

LAKE SERVICE AGREEMENT

THIS LAKE SERVICE AGREEMENT (“Agreement”) is entered into effective _____, 2011 (the “Effective Date”), by and between **THE WOODLANDS TOWNSHIP**, a political subdivision of the State of Texas (the “Township”), and **LAKE WOODLANDS PROPERTY OWNERS' ASSOCIATION, INC.**, a Texas non-profit corporation (the “LWPOA”).

RECITALS

A. LWPOA is a Texas non-profit corporation established as a property owners association to provide to provide certain services and amenities and to perform such other duties as permitted or required by its articles of incorporation and by-laws.

B. In accordance with the terms of a Lease Agreement (the “Lease”) between LWPOA and The Woodlands Corporation (“TWC”) dated April 23, 1986, LWPOA is the owner and holder of certain leasehold rights and interests in and to a tract of land currently containing approximately 200 acres in The Woodlands, as more particularly described in Exhibit “A” hereto, upon which has been constructed a dam (the “Dam”) and a lake (“Lake Woodlands”). The Dam and Lake Woodlands are sometimes collectively referred to herein as the “Lake.” The Lease requires LWPOA, among other things, to maintain the Lake.

C. Township is a political subdivision of the State of Texas.

D. By this Agreement, LWPOA retains Township to perform the Work and Extra Work (as defined herein) pursuant to the terms and conditions hereof.

NOW THEREFORE, for and in consideration of the mutual covenants and obligations herein contained, Township and LWPOA agree as follows:

1. **The Work.** LWPOA retains Township to perform the services (the “Scope of Work”) described on Exhibit “A” attached hereto on behalf of LWPOA, either directly with its own employees or by means of third party subcontractors, laborers, mechanics, or materialmen (“Subcontractors”), and Township agrees to perform the Scope of Work or cause Subcontractors to perform the Scope of Work subject to the terms and conditions hereof. Beginning September 15, 2011, and on or before September 15 of each calendar year during the term of this Agreement, Township shall furnish LWPOA with a cost estimate (“Estimate”) for the Scope of Work for the next calendar year. The Estimate shall specify the cost for the performance of each item of work and service within the Scope of Work for the applicable year (“Work”). Upon approval of the Estimate by the LWPOA Board of Directors as part of the LWPOA budget for the next calendar year, the Estimate shall constitute an agreement between the parties as the cost of the Work for that year. If the parties are unable to agree on the Estimate, they shall negotiate in good faith any necessary revisions to or amendments of the Estimate. If no agreement is reached on the Estimate by December 1, then either party shall have the right to terminate this Agreement upon sixty (60) days prior written notice to the other party.

2. **Extra Work.** LWPOA may request Township and Township may recommend that the Township perform work or provide services not included within the Work (“Extra

Work”). Any such request or recommendation shall be in writing. Receipt of an Extra Work request from LWPOA shall be acknowledged by Township in writing, and any Township recommendation and associated costs must be agreed to by LWPOA to be binding. If Township is unable or unwilling to perform the Extra Work as requested, it shall inform LWPOA in writing within ten (10) business days of receipt of the request. If Township elects to accept the request and perform the Extra Work, Township shall so inform LWPOA in writing that Township will perform the Extra Work and the cost thereof. LWPOA shall respond in writing either accepting the offer to perform the Extra Work at the quoted cost or rejecting the offer. Upon acceptance of the offer, the exchange of writings shall become a binding agreement between the parties. An email shall be considered a “writing” for the purpose of this paragraph.

3. **Payment.** Unless otherwise agreed by the parties, LWPOA agrees to pay Township quarterly for the Work and for the Extra Work pursuant to Section 4 of this Agreement.

4. **Payment Procedure.**

(a) Township will provide LWPOA a written invoice for the Work and any Extra Work by the 30th day of each calendar quarter for Work and Extra Work performed during the prior calendar quarter. Each invoice shall be accompanied by any supporting invoices or other documents as LWPOA may reasonably require.

(b) Provided the invoice complies with the requirements of Section 4(a) and further provided that Township is not in default of its obligation to pay Operating Costs pursuant to that certain Second Amended Lake Woodlands Agreement (“Second Amended Agreement”) between LWPOA and Township effective _____, 2011, within thirty (30) days of its receipt, LWPOA shall promptly pay the invoice.

5. **Liens.** Township shall use its best efforts to prevent any liens to be recorded by any subcontractor, supplier or materialman against the Lake or LWPOA property because of the Work or Extra Work. LWPOA shall promptly notify Township of any lien notice filed against the Lake or LWPOA property because of the Work or Extra Work and Township shall within thirty (30) days of receipt of such notice or Township’s discovery of the recorded lien, pay the amount claimed due and furnish LWPOA a release of lien signed by the party claiming the lien, bond around the lien notice pursuant to Section 153.171 of the Texas Property Code, or institute appropriate proceedings to contest such lien. Unless the claimed amount is adjudged to be due and owing in full by the Township, the costs of such bond or contest shall be included in the costs of the Work or Extra Work to be paid by LWPOA.

6. **Performance of the Work and Extra Work.**

(a) Township may perform all or part of the Work and Extra Work using Township employees or third parties (“Subcontractors”).

(b) Township, with respect to the Work and Extra Work performed by Township employees, shall (i) use its best efforts to perform the Work and Extra Work in a good and workmanlike manner in compliance with applicable law and to incorporate in the Work and

Extra Work materials and equipment of good quality free from faults and defects, (ii) repair or replace at no cost to LWPOA all Work and Extra Work which is discovered within one (1) year from the performance thereof to have not been performed in a good and workmanlike manner in compliance with applicable law or to have not incorporated materials and equipment of good quality free from faults and defects, (iii) provide all personnel, tools, machinery, and equipment reasonably necessary for the performance of the Work and Extra Work at no additional cost to LWPOA, (iv) repair or pay for the repair of damage to the Lake and to property of LWPOA and third parties caused by the performance of the Work and Extra Work, (v) perform periodic and final clean-up of all debris resulting from the Work and Extra Work, (vi) obtain all required permits, licenses, consents and approvals at no additional cost to LWPOA, (vii) obtain all required inspections and approvals of the Work and any Extra Work at no additional cost to LWPOA, and (viii) pay and satisfy all legitimate claims for labor and materials.

(c) If Township elects to cause all or part of the Work and Extra Work to be performed by Subcontractors, Township shall use its best efforts to engage competent and experienced Subcontractors. All contracts between Township and Subcontractors shall: (i) be written, (ii) name LWPOA as a third party beneficiary, (iii) provide that LWPOA receive written notice of all defaults of Township and be afforded the same cure period and cure rights provided Township, (iv) provide that Subcontractor indemnify LWPOA and its directors to the same extent that Township is indemnified, (v) require Subcontractor to provide insurance coverages reasonably acceptable to LWPOA which shall name LWPOA as a “additional insured” or “loss payee” as appropriate, (vi) require Subcontractor to perform the work covered by the contract in compliance with applicable law and in a good and workmanlike manner, and (vii) require Subcontractor to warrant (A) that all material, equipment, and workmanship included in the work covered by the contract shall perform their intended purposes for a period of one (1) year, (B) that all material and equipment incorporated in the work covered by the contract shall be of good quality, shall be free from faults and defects and shall conform to the terms and conditions of the contract and (C) that all work covered by the contract not conforming to these requirements shall be considered defective and shall be repaired or replaced at no cost to LWPOA, and (viii) incorporate in the contract the requirements set out in Section 6(b).

(d) Township and LWPOA agree to develop standard provisions for the matters described in Section 6(c) and other mutually acceptable contract provisions which Township shall include in all Subcontracts unless LWPOA otherwise agrees with regard to a specific Subcontract or category of Subcontracts and to periodically review the standard contract provisions to ensure they conform to changes in the law and circumstances.

(e) Township hereby assigns all Subcontractor warranties to LWPOA. LWPOA agrees that Township shall have ninety (90) days from the date any Subcontractor defaults in the performance of its contract to have the Subcontractor cure the default or if the Subcontractor refuses to do so, to institute litigation or demand arbitration, if required by the contract, against the Subcontractor for the breach. If the Township does not comply with the forgoing requirements, LWPOA may pursue its legal and equitable remedies against the Subcontractor for the breach.

(f) Except as provided in this Section 6(f) and in consideration of Township’s agreement to perform the Work and Extra Work or to retain Subcontractors to

perform same at Township's cost, LWPOA hereby waives all claims, causes of action and losses of every kind and nature against Township, including, without limitation, actual damages, consequential damages and punitive or exemplary damages to which LWPOA would be entitled to recover from Township for breach by Township of any or all of the provisions of this Section 6, except LWPOA does not waive and hereby reserves all claims and causes of action for specific performance of the provisions of this Section 6 and for recovery of reasonable attorney's fees for breach of written contract to the extent provided by Texas law. LWPOA, however, does not waive any claim, cause of action or loss against any Subcontractor and hereby reserves all rights to enforce Subcontracts to the full extent of applicable law.

7. **Acceptance of Lake.** Township has inspected the Lake and agrees that LWPOA is not required to perform any repairs to the Lake or otherwise alter the Lake in any manner as a condition precedent to Township entering into this Agreement or performing any Work or Extra Work.

8. **Records.**

(a) Upon full execution of this Agreement, Township agrees to provide LWPOA the originals of all contracts, correspondence, plans, maps and other documents of any kind ("Records") created or maintained by the Woodlands Community Service Corporation ("WCSC") or Township concerning the work and services performed by WCSC or Township pursuant to the Service Agreement dated effective December 10, 1999, between LWPOA and WCSC.

(b) During the term of this Agreement, Township agrees to keep complete and correct Records regarding the Work and Extra Work and to make same available to LWPOA for inspection and copying at reasonable times during business hours at the office of Township in The Woodlands, Texas.

(c) Upon the termination or expiration of the term of this Agreement without renewal or extension, Township agrees to provide LWPOA the originals of all Records regarding the Work and the Extra Work.

(d) All Records created by Township shall properly reflect the facts stated therein of its activities under this Agreement. Township shall notify LWPOA promptly upon discovery of any instance where Township has reason to believe that any Records or the data contained therein are no longer accurate and complete.

9. **Term.** Unless sooner terminated as provided herein, the initial term of this Agreement shall commence on the Effective Date and expire on December 31, 2014. The term shall be automatically extended for successive periods of three (3) years each unless a party terminates this Agreement by giving written notice of termination to the other party no later than ninety (90) days prior to the expiration of the term or any extended term, but in no event beyond the expiration or termination of the Lease, as same may be extended under the terms thereof.

10. **Termination.**

(a) In addition to termination pursuant to Section 9 above, either party may terminate this Agreement without cause at any time by giving the other party a 90-day written notice of termination. Township shall be paid the amount due it through the date of termination.

(b) If a party defaults in the performance of its duties under this Agreement and fails to cure the default to the reasonable satisfaction of the non-defaulting party within thirty (30) days after the non-defaulting party furnishes the defaulting party a written notice describing the default in reasonable detail, the non-defaulting party may terminate this Agreement for default by furnishing the defaulting party a written notice of termination after the expiration of the 30-day cure period.

A notice of termination shall set out the effective date of termination. If Township receives a notice of termination, except as directed by LWPOA in the notice of termination, Township shall stop all work as of the termination date set out in the notice. The termination of this Agreement by a party shall not relieve the other party from any of its obligations under this Agreement prior to the date of termination nor limit the rights and remedies of either party in any manner.

10. **Independent Contractor.** All Work and Extra Work performed hereunder shall meet with LWPOA's reasonable approval, but the detailed manner and method of doing the Work and Extra Work shall be under the control of Township or of Subcontractors retained by Township, LWPOA being interested only in the result obtained. Township and all Subcontractors retained by Township are independent contractors as to the Work and Extra Work. **Notice.** Any notice required by the terms of this Agreement shall be delivered in person or by certified United States mail, return receipt requested, addressed as follows:

If to LWPOA: Lake Woodlands Property Owners' Association, Inc.
C/o Association Management, Inc.
2004 Timberloch Place, Suite 180
The Woodlands, Texas 77387-4000

If to Township: The Woodlands Township
2801 Technology Forest Place
The Woodlands, Texas 77380
Attention: President and CEO

Such notice shall be deemed given when delivered in person, or upon receipt if mailed. Either party may change the address for receipt of notice by written notice to the other party in accordance with the terms of this Agreement.

11. **Assignment.** Except as provided in this Section 11, Township may not assign its interest in this Agreement or any of its duties hereunder without the prior written consent of LWPOA. Notwithstanding the preceding sentence, Township may assign its interest in this Agreement to a successor governmental entity, or other entity approved in advance in writing by LWPOA, provided that any assignee assumes in writing the obligations of Township under this Agreement. Except as provided above, any attempt by Township to assign its interest

in this Agreement without the prior, written consent of LWPOA shall be null and void. Upon the assumption of this Agreement as permitted by this Section, Township shall have no further liability, duty or obligation under this Agreement after the date of the assumption other than any liability which arose prior to the date of assumption and which has not been fully discharged as of that date. LWPOA may assign its interest in this Agreement to any financially responsible person or entity succeeding to the principal rights, duties and responsibilities of LWPOA upon the express assumption of such assignee of the obligations of LWPOA hereunder.

12. **Local Governmental Entity.** Township represents and warrants to LWPOA (a) that this Agreement is a written contract stating the essential terms of the agreement for providing goods or services to Township that has been properly executed on behalf of the Township and (b) that Township is entering into this Agreement subject to Title 8, Subtitle C, Chapter 271, Subchapter I, Section 271.152 of the Texas Local Government Code.

13. **No Implied Covenants.** Township and LWPOA agree that there are no, nor shall there be any, implied covenants of good faith and fair dealing or other similar covenants or agreements in or arising out of this Agreement or the relationship of the parties. All contractual duties are set forth herein.

14. **Binding Nature; No Third Party Beneficiary.** The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties, and their respective successors and assigns, and is made solely and specifically for their benefit. No other persons shall have any rights, interest or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third-party beneficiary or otherwise.

15. **Counterparts.** To facilitate execution, this Agreement may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of each party appear on each counterpart. All counterparts shall collectively constitute a single instrument. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.

16. **Governing Law; Venue.** This Agreement is executed and delivered in Montgomery County, Texas, and shall be governed by and construed in accordance with the laws of the State of Texas.

17. **Waiver of Consequential, Punitive and Speculative Damages.** The parties agree that, in connection with any action, suit or proceeding relating to or arising out of this Agreement, each mutually waives to the fullest extent permitted by applicable law any claim for consequential, punitive or speculative damages.

18. **Headings.** The section headings are inserted for convenience of reference only and shall in no way alter, modify, or define, or be used in construing the text in the sections.

19. **Amendments.** This Agreement contains the entire agreement of the parties with respect to the subject matter thereof and cannot be amended except in a writing executed by both parties.

20. **Force Majeure.** It is expressly understood and agreed that if the performance of any covenant, agreement, obligation, or undertaking contained in this Agreement other than the agreement to pay money is delayed by any reason beyond the reasonable control of the party obligated or permitted under the terms hereof to do or perform the same, each such party shall be excused from doing or performing the same during such period of delay.

21. **No Waiver.** No waiver by a party of any default or breach of any term or condition in this Agreement by the other party shall be a waiver of any subsequent default or breach of the same or any other term or condition in this Agreement.

22. **Waiver of Jury Trial.** THE PARTIES WAIVE THEIR RIGHT TO A JURY TRIAL WITH RESPECT TO ALL CLAIMS AND CAUSES OF ACTION RELATED TO OR ARISING OUT OF THE NEGOTIATION OR PERFORMANCE OF THIS AGREEMENT.

23. **Legal Construction.** If any one or more of the terms or conditions in this Agreement are held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other term or condition of this Agreement, and this Agreement shall be construed as if such invalid, illegal, or unenforceable term or condition had not been in this Agreement.

24. **Prior Agreements Superseded.** This Agreement is the only agreement of the parties and supersedes any prior understandings or written or oral agreements between the parties respecting the matters contained in this Agreement.

25. **Rights and Remedies Cumulative.** Except as otherwise stated herein, the rights and remedies provided in this Agreement are cumulative, and the use of any one right or remedy by either party shall not preclude or waive its right to use any or all other remedies. These rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

26. **Day.** Unless otherwise specified in this Agreement, all references to “day” or “days” in this Agreement refers to calendar days.

27. **Approval.** If the approval or consent of a party is required herein, unless otherwise expressly provided herein and prior to the default of the party requesting a consent or approval, the party shall not unreasonably withhold, condition or delay the requested consent or approval.

EXECUTED to be effective the date first written above.

**LAKE WOODLANDS PROPERTY OWNERS
ASSOCIATION,**
a Texas non-profit corporation

By: _____
Name: _____

Title: _____

THE WOODLANDS TOWNSHIP,
a political subdivision of the State of Texas

By: _____
Name: _____
Title: _____

EXHIBIT “A” – SCOPE OF WORK

Activity	Frequency
Removal of Trash & Debris Floating on the Lake	Monthly – 12 times per year
Aquatic Vegetation Control	Quarterly – 4 times per year or as needed when heavy flooding causes larges mats of vegetation to accumulate in the lake.
Dam Inspection	Monthly - 12 times per year by Township. Annually – 1 time per year by Professional Engineer.
Dam Maintenance: routine & minor	Annually – as determined by annual dam inspection report.
Inspect Bulk Heads	Annually – 1 time per year.
Monitor and enforce motor boat activity on the Lake	Daily – 365 times per year.
Monitor and enforce recreational use	Daily – 365 times per year.
Nuisance wild animal management	As needed
Materials and supplies; equipment and tools; personal property; and rental expenses necessary to accomplish the Scope of Work described in this exhibit.	

SECOND AMENDED LAKE WOODLANDS AGREEMENT

THIS SECOND AMENDED LAKE WOODLANDS AGREEMENT (“Agreement”) is entered into effective _____, 2011 (the “Effective Date”), by and between **THE WOODLANDS TOWNSHIP**, a political subdivision of the State of Texas (the “Township”), and **LAKE WOODLANDS PROPERTY OWNERS' ASSOCIATION, INC.**, a Texas non-profit corporation (the “LWPOA”).

RECITALS

A. In accordance with the terms of a Lease Agreement (the “Lease”) between LWPOA and The Woodlands Corporation (“TWC”) dated April 23, 1986, LWPOA is the owner and holder of certain leasehold rights and interests in and to a tract of land currently containing approximately 200 acres described on Exhibit “A” attached hereto in The Woodlands upon which has been constructed a dam (the “Dam”) and a lake (“Lake Woodlands”). The Dam and Lake Woodlands are sometimes collectively referred to herein as the “Lake.” The Lease requires LWPOA, among other things, to regulate use of the Lake, to operate and maintain the Lake and to pay all costs and expenses incurred in connection therewith.

B. LWPOA is subject to the provisions of the Declaration of Covenants, Conditions, Restrictions and Easements for Lake Woodlands Property Owners' Association, Inc. (“LWPOA Covenants”), dated January 7, 1986, and filed for record in File No. 8600794 of the Real Property Records of Montgomery County, Texas.

C. Effective April 30, 1986, The Woodlands Community Association, Inc. (“WCA”) and LWPOA entered into that certain Lake Woodlands Agreement.

D. Effective November 30, 1994, WCA, The Woodlands Association, Inc. and The Woodlands Commercial Owners Association, Inc. (collectively, the “Associations”), and LWPOA entered into that certain First Amended Lake Woodlands Agreement which superseded the Lake Woodlands Agreement and which was amended effective April 15, 2009, by that certain First Amendment to First Amended Lake Woodlands Agreement.

E. Pursuant to the Lake Woodlands Agreement and to the First Amended Lake Woodlands Agreement, LWPOA was required to pay all costs and expenses of maintaining and operating the Lake (the “Lake Costs”). Section 4 of the agreements, however, required WCA, as a party to the Lake Woodlands Agreement, and the Associations, as parties to the First Amended Lake Woodlands Agreement, to pay an annual fee to LWPOA as consideration for LWPOA allowing members of WCA, and later of the Associations, to use Lake Woodlands. The annual fee was intended to reimburse LWPOA for some or all of the Lake Costs paid by LWPOA.

F. Originally, LWPOA did not have sufficient assessment revenue to pay all of the Lake Costs. Instead of borrowing funds or increasing assessments to cover the revenue shortfall, LWPOA paid the Lake Costs to the extent of its available assessment revenue and WCA paid the balance.

G. After the First Amended Lake Woodlands Agreement was executed in 1994, this practice continued. LWPOA used its available assessment revenue to pay Lake Costs and the Associations paid the remainder on a pro-rata basis based on population.

H. Until 2000, the Associations paid the majority of the Lake Costs. As LWPOA assessment revenue increased, the share of Lake Costs paid by LWPOA also increased. In 2001 and thereafter, LWPOA paid the majority of the Lake Costs.

I. Section 4 in the Original Agreement and in the First Amended Agreement was never formally amended in writing to conform Section 4 to the actual and agreed-upon procedure for the payment of Lake Costs.

J. Subsequent to the execution of the First Amended Lake Woodlands Agreement, The Woodlands Land Development Company, L.P. ("TWLDC") assumed the rights and obligations of TWC under the First Amended Lake Woodlands Agreement and The Woodlands Township ("Township") succeeded to the rights and obligations of the Associations under the First Amended Lake Woodlands Agreement.

K. Township and LWPOA have agreed that as of the Effective Date (a) LWPOA will allow residents of Township to use Lake Woodlands and allow Township to stage special events on Lake Woodlands subject to the terms and conditions set out herein and as consideration therefore, Township will pay all costs of maintaining, repairing and operating Lake Woodlands and the Dam, (b) the actions and decisions of the directors of the Associations and of LWPOA in allocating and paying the Lake Costs as described in these Recitals will be ratified and approved, and (c) this Agreement will supersede and replace the Lake Woodlands Agreement, First Amended Lake Woodlands Agreement and the First Amendment to the First Amended Lake Woodlands Agreement.

NOW THEREFORE, for and in consideration of the mutual covenants and obligations herein contained, Township and LWPOA agree as follows:

1. Use of Lake Woodlands.

(a) During the term of this Agreement, the residents of Township and their invitees (collectively, the "Residents") shall have the non-exclusive right to enter upon and use Lake Woodlands during daylight hours, and at such other times as LWPOA may permit, solely and exclusively for recreational activities, such as fishing, boating and special events and for no other purpose. Swimming is prohibited in Lake Woodlands unless expressly approved by LWPOA for specific events. Boats may be powered by electric motors not to exceed _____ horsepower, but except for boats used for maintenance, safety or rescue operations or special events on Lake Woodlands, no non-electric motors shall be permitted.

(b) The Residents' use of Lake Woodlands shall always be subject to the right of LWPOA (i) to prohibit use of all or part of Lake Woodlands as necessary (A) for health or safety reasons, (B) for staging special events involving the use of Lake Woodlands and (C) for the maintenance, repair or restoration of Lake Woodlands or of the Dam and (ii) to

establish and enforce additional reasonable rules and regulations regarding the use of Lake Woodlands from time to time; provided that no regulation shall materially restrict the right of the Residents to use Lake Woodlands for the purposes set out herein.

(c) Except for special events approved by LWPOA, the Residents' use of Lake Woodlands shall not create unreasonable noise or odorous emissions and shall not cause a nuisance to residents bordering Lake Woodlands or to the general public.

2. **Rules and Regulations.** LWPOA reserves the right to adopt reasonable rules and regulations controlling the use of Lake Woodlands and agrees to provide Township a copy of all proposed rules and regulations in writing not less than thirty (30) in advance of their effective date, except in cases of emergency. Township agrees to use reasonable efforts to provide notice of the rules and regulations to Residents by posting notices, preparing and distributing informational material, and/or publishing the rules and regulations, all in a manner as Township shall deem appropriate in the exercise of its good faith judgment. All posted notices shall be conspicuous, placed in areas frequented by the public, and of a size and type which is clearly readable. Township agrees to use its best efforts to enforce the rules and regulations to the extent of its jurisdictional authority. LWPOA reserves the right to enforce the rules and regulations through the prosecution of civil and criminal trespass actions and other appropriate legal proceedings.

3. **Fees.** LWPOA agrees not to charge any fee to the Residents solely for the use of Lake Woodlands as permitted herein; however, LWPOA may charge fees for the use of its facilities associated with Lake Woodlands, including, but not limited to, boat launch fees and dock rental fees. Nothing herein shall be construed to limit the right of the LWPOA to use Lake Woodlands, to charge fees for the use of Lake Woodlands by Residents and non-Residents for commercial events, to condition the use of Lake Woodlands for commercial or noncommercial special events upon the agreement of the event sponsor to reimburse LWPOA the extra costs incurred by LWPOA in connection with the event, or to grant rights to others for the commercial or noncommercial use of Lake Woodlands to extent permitted by the Lease, provided that such use does not unreasonably interfere with the right of Residents to use Lake Woodlands to the extent provided herein and in the rules and regulations.

4. **Township Special Events.** Subject to the terms of this Section 4, LWPOA agrees that Township shall have the right to periodically hold special events on Lake Woodlands without charge. Township shall be responsible for all costs of the special events and agrees to reimburse LWPOA for the costs incurred by LWPOA for any increased administrative, operational or maintenance expenses incurred by LWPOA as a direct and sole result of the special events. Township shall pay such increased costs within thirty (30) days of receipt of an invoice for the costs. If security is required at any Township special event, Township shall be solely responsible at its cost for providing such security as Township deems necessary. Township agrees to give LWPOA at least thirty (30) days prior written notice of a proposed special event, which shall specify the date, type and duration of the event and the location of the special event on Lake Woodlands. If the special event conflicts with an event previously scheduled by LWPOA, Township's special event shall be re-scheduled to a mutually acceptable date. Township further agrees that it shall be solely responsible at its cost to notify the Residents

if any Township special event limits the right of the Residents to use Lake Woodlands granted herein. Notwithstanding the forgoing, LWPOA hereby approves an annual “Ironman” event for the years 2011 through 2015 provided (a) the event is substantially similar to the event held in 2011, (b) the event is held pursuant to a contract substantially similar to the Host Venue Sponsorship Agreement (“Ironman Agreement”) dated effective June 23, 2010, among World Triathlon Corporation, The Woodlands Township and The Woodlands Convention & Visitors Bureau and (c) such contract requires the World Triathlon Corporation (i) to indemnify LWPOA at least to same extent as provided in the Ironman Agreement, (ii) to require participants in the event to sign written waivers of liability in favor of LWPOA, (iii) to name LWPOA as an additional insured under the terms of a comprehensive general liability insurance policy with the same coverages and issued by the same type of insurance company described in the Ironman Agreement and (iv) to provide LWPOA with a certificate of insurance properly showing the coverages provided LWPOA in such contract at least ten (10) days prior to the event.

5. Payment of Operating Costs.

(a) As consideration for the rights and privileges granted the Residents and Township herein, Township agrees to pay to LWPOA costs and expenditures of every kind incurred by LWPOA to maintain and operate Lake Woodlands and the Dam as a safe, first class recreational facility, including maintenance, repairs and expenditures that are normal and routine in the operation of Lake Woodlands and of the Dam, within the following expense categories (the “Operating Costs”). “Operating Costs” do not include the cost of replacing the Dam at end of its useful life or of repairing substantial damage to the Dam.

(i) Materials and supplies; equipment and tools; personal property; and rental expenses necessary to accomplish the Scope of Work described on Exhibit “B” attached hereto;

(ii) Administrative and management fees, including accounting, information and professional services; salaries, benefits, reimbursable expenses and taxes (or allocations thereof) for full and part time personnel involved in operation, maintenance, management, repair and security of Lake Woodlands or of the Dam necessary to accomplish the Scope of Work; provided, however, Operating Costs shall not include fees paid by LWOPA to a third party management company for the management of the affairs of LWPOA unrelated to Lake Woodlands or the Dam;

(iii) Inland marine, property, commercial general liability and other insurance coverages proposed by an independent insurance broker acceptable to LWPOA and Township and carried by LWPOA or Township related to use, operation or maintenance of Lake Woodlands or the Dam, including deductibles; provided, however, that such insurance shall cover 100% of the cost to repair or restore of the Dam in the event of a casualty loss;

(iv) Real estate taxes and personal property taxes, including interest on installment payments of taxes which payments have been approved by Township, which may be levied or assessed on LWPOA’s leasehold interest in Lake Woodlands and the

Dam or on personal property owned by LWPOA and used in the operation, maintenance, or management or repair of Lake Woodlands or of the Dam;

(v) Compliance with applicable law, including license, permit and inspection fees; and all expenses and fees, including reasonable attorneys' fees and court costs, incurred in negotiating or contesting real estate taxes, personal property taxes or the validity and/or applicability of any governmental enactments which may affect Operating Costs; provided LWPOA shall credit against Operating Costs any refunds received as a result of such negotiations or contests to the extent originally included in Operating Costs (less LWPOA's costs);

(vi) Civil and criminal trespass and other legal actions prosecuted by LWPOA to enforce the Lake Woodlands rules and regulations; civil actions for damages and other relief prosecuted by LWPOA against subcontractors in default of agreements with the vendor(s) retained by LWPOA to operate, repair and maintain Lake Woodlands and the Dam and civil actions prosecuted by LWPOA to recover damages and other relief against the vendor(s) retained by LWPOA to operate, repair and maintain Lake Woodlands and the Dam (the "Service Provider") for breach of such agreements; provided, however, as long as the Township is the Service Provider, the legal action shall be limited to enforcement of specific performance and the recovery of attorney's fees;

(vii) Costs, including reasonable attorney's fees, which LWPOA is required by contract to reimburse the Service Provider, which costs were incurred by the Service Provider in bonding around a lien notice filed against Lake Woodlands or the Dam or in prosecuting a proceeding to contest such lien if the claimed amount is adjudged not to be due and owing in full by the Service Provider; and

(viii) Such other costs and expenses approved by LWPOA and Township.

(b) On or before January 1 of each calendar year during the term of this Agreement, LWPOA shall furnish Township LWPOA's good faith estimate of the Operating Costs ("Estimated Operating Costs") for the next year, which Estimated Operating Costs shall be the Operating Cost estimate for the next year prepared by the vendor(s) retained by LWPOA to provide the services described in Section 5(a) (the "Service Provider"), approved by LWPOA and incorporated by LWPOA into its annual budget. If Township is not a Service Provider, the Estimated Operating Cost shall be subject to the reasonable approval of Township. LWPOA shall invoice Township each calendar quarter for twenty-five percent (25%) of the Estimated Operating Costs for that year and Township agrees to pay the invoice within thirty (30) days of receipt.

(c) Within 120 days following the completion of each calendar year, or as soon thereafter as practical, LWPOA shall furnish Township a statement of actual Operating Costs for the preceding calendar year. Provided no uncured Township default then exists hereunder (and no condition exists which, with the passage of time or giving of notice, would become a Township default), LWPOA shall promptly refund any overpayment to

Township for the prior calendar year (or, at LWPOA's option, apply such amount against Operating Costs due for the current calendar year). Likewise, Township shall, within thirty (30) days of receipt of LWPOA's invoice, pay LWPOA any underpayment for the prior calendar year. The foregoing obligations shall survive the expiration or termination of this Agreement. LWPOA may adjust estimated Operating Costs at any time based on actual or expected increases in Operating Costs.

(d) Township shall have the right for a period of thirty (30) days after LWPOA delivers to Township the statement of LWPOA's actual Operating Costs for the previous calendar year (the "Review Period") to audit and/or inspect that portion of LWPOA's books and records pertaining to the actual Operating Costs for such preceding calendar year; provided (i) such audit and/or inspection commences within thirty (30) days after LWPOA makes such books and records available to Township and thereafter proceeds reasonably to conclusion, (ii) such audit if conducted by a third party is not conducted for a contingent fee, and (iii) the report reflecting the results of such audit is promptly delivered to LWPOA. If such audit conducted by Township discloses that Township has overpaid or underpaid Operating Costs, then, after verification of such audit by LWPOA or by accountants selected by LWPOA, any overpayment shall, at LWPOA's election, either be refunded to Township (so long as Township is not then in default of this Agreement, in which event such overpayment shall be applied against any amount Township owes as a result of such default) within thirty (30) days after the verification of the audit or credited against the next quarterly payments of Operating Costs due from Township (except during the last year of the term of this Agreement overpayments shall not be credited against quarterly payments), and any underpayment shall be paid to LWPOA within thirty (30) days after the verification of the audit. This section shall survive the termination or expiration of this Agreement.

(e) Township agrees that any payment or reimbursement due LWPOA hereunder not received by LWPOA by the date when due shall bear interest at the greater of 10% per annum or the highest rate permitted by applicable law from the date due until paid.

6. **Capital Reserve.** The parties agree that LWOPA shall maintain the existing capital reserve and that during 2011, the capital reserve may be used to pay Operating Costs. During 2012 and thereafter, the capital reserve shall be limited to the payment of the cost (a) of repairs, replacements and restoration of the Dam not paid as Operating Costs pursuant to Section 5(a) and not paid by insurance proceeds and (b) of deductibles and retentions under the inland marine insurance policy on the Dam. Township agrees to fund the reserve at the rate of \$20,000.00 per year until the capital reserve, exclusive of earnings, is \$500,000.00. No disbursements of the capital reserve shall be made without the written approval of LWPOA and Township. Earnings from the capital reserve investments will be added to the balance and become a part of the reserve. The capital reserve shall be managed and invested pursuant to Township investment policies.

7. **Ratification.**

(a) Township ratifies and confirms all prior actions and decisions of the boards of directors of the Associations regarding the allocation and payment of the costs and

expenses of operating and maintaining the Dam and Lake Woodlands without regard to whether such actions or decisions complied with the requirements of Section 4 of the Original Agreement or of the First Amendment. Township releases LWPOA and its current and former directors from all claims which accrued prior to the Effective Date related to or arising out of the allocation or payment of the costs and expenses of operating and maintaining the Dam and/or Lake Woodlands.

(b) LWPOA ratifies and confirms all prior actions and decisions of its board of directors regarding the allocation and payment of the costs and expenses of operating and maintaining the Dam and Lake Woodlands without regard to whether such actions or decisions conformed to the requirements of Section 4 of the Original Agreement or of the First Amendment. LWPOA releases Township and its directors from all claims which accrued prior to the Effective Date related to or arising out of the allocation or payment of the costs and expenses of operating and maintaining the Dam and/or Lake Woodlands.

8. **Damage or Destruction of the Lake.** LWPOA shall not be obligated under this Agreement to restore Lake Woodlands or the Dam if either is substantially damaged or destroyed for any reason and if LWPOA elects not to restore both Lake Woodlands and the Dam, in such circumstances then it shall return to Township all funds deposited by Township into the capital reserve after the Effective Date and all earnings on such deposits. In the event LWPOA elects to repair or restore, it shall give Township written notice of its election. If LWPOA does not give such notice to Township within ninety (90) days from the substantial damage or destruction or if LWPOA commences restoration or repair and does not substantially complete the restoration or repair within a reasonable period of time, Township may terminate this Agreement by giving LWPOA written notice of termination whereupon this Agreement shall terminate without any liability or obligation of LWPOA to Township and Township and LWPOA shall have no further liability, duty or obligation under this Agreement after the date of termination other than any liability which arose prior to the date of termination and which has not been fully discharged as of that date, including the liability to pay Operating Costs through the date of termination. If LWPOA elects to repair or restore, it need only return the damaged area or the damaged or destroyed facility to its condition immediately prior to the damage or destruction.

9. **Term.** The term of this Agreement shall commence on the Effective Date and shall expire upon the expiration or termination of the term of the Lease, including extensions of the term permitted by the extension options currently in the Lease, unless sooner terminated as provided herein.

10. **Termination; Opportunity to Cure.** A party will be in default if this Agreement if the party fails to perform any covenant, duty, or obligation under this Agreement and does not to cure its failure to perform within thirty (30) days following receipt of written notice describing the party's default in reasonable detail from the non-defaulting party. The default shall entitle the non-defaulting party to specifically enforce the terms of this Agreement, to terminate this Agreement or to seek damages or other relief to which it may be entitled at law or in equity.

11. **Notice.** Any notice required by the terms of this Agreement shall be delivered in person or by certified United States mail, return receipt requested, addressed as follows:

If to LWPOA: Lake Woodlands Property
Owners' Association, Inc.
C/o Association Management, Inc.
2004 Timberloch Place, Suite 180
The Woodlands, Texas 77387-4000

If to Township: The Woodlands Township
2801 Technology Forest Place
The Woodlands, Texas 77380
Attention: President and CEO

Such notice shall be deemed given when delivered in person, or upon receipt if mailed. Either party may change the address for receipt of notice by written notice to the other party in accordance with the terms of this Agreement.

12. **No Oral Agreements.** This Agreement constitutes the sole agreement between the parties with regard to the subject matter thereof and supersedes any other or contrary prior written or oral agreements or understandings, including the Original Agreement and the First Amended Agreement.

13. **Assignment.**

(a) Except as provided in this Section 13(a), Township may not assign its interest in this Agreement or any of its duties hereunder without the prior written consent of LWPOA. Notwithstanding the preceding sentence, Township may assign its interest in this Agreement to a successor governmental entity, or other entity approved in advance in writing by LWPOA, provided that any assignee assumes in writing the obligations of Township under this Agreement. Except as provided above, any attempt by Township to assign its interest in this Agreement without the prior, written consent of LWPOA shall be null and void. Upon the assumption of this Agreement as permitted by this Section 13(a), Township shall have no further liability, duty or obligation under this Agreement after the date of the assumption other than any liability which arose prior to the date of assumption and which has not been fully discharged as of that date.

(b) Except as provided in this Section 13(b), LWPOA may not assign its interest in this Agreement or any of its duties hereunder without the prior written consent of Township. Notwithstanding the preceding sentence, LWPOA may assign all of its rights, duties and obligations under this Agreement to any entity to whom LWPOA also assigns its rights under the Lease, provided that any assignee assumes in writing the obligations of LWPOA under this Agreement. Upon the assumption of this Agreement as permitted by this Section 13(b), LWPOA shall have no further liability, duty, or obligation under this Agreement after the date of

the assignment other than any liability which arose prior to the date of assumption and which has not been fully discharged as of that date.

14. **Texas Local Government Code.** Township represents and warrants to LWPOA (a) this Agreement is a written contract stating the essential terms of the agreement for providing goods or services to Township that has been properly executed on behalf of the Township, and (b) that Township is entering into this Agreement subject to Title 8, Subtitle C, Chapter 271, Subchapter I of the Texas Local Government Code.

15. **No Implied Covenants.** Township and LWPOA agree that there are no, nor shall there be, any implied covenants of good faith and fair dealing or other similar covenants or agreements in or arising out of this Agreement or the relationship of the parties. All contractual duties are set forth herein.

16. **Binding Nature; No Third Party Beneficiary.** The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties, and their respective successors and assigns, and is made solely and specifically for their benefit. No other persons, including the Residents, shall have any rights, interest or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third-party beneficiary or otherwise.

17. **Counterparts.** To facilitate execution, this Agreement may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of each party appear on each counterpart. All counterparts shall collectively constitute a single instrument. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.

18. **Governing Law; Venue.** This Agreement is executed and delivered in Montgomery County, Texas, and shall be governed by and construed in accordance with the laws of the State of Texas.

19. **Waiver of Consequential, Punitive and Speculative Damages.** The parties agree that, in connection with any action, suit or proceeding relating to or arising out of this Agreement, each mutually waives to the fullest extent permitted by applicable law any claim for consequential, punitive or speculative damages.

20. **Headings.** The section headings are inserted for convenience of reference only and shall in no way alter, modify, or define, or be used in construing the text in the sections.

21. **Amendments.** This Agreement contains the entire agreement of the parties with respect to the subject matter thereof and cannot be amended except in a writing executed by both parties.

22. **Force Majeure.** It is expressly understood and agreed that if the performance of any covenant, agreement, obligation, or undertaking contained in this Agreement other than the agreement to pay money is delayed by any reason beyond the reasonable control

of the party obligated or permitted under the terms hereof to do or perform the same, each such party shall be excused from doing or performing the same during such period of delay.

23. **No Waiver.** No waiver by a party of any default or breach of any term or condition in this Agreement by the other party shall be a waiver of any subsequent default or breach of the same or any other term or condition in this Agreement.

24. **Waiver of Jury Trial.** THE PARTIES WAIVE THEIR RIGHT TO A JURY TRIAL WITH RESPECT TO ALL CLAIMS AND CAUSES OF ACTION RELATED TO OR ARISING OUT OF THE NEGOTIATION OR PERFORMANCE OF THIS AGREEMENT.

25. **Legal Construction.** If any one or more of the terms or conditions in this Agreement are held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other term or condition of this Agreement, and this Agreement shall be construed as if such invalid, illegal, or unenforceable term or condition had not been in this Agreement.

26. **Prior Agreements Superseded.** This Agreement is the only agreement of the parties and supersedes any prior understandings or written or oral agreements between the parties respecting the matters contained in this Agreement including, without limitation, the Lake Woodlands Agreement, the First Amended Lake Woodlands Agreement and the First Amendment to the First Amended Lake Woodlands Agreement.

27. **Rights and Remedies Cumulative.** Except as otherwise stated herein, the rights and remedies provided in this Agreement are cumulative, and the use of any one right or remedy by either party shall not preclude or waive its right to use any or all other remedies. These rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

28. **Day.** Unless otherwise specified in this Agreement, all references to “day” or “days” in this Agreement refers to calendar days.

29. **Approval.** If the approval or consent of a party is required herein, the party shall not unreasonably withhold, condition or delay the requested consent or approval.

EXECUTED as of the date first written above.

**LAKE WOODLANDS PROPERTY OWNERS
ASSOCIATION,**
a Texas non-profit corporation

By: _____
Name: _____
Title: _____

FINAL VERSION

THE WOODLANDS TOWNSHIP,
a political subdivision of the State of Texas

By: _____
Name: _____
Title: _____

FINAL VERSION

EXHIBIT “A” – LEGAL DESCRIPTION OF LAKE WOODLANDS AND DAM

(SEE ATTACHED)

EXHIBIT “B” - SCOPE OF WORK

Activity	Frequency
Removal of Trash & Debris Floating on the Lake	Monthly – 12 times per year
Aquatic Vegetation Control	Quarterly – 4 times per year or as needed when heavy flooding causes large mats of vegetation to accumulate in the lake.
Dam Inspection	Monthly - 12 times per year. Annually – 1 time per year by Professional Engineer.
Dam Maintenance: routine & minor	Annually – as determined by annual dam inspection report.
Inspect Bulk Heads	Annually – 1 time per year.
Regulate motor boat activity on the Lake	Daily – 365 times per year.
Regulate recreational use	Daily – 365 times per year.
Nuisance wild animal management	As needed
Materials and supplies; equipment and tools; personal property; and rental expenses necessary to accomplish the items described above.	