



Johnston

1st Judicial District

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BOOK 1563 PAGE 602



**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR SWAN LAKE ESTATES, PHASE I, UNIT 3**

THIS DECLARATION is made this the 29th day of November, 2001, by LHF, INC., a Mississippi corporation, for itself, its successors, grantees and assigns, hereinafter referred to as "Declarant".

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain real property in the First Judicial District of Harrison County, Mississippi, which is more particularly described as follows, to-wit:

Lots 1 through 9, inclusive, SWAN LAKE ESTATES, PHASE I, UNIT 3, First Judicial District of Harrison County, Mississippi, according to a plat thereof recorded in Plat Book 44 at Page 7 of the public records of the First Judicial District of Harrison County, Mississippi.

NOW THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, covenants, conditions and restrictions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to SWAN LAKE ESTATES HOMEOWNERS ASSOCIATION, INC., a Mississippi non-profit corporation, its successors and assigns.

Section 2. "Owner" shall mean and refer to the owner of record, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Prepared by:
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Section 3. "Properties" shall mean and refer to that certain real property hereinabove described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Lot" shall mean and refer to numbered Lots 1 through 9 as illustrated and shown on the plat of SWAN LAKE ESTATES, PHASE I, UNIT 3, as recorded in the public records of the First Judicial District of Harrison County, Mississippi.

Section 5. "Building Site" shall mean those fractional parts of adjacent lots or one or more lots and all or a portion of an adjacent lot, which are more particularly described and defined in Section 20 of Article VI of this Declaration.

Section 6. "Home" or "dwelling" shall mean and refer to any building situated upon a Lot which is designated and intended for use and occupancy as a residence by a single family.

Section 7. "Living Unit" shall mean and refer to a Lot and the Home constructed thereon.

Section 8. "Member" shall mean and refer to all those Owners who are members of the Association as provided in Article II, Section 1 hereof.

Section 9. "Common Area" shall mean all real property (including improvements thereto) owned by the Association and/or which the Association members have the right to use and enjoy and also all rights of easement and license and shall include any and all other property shown on the recorded plat of SWAN LAKE ESTATES, PHASE I, UNIT 3, but with the exception of and excluding the platted lots and parcels, and with the exception of and excluding the drainage and utility easements and the streets and/or roads.

Section 10. "Declarant" shall mean and refer to LHF, INC., a Mississippi corporation, and its successors and assigns.

ARTICLE II

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of Lots 1 through 9 of SWAN LAKE ESTATES, PHASE I, UNIT 3 shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

When more than one person owns an interest in any Lot or Building Site, all such persons shall be members. The vote for such Lot or Building Site shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot or Building Site.

ARTICLE 3

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Living Unit and/or Lot owned hereby covenants, and each Owner of any Living Unit and/or Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: annual assessments or charges, such assessments to be established and collected as hereinafter provided. The annual assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property 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 such property at the time the assessment fell due. The personal obligation for delinquent assessments shall not pass to successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to maintain and care for the common area and common landscaping; to maintain, landscape and irrigate entranceways and medians; to maintain and light entranceways, including signs and fences, and for any other purpose deemed necessary and appropriate by the Association.

Section 3. Uniform Rate of Assessment. Annual assessments must be fixed at a uniform rate for all Living Units and/or lots and will be collected on a yearly basis.

Section 4. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all lots or building sites at such times as are fixed by the Board of Directors of Swan Lake Estates Homeowners Association, Inc., but in no

event, no later than January 1, 2002. The Board of Directors shall fix the amount of the annual assessment against each Lot at least 30 days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors. 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. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 5. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within 30 days after the due date shall bear interest from the due date and/or a late charge and reasonable attorney fees, all of which shall be continuing lien on the lot against which the assessment is made. The Association may bring action at law against the owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area, if any, or abandonment of his Living Unit. The Association may suspend the voting rights of an Owner for any period during which any assessment against his Living Unit remains unpaid.

Section 6. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage encumbering any Lot, parcel or Living Unit within the subdivision. Sale or transfer of any Lot or Living Unit shall not affect the assessment lien. However, the sale or transfer of any Lot or Living Unit pursuant to foreclosure of a first mortgage or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Living Unit from

liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE IV

ARCHITECTURAL CONTROL

Section 1. Architectural Approval. No building, fence, wall, mailbox, decorative objects placed in yards or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, color, kind, shape, height, materials, roof, and location of the same, shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Architectural Control Committee composed of at least two (2) and not more than five (5) representatives appointed as herein provided. In the event said committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

Section 2. Architectural Control Committee. The initial Architectural Control Committee shall be composed of Carl B. Hamilton and Terry M. Loveless. Upon the death or resignation of a member or members of the committee, the remaining member or members shall have full authority to designate successor members. The Declarant shall have the authority to appoint committee members in addition to the two (2) original members until the closing of the sale of all lots or building sites by Declarant in SWAN LAKE ESTATES, PHASE I, UNIT 3. Neither the members of the committee nor its designated representatives shall be entitled to any compensation for services performed pursuant to this covenant. At any time after the closing of the sale of all of the lots or building sites by Declarant in Lots 1 through 9, SWAN LAKE ESTATES, PHASE I, UNIT 3, the Association shall have the authority to appoint a committee of at least two (2) and not more than five (5) representatives to exercise the power, duties and responsibilities hereinabove set forth.

Section 3. Granting of Variances. When a building or other structure has been erected or its construction is substantially advanced and the building is located on any lot or building site in a manner that constitutes a violation of these covenants, conditions and restrictions or the building setback lines shown on the recorded plat, or if the Architectural Control Committee, in its sole discretion, determines that a variance is desirable in order to best accommodate the location of a planned building on a particular lot, the Architectural Control Committee may release the lot or building site, or parts of it, from any part of the covenants, conditions and restrictions, or setback lines, that are violated. The Architectural Control Committee shall not give such a release except for a violation that it determines to be a minor or insubstantial violation in its sole discretion. Provided, however, that the Architectural Control Committee shall have no authority to grant a variance of a Harrison County subdivision regulation, including, but not limited to, those that may be contained in these covenants, conditions and restrictions. Neither the Board of Directors of the Association, nor the Architectural Control Committee, nor any of the respective members, shall in any way be liable or be held liable to any Owner, the Association, or any other person or entity resulting from its good faith exercise of the discretionary authority conferred by this Section.

ARTICLE V

DUTY TO CLEAR A LOT IF OWNER

ELECTS NOT TO REBUILD AFTER DESTRUCTION

In the event of damage to or destruction of any Home on the Properties by fire, windstorm, water, or other cause whatsoever, and the Owner elects not to rebuild the Home, then the Owner shall be required to clear the Lot within a reasonable time after the damage or destruction to the Home. The Owner shall be required to maintain the Lot in a clean and presentable manner, free from all trash and rubble, and to maintain the Lot so that it is in harmony with the surrounding property.

ARTICLE VI

RESTRICTIONS AS TO USE,

OCCUPANCY AND APPEARANCE

Section 1. General. All of the Lots shall be used and occupied as single family residences and no structures shall be erected, altered, placed or permitted to remain other than one single family dwelling with a private garage for not more than three (3) vehicles and one (1) storage or outbuilding. No building, fence, wall or other structure shall be erected or placed on any Lot, except in accordance with the provisions of this Declaration, including written permission of the Architectural Control Committee. No alteration to the exterior (appearance) of any Home, Lot, building, fence, or other structure shall be made without the written permission of the Architectural Control Committee created hereunder. Each Owner shall be responsible for his/her own exterior maintenance, landscaping, and maintenance of the landscaping, so long as it does not interfere with the adjoining Lot Owners, and is consistent with these Covenants, Conditions and Restrictions, and harmonious with the surrounding improvements.

Section 2. Building Setback Requirements. No building shall be located on any lot in the subdivision nearer than twenty-five (25) feet to the front lot line, nearer than eight (8) feet to any interior lot line or nearer than eight (8) feet to the back or rear lot line. For the purpose of these covenants, conditions and restrictions, eaves, steps and open patios shall not be considered a part of the building.

Section 3. Dwelling Size. The dwellings on Lots 1 through 9 shall have a minimum of 1700 square feet of heated and cooled living area. For purposes of determining heated and cooled living area, porches (other than glass-enclosed porches), garages, and storage areas shall not be included.

Section 4. Fences. All fences to be constructed on any lot or building site must be approved by the Architectural Control Committee prior to construction in accordance with Section 1 of Article IV of these covenants, conditions and restrictions. No chain link fences shall be allowed on any lot in SWAN LAKE ESTATES, PHASE I, UNIT 3.

Section 5. Temporary Structures. No structure of a temporary nature (trailer, shack, tent or other building) shall be moved to, placed upon or used on any Lot at any time, either temporarily or permanently, excepting, however, that during periods of construction, contractors shall be permitted a single storage shed on each separate construction site.

Section 6. Building Condition, General Appearance, Nuisance, and Health Regulations. All premises shall be maintained in good repair, shall be clean and sanitary at all times, and no nuisance and no violation of the rules and regulations of the State Board of Health or any governmental agency shall be permitted.

Section 7. Noxious and Offensive Trade. No noxious or offensive trade or activity shall be carried out upon the Properties nor shall anything be done thereon which may be or become an annoyance to the other Owners. Floodlights, bells, telephones, music, number or noise level of pets, air pollutants, etc. shall not be such as to constitute a nuisance to or impair the enjoyment of neighboring lots or building sites.

Section 8. Signs. No professional, commercial or other signs of any kind shall be erected or maintained on any Lot or Home by any Owner except with the written permission and direction of the Association, or except as may be required by legal proceedings, it being understood that the Association will not grant permission unless reasonably necessary to avert serious hardship to an Owner. However, an Owner may place a professionally made "For Rent" or "For Sale" sign no larger than three (3) square feet in size on the Lot. This restriction is not applicable to the Declarant during any such period of time that Declarant owns any Lot and is offering any said Lot, Home or Living Unit for sale.

Section 9. No Clothes Lines. No outside clothes lines or other items detrimental to the appearance of the Properties shall be permitted on any Lot. All personal garbage and trash receptacles which are to be furnished by the Owners must be hidden from view.

Section 10. Animals. No livestock, animals, chickens or fowl of any kind shall be permitted on the Properties except for dogs and cats owned as personal pets which shall not be kept in such number as to be an annoyance to other Owners of Lots. In addition, no dogs or cats shall be permitted on the Properties except inside a Home or fenced-in area, without being on a leash and under the immediate control of a responsible individual. All such pets must be walked in appropriate areas, and owners of such pets must clean up after their pets. If any such pet owner fails to properly clean up after his pet, the Association shall perform such service and shall bill the pet owner accordingly. The Association shall have the right to adopt and enforce such additional pet regulations as are reasonably necessary to insure that such pets are not and do not become a nuisance.

Section 11. No lot shall at any time be used for the purpose of any trade, business, manufacture or public amusement.

Section 12. Nuisances. No nuisance shall be allowed upon the Properties, nor any use or practice that is a source of annoyance to residents or which interferes with the peaceful possession and proper use of the Property by its residents. All parts of the Properties shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage allowed to accumulate or any fire hazard allowed to exist. No Owner shall permit clothes, towels, or other items of personal property to be hung, draped, or otherwise displayed on the patio for the purpose of drying or for any other purpose in a manner which would allow said clothing, towel or other personal property to be viewed by any other person occupying or using the Properties. No Owner shall permit any noise to originate from his Home that would be an annoyance or nuisance to occupants of adjoining Lots, including, but not limited to, radios, record players, stereos, musical instruments, singing, barking of dogs, and meowing of cats.

Section 13. Lawful Use. No immoral, improper, offensive or unlawful use shall be made of the Properties nor any part thereof; and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed. The responsibility of

meeting the requirements of governmental bodies for maintenance, modification or repair of the Properties shall be the same as the responsibility for the maintenance and repair of the property concerned.

Section 14. Leasing. Entire Living Units may be rented provided that the Living Unit is used only as a residence; that the lease or rental period is for not less than thirty (30) consecutive days; that the Living Unit is occupied by only one family having no more members than the Living Unit is designed to accommodate; and provided that such use by the tenant or tenants does not create a nuisance. An Owner may lease or rent his own Living Unit himself to any lessee provided that he furnishes the Association with the names of all the tenants. All lessees are subject to the provisions of this Declaration and the By-Laws of the Association and failure to comply with said provisions shall be a default under any lease of any Living Unit whether so stated in said lease. All of the foregoing may be enforced by the Association.

Section 15. Parking. No boat, boat trailer, house trailer, truck, tractor or commercial vehicle of any kind, or any other vehicle, machine, equipment or apparatus other than operating passenger automobiles, pickups and operating passenger vans (vans are limited to those that are no wider than American made family automobiles) shall be parked or stored in any driveway or on any Lot in the subdivision or on the street or road right-of-way in front of any such Lot so as to be visible from the street. Any such vehicles, machines, equipment and apparatus must be parked or stored on the rear of the property behind the dwelling, and screened from view to the satisfaction of the Architectural Control Committee. All vehicles belonging to Owners or tenants occupying any dwelling, building site or lot must be operable and not in storage and/or being repaired. No trailer/tractor, bus, or other commercial vehicle shall be parked on any lot, building site, or adjoining street right-of-way overnight.

Section 16. Maintenance of Vacant Lots or Building Sites. If construction of a residential dwelling is not commenced within 12

months from the date a lot is purchased, then the Owner shall remove all underbrush and mow and maintain the lot on a regular basis. If any unimproved lot or building site is not so maintained, the Declarant or the Association shall be empowered to maintain the lot or building site and file a lien against the property for any and all expenditures in connection with said maintenance.

Section 17. Flagpoles, Antennas, Satellite Dishes, and Basketball Goals. No ham radio antennas, citizen band radio antennas, television antennas, or any other type of antenna shall be allowed or permitted to be erected or located or to remain on any lot or building site at any time. No flagpoles shall be permitted in the subdivision unless approved by the Architectural Control Committee. Any television satellite dishes erected and properly located on a lot or building site in the subdivision shall be the RCA type and shall not exceed eighteen (18) inches in diameter. Basketball goals, posts or backboards shall not be erected, altered or permitted on any lot or building site in the subdivision or on any street right-of-way, unless the same is approved by the Architectural Control Committee. No owner or builder shall install or cause to be installed any mailbox on any lot except as approved by the Declarant, LHF, INC. The Declarant, LHF, INC., reserves the right to require standardized mailboxes for all lots which will be supplied by LHF, INC. for the cost thereof.

Section 18. Maintenance of Landscaping. Each Owner shall maintain the appearance of his or her lot or building site in high quality condition, and will provide and maintain landscaping on the lot or building site. Grass, flowers and shrubbery must be kept in an orderly fashion. No bamboo hedges, plant material or hedges (excluding trees), exceeding three (3) feet in height shall be allowed within the required twenty-five (25) foot front setback area.

Section 19. Sewage and Drainage Control. No activities shall be permitted that discharge pollutants into the surface drainage system.

Section 20. Adjoining Lots. If one or more lots, or one lot and all or a portion of an adjacent lot, or two or more fractional parts of adjoining lots, within the subdivision, are utilized for one single

family residential purposes, the setback requirements herein shall be measured from the boundary line of the entire building site or plot being then and there utilized and devoted to the single family residence. Two fractional parts of adjacent lots may be utilized as a single family residential building site or plot, provided that no such building site or plot shall contain fewer square feet than the smallest platted lot within the subdivision nor have a width, at the building setback line, of less than the width, at the building setback line, of the smallest platted lot within the subdivision.

Section 21. Reservation of Easements. Easements for the installation and maintenance of utilities and drainage facilities, for access and for sidewalks are reserved as shown, noted and indicated on the recorded Plat of the subdivision and are hereby adopted as part of this Declaration.

Section 22. Wetlands. Designated wetland areas, if any, are not allowed to be cleared, excavated, filled, built upon, sodded, or disturbed in any other way not approved by the Corps of Engineers. The wetland areas may be bush-hogged, mowed, or cut by manual implements if so desired.

Section 23. Tree Removal. In order to assure that maximum benefit of natural vegetation accrues to the owners of lots within the subdivision, trees may only be removed in accordance with the ordinances and regulations of Harrison County, Mississippi.

Section 24. Storage or Outbuildings. Only one storage or outbuilding, shall be placed, permitted or allowed on each lot. The size and design of any such outbuilding must be approved in writing by the Architectural Control Committee and must conform to all setback requirements contained in Section 2 of Article VI of these covenants and those setback requirements of the subdivision regulations of Harrison County, Mississippi, and any other applicable government entity.

Section 25. Regulations. Reasonable regulations concerning the use of the Properties may be made and amended from time to time by the Association in the manner provided by its Articles of Incorporation and

By-Laws. Copies of such regulations and amendments shall be furnished by the Association to all Owners and residents on the Properties upon request.

Section 26. Proviso. Provided, however, that until Declarant has completed all of the contemplated improvements and closed the sale of Lots 1 through 9, SWAN LAKE ESTATES, PHASE I, UNIT 3, neither the Owners nor the Association nor the use of the Properties shall interfere with the completion of the contemplated improvements and the sale of the Lots by Declarant. Declarant may make such use of the unsold Lots and common areas, if any, as may facilitate such completion and sale, including but not limited to maintenance of a sales office, the showing of the Properties and the display of signs.

ARTICLE VII

GENERAL PROVISIONS

Section 1. Enforcement. The Association, the Declarant 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 the Association, the Declarant, or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In the event that a Court of competent jurisdiction shall determine that any lot owner shall have violated or have attempted to violate any of the covenants herein, the owner of the lot or lots causing the violation upon which the violation occurs shall pay all attorney's fees, court costs, and other necessary expenses incurred by the person instituting such legal proceedings to maintain and enforce the aforesaid covenants. Said attorney's fees, court costs and other expenses allowed and assigned by the Court shall become a lien upon the lot and improvements.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Amendment.

(a) The covenants, conditions and restrictions of this Declaration shall run with and bind the land, for a term of fifteen (15) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of five (5) years.

(b) This Declaration may be amended anytime during the initial fifteen (15) year period or any extensions thereof by Declarant or its nominees, provided they own at least fifty-one percent (51%) of the numbered lots in the subdivision. Beginning five (5) years from the date of recordation of the Declaration and for the remainder of the initial fifteen (15) year period or any extensions, the Covenants may also be amended by the written consent of at least seventy-five percent (75%) of the Lot Owners, exclusive of their mortgagees. Any amendment must be recorded.

(c) Notwithstanding anything herein contained to the contrary, the Declarant reserves and shall have the right for a period of three (3) years from the date of the recording of these Covenants, Conditions and Restrictions to unilaterally amend this Declaration in whole or in part in order to (1) conform this Declaration to the requirements of any governmental agency, federal, state or local, (2) to conform to the requirements of any mortgage lender, or (3) to insure the reasonable development of the property. The Declarant shall retain total control of the property, the development thereof, and the improvements thereon including, without limitation, plan approval, until the development is complete and all of the lots have been sold.

WITNESS ITS SIGNATURE on this the 29th day of November, 2001.

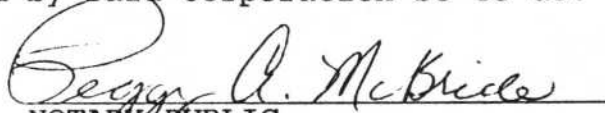
LHF, INC., Owner

BY: Terry M. Loveless
Terry M. Loveless, Vice President

STATE OF MISSISSIPPI

COUNTY OF HARRISON

PERSONALLY appeared before me, the undersigned authority in and for said county and state, on this the 29th day of November, 2001, within my jurisdiction, the within named Terry M. Loveless, who acknowledged that he is Vice President of LHF, INC., a Mississippi corporation, and that for and on behalf of said corporation, and as its act and deed he executed the above and foregoing instrument, after first having been duly authorized by said corporation so to do.


NOTARY PUBLIC

My Commission Expires: 7/17/04

