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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

STATE OF TEXAS §  
COUNTY OF BRAZOS §

BIRDWELL FAMILY PARTNERSHIP, L.P., a Texas limited partnership, (hereinafter called the Declarant) is the owner of real property in Brazos County fully described as Lots Ten (10), Eleven (11), Twelve (12), Thirteen (13), Fourteen (14) and Fifteen (15), Amending Plat of Wickson Lake Estates, a subdivision of Brazos County, Texas, according to plat recorded in Volume 4181, Page 216, Official Records, Brazos County, Texas (The Property).

The Declarant desires to convey the Property subject to certain protective covenants, conditions, and restrictions as hereinafter set forth.

Declarant desires to create or carry out a uniform plan for the improvement, development, and sale of the Property for the benefit of the present and future owners of the Property.

Now therefore, it is hereby declared that all of the Property shall be held, sold, conveyed, and occupied subject to the following covenants, conditions, and restrictions, which are for the purpose of protecting the value and desirability of, and which shall run with, the Property, and which shall be binding on all parties having any right, title, or interest in or to the Property or any part thereof, their heirs, successors, legal representatives, and assigns, and which shall inure to the benefit of each owner thereof. Further, it is hereby declared that each contract or deed that may hereafter be executed with regard to the Property or any portion thereof shall conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions, and restrictions regardless of whether or not the same are set out and referred to in said contract or deed.

ARTICLE 1

Declarant may, at any time and from time to time, add any other lands to the Property and upon such addition, this Declaration and the covenants, conditions, restrictions, and obligations set forth herein shall apply to the added land, and the rights, privileges, duties, and liabilities of the person subject to this Declaration shall be the same with respect to the added land as they are with respect to the lands originally covered by this Declaration. In order to add lands to the Property hereunder, Declarant shall be required only to record a statement in the official records of Brazos County, Texas giving notice of the addition of the land.

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ARTICLE 2

All of the Property shall be owned, held, encumbered, leased, used, occupied, and enjoyed subject to the following limitations and restrictions:

- A. All tracts shall be used for single family residential purposes only, except as specified herein. No more than one single family structure shall be built on any lot. All residential dwellings shall be permanent construction and must consist of at least 2000 or more square feet of heated area. Exterior facade construction materials shall be limited to brick, rock, brick veneer, Hardy siding or rough cedar unless the Architectural Committee gives specific written approval to other construction materials.
- B. No mobile homes, manufactured sectional homes, or temporary buildings (other than storage buildings approved by the Architectural Committee) shall be allowed within the Property.
- C. No outside unscreened storage shall be allowed within the Property.
- D. No commercial use of any type shall be allowed within the Property.
- E. Household pets are allowed.
- F. Each tract within the Property shall be allowed to keep one horse per two acres. No other livestock, or poultry, sheep, goats, or swine shall be allowed within the Property.
- G. No rubbish or debris of any kind shall be placed or permitted to accumulate upon the Property, and no odors shall be permitted to arise from the Property so as to render the Property or any portion thereof unsanitary, unsightly, offensive, or detrimental to any other property or its occupants. Refuse, garbage, and trash shall be kept within enclosed structures or appropriately screened from view.
- H. No noise or other nuisance shall be permitted to exist or operate on the Property so as to be offensive or detrimental to any other portion of the Property. No stripped down, wrecked, junked, or wholly inoperable vehicle shall be kept, parked, stored, or maintained on any portion of the Property which is visible to public view from any road within the Property. No dismantling or assembling of motor vehicles, boats, trailers, recreational vehicles, or other machinery or equipment shall be permitted within the Property.
- I. No tract shall be subdivided within the Property. Only one family shall be allowed to reside on a tract. No tract may have more than four (4) accessory buildings.

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- J. No Improvements shall hereafter be constructed upon any of the Property without the prior approval of the Architectural Committee (hereafter defined).
- K. The Architectural Committee shall have the right to approve the location of any tank used or proposed in connection with a single family residential structure, including tanks for storage of fuel, water, oil or LPG and including swimming pool filter tanks. (No elevated tanks of any kind shall be erected, placed or permitted on any Lot). All tanks shall be screened so as not to be visible from any other portion of the Property.
- L. There shall be no interference with the established drainage patterns over any of the Property, unless adequate provision is made for property drainage and approved by the Architectural Committee.
- M. No oil drilling, oil development operations, oil refining, quarrying or mining operation of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be permitted upon any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.
- N. No building shall be located or erected nearer to any front Lot line than seventy feet (70') except lots 14 and 15 on which the front setback shall be fifty (50') feet. No building shall be located or erected nearer than thirty feet (30') to any interior side or rear Lot lines.
- O. When any residence is constructed on any lot, it shall be equipped with an aerobic on-site waste water system permitted and approved by the Brazos County Health Department.
- P. No signs shall be allowed on any tract other than one "for sale" sign, no larger in size (surface area) than 2 feet by 3 feet.

ARTICLE 3

The Architectural Committee shall consist of not more than three (3) members ("Members"). The following persons are hereby designated as the initial Members of the Architectural Committee: J. R. Birdwell, Randy Birdwell and Rhonda Neel. Items presented to the Architectural Committee shall be decided by a majority vote of the Members. Each Member of the Architectural Committee shall hold office until such time as he or she has resigned, dies, or is judicially declared incompetent. In the event of a vacancy on the Architectural Committee, the remaining members shall select a new member. The Architectural Committee may adopt such procedural and substantive rules, not in conflict with this Declaration, as it deems necessary or property for the performance of its duties, including

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but not limited to a building code, a fire code, a housing code, and other similar codes. The Architectural Committee shall promote the preservation of existing vegetation.

Whenever in this Declaration the approval of the Architectural Committee is required, the Architectural Committee shall have the right to consider all of the Plans and Specifications for the Improvement or proposal in question and all other facts which, in its sole discretion, are relevant. Except as otherwise specifically provided herein, prior to the commencement of any construction of any Improvement on the Property or any portion thereof, the Plans and Specifications therefor shall be submitted to the Architectural Committee, and construction thereof may not commence unless and until the Architectural Committee has approved such Plans and Specifications. Until receipt by the Architectural Committee of any information or document deemed necessary by the Architectural Committee, it may postpone review of any Plans and Specifications submitted for approval. Upon receipt of all necessary information, the Architectural Committee shall consider and act upon any and all Plans and Specifications submitted for its approval pursuant to this Declaration, and perform such other related duties assigned or authorized by this Declaration, including at its option inspection of construction in progress to assure its conformance with previously approved Plans and Specifications. The Architectural Committee shall have the express authority to perform fact finding functions hereunder and shall have the power to construe and interpret any covenant herein that may be vague, indefinite, uncertain or capable of more than one construction. No Improvement shall be allowed on any Lot which is of such size or architectural design or involves the use of such landscaping, color schemes, exterior finishes and materials and similar features as to be incompatible with residential development within the Property and the surrounding area. The Architectural Committee shall have the authority to disapprove any proposed Improvement based upon the restrictions set forth in the preceding sentence and the decision of the Architectural Committee shall be final and binding so long as it is made in good faith. The Architectural Committee shall not be responsible for reviewing any proposed Improvement, nor shall its approval of any Plans and Specifications be deemed an endorsement, from the standpoint of structural safety, engineering soundness, or conformance with building or other codes not of its authorship.

The approval or consent of the Architectural Committee of any Plans and Specifications for any work done or proposed, or in connection with any other matter requiring the approval or consent of the Architectural Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any other Plans and Specifications, or other matter whatever, subsequently or additionally submitted for approval or consent by the same or a different person. The Architectural Committee may at its option inspect all work in progress to insure compliance with approved Plans and Specifications. Neither the Architectural Committee nor any member thereof shall be liable to the Association or to any Owner or to any other person for any loss, damage or injury arising out of their being in any way connected with the performance of the Architectural Committee's duties under this Declaration unless due to the willful misconduct or bad faith of the Architectural Committee or its members, as

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the case may be. Neither the Architectural Committee nor any member thereof shall be liable to any Owner due to the construction of any Improvements within the Property, or the creation thereby of any obstruction of the view from such Owner's Lot or Lots. In the event the Architectural Committee or its designated representative fails to approve or disapprove any Plans and Specifications within thirty (30) days after the same have been received by a member of the Architectural Committee, to be evidenced by a written receipt, complete with all other information requested by the Architectural Committee in connection with such submission, approval shall be assumed. Notwithstanding any other provision of this Declaration, in order to prevent undue hardship upon the Owner or Owners of any individual Lot or Lots upon the Property, variance from any restrictions set out in this Declaration may be granted by a unanimous decision of the Architectural Committee in a written instrument to be duly acknowledged if and when such a variance shall ever be granted.

ARTICLE 4

A. Declarant has caused the Wickson Lake Estate Owners Association (the Association) to be formed as an unincorporated association. Each owner of a tract shall be a member of the Association, and membership is mandatory and appurtenant to ownership, as a covenant running with the land. Additionally, the owners of all or any portion of a 757.14 acre tract which now or hereafter uses Joyce Road within the subdivision shall be mandatory voting members of the Association, although the restrictions set out above shall not apply to the 757.14 acre tract. The owner of the 757.14 acre tract shall be required to pay the annual assessment and any special assessments approved by the board. The 757.14 acre tract is the same property described in deed recorded in Volume 289, Page 71, Deed Records, Brazos County, Texas.

B. The right to cast votes, and the number of votes which may be cast for election of directors to the Board or all other matters to be voted on by the Members shall be calculated as follows:

The Owner, whether one or more (including the Declarant) of each Lot within the Property shall have one vote for each Lot so owned.

C. The Association shall have the power to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers granted to it by the laws of Texas or by this Declaration. Without in any way limiting the generality of the preceding sentences, the Association, and the Board acting on behalf of the Association, shall have the following powers and authority at all times:

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1. Rules and Bylaws. To make, establish and promulgate, and in its discretion to amend or repeal and re-enact, such Rules and Bylaws, not in conflict with this Declaration, as it deems proper to address any and all aspects of its functions.
2. Insurance. To obtain and maintain in effect policies of insurance which in the opinion of the Board, are reasonably necessary or appropriate to carry out Association functions.
3. Assessments. To levy Assessments as provided in Article VII below.
4. Right of Entry and Enforcement. To enter at any time in an emergency, or in a non-emergency, after ten (10) days written notice, without being liable to any Owner, upon any Lot and into any Improvements thereon for the purpose of enforcing the Restrictions or for the purpose of erecting, maintaining or repairing any improvement to conform to the Restrictions, and the expense incurred by the Association in connection with the entry upon any Lot and the work conducted thereon shall be a personal obligation to the Owner of the Lot entered upon, shall be a lien upon the Lot entered on and Improvements thereon, and shall be enforced in the same manner and to the same extent as provided in Article VII hereof for regular and special assessments. The Association shall have the power and authority from time to time, in its own behalf, or in the name of an on behalf of any Owner who consents thereto, to commence and maintain all actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach of the Restrictions.
5. Legal and Accounting Services. To retain and pay for Legal and Accounting services necessary or proper for the operation of the Association.
6. Road. To build, maintain, repair, improve, extend, widen and replace the 70' roadway or easement called Joyce Road which is used in common by the owners.

D. Association By-laws.

1. All owners shall be members of the Board of the Association, and the Board shall conduct all of the business of the Association. The Board shall meet at least annually on the second Monday of December, at 7:00 PM at a location within the Property to be designated by the President. Special meetings of the Board may be called at any time by the President provided written notice is sent by the President at least thirty days prior to the meeting date. Notice shall be sent by regular U.S. Mail to the address of each owner registered on the Association roster of Owners. It shall be the duty of each Owner to update any address changes by written notice to the

Secretary of the Association. A quorum shall exist at any Board meeting if three tracts are represented by an Owner.

2. The Officers of the Association shall consist of a President and a Secretary - Treasurer. The President shall preside at all meetings and carry out official business of the Association as the signatory party. The Secretary - Treasurer shall keep all books and records of the Association, record and preserve minutes of all Board meetings, send and receive correspondence, and administer and account for all the funds of the Association. The officers shall be elected annually at the December meeting of the Board.

3. The Board shall appoint an Architectural Committee when the initial Architectural Committee resigns, or five years from date, whichever occurs first.

4. The initial officers of the Association shall be Randy Birdwell, President and J. R. Birdwell, Secretary - Treasurer, and they shall serve until the December 2002 meeting of the Board.

#### ARTICLE 5

A. The Association may from time to time levy Assessments against each Lot whether or not improved. The level of Assessment shall be equal and uniform between all Lots, provided however, that no Assessments hereunder shall be levied against Declarant. The initial Assessment shall be \$250.00 per Lot, commencing on January 1, 2003, and a like amount shall be assessed on January of each year thereafter until the Board approves a different assessment amount, except any increase which exceeds 5% over the prior year's assessment shall require unanimous approval of the Board.

B. Each unpaid Assessment together with such interest thereon and costs of collection thereof as hereinafter provided, shall be the personal obligation of the owner of the Lot against which the Assessment falls due, and shall become a lien against each such Lot and all Improvements thereon. The Association may enforce payment of such Assessments in accordance with the provisions of this article.

C. Maintenance Fund. The Board shall establish a maintenance fund into which disbursements shall be made in performing the functions of the Associations under this Declaration. The funds of the Association must be used solely for purposes authorized by this Declaration, as it may from time to time be amended.

D. Special Assessments. In addition to the regular annual Assessments provided for above, the Board may levy special Assessments are necessary to enable the Board to carry out the mandatory functions of the Association under the Residential Restrictions. The amount

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and due date of any special Assessments shall be at the reasonable discretion of the Board, and shall not be required or levied without the unanimous approval of the Board.

E. Owner's Personal Obligation for Payment of Assessments. The regular and special Assessments provided for herein shall be the personal and individual debt of the owner of the Lot covered by such assessments. Except as otherwise provided above, no Owner may exempt himself from liability for such Assessments. In the event of default in the payment of any such Assessment, the owner of the Lot shall be obligated to pay interest at the highest rate allowed by applicable usury laws then in effect on the amount of the Assessment from due date thereof (or if there is no such highest rate, then at the rate of 1-1/2% per month), together with all costs and expenses of collection, including reasonable attorney's fees.

F. Assessment Lien and Foreclosure. All sums assessed in the manner provided in this Article but unpaid, shall together with interest as provided above and the cost of collection, including attorney's fees as herein provided, thereupon become a continuing lien and charge on the Lot covered by such Assessment, which shall bind such lot in the hands of the Owner, and such Owner's heirs, devisees, personal representatives, successors or assigns. The aforesaid lien shall be superior to all other liens and charges against the said Lot, except only for tax liens and all sums unpaid on a first mortgage lien or first deed of trust filed of record, securing in either instance sums borrowed for the acquisition or improvement of the Lot in question. The Association shall have the power to subordinate the aforesaid Assessment lien to any other lien. Such power shall be entirely discretionary with the Board and such subordination shall be effectuated by an officer of the Association, duly authorized by the Board. To evidence an Assessment lien, the Association may 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 an officer of the Association, duly authorized by the Board, and shall be recorded in the office of the County Clerk of Brazos County, Texas. Such lien for payment of Assessments shall attach with the priority above set forth from the date that such payment becomes delinquent, and may be enforced subsequent to the recording of a notice of Assessment lien as provided above, by the foreclosure of the defaulting Owner's Lot by the Association in like manner as a mortgage on real property, 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 not judicial, the Owner shall be required to pay the costs, expenses, and reasonable attorney's fees incurred by the Association. The Association shall have the power to bid on the property at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. Upon the written request of any Mortgagee, the Association shall report to said Mortgagee the status of any Assessments relating to the Mortgagee's mortgage and remaining unpaid longer than thirty (30) days after due.



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ARTICLE 6

Declarant or any owner of any portion of the Property shall be entitled to enforce these restrictions, and to recover attorney's fees and costs of court from the parties violating the restrictions which are incurred in connection with the enforcement hereof. Declarant shall have no duty to enforce the restrictions and shall not have any liability for violations of these restrictions which are committed by parties other than Declarant.

ARTICLE 7

This Declaration, including all of the covenants, conditions, and restrictions hereof shall run until June 30, 2026 unless amended as herein provided. After June 30, 2026, this Declaration, including all such covenants, conditions, and restrictions shall be automatically renewed for four (4) successive periods of ten (10) years each, unless amended as herein provided or terminated by a written instrument executed by the owners of at least seventy-five percent (75%) of the members of the Association then subject to this Declaration, filed of record in the Official Records of Brazos County, Texas.

ARTICLE 8

This Declaration may be amended by the Declarant until June 30, 2002, and thereafter for so long as Declarant owns more than fifty (50%) of the Property then covered by these Declarations. No such amendment by Declarant shall be effective until there is filed in the Official Records of Brazos County, Texas an instrument executed by Declarant and setting forth the amendment. In addition to amendment by the Declarant, as stated above, after June 30, 2002, this Declaration may be amended by recording in the Official Records of Brazos County, Texas an instrument executed and acknowledged by the owners of at least seventy-five percent (75%) of the separate tracts (in number, and not in acreage) then covered by these Declarations, setting forth the amendment and certifying that such amendment has been approved in such manner.

ARTICLE 9

The provisions of these restrictions shall be deemed independent and severable, and the invalidity or partial invalidity of any portion thereof shall not affect the validity or enforceability of any other provision or portion thereof. This Declaration shall be construed in accordance with the laws of the State of Texas.

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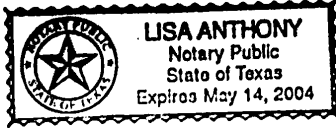
In witness whereof, Declarant has executed this Declaration as of this 20<sup>th</sup> day of June, 2001.

BIRDWELL FAMILY LIMITED PARTNERSHIP

J. R. Birdwell  
J. R. BIRDWELL, General Partner

STATE OF TEXAS §  
COUNTY OF BRAZOS §

This instrument was acknowledged before me on the 20<sup>th</sup> day of June, 2001 by J. R. BIRDWELL, General Partner of BIRDWELL FAMILY LIMITED PARTNERSHIP, on behalf of such partnership and in the capacity stated therein.



Lisa Anthony  
Notary Public of Texas

Filed for Record in:  
BRAZOS COUNTY,  
On: Jun 21, 2001 at 03:45PM  
As a  
Recordings  
Document Number: 0746878  
Amount: 24.00  
Receipt Number - 174554  
Pay Divisor: 571  
STATE OF TEXAS COUNTY OF BRAZOS  
I hereby certify that this instrument was filed on the date and time stamped herein by me and was duly recorded in the index and page of the said records in BRAZOS COUNTY, as stamped herein by me.  
Jun 21, 2001  
HOELSCHER LIPSEY ELMORE, COUNTY CLERK  
BRAZOS COUNTY,

Please return to:  
Cully Lipsy  
010371

HOELSCHER LIPSEY ELMORE  
1021 University Dr. East 102  
College Station 77840-2120