

4-30-04 cc: Robert M

CTC
Wind Rose
Richard H.
David P.
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Billie Jo W.

45 Ruth

DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR
LAKES OF FAIRHAVEN SUBDIVISION

THE STATE OF TEXAS §

04/20/04 X547585
HC File X547585 300391350 \$35.00

COUNTY OF HARRIS §

THIS DECLARATION made on the date hereinafter set forth by Lakes Of Fairhaven, LLC, A Texas limited liability company, acting by and through its duly authorized officers, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of all that certain 176.324 acres of land, out of that certain called 520.750 acre tract of land recorded under Harris County Clerk's File No. W707964 and located in the J. W. Moody Survey, A-547, and the Isaac D. Steele Survey, A-755, Harris County, Texas, (the "Property"), which has been platted and subdivided as SECTION ONE LAKES OF FAIRHAVEN, a subdivision recorded under Film Code No. 553034 of the Map and Plat Records of Harris County, Texas (the "Plat"); and

WHEREAS, Declarant desires to impose certain easements, covenants, conditions and restrictions (hereinafter collectively referred to as the "Restrictions") on that portion of the Property platted into four (4) Blocks and one hundred eighty-nine (189) Lots (the "Subdivision"), specifically excluding and excepting those areas designated on the Plat as "Reserves" from the effects of this Declaration.

NOW, THEREFORE, Declarant hereby declares that all Lots in the Subdivision referred to herein as LAKES OF FAIRHAVEN shall be held, sold and conveyed subject to the following Restrictions which are for the purpose of protecting the value and desirability of the said Subdivision, and shall constitute covenants running with the said real property, shall be binding on all parties having any right, title or interest therein or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I.
DEFINITIONS

1.1 "Association" shall mean and refers to LAKES OF FAIRHAVEN HOMEOWNERS' ASSOCIATION, its successors and assigns. The Association has the power to collect and disburse those maintenance assessments as herein below described in Article VII hereof.

Mailing
Lakes of Fairhaven HOA
1704 Avenue D
Katy, TX
77493

11 Reg
Lakes of Fairhaven, HOA
Mustang Development
1704 Avenue D
Katy, TX 77493

1.2 "Owner" shall mean and refer to the record owner of a fee simple title to any Lot which is a part of the Subdivision, including owners that have entered into contracts of sale with others, but excluding those having such interest merely as security for the performance of any obligation.

1.3 "Lot" or "Lots" shall mean and refer to any of the plots of land shown on the plat of LAKES OF FAIRHAVEN described and referred to herein above; provided, however, the term "Lot" shall not include streets, easements, nor the property designated on the plat as Reserves "A" through "M". "Lot" shall also include building sites for the construction of one single-family residence structures resulting from consolidation or resubdivision pursuant hereto.

1.4 "Common Area" shall mean all real property contained within Reserves "A" through "M" referred to herein above, together with any and all improvements thereon. Declarant shall convey Reserve "A" through "M" to the Association, together with all improvements thereon, within five (5) years from the execution date of this instrument.

1.5 "Declarant", at times herein also referred to as "Developer", shall mean and refer to not only LAKES OF FAIRHAVEN, LLC, but also to its successors or assigns.

ARTICLE II. EASEMENTS AND UTILITIES

2.1 Reservation of Easements. All Lots shall be and are subject to certain easements over and across portions of each Lot as shown by the plat. The easements are deemed appropriate or necessary for the purpose of installing, using and maintaining public utilities and/or equipment necessary for the performance of any public, quasi-public or private utility service or function. The easements include the right of access for the purpose of further construction and maintenance. The right of access shall include the right, without liability on the part of the Declarant, owners or operators of such utilities, to remove any obstructions on said easements which in their opinions may interfere with installation or operation of said utility. The easements are for the general benefit of the Subdivision and the Lot owners and are reserved and created in favor of all utility companies serving the Subdivision.

2.2 Rights in Utility Assets. The title conveyed by Declarant to any Lot or Lots shall not in any event be held or construed to include the title to any instrumentality constructed or placed by Developer or any utility company, whether public or private, along any of said streets or easements of the Subdivision or Property for the purpose of providing water, sanitary sewer, gas, storm sewer, electric power, telephone or other communications or any other utility, to serve any portion of the Subdivision. The right to sell or lease such lines, utilities and appurtenances to any municipality or other governmental agency or to any public or private service company or to any other party, is hereby expressly reserved, but not exclusively, in Developer, its assigns and successors.

2.3 Sanitary Systems. Declarant shall cause to be constructed a sanitary sewer collection system for the purpose of providing sanitary sewer systems to the residents of LAKES OF FAIRHAVEN. In addition, each owner shall pay the owner of the system a reasonable monthly fee for sanitary sewer provided to each Lot.

2.4 Water System. Declarant shall cause to be constructed a water distribution system for the purpose of providing water to the residents of LAKES OF FAIRHAVEN. In addition, each owner shall pay the owner of the system a reasonable monthly fee for water provided to each Lot.

ARTICLE III.
ARCHITECTURAL CONTROL COMMITTEE

3.1 Creation of Committee. An Architectural Control Committee (the "Committee") shall be composed of two (2) members who shall be natural persons, and who shall be appointed by Declarant. The initial members of Committee shall be Michael Walton and Lynda Walton. The Committee shall have the right and power to enforce these Restrictions in any manner authorized in this instrument.

3.2 Appointment and Change of Membership. Until January 1, 2008, or at such earlier time as Declarant should decide, the members of the Committee shall be chosen by Declarant; however, at any earlier time, without regard as to whether Declarant owns any Lots, and at its own discretion, Declarant may transfer to the **LAKES OF FAIRHAVEN HOMEOWNERS' ASSOCIATION** (the "Association") the authority and responsibility for designation and removal of the members of the Committee. Notice of such election to transfer shall be given to each lot owner. Following such election, members of the Committee may be removed and substitute or successor members shall be designated by a majority of the eligible votes of the Association. No member of the Committee, or his/her designated representative, shall be entitled to any compensation for services performed. Each member shall serve until a successor is named or is removed.

3.3 Liability of Members. The Declarant, the Committee and its members shall be free from liability for actions within the scope of the Committee's function, unless gross negligence is proven. All owners and/or the Association hereby expressly waive and relinquish any and all claims against the Declarant, Committee or its members, except for claims of gross negligence.

3.4 Required Approval of Plans. No building or any other structure or improvement shall be erected, placed or altered on any Lot until the plans and specifications showing all aspects of the structures and improvements shall have been approved in writing by the Committee as to: (i) quality of workmanship and materials; (ii) harmony of external design with existing structures and improvements; (iii) location of structures and improvements with respect to topography and finish grade elevation, including plan regarding landscaping and location of trees; (iv) compliance with the Restrictions contained in this Declaration.

3.5 Approval Process. All final plans and specifications must be submitted in duplicate to the Committee for approval prior to start of any construction. At such time as the plans and specifications meet the approval of the Committee, one complete set of such plans and specifications will be retained by the Committee and the other complete set will be marked "approved", signed by a member of the Committee and returned to the Lot owner. Any modification or change to the approved set of plans and specifications prior to commencement of construction must be approved in writing by the Committee. In the event construction is not in accordance with the approved plans and specifications and/or Restrictions, the owner and/or builder agree and covenant to alter such construction in order to conform to all requirements of this Declaration and the Committee. In the event the plans and specifications are properly submitted to the committee for its review, and the Committee, or its designated representative, fails to either approve or disapprove such plans and specifications within thirty (30) days after being submitted to the Committee, and if no suit to enjoin the construction is commenced prior to completion of such construction, then approval is presumed.

3.6 Variances. The Committee shall have the absolute right and authority to waive, vary or modify Restrictions contained in this Declaration if, in the opinion of the Committee, such action is to the advantage or benefit to the Subdivision or, in the case of a change in circumstances arising from either advances in technology or other unforeseen developments, resulting in the need for such action in order to accomplish the original purposes of this Declaration. All requests for and approvals of requests for variances shall be in writing. The granting of such variance shall be signed by a member of the Committee.

ARTICLE IV.
USE RESTRICTIONS

4.1 Activity. No commercial activity of any nature shall be carried on upon any lot, nor shall anything be done thereon which may create environmental contamination or which may be or become an annoyance, nuisance, or environmental hazard to other owners in the Subdivision. An owner may maintain an office in his/her residence provided, however, such business shall not be a retail business nor shall it create any additional vehicular traffic other than the normal traffic generated by the occupants of such dwelling. There shall be no parking provided or allowed to accommodate clients or customers of such owner's business. There shall be no four wheelers permitted on any lots, private streets or on reserves A-M.

4.2 Animals. No horses, cattle, cows, swine, sheep, goats, poultry or livestock of any kind, other than pets of reasonable kind and number ordinarily kept in residential subdivisions, may be kept on any part of the Subdivision. No pets may be kept or bred for commercial purposes nor shall they be allowed to run at large within the Subdivision. Any nuisance created due to an unreasonable number or type of pet or pets, or by virtue of the pet or pets' actions or conduct, shall subject the owner to fines, actions at law and/or injunctive proceedings.

4.3 Construction Period. Notwithstanding any provisions in this instrument contained to the contrary, it shall be expressly permissible for the general contractor constructing improvements to maintain during the period of construction, upon such portion of the premises as builder deems necessary, such facilities as may be reasonably required, convenient or incidental to the construction including, but not without limitation, a business office, storage area, construction yards, signs, and sales office, provided same are removed within sixty (60) days after completion of construction and sale. All exterior construction of the primary residential structure, garage, porches, and any other appurtenances or appendages of every kind on any Lot, and all interior construction including, but not limited to, all electrical outlets in place and functional, all plumbing fixtures installed and operational, including being connected to water and sewer lines, all cabinet work completed, all interior walls, ceilings, and doors completed and covered by paint, wallpaper, paneling or the like, and all floors covered by wood, carpet, tile or other similar floor covering, all of which shall be completed not later than twelve (12) months following the date on which foundation forms are set. If all or any portion of the improvements are damaged or destroyed by fire or other casualty, it shall be the duty of the owner thereof, with all due diligence, to reconstruct such improvements in a manner which will substantially restore it to its appearance and condition immediately prior to the casualty. Reconstruction shall be undertaken within three (3) months after the damage occurs and shall be completed within six (6) months from date reconstruction was commenced. Due to the impossibility of being able to ascertain the exact amount of actual damages, owner's failure to comply herewith shall result in liquidated damages being due to the Association in the amount of \$100.00 for each day of noncompliance.

4.4 Detached Buildings. No garage or outbuilding may be used for rental purposes. All living quarters on any Lot, other than in the main building, must be for the bona fide use of the owner's or occupant's immediate family or individuals (no more than two) hired to maintain the household. No outbuilding shall exceed one (1) and one half (1/2) story in height.

4.5 Garbage Disposal and Dumping. Garbage shall be kept in sanitary containers and such containers shall be kept in a clean and sanitary condition. Underground garbage can holders or other devices (designed to prevent unsightly cans being seen from the street) must be approved by the Committee; or, in the alternative, back-door, off-the-street garbage and trash pick-up service must be provided for each Lot in the Subdivision by its owner or occupant. Other than during the day of trash pick-up, no trash cans or garbage cans shall at any time or times be permitted to remain on the street or in front of the lots forward of the building line so that same may be seen by a

person using the street in the Subdivision. No Lot shall be used or maintained as a dumping ground for trash, and no dumpsters shall be placed anywhere in the Subdivision, including the public streets. By a majority vote of the members of the Association a regular garbage pick-up service may be contracted for; provided, however, in such event, each member shall pay its pro-rata share.

4.6 Mineral Activity. No mineral exploration, development, production, storage, treatment, or operations of any kind shall be permitted upon any Lot.

4.7 Storage of Automobiles, Boats, Trailers and Other Vehicles. No trailer, boat, travel trailer, inoperative automobiles, campers, or vehicles of any kind shall be parked or stored in the street right-of-way (private access easement) or forward of the front building line. Storage of such items and vehicles must be screened from public view, within the garage or within a detached building as designated in Section 4.4 of these Restrictions.

4.8 Signs. No sign of any kind shall be visible to the public view except: (i) one professional sign of not more than five (5) square feet advertising the property for sale, or signs used by a homebuilder to advertise the property during the construction and initial sales period; and (ii) two (2) signs shall be allowed for each model home, such signs to be in front of said model home.

4.9 Single Family Dwelling. All Lots in Subdivision shall be used for single family dwelling in which only one family per dwelling may reside.

4.10 Upkeep. The owner of each Lot shall be responsible for the proper maintenance and upkeep of the Lot and improvements at all times. The owner shall keep the Lot neatly mowed, and shall not permit the accumulation of trash, rubbish, deteriorating improvements or other unsightly articles on said Lot or the abutting easements or streets.

The area between the pavement and the lot line shall also be kept and maintained by the owner of the abutting Lot. If any Lot owner does not comply with these terms, then the Committee is authorized to have such Lot cleaned and maintained in order to comply with these provisions for the account of the owner of said Lot, and the paying party shall be entitled to reimbursement of the amount of any reasonable expenses so incurred from the Lot owner for whose account and benefit such maintenance and upkeep was performed.

ARTICLE V. BUILDING RESTRICTIONS

5.1 Aerials. No radio, telephone, television, satellite dish, or other aerial communication antennae or wires shall be maintained on any portion of any Lot forward of the front wall line of the main dwelling constructed on such Lot and shall not be visible from the street.

5.2 Building Lines. No building or other improvements shall be located on any Lot nearer than fifty (50) feet to the front Lot line or nearer to the street sideline than the minimum building setback line shown on the recorded plat. No building shall be located nearer than fifteen (15) feet to any interior Lot line, except that a garage or other permitted accessory building located one hundred (100) feet or more from the front Lot line may be located within ten (10) feet of an interior Lot line so long as the distance between any adjacent dwelling and the dwelling situated as close as (10) feet to an interior Lot line is not less than twenty (20) feet and neither dwelling is closer than three (3) feet to any easement containing water and/or sanitary sewer lines; provided, however, in no event shall the sum of the side yard widths on any Lot be less than twenty-five (25%) percent of the width of the Lot (except in the case of a garage or other permitted accessory building set back one hundred (100) feet as above prescribed). This distance shall be measured (to the nearest foot) along the front setback line shown on the recorded plat. For the purposes of this covenant or restriction, eaves, steps and unroofed terraces shall not be considered as part of a building, provided,

however, that this shall not be construed to permit any portion of the construction on a Lot to encroach upon another Lot.

5.3 Clothesline. No clothesline may be visible from the street. Such clotheslines must be enclosed by a hedge or other type of screening enclosure as may be approved by the Committee as a part of the plans for the improvements to be located on the Lot.

5.4 Detached Building Locations. Any garage, household assistant's quarters or any outbuilding of any kind detached from the main building shall be located at least one hundred (100) feet from the front street, unless prior written approval of a variance is given by the Committee.

5.5 Exterior Walls. Unless prior written approval of a variance is given by the Committee, the exterior walls of each dwelling shall be not less than seventy five (75%) percent masonry including, but not limited to, natural stone, brick, stucco or a veneer of any of them. In computing this percentage, all door and window openings and gables shall be excluded from the required area. On the remaining portions of the exterior walls and surface areas of the main structure, the garage, and on any outbuildings or appendages thereto, except greenhouses, the materials used must be in keeping with the general architectural design of the buildings, as determined by the Committee. Metal buildings and metal siding are prohibited, unless prior written approval is given by the Committee.

5.6 Facing. The main building on each Lot shall be constructed to face the street upon which such lot fronts.

5.7 Walls, Fences, and Hedges. No wall, fence or hedge shall be erected or maintained nearer to the front Lot line than the front building line on such Lot, nor on corner Lots nearer to the side Lot line than the building setback line parallel to the side street. No side or rear fence, wall or hedge shall be more than eight (8) feet in height. No chain link fence type construction will be permitted on any Lot save and except for pet enclosures not visible from the street. Any wall, or fence erected (except wood fencing) on a Lot by Developer shall pass ownership with title to the Lot and it shall become the responsibility of the LAKES OF FAIRHAVEN HOMEOWNER'S ASSOCIATION for repair and maintenance (any damage done by the Lot owner shall be the responsibility of the Lot owner). The minimum acceptable quality for the fence in Block One (1) through Block Four (4), Section One (1) of LAKES OF FAIRHAVEN, is vertical cedar wood, 12" Wrought Board and Cap that is free of large or loose knots and splits with 4" X 4" posts set 2' in concrete on 8' centers or less. Or wrought iron of the design approved by the Architectural Control Committee. All fences must be approved prior to commencement of construction.

5.8 Foundations. All foundations for all main buildings and outbuildings including, but not limited to, houses, garages and porches, either attached or detached, shall be slab-on-grade, of concrete, and must be fully enclosed at the perimeter. Such foundations must be designed by a professional engineer, expert in foundation design, in accordance with the most recent criteria established by the Builders Research and Advisory Board (B.R.A.B.) or Post Tension Institute (P.T.I.) or other comparable standard designated by the Committee. It is understood that the builder and/or owner shall provide Committee with drawings signed by the professional engineer. The builder and/or owner shall be solely responsible for all soil tests.

5.9 Garages. Each lot must have an automobile garage, which garage shall be capable of storing at least two (2) conventional size automobiles unless otherwise approved by the Committee. Detached garages shall be no more than one story in height unless approved prior to commencement of construction. Any garage, whether detached or attached, shall not exceed the height of the main dwelling.

5.10 Height and Floor Area Limitations. No building shall be permitted on any Lot unless it complies with the following:

- a. No dwelling shall exceed two and one-half (2 1/2) stories in height.
- b. The living area of the main dwelling of any one-story residence, exclusive of porches, garages (whether attached or detached), patios, breezeways or other appendages, shall not be less than 2000 square feet.
- c. The living area of the main dwelling of any 2 or 2 1/2 story residence, exclusive of porches, garages (whether attached or detached), patios or other appendages, shall not be less than 2500 square feet.

5.11 Materials. All materials must be new material and no second-hand or used material shall be utilized in the construction of improvements on any Lot.

5.12 New Construction. All improvements of any nature placed on any Lot shall be newly erected on said Lot and no second-hand or used buildings, or other improvements, shall be moved onto any of said Lots.

5.13 Roof. The pitch of the roof of each main building and all outbuildings either attached or detached is subject to the approval of the Committee. Roofs shall be of composition material (at least 240 pound weight) and comparable in color to wood shingles. Any other roofing material must have prior written approval by the Committee.

5.14 Screening. All service and sanitation facilities must be enclosed within fences, walls, and/or landscaping and shall not be visible from any street fronting the Lot. The Committee may, in its reasonable discretion, permit owners to place additional lattice-work screening or other decorative screening on the subject Lots for the purpose of screening public view of hot-tubs, sun bathing areas, servicing equipment, etc.

5.15 Sight Distances at Intersections. No fence, wall, or landscaping which obstructs sight line at elevation between two (2) and six (6) feet above the streets shall be placed or permitted to remain on any corner Lot area within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines or in the case of a rounded corner, from the intersection of the street property line extended to intersect. The same sight line limitations shall apply on any Lot within ten (10) feet from the intersection of a street property line with the edge of a driveway pavement. No trees shall be permitted to remain within the above sight line of each intersection unless the foliage line is maintained at sufficient height to prevent the obstruction of the sight line.

5.16 Single Family Residential Homes. The main building on each Lot shall be constructed as a single-family residential dwelling.

5.17 Swimming Pool Equipment. All pool or pool service equipment shall be located either (a) in a side yard between the front and rear boundaries of the main dwelling, or (b) in the rear yard directly abutting and adjacent to the main dwelling. In addition, this equipment must be visually screened by a solid masonry wall or wood fence of approved type and construction. All screening walls shall be fully landscaped with landscaping of a type, quality and quantity approved by the Committee.

5.18 Tennis Courts. No tennis court lighting shall be constructed or placed upon any Lot, unless otherwise approved by the Committee.

5.19 Toilets. No outdoor toilets shall be placed on any Lot except during construction of main structure and related improvements.

5.20 Window or Wall Units. No window or wall type air conditioners shall be permitted to be used, placed or maintained on or in any building or in any part of the Subdivision, without the prior written consent of the Committee; however, during the construction phase of the main buildings and improvements, they shall be permitted on temporary buildings.

5.21 Composite Building Site. Any owner of adjoining Lots or portion thereof, may consolidate such Lots or portions thereof into one single-family residence building site, in which case setback lines shall be measured from the resulting side property lines rather than from the Lot lines shown on the recorded plat and such site shall be considered a Lot for all purposes hereof. Any proposed consolidated building site must be approved by the Committee.

5.22 Mailboxes. All mailboxes shall be constructed out of material that is harmonious and consistent with the overall architectural and aesthetic themes of the subdivision and must be approved prior to commencement of construction.

5.23 Lot Drainage and Landscaping. No owner shall design, construct, alter or in anyway cause the surface water of his or another lot to drain or adversely affect another lot or lots. Any landscaping or other activities by any owner which results or may result in an increase of surface water on another's lot is prohibited and may be enjoined by the Committee or other owners.

5.24 Lakefront Lots. The following restrictions shall be applicable only to lakefront lots: (1) No outbuildings shall be constructed on lakefront lots unless they are of extremely high quality and superior design. No outbuildings shall be approved if they detract or adversely affect the view and/or overall aesthetic theme of the lake area; (2) all fencing shall be constructed solely from wrought iron.

**ARTICLE VI.
STABLE CREEK HOMEOWNERS' ASSOCIATION
MEMBERSHIP AND VOTING RIGHTS**

6.1 The Association. The Declarant shall charter a corporation organized under the Texas Non-Profit Corporation Act to be known as **LAKES OF FAIRHAVEN HOMEOWNERS' ASSOCIATION, INC.**, or such other name as may be designated at the time of its incorporation, which incorporation shall be prior to the conveyance of the first lot. The Association shall act through its Board of Directors and shall have all powers enumerated herein, as well as those contained in the bylaws and those provided by law. The Board shall be composed of three (3) members and shall serve two (2) year terms; provided, however, the initial Board shall be composed of three (3) members appointed by Declarant and shall serve until the first meeting of members. It is not necessary that the directors be members of the Association.

6.2 Membership. Every owner of a Lot, which is subject to assessment, shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot, which is subject to assessment.

6.3 Classes of Voting Members. The Association shall have two classes of voting membership:

- (a) **Class A:** All Class A members shall be owners and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot. Holders of future interests not entitled to present possession shall not be considered as owners for the purposes of voting hereunder.
- (b) **Class B:** The Class B member shall be Declarant, its successors or assigns and shall be entitled to ten (10) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:
- (1) when the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership; or
 - (2) on January 1, 2008.

ARTICLE VII. **ASSESSMENTS**

7.1 Covenants for Assessments. The Declarant, subject to certain exemptions or abatement as hereinafter provided, and each purchaser of any Lot by acceptance of deed therefore, hereby covenant and shall be deemed to covenant to pay to the Association the following: (1) annual assessments or charges as specified below; (2) special assessments for capital improvements or for repayment of funds borrowed and used in payment of capital improvements, as specified below. All of such assessments are to be fixed, established and collected from time to time as hereinafter provided.

7.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the comfort, health, safety, and welfare of the owners of the Lots and for carrying out the purposes of the Association as stated in the Declaration and its Articles of Incorporation.

7.3 Creation of Lien and Personal Obligation for Assessments. The annual and special assessments, together with interest, costs and reasonable attorney's fees in the event of default, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of the Lot at the time when the assessment fell due. Appropriate recitations in the deed conveying each Lot will evidence the retention of a vendor's lien by Declarant for the purpose of securing payment of said charge assigned to the Association, without recourse on Declarant in any manner for the repayment of said charge and indebtedness. In the event such assessments are delinquent, and in order to evidence the aforesaid assessment lien, the Association shall prepare a written notice of assessment lien setting forth the amount of the unpaid indebtedness, the name of the owner of the Lot covered by such lien and a description of the Lot. Such notice shall be signed by one of the officers of the Association and shall be recorded in the office of the County Clerk of Harris County, Texas. Such lien for payment of assessments shall attach with the priority set forth in this Declaration from the date that such payment becomes delinquent and may be enforced by the foreclosure of the defaulting owner's property by the Association in like manner as a mortgage of real property subsequent to the recording of a notice of assessment lien as provided above, or the Association may institute suit against the owner personally obligated to pay the assessment and/or for foreclosure of the aforesaid lien judicially. In any foreclosure proceeding, whether judicial or non-judicial, the owner shall be required to pay all costs, expenses, and reasonable attorney's fees incurred.

All Common Areas of the Property and any other properties owned by Declarant, or any other association, designated on any recorded Plat or Map filed by Declarant, shall not be subject to the assessments and liens created herein.

7.4 Annual Assessment. Each owner of a Lot or Lots shall pay to the Association an annual assessment of seven hundred fifty (\$ 750.00) Dollars per Lot. The annual assessments provided for herein shall commence as to all Lots in LAKES OF FAIRHAVEN on January 1, 2004, and shall continue thereafter from year to year. All Lots owned by Declarant are exempt from the annual assessment for the years 2004 through 2008, and shall be charged the full assessment rate thereafter.

7.5 Increase in Rate of Annual Assessment. An increase in the rate of the annual assessment must be approved by a majority of the eligible votes of the membership of the Association, voting in person or by proxy, at a meeting duly called for such purpose. Written notice of such meeting shall be given to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting. No rate increase shall exceed ten (10%) of the prior year's rate. The Board of Directors of the Association may, after consideration of current maintenance costs and future needs of the Association, fix the actual assessment for any year at a lesser amount. The Association may not accumulate a surplus at the end of any year, which is more than two times the maximum permissible total annual assessment for that year. The Board of Directors shall, should excess surplus (as above defined) exist at the end of any year, reduce the next total annual assessment by an amount at least equal to said excess surplus

7.6 Special Assessment for Capital Improvements. In addition to the annual assessment authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any purchase, construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, if any, including fixtures and personal property related thereto, provided that any such assessment shall have the approval of at least two-thirds (2/3) of the eligible votes of the membership of the Association, voting in person or by proxy at a meeting duly called for this purpose. Written notice of such meeting shall be given to all members at least thirty (30) days in advance, but not more than sixty (60) days, and shall set forth the purpose of the meeting.

7.7 Due Date of Assessments. The annual assessments shall become due and payable on January 1 of each year, and shall be considered delinquent if not paid within thirty (30) days from due date. The Board of Directors may change the due date and all members shall be notified of such change. The due date and delinquent date of any special assessment shall be fixed in the resolution authorizing such assessment. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid and the amount of any delinquencies. The Association shall not be required to obtain a request for certificate signed by the owner but may deliver such certificate to any party who in the Association's judgment has a legitimate reason for requesting same.

7.8 Notice and Quorum for Meeting to Increase Rate of Assessments. Written notice of any meeting called for the purpose of taking any action to increase the rate of assessment regarding either annual or special assessments herein above provided shall be mailed by U.S. Mail, certified, return receipt requested, to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or proxies of all classes of membership entitled to cast fifty percent (50%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present at any such meeting, the meeting shall be adjourned but another meeting may be called subject to the same notice requirement; however, the required quorum at such subsequent meeting shall be one-half (1/2) of the required quorum applicable in the case of the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

7.9 Effect of Nonpayment of Assessments. Any delinquent assessment shall bear interest from the due date until paid at the rate of ten percent (10%) per annum. After ten (10) days notice to the delinquent owner, the Association may bring an action at law against the owner personally obligated to pay the assessment, or foreclose the lien against the Lot involved. No owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Lot.

7.10 Subordination of the Lien to Mortgages. The lien impressed for non-payment of the annual assessments provided for herein shall be subordinate to any lien of any unpaid first-lien mortgage existing as of the date of the creation of such first-lien mortgage upon the particular Lot involved. Sale or transfer of any Lot shall not affect the special assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure (whether by exercise of power of sale or otherwise) or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payment which became due on or prior to the date of the creation of such first lien mortgage. No mortgage foreclosure shall relieve such Lot from the liability for any annual assessments thereafter becoming due as of the date of the creation of the first-lien mortgage or subsequently to that date, but such lien shall exist as, and constitute, a separate and distinct charge and lien on each Lot.

ARTICLE VIII. GENERAL PROVISIONS

8.1 Enforcement: The Association, Committee, or any owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by any of the foregoing parties to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

8.2 Severability: Invalidation of any one of these Restrictions by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

8.3 Owner's Easement of Enjoyment: Every owner shall have a right and easement of enjoyment in and to the Common Area, if any, which shall be appurtenant to and shall pass with the title to every Lot subject to the following provisions:

- (a) the right of the Association to suspend the voting rights and right to use of the Common Area by an owner for any period during which an assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for each infraction of its published rules and regulations;
- (b) the right of the Association to dedicate or transfer all or any part of the Common Area, if any, to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of the members agreeing to such dedication or transfer has been recorded in the Public Records of Harris County, Texas;
- (c) the right of the Association to collect and disburse those funds as set forth in Article VII hereof.

8.4 Delegation of Use: Any owner may delegate in accordance with the By-Laws of the Association, his right of enjoyment to any Common Area and facilities to the members of his family, or his tenants.

8.5 Annexation: Additional property and Common Areas may be annexed to the Subdivision with the consent of two-thirds (2/3) of eligible votes of the membership of the Association. Declarant, acting unilaterally, within five (5) years from date of the execution of this instrument, may add additional property to the Association by filing a Supplemental Declaration of Covenants, Condition and Restrictions affecting only the annexed property. In this event, the Declarant shall have the exclusive right to substantially modify and/or alter these Restrictions, only as to the annexed property, in order to implement and carry out the intended purposes and uses of said annexed property including, but not limited to, modifying and altering these Restrictions in such manner consistent with intended commercial purposes, if any, and uses thereof.

8.6 Books and Records: The books, records and papers of the Association shall, during reasonable business hours, be subject to inspection by any members. The Articles of Incorporation, By-Laws of the Association, and Declaration shall be available for inspection by any member at the principal office of the Association where copies may be purchased at a reasonable cost.

8.7 Interpretation: If this Declaration, or any word, clause, sentence, paragraph or other part thereof, shall be susceptible of more than one or conflicting interpretations, then the interpretation which is most nearly in accordance with the general purposes and objectives of this Declaration shall govern.

8.8 Omissions: If any punctuation, word, clause, sentence or provision necessary to give meaning, validity or effect to any other word, clause, sentence or provision appearing in this Declaration shall be omitted herefrom, then it is hereby declared that such omission was unintentional and that the omitted punctuation, word, clause, sentence or provision shall be supplied by inference.

8.9 Notices: Any notice or communication required or permitted hereunder including, but not limited to, written approvals, notices of delinquencies, etc. shall be deemed to be delivered, whether actually received or not, when deposited in the U.S. mail, postage prepaid, and addressed to the intended recipient at the address shown herein, and, if not so shown, then at the last known address according to the records of the party delivering the notice. Notice given in any other manner shall be effective only if and when received by the addressee.

8.10 Choice of Law. This instrument shall be subject to and governed by the laws of the State of Texas. Each party hereby submits to the jurisdiction of the courts of the State of Texas. Venue shall be in Harris County, Texas.

8.11 Effect of Waiver or Consent. No waiver or consent, express or implied, by the Association, Committee, any owner or any other party to or of any breach or default by any owner in the performance of the obligations hereunder shall be deemed or construed to be a consent or waiver of any other breach or default in the performance by such owner of the same or any other obligations of such owner hereunder. Failure on the part of an owner, Committee, the Association, Declarant or any other party to complain of any act of any owner or to declare any owner in default, irrespective of how long such failure continues, or conduct condoned, shall not constitute a waiver by such party of the rights hereunder.

8.12 Duration. The Restrictions set forth herein shall continue and be binding upon owner and owner's successors and assigns for a period of thirty-five (35) years ("**Primary Term**") from this date, unless terminated or amended. At the expiration of the primary Term, these Restrictions shall automatically be extended for an additional ten (10) year period ("**Extension Term**") and for successive periods of the Extension Term thereafter, unless terminated or amended. After the expiration of the Primary Term, the owner or owners of a majority of the Lots may execute and acknowledge an agreement in writing terminating or revising the terms of this instrument and file the same in the Real Property Records of Harris County, or in such office as a conveyance of real estate then may be required to be filed, and then and thereafter the Restrictions set forth in this instrument shall be null, void and of no

further force and effect, or shall be modified as such recorded instrument may direct; provided, however, that the easements granted herein are perpetual.

8.13 Amendment. These Restrictions may be amended, but not terminated, at any time after the expiration of five (5) years from the date of execution of this Declaration by consent of not less than fifty-one (51%) of the eligible votes of the members of the Association.

EXECUTED this the 20 day of April, 2004.

LAKES OF FAIRHAVEN, LLC

By: *Michael R. Walton*
Michael R. Walton, President

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THE STATE OF TEXAS *

COUNTY OF HARRIS *

This instrument was acknowledged before me on this 20 day of April, 2004, by MICHAEL R.

WALTON, President of LAKES OF FAIRHAVEN, LLC, a Texas limited liability company, on behalf of said company.



Cheryl D. Calloway
Notary Public, STATE OF TEXAS

Name: *Cheryl D. Calloway*

Commission Expires: *3-15-07*