

STATE OF ALABAMA
COUNTY OF SHELBY

DECLARATION OF
RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS is made this 22nd day of November, 2004, by The Village at Highland Lakes, LLC ("Declarant(s)").

WHEREAS, Declarant is the owner of certain real property located in Shelby County, State of Alabama, more particularly described in Exhibit A attached hereto and by this reference made a part hereof and hereinafter referred to as the "Property;" and

WHEREAS, as compensatory mitigation under Federal law for Department of the Army Permit No. ALNW04-03116-K ("Permit") issued by the U.S. Army Corps of Engineers, Mobile District ("Corps" or "Mobile District," to include any successor agency), and in recognition of the continuing benefit to the permitted property, and for the protection of waters of the United States and scenic, resource, environmental, and general property values, Declarant has agreed to place certain restrictive covenants on the Property, in order that the Property shall remain substantially in its natural condition forever.

NOW THEREFORE, Declarant hereby declare that the Property shall be held, transferred, conveyed, leased, occupied or otherwise disposed of and used subject to the following restrictive covenants, which shall run with the land and be binding on all heirs, successors, assigns (they are included in the term, "Declarant," below), lessees, or other occupiers and users.

1. **Prohibitions.** Declarant(s) *is/are* and shall be prohibited from the following: filling, draining, flooding, dredging, impounding, clearing, burning, cutting or destroying vegetation, cultivating, excavating, erecting, constructing, releasing wastes, or otherwise doing any work on the Property; introducing exotic species into the Property (except biological controls preapproved in writing by the Corps; and from changing the grade or elevation, impairing the flow or circulation of waters, reducing the reach of waters, and any other discharge or activity requiring a permit under clean water or pollution control laws and regulations, as amended. The following are expressly excepted from this paragraph: a) cumulatively very small impacts associated with hunting (excluding planting or burning), fishing, and similar recreational or educational activities, consistent with the continuing natural condition of the Property; b) removal or trimming of vegetation hazardous to person or property, or of timber downed or damaged due to natural disaster; c) restoration or mitigation required under law *[if reference is made to the Permit, or to a mitigation plan approved by the Permit, all exceptions (including regarding buffer areas) must be specifically spelled out in the Permit or plan; also, additional, specific exceptions may be listed in this paragraph, e.g., fire or wildlife management plans, boardwalks, etc.]*.

2. **Amendment.** After recording, these restrictive covenants may only be amended by a recorded document signed by the Corps and Declarant. The recorded document, as amended, shall be consistent with the Mobile District model conservation restrictions at the time of the amendment. Amendment shall be allowed at the discretion of the Corps in consultation with resource agencies as appropriate, and then only in exceptional circumstances. Mitigation for amendment impacts will be required pursuant to Mobile District mitigation policy at the time of amendment. There shall be no obligation to allow an amendment.

3. **Notice to Government.** Any permit application, or request for certification or modification, which may affect the Property, made to any governmental entity with authority over wetlands or other waters of the United States, shall expressly reference and include a copy (with the recording stamp) of these restrictive covenants.

4. **Reserved Rights.** It is expressly understood and agreed that these restrictive covenants do not grant or convey to members of the general public any rights of ownership, entry or use of the Property. These restrictive covenants are created solely for the protection of the Property, and for the consideration and values set forth above, and Declarant(s) reserve(s) the ownership of the fee simple estate and all rights

appertaining thereto, including without limitation the rights to exclude others and to use the property for all purposes not inconsistent with these covenants.

5. **Compliance Inspections.** The Corps, and *its/their* authorized agents shall have the right to enter and go upon the lands of Declarant(s), to inspect the Property and take actions necessary to verify compliance with these restrictive covenants.

6. **Enforcement.** The Declarant(s) grant(s) to the Corps and the U.S. Department of Justice, a discretionary right to enforce these restrictive covenants in a judicial action against any person(s) or other entity(ies) violating or attempting to violate these restrictive covenants; provided, however, that no violation of these restrictive covenants shall result in a forfeiture or reversion of title. In any enforcement action, an enforcing agency shall be entitled to a complete restoration for any violation, as well as any other judicial remedy such as civil penalties. Nothing herein shall limit the right of the Corps to modify, suspend, or revoke the Permit.

7. **Property Transfers.** Declarant(s) shall include the following notice on all deeds, mortgages, plats, or any other legal instruments used to convey any interest in the Property (failure to comply with this paragraph does not impair the validity or enforceability of these restrictive covenants):

NOTICE: This Property Subject to Declaration of Restrictive Covenants Recorded at *[insert book and page references, county(ies), and date of recording]*.

8. **Marking of Property.** The perimeter of the Property shall at all times be plainly marked by permanent signs saying, "Protected Natural Areas," or by an equivalent, permanent marking system.

[Paragraph 9 – generally, a surveyed, recorded plat is required; however, at the discretion of the corps and DHEC, an approved permit drawing or site plan attached to these restrictive covenants may suffice]

9. **Recording of Plat.** A plat depicting the boundaries of the Property subject to these restrictive covenants shall be recorded in the deed records office for each county in which the Property is situated prior to the recording of these restrictive covenants.

The plat(s) *is/are* recorded at *[include book and page references, county(ies), and date]*.

10. **Separability Provision.** Should any separable part of these restrictive covenants be held contrary to law, the remainder shall continue in full force and effect.

IN WITNESS WHEREOF, the Declarant(s) *has/have* duly executed this Declaration of Restrictive Covenants the date written above.

IN THE PRESENCE OF:

Donna D. Rainey
[type name of witness under signature line]
Donna D. Rainey

[type name of witness under signature line]

Declarant(s)
By: *[Signature]*
Doug Eddleman
Its: Managing Member

STATE OF ALABAMA

PROBATE

COUNTY OF SHELBY

PERSONALLY appeared before me Donna D. Rainey, the undersigned witness, and made oath that he/she saw the within named The Village at Highland Lakes [, by Doug Eddleman, its Managing Member,] sign, seal and his/her/its act and deed, deliver the within named Declaration of Restrictive Covenants; and that he/she with the other witness named above witnessed the execution thereof.

Brandy McIsbrell

SWORN to and subscribed before me
this 22nd day of November, 2004.

Donna D. Rainey
[type name of witness under signature line]
Donna D. Rainey

NOTARY PUBLIC FOR ALABAMA

My Commission Expires: _____

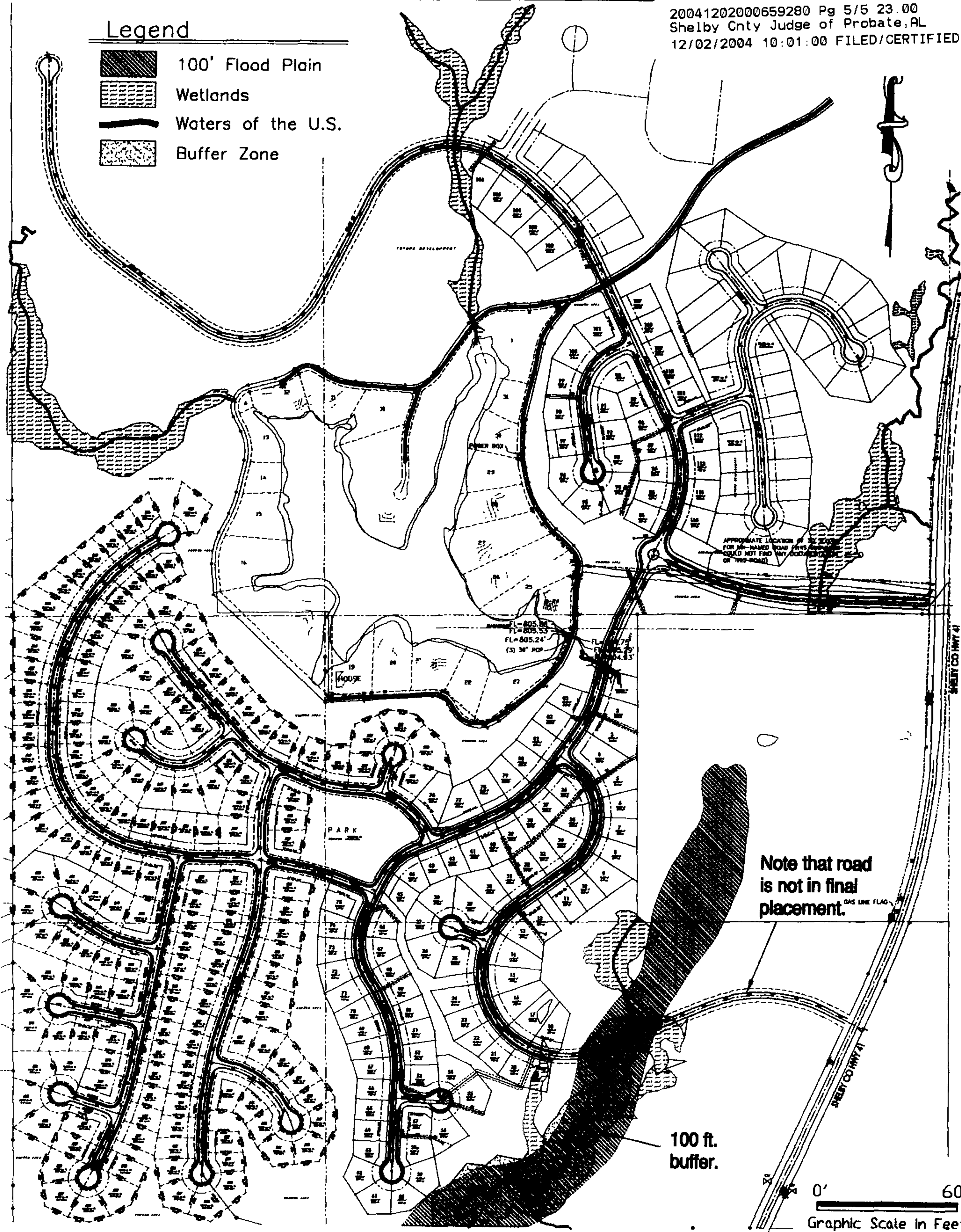
MY COMMISSION EXPIRES APRIL 4, 2006

EXHIBIT A

Description of a restrictive covenant as shown on the attached map and being more particularly described as follows: 100 feet from both banks of the following described intermittent stream: said lying within the southwestern section of Section 3 Township 19 South Range 1 West Shelby County Alabama: Beginning at the intersection of said intermittent stream and the southern boundary of Section 3 and following said stream in a northeasterly direction for approximately 900 feet to the end of said easement.

Legend

- 100' Flood Plain
- Wetlands
- Waters of the U.S.
- Buffer Zone



NO.	DATE	REVISION	NOTE	BY

Drawn By:	Project #:
TGH	1465-002
Checked By:	Date:
JDH	9/20/04
Project Manager:	File Name:
SH	1465002-5

SPECTRUM
ENVIRONMENTAL SERVICES, INC.
105 YEAGER CIRCLE
PELHAM, AL 35124
FAX (205) 664-2142
PHONE (205) 664-2000

TITLE
Figure 1465002-5 Mitigation Locator Map The Village at Highland Lakes Pelham, Alabama