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Shelby Cnty Judge of Probate, AL  
08/25/2005 03:57:07PM FILED/CERT

This instrument prepared by:  
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Birmingham, Alabama 35203  
(205) 458-5201

STATE OF ALABAMA     )  
SHELBY COUNTY         )

### DECLARATION OF EASEMENT FOR LAKE

**THIS DECLARATION** (the "Declaration") is made and entered into by and between Eddleman Properties, LLC, an Alabama limited partnership ("Development") and Eddleman Properties, Inc., an Alabama corporation ("Eddleman Properties"), and Joe Wildmon and Theresa Wildmon, individuals ("Wildmon"), and Highland Lakes Residential Association, Inc., an Alabama nonprofit corporation (the "Association").

### **RECITALS:**

Development desires to build a lake, dam and related improvements on the real property described on Exhibit A hereto (the "Lake") that will be used as one of the "Community Lakes" in Highland Lakes, a Residential Subdivision, under the terms and conditions of the Declaration of Easements and Master Protective Covenants of Highland Lakes recorded as Instrument No. 994-07111 in the Probate Office of Shelby County, Alabama, as amended by the documents recorded as Instrument No. 1996-17543 and Instrument No. 1999-31095 in said office (the "Master Covenants"). Development is the owner of the real property underlying the Lake, except that the lake will encroach on Lot 4A and Lot 5A according to the Resurvey of Highland Lakes 1st Sector Phase V and Acreage as recorded in Map Book 27, Page 108 in the Probate Office of Shelby County, Alabama; Eddleman Properties is the owner of Lot 5A and Wildmon is the owner of Lot 4A. The Association is the owners' association responsible for maintenance, operation and regulation of the Common Areas and Lakes within Highland Lakes under the Master Covenants. Development, Eddleman Properties, Wildmon and the Association desire to provide for the construction of the Lake and to subject the Lake to the easements, covenants and restrictions in the Master Covenants.

### **AGREEMENT:**

NOW, THEREFORE, THESE PREMISES CONSIDERED, Developer, Eddleman Properties and Wildmon (collectively the "Declarants") do hereby declare that the real property described in Exhibit A which is attached hereto and incorporated herein by this reference (the "Easement Premises"), shall be held, developed, improved, transferred, sold, conveyed, leased, and used subject to the following easements, covenants, conditions and restrictions:

1. Development hereby reserves for itself and its successors and assigns, and Eddleman Properties and Wildmon hereby grant to Development and its successors and assigns,

CLAYTON T. SWEENEY, ATTORNEY AT LAW



an easement over and across those portions of the Easement Premises as may be necessary for the construction of the Lake, spillway, dam and related improvements, including the right to inundate the Easement Premises. Development and its contractors and subcontractors and their respective agents and employees shall have the right, privilege and easement to enter upon the Easement Premises with their equipment for the purpose of constructing, repairing and maintaining the Lake, dam, spillway and related improvements. The cost of construction, maintenance and repair of the Lake and improvements shall be borne solely by Development.

2. The Declarants hereby reserve for themselves and their respective successors and assigns the right, privilege and easement to use and enjoy the Lake for recreational or other purposes; provided, however, that this reservation shall be subject to the terms and conditions of the Master Covenants as contemplated under Section 3 hereof and to the rights of Eddleman Properties, Chelsea Park Management, LLC (as assignee of Eddleman-Thornton, LLC) and Double Oak Water Reclamation, LLC ("DOWR") under their Agreement dated July 11, 2002, which provides for, among other things, the right of DOWR to drain the Lake as a supplemental source of water for its wastewater treatment plant.

3. Development and the Association have joined in the execution of this Declaration in order to subject the Lake to the Master Covenants in accordance with Section 2.2 thereof. Declarants and the Association hereby declare that the Lake shall be added to and included in the definition of "Community Lakes" under Section 1.37 of the Declaration and that the Lake shall be held, conveyed and used subject to the easements, restrictions and covenants of the Master Covenants, including without limitation the easement under Section 3.4(a) of the Master Covenants.

4. The Association shall be obligated to repair and maintain the Lake (including dam and spillway) in accordance with the Master Covenants, and shall have the exclusive right to regulate, control and police the Lake and from time to time to establish, modify, and enforce reasonable rules and regulations regarding the use of the Lake subject to and in accordance with the covenants and restrictions governing the use of the Lake in the Master Covenants.

5. The Association agrees to pay, prior to delinquency, ad valorem taxes and assessments levied against the real property underlying the Lake directly to the appropriate taxing authorities.

6. No covenant, condition or restriction set forth in this Declaration is intended to be, or shall be construed as, a condition subsequent or as creating the possibility of reverter.

7. The easements granted hereby shall be used solely for non-commercial, recreational purposes, and the responsibility of Declarants and the Association and their respective successors and assigns with respect to the Lake for liability for injury or damage to persons (including death) or property is intended to be limited by Section 35-15-1, et seq. of the Code of Alabama (1975) (the "Statute"). However, in the event the Statute is deemed inapplicable to Declarants and the Association, or any of them, or their respective successors and assigns with regard to the Lake, any person, by his use of the Lake under this Declaration, covenants and agrees that the Declarants and the Association and their respective successors and assigns shall have no duty of care to keep the Lake safe for entry and use by such persons, or to




give any warning of hazardous conditions, use of structures or activities on or about the Lake to any person entering the Lake; and the Declarants and the Association and their respective successors and assigns shall have no liability for any injury to persons (including death) or property caused by any act or omission of the Declarants, the Association, or any other person or relating to or arising out of the use of the Lake by any person.

8. The covenants and agreements herein contained shall be covenants running with the land and shall bind and inure to the benefit of the parties hereto and their respective successors and assigns.

9. The easements, covenants and provisions of this Declaration may be terminated or amended in accordance with the terms and provisions of the Master Covenants.

[Signatures on Following Page]

  
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IN WITNESS WHEREOF, the parties hereto have caused this Easement Agreement to be duly executed this 25 day of July, 2005.

HIGHLAND LAKES DEVELOPMENT,  
LTD.

By its General Partner:

Eddleman Properties, Inc.

By:

Its:

EDDLEMAN PROPERTIES, LLC.

By:

Its:

Joe Wildmon

Theresa Wildmon

HIGHLAND LAKES RESIDENTIAL  
ASSOCIATION, INC.

By:

Its:



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STATE OF ALABAMA )  
Jefferson COUNTY )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Douglas D. Eddleman, whose name as President of Eddleman Properties, Inc., a corporation, in its capacity as General Partner of Highland Lakes Development, Ltd., a limited partnership, is signed to the foregoing Declaration, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing Declaration, he, as such officer, and with full authority, executed the same voluntarily for and as the act of said corporation, acting in its capacity as General Partner as aforesaid.

Given under my hand and official seal of office, this 25<sup>th</sup> day of July, 2005.

Donna D. Rainey  
Notary Public  
My Commission Expires: \_\_\_\_\_

STATE OF ALABAMA )  
Jefferson COUNTY )


NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
MY COMMISSION EXPIRES: Dec 1, 2006  
BONDED THRU NOTARY PUBLIC UNDERWRITERS

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Douglas D. Eddleman, whose name as President of Eddleman Properties, LLC., a corporation, is signed to the foregoing Declaration, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing Declaration, he, as such officer, and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal of office, this 25<sup>th</sup> day of July, 2005.

Donna D. Rainey  
Notary Public  
My Commission Expires: \_\_\_\_\_

NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
MY COMMISSION EXPIRES: Dec 1, 2006  
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STATE OF ALABAMA )  
SHELBY COUNTY )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Joe Wildmon, whose name is signed to the foregoing Declaration, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing Declaration, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal of office this 19th day of August, 2005.

Jerry Hagedorn Elliott  
Notary Public  
My Commission Expires: 5-1-2007

STATE OF ALABAMA )  
SHELBY COUNTY )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Theresa Wildmon, whose name is signed to the foregoing Declaration, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing Declaration, she executed the same voluntarily on the day the same bears date.

Given under my hand and official seal of office this 19th day of August, 2005.

Jerry Hagedorn Elliott  
Notary Public  
My Commission Expires: 5-1-2007

STATE OF ALABAMA )  
Jefferson COUNTY )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Douglas D. Eddleman, whose name as President of Highland Lakes Residential Association, Inc., a corporation, is signed to the foregoing Declaration, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing Declaration, he, as such officer, and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal of office, this 25th day of July, 2005.

Donna O. Rainey  
Notary Public  
My Commission Expires: \_\_\_\_\_

NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
MY COMMISSION EXPIRES: Dec 1, 2006  
BONDED THRU NOTARY PUBLIC UNDERWRITERS