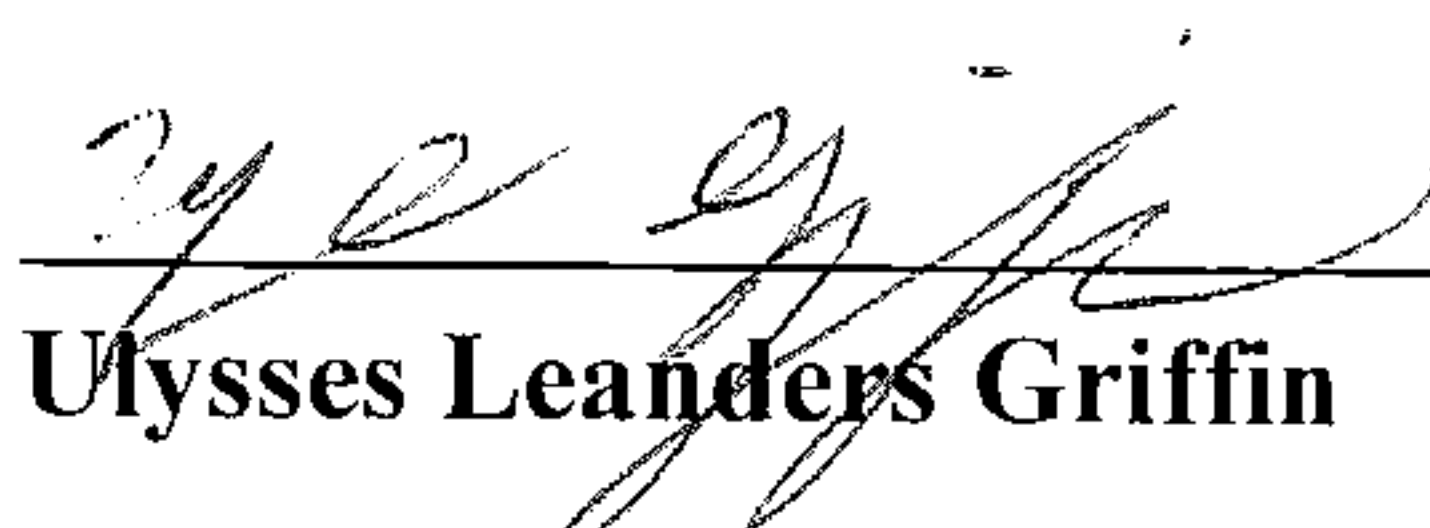
[NOTARIAL SEAL]

My commission expires: 8-21-23

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RESTCOVNAMEN 7/15

IN WITNESS WHEREOF, Ulysses Leanders Griffin, as Parcel Owner of Lot 24, has caused this Amendment to the Declaration of Protective Covenant for The Glades at Whippoorwill to be duly executed and authorized as of the day and year above written.

Parcel Owner:

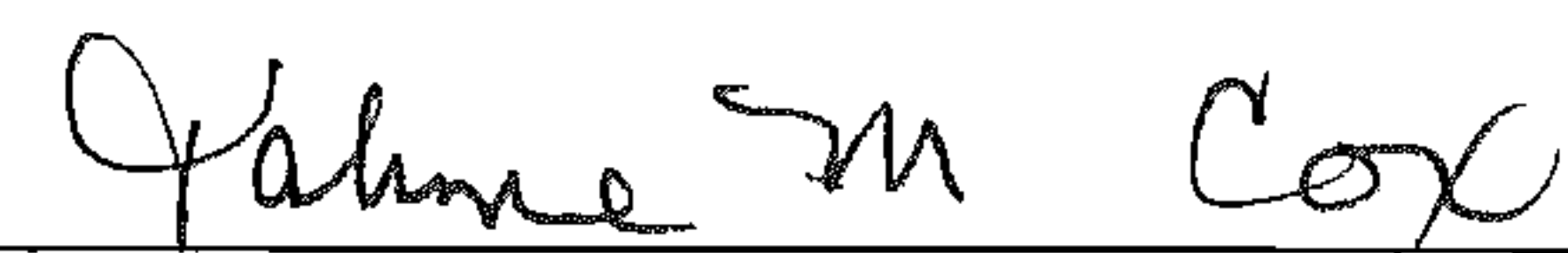
  
Ulysses Leanders Griffin

STATE OF Alabama )

COUNTY OF Shelby )

I, Tahme M Cox, a Notary Public in and for said County in said State, hereby certify that ULYSSES LEANDERS GRIFFIN, whose name 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 the instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand this the 2nd day of March, 2021.

  
Notary Public

[NOTARIAL SEAL]

My commission expires: 8-21-23

IN WITNESS WHEREOF, Renesha Byrd, has caused this Amendment to the Declaration of Protective Covenant for The Glades at Whippoorwill to be duly executed and authorized as of the day and year above written.

Additional Property Owner:

Renesha Danielle Byrd  
Renesha Byrd

STATE OF Alabama

COUNTY OF Jefferson

I, Laura L. Barnes, a Notary Public in and for said County in said State, hereby certify that RENESHA BYRD, whose name 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 the instrument, she executed the same voluntarily on the day the same bears date.

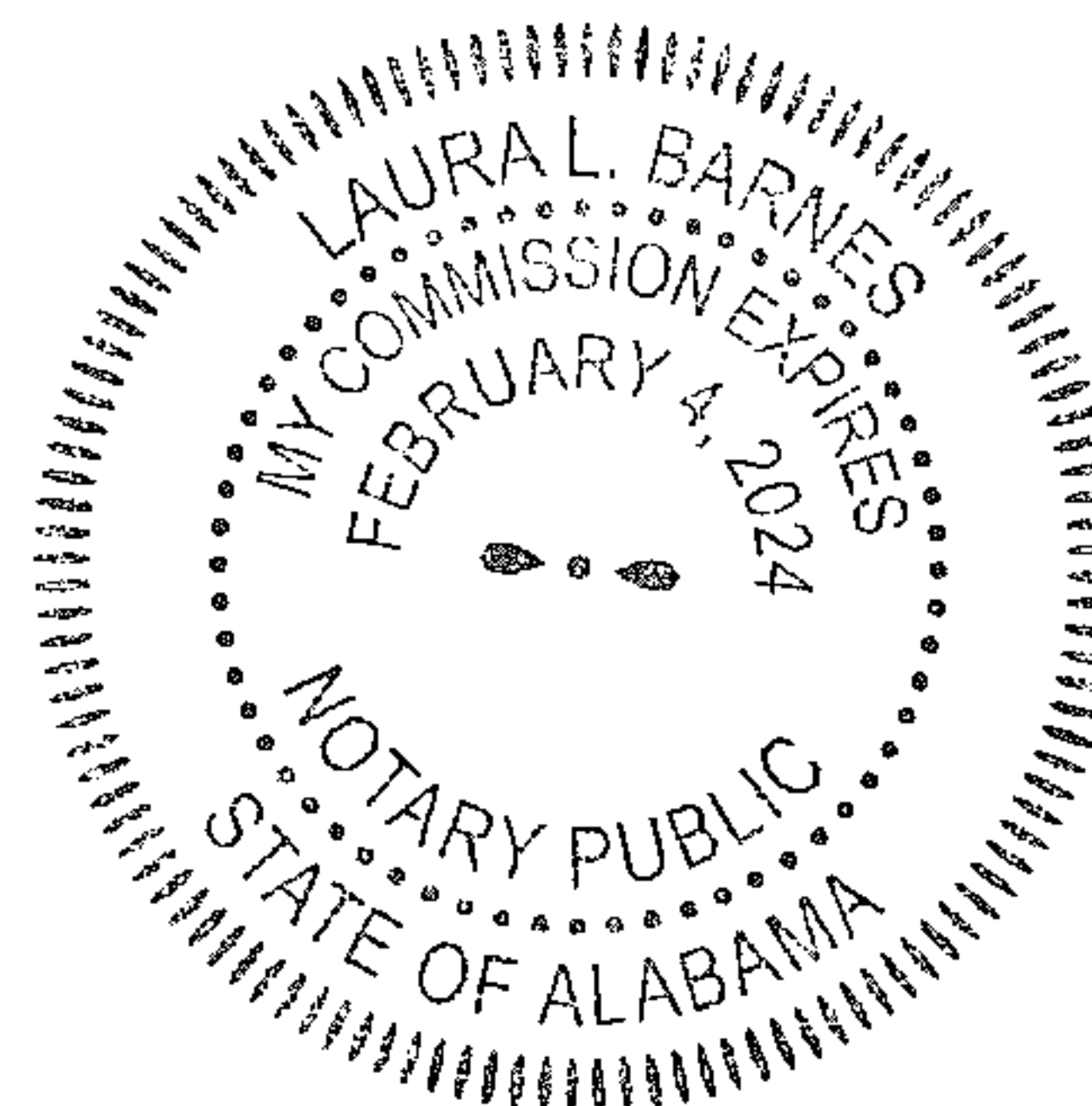
Given under my hand this the 19<sup>th</sup> day of Feb, 2021.

[Signature]  
Notary Public

My commission expires:

2/4/24

[NOTARIAL SEAL]






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RESTCOVNAMEN 9/15

IN WITNESS WHEREOF, Jeffrey D. Layton has caused this Amendment to the Declaration of Protective Covenant for The Glades at Whippoorwill to be duly executed and authorized as of the day and year above written.

Additional Property Owner:


  
Jeffrey D. Layton

STATE OF Alabama )

COUNTY OF Shelby )

I, Tahme M. Cox, a Notary Public in and for said County in said State, hereby certify that JEFFREY D. LAYTON, whose name 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 the instrument, she executed the same voluntarily on the day the same bears date.

Given under my hand this the 2nd day of March, 2021.

  
Notary Public  
My commission expires: 8-21-23

[NOTARIAL SEAL]

Consent of Mortgagee

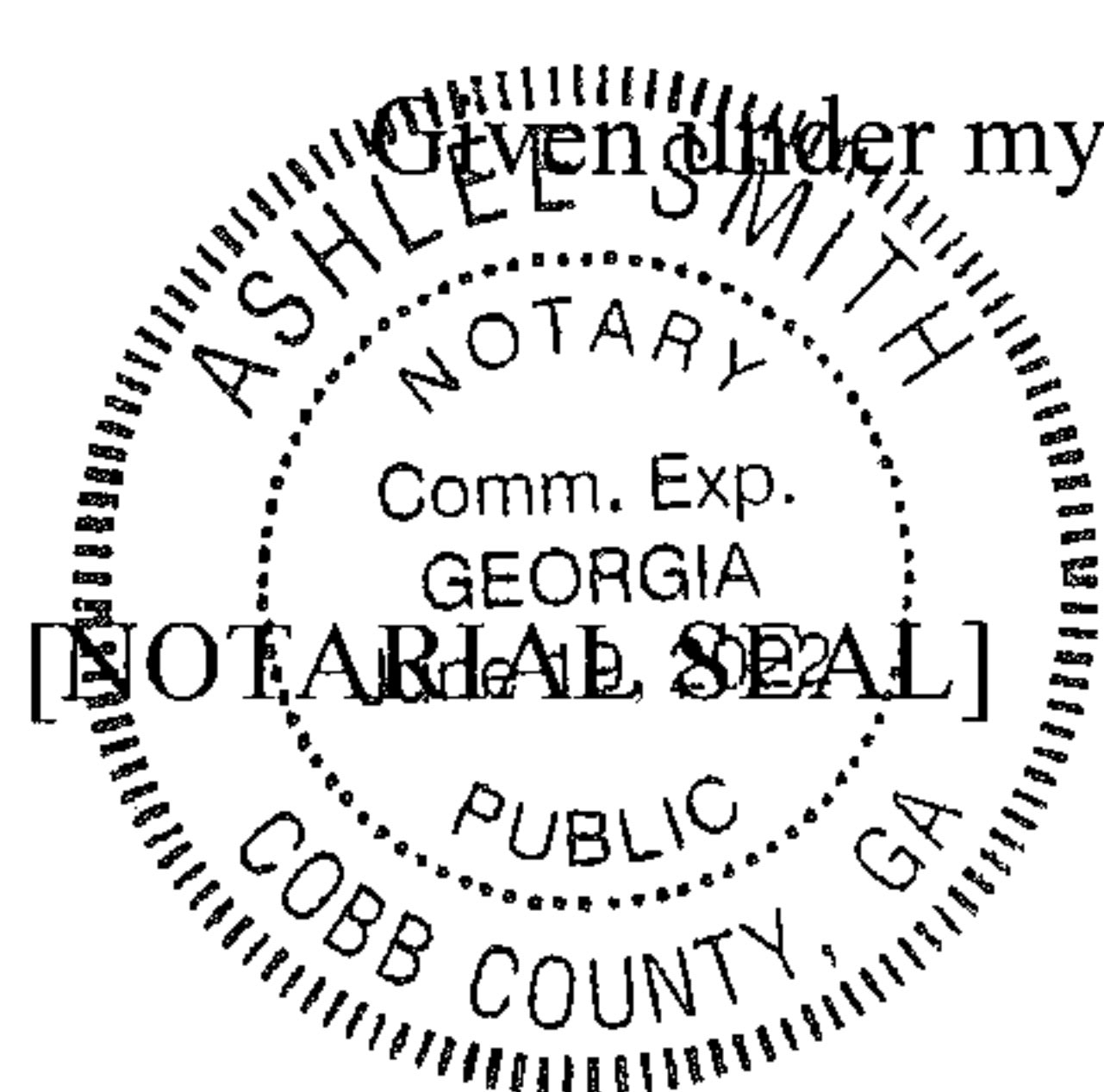
**REGIONS BANK**, an Alabama banking corporation, as the holder that certain mortgage recorded as Instrument #20190621000221320 in the Probate Office of Shelby County, Alabama, as amended by that certain Mortgage Modification and Spreader Agreement recorded as Instrument #20201008000457400 in the Probate Office of Shelby County, Alabama, and that certain Mortgage Modification and Spreader Agreement recorded as Instrument #20201002000446830 in the Probate Office of Shelby County, Alabama (collectively, the "Mortgage"), which encumbers a portion of the Additional Property (the "Encumbered Property") made subject to the foregoing Declaration, does hereby consent to the terms and provisions of the Declaration and does hereby agree that the Encumbered Property is and shall remain subject to the terms and provisions of the Declaration for all purposes; provided, however, that the foregoing consent is not intended to subordinate the lien of the Mortgage to any monetary obligations that may arise under the Declaration or this Amendment. Additionally, the execution of this Consent of Mortgagee by Regions Bank shall not be deemed or construed to have the effect of creating between Regions Bank and any other party the relationship of partnership or of joint venture nor shall anything contained hereunder be deemed to impose upon Regions Bank any of the liabilities, duties or obligations of any party under the Declaration or this Amendment. Regions Bank executes this Consent of Mortgagee solely for the purposes set forth herein.

**REGIONS BANK**

By: [Signature]  
Name: Scott R. McLay  
Its: Senior Vice President

STATE OF Georgia )  
COUNTY OF Cobb )

I, ASHLEE SMITH, a Notary Public in and for said County in said State, hereby certify that Scott R. McLay, whose name is signed as Senior Vice President of REGIONS BANK, an Alabama banking corporation, 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 the instrument, he, as such Senior Vice President and with full authority, executed the same voluntarily for and as the act of said banking corporation.



Given under my hand this the 3<sup>rd</sup> day of MARCH, 2021.

[Signature]  
Notary Public  
My commission expires: 06/19/2022

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**RESTCOVNAMEN 11/15**

**EXHIBIT A**  
**ADDITIONAL PROPERTY**

All of the real property situated in Shelby County, Alabama, which is more particularly described on that certain Final Plat of the Glades, recorded in Map Book 53, Page 22 in the Office of the Judge of Probate of Shelby County, Alabama, including without limitation all Lots (including Lots 1 – 24) and common areas depicted thereon.

**Exhibit B**

STATE OF ALABAMA       )  
JEFFERSON COUNTY       )

**CERTIFICATE OF FORMATION  
OF  
THE GLADES AT WHIPPOORWILL ASSOCIATION, INC.**

This is to certify that, for the purpose of forming a homeowners association as a nonprofit corporation pursuant to the provisions of Sections 10A-3-1.01, et seq., Code of Alabama (1975) as amended (the “Alabama Nonprofit Corporation Law”) and Sections 35-20-1.01, et seq., Code of Alabama (1975), as amended (the “Alabama Homeowners’ Association Act”), the undersigned does hereby make, adopt, and file the following Certificate of Formation:

**ARTICLE I**

**Name**

The name of the corporation being formed (hereinafter referred to as the “Association”) shall be:

The Glades at Whippoorwill Association, Inc.

**ARTICLE II**

**Type of Entity**

The Association is being formed as a nonprofit corporation and as a homeowners association.

**ARTICLE III**

**Duration**

The duration and existence of the Association shall be perpetual.

**ARTICLE IV**

**Purpose**

4.01 The purposes for which the Association is formed are:

(a) To be and constitute the Association to which reference is made in the Declaration of Protective Covenants for The Glades at Whippoorwill (as amended from time to time, hereinafter the “Declaration”), recorded in the Office of the Judge of Probate of Shelby County, Alabama, in Instrument Number 20080407000139980 to perform all obligations and duties of the Association, and to exercise all rights and powers of the Association, as specified in the Declaration, in the Bylaws of the Association (“Bylaws”) and as provided by law;

(b) To be and constitute a homeowners association within the meaning of Section 528 of the Internal Revenue Code of 1986; and



(c) To provide an entity for the furtherance of the interests of the Parcels Owners in as set forth in the Declaration.

4.02 In furtherance of the purposes set forth above, the Association shall have all of the powers conferred upon nonprofit corporations by common law and the statutes of the State of Alabama in effect from time to time, which, unless indicated otherwise in this Certificate of Formation, the Declaration or the Bylaws, may be exercised by the Board of Directors.

4.03 The Association shall have no capital stock, is not organized for pecuniary gain or profit, direct or indirect, to its Members. No part of the net earnings of the Association shall inure to the benefit of, or be distributable to, its directors, officers, or other private persons, except that the Association shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth herein. Notwithstanding any other provisions of this Certificate of Formation, the Association shall not carry on any other activities not permitted to be carried on by an organization exempt from federal income tax under Section 528 of the Code.

#### ARTICLE V

##### **Board of Directors**

5.01 All corporate powers of the Association shall be exercised by or under the authority of, and the business and affairs of the Association shall be managed under the direction of, a Board of Directors. All of the powers and duties conferred or imposed on a board of directors by the Alabama Nonprofit Corporation Law shall be exercised or performed by the Board of Directors. The number of directors, the qualifications for directors, the terms each shall serve, the means of their election, and the grounds and procedures for the removal of each shall be provided in the Bylaws of the Association.

5.02 The initial Board of Directors shall consist of three directors to serve until their successors are duly elected and qualified. The names and addresses of the initial Board of Directors are as follows:  
Name Address

<u>Name</u>	<u>Address</u>
Connor Thorpe	8137 Helena Road Suite 110 Pelham, AL 35124
Beth Emshoff	8137 Helena Road Suite 110 Pelham, AL 35124
Jeff Mullins	8137 Helena Road Suite 110 Pelham, AL 35124

#### ARTICLE VI

##### **Members**

The Association shall have Members. Each record Parcel Owner of a Parcel, as defined in and subject to the Declaration, is a Member and shall be entitled to vote as set forth herein, in the Declaration and in the Bylaws. Membership shall be appurtenant to and may not be separated from ownership of a Parcel.

ARTICLE VII

**Bylaws**

The Board of Directors shall adopt Bylaws governing the conduct of the business and affairs of the Association. Thereafter, the power to alter, amend, or repeal the Bylaws of the Corporation shall be vested in the Board of Directors or as otherwise set forth in the Bylaws.

ARTICLE VIII

**Initial Registered Office and Agent**

The initial registered office of the Association shall be 2700 Highway 280, Suite 425, Birmingham, Alabama 35223. The initial registered agent of the Association shall be Neighborhood Management, LLC, who shall be located at the initial registered office of the Association.

ARTICLE IX

**Dissolution**

Upon dissolution of the Association, the Board of Directors shall, after paying or making provision for the payment of all of the liabilities of the Association, distribute the assets of the Association as specified in a plan of distribution adopted in accordance with the Declaration and Alabama Nonprofit Corporation Law, or the corresponding provision of any subsequent Alabama nonprofit corporation statute.

ARTICLE X

**Indemnification**

The Association shall indemnify to the fullest extent permitted by the Alabama Nonprofit Corporation Law any person who has been made, or is threatened to be made, a party to an action, suit, or proceeding, whether civil, criminal, administrative, investigative, or otherwise (including an action, suit or proceeding by or in the right of the Association), by reason of the fact that the person is or was a director or officer of the Association. In addition, the Association shall pay for or reimburse any expenses incurred by such persons who are parties to such proceedings, in advance of the final disposition of such proceedings, to the full extent permitted by the Alabama Nonprofit Corporation Law.

ARTICLE XI

**Liability of Directors**

Pursuant to Section 10A-20-16.01 et seq. and Section 6-5-336 of the Code of Alabama (1975), as amended, all non-compensated directors, officers and other volunteers of the Association shall be immune from suit and shall not be subject to civil liability arising from the conduct of the affairs of the Association except when the act or omission of such person that gives rise to the cause of actions amounts to willful or wanton misconduct or fraud or gross negligence. To the fullest extent that the Alabama Nonprofit Corporation Law, as it exists on the date hereof or as it may hereafter be amended, permits the limitation or elimination of the liability of directors, no director of the Association shall be personally liable to the Association or its members for monetary damages for breach of duty of care or other duty as a director. No amendment to or repeal of this Article XI shall apply to or have any effect on the liability of alleged liability of any director of the Association for or with respect to any acts or omissions of such director occurring

prior to such amendment or repeal. Any repeal or modification of this Article XI shall be prospective only, and shall not adversely affect any limitation on the personal liability of a director of the Association with reference to any event or events preceding or state of facts existing at the time of such repeal or modification.

ARTICLE XII

**Incorporator**

The name of the Incorporator of the Association is J. Corbitt Tate and his address is 1901 6th Avenue North, Suite 1500, Birmingham, Alabama 35203.

ARTICLE XIII

**Amendment**

This Certificate of Formation may not be amended, nor may the Association adopt a plan of merger, consolidation, or dissolution, without the affirmative votes of two-thirds of the members of the Board of Directors in office. Further, the Association may not sell, lease, exchange, mortgage, pledge, or otherwise dispose of all or substantially all of its property without the affirmative votes of two-thirds of the members of the Board of Directors in office.

ARTICLE XIV

**Incorporation by Reference**

All of the terms, provisions, definitions, covenants, and conditions set forth in the Declaration are hereby expressly incorporated herein by reference as if fully set forth herein. In the event of any conflict or ambiguity between the terms, provisions, definitions, covenants and conditions set forth in this Certificate of Formation and the Declaration, then the provisions of the Declaration shall control.

IN WITNESS WHEREOF, the Incorporator has hereunto set his hand on this the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
J. Corbitt Tate  
Incorporator

This Instrument was prepared by:

J. Corbitt Tate  
BALCH & BINGHAM LLP  
1901 Sixth Avenue North, Suite 1500  
Birmingham, Alabama 35203



Filed and Recorded  
Official Public Records  
Judge of Probate, Shelby County Alabama, County  
Clerk  
Shelby County, AL  
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\$70.00 CHERRY  
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*Allen S. Bayl*